

FSLR | 77,412, Net Roadshow, Inc.

FSLR | 77,412

Securities Act–Road Shows–Internet.–

A company may transmit road shows over its Internet Web Site on behalf of a seller solely to qualified institutional buyers within the meaning of Rule 144A(a)(1) under the Securities Act. The transmission must comply with the following conditions: 1) it goes only to institutions that the seller has confirmed are QIBs; 2) a confidential password is assigned to the QIB for a particular road show that expires after the show; 3) the seller confirms to the company its reasonable belief concerning the viewer's QIB status; 4) the company otherwise has no actual knowledge or reason to believe that the viewer is not a QIB; 5) the company is not an affiliate of any seller or issuer of a security that is the subject of a particular road show.

See FSLR | 2705 and FSLR | 2705AA, "Securities Act–Exemptions"

Company: Net Roadshow, Inc.

Public Availability Date: January 30, 1998

WSB File No. 020298034

Fiche Locator No. 2842D1

WSB Subject Category: 013

Reference:

Securities Act of 1933, Section 4(1), Rule 144A

INQUIRY LETTER

TROUTMAN SANDERS LLP

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January 20, 1998

Catherine T. Dixon, Chief Counsel

Division of Corporation Finance

U. S. Securities and Exchange Commission

Mail Stop 3-3

450 Fifth Street, N.W.

Washington, D.C. 20549

Re: No Action Request

Rule 144A of the Securities Act of 1933,

as amended (the "Securities Act" or the "Act")

Dear Ms. Dixon:

This firm serves as counsel to Net Roadshow, Inc. (the "Company"). The Company desires to transmit, over the Internet, road shows that relate to offerings of securities made solely to "qualified institutional buyers" (or "QIBs" as such term is defined in Rule 144A(a)(1)) pursuant to Rule 144A under the Securities Act of 1933 (the "Act"). We would appreciate confirmation, in the form of a no-action response from the staff, of our opinion that the Company's transmission of a "Rule 144A Road Show" on behalf of a "Seller" (as these terms are defined below) is consistent with Rule 144A(d)(1) of the Act.

FACTUAL BACKGROUND

The format and flow of the requested Internet road show product is as follows:

1. For the purposes of this letter, any road show that the Company will transmit over the Internet will relate to unregistered securities offered and/or sold exclusively to QIBs by a "Seller", which term, for purposes of this letter, refers to a QIB (or person acting on its behalf) that purchases such securities from the issuer for resale to other QIBs under Rule 144A ("Rule 144A Road Show").

2. The Company will obtain from each Seller confirmation that such Seller is a QIB, and that such Seller reasonably believes that:

(i) the offering to which the Rule 144A Road Show pertains is not subject to registration under the Securities Act; and

(ii) only entities satisfying the Rule 144A(a)(1) definition of "QIB" will be permitted password-restricted access to a Rule 144A Road Show.

3. The Company will maintain a website accessible only to entities that the Seller has identified as QIBs eligible to participate in a particular offering and the corresponding road show. The Seller first will provide to the Company the "confirmation" described in paragraph 2, above, for each Rule 144A Road Show that the Company is to transmit, whereupon the Company will provide to the Seller, and the Seller will assign to each QIB, a confidential password, or restricted access code, necessary to gain access to that Rule 144A Road Show. Each QIB's password will be valid only for that road show, and will expire no later than the date of termination of the related offering.

4. Each Rule 144A Road Show presented on the Company's website would be the same road show that representatives of the QIBs attending the actual road show see live, as the live road show will be filmed in its entirety, including the filming of all questions and answers. The Company's transmission of the live road show will not be edited for content, and QIBs that enter the Company's website via the assigned password will generally view the road show in its entirety. 1 The Internet version of the road show will present the charts and oral presentation at a similar speed (like a slide show) as the live road show. In the event information changes between the time the road show is filmed and throughout the period that such road show is available on the website, the display will include a periodic crawl providing a synopsis of such changes. The crawl will also provide that the viewer may contact the appropriate representative of the Seller for further information about such changes.

The Offering Memorandum regarding each offering will be displayed at all times throughout the related road show. A viewer would simply "click" on the "button" featuring the Offering Memorandum to view it in its entirety.

5. Before viewing any road show, each QIB will be advised of, and must agree to, the following:

The offeree has provided the Seller with such information as has been requested by the Seller to determine whether the offeree is a "qualified institutional buyer" as defined in Rule 144A(a)(1) of the Securities Act of 1933, as amended.

The confidential password assigned by the Seller has not been disclosed to any person or entity other than an employee or authorized agent of the offeree.

The distribution of any road show material to any person or entity other than an employee or authorized agent of the QIB is not permitted.

It is strongly recommended that each investor read the Offering Memorandum before making an investment decision.

The Offering Memorandum relating to this offering is available through this site for viewing before viewing the road show. The Offering Memorandum may be obtained by clicking on the button labeled "OFFERING MEMORANDUM." Viewers should refer to the Offering Memorandum for more complete information about the offering.

In the event the viewer does not agree to the above, the viewer will be denied access to the road show. The screen, throughout each road show, would also carry a disclaimer at all times stating that "the distribution of any road show material is not permitted."

6. Each QIB will be able to view and print the entire Offering Memorandum, or any portion thereof. As discussed above, each QIB will be advised that the road show materials may not be distributed to any person or entity other than an employee or authorized agent of the QIB.

7. The viewer will be informed by a periodic crawl across the screen or by prominent text of the importance of viewing the entire Offering Memorandum.

8. The compensation to be received by the Company for the presentation of road shows over the Internet will not be contingent upon the degree of success of an underlying offering and will not be related to the size of an offering. The fees charged by the Company will be analogous to a production or printing cost in that the fees will be charged for the production of the material to be transmitted over the Internet. The Company's fees may vary depending upon whether the road show presentation is (i) produced but not transmitted, or (ii) produced and transmitted for any period of time.

9. We believe that the following benefits would be recognized in the marketplace if the Commission approves the no-action request:

(i) The Company believes this process would "level the playing field" by providing all QIBs invited to review the road show with the opportunity to view the road show at a time which is convenient to them;

(ii) QIBs located in geographic areas frequently missed by the live road show would be placed on more equal footing with other QIBs;

(iii) There would be wider availability of the road show and the Offering Memorandum to interested QIBs; and

(iv) The road show and the Offering Memorandum should be available to QIBs on a more timely basis, providing the QIBs with more time to make a fully informed investment decision.

LEGAL ANALYSIS

In IPONET, Interpretive Letter dated July 26, 1996, the staff indicated that the private offering of securities on a password protected website to accredited investors would not constitute a "general solicitation" or "general advertising" within the meaning of Rule 502(c) of Regulation D. There, the requestor indicated that it would post notices of private offerings of securities, and the offerings themselves, on a website which would be password-protected and therefore accessible only to those previously qualified as accredited investors.

The Company will operate with substantially the same procedures as those discussed in IPONET by limiting access to QIBs when transmitting Rule 144A Road Shows. This website, which will both identify and contain the road show presentations, will be password-protected. The only parties provided with a password, and therefore allowed access to the Company's website to view the road show transmissions, will be entities which a Seller has confirmed it reasonably believes to be QIBs. As noted, the Seller also must confirm to the Company that it is a QIB. Based upon the staff's position in IPONET, we believe that electronic transmission of Rule 144A Road Shows (see paragraph 1 above) pursuant to a website protected by an access code system should suffice to ensure that all offers pursuant to a road show will be made exclusively to QIBs. See Rule 144A(d)(1).

The staff also addressed issues relating to the offering of securities under Rule 144A by electronic means in The Institutional Real Estate Clearing House ("IREC"), No Action Letter dated May 28, 1996. 2 In IREC, the staff indicated that it would not take enforcement action against an entity facilitating the trading of unregistered securities in the Rule 144A secondary market through the operation of a closed, screen-based information system. The staff's response was conditioned in part on the requirement that the only parties allowed to offer and sell securities under Rule 144A through the system were entities qualified as QIBs under Rule 144A.

The Company's proposal to transmit information related to Rule 144A Road Shows is also comparable to the IREC facts and circumstances. In both situations, Sellers that are QIBs would offering Rule 144A securities through a password-protected system to prospective purchasers reasonably believed by the Seller to be QIBs. In contrast with both IREC and IPONET, however, the Company's proposal will not allow the viewer to purchase securities via the Company's website. Instead, any viewer that decides to purchase the securities that are the subject of particular Rule 144A Road Show will be required to consummate the transaction with the Seller alone, independently of and without any involvement by the Company.

CONCLUSION

The Company's presentation of a Rule 144A Road Show by means of the Internet as described herein, should be permissible because access to each such presentation will be limited solely to QIBs. 3 We believe that the proposal of the Company would conform with the present practice in the securities industry of conducting road shows in connection with offerings made to entities which the Seller reasonably believes to be QIBs in accordance with Rule 144A of the Act, with the only difference being that the "live" road shows would be presented electronically.

Based on the foregoing facts and analysis, we believe that the Company's system limiting access to Rule 144A Road Shows transmitted over the Company's website to entities which a Seller reasonably believes to be QIBs as described herein is consistent with Rule 144A(d)(1). We respectfully request that the Division agree not to recommend that the Commission take enforcement action against the Company if it establishes and operates the system described above. If you wish additional information, or believe that additional representations or clarifications as to the proposed transaction are required before issuing the No Action Response, we would appreciate your contacting us.

Thank you for your review of this No-Action Letter Request.

Sincerely,

Thomas M. Duffy for
Troutman Sanders LLP

TMD:lit

STAFF REPLY LETTER

January 30, 1998

RESPONSE OF THE OFFICE OF CHIEF COUNSEL DIVISION OF CORPORATION FINANCE

Re: Net Roadshow, Inc. (the "Company")

Incoming letter dated January 20, 1998

Based on the facts presented in your letter, and your counsel's opinion that the activities described in your letter are consistent with Rule 144A(d)(1) under the Securities Act of 1933 (the "Act"), the Division will not recommend enforcement action to the Commission if the Company transmits road shows over its Internet website, on behalf of a "Seller" (as that term defined in your letter), solely to "qualified institutional buyers" ("QIBS") within the meaning of Rule 144A(a)(1) under the Act. Moreover, the staff's no-action position is predicated on the Company's compliance with the following conditions in connection with each "Rule 144A Road Show" (as defined in your letter):

(A) the Company will deny access to its website for viewing of a particular road show (which road show shall be deemed to include the posting of any notice thereof on the Company's web site) to all persons or entities (other than employees or authorized agents of the Company or Seller for that road show), except those institutions for which the Seller has confirmed its reasonable belief regarding their QIB status (see Rule 144A(d)(1)).

(B) the confidential password assigned to QIBs for a particular road show will be unique to that road show, and will expire no later than the date of termination of the related offering.

(C) each Seller's "confirmation" to the Company (as described in your letter) will include the following:

(1) a representation that such Seller is a QIB within the meaning of Rule 144A(a)(1); and

(2) an adequate basis for such Seller's representations of its "reasonable belief" that:

(i) each entity to which the Seller has assigned a confidential password is a QIB; and

(ii) the offering to which the particular road show relates is not subject to registration under the Securities Act.

(D) the Company otherwise has no actual knowledge, or reason to believe, that:

(1) the Seller is not a QIB;

(2) any of the entities to which the Seller has assigned a confidential password is not a QIB; or

(3) the securities offering to which a particular road show relates is subject to registration under Section 5 of the Securities Act.

(E) the Company is not an affiliate of any Seller or issuer of a security that is the subject of a particular road show.

This position is based on the facts and circumstances outlined in your letter, as well as your counsel's opinion as described therein. Accordingly, any different facts or conditions might require a different conclusion. In addition, this response expresses the Division's position on enforcement action only, and as such does not express any legal conclusion on the question presented. Finally, because regulatory responses to legal issues raised by technological developments may evolve, you should be aware that this no-action position may be reevaluated in the future by either the staff or the Commission.

Sincerely,

Catherine T. Dixon

Chief Counsel

1The Company reserves the right to edit out "dead time" arising through logistical, organizational, or similar problems at live road shows and to give the Seller (and/or the issuer, as applicable) the opportunity to edit out misstatements or mistakes.

2The Company acknowledges that the staff did not specifically address issues relating to the Act in this letter and the letter is limited to the issues addressed therein.

3The Rule 144A Road Show presentations remain subject to the anti-fraud and the anti-manipulation provisions of the Act and the Securities Exchange Act of 1934, as amended.