WILLKIE FARR & GALLAGHER LLP

CLIENT
MEMORANDUM

CERTAIN SHELF REGISTRATION STATEMENTS TO EXPIRE IN DECEMBER

Under the Securities Offering Reform rules, which became effective December 1, 2005, certain shelf registration statements expire three years after their initial effective date under the Securities Act of 1933, as amended (the "Securities Act"). For a shelf registration statement that was effective before December 1, 2005, the SEC's transitional interpretation provides that the three-year period began on December 1, 2005, regardless of how long the registration statement had been effective before that date. For a shelf registration statement that was effective on or after December 1, 2005, the three-year period begins on the initial effective date of the registration statement.

Companies should determine whether they have expiring shelf registration statements and decide which they need to replace. Issuers, with the assistance of counsel, should then commence the preparation of these replacement registration statements, making arrangements for board approvals, accountant consents and updating selling securityholder information, among other things.

This three-year "sunset" provision applies only to certain registration statements, including:

- any automatic shelf registration statement ("ASR") filed by a well-known seasoned issuer for any type of offering;
- registration statements registering any delayed or continuous shelf offering by an issuer under Rule 415(a)(1)(ix) or (x) (*i.e.*, issuer universal, equity and debt registration statements); and
- registration statements covering continuous offerings, such as combined dividend reinvestment/direct stock purchase plans if they are also open to new investors.

The three-year "sunset" provision does not apply to certain other types of registration statements, including:

- resale registration statements, other than ASRs, covering offerings by selling securityholders;
- registration statements, other than ASRs, relating to pure dividend reinvestment plans (DRIPs) that are not open to new investors;
- registration statements, other than ASRs, registering the issuance of securities upon the exercise or conversion of outstanding securities; and
- registration statements on Form S-8 registering securities pursuant to an employee benefit plan.

Timing for Replacement of Shelf Registration Statements

Any registration statement registering any delayed or continuous shelf offerings by an issuer under Rule 415(a)(1)(ix) or (x) (*i.e.*, issuer universal, equity and debt registration statements) that became effective under the Securities Act before December 1, 2005 must be replaced prior to December 1, 2008.

Any such issuer registration statement that became effective under the Securities Act on or after December 1, 2005, as well as any ASR, must be replaced prior to the third anniversary of its initial effective date.

Selling securityholder registration statements that are ASRs must be replaced prior to the expiration of the three-year period if the issuer wishes to allow the offerings registered on those registration statements to continue. Under the February 2008 amendments to Rule 144, shares in reporting companies held by nonaffiliates for more than six months but for one year or less may be publicly resold subject to the current public information requirement, and shares in reporting companies held by nonaffiliates for more than one year may be publicly resold without restrictions. In light of these changes, companies should consider whether the registration of these offerings is still necessary.

Using Expired Registration Statements

Under certain circumstances, expiring registration statements other than ASRs can continue to be used for a limited period of time after expiration, as long as the issuer has filed prior to the expiration a new registration statement covering the securities offered by the prior registration statement.

Filing Fee Issues

Rule 457(p) under the Securities Act allows the unused filing fee from an expiring registration statement to be credited against the filing fee for a new registration statement if the new registration statement is filed no later than the fifth anniversary after the initial filing date of the old registration statement. The new registration statement must be filed by the issuer, its successor, a majority-owned subsidiary or a parent owning 50% or more of the issuer.

Issuers can also preserve filing fees through the use of Rule 429 under the Securities Act, which is used to carry over into a new registration statement any unsold securities from an existing registration statement.

Other Considerations

Companies should be aware that these rules have a number of nuances and that there are specific procedures to comply with in order to maintain market access via an expiring registration statement. In addition, this client memorandum does not address registration statements covering mortgage-related securities, those filed by investment companies and certain other registration statements.

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If you have any questions concerning your shelf registration statement or would like additional information, please contact David K. Boston (212-728-8625, dboston@willkie.com), Jeffrey S. Hochman (212-728-8592, jhochman@willkie.com), Cristopher Greer (212-728-8214, cgreer@willkie.com), Melinda I. Wang (212-728-8125, mwang@willkie.com), or the Willkie attorney with whom you regularly work.

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