



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

DIVISION OF
CORPORATION FINANCE

May 26, 2009

Mr. Brian J. Lane
Gibson, Dunn & Crutcher LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036-5306

Re: In the matter of CSK Auto Corporation (LA-3305)
Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act by O'Reilly Automotive, Inc.

Dear Mr. Lane:

This is in response to your letter dated May 13, 2009, written on behalf of your client O'Reilly Automotive, Inc. (Company) and its subsidiary CSK Auto Corporation (CSK) and constituting an application for relief from the Company being considered an "ineligible issuer" under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). The Company requests relief from being considered an ineligible issuer under Rule 405, due to the entry on May 26, 2009, of a Commission Order (Order) pursuant to Section 8A of Securities Act and 21C of the Securities Exchange Act of 1934 (Exchange Act) naming CSK as a respondent. The Order finds, among other things, that CSK violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Based on the facts and representations in your letter, and assuming the Company and CSK comply with the Order, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or non-compliance with the Order might require us to reach a different conclusion.

Sincerely,

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance

GIBSON, DUNN & CRUTCHER LLP

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Mary J. Kosterlitz, Esq.
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Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-0310

Re: In the Matter of CSK Auto Corporation (File No. LA-3305)

Dear Ms. Kosterlitz:

We submit this letter on behalf of our client, O'Reilly Automotive, Inc. ("O'Reilly"). As you may be aware, O'Reilly acquired all of the outstanding shares of common stock of CSK Auto Corporation ("CSK"), which is now a wholly-owned indirect subsidiary of O'Reilly and the settling defendant in a proposed administrative proceeding arising out of the above-referenced investigation by the Securities and Exchange Commission ("Commission").¹ The anticipated settlement will result in the issuance of an order that is described below against CSK (the "Order").

We hereby respectfully request a waiver of any "ineligible issuer" status that may arise pursuant to Rule 405 ("Rule 405") promulgated under the Securities Act of 1933 ("Securities Act") with respect to O'Reilly as a result of the contemplated settlement and entry of the Order. We respectfully request that this waiver be granted effective upon the entry of the Order. It is our understanding that the Division of Enforcement does not object to the grant of the requested waiver.

¹ All of the conduct that gave rise to this proceeding took place several years prior to CSK being acquired by O'Reilly in July 2008.

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BACKGROUND

The staff of the Division of Enforcement engaged in settlement discussions with CSK in connection with the investigation identified above. As a result of these discussions, CSK has submitted an Offer of Settlement of CSK Corporation (the "Offer") to be presented to the Commission.

In the Offer, solely for the purpose of proceedings brought by or on behalf of the Commission or in which the Commission is a party, CSK agreed to consent to the entry of the Order, without admitting or denying the findings contained therein (other than those relating to the jurisdiction of the Commission, which are admitted). In the Order, the Commission will make findings that CSK, through certain of its former officers, engaged in a financial reporting fraud during the company's fiscal years 2002, 2003, and 2004. The Order will find that, as a result of its failure to write off uncollectible vendor allowance receivables and its overrecognition of vendor allowances inconsistent with Generally Accepted Accounting Procedures, CSK filed false financial statements that materially overstated the company's pre-tax income for those years.

Based on these findings, the Commission in its Order will order CSK to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5, 12b-20, and 13a-1 thereunder.

DISCUSSION

In December 2005, the Commission adopted rule changes to provide benefits to issuers classified as "well-known seasoned issuers" ("WKSI"), including the use of a streamlined automatic shelf registration process and a more liberalized communications framework for securities offerings. These benefits are unavailable to issuers who are excluded from the WKSI definition.

An issuer is an ineligible issuer for the purposes of Rule 405 if, among other things,

[w]ithin the past three years ... the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree 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)

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Requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws.²

Ineligible issuer status may be waived if “the Commission determines, upon a showing of good cause that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”³ The Commission has delegated to the Division of Corporation Finance the authority to grant or deny applications requesting that an issuer not be considered an ineligible issuer as defined in Rule 405.⁴

O’Reilly qualifies as a WKSI and wishes to maintain its eligibility as a WKSI. Accordingly, O’Reilly hereby requests a waiver, effective upon entry of the Order, of any ineligible issuer status that may arise under Rule 405.⁵ For the following reasons, we do not believe that the protection of investors or the public interest would be served by denying O’Reilly the benefits afforded by the Securities Act to issuers that are not classified as ineligible issuers.

O’Reilly was not involved in any of the conduct described in the Order. It acquired CSK in 2008, several years after the conduct in question occurred. All of the CSK employees involved in the wrongdoing have left the Company. In addition, CSK was a smaller company than O’Reilly, not being a WKSI in its own right. Thus, a waiver would neither reward those responsible for the bad conduct, nor would it be cause for concern that the merger was effectuated by CSK to otherwise maintain WKSI status.

If the requested relief is not granted, O’Reilly would incur additional, unnecessary regulatory burdens through no fault of its own. Accordingly, O’Reilly should be determined not to be an “ineligible issuer” within the meaning of Rule 405.

In light of the grounds for relief discussed above, we believe that O’Reilly has shown good cause that relief should be granted. Accordingly, we respectfully urge the Division of Corporation Finance to grant a waiver, effective upon the issuance of the Order, of any ineligible issuer status with regard to O’Reilly that may arise pursuant to Rule 405.⁶

² Rule 405 (definition of “Ineligible issuer,” para. (l)(vi)).

³ *Id.* (definition of “Ineligible issuer,” para (2)).

⁴ *See* 70 Fed. Reg. 44,722; 44,798-799 (Aug. 3, 2005) (codified at 17 C.F.R. pt. 200.30-1(a)(10)).

⁵ O’Reilly reserves all rights to claim that this disqualification provision is inapplicable.

⁶ We note that the Division of Corporation Finance has granted such relief under Rule 405(I)(vi) of the Securities Act for similar reasons. *See e.g.* - Letter from Mary Kosterlitz, Chief, Office of Enforcement Liaison, Division of Corporate Finance to Christian J. Mixer, July 20, 2007, regarding Hewlett-Packard Company.

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Please do not hesitate to contact me at (202) 887-3646, if you have any questions regarding this request.

Sincerely,



Brian J. Lane

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