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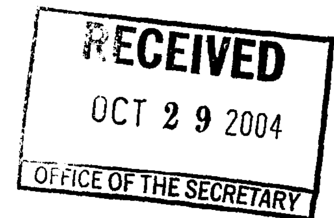
Chairman William H. Donaldson
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

S7-38-04



Dear Chairman Donaldson:

I would like to urge the Commission to consider eliminating the quiet period for public offerings. The existence of a quiet period stifles innovation and causes most direct public offerings (DPOs) to fail. The rule was necessary when it was first introduced but sufficient safeguards exist today that make the continued existence of the quiet rule unnecessary. It should therefore be eliminated.

For several years now I have taught a course that examines the impact that technology in general, and specifically the internet, has had on finance. We talk about what worked and what didn't. In the case of failure we explore reasons why technology failed to benefit an area of finance. Over three weeks is devoted to examining investment banking and the impact technology has had on it. This letter is in some ways an outgrowth of these discussions.

The current IPO process came about on the heals of the market crash of 1929. Prior to the Acts of 1933 and 1934, companies considered financial statements as inside information and did not reveal them to the public – nor were there laws that required the release of these statements. As a result of the lack of financial statements, stock prices moved due to rumors and unsubstantiated claims. In the backlash that followed the crash of 1929, legislators sought to focus investor attention on the facts provided by financial statements in a prospectus and to put a stop to rumor mills. Hence, not allowing firms going public to speak to the press made sense.

The environment today is very different from that of the 1930s. Seventy years after the Act of 1933, investors now routinely put more weight in the prospectus than in any other sources of information about a firm going public. The press has developed into a watchdog of the financial community pointing out any hint of impropriety within a firm. They are backed up by dozens of law firms that stand ready to file class action lawsuits. Corporations that commit fraud

are quickly punished in the criminal and civil courts. We have therefore changed from an environment in the 1920s that allowed fraud to flourish to one today that stifles it.

We also have the internet today. The Commission has struggled with how to allow electronic delivery of documents. Today a firm can place their prospectus online rather than mailing it to prospective investors. This has saved a great deal of money for firms going public which then translates into increased returns for investors. The internet can also be a help to other parts of the going public process, but first other rules need to change. The main requirement for the internet to be more useful in public offerings is to relax the quiet period rule.

There are two areas where relaxing the quiet period rule would help: DPOs and innovation in investment banking services. In a direct public offering, firms bypass investment banking firms and sell their securities directly to the public. The biggest service that investment banking firms offer is a list of established clients who they can contact to generate interest in an offering. Firms using a DPO do not have such a list of potential investors. In fact the few DPOs that have worked are those that sold unique consumer products such as Ben and Jerry's or Spring Street Brewery. In both of these cases, the firms placed coupons on packages of their products asking people to send them in to buy stock in the offering.

Firms in other industries thought they could use the internet to create interest in their DPOs. They developed web sites that explained what they were doing and contained the prospectus. As with the better mousetrap, the world did not beat a path to the firms' websites. As with all web sites their success depends on steering people to them. That requires getting references in the press so that investors know about the sites. A firm going public that spoke to the press to obtain the necessary reference to its website would be violating the quiet period rule. If the firm said something to the press that was fraudulent (such as the Commission's McWhortle website) the firm would be subject to criminal and civil penalties. In today's environment those penalties would be sought swiftly by state and federal regulators as well as class-action lawyers. Therefore, most firms would go to great lengths to make sure any statements to the press would be accurate. Thus, the quiet period merely prevents firms from directing people to their web site. This goes against the Commission's stated goal of making the task of raising capital easier for small firms. The quiet period should therefore be repealed.

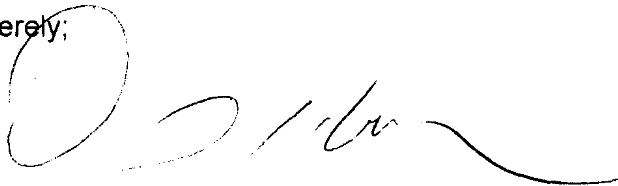
Another area which is affected by the quiet period is investment banking innovation. Traditional investment banking firms have a long client list to call on to sell an offering to. An innovative firm that lacks that such a list, but has a good idea, is disadvantaged by the quiet period rule. A good case in point is a firm that I (along with former Paramount Studios executive David Kirkpatrick and actress Diane Keaton) have been an advisor to, Civilian Capital. The firm

sought to allow ordinary investors to invest in film productions with the shares being traded in the aftermarket on the OTC Bulletin Board. The firm's idea could revolutionize film production similar top the way that money market mutual funds revolutionized the money markets. The firm went through all of the steps and obtained SEC approval to offer film production stocks to the public. However, Civilian lacked a list of established clients. The internet helped because they could provide information about the film stocks at low cost. But the quiet period rule prevented them from generating visits to their website (potential investors) by seeking press coverage of the offering. As with DPOs, if they made any fraudulent statements to the press they would be quickly punished with criminal and civil penalties. But they could not even tell the press about the offering.

Because they lack an established client list of potential investors, their success is far from certain. Clearly traditional firms using the traditional offering process have the advantage since they can generate interest without violating the quiet period. The regulators that put the quiet period in place had no idea that there may have been ways to generate interest in a n offering other than calling current clients on the phone. Technology has made new options available, but the quiet period prevents their power from being utilized. Innovation in investment banking means more competition. More competition means more choices to traditional issuing firms and a hope for non-traditional issuing firms (such as movie productions) which have few choices for raising capital. The quiet period should be repealed to allow innovation to flourish in investment banking.

In summary, it is clear that sufficient safeguards are in place that make the quiet period unnecessary. Above I detailed why keeping the rule in place stifles innovation and causes most DPOs to fail. The Commission should open hearings into the efficacy of the rule in light of Commission goals and the current business environment.

Sincerely;



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