Corporate Finance Alert

Skadden

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Securities Offerings and Gun Jumping: What You Can and Cannot Do

Overview

The Securities and Exchange Commission (SEC) imposes restrictions on communications when a securities offering is contemplated or in process. Generally, these communications restrictions are intended to prevent issuers and underwriters from attempting to offer or sell securities in the absence of available information about the issuer or the securities. The policy underlying these restrictions is the concern that certain communications may condition the market or arouse public interest in a particular security without providing investors with adequate disclosure. Violations of these restrictions are typically referred to as "gun jumping."

Gun jumping restrictions apply to all forms of communications, from press releases to interviews to communications on social media platforms, such as Facebook postings and Twitter "tweets." Companies should remember that *intent* is not required for the SEC to determine that gun jumping has occurred. The fact that an action had the effect of conditioning the market for an issuance of securities may be sufficient. A violation may result in the SEC imposing a "cooling-off period," which could delay a proposed public offering and give rise to rescission rights (investors having the statutory right to put back the securities purchased in the offering and receive a full refund of the purchase price plus up to one year of interest) and possible sanctions or fines by the SEC.

While issuers should not be precluded from doing business in the ordinary course, care should be taken to avoid actions that might be construed as publicity designed to stimulate interest in an offering of securities. In light of the complexity of the rules and regulations, and the significant consequences that may occur in the case of non-compliance, issuers should institute well-defined policies and procedures governing communications to avoid inadvertent violations of these rules.

Gun Jumping Framework

Section 5 of the Securities Act

Generally, Section 5 of the Securities Act of 1933 (Securities Act) makes it unlawful to engage in activities intended to stimulate interest in a securities offering prior to the filing of a registration statement containing the information required by the Securities Act. Specifically:

- Section 5(c) of the Securities Act makes it unlawful to offer a security unless a registration statement has been filed;
- Section 5(a) of the Securities Act makes it unlawful to sell a security unless a registration statement relating to the security has been filed and declared effective; and

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- Section 5(b) of the Securities Act requires that any "prospectus" relating to a security must comply with the requirements of Section 10 of the Securities Act. A "prospectus" for this purpose means any prospectus, notice, circular, advertisement, letter or communication that offers a security for sale.

The Securities Act defines an "offer" as "every attempt or offer to dispose of, or solicitations of offers to buy, a security or interest in a security for value." Courts have interpreted the definition of "offer" to include any activity that may have the effect of soliciting or creating a buying interest in a security. Violations of communications restrictions are not limited to issuers. Underwriters also must be mindful of the restrictions.

Communications During the Stages of the Offering Process

The applicability of the gun jumping rules is determined based on the stage of the offering process during which the communications are made. These stages are:

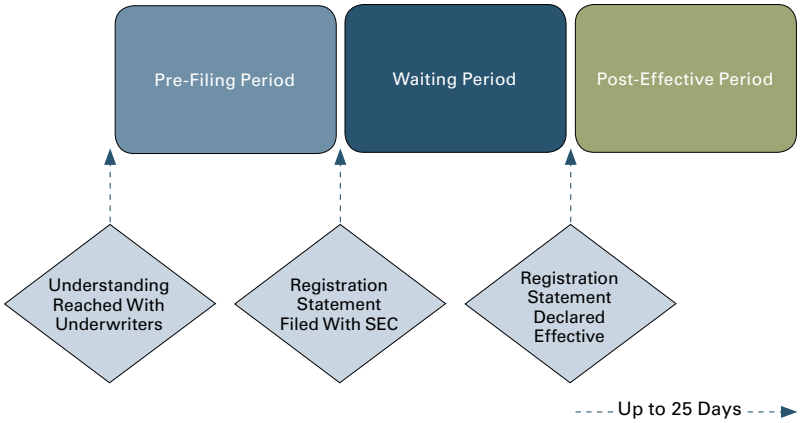
- the "pre-filing period" — from the time a company is first "in registration" until the initial filing of a registration statement with the SEC;
- the "waiting period" — from the time a registration statement is filed with the SEC until it is declared effective; and
- the "post-effective period" — up to 25 days after a registration statement has been declared effective.

The SEC has indicated that a company is deemed to be "in registration" at least from the time it reaches an understanding with the managing underwriter of an offering. The SEC has found a wide range of communications to constitute an improper awakening of interest in, or conditioning of, the market for a public offering prior to the filing of a registration statement. Therefore, companies are encouraged to monitor their communications with agents, employees, the press and the general public during the entire period from the time it reaches an understanding with an underwriter until, in the case of an IPO, up to 25 days after the date the registration statement is declared effective.

The following table summarizes the types of communications permitted during each stage of the offering process.

(continued on the next page)

What You Can Do and When You Can Do It



Permitted Communications	Pre-Filing Period	Waiting Period	Post-Effective Period
Communications Made More Than 30 Days Before a Registration Statement Is Filed (Rule 163A): • Communications made by or on behalf of a company more than 30 days prior to filing a registration statement. — May not reference a securities offering that is or will be the subject of a registration statement. — Company must take reasonable steps to prevent further dissemination of the communication during the 30-day period immediately before the registration statement is filed. — Applies only to communications by or on behalf of an issuer. May not be used by potential offering participants who are underwriters or dealers.	Yes	No	No
Notice of Proposed Public Offerings (Rule 135) • Limited announcement regarding a proposed public offering stating that the offering will be made only by a prospectus and the notice contains no more than the following: — the name of the issuer; — the title, amount and basic terms of the securities; — the amount to be offered by any selling securityholders; — the anticipated timing of the offering; and — a brief statement of the manner and purpose of the offering without naming the underwriters.	Yes	No	No
Regularly Released Business Information for Non-Reporting Issuers (Rule 169) • Communications by or on behalf of a non-reporting issuer of regularly released factual business information. — Defined as factual information about the issuer, its business or financial developments or other aspects of its business; and advertisements of, or other information about, the issuer's products or services. — Made by the same employees who historically have been responsible for providing such information to persons other than investors or potential investors. The information must be for the intended use of the company's customers and suppliers, other than in their capacities as investors in the company. — Does not extend to dividend information or forward-looking statements. — Does not apply to communications that also include information about a registered offering or communications that are disseminated as part of the offering activities for a registered offering.	Yes	Yes	No

Permitted Communications	Pre-Filing Period	Waiting Period	Post-Effective Period
Regularly Released Business Information for Reporting Issuers (Rule 168) • Communications issued by or on behalf of a reporting issuer of regularly released factual information. — Includes forward-looking information (unlike Rule 169). — Company must have previously released or disseminated the information or the information must be released in the ordinary course of its business, and the timing, manner and form of the release must be consistent with similar past releases. — Does not apply to a communication that also includes information about a registered offering or a communication that is disseminated as part of the offering activities for a registered offering.	Yes	Yes	Yes
JOBS Act – Testing the Waters With QIBs and IAIs for EGCs • An "emerging growth company" (EGC), or any person authorized to act on behalf of an EGC, may "test the waters" by engaging in oral or written communications with potential investors that are qualified institutional buyers (QIBs) or institutions that are accredited investors (IAIs) to determine whether such investors might have an interest in a contemplated securities offering.	Yes	Yes	Yes
Communications and Offers by Well-Known Seasoned Issuers (Rule 163) • Communications, including certain offers to sell or buy securities, by issuers that qualify as "well-known seasoned issuers" (WKSIs). — Can be made by or on behalf of a WKSI, but may not be made by offering participants, such as prospective underwriters. — Written communications are required to include a legend and are treated as issuer free writing prospectuses (FWPs) (*i.e.*, subject to applicable SEC filing requirements).	Yes	No	No
Communications Not Deemed a Prospectus (Rule 134) • These communications may only contain, among other items enumerated in the rule, factual information about the legal identity and business location of the company and a brief indication of the general type of business of the company; information with respect to the securities being offered, the title, amount being offered, any listing, assigned or expected ratings, and the price, maturity, interest and yield (or *bona fide* estimates thereof). — May also include the type of underwriting, names of underwriters, names of selling securityholders and a brief description of the intended use of proceeds of the offering if the information is included in a registration statement filed with the SEC. — Communication is required to include a legend unless accompanied or preceded by a Section 10-compliant prospectus or indicates where a Section 10-compliant prospectus may be obtained.	No	Yes	Yes
Free Writing Prospectuses (Rule 433) • A written communication that constitutes an offer to sell or a solicitation of an offer to buy securities that are or will be the subject of a registration statement. An FWP may take any form and is not required to meet the informational requirements applicable to statutory prospectuses. — A non-reporting issuer is not permitted to use an FWP until a registration statement has been filed. — May include information that is different from or supplemental to the information included in the registration statement, but the information may not conflict with the registration statement. — Must comply with applicable prospectus delivery, SEC filing and legend requirements.	No (Other than WKSIs. See Rule 163 above.)	Yes	Yes

Pre-Filing Period Restrictions and Safe Harbors

Publicity about a company or its business during the pre-filing period may be deemed to constitute an unlawful offering if the SEC or a court were to determine that such publicity was designed to stimulate interest in the securities to be offered, even absent a specific reference to any proposed offering. The SEC has adopted a number of safe harbors applicable to pre-filing communications which specify the types of communications and information that are permitted to be distributed without being considered "gun jumping."

Communications More than 30 days Before a Registration Statement Is Filed (Rule 163A)

The SEC has long encouraged expanded communications between companies, their securityholders and the general public regarding business matters. For many years, companies have relied upon communications guidelines first published by the SEC in the 1970s. Notwithstanding these guidelines, significant uncertainty remained. To provide more clarity regarding permitted communications, the SEC adopted Rule 163A under the Securities Act which provides for a 30-day bright line exclusion from the prohibition on offers prior to the filing of a registration statement. More specifically, under Rule 163A:

- communications made by or on behalf of a company made more than 30 days prior to filing a registration statement are excluded from the gun jumping restrictions so long as such communications do not reference a securities offering that is or will be the subject of a registration statement; and
- the company takes reasonable steps within its control to prevent further dissemination[1] of the communication during the 30-day period immediately before the registration statement is filed.

This bright-line exclusion applies only to communications by or on behalf of an issuer and may not be used by potential offering participants who are underwriters or dealers.

Notice of Proposed Public Offerings (Rule 135)

Rule 135 under the Securities Act provides a "safe harbor" whereby certain limited announcements regarding a proposed public offering are deemed not to constitute an offering. Specifically, Rule 135 provides that a notice of a proposed offering will not be deemed to be an offer if it states that the offering will be made only by a prospectus and the notice contains no more than the following:

- the name of the issuer;
- the title, amount and basic terms of the securities;
- the amount to be offered by any selling securityholders;
- the anticipated timing of the offering; and
- a brief statement of the manner and purpose of the offering without naming the underwriters.

Naming the underwriters would constitute a violation of the Securities Act because such disclosure (at least in theory) would tell prospective purchasers whom to approach to purchase the security.

The determination as to whether publicity or public disclosure of information beyond that permitted by the Rule 135 "safe harbor" provisions could be deemed to constitute an unlawful offer in violation of Section 5 of the Securities Act is often a difficult and complex issue, and must be made on a case-by-case basis, after consultation with counsel, in light of all the surrounding facts and circumstances.

The SEC permits reliance on the Rule 135 safe harbor for the purpose of disseminating certain limited information to employees, so long as the particular disclosures comply with the rule. It is possible that certain employees of a company could participate in a securities issuance where they are given an opportunity to subscribe for securities in an offering or are granted stock options. As a result, communications by a company to its employees about a possible securities offering must be carefully coordinated so as not to appear to constitute an improper selling effort.

Regularly Released Business Information for Non-Reporting Issuers (Rule 169)

Rule 169 under the Securities Act provides a "safe harbor" for continued communications at any time by or on behalf of a non-reporting issuer (an issuer that is not required to file periodic reports under the Securities Exchange Act of 1934 (Exchange Act) and that does not file such reports voluntarily) of regularly released factual business information by the same employees who historically have been responsible for providing such information to persons other than investors or potential investors.

For purposes of Rule 169, "factual business information" is defined as:

- factual information about the issuer, its business or financial developments or other aspects of its business; and
- advertisements of, or other information about, the issuer's products or services.

Note that the scope of "factual business information" permitted under Rule 169 does not extend to dividend information or forward-looking statements. Additionally, the information in the communication must be for the intended use of the company's customers and suppliers, other than in their capacities as investors in the company. The Rule 169 safe harbor does not apply to a communication that also includes information about a registered offering or a communication that is disseminated as part of the offering activities for a registered offering.

Regularly Released Business Information for Reporting Issuers (Rule 168)

Rule 168 establishes a safe harbor for reporting issuers for communications issued by or on behalf of an issuer of regularly released factual information or, unlike Rule 169, forward-looking information. Examples include factual information about the issuer, its business or financial developments, advertisements or other information regarding the issuer's products or services and dividend notices. To rely on the Rule 168 safe harbor, the issuer must have previously released or disseminated the information or the information must be released in the ordinary course of its business, and the timing, manner and form of the release must be consistent with similar past releases. Although the Rule 168 safe harbor requires the company to have some track record of releasing the particular type of information, the SEC has clarified that even a single prior release or dissemination could establish such a track record.

As with Rule 169, the Rule 168 safe harbor does not apply to a communication that also includes information about a registered offering or a communication that is disseminated as part of the offering activities for a registered offering. Additionally, Rule 168 is not available to registered investment companies or business development companies.

The JOBS Act — Testing the Waters With QIBs and IAIs

In April 2012, the JOBS Act was signed into law and created a new category of issuers called "emerging growth companies" (EGCs).[2] EGCs are exempt from, or subject to reduced, regulatory requirements for a limited period of time in an effort to encourage them to go public in the United States. Among other things, the JOBS Act expanded permissible communications by EGCs by permitting an EGC, or any person authorized to act on behalf of an EGC, either before or after the

filing of a registration statement, to "test the waters" by engaging in oral or written communications with potential investors that are qualified institutional buyers (QIBs) or institutions that are accredited investors (IAIs) to determine whether such investors might have an interest in a contemplated securities offering.

The SEC has advised that companies should assess their EGC status at the time they undertake any "water testing" activities. If a company undertakes permitted water testing activities at a time when it satisfies the requirements of an EGC but subsequently loses its EGC status, the earlier water testing activities would remain protected by the safe harbor.

Typical water testing activities may resemble a "road show" presentation[3] where management and the underwriters meet with potential investors and give a presentation describing the company and the proposed offering. Because the anti-fraud provisions of the Securities Act still apply,[4] water testing presentations should be vetted with counsel and should be prepared with the same degree of diligence as would be applicable to a traditional road show presentation.[5] Additionally, it should be expected that during an SEC review of a company's registration statement, the SEC likely will request a description of any water testing activities and will request copies of any materials that were provided in connection with such activities.

Communications and Offers by Well-Known Seasoned Issuers (Rule 163)

As discussed above, Section 5(c) of the Securities Act makes it unlawful to offer to sell securities unless a registration statement has been filed. Rule 163 under the Securities Act permits communications, including certain offers to sell or buy securities, during the pre-filing period by issuers that qualify as "well-known seasoned issuers" (WKSIs).[6] Rule 163 communications can be made by or on behalf of a WKSI, but they cannot be made by offering participants, such as prospective underwriters. Written communications issued under Rule 163 are required to include a legend[7] and are treated as issuer free writing prospectuses (discussed below) which, subject to certain exceptions, must be filed with the SEC promptly upon the filing of the registration statement, if one is filed, covering the securities that were offered in reliance on Rule 163. Rule 163 is not available for business combinations, registered investment companies or business development companies.

Waiting Period Restrictions and Safe Harbors

The waiting period begins when a company files a registration statement with the SEC, after which the SEC will begin its review of the registration statement.[8] During the waiting period, other than the delivery of a preliminary prospectus, issuers, underwriters and dealers are permitted to engage in limited written communications with prospective investors, including soliciting offers, without violating the gun jumping rules. The following is a summary of communications with securityholders and the general public that are permitted during the waiting period.

Ongoing Business Communications

As discussed above, Rule 168 and Rule 169 permit ongoing communications by reporting or non-reporting issuers before and after the filing of a registration statement so long as those communications are limited to factual business information in the case of Rule 168 and Rule 169 and certain forward-looking information in the case of Rule 168. During the waiting period, Section 5(b) of the Securities Act makes it unlawful to use a prospectus relating to a security with respect to which a registration statement has been filed unless the prospectus satisfies the requirements of Section 10 of the Securities Act. So long as the conditions of Rule 168 or Rule 169, as applicable, are complied with, a communication will not be considered a prospectus for purposes of Section 5(b). As a result, such communications may continue during both the waiting period and the post-effective period.

Communications Not Deemed a Prospectus (Rule 134)

A written communication that complies with Rule 134 is not considered to be a "prospectus." Under Rule 134, press releases have the benefit of the safe harbor if they only contain, among other items enumerated in the rule, factual information about the legal identity and business location of the company and a brief indication of the general type of business of the company; information with respect to the securities being offered, the title, amount being offered, any listing, assigned or expected ratings, and the price, maturity, interest and yield (or *bona fide* estimates thereof). To the extent the information is included in a registration statement filed with the SEC, a press release under Rule 134 may also include the type of underwriting, names of underwriters, names of selling securityholders and a brief description of the intended use of proceeds of the offering. A Rule 134 communication also is required to include a legend[9] unless accompanied or preceded by a Section 10-compliant prospectus or indicates where a Section 10-compliant prospectus may be obtained.

Free Writing Prospectuses

A "free writing prospectus" (FWP) is defined in Rule 405 under the Securities Act as a written communication that constitutes an offer to sell or a solicitation of an offer to buy securities that are or will be the subject of a registration statement. An FWP may take any form and is not required to meet the informational requirements applicable to statutory prospectuses. A non-reporting issuer is not permitted to use an FWP until a registration statement has been filed. Also, FWPs must include the legend required by Rule 433(c)(2) [10] under the Securities Act and, while an FWP may include information that is different from or supplemental to the information included in the registration statement, the information in an FWP may not conflict with the information contained in the registration statement.

Rule 433(b)(2)(i) requires that FWPs used by non-reporting issuers must be accompanied or preceded by a physical copy of the most recent statutory prospectus if: the FWP was prepared by or on behalf of the issuer or an offering participant; a payment or other consideration was or will be provided by the issuer or an offering participant for the publication or broadcast of an FWP; or Section 17(b) of the Securities Act otherwise requires disclosure that consideration was or will be given by the issuer or an offering participant for any activity described in the FWP. In the case of a non-reporting issuer, although the statutory prospectus must be delivered in physical form, the statutory prospectus is deemed to accompany an electronic FWP if the latter contains an active hyperlink to the statutory prospectus.

Unless it contains no substantive changes from a previously filed FWP, an FWP must be filed with the SEC by the company if it is prepared by or on behalf of or referred to or used by the company or if information prepared by the company in an FWP is used by any other offering participant, or if the FWP includes the final terms of the offering (regardless of whether or not it was prepared by the company). This filing must generally be made within two days after the later of the date on which the terms of the securities are final or the date of first use. There also is a cure provision that permits the FWP to be filed as soon as practicable after the discovery of the failure to file in the case of an immaterial or unintentional failure to file. If an FWP is not filed with the SEC, the issuer and offering participants must retain the FWP that they have used for three years from the date of the initial *bona fide* offering of the securities.

Generally, if the company or other offering participant prepares a media publication or broadcast or pays for it, the publication will be subject to the same conditions, such as prospectus delivery and filing, as are applicable to other FWPs. However, if a publication is prepared and published by a person unaffiliated with the issuer, neither the issuer nor any other offering participant has paid for it and the issuer or another offering participant provided, approved or authorized the information in the publication, Rule 433(f) provides that such publication will be considered an FWP, but will be subject to fewer conditions. Such an FWP will have to be filed with the SEC but will be exempt from the prospectus delivery requirement. Thus, the safe harbor in Rule 433(f) enables both reporting and non-reporting issuers or any of the participants in the offering being made by such issuers or persons acting on their behalf to participate in an interview or other media publication or television or radio broadcast so long as they do not prepare or pay for the broadcast and they follow the filing requirements under Rule 433.

"Live" road shows are not considered to be written communications (even if there is simultaneous electronic transmission). However, if the road show is made available for rebroadcast, it will be treated as an FWP. Similarly, any slide shows or presentations used at a live road show do not fall within the definition of an FWP unless they are used outside the live road show. Road shows that are considered to be written communications need only be filed for initial public offerings of common equity or convertible equity securities, provided that no filing is required if at least one version of the bona fide electronic road show is made readily available to any potential investor without restriction (for example, by posting it to the company's website).

Historical information on a company's website is not considered a current offer of the company's securities (and, therefore, not an FWP), provided that the historical information is:

- separately identified as historical information; and
- located in a separate section of the company's website containing historical information.

The historical information may become a current offer if the information is incorporated by reference into or otherwise included in a prospectus of the issuer for the offering or otherwise used or referred to in connection with the offering.

The JOBS Act — Testing the Waters During the Waiting Period

As discussed above, the JOBS Act permits EGCs, or any person authorized to act on behalf of an EGC, either before or after the filing of a registration statement, to "test the waters" by engaging in oral or written communications with potential investors that are QIBs or IAIs to determine whether such investors might have an interest in a contemplated securities offering. Accordingly, "water testing" activities may continue during the waiting period.

With respect to water testing activities during the waiting period, companies should ensure that statements made and materials distributed in connection with water testing activities are consistent with information that is provided to the public in the registration statement or that such public information is updated to reflect the information provided in connection with the water testing activities. Any water testing presentations should be vetted with counsel and should be prepared with the same degree of diligence as would be applicable to a traditional road show presentation. Additionally, companies should expect the SEC to request copies of any materials used in connection with any water testing activities during the waiting period.

Conclusion

Although the SEC has softened its approach to gun jumping, companies should be cautious about their public communications if an offering is anticipated or ongoing. Companies must be mindful that all types of communications have potential for inadvertent gun jumping violations and should establish well-defined policies and procedures governing communications to avoid inadvertent violations of these rules.

In particular, communications on platforms such as LinkedIn, Twitter, YouTube and Facebook must be monitored as the informal nature of such communications, as well as the convergence of personal and corporate use, make social media an area fraught with potential gun jumping risk. Often, companies review social media communications less rigorously than other more traditional forms of communications, which should not be the case. Pre-clearance of posts and having clearly defined "dos" and don'ts" are just as important in the social media space. Companies should avoid establishing a new website or expanding existing websites, other than in a manner consistent with past practice and should consider having internal and/or outside counsel review all information before it is posted on a company website or a social media platform. While a company generally is not responsible for third-party commentary posted on its website or social media platforms, repackaging the commentary for company use or re-tweeting a third-party Twitter post could be viewed as a company's sponsoring the commentary and therefore subject to gun jumping violations and potential liability. Appropriate care also must be taken with advertising, as a significant increase in advertising could be viewed as gun jumping. Additionally, companies should be careful when responding to media inquiries and when making other public statements.

While the SEC encourages companies to continue providing ordinary course business communications, these communications should be carefully considered when a company is "in registration." Because intent is not required for the SEC to determine that gun-jumping has occurred, companies are strongly encouraged to establish and maintain internal procedures for public communications, including through social media platforms. Companies should carefully monitor communications by their employees, agents and other representatives with customers, the press and the general public to ensure all activities remain within the guidelines established by the SEC.

END NOTES

1 Information posted to the company's website would not need to be removed provided that the information is appropriately dated or otherwise identified as historical material and not referred to as part of any offering activities.

2 An EGC is defined as an issuer that had total annual gross revenues of less than $1 billion during its most recently completed fiscal year. An issuer that is an EGC will continue to be considered an EGC until the earliest of: (i) the last day of the fiscal year during which it had total annual gross revenues of at least $1 billion; (ii) the last day of the fiscal year following the fifth anniversary of the initial public offering of its equity; (iii) the date on which it has, during the previous three-year period, issued more than $1 billion in non-convertible debt; or (iv) the date on which it is considered to be a "large accelerated filer" under the Exchange Act. An issuer will not qualify as an EGC if its IPO occurred on or before December 8, 2011.

3 "Road shows" are frequently used as part of the marketing process for securities offerings and consist of a presentation regarding an offering by one or more members of a company's management and by underwriters on behalf of the company, and include a discussion of the company, its management and the securities being offered.

4 Securities Act Section 12(a)(2) prohibits the sale of a security by means of a prospectus or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading.

5 In general terms, a road show presentation must not contain: (i) information that conflicts with or goes materially beyond information included in or that will be included in the registration statement or that is otherwise publicly disclosed by the company or (ii) materially misleading misstatements or omissions.

6 Generally speaking, a "well known seasoned issuer" is an issuer that satisfies the issuer requirements to use Form S-3 (or Form F-3), including that the issuer be current and timely on reporting obligations under the Exchange Act for the preceding 12 months and that it either (i) has $700 million of worldwide public common equity float or (ii) has sold at least $1 billion aggregate principal amount of non-convertible securities (other than common stock) in the preceding three years.

7 The legend required by Rule 163 is as follows:

"The issuer may file a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, the company will arrange to send you the prospectus after filing if you request it by calling toll-free 1-8[xx-xxx-xxxx]."

8 WKSIs are eligible to file a shelf registration statement that is automatically effective upon filing.

9 The Rule 134 legend is as follows:

"A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective."

10 The legend required by Rule 433(c)(2) is as follows:

"The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the registrant has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling toll free 1-8[xx-xxx-xxxx]."

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