

SHAREGIFT USA WHITE PAPER MAKING SHARES MAKE A DIFFERENCE

SETTING THE STAGE FOR INNOVATIONS IN CHARITABLE GIVING

An enabling approach under U.S. securities laws

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Introduction

This White Paper introduces an innovative way of facilitating charitable giving by shareholders in the U.S. These efforts are accomplished by including a “check the box” charitable giving option on the documentation that is normally communicated to shareholders as part of corporate transactions. By checking the box, charitably-minded shareholders can donate some or all their shares or other transaction proceeds. ShareGift USA then aggregates and sells the donated shares and then gives the proceeds to not-for-profit and other charitable organizations.

As an organization recognized as exempt from tax under 501(c)(3) of the Internal Revenue Code, we aim to provide shareholders with an easy and efficient means of making charitable contributions that may be tax deductible for eligible U.S. taxpayers. Our initiatives facilitate giving by eliminating needless transaction costs, making it easier for shareholders to donate and thereby increasing the likelihood that they will do so.

ShareGift USA began its activities in accessing “found money” by encouraging shareholders to donate dormant “odd-lot” shareholdings by participating in corporate odd-lot tender offer programs. ShareGift USA now seeks to expand charitable share and transaction proceed donation programs to a variety of corporate transactions, thereby providing all shareholders, regardless of the size of their holdings, the opportunity to make a difference. In particular, we are focused on fully integrating ShareGift USA’s program on a national scale for all major tender offer and merger and acquisition transactions.

As described more fully below, the details are simple and the plan is uncontroversial. Because we rely on existing corporate infrastructure and communications, ShareGift USA has the opportunity to tap into a new charitable giving market at little to no marginal cost to any constituent. Corporations, shareholders, policy makers and securities market professionals immediately see the value in ShareGift USA’s model. And, after reading this White Paper, we hope that you too will come to the conclusion that every effort should be made to facilitate ShareGift USA’s goals.

So, what stands in the way of immediate implementation? While the model already has a proven track record in the U.K., experience in the U.S. is limited. Understandably, in the current legal environment, corporations and their outside advisors are reluctant to adopt new ideas without reasonable assurance that liability and regulatory exposure can be minimized. The purpose of this White Paper is, in part, to educate regulators and securities market professionals as to the legal issues that underlie ShareGift USA’s model. Principally, we examine whether ShareGift USA’s activities should be viewed as tender offers or proxy solicitations or whether ShareGift USA could be viewed as an underwriter in stock-based transactions. In our view, the risks of harm are practically nil as the model is uniquely tailored to limit legal and regulatory risk, particularly the securities laws. In addition, this White Paper is a precursor to specific regulatory guidance that ShareGift USA expects to seek from the Securities and Exchange Commission (the “SEC”) to give further comfort to future constituents.

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I. ShareGift USA: Making Shares Make a Difference

A. ShareGift USA's Organizational History

ShareGift USA was founded in 2004, inspired by the success of ShareGift, the share donation charity in the U.K. ("ShareGift U.K."), which was established in 1996. Over the last decade, ShareGift U.K. has given millions of pounds to hundreds of different charities in the U.K. ShareGift USA is building on the work of ShareGift U.K. by providing a valuable service to individuals and corporations and by contributing substantial sums to U.S. charities.

B. Umbrella for Fund Raising

As an umbrella charity, ShareGift USA's primary objective is to garner as much funding into the hands of worthy charities as possible. We anticipate receiving donations from a wide array of individuals located in all parts of the U.S., and our donation policy seeks to reflect this diverse donor base. Upon receiving title to donated shares, ShareGift USA monetizes the shares and allocates the cash proceeds to selected charities. Specifically, based on rigorous criteria, we select leading national charitable organizations that reflect the philanthropic patterns of generous Americans and that have both a track record of success and a high efficiency rating. The initial charities that were selected focus on education, health, human services, public society, and the environment. We do not accept applications from charities seeking funding, and, over time, ShareGift USA will select additional charities that meet our selection standards. Moreover, none of ShareGift USA's board members receives any direct or indirect benefit for our programs.

C. Corporate Share Donation Programs

We anticipate using a wide range of mechanisms to facilitate share donation initiatives. One such mechanism is the inclusion of information about ShareGift in companies' annual and interim reports and proxy statements. In the U.K., companies such as Vodafone, Hanson PLC, and Centrica have included mentions of ShareGift in reports to shareholders. Also, companies such as Amersham and Kingfisher PLC have listed ShareGift as a service available to shareholders in investor relations information, in shareholder brochures or on corporate web sites.

We foresee engaging with companies to incorporate a donative option into share sale or issuance programs. This can take place as part of dividend reinvestment programs or employee stock issuance schemes or whenever a company issues stock dividends. For example, in the U.K., Cadbury Schweppes includes ShareGift U.K. as an option as part of its dividend reinvestment plan.

Additionally, we intend to work with corporations to present a charitable donation option whenever a corporation is repurchasing its shares. We have already worked with Gannett to provide shareholders the option of donating shares as part of an odd-lot repurchase initiative. In October of 2005, Gannett commenced a voluntary program by which holders of less than 100 shares were given the opportunity to (1) sell all their shares, (2) purchase enough additional shares to increase their holdings to 100 shares, or (3) donate their shares to ShareGift USA. Gannett approached approximately 7400 of its shareholders, 1463 of whom elected to participate

in the program, and approximately 4% of the participants elected to donate their shares to ShareGift USA. Circuit City participated in a similar odd-lot tender offer program in early 2006.

We believe the greatest potential for charitable share donation programs to make a difference lies in integrating such initiatives into major capital market and business combination transactions. In particular, tender offers and mergers and acquisitions provide a promising avenue for increased charitable donations. When major transactions occur, retail shareholders often receive small amounts of cash or stock consideration in exchange for their current shareholdings. By working with corporations, their attorneys, and investment bankers, we can provide shareholders with an efficient option of donating to charity all or part of the consideration they expect to receive in a transaction.

By way of example, in the U.K. shareholders of acquired corporations have been given the opportunity to donate their shares to ShareGift U.K. rather than submitting the required paperwork, including their old share certificates, in exchange for shares of the acquirer. This was the case when Aviva PLC acquired General Accident PLC in June of 1998. Similarly, when E.On U.K. PLC acquired Powergen PLC in July of 2002, former Powergen shareholders were cashed out at £7.65 per share. Many shareholders never acted on their right to payment, and in response, E.On U.K. offered these shareholders the right to donate their transaction proceeds to ShareGift U.K.

There are other areas where we believe that ShareGift USA can access small shareholders, including class action suits. In all such cases, shareholders are entitled to relatively minor amounts of consideration on an individual basis. By working with claims administrators, ShareGift USA can offer these shareholders the ability to donate these amounts to charity. ShareGift USA also plans to work with retail brokerage firms to offer their clients the ability to clean up their accounts and donate small holdings.

Individual donations may be small, but when aggregated across thousands or millions of donors, the results can be substantial. ShareGift USA can process share donations more efficiently than individuals can on their own, and we believe that a charitable option can provide a heretofore missing incentive for individuals to donate their smaller shareholdings. Furthermore, because most of our operating costs are donated or underwritten, we are able to pass through virtually all of its donations to the selected charities.

D. A Classic Win-Win Proposition

We want to give shareholders the choice of making their shares make a difference. ShareGift USA allows donors to be part of a collective giving effort, a new force in U.S. philanthropy. While individual philanthropy has long been considered the purview of the very wealthy, ShareGift USA allows individual donors to leverage their assets by pooling their gifts for greater impact. Small holdings, when aggregated, make a huge difference. Moreover, by donating their shares to ShareGift USA, eligible donors may receive a tax deduction on their U.S. income tax returns.

The concept originated with ShareGift U.K. in response to the phenomenon of dormant odd lots of shares (i.e., shareholdings of less than 100 shares per holder). Shareholders

may hold small numbers of shares for a variety of reasons—because of acquisitions, spin-offs, bankruptcies, or employee ownership plans. Often, the value of a small holding does not warrant the effort or expense necessary to sell the shares, or shareholders may find that there may be a limited market for odd lots. Consequently, those shareholders may ignore their holdings.

At the same time, however, corporations must still spend considerable sums in connection with providing those holders with regular communications and other required disclosures. By eliminating the costs of communicating with small holders, corporations realize an immediate benefit. A 1998 PricewaterhouseCoopers audit for the New York Stock Exchange estimated the average annual servicing cost per shareholder at approximately \$19.88.¹ According to Georgeson Communications, a leading proxy solicitation and consulting firm, 48% of a given corporation's shareholders own odd lots of shares, but these shareholders account for only 0.05% of the shares voted at annual meetings. While all shareholders are important, it may be in the interests of corporations and shareholders alike to reduce the number of odd lots held by shareholders. ShareGift USA works with corporations and their advisors to help them identify these holders and to encourage them to donate their holdings, thereby consolidating odd-lot shares and reducing costs.

ShareGift USA's existing practices, such as the program undertaken by Gannett and Circuit City, do not suffer from legal uncertainty because purchases of odd lots are exempt from many of the rules applicable to general tender offers.² The comprehensive odd-lot exemptions have facilitated charitable giving of small shareholdings, but those exemptions do not specifically apply to charitable efforts that can provide all shareholders—regardless of the size of their holdings—the opportunity to donate their shares for a worthy cause in an efficient manner. As this White Paper demonstrates, however, the other donation programs envisioned by ShareGift USA are consistent with both a straightforward reading of the securities laws and the supporting case law.

E. A Proven Success: The U.K. Example

ShareGift U.K. has over 10 years of experience and has raised more than £10m for U.K. charities. Over 50% of FTSE 100 companies have undertaken programs in the U.K. with ShareGift; participants include such well-known companies as Barclays, BAA plc, and Marks & Spencer. The donation option is regularly included in company-led sale and share purchase offers, as well as in mergers and acquisitions.

Recently, the Rt. Hon. Gordon Brown, Member of Parliament, Chancellor of the Exchequer, acknowledged ShareGift U.K.'s impact on charitable giving in the U.K. In applauding ShareGift U.K.'s co-founders, Mr. Brown noted:

“I want to congratulate Claire [Mackintosh] and her co-founder of ShareGift, Matthew Orr on their initiative, firstly on setting up this unique organization and then on how they have managed to draw together so many different aspects of the business world to make it work at such a high level in just ten years. It is such an obvious idea, but very hard indeed to put into practice.

It is a particular tribute to their achievement that other countries, including the United States, have begun to react to this U.K. success story by setting up a ShareGift of their own, based on Claire's and Matthew's proven model."

The fact that the ShareGift strategy has not yet caught on in the U.S. can be linked primarily to legal uncertainty. Because the potential for benefit is so appreciable and there are no apparent negative consequences, the SEC has the unique opportunity to help remove the unnecessary legal uncertainty that is currently preventing the widespread outgrowth of this emerging philanthropic phenomenon.

II. Regulatory Uncertainty Impedes Charitable Giving

A. The SEC's Pivotal Role

Because of the relatively limited experience with ShareGift USA's programs in the U.S., the SEC can help by removing unnecessary regulatory uncertainty that currently clouds charitable giving in this context. Our experience is that many corporations are interested and excited about participating in our programs beyond odd-lot tender offers, but they are searching for some affirmation that they will not take on meaningful legal risk as a consequence of their participation.

The securities laws were enacted to protect individual investors, and it would be a terrible irony if these same laws are allowed to impede charitable giving by willing, benevolent shareholders. With express regulatory authorization, ShareGift USA will be able to harness the great potential for charitable giving that lies dormant in the area of corporate tender offers, mergers and acquisition and similar transactions. Because charitable share donations neither raise risks of abuse nor contravene the purposes underlying the securities laws, the SEC should not hesitate to expressly adopt a position reflecting agreement with the legal positions described below. The discussion that follows addresses existing areas of legal uncertainty, all reaching the same conclusion that ShareGift USA's proposals for obtaining donations do not run afoul of applicable securities laws.

B. Requests for Donations Are Not Tender Offers

ShareGift USA may request donations of shares in any number of contexts, including in connection with an issuer's self tender for its stock or as part of the consideration payout process in a merger or acquisition. Regardless of the context, ShareGift USA's activities should not be viewed as engaging in a tender offer. The SEC uses an eight-factor test to determine whether a transaction is a tender offer under the securities laws. The factors include whether:

- (1) an active, widespread solicitation is made for securities of an issuer;
- (2) the solicitation is made for a substantial percentage of the issuer's securities;
- (3) the offer to purchase is made at a premium over the prevailing market price;
- (4) the terms of the offer are firm rather than negotiable;

- (5) the offer is contingent on the tender of a fixed minimum number of securities and often subject to a ceiling of a fixed maximum number of securities to be purchased;
- (6) the offer is open only for a limited period of time;
- (7) the offerees are subject to pressure to sell their stock; and
- (8) public announcements of an acquisition program precede or accompany the accumulation of securities.³

Not all courts have strictly adhered to this formulation in determining whether a transaction is a tender offer. In Hanson Trust PLC v. SCM Corp.,⁴ the Second Circuit court of appeals focused on whether a given solicitation implicates the “purpose of the Williams Act,” namely the protection of shareholders faced with a potentially coercive cash offer in a situation in which they lack adequate information.⁵ The court did recognize, however, that such an inquiry will often turn on some combination of the SEC’s eight factors.

A ShareGift USA request for charitable donations does not reflect the traditional indicia of a tender offer. Most notably, ShareGift USA does not attempt to purchase shares, let alone offer a premium over the market price.⁶ Moreover, ShareGift USA does not condition acceptance of donations on receipt of a minimum number of shares, nor is the organization only willing to accept a given maximum number of shares.⁷ The lack of a minimum share requirement counsels strongly against a conclusion that a request for charitable donations is a tender offer.⁸ Furthermore, ShareGift USA does not limit the time period during which it will accept donations.⁹

The dispositive factor is that ShareGift USA’s request for donations is in no way coercive. All transfers of shares will take place solely at the discretion of donating shareholders. The Williams Act intended to protect shareholders of target companies from acting “hastily” in response to coercive tender offers used to achieve corporate control.¹⁰ The Williams Act is concerned with coercion that is caused by a “high premium with a threat that the offer will disappear within a certain time.”¹¹ This is not an issue when ShareGift USA is requesting voluntary donations from shareholders.

Because ShareGift USA’s activities do not implicate the traditional concerns of the securities laws, and because the requests for charitable donations do not meet the crucial factors of the SEC’s test, the requests are not tender offers.

C. Requests for Donations Are Not Proxy Solicitations

Under Section 14(a) of the Securities Exchange Act of 1934, as amended (the “1934 Act”), the solicitation of proxies with respect to securities registered pursuant to Section 12 of the 1934 Act must comply with the applicable rules and regulations promulgated by the SEC. If an issuer chooses to include information in its proxy solicitations that will provide shareholders the option of donating shares to ShareGift USA—such as, for example, as part of a solicitation for approval of a merger— ShareGift USA’s information and participation should not be viewed as a proxy solicitation.

The rules governing proxy solicitations apply to “writings which are part of a continuous plan ending in solicitation and which prepare the way for” success in soliciting a proxy.¹² In general, a proxy solicitation will be a “commendatory or subjective presentation” of a proposed corporate transaction, over and above a “purely factual description of the proposed transaction.”¹³ Moreover, ShareGift has received numerous concurring views amongst the top legal practitioners that any communications received by shareholders after a vote (e.g., a merger transactions), such as donation instructions in Letters of Transmittal, would definitively not qualify as solicitation materials. These materials are not commonly received by shareholders until after the completion a transaction.

1. ShareGift USA Does Not Solicit Proxies

When shareholders are given the option to make a charitable donation as part of a proposed merger, the option will be merely ancillary to the overarching corporate transaction. ShareGift USA’s request for shares is for shares, not for proxies, and we will present no view, commendatory or otherwise, on the merits of the separate corporate transaction. The purpose of the proxy rules is to ensure that shareholders are fully informed when proxies are solicited regarding upcoming votes. This purpose is not at all implicated in the event that shareholders freely decide to donate their shares to ShareGift USA.

2. ShareGift USA Is Exempted From the Proxy Rules

In 1992, the SEC adopted new express exemptions from the proxy rules. A person is exempted if it does not “seek directly or indirectly, either on its own or another’s behalf, the power to act as a proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization.”¹⁴ This exemption covers ShareGift USA, which does not seek to act as a proxy for other holders in the context of a shareholder vote. ShareGift USA also does not fall within any of the ten categories of persons who cannot claim the Rule 14a-2(b) exemption, as ShareGift USA is not:

- (1) the registrant of the securities it receives through donations;
- (2) an officer or director of the registrant;
- (3) an officer, director, affiliate, or associate of a person ineligible under one of these categories;
- (4) a nominee for whose election as a director proxies are solicited;
- (5) soliciting in opposition to a merger or other extraordinary transaction recommended or approved by the board of directors of the registrant;
- (6) required to report beneficial ownership of the registrant’s equity securities on a Schedule 13D filing;
- (7) a person who receives compensation from an ineligible person directly related to the solicitation of proxies;
- (8) an interested person of an investment company;

- (9) a person likely to receive a benefit from a successful solicitation that would not be shared pro rata by all other holders of the same class of securities; or
- (10) a person acting on behalf of any of the foregoing ineligible persons.

Moreover, the election by a shareholder to participate in a ShareGift USA program need not take place on a proxy card with respect to the transaction at issue in any particular deal. Instead, shareholder participation would be indicated by an affirmative election noted on a letter of transmittal or other form of election sent to holders in connection with a transaction that has already received the requisite shareholders approval.

D. ShareGift USA Is Not an Underwriter

In the context of a stock-for-stock merger or a mixed cash/stock consideration transaction, shareholders participating in a ShareGift USA program will have the opportunity to donate some or all of the merger proceeds to ShareGift USA which will then promptly sell those shares in the market. ShareGift USA should not be viewed as a statutory underwriter if it receives and then sells those shares. Section 2 of the Securities Act of 1933, as amended (“1933 Act”),¹⁵ defines an underwriter as “any person who has purchased from an issuer with a view to, or offers or sell for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking.”

1. ShareGift USA Does Not Purchase Securities from Issuers

Because ShareGift USA does not purchase securities from the issuers or offer to sell securities on their behalf, it is not an underwriter. Although its request for charitable donations of shares may occur at the time new stock is being issued, it does not follow that ShareGift USA “participates” in an underwriting for the purposes of the securities laws. The participation with which Section 2 is concerned is that which “facilitates the issuer’s distribution.”¹⁶ Merely “[h]aving a relationship with an issuer or an underwriting [] does not transform one into an underwriter.”¹⁷

2. ShareGift USA Does Not Participate in the Issuing Process

ShareGift USA will only be stepping into the shoes of the donor of the securities. It will not be “participat[ing] in the transmission process between the issuer and the public,”¹⁸ as it constitutes a legitimate member of the “public” by virtue of the rights obtained upon receipt of the gift of shares. ShareGift USA is not facilitating the issuance of any shares any more than a private investor who receives shares in exchange for his own existing shares. Under the securities laws, trading between individual investors—such as a sale by ShareGift USA on the open market—does not give rise to underwriting status.¹⁹ ShareGift USA will not be engaging in “steps necessary to the consummation of the public distribution of shares by the issuer,”²⁰ as the shares will be issued regardless of whether ShareGift USA receives donations.

Furthermore, ShareGift USA does not control, is not controlled by and is not under common control with any issuer of securities. In particular, ShareGift USA does not offer or sell securities on behalf of any issuer in connection with any distribution of any securities, nor

does it participate or otherwise have direct or indirect participation in any such undertaking or any underwriting of any such undertaking. Therefore, the restrictions and safe harbor provisions of Rule 144 of the 1933 Act do not apply to resales of securities donated to ShareGift USA.²¹

E. ShareGift USA's Activities Do Not Run Afoul of Regulation M

1. Rule 101 of Regulation M Does Not Apply to ShareGift USA

Regulation M was enacted by the SEC in 1996 as a modification of the securities laws' anti-manipulation rules.²² Rule 101 of Regulation M regulates conduct by "distribution participants" and their "affiliated purchasers." In Rule 100, "distribution participant" is defined as an "underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in a distribution." ShareGift USA is not a broker or a dealer, and as discussed above, the organization is not an underwriter or a participant in a securities offering as those terms are used in the securities laws. Rule 100 defines an "affiliated purchaser" to include "person[s] acting, directly or indirectly, in concert with a distribution participant, issuer, or selling security holder in connection with the acquisition or distribution of any covered security." In general, the term "affiliate" refers to a corporation that is connected to another corporation by shareholding or common control.²³ ShareGift USA will not be affiliated in this sense with the corporations whose shares it receives as donations. ShareGift USA will not be acting "in concert" with the other entities for many of the same reasons that it is not a statutory "participant" in a tender offer. To the extent that ShareGift USA acquires shares as part of a distribution, it is doing so only by virtue of its status as a private shareholder, having received donated shares; it stands on the same ground as private retail investors who passively receive shares from an issuer and who are not thereby deemed to be acting "in concert" with the issuer in the distribution.

2. Compliance with Rule 102 of Regulation M

Rule 102 governs practices in "connection with a distribution of securities effected by or on behalf of an issuer or selling security holder." According to Rule 100, a "selling security holder" is one "on whose behalf a distribution is made." The SEC has made it clear that selling security holders are not "distribution participants."²⁴ To the extent that a distribution by an issuer is made to existing shareholders—for example, as consideration for a merger—ShareGift USA may become a "selling security holder." However, ShareGift USA will not be engaged in the activities prohibited by Rule 102, which include bidding for, purchasing, or attempting to induce any person to bid for or purchase, a covered security in connection with a distribution of securities during the applicable restricted period. The term "distribution" is defined in Rule 100 as an "offering of securities . . . that is distinguished from ordinary transactions by the magnitude of the offering and the presence of special selling efforts and selling methods." ShareGift USA's involvement with the distribution process will be limited, as it will merely be the passive recipient of shares owed to it by virtue of its status as a shareholder. To the extent that ShareGift USA will be an independent shareholder, its duties to comply with the applicable securities laws when effecting retail sale of its donated shares will be the same duties held by other independent shareholders. Along these lines, ShareGift USA will have the duty to comply with Rules 104 and 105 of Regulation M, which apply to all "persons."

F. Issuers Should Not Incur Additional Securities Liability by Working with ShareGift USA

1. Absence of Concern under Section 10(b) of The 1934 Act

“The 1934 Act was designed to protect investors against manipulation of stock prices.”²⁵ Under Section 10(b) of the 1934 Act and the SEC’s Rule 10b-5,²⁶ a person cannot make “any untrue statement of a material fact . . . in connection with the purchase or sale of any security.” ShareGift USA will not be purchasing or selling securities when it requests or receives charitable donations.²⁷ Moreover, the activities of ShareGift USA in requesting charitable donations do not otherwise implicate Section 10(b)’s prohibitions on manipulative and deceptive devices. Of course, when ShareGift USA does sell donated shares, it will comply with all applicable securities laws.

2. Immateriality of Information About ShareGift USA

Any information about ShareGift USA included in an issuer’s periodic reports, proxy materials or prospectuses will not be “material” under the securities laws. The Supreme Court’s definition of a material fact is one that “would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.”²⁸ This standard does not refer to *any* information; instead, the ‘total mix’ at issue is that which investors reasonably use to evaluate the investment prospects of a given company or an investment decision in the context of a transaction. A material misrepresentation is one that could reasonably lead to a “distortion in price” of a company’s security.²⁹

A typical mention of ShareGift USA in a company’s periodic statements may appear as follows:

Should you desire, the Company has made arrangements to enable you to donate some or all of your shares to *ShareGift USA*. ShareGift USA is a nonprofit charity qualified by the IRS as a 501(c)(3) organization that distributes the proceeds from the sale of donated shares to a variety of recognized U.S. charities. If you would like to donate your shares under this program, simply return your properly completed Letter of Transmittal and Share certificate(s), if any, in the envelope provided.³⁰

In the context of a merger, typically there would be a brief mention of ShareGift USA in a company’s proxy statement or proxy statement/prospectus, with a reference to a letter of transmittal to be issued to holders upon completion of the transaction. The letter of transmittal would contain information substantially in the form set out above. A company may also include a list of ShareGift USA’s favored charities, a reference to ShareGift USA’s web site and a contact phone number for questions. None of this information would be viewed as “material” by a reasonable investor because this information will not have an effect, adverse or otherwise, on the price of an issuer’s stock.

III. Conclusion

ShareGift USA is likely to seek written regulatory guidance from the SEC in respect of the bulk of the legal issues described above. As this White Paper makes clear, any legal uncertainty regarding ShareGift USA's charitable initiatives should be resolved in favor of supporting ShareGift USA's laudable goals. Unfortunately, until the SEC expressly adopts such a position, corporations and shareholders may be deterred from participating in our programs on a wider scale. Securities regulators have the unique opportunity to both dutifully regulate securities markets while enabling the private sector to implement a simple idea with the potential of achieving incontrovertibly desirable goals at a national scale.

¹ The New York Stock Exchange Shareholder Communications and Proxy Study—Survey Results, January 1998.

² 17 CFR 240.13e-4(h)(5); 17 CFR 240.14e-5(b)(3).

³ See Wellman v. Dickinson, 475 F. Supp. 783, 823–24 (S.D.N.Y. 1979).

⁴ 774 F.2d 47 (2d Cir. 1985).

⁵ Id. at 55.

⁶ See Gilbert v. Bagley, 492 F. Supp. 714, 729 (M.D.N.C. 1980) (finding that an offer to purchase securities at a price that “did not represent a premium price” was not a tender offer).

⁷ Clearly, if ShareGift reaches ownership levels that trigger filing requirements (e.g., Schedule 13G) it would comply with applicable law. That said, given the historical experience with donation rates, share ownership at that level is extraordinarily unlikely.

⁸ See Brascan Ltd. v. Edper Equities Ltd., 477 F. Supp. 773, 792 (S.D.N.Y. 1979).

⁹ Cf. SEC v. Carter Hawley Hale Stores, Inc., 760 F.2d 945, 951 (9th Cir. 1985).

¹⁰ Id. at 948.

¹¹ Brascan, 477 F. Supp. at 792.

¹² SEC v. Okin, 132 F.2d 784, 786 (2d Cir. 1943).

¹³ Capital Real Estate Investors Tax Exempt Fund Ltd. Partnership v. Schwartzberg, 929 F. Supp. 105, 113 (S.D.N.Y. 1996).

¹⁴ Rule 14a-2(b).

¹⁵ 15 U.S.C. § 77.

¹⁶ Ingenito v. Bermec Corp., 441 F. Supp. 525, 536 (S.D.N.Y. 1977).

¹⁷ In re Worldcom, Inc. Securities Litigation, 308 F. Supp. 2d 338, 344 (S.D.N.Y. 2004).

¹⁸ Ingenito, 441 F. Supp. at 536.

¹⁹ See SEC v. Culpepper, 270 F.2d 241, 247 (2d Cir. 1959).

²⁰ Id.

²¹ 17 CFR 242.144. This analysis is not intended to extend to donations of control shares from insiders and similar gifts that might impose resale restrictions. ShareGift USA has not yet determined as a policy matter whether it will accept such donations.

²² 17 CFR 242.100–105.

²³ See SEC v. Burns, 816 F.2d 471, 474–75 (9th Cir. 1987).

²⁴ Division of Market Regulation, Staff Legal Bulletin No. 9 (Oct. 27, 1999).

²⁵ Basic, Inc. v. Levinson, 485 U.S. 224, 230 (1988).

²⁶ 17 CFR 240.10b-5.

²⁷ See Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 754–55 (1975) (holding that a plaintiff must prove he actually purchased or sold the securities in question in order to recover in a 10b-5 action).

²⁸ Basic, 485 U.S. at 231–32 (citing TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)).

²⁹ See id. at 248.

³⁰ Taking aside the fact that information regarding ShareGift USA's program is immaterial, given the simplicity of the disclosure, the likelihood of it being seen as “misleading” is more than remote.