

**SEC AMENDS RULE 10B-18 REGARDING  
ISSUER EQUITY BUY BACKS  
FOLLOWING A MARKET TRADING SUSPENSION**

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On September 23, 1999, the Securities and Exchange Commission (“SEC”) amended Rule 10b-18 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).<sup>1</sup> The amendment, effective October 29, 1999, revises the safe harbor available to an issuer under Rule 10b-18 when the issuer purchases its own stock during the trading session immediately following a market-wide trading suspension under the “circuit breaker” rule.<sup>2</sup>

Rule 10b-18 provides a safe harbor from liability under the anti-manipulation provisions of the Exchange Act, including Rule 10b-5, when an issuer or affiliated purchaser bids for or buys shares of its common stock if the issuer complies with specified conditions regarding the manner, price, volume and timing of these purchases. Generally, Rule 10b-18 excludes from its safe harbor provisions an issuer’s purchase of its common stock as the opening transaction for a trading day, and during the last half-hour before the scheduled close of trading.

The Rule 10b-18 amendment liberalizes Rule 10b-18’s timing condition for the trading session following a market-wide trading suspension. The purpose of the amendment is to improve liquidity during these periods and facilitate market participants’ ability to reestablish equilibrium between buying and selling interests.<sup>3</sup> Effective October 29, 1999, the safe harbor is now available to an issuer that bids for or purchases its own stock either:

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<sup>1</sup> SEC Exchange Act Release No. 41905 (September 23, 1999). The amendment was adopted in response to, and substantially in the form proposed by, a petition for rulemaking filed by the New York Stock Exchange, Inc.

<sup>2</sup> Circuit breakers are coordinated market wide trading halts which are triggered across all the U.S. stock exchanges and the National Association of Securities Dealers, Inc. with respect to stock, stock options and stock index options, as well as U.S. futures exchanges. The circuit breaker rule sets trigger values representing a one-day decline in the Dow Jones Industrial Average of 10%, 20%, and 30% with the durations of the trading halt depending on the size of the decline. The circuit breaker rules are intended to avoid systemic breakdown when a severe one-day market drop interferes with the orderly operation of the financial markets.

<sup>3</sup> Following the market interruptions in October 1987 and October 1997, issuer repurchases provided an important source of liquidity that helped ease the market stress.

- from the reopening of trading until the close of trading on the same day as the imposition of the market-wide trading suspension; or
- at the next day's opening in the case where the market-wide trading suspension was in effect at the scheduled close of trading.

The other conditions in Rule 10b-18 regarding manner (use of a single broker or dealer on any given day), price (no higher than the current independent published bid or last independent transaction price), and volume (daily purchases, excluding block purchases<sup>4</sup>, limited to an amount no greater than 25% of the trading volume, as calculated by the average daily trading volume in the preceding four calendar weeks reported by the exchanges or the automated quotation system operated by NASD) remain unchanged and must be followed in all cases to qualify for the Rule 10b-18's safe harbor protection.

Compliance with Rule 10b-18 is voluntary; therefore, transactions that do not comply with the rule's conditions are not necessarily manipulative. Rule 10b-18 provides no protection from possible Rule 10b-5 liability where the issuer engages in repurchases while in possession of insider information concerning its securities.

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If you have any questions concerning the Rule 10b-18 amendment, please contact Raymond Wagner, Andrew Keller, Arthur Robinson or Douglas Ambrose of this firm at 212-455-2000.

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<sup>4</sup> A "block" is defined as a quantity of stock that either: (i) has a purchase price of \$200,000 or more; (ii) is at least 5,000 shares and has a purchase price of at least \$50,000; or (iii) is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least .1% of the outstanding shares of the security, exclusive of any shares owned by any affiliate. A "block" does not include any amount a broker or dealer, acting as principal, has accumulated for the purpose of selling to the issuer or affiliated purchaser, if the issuer or affiliated purchaser knows or has reason to know that such amount was accumulated for such purpose, nor does it include any amount that a broker or dealer has sold short to the issuer, if the issuer or affiliated purchaser knows or has reason to know that the sale was a short sale. The manner, price, and timing conditions still apply to block purchases.