ES150778

McElveen, Josephine

From: Tony Chiarenza <[redacted]>
Sent: Wednesday, October 23, 2013 3:34 PM
To: CHAIRMANOFFICE
Cc: SEC Office of Small Business Policy; newyork; Rule-Comments
Subject: Attention Ms. Mary Jo White
Attachments: UPG let.pdf

Dear Ms. White:

Welcome to the SEC. We hope that you take a fresh look at the abuse of the small investor by small cap companies. We have been significant investors in small capitalization equity securities for over thirty years. We find that there is currently an unambiguous and critical need to change the requirements for the deregistration of a security. We hope that with the change in administration there is a renewed emphasis on the rights of small outside shareholders.

Over the past ten years we, along with most small cap investors, have experienced a very troubling trend. The boards and managements of many of our small company investments have decided to deregister their equity securities and numerous others are seriously contemplating it. Companies with thousands of "beneficial shareholders" but less than 300 shareholders of record have taken advantage of the loophole in the legislation to leave public shareholders materially damaged. Their explicit justification has generally been to free themselves from the requirements of the Sarbanes-Oxley and Security Acts. Unfortunately, the current serious flaw in the law in the definition of "holders of a security" has provided an easy mechanism for many unethical companies to essentially "opt out" of the securities regulations and leave their public shareholders "in the dark". We believe that this is clearly not the intent of the regulations. Companies should not simply be allowed to "choose" to no longer be subject to regulations that they find demanding.

It is important for you to understand what happens once a company deregisters. Here is the typical scenario. The stock price collapses and trading volume becomes miniscule. Bid offer spreads become extremely wide as the shares are relegated to the pink sheets. Moreover, once many of these unethical companies deregister, managements, fully cognizant that there is no longer any regulator "looking over their shoulders", simply cease all communications with their outside shareholders. Press releases disappear. Managements become complete inaccessible. Financial statements are not provided and annual meetings are not held. Managements begin to act as if they are private companies and outside shareholders are left "in the dark" with a completely illiquid stock and with little recourse. Legal action is possible under Delaware Corporate Law (or other applicable state law), but most small investors do not have the time or the financial resources to fight for their rights. This is why it absolutely critical that you act to remedy this situation. (Attached is a letter we sent to the the latest company to deregister.)

Investors buy securities with the explicit expectation that they will be provided protection by the Federal Securities Laws. Allowing companies to simply *choose not to comply* with the law by taking advantage of a technicality is certainly not the intent of the legislation. We urge you to change this egregious loophole in the law and help restore confidence in the equity markets.

Sincerely,

Anthony Chiarenza

Key Equity Investors, Inc.
Po Box 604579
Bayside, NY 11360
718-281-0192

Key Equity Investors, Inc.

Anthony Chiarenza, President

October 21, 2013

Mr. Ian C. Edmonds
Chief Executive Officer
Universal Power Group, Inc.
488 S. Royal Lane
Coppell, Texas 75019

Dear Mr. Edmonds:

As a significant holder of Universal Power Group shares, we were distraught and shocked to learn this afternoon that you are about to file a Form 15 leaving your public shareholders **"in the dark"**. This "shareholder-unfriendly" decision has been implemented without the courtesy of a warning or a detailed explanation of how shareholders will be informed of Company performance and material events in the future. In fact, there is absolutely no statement or reference in you press release about future shareholder disclosure. We find this simply unacceptable from the perspective of outside shareholders. **We urge you to immediately provide outside shareholders with an explanation of your filing and your plan for providing quarterly shareholder disclosure.**

One fact is undeniably accurate about this filing. This action, which relies on an archaic section of the Federal Securities Laws, is not in the best interest of the Company's outside shareholders. It has been well documented that many issuers take advantage of this loophole in the existing law to further the interests of a select group of stockholders at the expense of outside stockholders. The Company "went dark" by stating that it had fewer than 300 shareholders of record and filing a Form 15 with the SEC, terminating its status as a reporting Company. It's unambiguous to management and outside shareholders that the Company has significantly more than 300 beneficial shareholders. The Company has taken advantage of an archaic SEC interpretation of a provision adopted in 1965 that allows the Company to count all securities held by a single brokerage firm in "street name" as one holder. (The Commission is very likely to change this interpretation in the near future and forcing companies like UPG to reregister with the SEC.) We are certain that hundreds of shareholders, such as ourselves, hold shares in "street name" which were aggregated by each of our respective brokerage firms and counted only as a handful of shareholders in the Company's calculations. **This transaction may be technically legal, but we believe that it is unethical and a**

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violation of the Board's fiduciary responsibilities to the public shareholders.

In addition, we would like to emphasize that the above transaction is being implemented without any warning to the public shareholders. Public shareholders were given no opportunity to comment before the Company's action. At a minimum, we should have been warned that the Board was contemplating such action. The public shareholders have been forced to accept securities in what now is essentially a private company without any ability to access their money or to receive periodic reports as mandated by the Federal Securities Laws. Company shareholders bought shares with the explicit expectation that they would be provided protection by the Federal Securities Laws. Deregistration violates the trust the Company had with its shareholders and removes the protection of the securities laws for the Company's public shareholders.

Finally, deregistration will materially reduce the value and liquidity of the Company's shares. Potential investors will become uninterested in purchasing shares in a "deregistered pink sheet company" that has no obligation to provide timely reports to its shareholders. Drops of 50% in the shares of companies filing Form 15's are not uncommon. (The Company's shares were already down over 30% minutes following the announcement.) In addition, bid offer spreads become extremely wide and liquidity becomes non-existent.

If management and the Board wanted to remove the burden and cost of being a public Company and treat **all** shareholders fairly, they should have taken the Company private. Deregistration will not make the Company private. **Deregistered companies remain public and are subject to all the requirements of Texas Corporate Law, including the requirement to hold an annual meeting, the right for public investors to inspect records of the Company and for the Company to provide outside shareholders with audited financial statements.**

We are obviously very dismayed with your filing and fail to understand the reason for your action, other than to further the interest of management. We urge you to immediately contact us and explain the logic for your action and your disclosure plan for the future.

Regards,

cc:
L. Bernhard
R. Gutkowski
H. Park
W. Tan
M. Tan