



DIVISION OF  
CORPORATION FINANCE

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

June 26, 2007

Ms. Elizabeth L. Grayer  
Cravath, Swaine & Moore, LLP  
825 Eighth Avenue  
New York, NY 10019-7475

**Re: In the Matter of International Business Machines Corporation – Waiver  
Request of Ineligible Issuer Status under Rule 405 of the Securities Act**

Dear Ms. Grayer:

This is in response to your letter dated June 21, 2007, written on behalf of International Business Machines Corporation (Company), and constituting an application for relief from the Company being considered an “ineligible issuer” under Rule 405(l)(vi) of the Securities Act of 1933 (Securities Act). The Company requests relief from being considered an “ineligible Issuer” under Rule 405(l)(vi), due to the entry on June 25, 2007, of a Commission order (Order) pursuant to Section 21C of the Securities Exchange Act of 1934 (Exchange Act), naming the Company as a respondent. The Order finds, among other things, that the Company caused Dollar General Corporation to violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Based on the facts and representations in your letter, and assuming the Company will comply with the Order, 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 Order. 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 from those represented or non-compliance with the Order might require us to reach a different conclusion.

Sincerely,

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

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June 21, 2007

## In the Matter of Dollar General Corporation SEC File No. HO-9238

Dear Ms. Kosterlitz:

We submit this letter on behalf of International Business Machines Corporation ("IBM") in connection with a proposed settlement arising out of the above-entitled investigation by the Securities and Exchange Commission (the "Commission"). The proposed settlement would result in the issuance of an order that is described below (the "Proposed Order").

IBM hereby requests, pursuant to Rule 405 under the Securities Act of 1933 (the "Securities Act"), 17 C.F.R. § 230.405, that the Commission determine that, for good cause shown, it is not necessary under the circumstances that IBM be considered an "ineligible issuer" under Rule 405. IBM requests that this determination be effective upon the entry of the Proposed Order. It is our understanding that the Division of Enforcement does not object to the Division of Corporation Finance providing the requested determination.<sup>1</sup>

### BACKGROUND

The Commission and IBM have reached agreement on the terms of the Proposed Order. IBM is submitting an offer of settlement in which it neither admits nor denies the findings of the Proposed Order but consents to its entry in agreed form. The Proposed Order will find that IBM caused Dollar General Corporation's ("Dollar General's") violation of Sections 10(b), 13(a) and 13(b)(2)(A) of the Securities and Exchange Act of 1934 (the "Exchange Act") and Rules 10b-5, 12b-20 and 13a-11

<sup>1</sup> The authority to grant or deny a waiver of ineligibility has been delegated by the Commission to the Division of Corporation Finance. See 17 CFR 200.30-1.

thereunder, will find that IBM violated Section 13(b)(2)(A) of the Exchange Act and will direct that IBM cease and desist from committing or causing any violations and any future violations of these securities laws and regulations. In addition, IBM will undertake to pay \$7,000,000 to the Clerk of the United States District Court for the Middle District of Tennessee to be deposited and joined to the funds currently held in SEC v. Dollar General Corporation, et al., C.A. No. 3:05-0283.

### **DISCUSSION**

Rule 405 under the Securities Act, effective December 1, 2005, makes available to certain issuers, referred to as "well-known seasoned issuers," the benefits of certain securities offering reforms reflected in the Commission's recently-adopted rules modifying the registration, communications and offering processes under the Act. See Release No. 33-8591 (July 19, 2005). IBM currently qualifies as a well-known seasoned issuer under Rule 405.

IBM understands that entry of the Proposed Order could operate to make IBM an "ineligible issuer" under Rule 405 and therefore no longer able to qualify as a well-known seasoned issuer. In relevant part, Rule 405 defines "ineligible issuer," as "an issuer with respect to which any of the following is true as of the relevant dates of determination:

(1) (vi) Within the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that:

(A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws;

(B) Requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or

(C) Determines that the person violated the anti-fraud provisions of the federal securities laws."

Pursuant to section (2) of the definition, however, the Commission may determine "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer."

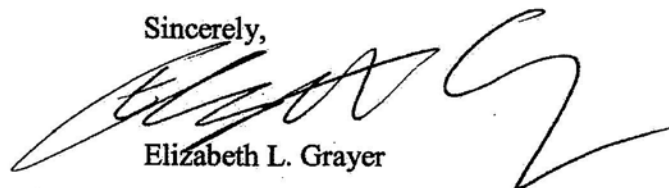
IBM requests that the Commission make this determination on the following grounds:

1. Rule 405 was adopted as part of reforms intended to improve the delivery of timely, high-quality information to the securities markets by issuers. *See* Release No. 33-8591 at 21. As part of this effort, Rule 405 created a new category of issuer – a “well-known seasoned issuer” – that is eligible to benefit from certain streamlined communications rules and registration processes for registered transactions under the Securities Act.
2. Rule 405 also created a category of issuer – an “ineligible issuer” – that, because of, among other things, its alleged failure to provide accurate information about itself and its securities to the securities markets, should be deemed ineligible to benefit from these reforms.
3. IBM is alleged to have participated in a certain business transaction with Dollar General which Dollar General allegedly misreported in its financial statements in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.
4. There are no allegations that any disclosures made by or about IBM violate the anti-fraud provisions of the federal securities laws.
5. Although the entry of the Proposed Order could operate to make IBM an “ineligible issuer” under Rule 405, because the alleged fraud does not involve IBM’s own disclosures, such a categorization is inconsistent with the purposes of Rule 405.

In light of these considerations, there is good cause to determine that IBM should not be considered an “ineligible issuer” under Rule 405. We respectfully request that the Commission make that determination.

Please contact me with any questions about this request.

Sincerely,



Elizabeth L. Grayer

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VIA EMAIL AND FEDERAL EXPRESS