GNCC CAPITAL, INC.

SUPPLEMENTAL FILING

STOCK REPURCHASE PROGRAM

JANUARY 13, 2014

IMPLEMENTATION OF STOCK REPURCHASES IN OPEN MARKET

On January 13, 2014, the Directors of GNCC Capital, Inc. ("the Corporation") unanimously resolved to implement a share repurchase of shares of the Corporation's Common Stock.

NOTICE OF STOCK REPURCHASE PROGRAM:-

1. The principal purposes for the buyback:

   A share repurchase is in the best interest of the Corporation. The capital of the Corporation is not impaired and such repurchase shall not cause any impairment of the capital of the Corporation.

   All shares repurchased by the Corporation would result in a decrease of the number of freely trading shares of our common stock in free float from time to time.

   The purpose of the share repurchase is for general corporate purposes.

2. The amount authorized to be repurchased:

   The share repurchase shall consist of no more than 20% of the issued and outstanding shares of common stock in the Corporation as may be in issuance from time to time. No other classes of securities are affected by the share repurchase. The total amount to be utilized will not exceed the amount of $750,000.

3. The estimated time period for when the purchases are anticipated to occur:

   The Corporation may repurchase common stock of the Corporation pursuant to the authority granted in the unanimous Directors' Resolution for a period of one year from the date hereof.

4. The manner in which the shares will be repurchased and the Corporation's plans with respect to the deposition of the shares once repurchased:

   The purchase price upon repurchase not exceed any outstanding option or redemption values.

   All share repurchases shall be conducted in an open market. No off-market transactions shall be used to effectuate the repurchase of shares of the common stock of the Corporation.

   The Board of Directors of the Corporation may in its sole discretion elect to retire any and/or all repurchased shares from time to time. Any shares not retired may be retained as treasury shares or used for any other valid corporate purpose.

5. The source of funds to be used for the repurchases:

   The share repurchase shall be funded by a third-party, non-affiliated loan to the Corporation on terms and conditions to be agreed and approved by the Directors.

6. Any existing buyback arrangements:

   The Corporation has no existing or previous stock repurchase programs.

7. Any previously undisclosed material developments:

   There are no significant corporate developments that have not been previously disclosed related to the Corporation other than the issuance of shares of its common stock on December 13, 2013 and in partial settlement of various outstanding convertible loan notes dated May 3, 2010. This conversion became effective prior to the decision to repurchase shares of common stock of the Corporation.

SALIENT POINTS FROM DIRECTORS' UNANIMOUS RESOLUTION:

Having given due consideration, the directors unanimously consent and agree that the repurchase is desirable and is in the best interest of the Corporation and its shareholders. Accordingly, we do hereby unanimously consent to the proposed share repurchase in accordance with the articles and bylaws of the Corporation, Delaware state law and relevant federal rules and regulations, including relevant securities laws. The board of directors unanimously decided that:

1. A share repurchase is in the best interest of the Corporation. The capital of the Corporation is not impaired and such repurchase shall not cause any impairment of the capital of the Corporation.
2. The purpose of the share repurchase is for general corporate purposes.
3. The purchase price upon repurchase not exceed any outstanding option or redemption values.
4. The Board may in its sole discretion elect to retire any and/or all repurchased shares from time to time. Any shares not retired may be retained as treasury shares or used for any other valid corporate purpose.
5. All share repurchases shall be conducted in an open market. No off-market transactions shall be used to effectuate the repurchase of shares of the common stock of the Corporation.
6. There are no significant corporate developments that have not been previously disclosed related to the Corporation other than the issuance of shares of its common stock on December 13, 2013 and in partial settlement of various outstanding convertible loan notes dated May 3, 2010. This conversion became effective prior to the decision to repurchase shares of common stock of the Corporation.
7. All shares repurchased by the Corporation would result in a decrease of the number of freely trading shares of our common stock in free float from time to time.
8. There is no arrangement contractual or otherwise extant related to this repurchase of common shares of the Corporation.
9. Any purchases of our shares of common stock made pursuant to this share repurchase are to be made subject to the various restrictions related to volume, price, and timing as set out in the applicable securities rules and regulations in an effort to minimize the impact of such repurchase on the market for the shares.
10. The share repurchase shall consist of no more than 20% of the issued and outstanding shares of common stock in the Corporation as may be in issuance from time to time. No other classes of securities are affected by the share repurchase.
11. The share repurchase does not conflict with any outstanding loan agreements, restrictions on other classes of securities of the Corporation, or any other commitments of the Corporation.

12. The share repurchase has been duly authorized as evidenced by this resolution and does not conflict or contravene any other corporate policy or rule.
13. The share repurchase shall be funded by a third-party, non-affiliated loan to the Corporation on terms and conditions to be agreed and approved by the Directors.
14. That Ronald Lowenthal shall be granted the authority to implement the stock repurchase.

Therefore, it was resolved that the Corporation shall

1. Appoint an investment bank or other licensed broker-dealer in the United States, to be selected by Ronald Lowenthal or in his absence, by the Directors of the Corporation to implement and execute such share repurchases.
2. The Corporation shall execute such documents and take such actions as may be reasonably necessary to effectuate the repurchase of common stock of the Corporation.
3. The Corporation shall retain such external counsel and other professional advisors as may be necessary to effectuate the share repurchase and to ensure compliance with relevant and applicable state and federal laws, including any relevant securities regulations.
4. The Corporation may repurchase common stock of the Corporation pursuant to the authority granted in this resolution for a period of one year from the date hereof.
5. Ronald Lowenthal is granted all such powers and is authorized to appoint any advisors and to enter into any agreement or sign any document on behalf of the Corporation as may be reasonably necessary to effectuate the repurchase of common stock of the Corporation.

FUNDING OF SHARE REPURCHASES:

On January 12, 2014, the Corporation entered into a Line of Credit Loan Agreement in the total amount of $750,000 to fund the cost of share repurchases over the agreed upon period of time. Full details of this Agreement are contained in a Filing dated January 13, 2014.

The Directors of the Company were not prepared to utilize funds available to the Corporation under existing unrelated loan agreements for stock repurchases as they relate solely to corporate expenses and mining exploration expenditure.

RULE 10b-18 OF THE 1934 SECURITIES ACT (AS AMENDED) – PURCHASES OF CERTAIN EQUITY SECURITIES BY THE ISSUER AND OTHERS

General Rules and Regulations
promulgated
under the
Securities Exchange Act of 1934

Rule 10b-18 -- Purchases of Certain Equity Securities by the Issuer and Others

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Preliminary Notes to Rule 240.10b-18

1. Rule 10b-18 provides an issuer (and its affiliated purchasers) with a "safe harbor" from liability for manipulation under sections 9(a)(2) (SEE THIS SECTION IN FILING) and Rule 10b-5 (SEE THIS SECTION IN FILING) under the Act solely by reason of the manner, timing, price, and volume of their repurchases when they repurchase the issuer's common stock in the market in accordance with the section's manner, timing, price, and volume conditions. As a safe harbor, compliance with Rule 10b-18 is voluntary. To come within the safe harbor, however, an issuer's repurchases must satisfy (on a daily basis) each of the section's four conditions. Failure to meet any one of the four conditions will remove all of the issuer's repurchases from the safe harbor for that day. The safe harbor, moreover, is not available for repurchases that, although made in technical compliance with the section, are part of a plan or scheme to evade the federal securities laws.

2. Regardless of whether the repurchases are effected in accordance with Rule 10b-18, reporting issuers must report their repurchasing activity as required by Item 703 of Regulation S-K and S-B and Item 15(e) of Form 20-F (17 CFR 249.220f) (regarding foreign private issuers), and closed-end management investment companies that are registered under the Investment Company Act of 1940 must report their repurchasing activity as required by Item 8 of Form N-CSR (17 CFR 249.331; 17 CFR 274.128).

Definitions. Unless otherwise provided, all terms used in this section shall have the same meaning as in the Act. In addition, the following definitions shall apply:

ADTV means the average daily trading volume reported for the security during the four calendar weeks preceding the week in which the Rule 10b-18 purchase is to be effected.

Affiliate means any person that directly or indirectly controls, is controlled by, or is under common control with, the issuer.

Affiliated purchaser means:

A person acting, directly or indirectly, in concert with the issuer for the purpose of acquiring the issuer's securities; or

An affiliate who, directly or indirectly, controls the issuer's purchases of such securities, whose purchases are controlled by the issuer, or whose purchases are under common control with those of the issuer; Provided, however, that "affiliated purchaser" shall not include a broker, dealer, or other person solely by reason of such broker, dealer, or other person effecting Rule 10b-18 purchases on behalf of the issuer or for its account, and shall not include an officer or director of the issuer solely by reason of that officer or director's participation in the decision to authorize Rule 10b-18 purchases by or on behalf of the issuer.

Agent independent of the issuer has the meaning contained in § 242.100 of this chapter.

Block means a quantity of stock that either:

Has a purchase price of $200,000 or more; or

Is at least 5,000 shares and has a purchase price of at least $50,000; or

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 one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate;

Provided, however, That a block under paragraph (a)(5)(i), (ii), and (iii) shall not include any amount a broker or dealer, acting as principal, has accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser of the issuer if the issuer or such affiliated purchaser knows or has reason to know that such amount was accumulated for such purpose, nor shall it include any amount that a broker or dealer has sold short to the issuer or to any affiliated purchaser of the issuer if the issuer or such affiliated purchaser knows or has reason to know that the sale was a short sale.

Consolidated system means a consolidated transaction or quotation reporting system that collects and publicly disseminates on a current and continuous basis transaction or quotation information in common equity securities pursuant to an effective transaction reporting plan or an effective national market system plan (as those terms are defined in Rule 242.600 of this chapter).

Market-wide trading suspension means a market-wide trading halt of 30 minutes or more that is:

Imposed pursuant to the rules of a national securities exchange or a national securities association in response to a market-wide decline during a single trading session; or

Declared by the Commission pursuant to its authority under section 12(k) of the Act.

Plan has the meaning contained in § 242.100 of this chapter.

Principal market for a security means the single securities market with the largest reported trading volume for the security during the six full calendar months preceding the week in which the Rule 10b-18 purchase is to be effected.

Public float value has the meaning contained in § 242.100 of this chapter.

Purchase price means the price paid per share as reported, exclusive of any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer.

Riskless principal transaction means a transaction in which a broker or dealer after having received an order from an issuer to buy its security, buys the security as principal in the market at the same price to satisfy the issuer's buy order. The issuer's buy order must be effected at the same price per-share at which the broker or dealer bought the shares to satisfy the issuer's buy order, exclusive of any explicitly disclosed markup or markdown, commission equivalent, or other fee. In addition, only the first leg of the transaction, when the broker or dealer buys the security in the market as principal, is reported under the rules of a self-regulatory organization or under the Act. For purposes of this section, the broker or dealer must have written policies and procedures in place to assure that, at a minimum, the issuer's buy order was received prior to the offsetting transaction; the offsetting transaction is allocated to a riskless principal account or the issuer's account within 60 seconds of the execution; and the broker or dealer has supervisory systems in place to produce records that enable the broker or dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders effected on a riskless principal basis.

Rule 10b-18 purchase means a purchase (or any bid or limit order that would effect such purchase) of an issuer's common stock (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) by or for the issuer or any affiliated purchaser (including riskless principal transactions). However, it does not include any purchase of such security:

Effected during the applicable restricted period of a distribution that is subject to Rule 242.102 of this chapter;

Effected by or for an issuer plan by an agent independent of the issuer;

Effected as a fractional share purchase (a fractional interest in a security) evidenced by a script certificate, order form, or similar document;

Effected during the period from the time of public announcement (as defined in Rule 165(f)) of a merger, acquisition, or similar transaction involving a recapitalization, until the earlier of the completion of such transaction or the completion of the vote by target shareholders. This exclusion does not apply to Rule 10b-18 purchases:

Effected during such transaction in which the consideration is solely cash and there is no valuation period; or

Where:

The total volume of Rule 10b-18 purchases effected on any single day does not exceed the lesser of 25% of the security's four-week ADTV or the issuer's average daily Rule 10b-18 purchases during the three full calendar months preceding the date of the announcement of such transaction;

The issuer's block purchases effected pursuant to paragraph (b)(4) of this section do not exceed the average size and frequency of the issuer's block purchases effected pursuant to paragraph (b)(4) of this section during the three full calendar months preceding the date of the announcement of such transaction; and

Such purchases are not otherwise restricted or prohibited;

Effected pursuant to Rule 13e-1;

Effected pursuant to a tender offer that is subject to Rule 13e-4 or specifically excepted from Rule 13e-4; or

Effected pursuant to a tender offer that is subject to section 14(d) of the Act and the rules and regulations thereunder.

Conditions to be met. Rule 10b-18 purchases shall not be deemed to have violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the Act or Rule 10b-5 under the Act, solely by reason of the time, price, or amount of the Rule 10b-18 purchases, or the number of brokers or dealers used in connection with such purchases, if the issuer or affiliated purchaser of the issuer effects the Rule 10b-18 purchases according to each of the following conditions:

One broker or dealer. Rule 10b-18 purchases must be effected from or through only one broker or dealer on any single day; Provided, however, that:

The "one broker or dealer" condition shall not apply to Rule 10b-18 purchases that are not solicited by or on behalf of the issuer or its affiliated purchaser(s);

Where Rule 10b-18 purchases are effected by or on behalf of more than one affiliated purchaser of the issuer (or the issuer and one or more of its affiliated purchasers) on a single day, the issuer and all affiliated purchasers must use the same broker or dealer; and

Where Rule 10b-18 purchases are effected on behalf of the issuer by a broker-dealer that is not an electronic communication network (ECN) or other alternative trading system (ATS), that broker-dealer can access ECN or other ATS liquidity in order to execute repurchases on behalf of the issuer (or any affiliated purchaser of the issuer) on that day.

Time of purchases. Rule 10b-18 purchases must not be:

The opening (regular way) purchase reported in the consolidated system;

Effected during the 10 minutes before the scheduled close of the primary trading session in the principal market for the security, and the 10 minutes before the scheduled close of the primary trading session in the market where the purchase is effected, for a security that has an ADTV value of $1 million or more and a public float value of $150 million or more; and

Effected during the 30 minutes before the scheduled close of the primary trading session in the principal market for the security, and the 30 minutes before the scheduled close of the primary trading session in the market where the purchase is effected, for all other securities;

However, for purposes of this section, Rule 10b-18 purchases may be effected following the close of the primary trading session until the termination of the period in which last sale prices are reported in the consolidated system so long as such purchases are effected at prices that do not exceed the lower of the closing price of the primary trading session in the principal market for the security and any lower bids or sale prices subsequently reported in the consolidated system, and all of this section's conditions are met. However, for purposes of this section, the issuer may use one broker or dealer to effect Rule 10b-18 purchases during this period that may be different from the broker or dealer that it used during the primary trading session. However, the issuer's Rule 10b-18 purchase may not be the opening transaction of the session following the close of the primary trading session.

Price of purchases. Rule 10b-18 purchases must be effected at a purchase price that:

Does not exceed the highest independent bid or the last independent transaction price, whichever is higher, quoted or reported in the consolidated system at the time the Rule 10b-18 purchase is effected;

For securities for which bids and transaction prices are not quoted or reported in the consolidated system, Rule 10b-18 purchases must be effected at a purchase price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher, displayed and disseminated on any national securities exchange or on any inter-dealer quotation system (as defined in Rule 15c2-11) that displays at least two priced quotations for the security, at the time the Rule 10b-18 purchase is effected; and

For all other securities, Rule 10b-18 purchases must be effected at a price no higher than the highest independent bid obtained from three independent dealers.

Volume of purchases. The total volume of Rule 10b-18 purchases effected by or for the issuer and any affiliated purchasers effected on any single day must not exceed 25 percent of the ADTV for that security; However, once each week, in lieu of purchasing under the 25 percent of ADTV limit for that day, the issuer or an affiliated purchaser of the issuer may effect one block purchase if:

No other Rule 10b-18 purchases are effected that day, and

The block purchase is not included when calculating a security's four week ADTV under this section.

Alternative conditions. The conditions of paragraph (b) of this section shall apply in connection with Rule 10b-18 purchases effected during a trading session following the imposition of a market-wide trading suspension, except:

That the time of purchases condition in paragraph (b)(2)of this section shall not apply, either:

From the reopening of trading until the scheduled close of trading on the day that the market-wide trading suspension is imposed; or

At the opening of trading on the next trading day until the scheduled close of trading that day, if a market-wide trading suspension was in effect at the close of trading on the preceding day; and<

The volume of purchases condition in paragraph (b)(4)of this section is modified so that the amount of Rule 10b-18 purchases must not exceed 100 percent of the ADTV for that security.

Other purchases. No presumption shall arise that an issuer or an affiliated purchaser has violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the Act, or Rule 10b-5 under the Act, if the Rule 10b-18 purchases of such issuer or affiliated purchaser do not meet the conditions specified in paragraph (b) or (c) of this section.

Regulatory History

47 FR 53339, Nov. 26, 1982, as amended by 62 FR 520, 543, Jan. 3, 1997, 62 FR 11321, 11323, March 12, 1997, 64 FR 52428, 52433, Sept. 29, 1999, 68 FR 64952, Nov. 17, 2003; 70 FR 37496, 37618, June 29, 2005.

FURTHER EXPLANATIONS PERTAINING TO RULES REFERENCED ABOVE:

SECTION 9 OF THE SECURITIES ACT OF 1934 (AS AMENDED):

Manipulation of Security Prices

a. Transactions relating to purchase or sale of security

It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange--

1. For the purpose of creating a false or misleading appearance of active trading in any security registered on a national securities exchange, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

2. To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

3. If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security based swap agreement (as defined in section 206B of the Gramm-Leach Bliley Act) with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

4. If a dealer or broker, or the person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to make, regarding any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap agreement, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

5. For a consideration, received directly or indirectly from a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

6. To effect either alone or with one or more other persons any series of transactions for the purchase and/or sale of any security registered on a national securities exchange for the purpose of pegging, fixing, or stabilizing the price of such security in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

b. Transactions relating to puts, calls, straddles, or options

It shall be unlawful for any person to effect, by use of any facility of a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors--

1. any transaction in connection with any security whereby any party to such transaction acquires (A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so; or (B) any security futures product on the security; or

2. any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; or (B) such security futures product; or

3. any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; or (B) such security futures product with relation to such security.

c. Endorsement or guarantee of puts, calls, straddles, or options

It shall be unlawful for any member of a national securities exchange directly or indirectly to endorse or guarantee the performance of any put, call, straddle, option, or privilege in relation to any security registered on a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

d. Registered warrant, right, or convertible security not included in "put", "call", "straddle", or "option"

The terms "put", "call", "straddle", "option", or "privilege" as used in this section shall not include any registered warrant, right, or convertible security.

e. Persons liable; suits at law or in equity

Any person who willfully participates in any act or transaction in violation of subsections (a), (b), or (c) of this section, shall be liable to any person who shall purchase or sell any security at a price which was affected by such act or transaction, and the person so injured may sue in law or in equity in any court of competent jurisdiction to recover the damages sustained as a result of any such act or transaction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant. Every person who becomes liable to make any payment under this subsection may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment. No action shall be maintained to enforce any liability created under this section, unless brought within one year after the discovery of the facts constituting the violation and within three years after such violation.

f. Subsection (a) not applicable to exempted securities

The provisions of subsection (a) of this section shall not apply to an exempted security.

g. Foreign currencies

1. Notwithstanding any other provision of law, the Commission shall have the authority to regulate the trading of any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency (but not, with respect to any of the foregoing, an option on a contract for future delivery other than a security futures product).

2. Notwithstanding the Commodity Exchange Act, the Commission shall have the authority to regulate the trading of any security futures product to the extent provided in the securities laws.

h. Limitations on practices that affect market volatility

It shall be unlawful for any person, by the use of the mails or any means or instrumentality of interstate commerce or of any facility of any national securities exchange, to use or employ any act or practice in connection with the purchase or sale of any equity security in contravention of such rules or regulations as the Commission may adopt, consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets--

1. to prescribe means reasonably designed to prevent manipulation of price levels of the equity securities market or a substantial segment thereof; and

2. to prohibit or constrain, during periods of extraordinary market volatility, any trading practice in connection with the purchase or sale of equity securities that the Commission determines (A) has previously contributed significantly to extraordinary levels of volatility that have threatened the maintenance of fair and orderly markets; and (B) is reasonably certain to engender such levels of volatility if not prohibited or constrained.

In adopting rules under paragraph (2), the Commission shall, consistent with the purposes of this subsection, minimize the impact on the normal operations of the market and a natural person's freedom to buy or sell any equity security.

i. Limitation

The authority of the Commission under this section with respect to security- based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 3A(b).

Legislative History

June 6, 1934, c. 404, Title I, § 9, 48 Stat. 889; Oct. 13, 1982, Pub.L. 97 303, § 3, 96 Stat. 1409; Oct. 16, 1990, Pub.L. 101-432, § 6(a), 104 Stat. 975; Dec. 21, 2000, Pub.L. 106-554, § 1(a)(5), 114 Stat. 2763.

RULE 10b-5 OF THE SECURITIES ACT OF 1934 (AS AMENDED):

EMPLOYMENT OF MANIPULATIVE OR DECEPTIVE PRACTISES:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

a. To employ any device, scheme, or artifice to defraud,

b. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

c. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

Regulatory History

13 FR 8183, Dec. 22, 1948, as amended at 16 FR 7928, Aug. 11, 1951

ITEM 703 OF REGULATIONS S-K:

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

a. In the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the issuer or any "affiliated purchaser," as defined in Rule 10b-18(a)(3) of this chapter, of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to section 12 of the Exchange Act.

ISSUER PURCHASES OF EQUITY SECURITIES				
Period	**(a) Total Number of Shares (or Units) Purchased**	**(b) Average Price Paid per Share (or Unit)**	**(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs**	**(d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs**
Month #1 (identify beginning and ending dates)				
Month #2 (identify beginning and ending dates)				
Month #3 (identify beginning and ending dates)				
Total				

b. The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

The total number of shares (or units) purchased (column (a));

Instruction to paragraph (b)(1) of Item 703

Include in this column all issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (e.g., whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions).

The average price paid per share (or unit) (column (b));

The total number of shares (or units) purchased as part of publicly announced repurchase plans or programs (column (c)); and

The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

Instructions to paragraphs (b)(3) and (b)(4) of Item 703

1. In the table, disclose this information in the aggregate for all plans or programs publicly announced.
2. By footnote to the table, indicate:
   a. The date each plan or program was announced;
   b. The dollar amount (or share or unit amount) approved;
   c. The expiration date (if any) of each plan or program;

d. Each plan or program that has expired during the period covered by the table; and

e. Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

Instruction to Item 703

Disclose all purchases covered by this Item, including purchases that do not satisfy the conditions of the safe harbor of Rule 10b-18 of this chapter.

Regulatory History

47 FR 11401, Mar. 16, 1982 as amended by 68 FR 64952, Nov. 17, 2003.

RULE 165 OF THE SECURITIES ACT OF 1934 (AS AMENDED):

Offers Made in Connection with a Business Combination Transaction

Preliminary:

This section is available only to communications relating to business combinations. The exemption does not apply to communications that may be in technical compliance with this section, but have the primary purpose or effect of conditioning the market for another transaction, such as a capital-raising or resale transaction.

a. Communications before a registration statement is filed.

   Notwithstanding section 5(c) of the Act, the offeror of securities in a business combination transaction to be registered under the Act may make an offer to sell or solicit an offer to buy those securities from and including the first public announcement until the filing of a registration statement related to the transaction, so long as any written communication (other than non-public communications among participants) made in connection with or relating to the transaction (i.e., prospectus) is filed in accordance with Rule 425 and the conditions in paragraph (c) of this section are satisfied.

b. Communications after a registration statement is filed.

   Notwithstanding section 5(b)(1) of the Act, any written communication (other than non-public communications among participants) made in connection with or relating to a business combination transaction (i.e., prospectus) after the filing of a registration statement related to the transaction need not satisfy the requirements of section 10 of the Act, so long as the prospectus is filed in accordance with Rule 424 or Rule 425 and the conditions in paragraph (c) of this section are satisfied.

c. Conditions.

   To rely on paragraphs (a) and (b) of this section:

   1. Each prospectus must contain a prominent legend that urges investors to read the relevant documents filed or to be filed with the Commission because they contain important information. The legend also must explain to investors that they can get the documents for free at the Commission's web site and describe which documents are available free from the offeror; and

2. In an exchange offer, the offer must be made in accordance with the applicable tender offer rules (Rule 14d-1 through Rule 14e-8); and, in a transaction involving the vote of security holders, the offer must be made in accordance with the applicable proxy or information statement rules (Rule 14a-1 through Rule 14a-101 and Rule 14c-1 through Rule 14c-101).

d. Applicability.

This section is applicable not only to the offeror of securities in a business combination transaction, but also to any other participant that may need to rely on and complies with this section in communicating about the transaction.

e. Failure to file or delay in filing.

An immaterial or unintentional failure to file or delay in filing a prospectus described in this section will not result in a violation of section 5(b)(1) or (c) of the Act, so long as:

1. A good faith and reasonable effort was made to comply with the filing requirement; and

2. The prospectus is filed as soon as practicable after discovery of the failure to file.

f. Definitions.

1. A business combination transaction means any transaction specified in Rule 145(a) or exchange offer;

2. A participant is any person or entity that is a party to the business combination transaction and any persons authorized to act on their behalf; and

3. Public announcement is any oral or written communication by a participant that is reasonably designed to, or has the effect of, informing the public or security holders in general about the business combination transaction.

Regulatory History:

64 FR 61408, 61450, Nov. 10, 1999

DELAWARE STATE RESTRICTIONS ON STOCK REPURCHASES:

The Corporation is incorporated in the State of Delaware.

Certain provisions of the Delaware General Corporation Law ("DGCL") contain restrictions regarding legally available funds that apply to repurchases of shares of capital stock. Under DGCL Section 160, a Delaware corporation cannot purchase shares of its capital stock when the purchase "would cause any impairment of the capital of the corporation."

The Directors of the Corporation have ensured that this requirement has been met.

APPLICABLE DELAWARE STATE LAW REQUIREMENTS PERTAINING TO STOCK REPURCHASES:

TITLE 8

Corporations

CHAPTER 1. GENERAL CORPORATION LAW

Subchapter V. Stock and Dividends

§ 151 Classes and series of stock; redemption; rights.

(a) Every corporation may issue 1 or more classes of stock or 1 or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the certificate of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation. Any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the certificate of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by its certificate of incorporation, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series of stock is clearly and expressly set forth in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors. The term "facts," as used in this subsection, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. The power to increase or decrease or otherwise adjust the capital stock as provided in this chapter shall apply to all or any such classes of stock.

(b) Any stock of any class or series may be made subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event; provided however, that immediately following any such redemption the corporation shall have outstanding 1 or more shares of 1 or more classes or series of stock, which share, or shares together, shall have full voting powers. Notwithstanding the limitation stated in the foregoing proviso:

(1) Any stock of a regulated investment company registered under the Investment Company Act of 1940 [15 U.S.C. § 80 a-1 et seq.], as heretofore or hereafter amended, may be made subject to redemption by the corporation at its option or at the option of the holders of such stock.

(2) Any stock of a corporation which holds (directly or indirectly) a license or franchise from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it.

Any stock which may be made redeemable under this section may be redeemed for cash, property or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or rates, and with such adjustments, as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to subsection (a) of this section.

(c) The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which such stocks are entitled, shall have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as elsewhere in this chapter provided.

(d) The holders of the preferred or special stock of any class or of any series thereof shall be entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(e) Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(f) If any corporation shall be authorized to issue more than 1 class of stock or more than 1 series of any class, the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in § 202 of this title, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or § 156, § 202(a) or § 218(a) of this title or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

(g) When any corporation desires to issue any shares of stock of any class or of any series of any class of which the powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, shall not have been set forth in the certificate of incorporation or in any amendment thereto but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the certificate of incorporation or any amendment thereto, a certificate of designations setting forth a copy of such resolution or resolutions and the number of shares of stock of such class or series as to which the resolution or resolutions apply shall be executed, acknowledged, filed and shall become effective, in accordance with § 103 of this title. Unless otherwise provided in any such resolution or resolutions, the number of shares of stock of any such series to which such resolution or resolutions apply may be increased (but not above the total number of authorized shares of the class) or decreased (but not below the number of shares thereof then outstanding) by a certificate likewise executed, acknowledged and filed setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased the number of shares so specified in the certificate shall resume the status which they had prior to the adoption of the first resolution or resolutions. When no shares of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding, and that none will be issued subject to the certificate of designations previously filed with respect to such class or series, may be executed, acknowledged and filed in accordance with § 103 of this title and, when

such certificate becomes effective, it shall have the effect of eliminating from the certificate of incorporation all matters set forth in the certificate of designations with respect to such class or series of stock. Unless otherwise provided in the certificate of incorporation, if no shares of stock have been issued of a class or series of stock established by a resolution of the board of directors, the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, may be amended by a resolution or resolutions adopted by the board of directors. A certificate which:

(1) States that no shares of the class or series have been issued;

(2) Sets forth a copy of the resolution or resolutions; and

(3) If the designation of the class or series is being changed, indicates the original designation and the new designation,

shall be executed, acknowledged and filed and shall become effective, in accordance with § 103 of this title. When any certificate filed under this subsection becomes effective, it shall have the effect of amending the certificate of incorporation; except that neither the filing of such certificate nor the filing of a restated certificate of incorporation pursuant to § 245 of this title shall prohibit the board of directors from subsequently adopting such resolutions as authorized by this subsection.

8 Del. C. 1953, § 151; 56 Del. Laws, c. 50; 57 Del. Laws, c. 148, §§ 8, 9; 57 Del. Laws, c. 421, §§ 3, 4; 59 Del. Laws, c. 106, § 1; 64 Del. Laws, c. 112, §§ 8-10; 65 Del. Laws, c. 127, § 4; 66 Del. Laws, c. 136, § 4; 67 Del. Laws, c. 376, § 4; 69 Del. Laws, c. 264, § 1; 70 Del. Laws, c. 587, § 12; 71 Del. Laws, c. 339, § 18.;

§ 152 Issuance of stock; lawful consideration; fully paid stock.

The consideration, as determined pursuant to § 153(a) and (b) of this title, for subscriptions to, or the purchase of, the capital stock to be issued by a corporation shall be paid in such form and in such manner as the board of directors shall determine. The board of directors may authorize capital stock to be issued for consideration consisting of cash, any tangible or intangible property or any benefit to the corporation, or any combination thereof. The board of directors may determine the amount of such consideration by approving a formula by which the amount of consideration is determined. In the absence of actual fraud in the transaction, the judgment of the directors as to the value of such consideration shall be conclusive. The capital stock so issued shall be deemed to be fully paid and nonassessable stock upon receipt by the corporation of such consideration; provided, however, nothing contained herein shall prevent the board of directors from issuing partly paid shares under § 156 of this title.

8 Del. C. 1953, § 152; 56 Del. Laws, c. 50; 59 Del. Laws, c. 437, § 8; 74 Del. Laws, c. 326, § 3; 79 Del. Laws, c. 72, § 3.;

§ 153 Consideration for stock.

(a) Shares of stock with par value may be issued for such consideration, having a value not less than the par value thereof, as determined from time to time by the board of directors, or by the stockholders if the certificate of incorporation so provides.

(b) Shares of stock without par value may be issued for such consideration as is determined from time to time by the board of directors, or by the stockholders if the certificate of incorporation so provides.

(c) Treasury shares may be disposed of by the corporation for such consideration as may be determined from time to time by the board of directors, or by the stockholders if the certificate of incorporation so provides.

(d) If the certificate of incorporation reserves to the stockholders the right to determine the consideration for the issue of any shares, the stockholders shall, unless the certificate requires a greater vote, do so by a vote of a majority of the outstanding stock entitled to vote thereon.

8 Del. C. 1953, § 153; 56 Del. Laws, c. 50; 57 Del. Laws, c. 148, § 10.;

§ 154 Determination of amount of capital; capital, surplus and net assets defined.

Any corporation may, by resolution of its board of directors, determine that only a part of the consideration which shall be received by the corporation for any of the shares of its capital stock which it shall issue from time to time shall be capital; but, in case any of the shares issued shall be shares having a par value, the amount of the part of such consideration so determined to be capital shall be in excess of the aggregate par value of the shares issued for such consideration having a par value, unless all the shares issued shall be shares having a par value, in which case the amount of the part of such consideration so determined to be capital need be only equal to the aggregate par value of such shares. In each such case the board of directors shall specify in dollars the part of such consideration which shall be capital. If the board of directors shall not have determined (1) at the time of issue of any shares of the capital stock of the corporation issued for cash or (2) within 60 days after the issue of any shares of the capital stock of the corporation issued for consideration other than cash what part of the consideration for such shares shall be capital, the capital of the corporation in respect of such shares shall be an amount equal to the aggregate par value of such shares having a par value, plus the amount of the consideration for such shares without par value. The amount of the consideration so determined to be capital in respect of any shares without par value shall be the stated capital of such shares. The capital of the corporation may be increased from time to time by resolution of the board of directors directing that a portion of the net assets of the corporation in excess of the amount so determined to be capital be transferred to the capital account. The board of directors may direct that the portion of such net assets so transferred shall be treated as capital in respect of any shares of the corporation of any designated class or classes. The excess, if any, at any given time, of the net assets of the corporation over the amount so determined to be capital shall be surplus. Net assets means the amount by which total assets exceed total liabilities. Capital and surplus are not liabilities for this purpose. Notwithstanding anything in this section to the contrary, for purposes of this section and §§ 160 and 170 of this title, the capital of any nonstock corporation shall be deemed to be zero.

8 Del. C. 1953, § 154; 56 Del. Laws, c. 50; 59 Del. Laws, c. 106, § 2; 74 Del. Laws, c. 326, § 4; 77 Del. Laws, c. 253, § 15.;

§ 155 Fractions of shares.

A corporation may, but shall not be required to, issue fractions of a share. If it does not issue fractions of a share, it shall (1) arrange for the disposition of fractional interests by those entitled thereto, (2) pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined or (3) issue scrip or warrants in registered form (either represented by a certificate or uncertificated) or in bearer form (represented by a certificate) which shall entitle the holder to receive a full share upon the surrender of such scrip or warrants aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip or warrants shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip or warrants to be issued subject to the conditions that they shall become void if not exchanged for certificates representing the full shares or uncertificated full shares before a specified date, or subject to the conditions that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip or warrants, or subject to any other conditions which the board of directors may impose.

8 Del. C. 1953, § 155; 56 Del. Laws, c. 50; 56 Del. Laws, c. 186, § 7; 57 Del. Laws, c. 148, § 11; 64 Del. Laws, c. 112, § 11.;

§ 156 Partly paid shares.

Any corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

8 Del. C. 1953, § 156; 56 Del. Laws, c. 50; 64 Del. Laws, c. 112, § 12.;

§ 157 Rights and options respecting stock.

(a) Subject to any provisions in the certificate of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation, rights or options entitling the holders thereof to acquire from the corporation any shares of its capital stock of any class or classes, such rights or options to be evidenced by or in such instrument or instruments as shall be approved by the board of directors.

(b) The terms upon which, including the time or times which may be limited or unlimited in duration, at or within which, and the consideration (including a formula by which such consideration may be determined) for which any such shares may be acquired from the corporation upon the exercise of any such right or option, shall be such as shall be stated in the certificate of incorporation, or in a resolution adopted by the board of directors providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive.

(c) The board of directors may, by a resolution adopted by the board, authorize 1 or more officers of the corporation to do 1 or both of the following: (i) designate officers and employees of the corporation or of any of its subsidiaries to be recipients of such rights or options created by the corporation, and (ii) determine the number of such rights or options to be received by such officers and employees; provided, however, that the resolution so authorizing such officer or officers shall specify the total number of rights or options such officer or officers may so award. The board of directors may not authorize an officer to designate himself or herself as a recipient of any such rights or options.

(d) In case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the consideration so to be received therefor shall have a value not less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par value, the consideration therefor shall be determined in the manner provided in § 153 of this title.

8 Del. C. 1953, § 157; 56 Del. Laws, c. 50; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 82, §§ 4-7; 74 Del. Laws, c. 326, §§ 5-7.;

§ 158 Stock certificates; uncertificated shares.

The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the corporation by the chairperson or vice-chairperson of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. A corporation shall not have power to issue a certificate in bearer form.

8 Del. C. 1953, § 158; 56 Del. Laws, c. 50; 56 Del. Laws, c. 186, § 8; 58 Del. Laws, c. 235, § 2; 64 Del. Laws, c. 112, § 13; 71 Del. Laws, c. 339, § 19; 73 Del. Laws, c. 298, § 3; 75 Del. Laws, c. 30, § 2.;

§ 159 Shares of stock; personal property, transfer and taxation.

The shares of stock in every corporation shall be deemed personal property and transferable as provided in Article 8 of subtitle I of Title 6. No stock or bonds issued by any corporation organized under this chapter shall be taxed by this State when the same shall be owned by nonresidents of this State, or by foreign corporations. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of transfer if, when the certificates are presented to the corporation for transfer or uncertificated shares are requested to be transferred, both the transferor and transferee request the corporation to do so.

8 Del. C. 1953, § 159; 56 Del. Laws, c. 50; 64 Del. Laws, c. 112, § 14.;

§ 160 Corporation's powers respecting ownership, voting, etc., of its own stock; rights of stock called for redemption.

(a) Every corporation may purchase, redeem, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; provided, however, that no corporation shall:

(1) Purchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when such purchase or redemption would cause any impairment of the capital of the corporation, except that a corporation other than a nonstock corporation may purchase or redeem out of capital any of its own shares which are entitled upon any distribution of its assets, whether by dividend or in liquidation, to a preference over another class or series of its stock, or, if no shares entitled to such a preference are outstanding, any of its own shares, if such shares will be retired upon their acquisition and the capital of the corporation reduced in accordance with §§ 243 and 244 of this title. Nothing in this subsection shall invalidate or otherwise affect a note, debenture or other obligation of a corporation given by it as consideration for its acquisition by purchase, redemption or exchange of its shares of stock if at the time such note, debenture or obligation was delivered by the corporation its capital was not then impaired or did not thereby become impaired;

(2) Purchase, for more than the price at which they may then be redeemed, any of its shares which are redeemable at the option of the corporation; or

(3)a. In the case of a corporation other than a nonstock corporation, redeem any of its shares, unless their redemption is authorized by § 151(b) of this title and then only in accordance with such section and the certificate of incorporation, or

b. In the case of a nonstock corporation, redeem any of its membership interests, unless their redemption is authorized by the certificate of incorporation and then only in accordance with the certificate of incorporation.

(b) Nothing in this section limits or affects a corporation's right to resell any of its shares theretofore purchased or redeemed out of surplus and which have not been retired, for such consideration as shall be fixed by the board of directors.

(c) Shares of its own capital stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes. Nothing in this section shall be construed as limiting the right of any corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

(d) Shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to holders thereof and a sum sufficient to redeem such shares has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of certificates therefor.

8 Del. C. 1953, § 160; 56 Del. Laws, c. 50; 57 Del. Laws, c. 649, § 1; 59 Del. Laws, c. 106, § 3; 59 Del. Laws, c. 437, § 9; 70 Del. Laws, c. 349, § 3; 77 Del. Laws, c. 253, §§ 16, 17.;

§ 161 Issuance of additional stock; when and by whom.

The directors may, at any time and from time to time, if all of the shares of capital stock which the corporation is authorized by its certificate of incorporation to issue have not been issued, subscribed for, or otherwise committed to be issued, issue or take subscriptions for additional shares of its capital stock up to the amount authorized in its certificate of incorporation.

8 Del. C. 1953, § 161; 56 Del. Laws, c. 50.;

§ 162 Liability of stockholder or subscriber for stock not paid in full.

(a) When the whole of the consideration payable for shares of a corporation has not been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each holder of or subscriber for such shares shall be bound to pay on each share held or subscribed for by such holder or subscriber the sum necessary to complete the amount of the unpaid balance of the consideration for which such shares were issued or are to be issued by the corporation.

(b) The amounts which shall be payable as provided in subsection (a) of this section may be recovered as provided in § 325 of this title, after a writ of execution against the corporation has been returned unsatisfied as provided in said § 325.

(c) Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable for any unpaid portion of such consideration, but the transferor shall remain liable therefor.

(d) No person holding shares in any corporation as collateral security shall be personally liable as a stockholder but the person pledging such shares shall be considered the holder thereof and shall be so liable. No executor, administrator, guardian, trustee or other fiduciary shall be personally liable as a stockholder, but the estate or funds held by such executor, administrator, guardian, trustee or other fiduciary in such fiduciary capacity shall be liable.

(e) No liability under this section or under § 325 of this title shall be asserted more than 6 years after the issuance of the stock or the date of the subscription upon which the assessment is sought.

(f) In any action by a receiver or trustee of an insolvent corporation or by a judgment creditor to obtain an assessment under this section, any stockholder or subscriber for stock of the insolvent corporation may appear and contest the claim or claims of such receiver or trustee.

8 Del. C. 1953, § 162; 56 Del. Laws, c. 50; 71 Del. Laws, c. 339, § 20.;

§ 163 Payment for stock not paid in full.

The capital stock of a corporation shall be paid for in such amounts and at such times as the directors may require. The directors may, from time to time, demand payment, in respect of each share of stock not fully paid, of such sum of money as the necessities of the business may, in the judgment of the board of directors, require, not exceeding in the whole the balance remaining unpaid on said stock, and such sum so demanded shall be paid to the corporation at such times and by such installments as the directors shall direct. The directors shall give written notice of the time and place of such payments, which notice shall be mailed at least 30 days before the time for such payment, to each holder of or subscriber for stock which is not fully paid at such holder's or subscriber's last known post-office address.

8 Del. C. 1953, § 163; 56 Del. Laws, c. 50; 71 Del. Laws, c. 339, § 21.;

§ 164 Failure to pay for stock; remedies.

When any stockholder fails to pay any installment or call upon such stockholder's stock which may have been properly demanded by the directors, at the time when such payment is due, the directors may collect the amount of any such installment or call or any balance thereof remaining unpaid, from the said stockholder by an action at law, or they shall sell at public sale such part of the shares of such delinquent stockholder as will pay all demands then due from such stockholder with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor.

Notice of the time and place of such sale and of the sum due on each share shall be given by advertisement at least 1 week before the sale, in a newspaper of the county in this State where such corporation's registered office is located, and such notice shall be mailed by the corporation to such delinquent stockholder at such stockholder's last known post-office address, at least 20 days before such sale.

If no bidder can be had to pay the amount due on the stock, and if the amount is not collected by an action at law, which may be brought within the county where the corporation has its registered office, within 1 year from the date of the bringing of such action at law, the said stock and the amount previously paid in by the delinquent stockholder on the stock shall be forfeited to the corporation.

8 Del. C. 1953, § 164; 56 Del. Laws, c. 50; 59 Del. Laws, c. 106, § 4; 71 Del. Laws, c. 339, § 22.;

§ 165 Revocability of preincorporation subscriptions.

Unless otherwise provided by the terms of the subscription, a subscription for stock of a corporation to be formed shall be irrevocable, except with the consent of all other subscribers or the corporation, for a period of 6 months from its date.

8 Del. C. 1953, § 165; 56 Del. Laws, c. 50.;

§ 166 Formalities required of stock subscriptions.

A subscription for stock of a corporation, whether made before or after the formation of a corporation, shall not be enforceable against a subscriber, unless in writing and signed by the subscriber or by such subscriber's agent.

8 Del. C. 1953, § 166; 56 Del. Laws, c. 50; 71 Del. Laws, c. 339, § 23.;

§ 167 Lost, stolen or destroyed stock certificates; issuance of new certificate or uncertificated shares.

A corporation may issue a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

8 Del. C. 1953, § 167; 56 Del. Laws, c. 50; 64 Del. Laws, c. 112, § 15; 71 Del. Laws, c. 339, § 24.;

§ 168 Judicial proceedings to compel issuance of new certificate or uncertificated shares.

(a) If a corporation refuses to issue new uncertificated shares or a new certificate of stock in place of a certificate theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost, stolen or destroyed, the owner of the lost, stolen or destroyed certificate or such owner's legal representatives may apply to the Court of Chancery for an order requiring the corporation to show cause why it should not issue new uncertificated shares or a new certificate of stock in place of the certificate so lost, stolen or destroyed. Such application shall be by a complaint which shall state the name of the corporation, the number and date of the certificate, if known or ascertainable by the plaintiff, the number of shares of stock represented thereby and to whom issued, and a statement of the circumstances attending such loss, theft or destruction. Thereupon the court shall make an order requiring the corporation to show cause at a time and place therein designated, why it should not issue new uncertificated shares or a new certificate of stock in place of the one described in the complaint. A copy of the complaint and order shall be served upon the corporation at least 5 days before the time designated in the order.

(b) If, upon hearing, the court is satisfied that the plaintiff is the lawful owner of the number of shares of capital stock, or any part thereof, described in the complaint, and that the certificate therefor has been lost, stolen or destroyed, and no sufficient cause has been shown why new uncertificated shares or a new certificate should not be issued in place thereof, it shall make an order requiring the corporation to issue and deliver to the plaintiff new uncertificated shares or a new certificate for such shares. In its order the court shall direct that, prior to the issuance and delivery to the plaintiff of such new uncertificated shares or a new certificate, the plaintiff give the corporation a bond in such form and with such security as to the court appears sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new uncertificated shares or new certificate. No corporation which has issued uncertificated shares or a certificate pursuant to an order of the court entered hereunder shall be liable in an amount in excess of the amount specified in such bond.

8 Del. C. 1953, § 168; 56 Del. Laws, c. 50; 64 Del. Laws, c. 112, § 16; 71 Del. Laws, c. 339, § 25.;

§ 169 Situs of ownership of stock.

For all purposes of title, action, attachment, garnishment and jurisdiction of all courts held in this State, but not for the purpose of taxation, the situs of the ownership of the capital stock of all corporations existing under the laws of this State, whether organized under this chapter or otherwise, shall be regarded as in this State.

8 Del. C. 1953, § 169; 56 Del. Laws, c. 50.;

§ 170 Dividends; payment; wasting asset corporations.

(a) The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock either:

(1) Out of its surplus, as defined in and computed in accordance with §§ 154 and 244 of this title; or

(2) In case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year.

If the capital of the corporation, computed in accordance with §§ 154 and 244 of this title, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired. Nothing in this subsection shall invalidate or otherwise affect a note, debenture or other obligation of the corporation paid by it as a dividend on shares of its stock, or any payment made thereon, if at the time such note, debenture or obligation was delivered by the corporation, the corporation had either surplus or net profits as provided in (a)(1) or (2) of this section from which the dividend could lawfully have been paid.

(b) Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (including but not limited to a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or engaged primarily in the liquidation of specific assets) may determine the net profits derived from the exploitation of such wasting assets or the net proceeds derived from such liquidation without taking into consideration the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation of such assets.

8 Del. C. 1953, § 170; 56 Del. Laws, c. 50; 56 Del. Laws, c. 186, § 9; 59 Del. Laws, c. 106, § 5; 64 Del. Laws, c. 112, § 17; 67 Del. Laws, c. 376, § 5; 69 Del. Laws, c. 61, § 3; 72 Del. Laws, c. 123, § 3; 77 Del. Laws, c. 253, § 18.;

§ 171 Special purpose reserves.

The directors of a corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

8 Del. C. 1953, § 171; 56 Del. Laws, c. 50.;

§ 172 Liability of directors and committee members as to dividends or stock redemption.

A member of the board of directors, or a member of any committee designated by the board of directors, shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of its officers or employees, or committees of the board of directors, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation, as to the value and amount of the assets, liabilities and/or net profits of the corporation or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the corporation's stock might properly be purchased or redeemed.

8 Del. C. 1953, § 172; 56 Del. Laws, c. 50; 56 Del. Laws, c. 186, § 10; 66 Del. Laws, c. 136, § 5.;

§ 173 Declaration and payment of dividends.

No corporation shall pay dividends except in accordance with this chapter. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock. If the dividend is to be paid in shares of the corporation's theretofore unissued capital stock the board of directors shall, by resolution, direct that there be designated as capital in respect of such shares an amount which is not less than the aggregate par value of par value shares being declared as a dividend and, in the case of shares without par value being declared as a dividend, such amount as shall be determined by the board of directors. No such designation as capital shall be necessary if shares are being distributed by a corporation pursuant to a split-up or division of its stock rather than as payment of a dividend declared payable in stock of the corporation.

8 Del. C. 1953, § 173; 56 Del. Laws, c. 50; 59 Del. Laws, c. 437, § 10; 65 Del. Laws, c. 127, § 5.;

§ 174 Liability of directors for unlawful payment of dividend or unlawful stock purchase or redemption; exoneration from liability; contribution among directors; subrogation.

(a) In case of any wilful or negligent violation of § 160 or § 173 of this title, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within 6 years after paying such unlawful dividend or after such unlawful stock purchase or redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation's stock, with interest from the time such liability accrued. Any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may be exonerated from such liability by causing his or her dissent to be entered on the books containing the minutes of the proceedings of the directors at the time the same was done, or immediately after such director has notice of the same.

(b) Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors who voted for or concurred in the unlawful dividend, stock purchase or stock redemption.

(c) Any director against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amount paid by such director as a result of such claim, to be subrogated to the rights of the corporation against stockholders who received the dividend on, or assets for the sale or redemption of, their stock with knowledge of facts indicating that such dividend, stock purchase or redemption was unlawful under this chapter, in proportion to the amounts received by such stockholders respectively.

8 Del. C. 1953, § 174; 56 Del. Laws, c. 50; 59 Del. Laws, c. 106, § 6; 71 Del. Laws, c. 339, §§ 26, 27.;

DATED: JANUARY 13, 2013

RONALD YADIN LOWENTHAL

EXECUTIVE CHAIRMAN

EXHIBITS:

Directors' Resolution dated January 13, 2014

Frequently Asked Questions about Rule 10b-18 and Stock Repurchase Programs

GNCC CAPITAL, INC.

UNANIMOUS RESOLUTION OF THE BOARD OF DIRECTORS

Unanimous Resolution of the Board of Directors of GNCC Capital, Inc., a Delaware Corporation (the "Corporation") related to the repurchase of shares in the Corporation.

We, the undersigned, being all of directors of the Corporation, consent and agree that the corporate resoluion was made on January 13, 2014.

Having given due consideration, the directors unanimously consent and agree that the repurchase is desirable and is in the best interest of the Corporation and its shareholders. Accordingly, we do hereby unanimously consent to the proposed share repurchase in accordance with the articles and bylaws of the Corporation, Delaware state law and relevant federal rules and regulations, including relevant securities laws. The board of directors unanimously decided that

1. A share repurchase is in the best interest of the Corporation. The capital of the Corporation is not impaired and such repurchase shall not cause any impairment of the capital of the Corporation.
2. The purpose of the share repurchase is for general corporate purposes.
3. The purchase price upon repurchase not exceed any outstanding option or redemption values.
4. The Board may in its sole discretion elect to retire any and/or all repurchased shares from time to time. Any shares not retired may be retained as treasury shares or used for any other valid corporate purpose.
5. All share repurchases shall be conducted in an open market. No off-market transactions shall be used to effectuate the repurchase of shares of the common stock of the Corporation.
6. There are no significant corporate developments that have not been previously disclosed related to the Corporation other than the issuance of shares of its common stock on December 13, 2013 and in partial settlement of various outstanding convertible loan notes dated May 3, 2010. This conversion became effective prior to the decision to repurchase shares of common stock of the Corporation.
7. All shares repurchased by the Corporation would result in a decrease of the number of freely trading shares of our common stock in free float from time to time.
8. There is no arrangement contractual or otherwise extant related to this repurchase of common shares of the Corporation.
9. Any purchases of our shares of common stock made pursuant to this share repurchase are to be made subject to the various restrictions related to volume, price, and timing as set out in the applicable securities rules and regulations in an effort to minimize the impact of such repurchase on the market for the shares.
10. The share repurchase shall consist of no more than 20% of the issued and outstanding shares of common stock in the Corporation as may be in issuance from time to time. No other classes of securities are affected by the share repurchase.

11. The share repurchase does not conflict with any outstanding loan agreements, restrictions on other classes of securities of the Corporation, or any other commitments of the Corporation.
12. The share repurchase has been duly authorized as evidenced by this resolution and does not conflict or contravene any other corporate policy or rule.
13. The share repurchase shall be funded by a third-party, non-affiliated loan to the Corporation on terms and conditions to be agreed and approved by the Directors.
14. That Ronald Lowenthal shall be granted the authority to implement the stock repurchase.

Therefore, it is resolved that the Corporation shall

1. Appoint an investment bank or other licensed broker-dealer in the United States, to be selected by Ronald Lowenthal or in his absence, by the Directors of the Corporation to implement and execute such share repurchases.
2. The Corporation shall execute such documents and take such actions as may be reasonably necessary to effectuate the repurchase of common stock of the Corporation.
3. The Corporation shall retain such external counsel and other professional advisors as may be necessary to effectuate the share repurchase and to ensure compliance with relevant and applicable state and federal laws, including any relevant securities regulations.
4. The Corporation may repurchase common stock of the Corporation pursuant to the authority granted in this resolution for a period of one year from the date hereof.
5. Ronald Lowenthal is granted all such powers and is authorized to appoint any advisors and to enter into any agreement or sign any document on behalf of the Corporation as may be reasonably necessary to effectuate the repurchase of common stock of the Corporation.

DATED: JANUARY 13, 2014

/s/

_____

Ronald Yadin Lowenthal
Executive Chairman

/s/

_____

Nicolaas Edward Blom
President and Chief Executive Officer

FREQUENTLY ASKED QUESTIONS ABOUT RULE 10b-18 AND STOCK REPURCHASE PROGRAMS

The Regulation

What is Rule 10b-18?

Rule 10b-18 provides an issuer (and its "affiliated purchasers") with a non-exclusive safe harbor from liability under certain market manipulation rules (i.e., Sections 9(a)(2) and 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 under the Exchange Act, each to a limited extent) when repurchases of the issuer's common stock in the market are made in accordance with the rule's manner, timing, price and volume conditions. Rule 10b-18's safe harbor is available for purchases of the issuer's stock on any given day. To fall within the safe harbor, the issuer's repurchases must satisfy, on a daily basis, each of the rule's four conditions. Failure to meet any one of the four conditions will disqualify all of the issuer's repurchases from the safe harbor for that day.

Why was Rule 10b-18 adopted?

An issuer has a strong interest in the market price of its securities. The market price of the issuer's common stock may determine the price of a future acquisition or the price of the offering of additional shares and also serves as an indicator of the health and performance of the issuer. Therefore, an issuer may have an incentive to manipulate the price of its common stock. One way an issuer may positively affect the price of its common stock is to repurchase shares of its common stock in the open market. Such repurchases may subject an issuer to claims of manipulative behavior. However, an issuer may also engage in open market repurchases for many legitimate business reasons. Therefore, in 1982, the Securities Exchange Commission (the "SEC") adopted Rule 10b-18 to provide a non-exclusive safe harbor for issuer repurchases.

Why has the SEC proposed to amend Rule 10b-18?

On January 26, 2010, the SEC proposed amendments to Rule 10b-18 to clarify and modernize the safe harbor provision in light of market changes with respect to trading strategies and developments in automated trading systems and technology that has increased the speed of trading and changed the profile of how issuer repurchases are effected.[1] These proposed amendments

[1] See proposing release No. 34-61414 available at http://sec.gov/rules/proposed/2010/34-61414.pdf.

are incorporated into this discussion of the conditions for repurchases under Rule 10b-18.

Scope of the Rule 10b-18 Safe Harbor

Does Rule 10b-18 provide an absolute safe harbor from liability under Section 10(b) or Rule 10b-5?

No. Rule 10b-18 does not provide an absolute safe harbor from liability under Section 10(b) or Rule 10b-5. For example, Rule 10b-18 confers no immunity from possible Rule 10b-5 liability where the issuer engages in repurchases while in possession of material non-public information, or where purchases are part of a plan or scheme to evade the federal securities laws.

Note that an issuer may exceed the limitations contained in Rule 10b-18 and still not incur liability under the anti-manipulation provisions of Section 9(a)(2) or Rule 10b-5. However, there is a greater uncertainty associated with purchase activities outside the "safe harbor" because of the lack of specific guidelines.

Is Rule 10b-18 the exclusive means by which an issuer may repurchase its common stock in the open market?

No. Rule 10b-18 does not mandate the terms under which an issuer may repurchase its stock. Rule 10b-18 expressly provides that there is no presumption of manipulation simply because the issuer's purchases do not satisfy the rule's conditions.

Purpose and Benefits of Stock Repurchase Programs

What is the purpose of a stock repurchase program?

An issuer may want to engage in stock repurchases for a variety of reasons, including: (i) to meet the needs of employee benefit plans and stock option plans; (ii) to send a signal to the market that the stock is undervalued and a good investment; (iii) to move excess cash to a better investment when more favorable alternatives are unavailable; or (iv) to reduce its cost of capital.

What are the benefits of a stock repurchase program?

There are several benefits associated with stock repurchase programs. These include the following:

- The availability of a non-exclusive safe harbor from liability for manipulation of the issuer's stock price (if Rule 10b-18's conditions are met);
- Greater certainty to the issuer and affiliated purchasers in planning purchases of the issuer's common stock.;
- Increased liquidity, which benefits shareholders;
- Minimize dilution post acquisition;
- A tax efficient alternative to dividends as a way to return money to the shareholders;
- Generally, stock repurchases may have a positive impact on earnings per share, assuming the cash used to fund the plan or program was not needed for other corporate purposes; and

- Potentially less negative publicity associated with issuer repurchases, if the program is previously disclosed.

Establishing Stock Repurchase Programs

Should a stock repurchase program be approved by the board of directors?

Any stock repurchase program should be authorized and approved by the board of directors. As part of this authorization, the board should document the purpose of the share repurchase. It is important that the board concludes that the repurchase program is desirable and in the company's and its shareholders' best interests. When approving a repurchase program, it is advisable that the board establishes a record of discharging its fiduciary duty. The record should include a current review, in consultation with the company's accountants, of the company's capital position and a thorough discussion of the purpose of the program.

What factors should a company consider in deciding whether to adopt a stock repurchase program?

Among the factors to be considered are (i) the impact on the company's cash position and capital needs for its continuing operations; (ii) the alternative uses for the cash used to repurchase the stock, including repayment of outstanding indebtedness; and (iii) the possible effect on earnings per share and book value per share. The company should consult with its accountants regarding the company's capital position prior to implementing a stock repurchase program. Additionally, prior to implementing a stock repurchase program, the company should conduct a review of its charter, bylaws and the agreements to which it is a party, or by which it is bound, to determine whether there are any restrictions on or impediments to the company's use of funds to acquire its own securities. Specifically, the company's loan agreements and security documents should be reviewed for any such restrictions or limitations. Any change in control or antidilution provisions also should be reviewed to ensure that the consequences of the company's repurchase activity are understood. These restrictions may be direct limitations on repurchases or indirect limitations in the form of financial ratios and covenants.

Are there any state law restrictions on stock repurchases?

Certain provisions of the Delaware General Corporation Law ("DGCL") contain restrictions regarding legally available funds that apply to repurchases of shares of capital stock. Under DGCL Section 160, a Delaware corporation cannot purchase shares of its capital stock when the purchase "would cause any impairment of the capital of the corporation." The company should consult with its outside counsel regarding any applicable state law restrictions prior to implementing a stock repurchase program.

Additionally, the California Corporations Code (§§ 500 et seq.) requires that a California corporation must follow certain requirements prior to engaging in a distribution which includes issuer repurchases. Accordingly, an issuer repurchase may only be made if either: (a) the amount of the retained earnings immediately prior to the distribution equals or exceeds the amount of the proposed distribution, or (b) immediately after giving effect to the distribution, (i) the sum of the assets of the corporation (exclusive of certain items) would be at least equal to 1 1/4 times its liabilities (exclusive of certain items) and (ii) the current assets of

the corporation would be at least equal to its current liabilities, or, if the average of the earnings of the corporation before taxes on income and before interest expenses for the two preceding fiscal years was less than the average of the interest expenses of the corporation for those fiscal years, at least equal to 1 1/4 times its current liabilities.

What are the reporting requirements for issuer stock repurchases?

Regulation S-K and Forms 10-Q, 10-K and 20-F (for foreign private issuers) require quarterly periodic disclosure for all issuer repurchases of equity securities. This disclosure is required regardless of whether the repurchase is effected under the safe harbor of Rule 10b-18. An issuer must disclose in tabular form (a) the total number of shares, by month, repurchased during the past quarter; (b) the average price paid per share; (c) the number of shares that were purchased as part of a publicly announced repurchase plan; and (d) the maximum number (or approximate dollar value) of shares that may yet be purchased under the plans or programs. For publicly announced repurchase plans, the issuer is also required to disclose (by footnotes to the table) the following information: (a) the announcement date; (b) the share or dollar amount approved; (c) the expiration date (if any) of the plans or programs; (d) each plan or program that has expired during the period covered by the table; and (e) each plan or program that the issuer has determined to terminate prior to expiration or under which the issuer does not intend to make further purchases. Additionally, the company should consider discussing any repurchase program under the "Liquidity and Capital Resources" section of the MD&A, as any repurchase plan could be considered to be a "known trend" or "commitment" that is reasonably likely to result in a material change to the company's liquidity. The company should also consider whether disclosure of significant repurchases is required in its financial statements or notes to its financial statements.

Should a stock repurchase program be publicly announced?

While Rule 10b-18 does not specifically require an issuer to publicly disclose a stock repurchase program, the disclosure provisions of other federal securities laws, including Rule 10b-5, still apply. It is generally advisable, at a minimum, for an issuer to announce the existence of a significant stock repurchase program. However, an announcement should not be made unless the company actually intends to repurchase shares because any termination of the repurchase program without purchases could be deemed manipulative in the absence of a sound business reason.

The specifics of the public announcement depend on the circumstances, but the company should include the following:

- the reason for the repurchase;
- the approximate number or aggregate dollar amount of shares to be repurchased;
- the method of purchase to be used;
- any significant corporate developments which have not been previously disclosed;
- the impact of the repurchase program on the remaining outstanding shares;
- any arrangement, contractual or otherwise, with any person for the purchase of the shares;
- whether the purchases are to be made subject to restrictions relating to volume, price and

timing in an effort to minimize the impact of the purchases upon the market for the shares; and

- the duration of the program.

The company should consider filing a Form 8-K with any press release as an exhibit for purposes of Regulation FD.

Conditions for Repurchases under Rule 10b-18

What are the conditions for conducting stock repurchase programs within the safe harbor?

Rule 10b-18's non-exclusive safe harbor is available only when the repurchases of the issuer's common stock in the market are made in accordance with the following conditions:

- *manner of purchase condition*: requires an issuer to use a single broker or dealer per day to bid for or purchase its common stock;
- *timing condition*: restricts the periods during which an issuer may bid for or purchase its common stock;
- *price condition*: specifies the highest price an issuer may bid or pay for its common stock; and
- *volume condition*: limits the amount of common stock an issuer may repurchase in the market in a single day.

Failure to meet any one of the rule's conditions will disqualify the company's purchases for that day from the safe harbor. [2]

What does the manner of purchase condition require?

On a single day, the purchases and any bids of the issuer or its affiliated purchasers must be made through one broker or dealer. However, this restriction does not bar the issuer or its affiliated purchasers from making purchases if they are deemed not solicited by or on behalf of the issuer, such as purchases not solicited from additional brokers or dealers or when a shareholder approaches the issuer to buy shares. An issuer must evaluate whether a transaction is "solicited" based on the facts and circumstances of each case. Additionally, on a daily basis, the issuer may use a different broker or dealer to execute their purchases. Furthermore, an issuer may use a different broker or dealer during an after-hours trading session from the one used during regular hours.

An issuer that directly accesses an electronic communication network ("ECN") or an alternative trading system ("ATS") to purchase common stock will be considered to be using one broker or dealer and cannot purchase its common stock through a non-ECN or non-ATS broker or dealer on the same day.

The purpose of this condition is to avoid creating the false appearance of widespread purchasing interest and trading activity in the issuer's common stock through the use of many brokers or dealers on any given trading day.

What does the timing condition require?

A purchase by the issuer may not be the opening transaction reported in the consolidated system, the principal market or the market where the purchase is

[2] However, a purchase that otherwise is in compliance with the rule at the time the purchase order is entered but does not meet the price condition at the time the purchase is effected due to a "flickering quote" will only remove that particular purchase from the safe harbor, rather than all of the issuer's other Rule 10b-18 purchases for that day.

effected.[3] A consolidated system is a consolidated transaction or quotation reporting system that collects and publicly disseminates on a current and continuous basis, transaction or quotation information in common equity securities pursuant to an effective transaction reporting plan or an effective national market system plan.

Additionally, the purchase may also not be effected during the ten minutes before the scheduled close of the primary trading session in the principal market for the security and the last ten minutes before the scheduled close of the primary trading session in the market where the purchase is effected for a security that has an average daily trading volume ("ADTV") of $1 million or more, and a public float value of $150 million or more. The ADTV is the volume reported for the security during the four calendar weeks preceding the week in which the Rule 10b-18 purchase is to be effected. For all other securities, purchases may not be effected during the thirty minutes before the scheduled close of the primary trading session in the principal market for the security and the thirty minutes before the scheduled close of the primary trading session in the market where the purchase is effected.

An issuer purchase may be effected following the close of the primary trading session in the principal market until the termination of the period in which the last sale prices are reported in the consolidated system if: (i) the purchase is effected at a price that does not exceed the lower of the closing price of the primary trading session in the principal market for the security, and any lower bids or sales prices subsequently reported in the consolidated system; (ii) all of the other 10b-18 requirements are met; and (iii) the issuer's Rule 10b-18 purchase is not the opening transaction of the session following the close of the primary trading session.

The purpose of this condition is to prevent the issuer from establishing either the opening or closing price of the stock, both of which are considered to be the guide in the direction of trading.

What does the price condition require?

During trading hours, if the security is reported in the consolidated system, displayed and disseminated on any national securities exchange, or quoted on any inter-dealer quotation system that displays at least two price quotations, issuer purchases must be made at a price not exceeding the highest independent bid or last transaction price, whichever is higher. For all other securities, an issuer will need to look at the highest independent bid obtained from three independent dealers.

For after-hours trading, stock repurchase prices must not exceed the lower of the closing price of the primary trading session in the principal market for the security and any lower bids or sales prices subsequently reported in the consolidated system by other markets. The issuer is permitted to repurchase until the termination of the period in which last sale prices are reported in the consolidated system.

However, the SEC will except from Rule 10b-18's price condition repurchases effected on a volume-weighted average price ("VWAP") basis, provided the following criteria are met:[4]

[3] This discussion incorporates the rule amendments proposed by the SEC on January 25, 2010. See footnote 1.

[4] See footnote 3.

- the purchases otherwise comply with the manner of purchase, time and volume conditions of Rule 10b-18;
- the security is an "actively-traded security," as defined in Regulation M;
- the purchase is entered into or matched before the opening of the regular trading session;
- the execution price of the VWAP purchase is determined based on all regular way trades effected in accordance with specified conditions that are reported in the consolidated system during the primary trading session for that security;
- the purchases do not exceed 10% of the security's relevant ADTV;
- the purchase is not effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security;
- the VWAP is calculated in accordance with the provisions of the rule; and
- the purchase is reported using a special VWAP trade modifier.

The purpose of the price condition is to prevent an issuer from propping up its stock price through the repurchases, or from supporting the price at a level that would not otherwise be maintained by independent market forces.

What does the volume condition require?

The purchases on a particular day may not exceed 25% of the ADTV in the preceding four weeks. ("Block" transactions are included in determining the 25% limit and include trades of not less than $50,000 with a volume of not less than 5,000 shares if the trade value is less than $200,000, but excludes any securities the issuer knows or has reason to know were accumulated by a broker-dealer, acting as a principal, for the purpose of resale to the issuer.) Alternatively, the company may make one "block" purchase per week and not be subject to the 25% limit, provided the "block" purchase is the only Rule 10b-18 purchase made on that same day. Rule 10b-18's volume calculation carries over from the regular trading session to after-hours trading sessions.

The purpose of the volume condition is to prevent the issuer from dominating the market by purchasing a large amount of its common stock relative to purchases in the independent market.

What happens to the Rule 10b-18 conditions during periods of severe market downturns?

The Rule 10b-18 safe harbor conditions are modified following a market-wide trading suspension. The volume of purchases condition is modified so that issuer may purchase up to 100% of the security's ADTV. Additionally, the time of purchase condition does not apply either (a) from the reopening of trading until the scheduled close of trading on the day that the market-wide trading suspension is imposed, or (b) at the opening of trading on the next trading day until the scheduled close of the trading day, if a market-wide trading suspension was in effect at the close of trading on the preceding day.

Purchase Activity Covered by Rule 10b-18

What types of securities are covered by Rule 10b-18?

The Rule 10b-18 safe harbor only applies to purchases by an issuer of its common stock (or an equivalent interest, such as a unit of beneficial interest in a trust or

limited partnership or a depository share). It does not apply to any other type of security, including purchases of preferred stock, warrants, convertible debt securities, options, or security future products. However, many issuers analogize to the conditions of Rule 10b-18 in connection with repurchases of other equity-linked securities.

What types of purchases are covered by Rule 10b-18?

Generally, open market purchases by an issuer of its common stock are covered by the safe harbor. However, certain types of purchases of common stock are not covered by Rule 10b-18, due to the greater potential risk of manipulation of the price of the stock by the issuer. Such transactions include: (i) purchases effected by or for an employee plan by an agent independent of the issuer; (ii) purchases of fractional interests; (iii) certain purchases made pursuant to a merger, acquisition, or similar transactions involving a recapitalization (subject to certain exceptions); and (iv) purchases made pursuant to a tender offer governed by the Williams Act.

When will purchases by an affiliated purchaser be attributed to the issuer?

Purchases by an affiliate will be attributable to the issuer under Rule 10b-18 where, directly or indirectly, (a) the affiliate controls the issuer's Rule 10b-18 purchases, (b) the issuer controls the affiliate's Rule 10b-18 purchases, or (c) the Rule 10b-18 purchases by the affiliate and the issuer are under common control. Purchases by persons acting in concert with the issuer for the purposes of acquiring the issuer's common stock will also be attributed to the issuer. If Rule 10b-18 purchases are effected by or on behalf of more than one affiliated purchaser (or the issuer and one or more of its affiliates) on a single day, the issuer and all affiliated purchasers must use the same broker or dealer.

Who is deemed an "affiliated purchaser"?

Under Rule 10b-18, an affiliated purchaser is: (i) a person acting, directly or indirectly, in concert with the issuer for the purpose of acquiring the issuer's securities; or (ii) an "affiliate" who controls the issuer's purchases or whose purchases are controlled by or under common control with the issuer. An "affiliate" is any person who controls or is controlled by or is under common control with the issuer.[5] However, the definition of affiliated purchaser does not include a broker or dealer (solely by reason of that broker effecting purchases on behalf of the issuer), or any officer or director of the issuer (solely by reason of that officer or director's participation in the decision to authorize Rule 10b-18 purchases). A financial institution with an affiliated broker-dealer may want to take special care in conducting this analysis.

What if there is a merger or other acquisition occurring?

If a merger, acquisition, or similar transaction is under negotiation or discussion, the safe harbor of Rule 10b-18 is generally not available for issuer purchases made at this time, even after public announcement of the event, until the earlier of the closing of the transaction or the completion of the vote by the target shareholders, unless the following applies:

- the purchase price is solely cash (and there is no valuation period with respect to the purchase price);

[5] The SEC has not precisely defined "control;" however, the SEC takes the position that "control" is a question of fact to be determined by the circumstances of each case.

- the repurchases are ordinary repurchases that do not exceed the lesser of 25% of the security's four-week ADTV or the issuer's average daily Rule 10b-18 purchases during the three full calendar months preceding the announcement; or
- the repurchases are "block" transactions that do not exceed the average size and frequency of "block" purchases during the three full calendar months preceding the announcement.

Is the safe harbor available to an issuer who recently conducted an initial public offering?

Yes, however, the issuer has to wait four weeks after its common stock has begun to trade because Rule 10b-18's volume condition is based upon trading in the common stock for four full calendar weeks prior to the week in which the purchase is effected.

Are there any special considerations that arise in connection with offerings?

An issuer and its counsel should be particularly mindful of any repurchase programs (whether direct or indirect) that may be ongoing at the time that an issuer first starts contemplating an offering. The issuer and counsel will want to consider the appropriate time to suspend an ongoing repurchase program. In this context, an issuer also should consider the interplay of these questions with the requirements of Regulation M relating to activities in connection with an offering. See "How does Regulation M affect stock repurchases?"

What are some of the issues that a company should consider in connection with entering into an accelerated share repurchase program?

By its terms, the Rule 10b-18 safe harbor is available only to the issuer and not to the broker-dealer/derivatives dealer that will be executing the share repurchase program. In substance, however, the broker-dealer will be executing repurchases having already entered into a separate agreement with the issuer. This agreement between the issuer and the broker-dealer will be documented as a confirmation to an ISDA Master Agreement. The confirmation will set out the mechanics of the transaction, including the mechanics relating to the buy-in of the shares and the pricing of the shares sold by the broker-dealer to the issuer, as well as arrangements relating to dividends that may be declared by the issuer during the term of the arrangement. The confirmation also will require that the issuer make a number of representations and warranties to the broker-dealer. Generally, these will address the issuer's SEC filings, approvals for the repurchase program, confirmation that the issuer is not engaged in a "distribution," and representations regarding the issuer's status. The issuer's counsel also typically will be required to render an opinion to the broker-dealer addressing certain corporate matters. As a precaution, most confirmations will incorporate Rule 10b-18 provisions and broker-dealers will follow the guidance provided by Rule 10b-18 in structuring these indirect repurchase transactions.

What other considerations must an issuer keep in mind when engaging in stock repurchases under its program?

A company engaging in repurchases should always consider the impact of insider trading and antifraud provisions, including Rule 10b-5.

At a minimum, the company should assume that its officers, directors and controlling shareholders will be deemed to be "insiders;" that the rules as to insiders will apply to purchases as well as sales; that the rules generally require disclosure of material facts concerning the company or affecting the market in securities of the company not generally known to the public; and that the disclosure or use of non-public information may violate a fiduciary duty owed to the company or stockholders to whom it is not disclosed. A few guidelines include:

- An issuer should generally avoid purchasing stock at any time when any insider is selling equity securities, and insiders should avoid selling the issuer's stock, when the issuer is purchasing its own stock.
- The issuer should encourage its executive officer, directors and other insiders (and should memorialize this in their plan or program) not to go into the market and purchase or sell, on their own behalf, the issuer's common stock during the course of any repurchase program, unless they advise a designated officer and secure confirmation that such action will not violate any applicable securities or other laws or fiduciary obligations to the issuer or its stockholders. An issuer can use a Rule 10b5-1 plan for the repurchase of securities, coupled with the Rule 10b-18 repurchase program, to monitor purchases by executive officers, directors and other insiders.
- The issuer should avoid purchasing shares from officers, directors or other insiders during the course of a program to avoid any appearance of preference or conflict of interest.

Furthermore, when engaging in repurchases, an issuer must be rigorous in connection with its disclosure obligations to the public. Once an issuer implements a stock repurchase program, the issuer should be extra mindful of making prompt and complete disclosure of all material information to the public that, if known, might reasonably be expected to influence the market price of the issuer's stock. If a proposed repurchase happens to coincide with the announcement of news about the issuer, the purchase should be deferred until after the full dissemination of information. Moreover, if the issuer is engaged in negotiations or discussions with respect to material corporate events, repurchases should be suspended until there has been public disclosure of the transaction in question. However, where the material corporation event is a merger, acquisition or other similar transaction, other timing factors should be taken into account. See "What if there is a merger or other acquisition occurring?"

Does Rule 10b-18 apply to issuer repurchases made in markets outside the U.S.?

No. The Rule 10b-18 safe harbor does not apply to repurchases made outside the U.S. Additionally, foreign trading volume is not included in a security's ADTV calculation for purposes of applying the safe harbor.

Interaction between Rule 10b-18 and Other Federal Securities Laws

How does Rule 10b-18 relate to other securities laws and regulations?

Rule 10b-18 provides an issuer a safe harbor from liability for manipulation in connection with stock repurchases in the open market; however, it does not provide protection from other federal securities laws, such as insider trading and antifraud provisions. An issuer making purchases pursuant to a stock repurchase program must still comply with other regulatory reporting requirements.

Can an issuer structure its Rule 10b-18 stock repurchase program to comply with the Rule 10b5-1 safe harbor?

Yes, an issuer can avoid Rule 10b-5 liability by structuring its stock repurchase program to comply with the Rule 10b5-1 safe harbor. Compliance with the safe harbor under Rule 10b5-1 generally requires that the issuer, before becoming aware of any material non-public information do one of the following: (i) enter into a binding contract to purchase the securities; (ii) instruct another person to purchase the securities for the issuer's account; or (iii) adopt a written plan for purchasing or selling the securities and conform its stock repurchases to the requirements of a Rule 10b5-1 plan. For a Rule 10b-18 repurchase program to meet the requirements of the safe harbor under Rule 10b5-1, the program must contain one of the following elements: (i) it must specify the amount, price, and date of the transactions(s); (ii) it must include a written formula, algorithm, or computer program for determining amounts, prices and dates for the transaction(s); or (iii) it must not permit the issuer to exercise any subsequent influence over how, when, or whether to make purchases or sales (and any other person exercising such influence under the stock repurchase program must not be aware of material non-public information when doing so). Furthermore, the repurchase program must be entered into in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b5-1. The issuer must implement reasonable policies and procedures to insure that individuals making investment decisions on its behalf would not violate the laws prohibiting trading on the basis of material non-public information.

How does Regulation M affect stock repurchases?

Under Rule 102 of Regulation M, with certain exceptions, the issuer cannot repurchase its common stock during certain restricted periods if at the same time the issuer or an affiliate is engaged in a "distribution" of the same class of equity securities or securities convertible into the same class of equity securities. Regulation M requires repurchase activity to be discontinued one business day prior to the determination of the offering price for the securities in distribution until the issuer's completion of its participation in distribution. The term "distribution" in this context covers more than conventional public offerings and includes any offering which is distinguished from any ordinary trading transaction by the magnitude of the offering and the presence of special selling efforts and methods. This definition may include certain offerings in connection with acquisitions or exchange offers. Such a distribution might also take place if a major stockholder of the issuer were engaged in significant sales of the issuer's stock.