S T A T E O F N E W Y O R K

7768--B

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 -- committee discharged and said bill committed to the Committee on Banks -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

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

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

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

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

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

(2) WHICH IS AN ORGAN OF A FOREIGN STATE OR A PROVINCE OR POLITICAL SUBDIVISION THEREOF, OR A MAJORITY OF WHOSE SHARES OR OTHER OWNERSHIP 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 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; 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 notice the name of the security or securities, name, post office address and state or country of incorporation or organization of the corporation, association, common law trust or similar organization issuing or to issue the security or securities to be sold or offered for sale, in the following form:

FURTHER STATE NOTICE

Name of security or securities .....
Name of issuer of securities .....
Post Office address of issuer of securities .....
The state or country in which organized .....

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

(B) NO DEBT EVADING FOREIGN STATE SHALL DIRECTLY OR INDIRECTLY (WHETHER THROUGH A BROKER OR AGENT, IN AN UNDERWRITTEN OFFERING OR OTHERWISE) SELL OR OFFER FOR SALE TO THE PUBLIC WITHIN THIS STATE ANY SECURITIES ISSUED OR TO BE ISSUED UNLESS AND UNTIL SUCH DEBT EVADING FOREIGN STATE SHALL HAVE: (1) CAUSED TO BE FILED A "FURTHER STATE NOTICE" CONTAINING THE NAME OF THE SECURITY OR SECURITIES TO BE SOLD OR OFFERED FOR SALE AND THE NAME, POST OFFICE ADDRESS AND, IF APPLICABLE, THE STATE OR COUNTRY OF INCORPORATION OR ORGANIZATION OF THE CORPORATION OR ENTITY ISSUING OR TO ISSUE THE SECURITY OR SECURITIES TO BE SOLD OR OFFERED FOR SALE, IN THE FORM SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVISION; AND (2) PAID ANY FEES REQUIRED TO BE PAID BY IT PURSUANT TO SUBDIVISION TWO OF SECTION THREE HUNDRED FIFTY-NINE-C OF THIS ARTICLE. NO SALE OR OFFER FOR SALE TO THE PUBLIC WITHIN THIS STATE BY A DEBT EVADING FOREIGN STATE (WHETHER MADE DIRECTLY OR INDIRECTLY, THROUGH A BROKER OR AGENT, IN AN UNDERWRITTEN OFFERING OR OTHERWISE) OF SECURITIES ISSUED OR TO BE ISSUED THAT IS PENDING ON THE DATE THIS PARAGRAPH TAKES EFFECT MAY BE CONSUMMATED (IN THE CASE OF A SALE) OR CONTINUE (IN THE CASE OF AN OFFER FOR SALE) UNLESS AND UNTIL SUCH DEBT EVADING FOREIGN STATE SHALL HAVE COMPLIED WITH THE REQUIREMENTS OF THE FIRST SENTENCE OF THIS PARAGRAPH. AS USED IN THIS PARAGRAPH, THE TERMS "SALE" AND "OFFER FOR SALE" SHALL INCLUDE, WITHOUT LIMITATION, ANY EXCHANGE OFFER BY A DEBT EVADING FOREIGN STATE AND ANY EXCHANGE OF SECURITIES PURSUANT TO SUCH AN OFFER.

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

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

S 5. This act shall take effect immediately.