18-00811-FOIA

foiapa

From: Request@ip-10-170-24-132.ec2.internal
Sent: Friday, January 12, 2018 4:37 PM
To: foiapa
Subject: Request for Document from Debord, Carmen
Attachments: WK_SEC Docket 1973-2004 Securities and Exchange Commission Simplificatio.pdf

Ms. Carmen Debord
1333 H Street NW
Suite 700E
Washington, District of Columbia 20005
United States

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carmen.debord@thomsonreuters.com
Thomson Reuters

RECEIVED
JAN 12 2018
Office of
FOIA Services

Request:
COMP_NAME: National Association of State Securities Administrators (NASSA)
DOC_DATE: Nov.3.1993
TYPE: Comment letters
COMMENTS: I would like to request from the SEC, a public comment letter made by the National Association of State Securities Administrators (NASSA)? In 1993 SEC proposed rule for Simplification of Registration and Reporting Requirements for Foreign Companies. Securities Act Release No. 7029 (Nov. 3, 1993) [58 FR 60307] (the Proposing Release).

In the Adopting release (attached), there is a mention of NASSA comment. See below.

"In response to the Commission's request for comment on the new safe harbor, the National Association of State Securities Administrators (NASAA) urged the Commission to provide the safe harbor only for foreign and domestic reporting companies and foreign companies that have obtained a Rule 12g3-2(b) exemption if such information is deemed material to the marketplace. NASAA expressed concerns that, as proposed, the safe harbor was overbroad in its applicability to companies without a public market, and thus particularly vulnerable to abuse. The Commission agrees that it would be appropriate in introducing the safe harbor that it be limited to reporting companies and foreign companies that have obtained a Rule 12g3-2(b) 47 exemption"
ATTACHMENT: WK_SEC Docket 1973-2004 Securities and Exchange Commission Simplificatio.pdf
FEE_AUTHORIZED: Other Amount $: 100.00
FEE_WAIVER_REQUESTED: No
EXPEDITED_SERVICE_REQUESTED: No

SEC Docket (1973-2004), Simplification of Registration and Reporting Requirements for Foreign Companies, Securities and Exchange Commission, (Apr. 19, 1994)

56 SEC-DOCKET 1256-713

Release No. 33-7053

Release No. 34-33918

Release No. IS-653

File No. S7-30-93

93-94 cch Dec., FSLR ¶85,331

17 CFR Parts 229, 230, 239 and 249

April 19, 1994

Registration: Foreign Companies: Rule and Form Amendments.– Registration and reporting requirements for foreign companies have been streamlined by expanding the universe of foreign issuers eligible to use short form and shelf registration and expanding safe harbor protection for analyst reports with regard to sizeable foreign companies publicly traded offshore. In addition, financial statement reconciliation and financial schedule requirements have been streamlined. Finally, a new safe harbor has been provided for company announcements regarding exempt offerings or unregistered offshore offerings. The changes take effect upon *Federal Register* publication.

See FSLR ¶6951, FSLR ¶6961, FSLR ¶6971, and FSLR ¶6981, "Securities Act—Forms" division, Volume 2.

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56 SEC-DOCKET 1256

RIN 3235-AF-83

SIMPLIFICATION OF REGISTRATION AND REPORTING REQUIREMENTS FOR FOREIGN COMPANIES; SAFE HARBORS FOR PUBLIC ANNOUNCEMENTS OF UNREGISTERED OFFERINGS AND BROKER-DEALER RESEARCH REPORTS

AGENCY: Securities and Exchange Commission.

ACTION: Final Rule and Amendments to Rules and Forms

SUMMARY: The Commission is announcing the adoption of a rule and amendments to rules and forms to streamline registration and reporting requirements for foreign companies by (1)§expanding the universe of foreign issuers eligible to use short-form and shelf registration under the Securities Act of 1933 (the 'Securities Act'); (2)§streamlining financial statement reconciliation and financial schedule requirements; and (3)§expanding safe harbor protection for analyst reports with respect to sizeable foreign companies publicly traded offshore. In addition, the Commission is providing a new safe harbor for certain company announcements regarding exempt offerings or unregistered offshore offerings.

EFFECTIVE DATE: [Insert date of publication in FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Sandra Folsom Kinsey or Annemarie Tierney, (202) 272-3246, Office of International Corporate Finance, Division of Corporation Finance, or, with respect to accounting matters, Wayne E. Carnall, (202) 272-2553, Office of the Chief Accountant, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to the following rules and forms under the Securities Act of 1933 [1] : Form F-1, [2] Form F-2, [3] Form F-3, [4] Form F-4, [5] Rule 135, [6] Rule

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

February 2, 2018

Ms. Carmen Debord
Thomson Reuters
1333 H. Street NW
Suite 700E
Washington, DC 20005

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. 18-00811-FOIA

Dear Ms. Debord:

This letter is in response to your request, dated and received in this office on January 12, 2018, for a public comment letter from the National Association of State Securities Administrators (NASSA). The comment letter was submitted in response to a 1993 SEC proposed rule for Simplification of Registration and Reporting Requirements for Foreign Countries.

Based on the information you provided in your letter, we conducted a thorough search of the SEC's various systems of records, but did not locate or identify the specific document cited in your request.

However, as I mentioned to you in our telephone conversations of January 18 and 31, 2018, we located the enclosed 4-page comment letter from the North American Securities Administrators Association, Inc. (NASAA) that pertains to the 1993 SEC proposed rule mentioned in your request. You asked that we forward this document to you.

If you consider this an adverse determination, you have the right to appeal the adequacy of our search to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(d)(5)(iv). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

You may file your appeal by completing the online Appeal form located at https://www.sec.gov/forms/request_appeal, or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address. Also, send a copy to the SEC Office of the General Counsel, Mail Stop 9612, or deliver it to Room 1120 at the Station Place address.

If you have any questions, please contact me at neilsonc@sec.gov or (202) 551-3149. You may also contact me at foiapa@sec.gov or (202) 551-7900. You also have the right to seek assistance from Dave Henshall at (202) 551-7900 as a FOIA Public Liaison for this office, or contact the Office of Government Information Services (OGIS) for dispute resolution services. OGIS can be reached at 1-877-684-6448 or Archives.gov or via e-mail at ogis@nara.gov.

Sincerely,

Curtis Neilson
FOIA Research Specialist

Enclosure

#18

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

NASAA

One Massachusetts Avenue, N.W., Suite 310
Washington, D.C. 20001
202/737-0900
Telecopier: 202/783-3571

RECEIVED
OFFICE OF THE SECRETARY
FEB 3 1994

February 2, 1994

Mr. Jonathan G. Katz
Secretary
U.S. Securities and
Exchange Commission
450 Fifth Street, N.W., Stop 6-9
Washington, D.C. 20549

Re: File No. S7-30-93
Release Nos. 33-7029, 34-33139
Safe Harbors for Public Announcements of Unregistered Offerings

Dear Mr. Katz:

The North American Securities Administrators Association, Inc. ("NASAA")[1] hereby submits its comments to the Securities and Exchange Commission (the "Commission") on its proposal as referenced above.

NASAA has serious concerns regarding the proposal and believes that it is an overbroad response to the need cited as the reason for the proposal[2]. In addition, the safeguards that have been included in the proposed rule as a condition of its use are unenforceable.

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[1] In the United States, NASAA is the national voice of the 50 state and the district securities agencies responsible for investor protection and the efficient functioning of the capital markets at the grassroots level.

[2] "The growing number of cross-border and offshore offerings and private placements following the adoption in 1990 of Regulation S and Rule 144A under the Securities Act has resulted in repeated requests for guidance in dealing with companies' need to keep investors informed of material developments, including securities offerings, and the limitations on general solicitation and directed selling efforts in private placements and offshore offerings under Regulation S. To address these concerns, the Commission is proposing a new safe harbor for issuers' announcements of offerings not registered or required to be registered under the Securities Act."

President: Craig A. Goettsch (Iowa) • President Elect: Philip A. Feigin (Colorado) • Secretary: Marcel de la Gorgendiere, Q.C. (Saskatchewan) • Treasurer: Mark J. Griffin (Utah)
Directors: Barry C. Guthary (Massachusetts) • Dee R. Harris (Arizona) • Mark V. Holderman (Ohio) • Wayne Klein (Idaho) • Nancy M. Smith (New Mexico)
Executive Director: Fowler C. West

NASAA believes the overinclusiveness of the proposal promises to promote sales activity for truly private companies who have no obligation to provide ongoing information to prior investors, but who will seek to take advantage of the permissible announcements to make additional offers and sales of securities without complying with the requirements of registration and without any real enforcement deterrent to keep such offers and sales in check.

We understand the policy reason behind that part of the proposal which will permit reporting companies to notify existing shareholders of material information, including that the company will be offering additional securities through a private placement. However, this proposal goes far beyond that limited purpose by suggesting that institutional issuers, private issuers, and companies making offerings that "come to rest" overseas may publish these public announcements of private offerings.

If an issuer has an active U.S. securities market and the securities laws of the United States or any foreign jurisdiction would require notice to shareholders of a securities offering, the company, mostly likely a reporting company or a 12g3-2(b) company, should be permitted to disclose such activity as required. Companies offering securities through a private placement that have previously completed a Regulation S or a 144A transaction are unlikely to have an active market in the United States. Therefore, it is unclear what, if any, ongoing independent reporting obligation such issuers would have to existing U.S. shareholders. Moreover, notice of such activity could be provided in a much less obtrusive and nonpublic way.

Widespread public notice of private offerings will surely attract the attention of the financial news media. If the media believes that the offering by the company is newsworthy, the media may hype the company or the offering despite the fact that the offering is a private placement. This could greatly expand the market of the private placement well beyond the targeted audience of preexisting shareholders.

The issue of most concern to NASAA regarding the proposal is its possible use by companies that have no public market and companies whose only shareholders hold restricted securities. The proposal does not restrict public announcements of Regulation D offerings to those made by reporting companies. We are unclear regarding what broader need the Commission is attempting to satisfy by not so limiting the proposal. In addition, we question whether the Commission has carefully weighed its policy reasons for this radical departure from the private nature of Regulation D offerings against data on the type of offerings and companies that traditionally make use of Regulation D offerings and the enforceability of the limitations placed on the use of the rule. NASAA would suggest that the historical prohibition on general solicitation of private offerings made under Regulation D,

including tombstone-like public announcements, is not only justified because the issuers who generally make use of Regulation D do not have active U. S. markets requiring notice of such offerings, but it is, in part, required under the statutory authority for Regulation D.

NASAA knows of no ongoing independent reporting obligation by private issuers to their shareholders. Therefore, it is unclear for what purpose such public announcements could be used by such companies other than as a sales tool. Although the proposal prohibits the use of a public announcement as a means to condition the market, and requires that a legend be included in the notice prohibiting sales of securities unless the security is registered or exempt, it is well recognized that "sales" of securities are made well in advance of the actual payment for the securities. In addition, it would be very difficult for a regulator to prove that a company was attempting to "condition the market" by making a public announcement of its private offering, especially when the rule does not require that a public market exist as a condition to allow publication of the announcement.

There is also no requirement in the proposal for companies, other than reporting companies and 12g3-2(b) companies, to file a notice with the Commission when they rely upon the proposed rule. Without such notice, regulators would only become aware of these types of announcements by other companies (e.g., institutional issuers, issuers of Regulation S offerings, Regulation D issuers) if they reviewed all printed media. If regulators are to carefully monitor compliance with the rule, they must have notice that such companies are making use of public announcements of their private offerings.

In addition to our substantive concerns regarding the proposal, we are very troubled by the timing of when NASAA received notice of the proposal. The proposal promotes nonuniformity with state regulation in a unilateral action that was not previously discussed with state regulators and in an area where concerns already exist regarding nonuniformity. When the states were encouraged to adopt the Uniform Limited Offering Exemption ("ULOE") to coordinate with the federal exemptions included in Regulation D, the states emphasized the need for compliance with certain minimum federal requirements to which ULOE was tied.

The prohibition against general solicitation has been included in both the federal and state exemptions. Historically, this prohibition has placed the responsibility for monitoring noncompliance of advertisements placed in national publications upon the SEC and the states have monitored publications within their jurisdictions. Changes in the federal law will have a direct impact on state regulation of private offerings. Without the states being able to rely upon this sharing of responsibility, states will also be required to address advertisements placed in national publications. Despite the creation of this proposed

federal exemption, these publications would still constitute general solicitation under state laws. An issuer could meet the federal requirements, yet violate state law. This dilemma dramatically underscores the need for a coordinated approach to policymaking of the type NASAA is currently discussing with the SEC in our mutual effort to improve NASAA/SEC cooperation.

NASAA suggests that the Commission limit the proposal to permit reporting companies and 12g3-2(b) companies to publish the limited announcements of private offerings, if such information is deemed material to the marketplace. All other issuers that would otherwise be able to use the announcement under the proposal as it is currently drafted do not have active markets and therefore do not have the need to report a private offering in a public manner.

Representatives of NASAA would be glad to clarify the concerns we have raised above if necessary. Thank you for this opportunity to comment.

Sincerely,

Craig A. Goettsch, President
NASAA

Debra Bollinger, Chair
Corporation Finance Section