



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

July 1, 2008

Mr. Bruce Hiler
Cadwalader, Wickersham & Taft
1201 F Street, NW
Washington, D.C. 20004

Re: **SEC v. Deephaven Capital Management LLC**
Knight Capital Group, Inc. -- Waiver Request of Ineligible Issuer Status
under Rule 405 of the Securities Act

Dear Mr. Hiler:

This is in response to your letter dated December 10, 2007, written on behalf of Knight Capital Group, Inc. (Company), and constituting an application for relief from the Company being considered an "ineligible issuer" under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act) arising from the settlement of a civil injunctive proceeding with the Commission. On May 2, 2006, the Commission filed a civil injunctive complaint in the United States District Court for the District of Columbia against Deephaven Capital Management, LCC (Deephaven), a subsidiary of the Company, alleging that Deephaven violated, Sections 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (Exchange Act). Deephaven filed a consent in which it agreed, without admitting or denying the allegations of the Commission's Complaint, to the entry of a Final Judgment against it. Among other things, the Final Judgment as entered on May 15, 2006, permanently enjoined Deephaven from violating Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act.

Based on the facts and representations in your letter, and assuming the Company and Deephaven will comply with the Final Judgment, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer by reason of the entry of the Final Judgment. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts than as represented or non-compliance with the Final Judgment might require us to reach a different conclusion.

Sincerely,

A handwritten signature in cursive script that reads "Mary Kosterlitz".

Mary Kosterlitz, Chief
Office of Enforcement Liaison
Division of Corporation Finance

CADWALADER

Cadwalader, Wickersham & Taft LLP
New York London Charlotte Washington Beijing

1201 F Street, N.W., Washington, DC 20004
Tel 202 862 2200 Fax 202 862 2400
www.cadwalader.com

December 10, 2007

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance, Stop 3628
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: SEC v. Deephaven Capital Management, LLC, Case No. 1:06CV00805 (D.D.C. 2006)

Dear Ms. Kosterlitz:

We are submitting this letter on behalf of our client, Knight Capital Group, Inc. ("Knight Capital"), in connection with an injunction described below (the "Prior Action"). The Prior Action arose out of an investigation by the Staff of the Division of Enforcement (the "Enforcement Staff") of the Securities and Exchange Commission (the "Commission") of certain trading practices of Deephaven Capital Management LLC ("Deephaven"), a subsidiary of Knight Capital.

Pursuant to Rule 405 under the Securities Act of 1933, as amended (the "Securities Act"), and the authority delegated to the Division of Corporation Finance (the "Division") by the Commission under 17 C.F.R. §200.30-1(a)(10), Knight Capital requests that the Division determine that Knight Capital should not be considered an "ineligible issuer" under Rule 405 as a result of the Prior Action. Knight Capital requests that this determination be made effective immediately. It is our understanding that the Enforcement Staff does not object to the Division of Corporation Finance providing the requested determination.

PRIOR ACTION

Deephaven is an indirect, wholly-owned subsidiary of Knight Capital that acts as an investment adviser for several private funds. Deephaven (and its former Director of Private Placements) consented to the entry of a final judgment related to a civil complaint by the SEC (the "Prior Action"). The complaint alleged that Deephaven violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and by the judgment, Deephaven was permanently enjoined from violating those sections and that rule. Deephaven also agreed to disgorge \$2,683,270 in trading profits, plus

\$343,418 in prejudgment interest, and to pay a \$2,683,270 civil penalty. Through its consent to the judgment, Deephaven neither admitted nor denied the allegations in the complaint.

The Prior Action arose out of Deephaven's trading activities in connection with private investment in public equity ("PIPE") offerings. The complaint alleged that from August 2001 to March 2004, Deephaven traded securities while in possession of material nonpublic information that 19 PIPE stock offerings were about to be publicly announced. The complaint alleged that Deephaven learned such information from placement agents for the issuing companies, and that Deephaven thereafter sold short the shares of those companies on behalf of a fund managed by Deephaven, allegedly profiting from a price decline in the subject stocks when the PIPE offerings were publicly announced.

Deephaven and the Staff agreed in principal to the complaint and entry of the judgment, and Deephaven executed and delivered an Offer of Settlement, in February 2006. The Prior Action became final upon entry of the final judgment on May 15, 2006.

DISCUSSION

In 2005, the Commission adopted rules that significantly modified the registration, communications and offering processes under the Securities Act.¹ These rules eliminate certain restrictions on offerings and provide more timely investment information to investors without mandating delays in the offering process that were considered by the Commission to be inconsistent with the needs of issuers for timely access to capital. Among the changes were the creation of a new category of issuer, defined in Rule 405 as the "well-known seasoned issuer," and a new category of offering communication, defined in Rule 405 as a "free writing prospectus." The changes to Rule 405 also added another category of issuer, the "ineligible issuer," which is excluded from the category of "well-known seasoned issuer" and is not eligible to make communications by way of a free writing prospectus except in limited circumstances.²

Rule 405 defines "ineligible issuer" to include an issuer that, within the prior three years, was itself or had a subsidiary that was made the subject of any judicial or administrative decree or order arising out of a governmental action that prohibits certain conduct or activities regarding, including future violations of, the antifraud provisions of the federal securities laws.³ Rule 405 further provides that "[a]n issuer shall not be an ineligible issuer if the Commission

¹ See *Securities Offering Reform*, Final Rule, Securities Act Release No. 8591, Exchange Act Release No. 52056, 70 Fed. Reg. 44722 (July 19, 2005) (the "Offering Reforms Release").

² See 17 C.F.R. §230.164(e) and 17 C.F.R. §230.433(b)(2).

³ Rule 405 does not specify which provisions of the federal securities laws are considered the antifraud provisions for purposes of the "ineligible issuer" definition. However, in the Offering Reforms Release the Commission cites Securities Act Section 17(a), Section 10(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Exchange Act Rule 10b-5 as examples of the antifraud provisions and refers to Securities Act Section 17(a) as a general antifraud provision.

determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”⁴

The Prior Action requires Deephaven, which is a subsidiary of Knight Capital, to cease and desist from committing or causing any violations and future violations of Securities Act Section 17(a), Exchange Act Section 10(b), and Rule 10b-5 thereunder. Consequently, Knight Capital is considered an “ineligible issuer” as a result of entry of the Order unless this request for relief under Rule 405 is granted. As such, Knight Capital is currently subject to the limitations on the content of a free writing prospectus and is unable to take advantage of the new automatic shelf registration process at least until May 15, 2009 (three years following entry of the final judgment in the Prior Action). For the reasons described below, Knight Capital respectfully requests that the Division determine that Knight Capital should not be considered an “ineligible issuer” under Rule 405 as a result of the Prior Action.

Knight Capital is the type of issuer for which the new rules are appropriate.

In adopting the new securities offering reform rules, the Commission noted that the modifications to the offering process and communications rules were intended to most benefit the largest, most widely followed issuers in the marketplace. The Commission observed that the largest issuers are followed by sophisticated institutional and retail investors, members of the financial press and numerous sell-side and buy-side analysts that actively seek new information on a continual basis. These issuers tend to have a more regular dialogue with investors and market participants through the press and other media. The communications of these issuers are subject to scrutiny by investors, the financial press, analysts and others who evaluate disclosure when it is made.⁵

Knight Capital is a leading financial services firm that, through its various subsidiaries, provides voice and electronic access to the capital markets across multiple asset classes for buy-side, sell-side and corporate clients, and asset management for institutions and private clients. Its stock has been traded on the NASDAQ Stock Market since going public in July 1998. As of August 9, 2007, Knight Capital had a market capitalization of over \$1.3 billion, and over 99,000,000 shares outstanding. The company is widely covered by both securities analysts and the media, and information regarding Knight Capital is readily available and analyzed in the marketplace. As a result, Knight Capital is the type of issuer for which the “well-known seasoned issuer” provisions of the new rules are appropriate.

The Prior Action does not relate to disclosures or security offerings of Knight Capital.

The fact that Knight Capital was not included in the conduct at issue in the Prior Action merits a determination by the Division under Rule 405 that Knight Capital should not be considered an “ineligible issuer” as a result of entry of the order in the Prior Action. The Prior Action

⁴ As noted above, pursuant to 17 C.F.R. §200.30-1(a)(10), the Commission has delegated authority to the Division to make determinations with respect to applicability of the ineligibility provisions under Rule 405.

⁵ See Offering Reforms Release, Section II.A.

relates to a specific investment strategy previously pursued by a Knight Capital subsidiary on behalf of a small fund managed by that subsidiary. The alleged violative conduct occurred over three years ago, and has been discontinued by the particular subsidiary. Knight Capital was not involved in the subject trading activity and the Prior Action did not involve any allegations that Knight Capital's financial, accounting or other disclosure statements were inaccurate.⁶ Applying the ineligibility provisions of the new securities offering reform rules to Knight Capital would do nothing to further protect investors in connection with securities offerings, or free-writing prospectuses, that Knight Capital could otherwise make or file as a "well-known seasoned issuer" under the new rules. The requested relief, therefore, would not defeat the purpose of the ineligibility provisions.

Applying the ineligibility provisions to Knight Capital because of the Prior Action would be disproportionately and unduly severe.

A determination that Knight Capital is an "ineligible issuer" as a result of the Prior Action is unduly and disproportionately severe, given the lack of any relationship between the allegations in the Prior Action and any disclosure or offering activity conducted by Knight Capital. The Prior Action, though only involving Deephaven, precludes Knight Capital from taking advantage of a number of the benefits provided by the new securities offering reform rules and leaves Knight Capital at a significant business disadvantage to its peers in terms of its ability to access the capital markets. Knight Capital's business is capital-intensive, and it relies on access to the capital markets. To consider Knight Capital an "ineligible issuer" based on alleged misconduct arising from the activities in one investment strategy of Deephaven, with which Knight Capital had no involvement and which (1) occurred over three years ago, (2) has since been discontinued, and (3) is unrelated to any disclosures that would be made in a securities offerings or prospectuses by Knight Capital, would be disproportionately and unduly severe, and beyond the intent of the penalties already imposed by the Prior Action.

Deephaven has taken significant steps to ensure that the allegedly violative trading activity does not recur.

Deephaven has, since 2005, taken several significant steps intended to prevent the re-occurrence of the trading activity which was the subject of the Prior Action. As part of its registration with the Commission as an investment adviser in January 2006, at which point Deephaven became subject to the full regulatory and reporting scheme under the Investment Adviser's Act, Deephaven implemented policies and procedures in conformance with the requirements under that Act. Deephaven has also designed its policies, procedures and training program so that the acquisition by a fund managed by Deephaven of a privately placed security is subject to appropriate supervisory review for compliance with the firm's insider trading prevention processes. In addition to other remedial steps, Deephaven has also hired a new and

⁶ Indeed, Knight Capital has a strong record of compliance with the securities laws, and has never been the subject of any adverse regulatory proceeding in connection with its stock offerings or public disclosures.

C A D W A L A D E R

experienced Chief Compliance Officer, and has added several experienced Compliance staff members.

* * *

In light of the foregoing, Knight Capital believes that a denial of the requested waiver would be unwarranted, contrary to the public interest, and unnecessary for the protection of investors. Knight Capital has shown good cause for a determination by the Commission, or its delegate, that it is not deemed to be an "ineligible issuer" as a result of the Prior Action. Accordingly, we respectfully request that the Division determine pursuant to Rule 405 that Knight Capital is not an "ineligible issuer" as a result of the Prior Action.

If you have any questions or require any additional information, please do not hesitate to call me at (202) 862-2256. Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce A. Hiler". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bruce A. Hiler

cc: Thomas M. Merritt, Esq.