Public Statement

Statement of Acting Chair Allison Herren Lee on Contingent Settlement Offers

Acting Chair Allison Herren Lee

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In consultation with the Divisions of Enforcement, Corporation Finance, and Investment Management, today I am taking action to reinforce the critical separation between the Commission's enforcement process and its consideration of requests for waivers from automatic disqualifications that arise from certain violations or sanctions. To ensure that these processes remain fair and serve investors' interests, the Division of Enforcement will no longer recommend to the Commission a settlement offer that is conditioned on granting a waiver. This return to the division's long-standing practice ensures that the consideration of waivers is forward looking and focused on protecting investors, the market, and market participants from those who fail to comply with the law.

Violations of certain provisions of the federal securities laws give rise to automatic disqualification from exercising certain privileges, including being considered a Well-Known Seasoned Issuer (WKSI), engaging in certain private securities offerings under Rule 506 of Regulation D, and serving in certain capacities for an investment company.[1] The relevant statutory and regulatory authorities contemplate that the Commission generally may, in its discretion, grant waivers from these disqualifications. These waivers, however, should not be used as a bargaining chip in settlement negotiations or regarded as an obstacle to be overcome on the way to a settlement. A waiver is not the default position under the law, and should not be considered one under our processes.

Waiver requests are received and reviewed by the Divisions of Corporation Finance and Investment Management using standards that are separate and distinct from our law enforcement mandate. Although in many instances a waiver, either in full or with conditions, may be appropriate, this determination should be made separately, as a policy matter, from considerations related to the settlement of an enforcement case.

The staff responsible for reviewing waiver applications do so with diligence, professionalism, and independence, as do those working to bring and settle enforcement cases. Today's action is meant to enshrine best practices and ensure that our policies and procedures are designed to eliminate the potential for any structural conflicts or pressures. This is the same standard expected of entities

regulated by the Commission, and will help preserve the independence of these separate processes and better protect investors and markets.

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[1]For example, WKSI status under Rule 405 of the Securities Act permits companies certain communication and registration flexibilities, and Rule 506 of Regulation D allows issuers to engage in certain securities offerings exempt from Securities Act registration requirements. Another privilege from which a company may be disqualified is the use of the statutory safe harbor for forward looking statements. These privileges allow companies to raise money from investors more quickly, and often with less expense, than would be possible without the flexibility these privileges afford, while also potentially providing less information to investors. While they are available to companies that use them responsibly, they can expose investors and markets to risk when used by those who cannot or will not follow the rules. In addition, individuals or entities that have been subject to certain sanctions, such as a criminal conviction pertaining to investment related activities or injunctive relief barring them from certain roles in the securities industry, are automatically disqualified from serving in certain capacities at registered investment companies under Section (9)(a) of the Investment Company Act.