



DIVISION OF
CORPORATION FINANCE

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

April 7, 2000

Ms. Lisa Roberts
Director of Listing Qualifications
NASDAQ
National Association of Securities Dealers
9801 Washingtonian Boulevard
Gaithersburg, MD 20878

Re. Form 8-K "Back Door" Registration under the Securities Exchange Act of 1934

Dear Ms. Roberts:

A non-reporting company recently asked about its reporting status under the Securities Exchange Act of 1934 after it acquired a reporting "blank check" company.¹ The requester suggested that it would be a successor issuer to the reporting obligation of the "blank check" company by virtue of Commission Rule 12g-3(a).² We disagreed.

Under our system, the concept of succession in part depends upon the nature of the company being succeeded. Thus, in Rule 12b-2, the definition of "succession" requires "the direct acquisition of the assets comprising a going business" [emphasis added]. We advised the requester that the "blank check" company did not seem to satisfy these criteria. Consequently, Rule 12g-3(a) would not be applicable, and the non-reporting company would have to file a Form 10 or Form 10-SB registration statement in order to become an Exchange Act reporting company. Nonetheless, we recognized the long-standing availability of the "back door" registration procedure where a going business was acquired, and concluded that if the requester here could provide the same, or at least some minimally acceptable level of information as issuers do in appropriate Rule 12g-3(a) cases, we would raise no objection to the procedure. The same level of information is the information required by Form 10 or Form 10-SB. A minimally acceptable level of information is complete audited and pro forma financial statements required by those forms. This information must be filed on Form 8-K within 15 days of the succession.

¹ A "blank check" company is a developmental stage company that has no specific business plan or purpose or has indicated its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

² "Back door" registration is used to describe the way a formerly non-reporting company first presents disclosure in a Commission filing about itself after completion of a Rule 12g-3(a) transaction. Because the information is filed under cover of Form 8-K rather than Form 10, 10-SB or 8-A, it has been referred to in this way.

As you know, the Form 8-K filing is the seminal event in this "back door" filing procedure under the Exchange Act for the new combined operating company. It is a particularly critical event where a formerly non-reporting company acquires a reporting "blank check" company. For this reason, we treat these Form 8-K "back door" filings in the same way we treat Form 10 and Form 10-SB filings. We subject them to our standards of review selection, and we may issue substantive comments on the sufficiency of the disclosures presented. Any disclosure deficiencies in the Form 8-K may impact the informed nature of trading markets for these securities. Therefore, in accordance with our customary procedure for processing Exchange Act registration statements, we will advise you of those situations where a Form 8-K "back door" registration has been selected for review, when we have issued comments on it and when those comments have been cleared by the staff.

We wanted you to be aware of the way we are administering these filings because of the importance your systems place upon the reporting requirements and information contained in Commission filings under sections 13(a) and 15(d) of the Exchange Act. You should feel free to advise your members and others of these views and procedures. If you have any questions, be sure to let me know.

Sincerely,

Richard K. Wulff, Chief
Office of Small Business