

Message

From: Parker Lewis [PL@haymancapital.com]
Sent: 10/4/2016 6:19:19 PM
To: J. Kyle Bass [k@haymancapital.com]; Dan Babich [DB@haymancapital.com]; Brandon Osmon [bo@haymancapital.com]; Davis Hostetter [dh@haymancapital.com]; Steele Schottenheimer [ss@haymancapital.com]; Kathryn E. Mueller [KM@haymancapital.com]
Subject: Letter to Nasdaq
Attachments: image001.jpg; Nasdaq Letter_Signed_Sent 10.4.16.pdf

Attached is the letter that Morgan Lewis sent to Nasdaq on our behalf related to the continued UDF halt.

[cid:image001.jpg@01C84251.44A3D170]

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October 4, 2016

Alan Rowland
NASDAQ Stock Market LLC
805 King Farm Boulevard, 1st Floor,
Rockville, Maryland 20850

Dear Sir or Madam:

I am writing at the request of Hayman Capital Management L.P. ("Hayman") to express its concerns regarding the continued halt imposed on trading in the common equity of United Development Funding IV ("UDF" or "the Company") on the NASDAQ Global Select Market. Hayman is the adviser to a private investment fund that has established a short position in the securities of UDF. Trading in UDF shares was halted by NASDAQ on February 18, 2016 after federal authorities executed a search warrant at UDF's corporate headquarters and served executive officers with grand jury subpoenas. To date, UDF has failed to file its Annual Report on Form 10-K with the Securities and Exchange Commission ("SEC") for fiscal year ending December 31, 2015. UDF has also failed to file its Quarterly Reports on Form 10-Q for the quarters ended March 31 and June 30, 2016 to date. Consequently, UDF shares have remained halted for the past seven months.

Background

The NASDAQ Stock Market LLC ("Nasdaq") notified UDF on March 17, 2016 that it was not in compliance with Nasdaq Listing Rule 5250(c)(1) because it had failed to timely file its Form 10-K. On September 14, 2016, UDF announced that the Nasdaq Hearings Panel (the "Panel") granted another extension of the exception previously granted for continued listing of UDF's common shares on Nasdaq. UDF's continued listing is subject to the condition that, on or before October 17, 2016, UDF becomes current in its periodic filings with the SEC. The extension to October 17, 2016 follows repeated extensions of previous deadlines based on UDF's unrealistic representations of its ability to become current in its SEC filings that UDF failed to meet. For example, UDF submitted a plan to regain compliance with Nasdaq's listing requirements on May 16, 2016, waiting the maximum 60 days following the deficiency notification. The Nasdaq Staff (the "Staff") rejected UDF's plan and notified UDF of its determination to delist on May 26, 2016, due to UDF's continued non-compliance with the applicable listing rule. In its May 26, 2016 response, the Staff indicated that because UDF's plan was predicated on the engagement of a new audit firm, the Staff believed that UDF's plan was not sufficiently definitive and may not be completed within the discretionary period available to the Staff.

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UDF appealed Nasdaq's decision and a hearing was held before Nasdaq's Hearings Panel on July 7, 2016. UDF has disclosed that it presented its plan to evidence compliance with all applicable criteria for continued listing. On July 26, 2016, UDF disclosed that the Panel determined to continue listing UDF's shares on the condition that on or before September 12, 2016, UDF comply with its SEC filing requirements. Despite the fact that a new auditing firm was only retained a few weeks earlier, on June 8, 2016, UDF stated that it expected to meet the September 12 deadline. That deadline has now passed, yet the Hearings Panel has granted another five-week extension.

In light of certain corporate developments, it was unreasonable in connection with the July extension for UDF to represent, and for the Hearings Panel to accept, that the new audit firm would complete an audit in the 90-day period following its engagement, especially considering the overhang of criminal and civil investigations by federal authorities. Those certain corporate developments make clear that UDF's request for an additional extension served no other purpose than to delay. These disclosed events included:

- The resignation of the Company's previous auditor on November 19, 2015, after being reappointed to audit the Company for that year at the Company's annual meeting in June 2015. UDF has inconsistently described the auditor's action as declining to stand for reappointment (after being appointed by UDF's board and approved by shareholders) for the 2015 fiscal year, but eventually accurately described it as a resignation in later Form NT-10Q filings.
- Certain events of default under the Company's lending agreements effective as of March 4, 2016 (prior to the Form 10-K filing deadline); however, UDF failed to disclose the circumstances until May 23, 2016, which were disclosed as part of a forbearance agreement entered into on May 17, 2016, in which the Lenders agreed to forbear from exercising any of their default-related rights against UDF until August 4, 2016. Under the Forbearance Agreement, UDF agreed to suspend its regular monthly cash distributions to its shareholders during the Forbearance Period.
- Ongoing investigations by the SEC and FBI concerning UDF and its external management which led to the execution of a search warrant of UDF's offices and the issuance of grand jury subpoenas.

Discussion

Nasdaq Listing Rule 5815 empowers, but does not require, the Panel to grant an exception to the SEC reporting listing requirement for a period not to exceed 360 days from the due date of the first such late periodic report. That authority, however, must be exercised after considering all the facts and circumstances:

In determining whether to grant an exception, and the length of any such exception, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body. [5815(c)(1)(f)]

It is not clear that the Hearings Panel has adequately considered these criteria in connection with its repeated extensions.

- **The likelihood that the audit can be completed and that necessary filings can be made within the exception period**

Given (i) that UDF stated on July 26, 2016 that it expected to be current by September 12, 2016; (ii) UDF made that representation when a new auditor was only retained approximately 90 days prior to the deadline; (iii) UDF previously failed to meet the condition for continued listing on or before September 12, 2016; (iv) the numerous red flags which have been identified regarding UDF's financial condition and disclosures, including its failure to timely pay creditors and subsequent acknowledgement of events of default (notably circumstances which are completely inconsistent with the Company's latest stated financial position); and (v) ongoing federal investigations, how did the Panel determine that there was a likelihood that the filings can be made within the newly granted exception period which contemplates only approximately four months to complete an audit of the Form 10-K and the review of two Forms 10-Q? The Staff apparently shared this concern when it denied the initial extension based on its conclusion that the Company's plan was not sufficiently definitive and may not be completed within the discretionary period available to the Staff. Notably, unlike its July 2016 assurance that it expected to meet the September 2016 deadline, UDF's September announcement of the additional extension did not even state that it expected to meet the new deadline.

- **The reasons for the late filing**

UDF has not provided any explanation why its former auditor, Whitley Penn LLP, which had audited UDF since inception (2009) and its affiliated public programs since 2003 (13 years) suddenly resigned concurrently as the auditor of UDF and all of UDF's affiliated public programs. Furthermore, UDF has also not provided any explanation why it took over 200 days to retain a new auditor and only after the Staff's determination to delist UDF on May 26, 2016, after it found that the Company's plan to seek a replacement auditor was too vague. The continued extensions of the trading halt only serves the interest of UDF's external management, as it protects them from market reaction to their delinquencies, loan defaults and regulatory problems.

- **Corporate events that may occur within the exception period**

In light of the recent default and forbearances under the lending agreements, the suspension of its monthly cash distributions, as well as the ongoing federal investigations, it is clear that significant negative developments have occurred throughout the delinquency period. The Staff apparently cited its concerns about the separate SEC and FBI investigations in initially denying an extension.

- **Going concern issues related to the Company's general financial status**

Given the repeated failures to timely pay creditors and subsequent acknowledgement of events of default (circumstances which are completely inconsistent with the Company's latest stated financial position), as well on the ongoing SEC investigation, how did the

Panel determine that the Company's general financial status was supportive of an extension of a previously granted exception?

- **The Company's conflicting disclosures to the market**

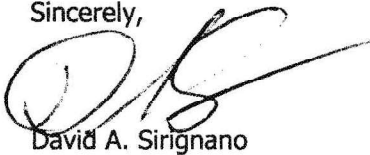
Given the contradictions in its disclosures to the market, notably first that (i) its auditor was reappointed and approved by shareholders, and then that (ii) its auditor declined to stand for reappointment and later that (iii) its auditor had actually resigned which is why it was unable to timely file its financials, how did the Panel, upon review of the Company's disclosures to the market, determine that representations made by the Company were dependable and supportive of a further extension? Although UDF's initial disclosure of an SEC investigation was not made until December 10, 2015, the investigation had been ongoing since 2014 as later disclosed by UDF. While UDF stated that the SEC had advised UDF that its investigation was not indicative of any wrongdoing at the time of the initial disclosure, federal authorities subsequently conducted a search of UDF's offices pursuant to a warrant and issued grand jury subpoenas.

Requested Action

Given the scope and gravity of the information presented for the Panel's consideration, Hayman requests that the Panel not grant UDF any further extensions. If, however, another extension somehow is found preferable to immediate delisting, Hayman requests that Nasdaq lift the trading ban to allow all investors to make independent, prudent decisions taking into consideration all publicly available information, including UDF's continued reporting delinquencies and false assurances of its ability to become compliant, as well as its interim disclosure of defaults on its lending agreements, suspension of monthly cash distributions, and active federal law enforcement investigations.

After repeatedly failing to meet past deadlines, should UDF fail to meet Nasdaq's current deadline, any representations and further assurances made by UDF's external management of its ability to become compliant should not be afforded any credibility; rather, these efforts should be viewed for what they are, as delaying tactics intended to benefit only UDF's external management.

Sincerely,



David A. Sirignano

c: P. Lewis, Hayman Capital