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Jonathan G. Katz, Secretary
SECURITIES AND EXCHANGE COMMISSION
450 Fifth Street, North West
Washington, D.C. 20549-0609

Re: *"Proposed Rule: Use of Form S-8 and Form 8-K by Shell Companies"*

Dear Mr. Secretary:

I am writing this letter in response to the Commission's request for comments to the above referenced proposed rule change.

My practice includes representation of companies with relatively small capitalization (both public and private) and shell companies which generally are seeking businesses with which to close a "reverse merger" transaction. My clients and I possess some experience and knowledge in this area and offer the following comments.

SUMMARY OF RESPONSES

As a general rule, temporary prohibitions regarding the use of Form S-8 by shell companies is a responsible and advisable response which curbs potential misuse of the Form. Also, as a general rule, requiring shell companies to provide full disclosure, and in particular disclosing financial information, on Form 8-K when reporting an event that causes it to cease being a shell company, *i.e.* closing a reverse merger, is reasonable and advisable as well.

However, the proposed amendments to Rule 405 under the Securities Act of 1933, as amended (the "Act"), to redefine "shell company" and "succession" merit comment and further consideration. The critical components of this proposal which merit concern are the terms "nominal operations" and "nominal assets" which will be used to define shell companies. These terms, as written, provide a significant amount of leeway in their interpretation and application.

Thus, the suggestion is made that these two terms be precisely defined in order to limit misunderstandings, interpretations, and applications and thereby provide the Commission, the public and the shell companies with a set of rules and definitions upon which all may reasonably rely.

DISCUSSION

Form S-8 Proposal

The proposal would restrict the use of a Form S-8 by a shell company and would only become available for use by a shell company sixty (60) days after it filed information equivalent to that found in a Form 10 registration statement. Such a proposal is intended to give employees who would receive stock through a Form S-8 the time to absorb information and prevent use of the Form S-8 by shell companies who would use the form to raise funds or otherwise promote stock while the company was still a shell.

Providing information and time to digest it to prospective investors and prohibiting the inappropriate exploitation of Form S-8 by controversial shell companies represents reasonable legislation which is responsive to abuses by a narrow group of irresponsible individuals.

The indefinite terms of the proposal are those which define a shell company as the proposal prohibits use of the Form S-8 by "shell companies." The proposal defines a "shell company" as one with "no or nominal operations, and with no or nominal assets or assets consisting solely of cash and cash equivalents." *Please see discussion of "shell company definition" below.*

Form 8-K Proposal

The proposal would require issuers to file a Form 8-K upon completion of the transaction which causes it to cease being a shell company. Under the current rules, an issuer has fifteen (15) days to file a Form 8-K disclosing the transaction and another seventy-one (71) days following the reporting event to file a comprehensive report (including audited financial statements) on Form 8-K. Such a proposal is intended to give the shareholders and the market adequate information as quickly as possible following the event and to curtail unwarranted promotion of the issuer's stock while material information remains undisclosed to the public.

Prompt disclosure of adequate information and the prohibition of exploitation of the stock by irresponsible parties are responsible advisable goals.

At the same time, transactions (whether through "reverse mergers," "back door mergers," "changes in control" or "succession") often carry burdens which require them to close prior to completion of financial audits. Where the seventy-one (71) day requirement may appear to be too long, making the preparation and filing of a comprehensive Form 8-K as a condition of a close of a transaction could, in some instances, place prohibitive requirements on an issuer. This would result in the loss of potential value to all the shareholders.

Definition of "Shell Company"

A critical element to the Commission's proposal is to provide investors, companies and the Commission with definitions and guidelines which allow fair, consistent and reasonable interpretation. Communication between the Commission and shell companies will be much more efficient and investors will be given the ability to better consider their investment opportunities.

The proposed definition of a "shell company" is one with "no or nominal operations, and with no or nominal assets or assets consisting solely of cash and cash equivalents." These definitions are open to interpretation.

Certainly, the term "no" means none, zero or nothing. It is a definitive term that is not open to interpretation.

However, while a general understanding of the term "nominal" may exist, the term and that understanding are debatable and open to interpretation. In some instances a broad interpretation. For example, assume Company A has assets valued at $100 million and through a single transaction or a series of transactions, Company A's balance sheet then reflects assets valued at only $1 million. By comparison, the new value is "nominal" in light of the previous value. As a further example, a "nominal" asset could consist of a new patent with a significant potential value which has simply yet to be realized.

Whether applied to cash, assets or operations, the term "nominal" provides a wide latitude of interpretation. While not ambiguous, such a wide latitude could lead to problems which the Commission is attempting to resolve. Thus, one of my concerns that definition could be selectively interpreted. Selective interpretations could easily lead to inconsistencies which could cloud market decisions.

It appears to me that the Commission, shell companies and the investing public would benefit from a more detailed definition of "nominal assets" and "nominal operations."

RESPONSES TO REQUESTS FOR SPECIFIC COMMENTS

In direct response to the Commissions request for comments, the following is offered:

Use of Form S-8

1. *Would adoption of the Form S-8 proposal effectively deter fraudulent and abusive use of Form S-8?*

Response – The S-8 proposal will assist in deterring fraudulent and abusive use of the Form S-8.

2. *Would prohibiting shell companies from using Form S-8 unduly hinder legitimate shell companies from offering securities to employees?*

Response – Yes, the issuance of stock to employees and the registration of same is an effective and legitimate form of compensation to employees. Any prohibition on such issuances will hinder companies from offering securities to employees.

3. *Should any shell companies, or companies that have been shell companies within 60 days, be permitted to use Form S-8? If so, under what specific circumstances?*

Response – Yes, provided they are issued to employees, officers and directors.

4. *Is the proposed 60-day waiting period too long? Should it be shorter, such as 30 days?*

Response – No comment.

5. *Is the proposed 60-day waiting period too short? Should it be longer, such as 90 days?*

Response – No.

6. *Is the waiting period proposed in 1999 preferable?*

Response – No.

7. *Should the waiting period be tied to some event other than filing of Form l0--equivalent information? For instance, should we provide that a shell company may use Form S-8 once a specific period of time has elapsed since completion of the transaction in which it ceases being a shell company, or a specified number of days after it files a periodic report on Form 10-K, Form 10-Q, Form 10-KSB or Form 10-QSB?*

Response – No, the current proposed sixty (60) day period following the day on which the company files information equivalent to that found in a Form 10 registration statement is advisable.

8. *Can you suggest a different waiting period or other alternative condition to Form S-8 availability that would adequately protect the markets and investors without adversely affecting the new business of the company?*

Response – No.

9. *Instead of prohibiting use of Form S-8 by shell companies, could we more effectively deter fraudulent and abusive conduct by shell companies by restricting the use of Form S-8 in other ways?*

Response – The suggested waiting period should offer the appropriate protections.

Use of Form 8-K

1. *Will requiring former shell companies to make more complete and detailed filings on Form 8-K when they cease being shell companies help investors in making informed investment decisions and deter fraud and abuse by shell companies?*

Response – Yes.

2. *Will closing the 71-day window for filing the financial statements of businesses acquired by shell companies in significant acquisitions deter fraud and abuse by shell companies?*

Response – Yes. However, the Commission may want to consider a compromise period between 15 to 45 days.

3. *Is the non-financial information that is proposed to be required in the Form 8-K necessary? Alternatively, should we require the historical audited annual and unaudited interim financial statements only, or some intermediate level of information, such as historical audited annual and unaudited interim financial statements, required pro forma financial information and the information containing Management's Discussion and Analysis of the Financial Condition and Results of Operations of the new business pursuant to Item 303 of Regulation S-K or Regulation S-B?*

Response – The non-financial information proposed to be required in the Form 8-K is not necessary because the alternative intermediate level of information, such as that required by Information Statement/Proxy Statements required by Regulations 14A and 14C, provide adequate information.

4. *Because of the manner in which we propose to define "shell company," a company could cease to be a shell company by acquiring substantial assets, even if it has neither acquired nor been acquired by an operating business. Should the proposed Form 8-K disclosure requirements be modified for this type of transaction?*

Response – A qualified yes. As noted above regarding the terms used to define a shell company, "substantial assets" poses the same interpretation problem. Again, the suggestion is that the Commission should provide a definition of "substantial assets" which limits misuse, but is not open to selective interpretation.

5. *Would the proposed amendments to Form 8-K unduly increase costs for smaller public companies?*

Response – Yes. It would cause shell companies to incur substantial legal and accounting fees. Shell companies are still required to comply with Exchange Act reporting requirements, including filing Form 8-K Reports. However, under some circumstances, the proposed requirement that the shell company file a "complete" Form 8-K prior to or contemporaneously with the close of a transaction that causes the company to no longer be considered a shell company could be unduly burdensome, both financially and practically. For example, the proposal would require accelerated work by legal and accounting professionals which would create substantial increases in fees.

6. *Would adoption of the Form 8-K proposal have any unwarranted or unforeseen adverse consequences, including adverse consequences for the preparation and auditing of financial statements reflecting significant acquisitions of businesses by shell companies? Would it create unnecessary obstacles to legitimate transactions?*

Response – Yes, please see response to Item 5. above.

7. *Should certain shell companies be exempted from the Form 8-K proposal? If so, what specific circumstances would warrant exemption?*

Response – No. The rules should be consistent for all shell companies.

8. *Is the proposed revision of the definition of "succession" appropriate? Does it have any consequences other than requiring the filing of a report on Form 8-K when a private entity acquires a public shell company? Should we instead make these companies file an Exchange Act registration statement, perhaps within an accelerated time frame?*

Response – No comment.

9. *Should we amend the definition of the term "succession" in Rule 12b-2 to delete the reference to "a going business," so that it would mean the act or right of taking over a predecessor entity's rights, obligations and property despite changes in ownership or management?*

Response — No comment.

10. *Should we amend Rule 12g-3 and Rule 15d-5 under the Exchange Act to provide that a change in control of a shell company constitutes a "succession" for purposes of those rules rather than, or in addition to, amending the definition of the term "succession" in Rule 12b-2 to achieve the same result? Is there a different and better way to achieve the desired result?*

Response — No comment.

11. *Should we try to make reports on Form 8-K reporting the shell company transactions discussed in this release easier to identify in the Commission's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system, such as by creating a special Form 8-K item for them or a special EDGAR tag?*

Response -- No.

Definition of "Shell Company"

1. *Is our proposed definition of the term "shell company" too broad or too narrow? If so, how should the definition be tailored to achieve our objectives?*

Response – Too broad. As discussed above, further definition is warranted.

2. *Should the first "and" in the proposed definition be an "or," so that the definition would encompass a company that has (1) no or nominal operations, (2) no or nominal assets, or (3) assets consisting solely of cash and cash equivalents?*

Response – Yes. Alternatives should be acceptable, provided there are clearly described definitions of each.

3. *Should our definition of the term "shell company" have quantitative thresholds defining the term "nominal"? For example, if a shell company has a specific level of non-cash assets or operations, should we exclude it from the definition?*

Response – Yes. As noted in my descriptive text, which is referenced in item 1 above, clear definitions and standards will better serve the Commission, issuers and the investing public.

4. *If the definition had quantitative thresholds, how could we prevent companies from circumventing them to defeat the intent of the Form 8-K proposal?*

Response – With a quantitative threshold, specific standards will be known by accountants, investment professionals, the Commission and the investing public. As a result, circumvention should be more difficult and easier to expose.

5. *Should we define the term "shell company" in a different way? For example should the definition reflect concepts from the definition of "blank check company," such as "development stage company," company with "no specific business plan or purpose," or company that "has indicated that its business plan or purpose is to merge with an unidentified company"?*

Response – The proposed change, with further clarification in the definition is sufficient.

6. *Should the definition of the term "shell company" include companies whose assets consist solely of cash, as proposed, and thereby subject such companies to the Form S-8 and Form 8-K proposals? If not, under what circumstances should such companies be excluded?*

Response – No.

7. *Should the definition of "'shell company" include companies with substantial assets, so long as they have no or nominal operations? If shell companies were defined only in terms of operations, would this be overly inclusive? On the other hand, can companies with substantial assets but no operations be used to combine with operating businesses in a manner that implicates the policy concerns discussed in this release?*

Response – The most simple manner by which to resolve this is to provide definitive descriptions of the terms "shell company," "nominal assets" and "nominal operations."

8. *Should the definition of "shell company" exclude shell companies formed solely to change corporate domicile or shell companies formed solely to effect merger and acquisition transactions?*

Response – Yes, with regard to excluding shell companies formed solely to change corporate domicile. No, if formed to effect a merger or acquisition.

We appreciate the opportunity to provide comments concerning the proposed rule changes. If you have any questions or wish to discuss this further, please do not hesitate to contact me.

Sincerely,

L. STEPHEN ALBRIGHT, Esq.