



STATE OF CONNECTICUT
DEPARTMENT OF BANKING

260 CONSTITUTION PLAZA • HARTFORD, CT 06103-1800



Howard F. Pitkin

Commissioner

VIA ELECTRONIC MAIL
rule-comments@sec.gov

September 7, 2007

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-12-07 (Electronic Filing and Simplification of Form D)

Dear Ms. Morris:

As Banking Commissioner of the State of Connecticut, I applaud the Commission's efforts to improve delivery of private placement information through electronic means at both the federal and state levels, and to undertake the long overdue restructuring of Form D.

Since 2001, Connecticut has advised filers for registration by coordination to dispense with paper filing of documents that our staff can view via the SEC's EDGAR system. While not all filers take advantage of this procedure, filers do benefit through increased reliance on technology. The Commission's proposal to extend electronic filing to Form D (presumably through an EDGAR-based model) represents an important step in facilitating private offering filings in our state. However, a number of questions concerning the mechanics of electronic filing remain unresolved.

For example, based on the release, it is not clear whether state query access would be identical to public access or whether state regulators would have a more elevated level of access. Would states have access to additional filing information (e.g. filer e-mail address) as is the case with the Central Registration Depository's Non-Filing Information field? Would the new system be capable of generating reports and, if so, what form would those reports take? Where a Form D is amended, would the original be accessible to state regulators online for historical purposes? We would encourage the Commission, in conjunction with the North American Securities Administrators, Inc., to continue to share ideas on improving system efficiency and performance.

The comments that follow pertain to the restructuring of Form D. In reviewing the release, we kept in mind that Form D encompasses not only filings made pursuant to Rule 506 of Regulation D, but those made in reliance on Rules 504 and 505 of Regulation D as well as Section 4(6) of the Securities Act of 1933. We note in passing that enhancing the data capture ability of the form is particularly important given the absence of free writing.

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Items 1 and 2

- The drop down boxes addressing the issuer's jurisdiction of incorporation and location should also cover foreign-based issuers such as those located in the Cayman Islands.
- Where an offering has more than one name (as is true in many oil and gas transactions), the form should include a space for that name. This does not necessarily mean that the Name of Offering section should be resurrected, but that a place for the data should be inserted. By the same token, the system should have the ability to conduct a search by alternate name, for report generation and other purposes.

Item 3

- The term "promoter" should be defined in the Instructions.
- The release noted that, although Form D is filed by both reporting and non-reporting companies, non-reporting issuers had raised privacy concerns about disclosing the identities of 10% owners of the issuer's equity securities. As a result, the release deleted the requirement from Form D altogether. As a compromise measure, the Commission should consider removing the disclosure requirement only where sales are made exclusively to "accredited investors." This would enable the states to continue to access such information in the context of Rule 504 and Rule 505 offerings without having to independently request an offering circular from the issuer.

Item 4

- The "investing" category under Banking & Financial Services is unclear and possibly redundant. Moreover, since the Instructions direct the filer to use the dictionary definition of terms, filers may become confused.

Item 5

- Revenue range includes a "Decline to Disclose" box where a private company considers its revenue range to be confidential. Given the choice, wouldn't most private company filers check this box, thus calling into question the purpose of the Item?

Item 7

- The Instructions should clarify that checking off a particular state box will not, in and of itself, fulfill state filing requirements. Further clarification is needed on how specific state data will be communicated to the affected jurisdictions.
- Inserting a menu pick indicating that the first sale has yet to occur in a particular jurisdiction is a welcome change that should reduce the number of regulatory inquiries. In addition, it has been our experience that some filers had been footnoting their Form D filing with this information.

Item 12

- This item should ensure that the broker-dealer's address includes city and state information as well as a street address.
- The Instructions' reference to finders is good, but should also include a reference to state agent of issuer registration requirements. In addition, the Instructions should clarify that not every individual or firm has a Central Registration Depository number. The Commission should consider assigning an identifier to individuals without CRD numbers to facilitate law enforcement and system report generation.
- In referring to states where compensated solicitation activity would occur, Item 12 might be clearer if it deleted the reference to solicitation (which would not be appropriate for private offerings) and substituted the language in the Instructions (i.e. "Enter the requested information for each individual who has been or will be paid directly or indirectly any commission or other similar compensation in connection with sales of securities in the offering, including finders"). The Instructions might also clarify that compensation includes non-cash consideration such as warrants that a finder might receive.

Deletion of Offering Expenses

- The proposed form deletes the section requiring an itemization of offering expenses, including sales related compensation. We would ask the Commission to reconsider this proposed deletion. Sales compensation information, where inconsistent with data contained elsewhere in the form, or reflecting excessive amounts, may be helpful to regulatory enforcement efforts.

Deletion of Form D Appendix

- While we are not advocating that the Appendix be retained in its present form, it did contain useful information such as an itemization of the amount of securities sold by state and the number of non-accredited and accredited investors in a particular state. The proposed form revision only requests information, in the aggregate, on the total amount of sold. State-specific information continues to be useful in state enforcement actions, particularly where Rule 504 and Rule 505 offerings are concerned.

Deletion of Question on Rule 262 Disqualifier

- Currently, the State Signature Page of Form D elicits information on whether a party is subject to the disqualification in SEC Rule 262. At the state level, this disqualification becomes relevant in conjunction with Rule 505 and Rule 504 offerings where certain state "bad actor" provisions may apply. Accordingly, we would recommend that the question be retained.

Scope of Consent to Service of Process

- Both Connecticut law and Form U-2 extend the appointment to cover actions arising under state securities law after the Consent to Service of Process has been filed. However, the proposed Form D modification only covers actions arising out of any activity in connection with the offering of securities *that are the subject of the Form D notice*. While the Commission, at note 65, attempted to draw a parallel to Form ADV, even Form ADV extends the appointment to a proceeding that "arises out of any activity in connection with your

investment advisory business” and is not confined to a forms submission. Revised Form D should more closely parallel Form U-2.

Additional Observations

- The release also proposed a modification to Rule 502(c) which would, in essence, provide that the mere filing of Form D online would not violate the prohibition on general solicitation and general advertising. Since the filings would be available for public viewing, we would also recommend that the system include ample online warnings to the public concerning limitations to which the affected issuers are subject.
- By ensuring that all data fields be completed before a filing will be accepted, the proposed system promises to minimize form deficiencies.
- The Commission has elicited comment on whether pooled investment vehicle issuers must disclose if their advisers are registered under the Investment Advisers Act of 1940. We believe that this is an idea worth pursuing, and would recommend that it be extended to state-registered advisers as well.
- We would have no objection to the SEC requiring an amendment to report an offering’s termination where it lasts more than a year. This would be helpful to state securities regulators who can consult the system to find out the final status of an offering across the board without having to contact issuers on an individual basis.
- The Commission has elicited comment on whether public companies should be exempt from having to file Form D where the Form D information is reported in periodic annual and quarterly reports or current reports on Form 8-K. We would recommend tabling this idea given possible difficulties in information retrieval and the problems with having data in multiple formats and online locations. In addition, it would create inevitable confusion for filers and the public and possibly present problems in the generation of reports.

Thank you once more for this opportunity to comment.

Very truly yours,



Howard F. Pitkin
Banking Commissioner