

**NO-ACT, NAFT WSB File No. 090897012, , Net Roadshow, Inc. , (Sep. 08, 1997)**

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**, Net Roadshow, Inc.**

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Company: Net Roadshow, Inc.

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WSB Subject Category: 032

Reference:

Securities Act of 1933, Section 2(10)

**INQUIRY LETTER 1**

**TROUTMAN SANDERS LLP**

**NATIONSBANK PLAZA**

**800 PEACHTREE STREET, N.E. – SUITE 5200**

**ATLANTA, GEORGIA 30308-2216**

**TELEPHONE(404) 885-3000**

July 23, 1997

**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: Request for Confidential Treatment

**Dear Ms. Dixon:**

This firm serves as legal counsel to Brad Hammond and Net Roadshow, Inc. ("Company"). Accompanying this letter is a request ("No-Action Request") made by this firm on behalf of the Company seeking confirmation of our opinion as to a legal interpretation of Section 2(10) of the Securities Act of 1933, as amended ("Act") and requesting that on the basis of the facts stated in the No-Action Request, the Staff would not recommend that the Commission take enforcement action based on the proposal of the Company.

On behalf of the Company, we hereby request that the No-Action Request be afforded confidential treatment for a period of time not to exceed 120 days from the date the response has been sent or given by the Commission to the Company. Considerations for our request for confidential treatment of the No-Action Request are as follows:

- (i) The information contained in the No-Action Request constitutes trade secrets and confidential information of a commercial or financial nature and is property of the Company;
- (ii) The information contained in the No-Action Request is privileged and confidential and the dissemination of such material into the public domain would be detrimental to the Company and its business operations:
- (iii) The disclosure of this information would affect adversely the Company's competitive position and, as a result, the Company should not be required to disclose such information to the public at the present time; and

(iv) The Company has, and will, take measures available to it to protect the confidential nature of the proposal including, but not limited to, requiring that potential customers enter into a confidentiality agreement with the Company prior to viewing a presentation of the proposal.

Sincerely,

**Thomas M. Duffy, for**  
TROUTMAN SANDERS, LLP

**TMD:lit**

**INQUIRY LETTER 2**

**TROUTMAN SANDERS LLP**

**NATIONSBANK PLAZA**

**800 PEACHTREE STREET, N.E. – SUITE 5200**

**ATLANTA, GEORGIA 30308-2216**

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July 23, 1997

**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/Section 2(10) of the Securities Act of 1933, as amended ("Act")

**Dear Ms. Dixon:**

This firm serves as legal counsel to Brad Hammond and Net Roadshow, Inc. ("Company"). The Company desires to provide road shows for public offerings to qualified investors over the Internet. We would appreciate confirmation in the form of a no-action response of our opinion that our client may provide road shows for public offerings for qualified investors over the Internet under the following facts and circumstances, and that such transmissions will not constitute a "prospectus" pursuant to Section 2(10) of the Act:

#### **FACTUAL BACKGROUND**

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

1. First, a website for road shows regarding public offerings would be established. The website would provide an index of the road shows available for viewing by qualified investors and by the underwriting investment banks. The road shows would be indexed by the name of the offering company, the name of the underwriting investment bank, and by industry classification. The road shows will not be transmitted prior to the filing of a registration statement with the Securities and Exchange Commission ("Commission") as to each applicable offering.
2. To view a road show, the qualified investor would be required to contact an institutional salesman or the syndicate department at one of the underwriting investment banks. The qualified investors will be typical of the investors who would customarily be invited to attend a live road show, such as registered broker/dealers and investment advisers. (Institutional salesmen would also be permitted to call qualified institutional money managers to inform them that it is available for viewing.) An access code will be required to view the road show on the Internet. A log will be maintained of who specifically received the access code. The access code for each road show will be changed each day and each qualified investor will be allowed to view a road show one day only.
3. The Internet road show would be the exact same road show that qualified investors see live, as the live road show will be filmed in its entirety, including the filing of all questions and answers. The live road shows will not be edited for content and viewers will generally view the road shows in their 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 the 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 institutional salesman for further information about such changes.
4. A large and obvious button reading "PRELIMINARY PROSPECTUS" will be displayed at all times throughout the road show. A viewer would simply "click" on the "button" featuring the preliminary prospectus which is on file with the Commission to view it in its entirety.

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

"The copying, downloading or distribution of any road show material is not permitted.

The Internet road show does not constitute a prospectus, in whole or in part. It is strongly recommended that each investor read the actual prospectus before making an investment decision."

The prospectus relating to this offering is available through this site for viewing before viewing the road show. The prospectus may be obtained by clicking on the button labeled "PRELIMINARY PROSPECTUS." Viewers should refer to the prospectus and/or the registration statement for more complete information about the offering.

A registration statement relating to these securities has been filed with the Securities and Exchange commission but has not yet become effective. These securities may not be sold nor offers to buy be accepted prior to the time the registration statement becomes effective. This transmission shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any State."

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 copying, downloading or distribution of any road show material is not permitted."

6. The viewer will be able to print the entire preliminary prospectus. The Company's transmissions include technology designed to prevent the copying, downloading or printing of any portion of the road show transmission other than the preliminary prospectus.

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

8. The issuers and the underwriters of the road shows transmitted will be required to take such steps as are necessary in order to provide that the road show information as transmitted by the Internet is not inconsistent or contradictory with the information set forth in the filed prospectus or in the live road show.

9. 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.

10. We believe that the following benefits would be recognized in the marketplace if the Commission approves the request:

(i) No longer will some institutions and money managers be placed at an advantage over others on syndicate transactions. Our client believes that your approval of this process would "level the playing field" and provide each qualified investor the opportunity to view the road show.

(ii) Money managers located in geographic areas frequently missed by the live road show would be placed on more equal footing.

(iii) There would be wider availability of the road show and the preliminary prospectus to interested money managers.

(iv) The road show and the preliminary prospectus should be distributed faster giving qualified investors more time to make a fully informed investment decision.

(v) The participants in the road show would likely be more precise in the choice of words and graphs knowing the distribution channel and the viewing audience (including, potentially, the Commission).

In summary, we believe that this approach allows for "rapid dissemination of information to investors and financial markets in a more cost-efficient, widespread, and equitable manner," consistent with the recent position of the Commission as provided in Release No. 33-7233.

## LEGAL ANALYSIS

Section 5(b) of the Act makes it unlawful to transmit any "prospectus" unless the prospectus meets the requirements of Section 2(10) of the Act. Section 2(10) of the Act defines "prospectus" to include any "prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security." We believe that the limited transmission by the Company of road shows, over an access code restricted Internet website, to the type of qualified investors who would customarily be invited to attend live road shows would not constitute "prospectuses" requiring compliance with Section 10 of the Act.

Road show presentations that occur after the filing and prior to the effectiveness of the registration statement ordinarily do not constitute "prospectuses" due to the fact that they are oral and visual and are not "written." 2 Thus, transmission of substantially the same communication by means of the Internet should not be deemed prospectuses unless the Internet transmissions constitute "radio" or "television" broadcasts within the meaning of Section 2(10) of the Act. We do not believe that such transmissions by means of the Internet would constitute "radio" or "television" broadcasts.

The use of the terms "radio" or "television" in Section 2(10) of the Act is for the purpose of regulating the "broadcasting" of materials relating to the offer of any security for sale. The intention of Congress as evidenced from the language of the statute was to prevent the broadcasting of a communication regarding the offer or sale of a security to an unlimited audience. 3 The references in Section 2(10) to "radio" or "television" are not intended to prohibit all uses of technology, such as radio or

television or electronic media in the form of the Internet, but only to prohibit the transmission of materials which constitute a broadcast.

The Act specifically provides in Section 10(f) that where a prospectus does consist of a radio or television "broadcast," copies of the materials constituting the prospectus must be filed with the Commission. This provision of the Act indicates that communications which provide the widespread dissemination of information to the public regarding the offer of a security for sale are the types of communications fully within the scope of Section 10(f). The only type of radio or television transmission that could be deemed a prospectus would therefore be a broadcast to a mass audience. Accordingly, the only type of transmission by electronic media, such as the Internet, which could be deemed a prospectus would be a broadcast over the Internet which provided unlimited and widespread dissemination of the material being transmitted. The proposal of the Company will take such steps as are necessary in order to provide that access to the information will be limited so that such transmission will not constitute a broadcast.

While the use of media such as radio and television, and vehicles for electronic communication such as the Internet, have evolved since the adoption of the Act in 1933 and amended thereafter, it remains the intention of Congress for Section 2(10) to regulate broadcasts of information in a widely disseminated manner rather than to a limited audience. In *Gustafson v. Alloyd Co., Inc.*, No. 93-404 (U.S. Feb. 28, 1995) the United Supreme Court recognized this fact by holding, in part, that the term prospectus was intended to be a document which solicited the public to acquire securities. The term was not intended to refer to the dissemination of information to a limited viewing audience as contemplated by the Company.

In summary, references to the words "radio" and "television" in Section 2(10) are intended to prevent unlimited and wide spread dissemination or communication to the public of information regarding an offer for sale of a security without the type of disclosure required by Section 2(10) of the Act. By contrast, the Internet transmissions contemplated by the Company will be restricted in terms of the type of persons or entities to be provided with the access code required to view the transmission. The Company is also utilizing technology designed to prevent the person or entity viewing the presentation from copying, downloading, or otherwise reproducing the road show transmission. The only component of the road show transmitted by the Company over the Internet which may be copied or printed is the preliminary prospectus relating to each offering. The Company has taken these measures in order to provide that the transmission by the Company of road shows by means of the Internet will make the securities markets more efficient, furthering the goals of the Commission as evidenced through the implementation of the EDGAR system and more recently, the adoption of Release No. 33-7233.

## **CONCLUSION**

We believe that the proposal of our client would conform with the beliefs of the Commission that the use of electronic media within the securities industry will make the securities markets more efficient, as evidenced through the implementation of the EDGAR system and more recently, the adoption of Release No. 33-7233.

The presentation of a road show by means of the Internet as described in our client's proposal should be permissible because the information disseminated through the presentation will not constitute a prospectus or a broadcast. Our client's proposal specifically limits access to the transmissions through an access restricted website to the type of qualified investors who would customarily attend a road show, provides that prospective purchasers will not be provided with a paper version of the road show presentation made by means of the Internet, and includes technology designed to prevent the presentation from being copied, printed, or disseminated.

Based on the foregoing facts and analysis, we believe that providing road shows for public offerings to qualified investors over the Internet as described herein will not constitute the use of a "prospectus" under Section 2(10) of the Act. We respectfully request advice that you concur with this view or that the Division will not recommend that the Commission take enforcement action against our client if it engages in the transactions described above. If you wish additional information, or believe that additional representations or clarifications as to the proposed transaction are required before issuing a 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**

July 30, 1997

## **RESPONSE OF THE OFFICE OF CHIEF COUNSEL DIVISION OF CORPORATION FINANCE**

### **Re: Net Roadshow, Inc. ("Net Roadshow")**

Incoming letter dated July 23, 1997

Based on the facts presented, but without necessarily agreeing with your analysis, the Division will not recommend enforcement action to the Commission if Net Roadshow transmits an issuer's road show presentation over the Internet for the purposes and pursuant to the procedures described in your letter in reliance on your counsel's opinion that such transmissions are not prospectuses within the meaning of Section 2(a)(10) of the Securities Act of 1933. The Division notes that a roadshow transmission will not be conducted before the registration statement is filed with the Commission in connection with the particular public offering of securities.

The request for confidential treatment pursuant to Regulation 200.81 has been granted for the earlier of: (i) 120 days from the date of this response, or (ii) the date the information in your letter and this response is made publicly available by Net Roadshow, Inc.

This position is based on the representations and your counsel's opinion made to the Division in your letter. Any different facts or conditions might require different conclusions. Further, this response represents the Division's position on enforcement action only and does not express any legal conclusion on the question presented. Since 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.

Sincerely,

**Mary J. Kosterlitz**

Special Counsel

1The Company reserves the right to edit our "dead time" arising through logistical, organizational, or similar problems at live road shows and to give the issuer and/or underwriter the opportunity to edit our misstatements or mistakes.

2The communications, while not prospectuses, remain subject to the anti-fraud provisions of the Act and the Securities Exchange Act of 1934, as amended.

3Section 10(f) provides that "in any case where a prospectus consists of a radio or television broadcast, copies thereof shall be filed with the Commission under such rules and regulations as it shall prescribe."