

## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 34-56534 ; IA-2658 ; File No. S7-24-07]

### **PUBLIC ALERT: UNREGISTERED SOLICITING ENTITIES (“PAUSE”) PROGRAM**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice; request for comment.

**SUMMARY:** The Securities and Exchange Commission (“SEC” or “Commission”) is announcing a new program that will post on its Web site certain factual information about unregistered entities that are engaged in the solicitation of securities transactions.

**DATES:** Comments should be submitted on or before November 1, 2007.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-24-07 on the subject line.

#### Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-24-07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/other.shtml>).

Comments also are available for public inspection and copying in the Commission’s Public

Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** John Reed Stark, Chief of the Office of Internet Enforcement and Counselor to the Director, at (202) 551-4540, Jack Hardy, Branch Chief, Office of Investor Education and Advocacy, at (202) 551-6500, Alberto Arevalo, Acting Assistant Director, Office of International Affairs, at (202) 551-6690, at the Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6628.

**SUPPLEMENTARY INFORMATION:** The Commission today is announcing a new program for informing the public about unregistered entities engaged in solicitations of securities transactions. Through this new program, “Public Alert: Unregistered Soliciting Entities” (“PAUSE”), the Commission will publish on its Web site certain factual information about unregistered soliciting entities that have been the subject of complaints forwarded by investors and others, including fellow securities regulators. By making this information readily available, the Commission expects investors to be better able to evaluate solicitations to buy and sell securities. Before the program and Web site become operational December 3, 2007, the Commission is interested in receiving comments and suggestions on the PAUSE program.

1. Background

Generally, entities that solicit purchases or sales of securities for the accounts of other persons in the United States are required to register with the SEC. The Commission regularly receives complaints and inquiries from investors and others, including foreign securities

regulators, about solicitations made by entities claiming to be registered, licensed and/or operating in the United States, and in some cases, entities soliciting US investors that are not registered in the United States. When an entity claims to be registered with the SEC, it is in effect claiming that it has made itself available for SEC regulation and oversight. For this reason, it is important for prospective investors to consider whether a soliciting entity is, in fact, registered with the SEC.

The Commission's Office of Investor Education and Advocacy ("OIEA") fields investor complaints and inquiries. The single largest number of investor complaints received by OIEA concern solicitations of investors by unregistered entities that appear to be involved in boiler room and secondary advance fee schemes.<sup>1</sup> In 2005 and 2006, OIEA received respectively 1,385 and 1,418 complaints from investors who were solicited by unregistered entities, many of which purported to be US-based securities firms trading in securities of US-based issuers.

Moreover, perpetrators of boiler rooms and advance fee schemes increasingly use new devices to convince investors that their solicitations are legitimate, including:

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<sup>1</sup> Boiler room operations use high-pressure sales tactics generally over the telephone and solicit investors with false and/or misleading information. They frequently purport to be registered broker dealers and/or operating in the United States and offer "opportunities" to invest in securities, often issued by companies organized in the United States. The schemes are disbanded and the wrongdoers disappear after investors wire their money, which is then transferred to offshore accounts. Secondary "advance fee" schemes work very similarly to boiler room operations, the difference being that an advance fee scheme generally targets investors who purchased underperforming securities, perhaps through an affiliated boiler room, offering to arrange a lucrative sale of those securities, but first requiring the payment of an "advance fee" in the form of a commission, regulatory fee or tax, or some other incidental expense. The advance fees are paid, but the promised sale of the securities is never arranged.

For more information about boiler rooms and advance fee schemes, please see the following discussions on our Web site:

- The Fleecing of Foreign Investors: Avoid Getting Burned by "Hot" U.S. Stocks (<http://www.sec.gov/investor/pubs/fleecing.htm>)
- Worthless Stock: How to Avoid Doubling Your Losses (<http://www.sec.gov/investor/pubs/worthless.htm>)
- Protect Your Money: Check Out Brokers and Investment Advisers (<http://www.sec.gov/investor/brokers.htm>)

- impersonating US registered securities firms by, for example, using the same or a similar name or providing an address that closely resembles that of a US registered securities firm;
- making false reference to, including false claims of endorsement by, governmental agencies and international organizations (sometimes even impersonating them); and
- claiming endorsements by, or making other reference to, governmental agencies and international organizations that sound official, but do not exist.<sup>2</sup>

Our staff is frequently able to determine quickly the accuracy of various claims made by the soliciting entities. For example, a claim by an entity that it is a US registered broker-dealer is easily verifiable by checking public sources, including the Central Registration Depository database administered by the Financial Industry Regulatory Authority, Inc. (formerly, the NASD).<sup>3</sup> Entities that use names that are the same as, or similar to, the names of US registered securities firms can also be verified by checking public sources and obtaining information from officials at the firms. In this way, our staff can also determine whether the complained-of entity has any actual affiliation with the registered firm. A claim that an entity operates from a particular location in the United States can also be established. Finally, if a soliciting entity claims that the securities it offers are approved or endorsed by a particular governmental agency, that claim can usually also be quickly confirmed.

In appropriate cases, our staff's review may lead to a referral to the Division of Enforcement, which may begin an investigation of possible securities law violations, and the

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<sup>2</sup> In one case, a soliciting entity impersonated the International Organization of Securities Commissions ("IOSCO"). The Securities Investor Protection Corporation ("SIPC") has also been impersonated by virtue of a "look alike" Web site and responded by posting an alert identifying the fictitious organization, the "International Brokerage Association."

<sup>3</sup> <http://www.nasd.com/InvestorInformation/InvestorProtection/ChecktheBackgroundofYourInvestmentProfessional/index.htm>

Commission may ultimately bring an enforcement action for such violations. However, in a significant number of cases there may be obstacles to effective enforcement action. Soliciting entities change names frequently, often before law enforcement action can be taken. Often the subjects of complaints purport to be based in the United States, but in fact operate from numerous jurisdictions overseas. Notwithstanding cooperation with foreign counterparts, investigations of offshore operations can be complex and time-consuming. Even if the Division of Enforcement's investigation determines that the entities involved in such activities have sufficient contacts with the United States to grant the Commission and US courts with jurisdiction over their conduct, there can be substantial obstacles to completing legal action against these foreign operators and obtaining meaningful relief, while in the meantime investors can suffer significant harm.

## 2. The PAUSE Program

In light of the challenges associated with taking enforcement action against such operations, the Commission believes that it is useful to devise a complementary approach that serves to empower prospective investors. The goal of the PAUSE Program is to provide prospective investors with relevant information about unregistered soliciting entities before they invest.

To implement the PAUSE Program, the Commission will post on its public Web site specific information about unregistered soliciting entities that have been the subject of complaints. For each of these entities, the Commission's staff will have determined either (1) that there is no US registered securities firm with that name, or (2) that there is a US registered securities firm with the same (or a similar) name but that solicitations appear to have been made by persons not affiliated with the US registered securities firm.

In addition, the PAUSE list will contain a “Comments” section for each entry. The Comments section will reflect certain results of the staff’s investigation addressing the entity’s US registration status; any use of a name that is the same or similar to that of a US registered securities firm; and any references to governmental agencies and international organizations in the solicitations. The “Comments” section may include other relevant information that may be helpful to investors, such as the use of addresses that do not appear to exist.

A second PAUSE list will name fictitious governmental agencies and international organizations referred to by complained-of entities.

### 3. Additional Information

The Commission’s intent is to publish factual information that may be valuable to investors in connection with their investment decisions.<sup>4</sup> A listing on the PAUSE web page does not mean that the Commission has found violations of US federal securities laws or made a judgment about the merits of any securities offered by listed entities. As well, the PAUSE web page will not necessarily include information about all unregistered entities or entities that have been the subject of complaints. There may be various reasons, including law enforcement and policy, which may militate against including information about an entity on the PAUSE web page. The Commission intends to regularly update the PAUSE lists and archive information approximately nine months from the date of last observed activity.

### 4. Corrections

The Commission is committed to providing accurate information under the PAUSE Program. Before listing an entity on PAUSE, the Commission’s staff will notify the entity and provide an opportunity – two calendar days from the date of the staff’s notification letter – for

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<sup>4</sup> See, e.g., Securities Exchange Act § 21(a). Cf. Kukatash Mining Corp. v. Securities and Exchange Commission, 309 F.2d 647 (D.C. Cir. 1962); and Freedom of Information Act, 5 U.S.C. 552.

the entity to respond. If, after being listed on PAUSE, an entity believes it should be removed from a list because information included about it is incorrect, or for other reasons, it should notify the Commission's staff and provide such documents and other information as reasonably necessary to support its assertion.

To notify the Commission of a factual error or to request removal from a list, please write to the following address:

U.S. Securities and Exchange Commission  
Attn: PAUSE Program Administrator  
100 F Street, N.E.  
Washington, DC 20549-5631  
[enf-pauseresponse@sec.gov](mailto:enf-pauseresponse@sec.gov)  
FAX: 202-772-9278

Submissions will be reviewed for appropriate action by Commission staff.

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By the Commission.

Nancy M. Morris  
Secretary

Date: September 26, 2007