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I N S E N A T E

May 7, 2010

Introduced by Sen. FOLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to the further state notice filing requirement

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 2 of section 359-c of the general business law,
2 as amended by chapter 166 of the laws of 1991, is amended to read as
3 follows:

4 2. The department of state shall collect a fee of seventy-five dollars
5 for filing and publishing each state notice and each further state
6 notice, EXCEPT THAT, IN THE CASE OF A FURTHER STATE NOTICE FILED BY A
7 DEBT EVADING FOREIGN STATE OR A STATE-OWNED CORPORATION OF A DEBT EVAD-
8 ING FOREIGN STATE, THE DEPARTMENT OF STATE SHALL COLLECT A FEE FOR
9 FILING AND PUBLISHING EACH SUCH FURTHER STATE NOTICE IN AN AMOUNT EQUAL
10 TO THE GREATER OF FIFTEEN MILLION DOLLARS OR ONE AND A HALF PERCENT OF
11 THE AGGREGATE OFFERING AMOUNT OR, IN THE CASE OF DEBT SECURITIES, THE
12 AGGREGATE PRINCIPAL AMOUNT, OF (A) IN THE CASE OF AN OFFERING PURSUANT
13 TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE UNITED STATES SECURI-
14 TIES ACT OF 1933, ALL SECURITIES COVERED BY SUCH REGISTRATION STATEMENT,
15 OR (B) IN THE CASE OF ANY OTHER OFFERING, ALL SECURITIES OFFERED BY SUCH
16 DEBT EVADING FOREIGN STATE OR STATE-OWNED CORPORATION OF A DEBT EVADING
17 FOREIGN STATE (WHETHER IN NEW YORK OR IN ANY OTHER STATE) AS PART OF THE
18 SAME OFFERING AND IN ANY RELATED OFFERING.

19 S 2. Section 359-c of the general business law is amended by adding a
20 new subdivision 3 to read as follows:

21 3. THE FOLLOWING TERMS, WHENEVER USED OR REFERRED TO IN THIS ARTICLE,
22 SHALL HAVE THE FOLLOWING MEANING UNLESS A DIFFERENT MEANING CLEARLY
23 APPEARS FROM THE CONTEXT:

24 (A) "AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE" SHALL MEAN ANY
25 ENTITY:

26 (1) WHICH IS A SEPARATE LEGAL PERSON, CORPORATE OR OTHERWISE, AND

27 (2) WHICH IS AN ORGAN OF A FOREIGN STATE OR A PROVINCE OR POLITICAL
28 SUBDIVISION THEREOF, OR A MAJORITY OF WHOSE SHARES OR OTHER OWNERSHIP

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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INTEREST IS OWNED BY A FOREIGN STATE OR A PROVINCE OR POLITICAL SUBDIVISION THEREOF, AND

(3) WHICH IS NEITHER A CITIZEN OF A STATE OF THE UNITED STATES, NOR CREATED UNDER THE LAWS OF OF ANY THIRD COUNTRY.

(B) "FINAL JUDGMENT" SHALL MEAN ANY JUDGMENT THAT IS NO LONGER ELIGIBLE TO BE APPEALED TO ANY COURT.

(C) "FOREIGN STATE" SHALL MEAN ANY GOVERNMENTAL UNIT OTHER THAN THE UNITED STATES, OR ANY STATE, DISTRICT, COMMONWEALTH, TERRITORY, OR INSULAR POSSESSION THEREOF, AND INCLUDES A PROVINCE OR POLITICAL SUBDIVISION OF A FOREIGN STATE.

(D) (1) "DEBT EVADING FOREIGN STATE" SHALL MEAN ANY FOREIGN STATE THAT:

(I) HAS ONE OR MORE FINAL JUDGMENTS ENTERED AGAINST IT BY ANY STATE OR FEDERAL COURT LOCATED IN NEW YORK, INCLUDING ANY FINAL JUDGMENT ORIGINALLY ISSUED IN A FOREIGN COURT THAT IS FILED OR REGISTERED IN NEW YORK, IN THE COMBINED AMOUNT OF WHICH JUDGMENTS EXCEED ONE HUNDRED MILLION DOLLARS;

(II) FAILS TO SATISFY IN FULL ANY SUCH JUDGMENT FOR A PERIOD OF MORE THAN TWO YEARS AFTER THE JUDGMENT BECOMES A FINAL JUDGMENT, REGARDLESS OF WHETHER SUCH JUDGMENT BECAME A FINAL JUDGMENT BEFORE THE DATE OF THE ENACTMENT OF THIS SUBDIVISION; AND

(III) IS NOT A FOREIGN STATE ELIGIBLE FOR:

(A) FINANCING THROUGH THE INTERNATIONAL DEVELOPMENT ASSOCIATION (UNLESS SUCH STATE IS ELIGIBLE FOR FINANCING FROM THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT); OR

(B) DEBT RELIEF UNDER THE ENHANCED HIPC INITIATIVE (AS DEFINED IN SECTION 1625(E)(3) OF THE UNITED STATES INTERNATIONAL FINANCIAL INSTITUTIONS ACT); OR

(C) DEBT RELIEF UNDER THE MULTILATERAL DEBT RELIEF INITIATIVE OF THE INTERNATIONAL MONETARY FUND.

(2) FOR PURPOSES OF THIS SUBDIVISION, REFERENCES TO A DEBT EVADING FOREIGN STATE SHALL INCLUDE ANY AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE AND STATE-OWNED CORPORATION OF A DEBT EVADING FOREIGN STATE, AS DEFINED IN THIS SUBDIVISION.

(E) "STATE-OWNED CORPORATION OF A DEBT EVADING FOREIGN STATE" SHALL MEAN ANY CORPORATION OR ENTITY, OTHER THAN A NATURAL PERSON:

(1) THAT IS AN AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE THAT IS A DEBT EVADING FOREIGN STATE; OR

(2) A MAJORITY OF THE SHARES OR OTHER OWNERSHIP INTEREST OF WHICH IS HELD, EITHER DIRECTLY OR INDIRECTLY, BY A DEBT EVADING FOREIGN STATE OR BY AN AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE THAT IS A DEBT EVADING FOREIGN STATE.

S 3. Subdivision 8 of section 359-e of the general business law, as added by chapter 692 of the laws of 1959, is amended to read as follows:

8. (A) After this subdivision as hereby amended takes effect no dealer shall sell or offer for sale to the public within this state as principal or agent, any securities issued or to be issued which are not exempted from the provisions of this subdivision by section three hundred [and] fifty-nine-f hereof unless and until such dealer shall cause to be filed a "further state notice" containing the information, other than the names of partners, required to be published by subdivision two of this section, but opposite the heading "name of dealer", if the person or persons causing such notice to be filed are acting pursuant to the provisions of this subdivision, there shall be added either the words "syndicate manager" or "syndicate managers" as the case may be; and in addition thereto and as part of each such further state

1 notice the name of the security or securities, name, post office address
2 and state or country of incorporation or organization of the corpo-
3 ration, association, common law trust or similar organization issuing or
4 to issue the security or securities to be sold or offered for sale, in
5 the following form:

6 FURTHER STATE NOTICE

7 Name of security or securities
8 Name of issuer of securities
9 Post Office address of issuer of securities
10 The state or country in which organized

11 Two or more dealers may jointly file such further state notice
12 required by this subdivision, and a dealer or exchange must file a
13 further state notice for each issue about to be offered which has not
14 heretofore been published by the issuer. A syndicate manager or co-man-
15 ager with an office in this state may file on behalf of an entire syndi-
16 cate.

17 (B) NO DEBT EVADING FOREIGN STATE SHALL DIRECTLY OR INDIRECTLY (WHETH-
18 ER THROUGH A BROKER OR AGENT, IN AN UNDERWRITTEN OFFERING OR OTHERWISE)
19 SELL OR OFFER FOR SALE TO THE PUBLIC WITHIN THIS STATE ANY SECURITIES
20 ISSUED OR TO BE ISSUED UNLESS AND UNTIL SUCH DEBT EVADING FOREIGN STATE
21 SHALL HAVE: (1) CAUSED TO BE FILED A "FURTHER STATE NOTICE" CONTAINING
22 THE NAME OF THE SECURITY OR SECURITIES TO BE SOLD OR OFFERED FOR SALE
23 AND THE NAME, POST OFFICE ADDRESS AND, IF APPLICABLE, THE STATE OR COUN-
24 TRY OF INCORPORATION OR ORGANIZATION OF THE CORPORATION OR ENTITY ISSU-
25 ING OR TO ISSUE THE SECURITY OR SECURITIES TO BE SOLD OR OFFERED FOR
26 SALE, IN THE FORM SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVISION; AND
27 (2) PAID ANY FEES REQUIRED TO BE PAID BY IT PURSUANT TO SUBDIVISION TWO
28 OF SECTION THREE HUNDRED FIFTY-NINE-C OF THIS ARTICLE. NO SALE OR OFFER
29 FOR SALE TO THE PUBLIC WITHIN THIS STATE BY A DEBT EVADING FOREIGN STATE
30 (WHETHER MADE DIRECTLY OR INDIRECTLY, THROUGH A BROKER OR AGENT, IN AN
31 UNDERWRITTEN OFFERING OR OTHERWISE) OF SECURITIES ISSUED OR TO BE ISSUED
32 THAT IS PENDING ON THE DATE THIS PARAGRAPH TAKES EFFECT MAY BE CONSUM-
33 MATED (IN THE CASE OF A SALE) OR CONTINUE (IN THE CASE OF AN OFFER FOR
34 SALE) UNLESS AND UNTIL SUCH DEBT EVADING FOREIGN STATE SHALL HAVE
35 COMPLIED WITH THE REQUIREMENTS OF THE FIRST SENTENCE OF THIS PARAGRAPH.
36 AS USED IN THIS PARAGRAPH, THE TERMS "SALE" AND "OFFER FOR SALE" SHALL
37 INCLUDE, WITHOUT LIMITATION, ANY EXCHANGE OFFER BY A DEBT EVADING
38 FOREIGN STATE AND ANY EXCHANGE OF SECURITIES PURSUANT TO SUCH AN OFFER.

39 S 4. Paragraph (b) of subdivision 1 of section 359-f of the general
40 business law, as amended by chapter 980 of the laws of 1946, is amended
41 to read as follows:

42 (b) Any security issued or guaranteed by the Dominion of Canada or by
43 any foreign government with which the United States is at the time of
44 the sale or offer for sale thereof maintaining diplomatic relations
45 (OTHER THAN A DEBT EVADING FOREIGN STATE), or by any province or poli-
46 tical subdivision thereof.

47 S 5. This act shall take effect immediately.