



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

January 29, 2013

Dennis O. Garris, Esq.
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004

Re: NetRoadshow, Inc.
Request for No-Action Relief

Dear Mr. Garris:

Based on the representations and facts presented in your letter dated January 25, 2013 (the "Request"), the Office of Municipal Securities will not recommend enforcement action to the Commission against NetRoadshow, Inc. (the "Company"), or its clients acting as underwriters, under the provisions in Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), related to an underwriter's obligation to obtain, review, and disseminate a preliminary official statement or a final official statement, if (i) the Company transmits electronic road shows for offerings of municipal securities to retail investors ("Electronic Road Shows") as described in the Request and (ii) its clients acting as underwriters for the offerings do not treat the Electronic Road Shows as a part of the preliminary official statement or the final official statement for the municipal securities offerings, as those terms are defined in Rule 15c2-12, because the issuers of the municipal securities in such offerings do not treat the Electronic Road Shows as a part of the preliminary official statement or the final official statement. The Request states that the Company does not currently provide electronic road shows for municipal securities to retail investors. You are not requesting relief with respect to pre-existing practices related to electronic road show offerings of municipal securities to institutional investors.

For purposes of this letter, electronic road shows are presentations by an issuer coordinated by the underwriters that are designed to provide prospective investors with information about the issuer, its management, and the securities being offered. These presentations typically include video or an audio-only track of the speakers accompanied with descriptive presentation slides synchronized with the media. The Company transmits these road shows via the internet to potential investors.

The Company does not provide any commentary, advice, endorsement, or analysis of these presentations or the securities being offered. Further, the Company does not, in connection with the production or transmission of electronic road shows or

Dennis O. Garris, Esq.
January 29, 2013

otherwise, provide any advice to any issuer or underwriter with regard to financial products or the issuance of securities and does not hold itself out as providing securities-related services other than transmitting electronic road shows that are in compliance with the applicable rules of the Commission. The Company provides administrative and technological services and the Company's clients are the registered broker-dealers. In addition, the Company provides data storage and statistical services to issuers. In return for these services, the Company receives a flat transmission fee from its client broker-dealers that is not contingent on the completion of, the size of, or number of prospective investors in, the offering.

This no-action position is expressly conditioned on the current and continuing accuracy of the facts and representations contained in the Request. Any different facts or conditions may require a different response. This position is based on current laws, rules, and regulations governing participants in, and the markets for, municipal securities. Any changes in such laws, rules, or regulations may supersede this no-action position or require the Office to reevaluate its position.

This no-action position is subject to modification or revocation at any time the Office determines that such action is necessary or appropriate. The Office may, from time to time, request that the Company provide it with additional information concerning Electronic Road Shows referred to in the Request.

The position expressed herein is the Office's position on enforcement action only, and it does not represent a legal conclusion on the question presented.

Very truly yours,

A handwritten signature in black ink that reads "John J. Cross III". The signature is written in a cursive, slightly slanted style.

John J. Cross III
Director, Office of Municipal Securities

ALSTON & BIRD LLP

The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404

202-239-3300
Fax: 202-239-3333
www.alston.com

Dennis O. Garris

E-mail: dennis.garris@alston.com

January 25, 2013

Mr. John J. Cross III, Director
Office of Municipal Securities
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

**Re: NetRoadshow, Inc.
Request for No-Action Relief under Rule 15c2-12**

Dear Mr. Cross:

We are writing on behalf of our client, NetRoadshow, Inc. (the "Company"), to request that the staff of the Office of Municipal Securities (the "Staff") of the Securities and Exchange Commission (the "Commission") confirm that, under the circumstances described herein, the Staff will not recommend enforcement action to the Commission against the Company or its clients under the provisions in Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), related to an underwriter's obligation to obtain, review and disseminate preliminary official statements or final official statements, if (i) the Company transmits electronic road shows for offerings of municipal securities to retail investors (each an "Electronic Road Show") as described herein and (ii) the Company's clients acting as underwriters for the offerings do not treat the Electronic Road Shows as a part of the preliminary official statements or the final official statements for the offerings as those terms are defined in Rule 15c2-12 (together, the "Official Statements") because the issuers of the municipal securities in such offerings do not treat the Electronic Road Shows as a part of the Official Statements. The Company does not currently provide electronic road shows for municipal securities to retail investors. We are not requesting relief with respect to pre-existing practices related to electronic road show offerings of municipal securities to institutional investors.

NetRoadshow

The Company is the leading provider of electronic road shows for the securities industry. As more fully discussed below, electronic road shows are presentations by an issuer coordinated by the underwriters that are designed to provide prospective investors with information about the issuer, its management and the securities being offered.

These presentations typically include video or an audio-only track of the speakers accompanied with descriptive presentation slides synchronized with the media. The Company transmits these road shows via the internet to potential investors. In connection with private offerings, the Company restricts access to electronic road shows, as deemed appropriate by the underwriter, through the use of unique passwords. In connection with a public offering registered under the Securities Act of 1933, as amended (the “Securities Act”)¹ (a “Securities Act Offering”), the electronic road show includes access to a version of the complete preliminary prospectus, typically in Adobe Portable Document Format (“PDF”), and the viewer is reminded to read the preliminary prospectus before making an investment decision.

The Company does not provide any commentary, advice, endorsement or analysis of these presentations or the securities being offered. Consistent with no-action relief provided to other electronic road show providers, the Company does not, in connection with the production or transmission of electronic road shows or otherwise, provide any advice to any issuer or underwriter with regard to financial products or the issuance of securities² and does not hold itself out as providing securities-related services other than transmitting electronic road shows that are in compliance with the applicable rules of the Commission. The Company provides administrative and technological services and the Company’s clients are the registered broker-dealers. In addition, the Company provides data storage and statistical services to issuers. In return for these services, the Company receives a flat transmission fee from its client broker-dealers that is not contingent on the completion of, the size of, or number of prospective investors in, the offering.

Official Statements and Electronic Road Shows

Electronic road shows under the Securities Act

Issuers and underwriters often conduct road show presentations as part of their marketing efforts. These descriptive presentations to potential institutional investors feature oral presentations by management of the issuer and the lead underwriter, and are intended to create interest in the offering. These presentations may include slides and written material as part of the presentation, but the investors do not receive the slides and are not allowed to keep the written materials. Historically, road shows were conducted live and in person and were limited to institutional investors. However, in recent years these presentations have also been conducted with the use of internet webcasting technologies in compliance with the applicable rules of the Commission. These electronic road shows have assisted in “leveling the playing field” for investors that otherwise would not have had access to a “live” road show presentation.

¹ 15 U.S.C. § 77a et seq.

² See Roadshow Broadcast, LLC (May 6, 2011); e-Media, LLC (December 14, 2000); Angel Capital Electronic Network, (October 25, 1996).

In considering the Company's practices and request for relief, it is important to consider the evolution of electronic road shows in Securities Act Offerings. This context provides important insight into the Company's practices and current uncertainty regarding the applicability of Rule 15c2-12 with regard to Electronic Road Shows.

In a Securities Act Offering, Section 5(c) of the Securities Act prohibits offers, oral or otherwise, prior to the filing of a registration statement.³ Given that a road show would in most circumstances be deemed to be an offer under Section 2(a)(3) of the Securities Act,⁴ road shows do not commence until the filing of a registration statement. After that filing, the statute permits the making of offers but, pursuant to Section 5(b)(1),⁵ written offers must meet the requirements of Section 10 of the Securities Act.⁶

Issuers and underwriters are careful when conducting road shows to limit their road show presentations to those activities that comply with the Securities Act's communications rules. With respect to live road shows, the practices have been well established and understood for many years. As the internet gained popularity in the late 1990s and the early part of this century, issuers and underwriters began to conduct road shows over the internet. The staff of the Division of Corporation Finance issued a series of no-action letters to provide guidance setting out conditions such that electronic road shows in public offerings would not be deemed to be impermissible or non-compliant prospectuses under Section 2(a)(10) (and thus a violation of Section 5) of the Securities Act.⁷

In 2005, the Commission adopted a set of wide ranging reforms impacting the offering process, including the communication rules, known as Securities Offering Reform.⁸ Since Securities Offering Reform was adopted, issuers and offering participants, other than ineligible issuers as defined in Rule 405 of Regulation C,⁹ are permitted to use a "free writing prospectus" ("FWP"), subject to enumerated conditions,

³ 15 U.S.C. § 77e(c).

⁴ 15 U.S.C. § 77b(a)(3).

⁵ 15 U.S.C. § 77e(b)(1).

⁶ On April 5, 2012, the Jumpstart Our Business Startups Act (the "JOBS ACT") was signed into law. Among other things, the JOBS Act contains provisions effecting communications in connection with Securities Act Offerings, but it does not change the substance of this request.

⁷ See Division of Corporation Finance no-action letters to Private Financial Network (Mar. 12, 1997); Net Road show, Inc. (July 30, 1997); Bloomberg L.P. (Oct. 22, 1997); Thompson Financial Services, Inc. (Sep. 4, 1998); Activate.net Corporation (June 3, 1999); Charles Schwab & Co., Inc. (Nov. 15, 1999); Charles Schwab & Co., Inc. (Feb. 9, 2000). The Division of Trading and Markets (formerly the Division of Market Regulation) has also issued no-action letters stating that it would not recommend enforcement action against providers of electronic road shows under specified conditions if they did not register as broker-dealers under the Exchange Act. See Roadshow Broadcast, LLC (May 6, 2011); e-Media, LLC (December 14, 2000); Angel Capital Electronic Network, (October 25, 1996).

⁸ Securities Act Release 33-8591, 70 Fed. Reg. 44722 (August 3, 2005) [hereinafter *Securities Offering Reform Release*].

⁹ 17 C.F.R. § 230.405 (2011).

including, in specified cases, filing with the Commission. However, even after the adoption of Securities Offering Reform, if the specified conditions are not met, a writing that is an offer would be an impermissible FWP outside of the Section 10 prospectus and would violate Section 5 of the Securities Act.

In Securities Offering Reform, the Commission specifically addressed electronic road shows and withdrew the staff's earlier no-action positions related to electronic road shows in connection with public offerings.¹⁰ The Commission stated that a live, in real-time road show to a live audience (including slides and other visual aids) is considered an oral offer subject to Section 12(a)(2) and other liability under the federal securities laws.¹¹ On the other hand, road shows that do not originate live, in real-time to a live audience and are graphically transmitted are considered written communications and, therefore, FWPs.¹² After Securities Offering Reform, for road shows that are FWPs, the electronic road show audience does not have to be limited in any way, the electronic road show does not have to be the re-transmission of a live presentation in front of an audience and the electronic road show may be edited. Multiple versions of the electronic road show are permitted as long as they include the same broad subject matter. Although the Commission did not require that road shows be made available to unrestricted audiences, issuers and underwriters can do so, and the Commission stated that it believed that Securities Offering Reform would encourage issuers to do so where retail interest justifies such unrestricted availability.¹³

As noted above, the use of FWPs, including electronic road shows, is conditioned on certain requirements which are outlined in Securities Act Rule 433.¹⁴ Importantly, a FWP may include information beyond that which is included in a registration statement or prospectus (including information incorporated by reference therein) but that information cannot conflict with the information in the registration statement and prospectus. In addition, a FWP must include a required legend that includes a phone number where a prospective investor may call to receive a copy of the prospectus, be retained for three years in a specific required format and be preceded or be accompanied by the statutory prospectus, which could be accomplished through the inclusion of a hyperlink. Except with respect to equity offerings by companies that are not required to file reports under Section 13 or 15(d) of the Exchange Act, there is no filing requirement

¹⁰ The Commission did not withdraw its no-action letters relating to private offerings but noted that the treatment of electronic communications in the definitions of graphic communication and written communication applies to private placement transactions. An electronic road show or other communication that is a written communication would implicate the provisions of Securities Act Rule 502 of Regulation D regarding information that must be provided to non-accredited investors as well as restrictions on general solicitation and general advertising. *See Securities Offering Reform Release* at footnote 293, 70 Fed. Reg. 44722, 44754.

¹¹ *Id.* 44732-34.

¹² *Id.* at 44754.

¹³ *Id.* at 44755.

¹⁴ 17 C.F.R. § 230.433 (2011).

for such a FWP.¹⁵ In addition, companies that are not yet subject to the reporting requirements need not file a FWP if they make a bona fide version of the road show publicly available. If an issuer has filed at least one bona fide version of the road show with the SEC, it must retain, but need not file, subsequent road shows.

Official Statements Under Rule 15c2-12

Congress exempted offerings of municipal securities from the registration requirements and civil liability provisions of the Securities Act and from the system of periodic reporting under the Exchange Act.¹⁶ It did not, however, exempt transactions in municipal securities from the antifraud provisions of Section 17(a) of the Securities Act or Section 10(b) of the Exchange Act. Moreover, brokers, dealers and municipal securities dealers are subject to regulation by the Commission.¹⁷

Pursuant to the antifraud provisions and its authority over brokers, dealers and municipal securities dealers, the Commission adopted Exchange Act Rule 15c2-12 in 1989.¹⁸ Under Rule 15c2-12, underwriters of primary offerings of municipal securities with an aggregate principal amount of \$1,000,000 or more must receive, review and disseminate Official Statements prepared by issuers.

Under Rule 15c2-12, a final official statement is a:

“...document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter(s) and that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data, concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the Offering...”¹⁹

In addition to the Commission’s rules, Section 15B of the Exchange Act authorizes the Municipal Securities Rulemaking Board (the “MSRB”) to adopt rules to address municipal securities transactions by brokers, dealers and municipal securities dealers.²⁰ Pursuant to this authority, the MSRB has adopted Rule G-32. This rule

¹⁵ Securities Act Rule 433(d)(8)(ii); 17 C.F.R. § 230.433(d)(8)(ii) (2011); *Securities Offering Reform Release*, 70 Fed. Reg. 44754.

¹⁶ Securities Act Section 3(a)(2), 15 U.S.C. § 77c(a)(2); Exchange Act Section 15B(d)(1), 15 U.S.C. § 78o-4(d)(1).

¹⁷ *See, e.g.*, Exchange Act Section 15(a)(1), 15 U.S.C. § 78o(a)(1) (requiring registration of brokers and dealers engaging in certain securities transactions); Exchange Act Section 15B(1)(A), 15 U.S.C. § 78o-4(a)(1) (requiring registration of municipal securities dealers engaging in most municipal securities transactions).

¹⁸ 17 C.F.R. § 240.15c2-12 (2011).

¹⁹ Exchange Act Rule 15c2-12(f)(3), 17 C.F.R. § 240.15c2-12(f)(3) (2011).

²⁰ Exchange Act Section 15B(b), 15 U.S.C. § 78o-4(b).

requires that Official Statements be filed with the MSRB no later than the closing date of the transaction, and disseminated to customers no later than the settlement date of the transaction.²¹ MSRB Rule G-21 establishes specific requirements for “advertisements” by brokers, dealers and municipal securities dealers. The term “advertisement” does not apply to preliminary official statements or official statements, but does apply to any material published or used in any electronic or other public media, or any written or electronic promotional literature distributed or made generally available to customers or the public.²²

Legal Analysis of Electronic Road Shows under Rule 15c2-12

The use of an electronic road show in connection with an offering of municipal securities raises a question as to whether or not the Electronic Road Show would be deemed to be a part of the Official Statements. If it were deemed to be part of the Official Statements, the municipal securities underwriter would have an obligation to obtain and send it to potential customers and file it with the MSRB. We do not believe that an Electronic Road Show should be deemed to be part of the Official Statements.

In the absence of clear guidance, market participants are looking to Securities Offering Reform for procedures for conducting Electronic Road Shows. We believe, as recently noted by then-Commissioner Walter,²³ that it is helpful to look to the corporate disclosure scheme as a framework for municipal disclosure but that there are appropriate differences in the municipal and corporate finance worlds. As explained above, transactions in municipal securities are not subject to the registration or civil liability provisions of the Securities Act. However, investors in primary offerings of municipal securities generally receive disclosure of the material terms of a primary offering of municipal securities. Although the analysis regarding communications in connection with a primary offering of municipal securities is similar to that of transactions under the Securities Act, there is no statutory prohibition on “free writing” outside of the Official Statements in a municipal securities transaction. In fact, we believe the Commission made clear in Securities Act Release 33-7586 (April 28, 2000) that with respect to an offering of municipal securities, an issuer can use writings outside of the Official Statements and can designate which documents or set of documents constitute the Official Statements.²⁴ This release also states that documents can be displayed alongside the official statement. So long as the Official Statements do not contain a hyperlink

²¹ MSRB Rule G-32, *Disclosures In Connection With Primary Offerings*, <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-32.aspx>.

²² MSRB Rule G-21, *Advertising*, <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-21.aspx>.

²³ Commissioner Elisse B. Walter, Keynote Address at the National Federation of Municipal Analysts (NFMA) Twenty-Eighth Annual Conference, Charleston, S.C. (May 4, 2011). *See also* Commissioner Elisse B. Walter, Statement at SEC Field Hearing on the State of the Municipal Securities Market (Sept. 21, 2010).

²⁴ SEC Interpretation: Use of Electronic Media, Securities Act Release No. 33-7586, 65 Fed. Reg. 25843, 25848 (May 4, 2000).

to the “excluded” documents, the “excluded” documents will not be deemed to be part of the Official Statements.²⁵ This should be no less true for an Electronic Road Show that would be provided through the Company’s third-party site than it is for other documents on an issuer’s website.

Although other writings are permissible, there are, of course, important protections for investors in the disclosure regime for municipal securities.²⁶ As required by Rule 15c2-12, the final official statement must be “complete” as of the date it is delivered to participating underwriters. As a result, although the Electronic Road Show may include information the substance of which is not included in the Official Statements, issuers and underwriters must ensure that any additional information presented in the Electronic Road Show is not material to an evaluation of the offering, otherwise the final official statement would not be complete or comply with Rule 15c2-12. Further, to comply with the anti-fraud provisions, issuers and underwriters must be sure that the information contained in the Electronic Road Show is not materially inconsistent with the final official statement. This is a result of the fact that disclosure documents used by municipal issuers are subject to the prohibition against a false or misleading statement of material facts, including the omission of material facts necessary to make the statements made, in the light of the circumstances in which they are made, not misleading.²⁷ As an additional safeguard, an Electronic Road Show must also comply with MSRB Rule G-21’s prohibition of false and misleading advertising by brokers, dealers and municipal securities dealers.²⁸

Request for No Action Relief

We understand that the Commission staff is currently examining the municipal securities market and has conducted roundtables with the aim of providing additional guidance and recommendations with respect to municipal securities offerings and to strengthen and improve the disclosure that investors receive in a municipal securities offering. In the interim, market participants are attempting to recover from the financial downturn and any uncertainty with respect to permissible offering mechanics can limit access to information, particularly for retail investors. We, therefore, believe it would be helpful if the Staff were to provide clarity with respect to Electronic Road Shows by providing the relief we are requesting. Directly and through mutual funds, closed-end funds, UITs, and ETFs, retail investors hold the majority of the roughly \$3.7 trillion in municipal securities.²⁹ The treatment of electronic road shows in Securities Offering

²⁵ *Id.*

²⁶ Ensuring compliance with these rules and regulations is the responsibility of the issuers and underwriters.

²⁷ See Securities Act Section 17(a), 15 U.S.C. § 77q(a); Exchange Act Section 10(b), 15 U.S.C. §78j(b).

²⁸ *Supra* note 22, Section (a)(iii).

²⁹ See U.S. Government Accountability Office *Report to Congressional Committees, Municipal Securities: Overview of Market Structure, Pricing and Regulation*, GAO 12-265, Government Accountability Office, January 2012. <http://gao.gov/assets/590/587714.pdf>; see also Investment

Reform was at least partially motivated by the hope that issuers and underwriters would open road shows to a broader audience. The Company does not currently provide electronic road shows for municipal securities to retail investors. We believe that if the Staff were to provide the relief we are requesting, it would provide needed clarity in this area and make it more likely Electronic Road Shows would be open to retail investors.

The Company would host retail Electronic Road Shows on www.muniretailroadshow.com in a manner substantially consistent with the Company's current practices in Securities Act Offerings, such that Electronic Road Shows³⁰ would:

- not contain information that conflicted with the information in the most current official statement,
- include a legend informing the prospective investor that the issuer of the municipal securities had prepared preliminary and/or final official statements and that the investor should read the most current official statement before making an investment decision,
- include an additional statement at the beginning stating that prospective retail investors should read the most current official statement when making an investment decision and randomly display text encouraging the prospective retail investor to read the most current official statement when making an investment decision,
- include a PDF of the most current preliminary or final official statement that could be downloaded and printed,
- provide a link to the Official Statements on EMMA, that would be available on the Home Page of www.muniretailroadshow.com so that retail investors would have easy access to all Official Statements, including after an offering was completed and the particular retail municipal road show and the associated Official Statements were removed from the website,
- only permit the prospective retail investor to view the Electronic Road Show in a serial fashion, rather than permitting the investor to skip ahead and receive information out of its proper context, and
- be retained for three years from the completion of the transaction in a format that meets the requirements of Exchange Act Rule 17a-4.

Company Institute, *Frequently Asked Questions about Municipal Bonds*.
http://www.ici.org/policy/markets/domestic/faqs_muni_bond.

³⁰ Non-retail Electronic Road Shows would be hosted on a separate site and would have access restricted, as deemed appropriate by the underwriter, through the use of unique passwords.

Based on the foregoing, we respectfully request that the Staff confirm that the Staff will not recommend enforcement action to the Commission against the Company or its clients under the provisions in Rule 15c2-12 related to an underwriter's obligation to obtain, review and disseminate the Official Statements, if the Company transmits Electronic Road Shows as described above and neither the Company nor its clients acting as underwriters treat the Electronic Road Shows as part of the Official Statements pursuant to Rule 15c2-12 because the issuers of the municipal securities in such offerings do not treat the Electronic Road Shows as part of the Official Statements.

If you have any questions with respect to this request or require any additional information, please contact the undersigned at (202) 239-3452.

Sincerely,

A handwritten signature in black ink, appearing to read "D. O. Garris". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping underline.

Dennis O. Garris