When is a "Distribution" Complete?

a/k/a

"Sham Distributions"

"Sham Shells"

Securities Section
Utah State Bar

Jackson, Wyoming
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1. The Development of "Sham Distributions" and "Sham Shells"

(a) Context—broker's exemption in Section 4(a)(4)

(b) Rule 144(g)(4)—"after reasonable inquiry"

(c) Rule 144—December 2007 amendment, SEC Release no. 33-8869

(d) Rule 144(i)—Rule 144 cannot be used by any company that is or has been at any time previously a "shell"

  (i) No or nominal operations and either:

    (1) no or nominal assets; or

    (2) assets consisting only of cash or cash equivalents or assets consisting of any amount of cash and cash equivalents and nominal other assets

  (ii) One year fully reporting for companies "subject to Exchange Act reporting requirements"—*cf*. voluntary filer

(e) FINRA Regulatory Notice 09-05—"Unregistered Resales of Restricted Securities"

  (i) "Reasonable Investigation"

  (ii) Red flags

  (iii) Duty to make an inquiry

(f) Above has turned "reasonable inquiry" into "relentless inquiry"—barely short of strict liability

2. Some Common Elements

The following are presented as issues, possibilities, occasional occurrences, concerns, and sometimes allegations from a myriad of sources, some of which may be reliable:

(a) An issuer is formed immediately preceding filing a registration statement and commencing its public offering.

(b) The issuer's proposed business consists of actual activities in a described line of business, but without concrete expenditures, contracts, operating assets, or other indicia of actual operations in that business. Not a "shell."

(c) The issuer's initial proposed business is based on nominal, frequently a little cash and intangible, assets conveyed in exchange for stock issued to a single or few founders. Other assets are typically limited to intangible items such as product marketing agreements or undeveloped and intellectual property that has not been commercialized.

> We were recently organized and have limited our activities to obtaining initial capital of $4,500 from our founder, undertaking this offering, and entering into a distribution agreement with [named Asian company] to market cell phone covers in the United States from a website that we propose to develop with the proceeds of this offering. We have no revenues. Our offices are located at [location].

See Complaint in *SEC v. Caledonian Bank, Ltd*. (U.S.D.C. S.D.N.Y.), case no. 15-CV-00894 (Nov. 10, 2015) (Swingplane Ventures, Inc.; Goff, Corp.; Norstra Energy, Inc.; and Xumanii, Inc.)

(d) Cash invested by founder(s) is sufficient to organize and launch the offering, but not enough to conduct substantial activities in the proposed business. *See Caledonian*. After offering costs, Swingplane had $325 to start its "business."

(e) The issuer files a Form S-1 registration statement for a relatively small registered public offering—e.g., $35,000 or $40,000—or registers a larger amount, but sells less than all offered shares. Offering can be either primary or secondary. The registration statement is prepared by legal counsel who has a history of several similar registration statements with similar business and offering profiles as set forth above. Do issuers shop SIC/corporation finance reviewers?

(f) Sometimes the same shareholders purchase in multiple S-1 offerings.

(g) If resale or secondary offering for the resale of outstanding securities, SEC may conclude that it is in effect a primary offering and require that the stock be sold at a specified price for a designated period. Selling shareholders are "deemed underwriters."

(h) The offering costs are very low, including audit and legal fees—e.g., $3,500 for the entire organization, audit, and SEC registration work. *See Caledonian*: Swingplane.

(i) Issuer completes review process:

i. If SEC believes it is a shell, will challenge in comments.

ii. If SEC wins and issuer has to acknowledge shell status, need to say things that ruin deal:

(1) is a "shell";

(2) ineligible to use Form S-8; and

(3) stockholders cannot use Rule 144 [until "shell" status "cured" by filing one year of periodic reports after super 8-K].

iii. If issuer wins and company does not have to admit it is a shell, the SEC sometimes will not post the correspondence on EDGAR.

iv. SEC presses on management involvement and experience.

v. Sometimes the issuer will proceed with an offering even if it is a shell, apparently because shell status does not affect resale of S-1 stock.

(j) The entire offering is sold to a group of investors in the same location or some other commonality–sometimes offshore—e.g., Serbia, Mexico, Ireland, Ukraine, etc. *See Caledonian*. *See* also, complaint in *SEC v. McKelvey* (https://www.sec.gov/litigation/complaints/2015/comp-pr2015-69.pdf), case no. 15-80495 (U.S.D.C. S.D. Fla.) (at least 22 "blank check" companies; exactly 25 shareholders in each) and complaint in *SEC v. Husain* (https://www.sec.gov/litigation/complaints/2016/comp-pr2016-86.pdf), case no. 2:16-cv-03250 (U.S.D.C. C.D. Cal.) (approximately 35 purchasers in each private placement).

(k) Frequently all investors purchase the same amount—e.g., a $35,000 offering is sold to 35 investors who invest $1,000 each.

(l) The investors may use money orders or Western Union money wires to pay for the shares. Note lack of permanent or producible records. *Cf. Husain.*

(m) Stock certificates are not actually delivered to the offering purchasers, but are delivered to or held for the promoter, sometimes via an attorney or other custodian. In some instances, the stock certificates are not even issued in the names of the purchasers in the offering until later. *See Caledonian.*

(n) The issuer files and clears via FINRA Form 211 to obtain a trading symbol and make the stock eligible for trading under Rule 15c-11. Trading is sparse to very sparse. *See* Indictment in *U.S. v. McKelvey*, case no. 16-20546 (U.S.D.C. Fla., July 19, 1916) (false disclosure of control persons in DTC applications).

(o) Becomes DTC eligible to permit electronic settlement of trading transactions. *See* complaint in *SEC v. McKelvey* (https://www.sec.gov/litigation/complaints/2015/comp-pr2015-69.pdf), case no. 15-80495 (U.S.D.C. S.D. Fla.) (false disclosure of control persons in DTC applications).

(p) No actual business is conducted after the offering to employ the offering proceeds in the proposed business.

(q) Undisclosed promoters maintain periodic reports and corporate standing. *See* complaint in *SEC v. McKelvey* (https://www.sec.gov/litigation/complaints/2015/comp-pr2015-69.pdf), case no. 15-80495 (U.S.D.C. S.D. Fla.) (promoters forged approximately 300 false officer certificates accompanying periodic reports).

(r) A significant portion of the S-1 stock—frequently 100% of it—is sold back to U.S. residents or other person or group, frequently at prices equal to, at a slight premium to, or a low multiple of the public offering price.

(s) The purchaser(s) of the S-1 stock may be:

i. associated with a proposed reverse merger candidate—friends, family, or perhaps minority stockholders, but not typically acknowledged affiliates;

ii. an opportunistic promoter or broker wanting to participate in anticipated appreciation following an expected reverse merger; or

iii. associated with a promoter who plans a pump and dump.

(t) The sale of the S-1 stock by the S-1 purchasers to secondary purchasers is handled through some orchestrated mechanism:

i. A number of agreements on the same template between individual S-1 purchasers and new purchasers.

ii. A single escrow closed simultaneously with, and contingent upon, the closing of the reverse merger. Frequently these escrow agents are attorneys.

iii. In some instances, in order to facilitate these transactions, the original investors enter into an agreement to appoint a sellers' representative—one person to act as the attorney-in-fact for all of the offshore investors—to sell their shares, endorse certificates or stock powers, give disbursal instructions, and facilitate other mechanics. Frequently these sellers' representative are attorneys.

(u) Secondary purchasers of the S-1 stock or in a private placement accompanying the reverse merger (see below) sign "Lock-up/Leak Out Agreements" that provide for no resale after reverse merger or other event until the earlier of:

i. a specified date or the passage of a specified period following the reverse merger; and

ii. achieving a specified trading price for the stock.

Notwithstanding the appearance that stock will not overhang the trading market, trading price trigger reached with isolated [orchestrated?] bids or transactions.

(v) To effect the resale of the S-1 stock, the stock certificates representing the S-1 stock—100% of the float—are transferred into the names of the secondary purchasers and delivered to them. To facilitate the transfer, the issuer waives any requirement that the endorsements be accompanied with signature guarantees and agrees to indemnify the transfer agent for honoring the S-1 purchasers' or the issuer's transfer request.

(w) The issuer completes a reverse merger with an operating business in which the owners of the operating business take over management, acquire a substantial majority of the outstanding stock, and concentrate resources on the business of the acquired enterprise.

(x) The reverse merger operating company may not want to retain the "business" on which the issuer conducted its S-1 public offering and may want to eliminate the dilution resulting from the founder's stock block. In these instances, the issuer redeems the stock issued to the founding stockholder in consideration of the return of all of the pre-reverse-acquisition assets of the issuer. Since the founder may well have transferred those assets into the issuer in consideration of the original issuance of stock to the founder at the issuer's organization, this redemption results in what is, in effect, a rescission of the organization. This may be handled as part of the reverse merger through a common escrow to assure simultaneous closing. *See* "Agreement and Plan of Merger and Reorganization" and "Split-Off Agreement."

This is what SEC Release No. 33-8587, "Use of Form S-8, Form 8-K, and Form 20F by Shell Companies," footnote 32, intended to prevent in the registration statement eligibility. Issue dates back to at least 2005—SEC Release No. 33-8587, "Use of Form S-8, Form 8-K, and Form 20F by Shell Companies," footnote 32:

> We have become aware of a practice in which a promotor of a company and/or affiliates of the promoter appear to place assets or operations within an entity with the intent of causing that entity to fall outside of the definition of "blank check company" in Securities Act Rule 419. The promoter will then seek a business combination transaction for the company, with the assets or operations being returned to the promoter or

> affiliate upon the completion of that business combination transaction. It is likely that similar schemes will be undertaken with the intention of evading the definition of shell company that we are adopting today. In our view, where promoters (or their affiliates) of a company that would otherwise be a shell company place assets or operations in that company and those assets or operations are returned to the promoter or its affiliates (or an agreement is made to return those assets or operations to the promoter or its affiliates) before, upon completion of, or shortly after a business combination transaction by that company, those assets or operations would be considered "nominal" for purposes of the definition of shell company.

(y) If no reverse merger, proceed directly to pump and dump.

(z) The issuer files a "super 8-K" containing "Form 10 Information."

(aa) The trading market is prepared to launch when the reverse merger is complete, with the secondary purchasers selling the S-1 stock that has been acquired from the initial S-1 purchasers. Sometimes the secondary purchasers parcel some of this stock to investor relations advisers.

(bb) To better manage the flow of stock into the trading market, all or substantially all of the secondary purchasers place all of the S-1 stock with a single broker or through an escrow arrangement. Superseding Indictment in *U.S. v. Discala* (U.S.D.C. E.D.N.Y) (filed Nov 2. 2015) (stock held and sold into trading market via escrow account maintained by Kyleen Caine, Esq.).

(cc) The secondary purchasers of the S-1 stock, or their transferees, present that stock for unrestricted resale through broker-dealers, which then undertake a "reasonable investigation" to form basis of relying on Section 4(a)(4) broker's transaction exemption.

3. The Enforcement Response—a combination of "distribution" and fraud

(a) The big issues:

i. Hidden promoters

ii. Plan of distribution

iii. Distribution

iv. Pump and dump

(b) "Distribution"

i. Section 4(a)(3) exemption for transactions by a "dealer"

ii. NASD "hot issue" position—free riding, withholding, and parking

(1) FINRA Rule 2790

(2) IM-2110-1: "[M]embers have an obligation to make a bona fide public distribution at the public offering price of securities of a public offering which trade at a premium in the secondary market whenever such secondary market begins (a "hot issue") regardless of whether such securities are acquired by the member as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or a selling group member, or otherwise."

iii. *SEC v. Kern*, 425 F. 3rd 143 (2d Cir. Sept. 27, 2005) (promoters caused shares repurchased from several original owners to be sold in public market at identical

prices and quantities in arranged sales to achieve a desired trading price, transferred the shares to controlled entities, and then sold the shares into the trading market at a substantial profit).

> The Commission has described a distribution as continuing throughout "the entire process by which in the course of a public offering the block of securities is dispersed and ultimately comes to rest in the hands of the investing public." *R.A. Holman & Co., Inc. v. SEC*, 366 F.2d 446, 449 (2d Cir. 1966) (quoting *Lewisohn Copper Corp*., 38 S.E.C. 226, 234 (1958)). The fact that at some point in the midst of the transfer of ETA shares to the public, Kern ceased to be an affiliate, does not permit his remaining sales to become exempt under Section 4(1). Cutting off liability partway through a distribution by a control person would permit a control person to retain some fraction of the profits from such a distribution, thereby encouraging sales made without proper disclosures—precisely the result that *Ralston Purina* instructs us to avoid in interpreting exemptions. 346 U.S. at 124-25, 73 S.Ct. 981.

iv. *See SEC v. Caledonian Bank, Ltd*. (U.S.D.C. S.D.N.Y.), case no. 15-CV-00894 (Nov. 10, 2015) (Issuers: Swingplane Ventures, Inc.; Goff, Corp.; Norstra Energy, Inc.; and Xumanii, Inc.)

> However, the statute [section 4(a)(3)] "recognizes that there will be circumstances in which stock covered by an effective registration statement has not genuinely been offered to the public." *In re Lehman Bros. Sec. & ERISA Litig*., 903 F. Supp 2d 152, 171 (S.D.N.Y. 2012). For example, if the parties created a sham distribution to conceal a public offering that took place later, the bona fide offering date would differ from the effective date of the registration statement. To assess whether an offering is bona fide, "the relevant question . . . is when was the stock really and truly (genuinely) being offered to the public, as opposed to, say, a simulated offering." *See* excerpt from *Caledonian*.

(c) Fraud—hidden promoters, etc.

i. *See* Complaint in *SEC v. McKelvey* (https://www.sec.gov/litigation/complaints/ 2015/ comp-pr2015-69.pdf), case no. 15-80495 (U.S.D.C. S.D. Fla.) (control persons developed a fine-tuned assembly line (false disclosure of control persons in DTC applications).

ii. *See* Complaint in *SEC v. Coldicutt*, case no. 4:12-CV-00505 (U.S.D.C. E.D. Tex) (Weaver, Esq. authored opinion letters, served as securities counsel, prepared and reviewed SEC filings, and created, marketed, and sold his own shells via his own friends and family).

iii. *See* Information in *U.S. v. McKelvey*, case no. 16-20546 (U.S.D.C. S.D. Fla. Jul. 19, 2016) (promoters recruited straw CEOs to organize 18 corporations; filed Form S-1 registration statements and subsequent periodic reports; attached electronic signatures of nominee officers to registration statements, reports, and certifications; acquired all or nearly all unrestricted stock; caused false Form 211 to be filed with FINRA; arranged reverse merger; transferred gathered unrestricted shares to reverse merger buyer; sold "unrestricted" shares to public). Companion case, *SEC v. Sanders*, case no. 16-20572 (U.S.D.C. S.D. Fla.).

iv. *See* Complaint in *SEC v. Imran Husain and Gregg Evan Jaclin* (U.S.D.C. C.D. Ca. May 12, 2016) (Jaclin's "Self-Filing Model" for The Shell Factory).

v. *See* Order Instituting [§ 102(e)] Administrative Proceedings, *In the Matter of Donald J. Stoecklein, Esq.,* (June 2, 1916) (filed Form S-1 and amended it nine times, without going effective, that failed to state that Stoecklein, issuer's attorney, controlled and directed virtually all of the company's operations).

vi. *See* Order Instituting Administrative Proceedings, *In the Matter of American Registrar and Transfer Company*, SEC release no. 33-100082 (May 25, 2016) (One respondent served as nominee founder for issuer that filed a registration statement and Form 211 failing to disclose promoter's role; knew that the promoter had arranged for and funded the purchase of shares in the S-1 by 36 nominee names for the promoter's beneficial ownership; falsely asserted that respondent had offered the S-1 shares to his friends and family; facilitated gathering of S-1 shares; facilitated respondent's transfer agent to transfer certificates out of control without restrictive legend; facilitated hiding information regarding true control of shares from selling broker. Attorney Greg Jaclin.)

vii. *See* Order Instituting Administrative Proceedings, *In the Matter of John Briner, Esq.*, SEC Release no. 33-9699 (Jan 15, 2015) (SEC Rule 102(e) proceedings against Briner, Esq., Vancouver, B.C, and Diane Dalmy, Denver, and nine Texas and Nevada accountants or accounting firms) (Briner recruited officers and directors for companies; arranged for issuers to acquire designated mining claims; arranged for nominee purchases of founders' shares; arranged audits; arranged for Dalmy to file Form S-1 registration statements and issue opinions the resale of the stock sold. Dalmy stated in her 18 registration statement opinions that she had "made such investigation and examined such records" to support her opinion that the issuers' shares were validly issued. Briner and Dalmy each violated Section 17(a) of the Securities Act.)

viii. *See* Order Instituting Administrative Proceedings, *In the Matter of Wayne Middleton*, SEC release 33-9702 (Jan. 15, 2015) (respondent was nominee of unnamed promoter in three registration statements at the request of John Briner, Esq.)

ix. *See* Superseding Indictment in *U.S. v. Discala* (U.S.D.C. E.D.N.Y) (filed Nov 2. 2015) (alleges S-1 sold entire $34,500 offering to 24 nominee shareholders, primarily in Florida and pump and dump orchestrated via the sale of stock through escrow account maintained by Diane Dalmy, Esq.); Complaint in *SEC v. Discala*, case no. CV-14-4346 (U.S.D.C. E.D.N.Y) filed Jul. 17, 2014) (pump and dump in three securities facilitated by gathering of shares held by others, including an S-1 offering by CodeSmart to 24 stockholders).

x. *See In the Matter of Delaney Equity Group, LLC*, SEC Release No. 33-10122 (Aug. 16, 2016) (false FINRA Form 211 filings).

4. Warnings to Us All

(a) SEC enforcements effort keyed on attorney involvement

(b) Attorneys are increasingly defendants—civilly and criminally

i. Donald J. Stoecklein, Esq.

ii. John Briner, Esq

iii. Gregg Jaclin, Esq.

iv. Diane Dalmy, Esq.

v. Kyleen Caine, Esq.

vi. Robert C. Weaver Jr., Esq.

(c) Other possibilities

i. Section 3(a)(9): shares issued in a Chapter 11 reorganization, Section 1145 of the Bankruptcy Code

ii. Section 3(a)(10): shares issued after a fairness hearing, Staff Legal Bulletin No. 3A

iii. Form S-8 registrations: not available to compensate for services in connection with the offer or sale of securities in a capital-raising transactions and to directly or indirectly promote or maintain a market for the registrant's securities, *see* Release No. 33-85807, n. 32.

(d) A cautionary tale about the way we advise clients—note how many allegation in *Jaclin* were about things he advised his client to do

RULE 144(g)(4)

(g) *Brokers' transactions*. The term brokers' transactions in section 4(4) of the Act shall for the purposes of this rule be deemed to include transactions by a broker in which such broker:

. . . .

(4) After reasonable inquiry is not aware of circumstances indicating that the person for whose account the securities are sold is an underwriter with respect to the securities or that the transaction is a part of a distribution of securities of the issuer. Without limiting the foregoing, the broker shall be deemed to be aware of any facts or statements contained in the notice required by paragraph (h) of this section.

Notes.

(i) The broker, for his own protection, should obtain and retain in his files a copy of the notice required by paragraph (h) of this section.

(ii) The reasonable inquiry required by paragraph (g)(3) of this section should include, but not necessarily be limited to, inquiry as to the following matters:

a. The length of time the securities have been held by the person for whose account they are to be sold. If practicable, the inquiry should include physical inspection of the securities;

b. The nature of the transaction in which the securities were acquired by such person;

c. The amount of securities of the same class sold during the past three months by all persons whose sales are required to be taken into consideration pursuant to paragraph (e) of this section;

d. Whether such person intends to sell additional securities of the same class through any other means;

e. Whether such person has solicited or made any arrangement for the solicitation of buy orders in connection with the proposed sale of securities;

f. Whether such person has made any payment to any other person in connection with the proposed sale of the securities; and

g. The number of shares or other units of the class outstanding, or the relevant trading volume.

FERMO GROUP, INC.

Allmandring 1/22a-35,
Stuttgart, Germany 70569
Tel. 011-49-7211324929
E-mail: fermoinc@gmail.com

March 28, 2012

Mr. Daniel Leslie or Ms. Brigitte Lippmann
United States
Securities and Exchange Commission
Division of Corporate Finance
Washington, DC 20549

Re: Fermo Group, Inc.
Registration Statement on Form S-1
Filed February 27, 2012
File No. 333-179738

Dear Mr. Daniel Leslie and Ms. Brigitte Lippmann:

Further to your letter dated March 23, 2012, concerning the deficiencies in Form S-1 filed on February 27, 2012, we provide the following responses:

General

1. It appears that you may be a blank check company as defined by Rule 419 of Regulation C in view of the following:

   - your disclosure indicates that you are a development stage company issuing penny stock;
   - you have no revenues;
   - you have not entered into any contracts with suppliers;
   - you have conducted little business activity other than raising initial capital, entering a lease agreement and filing this registration statement;
   - you have not yet commenced operations;
   - you have no assets except for $3,000 in cash; and
   - you will be unable to implement your business plan without the successful completion of this offering.

In the adopting release of Rule 419, the Commission stated that "it will scrutinize registered offerings for attempts to create the appearance that the registrant is not a development stage company or has a specific business plan, in an effort to avoid the application of Rule 419." Therefore, please provide a detailed analysis addressing each of the issues described above explaining why you believe the company is not a blank check company and disclose whether you plan to merge with an unidentified company. Alternatively, please revise the registration statement to comply with Rule 419 and prominently disclose that you are a blank check company.

Response: In response to this comment the Company referred to Section (a)(2) of Rule 419 of the Securities Act, which defines a blank check company as a company that is issuing penny stock and that is a "development stage company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity."

While the Company is a development stage company, it is not a blank check company because:

- it has its own specific operational business plan intended to start generate revenues within 12 months of completing its offering;
- its business plan has no indications to engage in a merger or acquisition with an unidentified company or companies, or other entity;
- the fact that the Company has not generated revenues does not render the Company a blank check company. As clearly stated in the prospectus, the Company is a development stage company with a clear, specified business plan;
- although the Company has not entered into any contracts with suppliers, it has contacted the donut machines supplier (http://www.lilorbits.com), which machines we are going to buy;
- although the Company conducted little business activity and have not yet commenced operations, it has specific operational business plan and has taken substantive steps in furtherance of the business plan by the execution of a Lease Agreement on February 2, 2012;
- while the Company has no assets except for $3,000 in cash, it intends to acquire assets within first months of completing its offering;
- if the Company does not raise minimum funds required to implement its plan, it will utilize funds from Ilia Sachin, its Chairman and President;
- the fact that the Company is not a blank check company under Rule 419 has been disclosed on the cover page of the prospectus.

“We are not a blank check corporation. Section 7(b)(3) of the Securities Act of 1933, as amended defines the term “blank check company” to mean, any development stage company that is issuing a penny stock that, “(A) has no specific plan or purpose, or (B) has indicated that its business plan is to merge with an unidentified company or companies.” We have a specific plan and purpose. Fermo Group, Inc. will sell donuts in Germany.

Our operations to date have been devoted primarily to start-up and development activities, which include:

1. Formation of the Company;

2. Development of our business plan;

3. Signing of the lease agreement.

In Securities Act Release No. 6932 which adopted rules relating to blank check offerings, the Securities and Exchange Commission stated in II DISCUSSION OF THE RULES, A. Scope of Rule 419, that, “Rule 419 does not apply to start-up companies with specific business plans even if operations have not commenced at the time of the offering.” Further, we have not indicated in any manner whatsoever, that we plan to merge with an unidentified company or companies, nor do we have any plans to merge with an unidentified company or companies. We have no plans or intentions to be acquired or to merge with an operating company nor do we have plans to enter into a change of control or similar transaction or to change our management.”

As filed with the Securities and Exchange Commission on June 8, 2011

Registration No. 333-168912

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-1/A

Amendment No. 7

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Swingplane Ventures, Inc.

(Name of registrant as specified in its charter)

Nevada	**2300**	**27-2919616**
(State or jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

220 Summit Blvd. #402
Broomfield, Colorado 80021
(303) 803-0063

(Address and telephone number of registrant's principal executive offices)

Matthew R. Diehl, President
Swingplane Ventures, Inc.
220 Summit Blvd. #402
Broomfield, Colorado 80021

(Name, address and telephone number of agent for service)

From Prospectus

SWINGPLANE

Swingplane Ventures, Inc. was incorporated in the State of Nevada on June 24th, 2010. Swingplane Ventures, Inc. is a development stage company with a principal business objective of selling men's and women's golf apparel. The Company plans to have its initial clothing line consist of shirts, pants, and skirts designed specifically for younger golfers. We plan to stay on the cutting edge of the constantly changing golf apparel market and our goal is to create a quality reputation within the youthful golfing community and golf garment marketplace. Swingplane Ventures conducted research on various marketing venues and plans to sell our initial line of clothing through our own online retail website, golf course pro shops and other sporting retail outlets such as small-to-medium sized golf equipment retailers.

The Company

Our Business

Swingplane Ventures, Inc. was incorporated in the State of Nevada on June 24th, 2010. Swingplane Ventures, Inc. is a development stage company with a principal business objective of selling men's and women's golf apparel. The Company plans to have its initial clothing line consist of shirts, pants, and skirts designed specifically for younger golfers. We plan to stay on the cutting edge of the constantly changing golf apparel market and our goal is to create a quality reputation within the youthful golfing community and golf garment marketplace. Swingplane Ventures conducted research on various marketing venues and plans to sell our initial line of clothing through our own online retail website.

Escrow Account

The subscription proceeds from the sale of the shares in this offering will be payable to "Law Office of Clifford J. Hunt, P.A. Trust Account IOTA" and will be deposited in a non-interest bearing law office trust bank account until all offering proceeds are raised.

Directors and Executive Officers

Name	Age	Position
Matthew Diehl	34	President, Secretary and Chairman of the Board of Directors (1)

(1) Mr. Diehl will serve as a director until the next annual shareholder meeting.

Beneficial Ownership

		Amount and Nature of Beneficial Ownership		Percent of Class (1)(2)	
Title of Class	Name and Address of Beneficial Owner	Before Offering	After Offering	Before Offering	After Offering**(3)**
Common Stock	Matthew R. Diehl 220 Summit Blvd. #402 Broomfield, CO 80021	10,000,000	10,000,000	100%	74.07%

Item 8. Plan of Distribution.

Offering will be Sold by Our Officer and Director.

This is a self-underwritten offering. This Prospectus is part of a Prospectus that permits our officer and director to sell the Shares directly to the public, with no commission or other remuneration payable to him for any Shares he sells. There are no plans or arrangements to enter into any contracts or agreements to sell the Shares with a broker or dealer. Matt Diehl, the sole officer and director, will sell the shares and intends to offer them to friends, family members and acquaintances. In offering the securities on our behalf, Mr. Diehl will rely on the safe harbor from broker dealer registration set out in Rule 3a4-1 under the Securities Exchange Act of 1934. In his endeavors to sell this offering, Mr. Diehl does not intend to use any mass-advertising methods such as the Internet or print media.

Mr. Diehl will not register as a broker-dealer pursuant to Section 15 of the Securities Exchange Act of 1934, in reliance upon Rule 3a4-1, which sets forth the conditions under which a person associated with an Issuer, may participate in the offering of the Issuer's securities and not be deemed to be a broker-dealer.

a. Mr. Diehl is an officer and director and is not subject to a statutory disqualification, as that term is defined in Section 3(a)(39)of the Act, at the time of his participation; and

b. Mr. Diehl is an officer and director and will not be compensated in connection with his participation by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities; and

c. Mr. Diehl is an officer and director and is not, nor will he be at the time of his participation in the offering, an associated person of a broker-dealer; and

d. Mr. Diehl is an officer and director and meets the conditions of paragraph (a)(4)(ii) of Rule 3a4-1 of the Exchange Act, in that he (A) primarily performs, or is intended primarily to perform at the end of the offering, substantial duties for or on behalf of our company, other than in connection with transactions in securities; and (B) is not a broker or dealer, or been associated person of a broker or dealer, within the preceding twelve months; and (C) has not participated in selling and offering securities for any Issuer more than once every twelve months other than in reliance on Paragraphs (a)(4)(i) (a) (4) (iii).

Our officer, director, control person and affiliates of same do not intend to purchase any shares in this offering.

Terms of the Offering

Swingplane Ventures, Inc. (“Company”) is offering on a best-efforts basis a maximum of 3,500,000 shares of its common stock at a price of $0.01 per share. This is the initial offering of Common Stock of Swingplane Ventures, Inc. and no public market exists for the securities being offered. The Company is offering the shares on a “self-underwritten”, best-efforts all or none basis directly through our officer and director. The shares will be offered at a fixed price of $.01 per share for a period not to exceed 180 days from the date of this prospectus. There is no minimum number of shares required to be purchased. This offering is on a best effort, all-or-none basis, meaning if all shares are not sold and the total offering amount is not deposited by the expiration of the offering, all monies will be returned to investors, without interest or deduction. Matt Diehl, the sole officer and director of Swingplane Ventures Inc., intends to sell the shares directly. No commission or other compensation related to the sale of the shares will be paid to our officer and director. The intended methods of communication include, without limitations, telephone, and personal contact. For more information, see the section titled “Plan of Distribution” and “Use of Proceeds” herein.

The Officer and director of the issuer and any affiliated parties thereof will not participate in this offering.

The offering shall terminate on the earlier of (i) the date when the sale of all 3,500,000 shares is completed or (ii) one hundred and eighty (180) days from the date of this prospectus. Swingplane Ventures, Inc. will not extend the offering period beyond one hundred and eighty (180) days from the effective date of this prospectus.

There can be no assurance that all, or any, of the shares will be sold. As of the date of this Prospectus, Swingplane Ventures, Inc. has not entered into any agreements or arrangements for the sale of the shares with any broker/dealer or sales agent. However, if Swingplane Ventures, Inc. were to enter into such arrangements, Swingplane Ventures, Inc. will file a post-effective amendment to disclose those arrangements because any broker/dealer participating in the offering would be acting as an underwriter and would have to be so named in the prospectus.

In order to comply with the applicable securities laws of certain states, the securities may not be offered or sold unless they have been registered or qualified for sale in such states or an exemption from such registration or qualification requirement is available and with which Swingplane Ventures, Inc. has complied. The purchasers in this offering and in any subsequent trading market must be residents of such states where the shares have been registered or qualified for sale or an exemption from such registration or qualification requirement is available. As of the date of this Prospectus, Swingplane Ventures, Inc. has not identified the specific states where the offering will be sold. Swingplane Ventures, Inc. will file a pre-effective amendment indicating which state(s) the securities are to be sold pursuant to this registration statement.

Deposit of Offering Proceeds

The proceeds from the sale of the shares in this offering will be payable to Law Office of Clifford J. Hunt, P.A., Trust Account IOTA ("Trust Account") and will be deposited in a non-interest bank account until the minimum offering proceeds are raised. All subscription agreements and checks should be delivered to Law Office of Clifford J. Hunt, P.A., 8200 Seminole Boulevard, Seminole, Florida 33772. Failure to do so will result in checks being returned to the investor, who submitted the check. All subscription funds will be held in the Trust Account pending and no funds shall be released to Swingplane Ventures, Inc. until such a time as the entire offering is sold. If the entire offering is not sold and proceeds received within one hundred and eighty (180) days of the date of this prospectus, all subscription funds will be returned to investors promptly without interest or deduction of fees. The fee of the Trust Agent is $1,000.00. (See Exhibit 99(b)).

Procedures and Requirements for Subscription

Prior to the effectiveness of the Registration Statement, the Issuer has not provided potential purchasers of the securities being registered herein with a copy of this prospectus. Investors can purchase common stock in this offering by completing a Subscription Agreement (attached hereto as Exhibit 99(a)) and sending it together with payment in full to Law Office of Clifford J. Hunt P.A., Trust Account IOTA, 8200 Seminole Boulevard Seminole, Florida 33772. All payments are required in the form of United States currency either by personal check, bank draft, or by cashier's check. There is no minimum subscription requirement. Swingplane Ventures, Inc. reserves the right to either accept or reject any subscription. Any subscription rejected within this 30-day period will be returned to the subscriber within five business days of the rejection date. Furthermore, once a subscription agreement is accepted, it will be

executed without reconfirmation to or from the subscriber. Once Swingplane Ventures, Inc. accepts a subscription, the subscriber cannot withdraw it.

S-1 filed August 8, 2010, Item 13. Other Expenses Of Issuance And Distribution.

The following table sets forth the costs and expenses payable by Swingplane Ventures, Inc. in connection with the sale of the securities being registered. All amounts are estimates except the Securities and Exchange Commission registration fee and the Accounting Fees and Expenses:

Registration Fee	$ 2.50
Federal taxes, state taxes and fees	0.00
Blue Sky Qualifications	800.00
Accounting Fees and Expenses	2,500.00
Legal and Professional Fees and Expenses	1,500.00
EDGAR Fees and Expenses	700.00
Total	**$5,502.50**

AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

AGREEMENT AND PLAN OF MERGER AND REORGANIZATION (this "Agreement"), dated as of July 23, 2015, by and among **ViewRay, Inc.** (formerly **Mirax Corp**.), a Delaware corporation (the "Parent"), **Vesuvius Acquisition Corp.**, a Delaware corporation (the "Acquisition Subsidiary"), and **ViewRay Technologies, Inc.**, a Delaware corporation (the "Company"). The Parent, the Acquisition Subsidiary and the Company are each a "Party" and referred to collectively herein as the "Parties."

WHEREAS, this Agreement contemplates a merger of the Acquisition Subsidiary with and into the Company, with the Company remaining as the surviving entity after the merger (the "Merger"), whereby the stockholders of the Company will receive Parent Common Stock (as defined below) in exchange for their capital stock of the Company; and

WHEREAS, simultaneously with the closing of the Merger, the Parent will complete a private placement offering (the "Private Placement Offering") of a minimum of 8,000,000 shares (the "Minimum Amount") of the Parent's common stock, par value $0.01 per share (the "Parent Common Stock") at a purchase price of $5.00 per share upon the terms and subject to the conditions of a stock purchase agreement in the form of Exhibit A attached hereto (the "Stock Purchase Agreement"); and

WHEREAS, immediately before the closing of the Merger, the Parent shall split-off its existing business and its wholly owned subsidiary, **Mirax Enterprise Corp.**, a Nevada corporation (the "Split-Off Subsidiary"), through the assignment of all of the Parent's assets and liabilities (other than those under this Agreement and the other related agreements and transactions contemplated hereby) to, and the sale of all of the outstanding capital stock of, the Split-Off Subsidiary (the "Split-Off") upon the terms and conditions of a split-off agreement by and among the Parent, the Split-Off Subsidiary and **Dinara Akzhigitova** (the "Split-Off Purchaser"), in the form of Exhibit B attached hereto (the "Split-Off Agreement"); and

WHEREAS, simultaneously with the closing of the Merger, the Parent, Split-Off Subsidiary and Split-Off Purchaser shall enter into a general release agreement in the form of Exhibit C attached hereto (the "General Release Agreement"); and

WHEREAS, the Parent, the Acquisition Subsidiary and the Company desire that the Merger qualify as a "reorganization" under Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and that this Agreement constitute a "plan of reorganization" within the meaning of Sections 1.368-2(g) and 1.368-3(a) of the United States Treasury Regulations and not subject the holders of equity securities of the Company to tax liability under the Code.

SPLIT-OFF AGREEMENT

This **SPLIT-OFF AGREEMENT**, dated as of July 23, 2015 (this "**Agreement**"), is entered into by and among ViewRay, Inc., formerly known as Mirax Corp., a Delaware corporation (the "**Seller**"), Mirax Enterprise Corp, a Nevada corporation ("**Split-Off Subsidiary**"), and Dinara Akzhigitova ("**Buyer**").

R E C I T A L S:

WHEREAS, Seller is the owner of all of the issued and outstanding capital stock of Split-Off Subsidiary, which was formed on July 16, 2015; Split-Off Subsidiary is a wholly-owned subsidiary of Seller which will, pursuant to Article I of this Agreement, acquire the business assets and liabilities previously held by Seller; and Seller will have no other businesses or operations following the execution of this Agreement and immediately prior to the Merger (as defined herein);

WHEREAS, following the Assignment (as defined in Article I of this Agreement), pursuant to this Agreement, all of the outstanding stock of Split-Off Subsidiary shall be purchased by Buyer in exchange for Buyer's entire equity interest in Seller;

WHEREAS, immediately after the execution of this Agreement and the consummation of the transactions contemplated hereby, Seller, ViewRay Technologies, Inc., a Delaware corporation ("**PrivateCo**"), and Vesuvius Acquisition Corp., a Delaware corporation ("**Acquisition Sub**"), will enter into an Agreement and Plan of Merger and Reorganization (the "**Merger Agreement**") pursuant to which Acquisition Sub will merge with and into PrivateCo with PrivateCo remaining as the surviving entity (the "**Merger**"); and the equity holders of PrivateCo will receive securities of Seller in exchange for their equity interests in PrivateCo;

WHEREAS, the execution and delivery of this Agreement, and the consummation of the assignment, assumption, purchase and sale transactions contemplated by this Agreement are conditions to the completion of the Merger pursuant to the Merger Agreement, and Seller has represented to PrivateCo in the Merger Agreement that the transactions contemplated by this Agreement will be consummated immediately prior to the closing of the Merger, and PrivateCo relied on such representation in entering into the Merger Agreement;

WHEREAS, Buyer desires to purchase the Shares (as defined in Section 2.1) from Seller, and to assume, and hold Seller harmless against, all responsibility for any debts, obligations and liabilities of Seller (prior to the Merger) and Split-Off Subsidiary, on the terms and subject to the conditions specified in this Agreement; and

WHEREAS, Seller desires to sell and transfer the Shares to Buyer, on the terms and subject to the conditions specified in this Agreement;