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Via Overnight Mail

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F. Street NE
Washington, DC 20549-1090

4-572

Dear Ms. Morris:

We are writing on behalf of a number of our law firms' respective clients. We hereby jointly petition the Securities and Exchange Commission (the "Commission"), pursuant to Commission Rule of Practice 192(a), to adopt an amendment to Rule 144 under the Securities Act of 1933, as amended (17 CFR 230.144) ("Rule 144"). The proposed amendment would remove the prohibition in Rule 144(i) on shareholders who acquired shares when an issuer was a "shell company" or former "shell company" from being able to utilize Rule 144 for a sale of unregistered securities if the issuer has not filed its Securities Exchange Act of 1934 ("Exchange Act") reports for the one year prior to the proposed sale, other than in the first year following each date the issuer ceases to be a shell company and releases "Form 10 information."

This proposed amendment, we believe, will improve the public markets by providing greater transparency for investors and instilling greater confidence and liquidity in the capital markets, and treating former shells, starting one year after each time they cease to be a shell and release full Form 10 information, who have filed their Exchange Act reports during that one year period, like any other public company.

Specifically, we propose changing the phrase in Rule 144(i)(2) that currently reads, "...has filed all reports and other materials required to be filed by section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports and materials), other than Form 8-K reports..." to read instead, "has filed all reports and other materials required to be filed by section 13 or 15(d) of the Exchange Act, as applicable, *during the 12 months following each date upon which the issuer ceases to be a shell company and has filed current 'Form 10 information' with the Commission*, other than Form 8-K reports..."

Background of the Issue

In adopting the changes to Rule 144, the Commission appeared to express some concern about reverse mergers with shell companies. Under the new Rule 144(i), if a company ever was a shell company, the company must have completed all its Commission filings for the last 12 months or Rule 144 is simply not available. This means that any company that was ever a shell remains subject to this, even if it has not been a shell for many decades.

Problems Presented

The "evergreen" requirement that a former shell company stay current creates several problems.

Structuring registration rights if a former shell company is conducting a private offering of securities.

Prior to the adoption of the Rule 144 amendments, it was customary in private investments in public equity ("PIPEs") and other private placements for issuers to register the applicable securities in a resale registration statement and maintain that resale registration statement effective until the earlier of (i) the sale of all shares that were registered; and (ii) such time as the holder could sell without any restrictions under Rule 144. Prior to the rule change, for non-affiliates in most cases this period was two years.

Post-rule change, this period (other than with respect to sales of securities by shell companies) for non-affiliates is now one year. This is true because even though a holder of the placed securities can start to sell in six months, the company must remain current for the next six months, thus creating a potential restriction. However, in a situation involving a company that was ever a shell, this period now never ends.

Thus even five, ten or more years after a company ceases to be a shell, under the new rule a holder cannot utilize Rule 144 if the company is not current in its filings at the time of sale.

It has been our experience that both issuers and investors have experienced significant difficulties in dealing with these registration rights issues, and we are not aware of any PIPE offering subsequent to the adoption of the Rule in which this issue has been properly addressed to the investors' satisfaction, which has inhibited capital formation for smaller public companies in these troubling economic times.

Removal of restrictive legends.

Stock certificates issued to private placement or PIPE investors, as well as any holder who acquires shares from a company that are unregistered or "restricted" contain a legend on the certificate stating that the shares cannot be sold unless registered or an exemption from registration applies. Freely tradable shares have no such legend and delivering the unlegended stock certificate to a brokerage firm generally provides free tradability of the shares.

It is common practice to have the restrictive legend removed at the time of a sale where a holder seeks to sell utilizing the exemption under Rule 144. This process is somewhat cumbersome and occasionally time-consuming, involving the company, the transfer agent and company counsel giving an opinion, among other things.

Convention has developed allowing the legend to be removed when the holder has sufficiently held the shares so that they can be sold without any restrictions under Rule 144, rather than in connection with a sale. Removing the legend in advance is advantageous both to the investor and the issuer because it saves time at the time of sale by avoiding the difficult process described above, thereby avoiding unnecessary "fails-to-deliver" and costly buy-ins for innocent investors. Occasionally, a company also may refuse to remove a legend at the time of sale or counsel may have issue with delivering an opinion. Removing the legend in advance takes away this very real concern for investors.

Unfortunately, a holder of shares in a company that was ever a shell now can never have his or her legend removed in advance of a sale. Thus, even if a year has passed and no volume restrictions apply, there now forever remains another restriction: that at the time of sale the company must have been current for the prior year. Since an issuer cannot know this in advance, it will be unable to remove the legend until the time of sale. If the legend was removed any earlier, and a holder sought to sell at a later time, and the company was not current in its Exchange Act reports, the holder would be in violation of Rule 144.

The Scarlet Letter Effect

This limitation paints every former shell with a "scarlet letter," and applies to every share issued by that company not only when it was a shell company but also after it ceased to be a shell company, perhaps suggesting that the Commission believes these companies forever require greater regulatory oversight. If the Commission chooses not to effect our proposed amendment, the current rule will apply to Berkshire Hathaway, Occidental Petroleum, Texas Instruments, Blockbuster Entertainment, Tandy Corp. (Radio Shack), Waste Management, Jamba Juice, Muriel Siebert and every former special purpose acquisition company (SPAC), even if it raised \$1 billion. All these companies went public through business combinations with shell companies. We respectfully request that the Commission revisit this issue in light of the foregoing.

We do not believe that any legitimate investor protection goal is served by this significant restriction which continues to apply many years after a company ceases to be a shell. Indeed, we also believe that the spirit of this burden runs directly counter to the spirit of the various rule changes adopted as part of the Commission's response to its Advisory Committee on Smaller Public Companies, of which the Rule 144 changes served a part, which were intended to help smaller public companies grow and raise capital.

The Advisory Committee's charter, as set forth on Page 2 of the Executive Summary of its report, included the direction by the Commission to "identify methods of minimizing costs and maximizing benefits and facilitate capital formation by smaller companies." Unfortunately, in fact the evergreen requirement in Rule 144(i) will cause, and is already causing, exactly the opposite effect. Indeed, all other aspects of the Rule 144 changes were positive, extremely helpful additions to the regulatory landscape. Only this requirement added a new burden not previously mandated.

Now all former shells, including the well-known companies listed above, will learn that if they conduct any private offering of securities

- it will be impossible to remove a restrictive legend on shares that are not registered, and
- if the shares are registered there is no clear end date for when the registration should remain effective.

We are hopeful the Commission, in revisiting this issue, can confirm that it did not intend for these restrictions to apply to famed investor Warren Buffett, whose reverse merger occurred decades ago.

Urgency of Request

We certainly understand the challenge of the Commissioners in setting the Commission's agenda, especially given the current financial crisis. However, as a result of the adoption of the evergreen requirement, more and more smaller companies, whose sole realistic method of going public is through a business combination with a shell company, are opting to stay private rather than access the public markets solely because of concerns over this new burden.

They are being forced to accept more onerous financing terms, or not raise financing at all, foregoing growth opportunities and, in some cases, being at risk of surviving at all. There are a growing number of anecdotal incidents, and if addressing this urgent concern takes a year or more, it will certainly continue to create a significant new impediment to companies being able to access the public capital markets.

In 2007 there were over 200 reverse mergers. Through the middle of 2008 there have been 95 reverse mergers, compared with only 25 IPOs (of which only four raised less than \$25 million). We are indeed quite concerned that the only realistically available method for smaller companies to go public has suddenly become much more unattractive as a result of this new burden.

Our hope is that if you agree with the proposed amendment, this very narrow item be added to the Commission's agenda prior to the November 2008 elections. We believe it is a straightforward decision to be made and a small wording change to be accepted.

Conclusion

On November 14, 2007, Chairman Cox hailed the Rule 144 changes as highlighting the Commission's "focus on removing obstacles of growth" for smaller public companies. On that same day, Division of Corporation Finance Director John White noted the Commission's desire to "promote the growth and vitality of smaller public companies." The evergreen requirement runs counter-intuitive to those goals, and we sincerely hope you will determine to improve it in the manner suggested by the proposed amendment.

We thank you for your consideration of this request for rulemaking.

Please do not hesitate to contact David Feldman of Feldman Weinstein & Smith LLP at (212) 869-7000 with any questions or requests for further information with respect to the matters set

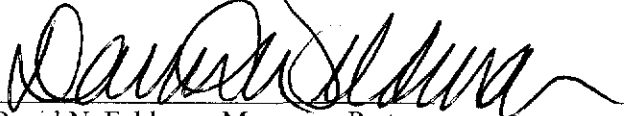
Feldman Weinstein & Smith

forth in this letter. All the attorneys and law firms below join in this request. We look forward to your response.

Sincerely yours,

FELDMAN WEINSTEIN & SMITH LLP

By:


David N. Feldman, Managing Partner

Additional Signatories:

GRAUBARD MILLER

By: /s/ David Alan Miller
David Alan Miller, Managing Partner

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By: /s/ Nanette C. Heide
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John W. White, Director, Division of Corporation Finance
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