



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

March 6, 2014

Horace Nash, Esq.
Fenwick & West LLP
801 California Street
Mountain View, CA 94041

**Re: SEC v. Diamond Foods, Inc., Civil Action No. 3:14-cv-00123 (N.D. Cal) (Jan. 9, 2014)
Waiver Request under Regulation A and Rules 505 and 506 of Regulation D**

Dear Mr. Nash:

This responds to your letter dated March 6, 2014 ("Waiver Request"), written on behalf of Diamond Foods, Inc. ("Diamond Foods"), and constituting an application for waivers of disqualification under Rule 262 of Regulation A and Rules 505(b)(2)(iii)(C) and 506(d)(2)(ii) of Regulation D under the Securities Act of 1933. In the Waiver Request, Diamond Foods requested relief from any disqualification that may arise under Rule 262 of Regulation A and Rules 505 and 506 of Regulation D by virtue of the Final Judgment entered on January 21, 2014 by the United States District Court for the Northern District of California in SEC v. Diamond Foods, Inc., Civil Action No. 3:14-cv-00123 (N.D. Cal) (Jan. 9, 2014) (the "Final Judgment"). The Final Judgment, among other things, permanently restrains and enjoins Diamond Foods from committing future violations of the relevant federal securities laws and imposes civil monetary penalties.

Based on the facts and representations set forth in your Waiver Request, and assuming Diamond Foods complies with the Final Judgment, the Commission, pursuant to delegated authority, has determined that Diamond Foods has made a showing of good cause under Rule 262 of Regulation A and Rules 505(b)(2)(iii)(C) and 506(d)(2)(ii) of Regulation D that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rules 505 and 506 of Regulation D by virtue of the entry of the Final Judgment. Accordingly, the relief requested in the Waiver Request regarding such disqualifications that may arise as to Diamond Foods under Rule 262 of Regulation A and Rules 505 and 506 of Regulation D by virtue of the entry of the Final Judgment is granted. Any different facts or representations in the Waiver Request or non-compliance with the Final Judgment might result in a different conclusion.

Very truly yours,

A handwritten signature in blue ink that reads "Sebastian Gomez Abero".

Sebastian Gomez Abero
Chief, Office of Small Business Policy
Division of Corporation Finance

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BY ELECTRONIC DELIVERY

Sebastian Gomez-Abero
Chief, Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Securities and Exchange Commission v. Diamond Foods, Inc.,
Civ. Action No. 3:14-cv-00123 (N.D. Cal) (January 9, 2014)

Dear Mr. Gomez-Abero:

This letter is submitted on behalf of our client, Diamond Foods, Inc. ("Diamond Foods"), the settling defendant in the above-captioned civil injunctive action brought by the Securities and Exchange Commission ("Commission"). Diamond Foods hereby requests, pursuant to Rule 262 of Regulation A and Rules 505(b)(2)(iii)(C) and 506(d)(2)(ii) of Regulation D of the Commission promulgated under the Securities Act of 1933 ("Securities Act"), waivers of any disqualifications from relying on exemptions under Regulation A and Rules 505 and 506 of Regulation D that may be applicable as a result of the entry of a Final Judgment as to Defendant Diamond Foods, Inc. ("Final Judgment") entered on January 21, 2014, which is described below.

BACKGROUND

The staff of the Division of Enforcement ("Staff") engaged in settlement discussions with Diamond Foods prior to and in connection with the above-captioned civil action. As a result of these discussions, Diamond Foods submitted a Consent of Defendant Diamond Foods, Inc. ("Consent") that was presented by the Staff to the United States District Court for the Northern District of California ("Court") when the Commission filed its complaint ("Complaint") against Diamond Foods in the civil action captioned above.

In the Consent, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, Diamond Foods consented to the entry of the Final Judgment without admitting or denying the matters set forth therein (other than those relating to the jurisdiction of the district court over it and the subject matter solely for purposes of that action). The Final Judgment, which was entered on January 21, 2014, resolved the Complaint's allegations that as a result of the conduct of Steven Neil, Diamond Foods' former chief financial officer, Diamond Foods underreported money paid to walnut growers by delaying the recording of payments into later fiscal periods and reported higher net income and earnings, thereby exceeding analysts' estimates for fiscal quarters in 2010 and 2011. Following an investigation by its Audit Committee, Diamond Foods restated its financial results in November 2012 to reflect the true costs of acquiring walnuts. The Complaint alleges that as a result of these activities, Diamond Foods violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13.

The Final Judgment:

1. Enjoins Diamond Foods from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, by using any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security: (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 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.
2. Enjoins Diamond Foods from violating Section 17(a) of the Securities Act in any offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: (a) to employ any device, scheme, or artifice to defraud; (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.
3. Enjoins Diamond Foods from violating, directly or indirectly, Section 13(a) of the Exchange Act and Rule 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder, by failing to file, or by filing or causing to be filed, with the Commission any report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, which report omits to disclose any information required to be disclosed or such further information, if any, as may be necessary to make the statements, in light of the circumstances under which they were made, not misleading.

4. Enjoins Diamond Foods from violating, directly or indirectly, Section 13(b)(2)(A) of the Exchange Act, by failing to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the expenses and transactions of the Company.
5. Enjoins Diamond Foods from violating, directly or indirectly, Section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for such assets.
6. Orders that Diamond Foods shall pay a civil penalty in the amount of \$5,000,000 to the Securities and Exchange Commission pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act, and that Diamond Foods shall satisfy this obligation by paying \$5,000,000 to the Commission within 14 days after entry of the Final Judgment. Diamond has timely paid the civil penalty.

DISCUSSION

Diamond Foods understands that the entry of the Final Judgment may disqualify it, its affiliated entities, and other issuers from relying on certain exemptions under Regulation A and Rules 505 and 506 of Regulation D promulgated under the Securities Act. Diamond Foods is concerned that, should it or any of its affiliated entities be deemed to be an issuer, predecessor of the issuer, affiliated issuer, general partner or managing member of issuer, promoter, underwriter of securities or in any other capacity described in Securities Act Rules 262, 505, and 506 for the purposes of Securities Act Rule 262(a)(4), Rule 262(b)(2), Rule 505(b)(2)(iii) or Rule 506(d)(1)(ii), Diamond Foods, its issuer affiliates, and other issuers with which it is associated in one of those listed capacities and which rely upon or may rely upon these offering exemptions when issuing securities would be prohibited from doing so. The Commission has the authority to waive the Regulation A and D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. *See* 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506(d)(2)(ii).

Diamond Foods requests that the Commission waive any disqualifying effects that the Final Judgment may have under Regulation A and Rules 505 and 506 of Regulation D as a result of its entry as to Diamond Foods on the following grounds:

1. Diamond Foods' conduct addressed in the Final Judgment does not pertain to the offer and sale of securities. Rather, the conduct alleged in the Complaint relates to the alleged misstatement of walnut costs in order to boost earnings and meet estimates by stock analysts. The alleged violations were the result of an effort directed by the former CFO of Diamond Foods, who was terminated by the Company in 2012 as a result of the Audit Committee's investigation and who is the defendant in a separate action filed by the SEC in the Northern District of California. Furthermore, the alleged violations in the Complaint, as described above,

and covered by the Final Judgment relate to fiscal quarters in 2010 and 2011, and those financial statements were restated in November 2012 to reflect the true costs of acquiring walnuts.

2. Over the past two years, Diamond Foods has taken multi-tiered and comprehensive measures to address the conduct alleged in the Complaint, including steps reasonably designed to prevent future violations of the securities laws. Since the events that are the subject of the Complaint, Diamond Foods has adopted a number of changes to its control environment and walnut grower accounting. As a result, management has concluded that the original material weaknesses were remediated as of July 31, 2013, based on the testing and evaluation of the effectiveness of the remediation steps implemented during fiscal 2013.

Changes to the Diamond Foods control environment include:

- Replacement of the former chief financial officer, former chief executive officer and former controller;
- Enhanced monthly financial and operational reporting packages with detailed financial analysis and identification of significant and non-routine transactions which are circulated for review by management; and
- Development and implementation of training, led by the Diamond Chief Executive Officer and reinforced by finance executives with appropriate accounting expertise, for executives, finance personnel and grower accounting to enhance awareness and understanding of standards and principles for accounting and financial reporting as well as the importance of financial reporting integrity and the Company's Code of Conduct and Ethics Policy.

Changes to walnut grower accounting included:

- Revised the walnut cost estimation policy to incorporate a wide variety of inputs each quarter with review and sign-off by cross-functional management;
- Enhanced documentation, oversight and monitoring of accounting policies and procedures relating to walnut grower payments and walnut grower accounting;
- Enhanced review and oversight of grower communications;
- Reassessment of responsibilities and realignment of reporting relationships within the walnut operations and grower accounting function;
- Creation of a Grower Advisory Board including members from a cross section of Diamond's grower base to provide a forum for input from growers and communication between Diamond senior management and growers;

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- Implementation of quarterly representations by grower services regarding compliance with grower contracting procedures; and
- Update and revision of Sarbanes-Oxley internal control narratives related to grower accounting.

In addition, Diamond Foods obtained recovery of more than \$4.0 million in bonuses and other benefits from its former chief executive officer.

3. Diamond provided meaningful cooperation with the Staff throughout the two-year investigation, including, among things:

- Production of approximately 980,000 documents, many of which were produced without regard to subpoena, privilege or other limitations;
- Production on a voluntary basis of numerous witnesses for interviews or testimony;
- Detailed presentations to the Staff by counsel for the Audit Committee setting out the Audit Committee's investigative procedures and findings;
- Detailed presentations and frequent in person meetings between the Staff and counsel for the Company regarding additional procedures conducted, analysis of documents and evidence, and findings reached by the Audit Committee and new management; and
- Detailed presentations to the Staff by counsel for the Company on numerous topics, including Diamond's remediation of internal control weaknesses; executive compensation and clawback efforts; other personnel actions; and impact of the investigation on the Company's investors and other stakeholders.

4. The disqualification of Diamond Foods and any of its affiliates from relying on the exemptions under Regulation A and Rules 505 and 506 of Regulation D would, we believe, have an adverse impact on third parties, including stockholders of Diamond Foods that may benefit from transactions under such exemptions should Diamond Foods or any of its affiliates seek to utilize such exemptions for capital-raising purposes.

5. For a period of five years from the date of the Final Judgment, Diamond Foods will furnish (or cause to be furnished) to each purchaser in a Regulation A, Rule 505 or Rule 506 offering that would otherwise be subject to the disqualification under Securities Act Rule 262(a)(4), Rule 262(b)(2), Rule 505(b)(2)(iii) or Rule 506(d)(1) as a result of the Final Judgment, a description in writing of the Final Judgment a reasonable time prior to sale.

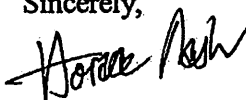
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In light of the grounds for relief discussed above, we believe that disqualification is not necessary under the circumstances and that Diamond Foods has shown good cause that relief should be granted.¹

* * *

Please do not hesitate to call me at the number listed above if you have any questions.

Sincerely,



Horace L. Nash

¹ We note in support of this request that the Commission has granted relief under Rule 262 of Regulation A and Rules 505(b)(2)(iii)(C) and 506(d)(2)(ii) of Regulation D for similar reasons or in similar circumstances. *See, e.g.,* General Electric Co., SEC No-Action Letter (Aug. 11, 2009) (waiver after violation of Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1, 13a-11 and 13a-13 promulgated thereunder); Dell Inc., SEC No-Action Letter (Oct. 13, 2010) (same); Harbert Management Corporation, et al., SEC No-Action Letter (July 3, 2012) (waiver after violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder); Investools Inc., SEC No-Action Letter (Dec. 16, 2009) (same); RBS Securities Inc., SEC No-Action Letter (Nov. 25, 2013) (waiver after violation of Sections 17(a) of the Securities Act); J.P. Morgan Securities LLC, et al., SEC No-Action Letter (Jan. 8, 2013) (same); Mizuho Securities USA Inc., SEC No-Action Letter (July 26, 2012) (same); H&R Block, Inc. and Block Financial LLC, SEC No-Action Letter (May 2, 2012) (same); GE Funding Capital Market Services, Inc., SEC No-Action Letter (Jan. 23, 2012) (same); Wells Fargo Bank N.A., SEC No-Action Letter (Dec. 9, 2011) (same); J.P. Morgan Securities LLC, SEC No-Action Letter (June 29, 2011) (same); Goldman Sachs & Co., SEC No-Action Letter (July 20, 2010) (same); A.G. Edwards & Sons, Inc., SEC No-Action Letter (May 31, 2006) (same); Bear, Stearns & Co. Inc., SEC No-Action Letter (May 31, 2006) (same); Goldman, Sachs & Co., SEC No-Action Letter (May 31, 2006) (same); Koss Corp., SEC No-Action Letter (Feb. 23, 2012) (waiver after violation of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 promulgated thereunder).