

ABOUT DAVIDOFF MALITO & HUTCHER LLP

Recent Events:

A Leading Full Service Corporate Law and Government Relations Firm with active practices in:

- Government Relations & Lobbying
- Corporate & Securities
- Mergers & Acquisitions
- Banking, Finance & Venture Capital
- Litigation
- Real Estate
- Land Use & Zoning
- Bankruptcy/Creditor's Rights
- Trusts & Estates
- Administrative Law
- Construction Law
- Computer & Internet Law
- Healthcare Law
- Labor & Employment Law

- On **December 12, 2005**, an article by **Peter M. Ripin** entitled "Hotels Must Protect their Brands Online" was published in **Travel Weekly**.
- On **December 5, 2005**, **John C. Penn's** interview regarding the **Evolution of the Best Price Rule** was referred to on Deallawyers.com in relation to the Securities and Exchange Commission public meeting held on December 14, 2005, to consider among other things, proposed amendments to the best price rule in the tender offer context.
- In **November 2005**, **John B. Kiernan** was appointed **Chairman of the Transition Committee** for Nassau County clerk-elect **Maureen O'Connell**.
- On **September 29, 2005**, our firm sponsored the **2005 TEC Long Island Regional Member Meeting & Conference**.
- On **September 22, 2005**, our firm sponsored **Long Island Invest**, an annual conference which brings Wall Street exposure to Long Island public companies. Our partner **Neil M. Kaufman** is a member of the advisory board of Long Island Invest, LLC.
- In **September 2005**, **Lewis M. Smoley** successfully settled a litigation on behalf of New York Yankee great **Yogi Berra** against Turner Broadcasting Systems, owner of the rights to "Sex in the City".

For more information regarding any of these events, please contact Neil M. Kaufman

The information contained herein is not to be construed as legal advice.

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SEC'S SECURITIES ACT REFORM IS NOW EFFECTIVE

On December 1, 2005, the SEC's recent Securities Act reform became effective. The reform initiatives vary based on the status of the registrant in relation to the following five categories:

- **well-known issuer** - a reporting company that (a) satisfies the Form S-3 or Form F-3 primary offering requirements, (b) has, within 60 days of its eligibility determination date, a worldwide public float held by non-affiliates of \$700 million, (c) has registered and issued within the prior three years at least \$1 billion aggregate principal amount of non-convertible securities, other than common equity, in primary offerings for cash and (d) is not an ineligible issuer;
- **seasoned issuer** - a reporting company that satisfies the Form s-3 or Form F-3 requirements;
- **unseasoned issuer** - a reporting company not eligible to use Form S-3 or Form F-3 for registering primary offerings;
- **non-reporting issuer** - an issuer not required to file reports pursuant to Section 13 or 15 (d) of the Securities Exchange Act even if it does so voluntarily; and
- **ineligible issuers** - includes reporting companies that (a) are not current in their Exchange Act reporting, (b) are or during the prior three years were blank check companies, shell companies or issuers of penny stock or (c) have filed for bankruptcy or insolvency during the prior three years.

The reform initiative includes long-awaited definitive guidance on gun-jumping. In this regard, the SEC has adopted safe harbors to permit:

- communications by issuers more than 30 days before they file registration statements so long as they do not refer to securities offerings;
- reporting companies to publish or disseminate, at any time, regularly released factual business information and forward-looking information that do not refer to a registered offering or are released as part of offering activities, including their (a) business or financial developments, advertisements and factual information in their Exchange Act reports and (b) statements about management's plans, revenue projections and statements about future economic performance accompanied by the assumptions underlying such information; and
- non-reporting issuers to publish or disseminate, at any time, regularly released factual business information (but not forward-looking statements) intended for those other than investors or prospective investors.

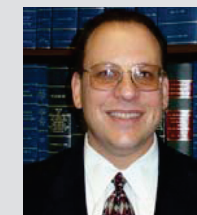
Well-known seasoned issues are also permitted to publish or disseminate, at any time, oral and written communications, including an offer to sell or a solicitation of an offer to buy securities that does not constitute a statutory prospectus. This use of what is known as a "free writing prospectus" along with other aspects of the Securities Act reform will be more fully discussed in our next issue.

FROM THE EDITOR

Dear clients and friends:

In response to numerous requests from our clients and friends, in this issue we have included a detailed chart setting forth the quantitative and qualitative listing requirements of each of the principal securities trading markets in the United States. We hope you find this helpful. In light of the size of this chart, we have been unable to include in this issue our "Company Spotlight" section, which we intend to bring back in subsequent issues.

We welcome David Lieser to our firm's Long Island office as an associate in our litigation practice group.



Neil M. Kaufman,
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SEC Proposes E-Proxy Delivery

On December 8, 2005, the SEC proposed amendments to the proxy rules under the Exchange Act that would allow issuers and others to deliver proxy materials to shareholders by posting them on a specified, publicly-accessible Internet Web site with a notice to shareholders of such availability.

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DM&H

PRINCIPAL UNITED STATES SECURITIES TRADING MARKETS INITIAL AND CONTINUING LISTING REQUIREMENTS

QUANTITATIVE REQUIREMENTS	New York Stock Exchange						American Stock Exchange						NASDAQ National Market						NASDAQ SmallCap Market	
	Initial Listing Requirements			Continued Listing Requirements			Initial Listing Requirements				Continued		Initial Listing Requirements			Continued			Initial	Continued
	Earnings	Valuation w/ Cash Flow	Pure Valuation	Earnings	Valuation w/ Cash Flow	Pure Valuation	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alt. 1	Alt. 2	Alternative 1	Alternative 2	Alternative 3	Alternative 1	Alternative 2			
Stockholder's Equity	-	-	-	\$75 M	-	-	\$4 M	\$4 M	\$4 M	-	-	\$2 M ⁽⁸⁾ , or \$4 M ⁽⁹⁾ , or \$6 M ⁽¹⁰⁾ , or *(11)	\$15 M	\$30 M	-	\$10 M	-	\$5 M -OR-	\$2.5 M -OR-	
Market Capitalization	-	\$500 M	\$750 M	\$75 M ⁽⁴⁾	\$250 M ⁽⁵⁾	\$375 M ⁽⁶⁾	-	-	\$50 M	\$75 M -OR-	\$50M -OR-	-	-	\$75 M ⁽¹³⁾ -OR-	-	\$50 M -OR-	\$50 M ⁽¹⁵⁾ -OR-	\$35 M ⁽¹⁵⁾ -OR-		
Total Assets	-	-	-	-	-	-	-	-	-	\$75 M ⁽⁷⁾	\$50 M	-	-	\$75 M	-	\$50 M	-	-		
Revenue	-	\$100 M in most recent 12 months	\$750 M	-	\$20 M in most recent 12 months	\$15 M in most recent 12 months	-	-	-	\$75 M	\$50 M	-	-	\$75 M	-	\$50 M	-	-		
Pre-Tax Income	\$10 M ⁽²⁾	-	-	-	-	-	\$750,000 ⁽⁷⁾	-	-	-	-	-	\$1 M	-	-	-	-	-		
Net Income from Operations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$750,000 ⁽⁷⁾		
Operating Cash Flow	-	\$25 M total in last 3 fiscal years	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
Operating History	3 years	3 years	3 years	-	-	-	-	2 years	-	-	-	-	-	2 years	-	-	-	1 Year or \$50 M market cap		
Min. Closing/Bid Price Per Share	\$5			\$1			\$3	\$3	\$2	\$3	-	-	\$5	\$5	\$5 ⁽¹³⁾	\$1	\$1	\$4	\$1	
Market Value of Public Float	\$100 M (for existing public company); \$60 M (for IPOs, Spin-offs, Carve Outs and Affiliated Companies ⁽³⁾)			-			\$3 M	\$15 M	\$15 M	\$20 M	\$15 M	Alt. 3 ⁽¹²⁾ \$1 M	\$8 M	\$18 M	\$20 M	\$5 M	\$15 M	\$5 M	\$1 M	
No. of Public Shareholders	Alternative 1	Alternative 2	Alternative 3	Alternative 1	Alternative 2	Alternative 3	Alternative 1	Alternative 2	Alternative 3											
	2,000 RLH	2,200	500	400	1,200	-	800	400	400	400 RLH	300 RLH	400 RLH	400 RLH	400 RLH	400 RLH	400 RLH	400 RLH	300 RLH	300 RLH	
No. of Shares Publicly Held ⁽¹⁾	1,100,000	1,100,000	1,100,000	-	-	600,000	500,000	1,000,000	500,000	1.1 M	200,000	1,100,000	1,100,000	1,100,000	750,000	1,100,000	1,000,000	500,000		
Average Daily Trading Volume	-	100,000 shares/ most recent 6 months	1,000,000 shares/ most recent 12 months	-	100,000 shares/ most recent 12 months	-	-	-	2,000 shares/ most recent 6 months	-	-	-	-	-	-	-	-	-		

QUALITATIVE REQUIREMENTS	NYSE	AMEX	NASDAQ
Independent Directors:			
(a) majority of Board of Directors must be comprised of independent directors (Board of Directors affirmatively determines that the independent director has no material relationship with the listed company); and	Yes	Yes	Yes
(b) independent directors must meet at regularly scheduled executive sessions without management.	Yes	Yes	Yes
Compensation of Executive Officers determined by:			
(a) Compensation Committee comprised solely of independent directors; or	Yes	Yes	Yes
(b) majority of independent directors.	-	Yes	Yes
Nominating/ Corporate Governance Committee comprised solely of independent directors	Yes	-	-
Audit Committee:			
(a) Audit Committee Charter – formal written audit committee charter required to specify the scope and responsibilities to include:			
(i) the purpose of committee includes overseeing accounting and financial reporting;	Yes	Yes	Yes
(ii) receipt from outside auditors of a formal written statement regarding independence;	Yes	Yes	Yes
(iii) reviewing and reassessing charter on an annual basis;	Yes	Yes	Yes
(iv) selecting/hiring registered independent public accounting firm;	Yes	Yes	Yes
(v) receiving and responding to complaints relating to accounting, internal accounting controlling or auditing matters; and	Yes	Yes	Yes
(vi) engaging and paying independent advisors.	Yes	Yes	Yes
(b) Audit Committee Composition:			
(i) at least three members;	Yes	Yes	Yes
(ii) all of whom are independent as set forth in Rule 10A-3(b)(1) of the Securities Exchange Act;	Yes	Yes	Yes
(iii) all of whom are able to read and understand financial statements; and	Yes	Yes	Yes
(iv) at least one of whom is an audit committee financial expert.	Yes	Yes	Yes
(c) Cure periods allow an issuer with notice to the exchange to retain a formerly independent director on its audit committee if such member loses independence outside of of his/her reasonable control until the earlier of:			
(i) the issuer's next annual shareholders meeting; or	Yes	Yes	Yes
(ii) one year from occurrence of the event causing the individual to lose independence.	Yes	Yes	Yes
Annual Shareholder Meetings Required	Yes	Yes	Yes
Shareholder Meeting Minimum Quorum Requirement	-	33 1/3	33 1/3
Conflict of Interest- review and approval of transactions with related parties, by audit committee or other independent body of Board of Directors required	Yes	Yes	Yes
Shareholder Approval required for:			
(a) equity compensation plans;	Yes	Yes	Yes
(b) issuances resulting in a change of control of the issuer; and	Yes	Yes	Yes
(c) issuances of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions involving:			
(i) voting power or shares equal or exceed 20%; or	Yes	Yes	Yes
(ii) any director, officer or substantial shareholder of the issuer having or receiving an interest, directly or indirectly in the Company.	Any	5%	5%
Code of Conduct satisfying the definition of code of ethics set out in Section 406(c) of the Sarbanes-Oxley Act:			
(a) adopted applicable to all directors, officers and employees;	Yes	Yes	Yes
(b) must provide for enforcement mechanism; and	Yes	Yes	Yes
(c) shall be publicly available.	Yes	Yes	Yes

OTCBB	Pink Sheets.com
<ul style="list-style-type: none"> must comply with reporting requirements pursuant to Section 13, 15(d) or 12(g)(2)(B) of the Exchange Act not a blank check or inactive company minimum of 40 stockholders of record market maker must submit Form 211 application to NASD Sarbanes-Oxley Act Section 302 compliance regarding certification requirements 	<ul style="list-style-type: none"> current financial information (unaudited) required at the time of initial quotation in public market compliance with Rule 15c2-11, including balance sheets not more than 16 months old, financial statements not more than 12 months old and other requirements for a market maker to trade the stock not a blank check or inactive company minimum of 25 round lot stockholders of record market maker must submit Form 211 application to NASD non-reporting companies are exempt from Sarbanes-Oxley Act governance requirements

Footnotes:

- not including any shares held by officers, directors, or beneficial owners of 10% or more
- aggregate for last three fiscal years and \$2 M in each of two most recent fiscal years
- \$500 M market capitalization, 1 year operating history, parent in good standing and retains or is under common control with entity
- subject to delisting if falls below \$25M regardless of stockholder's equity
- subject to delisting if falls below \$75 M regardless of other criteria
- subject to delisting if falls below \$100 M regardless of other criteria
- in last fiscal year or 2 of 3 last fiscal years
- if no losses from continuing operations or net losses in 2 of 3 most recent fiscal years
- if no losses from continuing operations or net losses in 3 or 4 most recent fiscal years
- if no losses from continuing operations or net losses in 5 most recent fiscal years
- subject to delisting if substantial losses from operations, lack of existing financial resources or financial condition is such that the issuer cannot continue operations
- applicable only to common stock
- must meet market value of listed securities and bid price requirements for 90 consecutive trading days prior to applying for listing

Format Notes:

- Information set forth herein is not exhaustive or exclusive
- M = Million
- RLH = Round Lot Holders (100)
- Qualitative Requirements, OTCBB and Pink Sheets only address initial listing requirement
- Annual amounts are for the last fiscal year except where otherwise noted