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The Securities Law Institute is a for profit corporation dedicated to implementing a system of disseminating material information relative to issuers and individuals involved in the ownership and management of public issuers.

12g-3 Mergers

I. Blank Check Merger

The 12g-3 "Blank Check" Merger is generally construed as a means by which a non-reporting company takes on the reporting status under the Securities Exchange Act of 1934 (the "34 Act") after its merger with a reporting "Blank Check" company.

II. Blank Check Defined

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.

III. 12g-3 Blank Check Mergers as Applied to the NASD Eligibility Rule

More recently, the 12g-3 Blank Check Mergers have occurred in the scenario where a non-reporting company was trading on the OTC bulletin board or the Pink Sheets, and was required to fulfill the

reporting requirements under the 34 Act in order to either continue to trade its securities, or commence trading its securities. Refer to the Securities Law Institute Newsletter of April 1999, which discusses the NASD Over-the-Counter Bulletin Board Eligibility Rule ("OTC:BB"). Under this rule companies were required to commence reporting and be cleared of comments prior to certain preset dates based upon the letters in the company's trading symbol.

IV. Methods of Effectuating 34 Act Reporting Status

Under the more typical method for a non-reporting company to establish reporting status under the 34 Act, the company would either file a Form 10, Form 10-SB, or file a 1933 Act registration and subsequent 8-A filing. However, as the NASD Eligibility Rule was in its embryonic stage, companies were finding that they had waited too long to file a Form 10-SB and were facing delisting from the OTC:BB.

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V. *The “Back Door” Approach*

Upon locating a reporting blank check company, a non-reporting trading company is able to reverse merge into the reporting company with the non-reporting company being the successor issuer. By virtue of Commission Rule 12g-3(a) the non-reporting company assumes the reporting status of the blank check company. This effectively provided an expedited method for taking on the status of a reporting company, which in turn allowed the company to continue trading on the OTC:BB. “Back Door” registration is used to describe the way a formerly non-reporting company first presents disclosure in a 34 Act filing about itself after completion of a Rule 12g-3(a) merger. Because the information is filed via Form 8-K12G3 rather than Form 10, 10-SB or 8-A, it has been referred to as a Back Door registration.

VI. *The SEC Position*

Although the SEC initially disagreed with the 12g-3 method of a company commencing its reporting status, ultimately the SEC indicated in a formal letter to the NASD that it would raise no objection to the procedure. The SEC recognized the long-standing

availability of the “back door” registration procedure where a going business was acquired.

VII. *12g-3(a)*

Key to the process of the 12g-3(a) Blank Check Merger is compliance with specific rules under 12g-3(a), the SEC, and the provision that upon completion of the merger the same level of information that is required on Form 10 or Form 10-SB is filed. Specifically, 12g-3(a) requires that the non-reporting company have a minimum of 300 round lot (100 shares or more) shareholders; although waivers of this provision have been granted in some situations. Upon completion of the merger, the successor company should file the same type of information required in a Form 10 or Form 10-SB on Form 8-K12G3 within 15 days of succession.

VIII. *SEC Review*

It should be further noted that the SEC subjects the 8-K12G3 filing to the same standard of review selection as other filings. Consequently, the 8-K12G3 filings should be properly drafted to avoid prolonged commentary from the SEC, which could impact tradability of the securities.

IX. *Conclusion*

It is incumbent upon the non-reporting company to: (i) utilize a properly documented 10-SB, (ii) which is current in its filings, (iii) through comments with the SEC, (iv) has a limited number of shareholders, (preferably one), and (v) find counsel versed in the process.

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