

Via e-mail

To: rule-comments@sec.gov

From: David Armon, COO, PR Newswire Association LLC (Dave.Armon@prnewswire.com)

cc: howard.schneider@kmzr.com

Re: File Number S7-38-04 Federal Register Notice on SECURITIES OFFERING REFORM (the "Release")

Date: January 28, 2005

Securities & Exchange Commission ("SEC")

Dear Sirs and Madam—

PR Newswire Association LLC ("PR Newswire")¹ is pleased to submit this letter in support of those portions of the Release which relate to communications by issuers at or around the time of a securities offering. We applaud the Commission's plan to (a) enable reporting companies to publish regularly released factual information, as well as forward-looking information; (b) to enable non-reporting companies to publish regularly released factual information; and (c) to enable all issuers to have a bright line safe harbor period of 30 days prior to the offering. The SEC's approach is epitomized in the Release when it states:

"We do not believe that it is beneficial to investors or the markets to force ... issuers to suspend their ordinary course of communi-

¹ PR Newswire pioneered the immediate electronic distribution of full text news releases to news media in 1954. Today, operating around the clock, 7 days a week, PR Newswire accurately, quickly and cost-effectively transmits daily as many as 1,000 news releases received directly from approximately 40,000 issuers of the information to thousands of print, broadcast, wire and online news media, the investment community and individual investors in the United States and overseas. PR Newswire distributes news releases to over 22,000 media outlets worldwide, more than 79,000 registered journalists through a password-protected media-only site, and over 3,600 Websites, which include major consumer and investor portals, online publications and news sites, and equities trading sites with a cumulative audience of more than 100 million visitors monthly. Through financial portals, like Bloomberg, Dow Jones, Thomson Financial's First Call network and Reuters, news is actively published to millions of professional investors where it is often commingled with other analytics to facilitate sifting through vast quantities of information necessary to making day-to-day investment decisions. Retail investors are actually alerted to corporate news through the media but also through their own direct access to many heavily trafficked portals like Yahoo! Finance, AOL and www.msn.com that carry the PR Newswire feed. In addition, PR Newswire is archived and accessible on the PR Newswire Web sites.

cations of ... information because they are raising capital in a registered offering.”²

or, conversely:

“Thus, while the investor protection concerns remain, the gun-jumping provisions of the Securities Act impose substantial and increasingly unworkable restrictions on communication that would be beneficial to investors and markets consistent with investor protection.”³

What is most commendable about the SEC’s proposals is that they will create greater legal certainty in an area where uncertainty has prevailed for decades.

As a newswire service that regularly helps companies meet their stock market disclosure requirements, we are often asked by clients if it is acceptable for them to issue news releases during the so-called “quiet” period. In December, 2004, PR Newswire conducted a survey among 125 communications professionals in which we asked for their viewpoints on the “quiet” period. Although the results were not quantitative, given the small sample, they did show directionally that many individuals who work in the field do not understand the current rules.

- When asked, “when does the quiet period officially begin?”, only 20.8 % said it was when the issuing company consults with investment bankers, which is generally considered the correct response.⁴ 52.8% said it was when the company files a registration statement with the SEC and 20% said they simply didn’t know.
- In the true/false category, 22% stated “false” to the statement that an issuing company could conduct media interviews on the day trading begins for the specific offering.
- Over 14% labeled false the statement: “during the quiet period, companies are allowed to make public announcements and engage in media interviews if the action is part of the company’s normal course of business.”

And, through our survey, we did find that most (67%) agreed or strongly agreed that the SEC should allow for increased communications during the “quiet” period; 78% said that the “quiet” period, in its current state, is outdated; but 73% also said that the “quiet” period is beneficial to the marketplace; and 73% said that the SEC should not eliminate the “quiet” period altogether.

Clarifying requirements for the pre-filing period and allowing more communication post-filing will doubtless result in more information about issuing companies and their activities

² Release at 67402

³ Release at 67399

⁴ “Consultation” in this case being more than preliminary discussions, e.g., when the offering process begins in earnest through substantive discussions with investment bankers.

flowing to investors which will benefit the marketplace as a whole. We endorse the SEC statement:

“[The SEC recognizes] that the financial news media are a valuable source of information about issuers to the public at large. Issuers and offering participants use the media to disseminate important information about themselves, such as through the use of press releases and interviews. The media plays an integral role, therefore, in providing information about issuers to the market.”⁵

Obviously, PR Newswire helps to provide that information to the market. Accordingly, as one of the key companies in bringing issuer information to the investing public, we have a keen interest in seeing that disclosure is robust at all times. The SEC will have gone a long way in enhancing disclosure to the marketplace if the communication proposals in the Release are adopted.

We believe that the safe harbors for communications proposed in the Release are far more clear and certain than the current rules. That should give issuers a comfort level that they previously did not have. The information allowed, however, should not be too prescriptive or it will mitigate the benefits of the proposals. If too many restrictions are put in place, companies will be hesitant to release information and will not take advantage of the proposals, to the detriment of the investing public.

We appreciate the opportunity to provide comments on the Commission’s proposals and are available to respond to any questions the Staff may have.

Respectfully submitted,

David Armon, COO-

⁵ Release at 67409