



CLIENT MEMORANDUM

Client Alert: Upcoming Expiration for Shelf Registration Statements

October 28, 2008

The SEC's Securities Offering Reform initiative, which became effective on December 1, 2005,¹ mandated a three-year expiration for most shelf registration statements under Rule 415. Under Rule 415 (as amended as part of Securities Offering Reform), a shelf registration statement that became effective on or after December 1, 2005 will expire three years from its effective date. A shelf registration statement that became effective before December 1, 2005 will expire three years later (*i.e.*, on December 1, 2008), regardless of its original effective date.

The three-year expiration provisions apply to the following types of shelf registration statements:

- automatic shelf registration statements ("ASRs") filed by well-known seasoned issuers ("WKSIs");
- registration statements filed for continuous offerings that may continue for a period in excess of 30 days from the date of initial effectiveness (Rule 415(a)(1)(ix));

- registration statements on Form S-3 or Form F-3 for immediate, continuous or delayed offerings by a registrant, majority subsidiary of a registrant or parent of a registrant (Rule 415(a)(1)(x)); and
- registration statements covering mortgage-related securities (Rule 415(a)(1)(vii)).

The three-year expiration provisions do *not* apply to certain other types of shelf registration statements, including, among others, registration statements (other than ASRs) covering:

- resales by selling securityholders (Rule 415(a)(1)(i));
- securities issued pursuant to dividend reinvestment plans or employee benefit plans (Rule 415(a)(1)(ii));

¹ "Securities Offering Reform," Release Nos. 33-8591; 34-52056; IC-26993; FR-75 (July 19, 2005) [17 CFR 200, 228, 229, 230, 239, 240, 243, 249 and 274].

- securities issued upon the exercise or conversion of outstanding securities (Rules 415(a)(1)(iii) and (iv));
- securities pledged as collateral (Rule 415(a)(1)(v));
- American Depositary Receipts registered on Form F-6 (Rule 415(a)(1)(vi)); and
- securities issued in connection with business combination transactions (Rule 415(a)(1)(viii)).

If a shelf registration statement will expire pursuant to the three-year expiration provisions, and a registrant wishes to continue to offer securities that were covered by the expiring registration statement, the registrant must file a new shelf registration statement to replace the expiring registration statement. A registrant that does not file a replacement shelf registration statement prior to the expiration of the three-year deadline for its existing shelf registration statement will not be able to offer and sell such securities until a new registration statement becomes effective (subject to a transitional provision referred to below).

ASRs are automatically effective upon filing. At the time of filing a new ASR, the registrant must confirm that it meets the definition of a WKSJ under Rule 405 under the Securities Act and is otherwise eligible to file an ASR under the instructions to Form S-3.

Shelf registration statements other than ASRs will become effective when declared effective by the SEC, which may be after SEC staff review. In order to avoid a "gap" between the expiration of an existing shelf registration statement and the effectiveness of a replacement shelf registration statement, Rule 415(a)(5) provides that a registrant (other than a registrant using an ASR) may continue to use the expiring shelf registration statement until the earlier of:

- 180 days after the expiration of the three-year period for the expiring shelf registration statement; and
- the time that the replacement shelf registration statement becomes effective.

Continuous offerings commenced prior to the end of the three-year period may continue to be conducted under the expiring registration statement during this period if they are permitted to be made under the replacement registration statement.

However, the replacement shelf registration statement must be on file with the SEC prior to the expiration of the prior shelf registration statement.

Under Rules 415(6) and 457(p), unused SEC filing fees may be carried forward to a new registration statement prior to its effectiveness as long as the new registration statement is filed within five years of the initial filing date of the original registration statement. A notation as to the carryover of the filing fee should be made on the cover of the registration statement.

This memorandum is for general informational purposes and should not be regarded as legal advice. It generally addresses the principal provisions relating to the expiration of certain shelf registration statements, but it does not address all of the rules relating thereto. Please contact your relationship partner if we can be of assistance regarding specific situations relating to registration statements filed or to be filed with the SEC. The names and office locations of all of our partners, as well as memoranda regarding recent corporate reporting and governance developments, can be obtained from our website, www.simpsonthacher.com.

UNITED STATES

New York

425 Lexington Avenue
New York, NY 10017
212-455-2000

Los Angeles

1999 Avenue of the Stars
Los Angeles, CA 90067
310-407-7500

Palo Alto

2550 Hanover Street
Palo Alto, CA 94304
650-251-5000

Washington, D.C.

601 Pennsylvania Avenue, N.W.
North Building
Washington, D.C. 20004
202-220-7700

EUROPE

London

Citypoint
One Ropemaker Street
London EC2Y 9HU, England
+44-20-7275-6500

ASIA

Beijing

3119 China World Tower One
1 Jianguomenwai Avenue
Beijing 100004, China
+86-10-5965-2999

Hong Kong

ICBC Tower
3 Garden Road
Hong Kong
+852-2514-7600

Tokyo

Ark Mori Building
12-32, Akasaka 1-Chome
Minato-Ku, Tokyo 107-6037, Japan
+81-3-5562-6200