



DIVISION OF
CORPORATION FINANCE

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

September 28, 2018

Thomas J. Kim
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005

Re: In the Matter of Walgreens Boots Alliance, Inc., et al.
Walgreens Boots Alliance, Inc. – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act of 1933

Dear Mr. Kim:

This is in response to your letter dated September 26, 2018, written on behalf of Walgreens Boots Alliance, Inc. (“WBA”) and constituting an application for relief from WBA being considered an “ineligible issuer” under clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 (“Securities Act”). WBA requests relief from being considered an ineligible issuer under Rule 405, due to the entry on September 28, 2018 of a Commission Order (“Order”) pursuant to Section 8A of the Securities Act against WBA. The Order requires that, among other things, WBA cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

Based on the facts and representations in your letter, and assuming WBA complies with the Order, we have determined that WBA has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that WBA will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from WBA being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance



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September 26, 2018

By Email

Timothy Henseler, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: *In the Matter of Walgreens Boots Alliance, Inc., et al.*

Dear Mr. Henseler:

We are writing on behalf of Walgreens Boots Alliance, Inc. (“WBA”) in connection with WBA’s anticipated settlement with the U.S. Securities and Exchange Commission (“SEC” or “Commission”) relating to *In the Matter of Walgreens Boots Alliance, Inc., et al.* The settlement will result in an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”) against WBA and two former Walgreen Co. (“Walgreens”) executives.

WBA is an Exchange Act registrant with shares listed on the Nasdaq Stock Market (“Nasdaq”) under the ticker symbol “WBA.”¹ WBA currently qualifies as a “well-known seasoned issuer” (“WKSI”), as defined in Rule 405 under the Securities Act. We respectfully request a waiver from the Division of Corporation Finance (the “Division”), acting pursuant to its delegated authority, or the Commission itself, determining that it is not necessary under the circumstances that WBA be deemed an “ineligible issuer,” as defined in Rule 405 under the Securities Act, as a result of the Commission entering the Order, which is described below. Consistent with the framework outlined in the Division’s *Revised Statement on Well-Known Seasoned Issuer Waivers* (April 24, 2014) (“Revised Statement”), there is good cause for the Division, on behalf of the Commission, or the Commission itself to grant the requested waiver, as discussed below.

We request that the determination that WBA not be deemed an ineligible issuer be made effective upon entry of the Order.

¹ Prior to the merger between Walgreens and Alliance Boots GmbH (“Alliance Boots”), discussed herein, Walgreens was a well-known seasoned issuer listed on the Nasdaq, the New York Stock Exchange (“NYSE”), and the Chicago Stock Exchange (“CHX”).

I. BACKGROUND

A. WBA, Walgreens, and Alliance Boots

In June 2012, Walgreens, the largest drugstore chain in the U.S., and Alliance Boots, a European pharmacy-led health and beauty company, entered into a two-step merger by which Walgreens initially purchased a 45% interest in Alliance Boots, with an option to purchase the remaining 55% of Alliance Boots in or around 2015 (“Merger”). Prior to the Merger, Walgreens’ common shares were registered pursuant to Section 12(b) of the Exchange Act and listed on the Nasdaq, the NYSE, and the CHX.

On December 31, 2014, Walgreens completed a reorganization into a holding company structure (“Reorganization”). Pursuant to the Reorganization, Walgreens became a wholly owned subsidiary of WBA, and WBA succeeded Walgreens as the publicly held corporation. Each issued and outstanding share of Walgreens common stock was converted into one share of WBA common stock.

Also on December 31, 2014, following the Reorganization, WBA completed the acquisition of the remaining 55% of Alliance Boots.

B. Administrative Proceeding

WBA has engaged in settlement discussions with the Division of Enforcement in connection with the above-referenced administrative proceeding. As a result of these discussions, WBA expects to submit an Offer of Settlement that will agree to the Order, which will be presented by the staff to the Commission.

When Walgreens announced the Merger with Alliance Boots in June 2012, Walgreens provided the market with financial goals for the fully combined entity for its fiscal year ending August 31, 2016, including combined adjusted operating income (“EBIT”) of \$9.0 to \$9.5 billion (the “FY16 EBIT Goal”), in order to help investors understand Walgreens’ view of the potential benefits of the Merger. Fiscal year 2016 would represent the first full year of results for the fully combined company, assuming step two of the Merger was consummated. The FY16 EBIT Goal was calculated from a deal model formulated by Walgreens’ mergers and acquisitions team and outside advisors. The deal model was based on the FY 2013-2015 long range plans for the Walgreens and Alliance Boots base businesses, along with an assumption for the synergies anticipated from the Merger.

The Order will find that Walgreens’ performance towards its interim EBIT targets lagged expectations in fiscal year 2013 (September 2012 – August 2013), and that this placed pressure on Walgreens’ 2014 and 2015 EBIT forecasts. The Order will find that from May 2013 forward, Walgreens internal forecasts for 2014, 2015, and 2016 showed significant, and increasing, risks to the interim EBIT targets and to the FY16 EBIT Goal. The Order will find that despite gaps between its internal forecasts and the FY16 EBIT Goal, Walgreens reaffirmed the full range of

the FY16 EBIT Goal on earnings calls in June and October 2013, without disclosing to the market that it had identified a significant increase in risk to the FY16 EBIT Goal.

The Order will also find that by December 2013, additional risk caused by an unanticipated and industry-wide increase in the price of generic drugs led Walgreens to lower its internal FY16 EBIT forecast. The Order will find that, on its December 2013 earnings call, Walgreens warned investors that the risk to the FY16 EBIT Goal had increased, but its disclosures failed to adequately disclose the increase in risk. The Order will find that Walgreens repeated a nearly identical warning on its earnings call in March 2014. By June 2014, Walgreens concluded that the FY16 EBIT Goal was no longer reasonably attainable. On its June 24, 2014, earnings call, Walgreens withdrew all of its previously announced goals for its fiscal year ending August 31, 2016.

The Order will find that WBA, Walgreens' former Chief Executive Officer ("CEO"), and Walgreens' former Chief Financial Officer ("CFO") acted negligently on the earnings calls in June 2013, October 2013, December 2013 and March 2014 by failing to adequately disclose to investors the material increase in risk to the company's ability to achieve the FY16 EBIT Goal, and as a result violated Section 17(a)(2) of the Securities Act. Without admitting or denying the findings in the Order, except as to the Commission's jurisdiction over WBA and the subject matter of the proceeding, WBA will consent to the issuance of the Order and to (i) cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, and (ii) pay a civil money penalty in the amount of \$34.5 million.²

II. DISCUSSION

A WKSI is eligible to utilize many important reforms in the securities offering and communication processes that the Commission adopted in 2005. Among other things, a WKSI can register the offer and sale of securities under an automatic shelf registration statement, which becomes effective upon filing, and is also eligible for the other benefits of the streamlined registration process, such as the ability to file automatically effective post-effective amendments to register additional securities and pay registration filing fees on a "pay as you go" basis. Furthermore, a WKSI is also able to communicate more freely than a non-WKSI during the offering process, including through the use of free writing prospectuses.

The Commission also created another category of issuer under Rule 405 – the "ineligible issuer." A company that is an "ineligible issuer" loses all of the benefits bestowed on a WKSI, including, and most importantly, the ability to utilize an automatic shelf registration statement and to use free writing prospectuses (except in very limited circumstances). An issuer is an ineligible issuer if "[w]ithin the past three years . . . the issuer or any entity that at the time was a

² Walgreens' former CEO and CFO will also agree to (1) cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, and (ii) pay a civil money penalty in the amount of \$160,000 each.

subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws; (B) requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or (C) determines that the person violated the anti-fraud provisions of the federal securities laws.”³

The entry of the Order against WBA will render WBA an ineligible issuer under Rule 405. As a result, absent a waiver from the disqualification, WBA would no longer be able to utilize the benefits of WKSI status.

The Commission retains the authority under Rule 405 to determine “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”⁴ The Commission has delegated authority to the Division to make such a determination.⁵

Consistent with the framework outlined in the Revised Statement, WBA respectfully requests that the Division, on behalf of the Commission, or the Commission itself determine that there is good cause and that it is not necessary under the circumstances for WBA to be deemed an ineligible issuer as a result of the Order.

A. Nature of Conduct: Responsibility for and Duration of the Conduct

The conduct described in the Order does not involve any intentional or reckless misconduct; rather, the Order will expressly find that Walgreens’ failure to disclose the increase in risk to achieving the FY16 EBIT Goal was negligent. The conduct relates to Walgreens – the predecessor entity to WBA – and statements on earnings calls over a period of approximately nine months. The statements at issue were spoken by Walgreens’ former CEO and CFO, neither of whom remain with WBA.⁶ Furthermore, the conduct does not involve any alleged fraud in connection with Walgreens’ securities offerings. The disclosures at issue in the Order were risk disclosures in earnings calls, and neither Walgreens nor WBA, as the successor issuer, has needed to restate its financials. Likewise, the Order does not call into question Walgreens’ disclosures in filings with the Commission as an issuer of securities or as an Exchange Act registrant.

³ 17 C.F.R. § 230.405(1)(vi).

⁴ 17 C.F.R. § 230.405(2).

⁵ 17 C.F.R. § 200.30-1(a)(10).

⁶ In August 2014, the former Walgreens CFO stepped down as CFO. In early 2015, the former Walgreens CEO retired from Walgreens, following the completion of the Merger.

B. The Order Is Neither Criminal in Nature Nor Involves Scierter-Based Fraud

The Revised Statement indicates that the Division “will review whether the conduct involved a criminal conviction or scierter-based violation as opposed to a civil or administrative non-scierter based violation.” The Order does not involve a criminal conviction and does not state that WBA acted with scierter. Indeed, the Order will expressly find that WBA acted negligently, and will find a violation of Section 17(a)(2) of the Securities Act, which is a non-scierter-based antifraud provision.

C. Cooperation and Remedial Steps

WBA cooperated extensively with the investigation into this matter by the Division of Enforcement. Additionally, WBA takes its disclosure obligations seriously and has a fulsome disclosure process involving executives from the finance, accounting, investor relations, legal, internal audit, and business functions.

As detailed below, in recent years, WBA management participating in the disclosure process has changed substantially, and WBA has also strengthened its disclosure controls and procedures. Further, WBA has determined to designate a law firm as underwriters’ counsel for three years following the date of the Order.

Disclosure Process Personnel Changes

The personnel currently participating in WBA’s disclosure process are significantly different from the personnel who participated in Walgreens’ disclosure process in 2013 and 2014, including the vast majority of senior management and of Disclosure Committee members. In particular, the following positions involved in the disclosure process have turned over or been created since the conduct at issue, and are filled with experienced, world-class professionals:

- Executive Vice Chairman and Chief Executive Officer
- Executive Vice President and Global Chief Financial Officer
- Co-Chief Operating Officers
- Executive Vice President, Global Chief Administrative Officer and General Counsel
- Senior Vice President, Global Controller and Chief Accounting Officer
- Vice President, Corporate Secretary
- Senior Vice President, Investor Relations & Special Projects
- Vice President, Global Financial Planning & Analysis

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- Vice President, Global Internal Audit
- Vice President, Global Reporting and Technical Accounting
- Vice President, Global Financial Control
- Vice President, Corporate Finance
- Global Treasurer
- Senior Director, Enterprise Risk Management
- Additional in-house counsel principally focused on securities law matters
- Divisional Chief Financial Officers for each of the Company's divisions

Disclosure Process Enhancements

In recent years, WBA has also made a number of enhancements to its robust disclosure process. Those enhancements include:

- Adding another in-house counsel principally focused on securities law matters in mid-2014.
- Greater formalization of the certification procedures, and centralization of accountability for verification in the Financial Planning & Analysis organization, beginning in 2015.
- Finalizing and locking the earnings call script further in advance, beginning in 2015.
- Pre-recording the scripted portion of earnings calls, beginning in spring 2017.
- Implementing the Workiva software solution to manage the document drafting and coordination process, beginning in spring 2017.
- Revising the Disclosure Policy in 2016 and 2017.
- Engaging outside counsel as disclosure counsel, beginning in late 2017.

Designated Underwriters' Counsel

Since WBA's creation in late 2014 – after the statements at issue in the Order – its underwriters have engaged outside counsel on each of WBA's public debt securities and selling shareholder offerings on a transactional basis. For a period of three years following the date of

the Order, WBA has determined to designate a law firm as underwriters' counsel, and will conduct a quarterly diligence call between members of WBA's finance team and that counsel in connection with any WBA shelf registration statement under which securities may be offered to the public.

D. Prior Relief

Neither WBA nor any of its predecessor entities has ever sought a WKSI waiver. Furthermore, neither WBA nor any of its predecessor entities has previously been the subject of a settlement or litigation with the SEC.

E. Impact on Issuer

The Division's Revised Statement indicates that it will "assess whether the loss of WKSI status would be a disproportionate hardship in light of the nature of the issuer's conduct." We respectfully submit that the impact of WBA being designated an ineligible issuer, resulting in the loss of WKSI status, would be unduly severe.

WBA is the largest retail pharmacy, health and daily living destination across the United States and Europe, and relies on automatic shelf registration statements to conduct frequent offers and sales of securities. For WBA, the automatic shelf registration process provides a critical means of timely and efficient access to the capital markets, which is an essential source of funding for its global operations. Consequently, the ability to avail itself of automatic shelf registration and the other benefits available to a WKSI is extremely important to WBA's ability to raise capital and conduct its operations. In recent years, all of WBA's public offerings have been completed utilizing WBA's S-3ASR registration statements.

As an ineligible issuer, WBA would, among other things, lose the ability to:

- file automatic shelf registration statements to register an indeterminate amount of securities;
- offer additional securities of the classes covered by a registration statement without filing a new registration statement;
- include certain information omitted from the registration statement at the time of effectiveness through the filing of prospectus supplements or incorporated Exchange Act reports;
- take advantage of the "pay as you go" filing fee payment process;
- qualify a new indenture under the Trust Indenture Act of 1939, if needed, without filing or having the Commission declare effective a new registration statement; and

- use free writing prospectuses other than one that contains only a description of the terms of the offered securities or the offering itself.

WBA currently has on file an automatic shelf registration statement on Form S-3ASR that registers indeterminate amounts of multiple classes of securities.⁷ For the period from November 1, 2014, to February 28, 2018, WBA priced approximately three securities offerings, consisting of 15 separate tranches, under its automatic shelf registration statement, with a total principal amount of approximately \$16 billion.⁸ Over the past several years, WBA has primarily used its automatic shelf registration statement in connection with the funding of mergers and acquisitions. Specifically:

- In November 2014, WBA issued a seven-tranche public offering of USD denominated debt securities, totaling approximately \$8.0 billion, and a three-tranche public offering of Euro and GBP denominated bonds, totaling approximately USD \$2.0 billion. The offerings were primarily intended to fund a portion of the cash consideration payable in connection with the second step of the Merger (the acquisition of the remaining 55% of Alliance Boots), to refinance substantially all of Alliance Boots' borrowings, and to pay related fees and expenses. The offerings were critical to the completion of Walgreens' strategic acquisition of Alliance Boots. An issuer free writing prospectus was filed pursuant to Securities Act Rule 433 upon the pricing of each of the offerings.
- In June 2016, WBA issued a five-tranche, \$6.0 billion public offering of USD denominated debt securities. The offering was primarily intended to fund a portion of the cash consideration payable in connection with the then-proposed merger with Rite Aid Corporation, to retire a portion of Rite Aid's debt, and to pay related fees and expenses.⁹ An issuer free writing prospectus was filed pursuant to Securities Act Rule 433 upon the pricing of the offerings.

As discussed above, in recent years, WBA has primarily utilized its automatic shelf registration statement to fund mergers and acquisitions. By having an automatic shelf registration statement, WBA was able to prefund a portion of the cash consideration to be paid in connection with strategic merger and acquisition transactions, based on an assessment of prevailing and anticipated interest rates and market conditions. Having an automatic shelf registration statement and the ability to use issuer free writing prospectuses allowed WBA to

⁷ WBA also fully and unconditionally guarantees certain debt securities of its wholly owned subsidiary, Walgreens, that were issued when Walgreens was a public company (prior to the Reorganization). However, Walgreens is no longer an issuer of securities.

⁸ Ten of the tranches, which occurred when WBA was a wholly owned subsidiary of Walgreens (prior to the Reorganization), were issued utilizing an S-3ASR registration statement initially filed by Walgreens, and for which WBA was an additional registrant.

⁹ Due to the non-consummation of the Rite Aid merger, three tranches were subsequently redeemed.

access the capital markets when it deemed necessary or appropriate. The ability to access the capital markets in such a manner is beneficial to the company and stockholders.

WBA has also utilized its automatic shelf registration statement in connection with secondary offerings of selling stockholders. Over the past three years, WBA has used its automatic shelf registration statement in connection with three selling stockholder offerings, totaling approximately 50,460,000 shares with aggregate proceeds to the selling stockholders, before expenses, of approximately \$4.1 billion. A free writing prospectus was filed pursuant to Securities Act Rule 433 to announce each of the intended secondary offerings by the selling stockholders.

The ability to avail itself of the benefits of WKSJ status is extremely important to WBA. WKSJ status allows WBA (a) to have ready access to the capital markets for financing purposes, (b) to pursue and efficiently finance, as circumstances arise, strategic transactions deemed to be in stockholder interests, and (c) to satisfy outstanding demand registration rights held by certain former stockholders of Alliance Boots.

It is critical that WBA have ready access to the capital markets at all times as WBA participates in a rapidly evolving industry, and strategic transactions and market activity can present themselves with little notice. The ability to timely access capital markets when conditions are favorable can significantly alter WBA's borrowing costs and its ability to drive stockholder value.

III. CONCLUSION

We respectfully submit that the Division should grant the request for this waiver because the Order does not find violations of scienter-based fraud or involve criminal conduct, and the loss of WKSJ status would be a disproportionate hardship for WBA. Additionally, WBA has fully cooperated with the Division of Enforcement in connection with its investigation. In light of these considerations, subjecting WBA to ineligible issuer status is not necessary to serve the public interest or for the protection of investors. Accordingly, we request that the Division, on behalf of the Commission, or the Commission itself make the determination that there is good cause for WBA not to be deemed an ineligible issuer as a result of the Order.

If you have any questions regarding any of the foregoing, please do not hesitate to contact me at 202-736-8615.

Very truly yours,



Thomas J. Kim