



January 27, 2009

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Attn: Ms. Shelley Parratt
Acting Director
Division of Corporate Finance

RE: Automatic Effectiveness of Registration Statements for WKSI Exchange Offers

Ladies and Gentlemen:

We are writing to propose certain regulatory changes to permit certain Form S-4 and Form F-4 registration statements of “well known seasoned issuers” (“WKSI”) to become effective immediately upon filing.

A. Overview

In recent months, a large number of companies have given consideration to restructuring all or a portion of their debt, either to rectify looming debt service issues or to take advantage of the disrupted markets to delever. In many cases, the most effective way of accomplishing a restructuring is through an exchange offer.

An exchange offer must either be registered under the Securities Act of 1933, as amended (the “Securities Act”) by filing a registration statement on Form S-4 or, in the case of foreign private issuers, Form F-4, or there must be an available exemption from registration. Due to the risk of delay in the execution of a transaction as a result of an exchange offer registration statement being subject to review by the staff of the Securities and Exchange Commission (“SEC”), issuers often structure exchange offers to comply with the exemptions from registration set forth in Section 3(a)(9) or Section 4(2) of the Securities Act. While exchange offers that are not subject to registration have considerable appeal in terms of speed and certainty of execution due to the elimination of the review process, reliance upon Section 3(a)(9) or Section 4(2) may impair issuers’ ability to meet their exchange offer objectives: in the case of an exchange offer conducted in reliance upon Section 3(a)(9), issuers are unable to pay a financial intermediary to solicit participation in the offer, which solicitations may be particularly necessary, if the securities subject to the exchange are widely dispersed; and in the case of an exchange offer conducted in reliance upon Section 4(2), it is necessary to exclude investors who are not “qualified institutional buyers”, as defined in Rule 144A under the Securities Act, or “accredited investors”, as defined in Rule 501 under the Securities Act.

In order to facilitate exchange offers being conducted on a registered basis to all securityholders, we propose that registration statements on Form S-4 (or F-4) filed by WKSIs become effective immediately upon filing of the registration statement on Forms S-4 or F-4 in the same way that WKSI registration statements on Forms S-3 and F-3 now go effective immediately. It is contemplated that such automatic effectiveness would not apply to filings on Forms S-4 or F-4 made in relation to business combination transactions, including transactions that would be subject to Rule 145 under the Securities Act, as such filings are more likely to involve significant new disclosures relating to the issuer as it may be reconstituted by virtue of the contemplated transaction.

- We believe that the policy considerations underlying the SEC's determination to permit WKSI registration statements on Form S-3 and Form F-3 to become effective automatically upon filing apply with equal or greater force in the context of WKSI registration statements on Form S-4 and Form F-4 for use in connection with exchange offers which do not involve business combination transactions. The SEC has accepted that periodic reports filed by WKSIs are likely to be widely followed by the market generally, sufficient to permit shelf registration statements to become effective immediately to facilitate offerings of securities for cash. We submit that where investors have already invested in a WKSI's securities, the argument for automatic effectiveness is even more compelling as an existing investor has even more reason to be monitoring the disclosures made by a WKSI than an investor who has no prior connection with a WKSI. Indeed, we believe that the value of the prior connection between investors and an issuer is an important element underlying the Section 3(a)(9) exemption. Consequently, we believe that it is fitting and appropriate that WKSI registration statements on Form S-4 and Form F-4 that do not involve business combination transactions become effective automatically upon filing.
- The current legal framework for exchange offers imposes substantial restrictions on WKSIs seeking to restructure their debt, either to reduce their overall debt service payments or the amount of outstanding debt. The determination of whether the SEC staff will review a filing and the process of responding to any staff comments can significantly protract the execution timing for an exchange offer.¹ In order to be able to effectively respond to the challenging market conditions, WKSIs should have the flexibility to take advantage of market windows and to complete exchange offers more quickly. The registration process for WKSI exchange offers should be streamlined for the same reasons that it made sense to facilitate cash offerings by WKSIs. Automatic effectiveness of S-4 and F-4 registration statements which do not involve business combinations would eliminate regulatory impediments, provide more flexibility to issuers to conduct exchange offers and lower the cost of capital by improving access to the public capital markets. It would thus improve efficiency and enhance global competitiveness of U.S. public capital markets.
- In addition, providing flexibility for registered exchange offers would encourage WKSIs to restructure their debt through the registration process instead of through private placements,

¹ The problems attendant to delays arising from the registration process in the context of exchange offers has been recognized by the SEC as evidenced by the recent amendments to Rule 162 to permit exchange offers for all securities to be commenced prior to a related registration statement being declared effective. While this rule change is helpful, we submit that significant issues remain inasmuch as WKSIs may continue to disfavor registered exchange offers because of a perceived need to proceed through the comment process before commencing the exchange offer in order to avoid recirculation issues and because of the risk to timely completion of the exchange offer if effectiveness of the registration statement is delayed through the comment process.

particularly in transactions where it is necessary to have a financial intermediary paid to solicit participation in the transaction.² To the extent that registered exchange offers are facilitated by the proposed rule changes, retail investors would be allowed to participate in a wider range of exchange offers. The facilitation of registered exchange offers by WKSI's will encourage the inclusion of all securityholders, consistent with other SEC tender offer initiatives such as the recent rule-making applicable to cross-border tender offers. We would also expect that conducting exchange offers on a registered basis would afford issuers savings as compared with transactions structured on alternative bases such as private exchange offers where procedures may need to be developed and implemented to screen investors to ensure that they meet applicable eligibility criteria.

B. Regulatory Changes Regarding Exchange Offers

In order to effect the proposed change, we believe that the current regulatory framework would need to be amended as follows:

1. Amendment to Rule 163A

An amendment to Rule 163A would add a new clause (f) to the rule to clarify that the 30-day safe harbor will be available for communications regarding exchange offers by WKSI's on Forms S-4 or F-4, provided that such exchange offers do not involve business combination transactions.³

2. Amendment to Rule 401(g)

An amendment to Rule 401(g) would provide that an automatic exchange offer registration statement will be deemed to be filed on the proper form unless the SEC notifies the issuer of its objection to the use of such form and that pending effectiveness of a post-effective amendment or a new registration statement, the ongoing offering could continue if such offering is permitted by the post-effective amendment or new registration statement.

3. Amendment to Rule 405

An amendment to Rule 405 would add a new definition of "Automatic exchange offer registration statement" to the defined terms of the rule.⁴

4. Amendment to Rule 430B

An amendment to Rule 430B would describe the type of information that an issuer may omit from a base prospectus in an exchange offer and include instead in a prospectus supplement, in a report

² The SEC recognized in the Securities Offering Reform adopting release that the registered offering process benefits issuers and investors and that issuers should be encouraged to raise their necessary capital through the registration process instead of through private placements. The proposed rule changes are consistent with the SEC's efforts to promote registered offerings.

³ Rule 163A applies to registration statements regardless of whether the registration is effective immediately.

⁴ "Automatic exchange offer registration statement. The term automatic exchange offer registration statement means a registration statement filed on Form S-4 or Form F-4 by a well-known seasoned issuer pursuant to the General Instructions of such forms, excluding such registration statements filed in connection with business combination transactions, including transactions subject to Rule 145 under the Securities Act."

filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act") incorporated by reference, or in a post-effective amendment. An amended provision in Rule 430B would clarify that information contained in a prospectus supplement will be deemed part of the registration statement containing the base prospectus to which the prospectus supplement relates.

5. Amendment to Rule 462(e)

An amendment to Rule 462(e) would provide that an automatic exchange offer registration statement and any post-effective amendment thereto shall become effective upon filing with the SEC.

6. Amendments to Form S-4 and Form F-4

Amendments to the General Instructions of Forms S-4 and F-4 would provide that an automatic exchange offer registration statement and post-effective amendments thereto by an eligible well-known seasoned issuer will become effective automatically upon filing with the SEC.

In addition, amendments to Forms S-4 and F-4 would permit WKSIs to identify selling securityholders and the amounts of securities to be registered after effectiveness of the registration statement and all information required in the prospectus about the issuer and its securities to be incorporated by reference from Exchange Act reports.

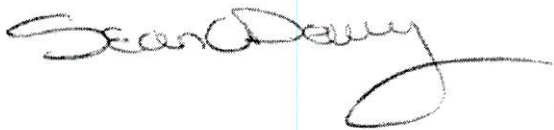
7. Amendment to Issuer Undertaking Required by Item 512 of Regulation S-K

An amendment to Item 512 of Regulation S-K would clarify that in exchange offer registration statements filed on Forms S-4 and F-4 all disclosures required by this undertaking may also be contained in any filed prospectus supplement deemed part of a registration statement or any Exchange Act report that is incorporated by reference into the registration statement.

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Should you have any questions on our proposed changes, please reach out directly to one of the undersigned below. We look forward to hearing your thoughts and reactions. In making this proposal, we have been kindly assisted by John D. Lobrano and Max Kirchner at Simpson Thacher & Bartlett LLP, and would be happy to arrange a small group discussion at your convenience.

Very truly yours,



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