THE BANK OF NEW YORK MELLON

April 25, 2008

Nancy N. Morris, Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-04-08

Dear Ms. Morris:

We write to offer our comments on the Commission's rulemaking proposal (the "Proposal") relating to exemption of foreign private issuers from the registration requirement of Section 12(g) of the Securities Exchange Act of 1934 (the "34 Act").

The Bank of New York is the leading depositary bank, acting for more than 1,300 American and global depositary receipt programs representing securities from 63 countries. The Bank's depositary receipt programs include approximately 540 sponsored Level I American Depositary Receipt ("ADR") programs (registered on Form F-6 for over-the-counter trading but not listed on a national securities exchange) and approximately 160 unsponsored ADR programs (also registered on Form F-6 but without contractual appointment by the issuer).

In general, except as set forth in this letter, we support the Proposal for two reasons:

First, we believe the Proposal would increase the availability of ADR programs in the U.S. We believe that ADRs have proved themselves to be an efficient and convenient vehicle for making securities of foreign issuers available to U.S. investors. However, under the present Rule 12g3-2(b) (the "Rule"), depositaries have been unable to establish Form F-6 registered ADR programs unless the foreign issuer took the affirmative steps of making an initial submission to the Commission under the Rule and obtaining the concurrence of the Commission staff that it was in compliance with the requirements of the present Rule. We believe that under the Proposal, many additional foreign issuers would qualify for exemption under the Rule by virtue of their existing practices of publishing shareholder communications on their websites as part of their ongoing investor relations activities and their existing situations regarding listing of their securities and trading patterns of their securities. Depositary banks would then be able to register unsponsored ADR programs for those foreign issuers immediately, without the involvement of those foreign issuers. As a result, the securities of many more foreign issuers would become available in the form of registered unsponsored ADRs and that increased availability of ADR programs would benefit U.S. investors.

Second, we believe that the Proposal would make more information about foreign issuers available to U.S. investors. We believe that the Proposal would simplify Rule compliance for foreign issuers and, as a result, more foreign issuers would become eligible under the Rule. In addition, we believe that information made available by foreign issuers on the Internet as provided in the Proposal would be far easier for U.S. investors to access than information furnished to the Commission in paper form under the present Rule. Therefore, we think the proposed procedural changes regarding the furnishing of foreign issuer information under the Rule will benefit U.S. investors.

We Observe that the Proposal Would Impose New Conditions for Exemption Under the Rule

Under the Proposal, the requirement of furnishing information to the Commission would be replaced with an on-line information publishing requirement and several additional conditions would be added, including the following:

- average daily trading volume of the foreign issuer's securities in one or two non-U.S. jurisdictions (a "Primary Trading Market") must account for at least 55 percent of worldwide average daily trading volume (the "Primary Trading Market Condition");

- the foreign issuer must be listed on a securities exchange in at least one of the non-U.S. jurisdictions comprising the Primary Trading Market (the "Foreign Listing Condition");

- if the average daily trading volume in two non-U.S. jurisdictions are aggregated to comprise the Primary Trading Market, then trading volume in one of those jurisdictions must exceed trading volume in the U.S. (the "Largest Single Market Is Foreign Condition"); and

- average daily trading volume in the U.S. market must not exceed 20 percent of worldwide average daily trading volume (the "U.S. Volume Limit Condition").

We Support Some, but Not All of the New Conditions

We support the Primary Trading Market Condition, the Foreign Listing Condition and the Largest Single Market Is Foreign Condition, but we oppose the U.S. Volume Limit Condition.

We understand the policy basis for the existing Rule to be that (i) home country disclosure rules would provide sufficient protection for U.S. investors that elected to purchase securities of those foreign issuers and (ii) it would not be reasonable to require foreign issuers that neither offered nor listed their securities in the U.S. to incur the expense and effort of registering under the 34 Act.

We think this basic policy judgment that underlies the Rule remains sound. We think in general there is a trend toward increased investor disclosure standards worldwide. We also think that the increasing appetite of U.S. investors for foreign securities shows that U.S. investors are willing to accept foreign disclosure standards as sufficient information for their investment decisions in many cases. We note that a number of the Commission's recent policy statements and rule changes appear to reflect an approach to market regulation that includes deference to the disclosure standards in non-U.S. markets, provided that U.S. investors and markets will still be adequately protected. We believe the Proposal is a worthy attempt by the Commission to strike a proper balance as between protection of U.S. investors and markets and the global economic forces reshaping the landscape for cross-border investing.

Although we believe the present Rule has worked well enough, we are not opposed to the elements of the Proposal that would establish additional conditions to the extent reasonably related to helping ensure that reliance on non-U.S. disclosure standards is justifiable in the case of foreign issuers that qualify for exemption under the Rule.

We read the Proposal for the most part as refocusing and redefining the policy judgment underlying the Rule to say in effect that exemption from 34 Act reporting should be afforded to a foreign issuer that:

(i) is regulated by a foreign securities regulatory authority that has greater regulatory interest in the foreign issuer than U.S. regulatory authorities would have;

(ii) makes available to U.S. investors the information it discloses under the rules of that foreign regulatory authority; and

(iii) has not offered or listed its securities in the U.S.

Under that standard, we think that the Primary Trading Market Condition, the Foreign Listing Condition and the Largest Single Market Is Foreign Condition are reasonable, but that the U.S. Volume Limit Condition is unnecessary.

<u>We Support the Primary Trading Market Condition, the Foreign Listing Condition and the Largest Single Market Is Foreign Condition</u>

We believe it is not justifiable or practical for securities issuers to be regulated in every jurisdiction in which their securities are held. We believe that in general it is sensible to leave regulation to the authorities in the jurisdiction where a clear majority of the trading in a class of securities takes place.

We believe that if (i) a foreign issuer is listed in a non-U.S. jurisdiction (Foreign Listing Condition), (ii) a clear majority of the trading in the foreign issuer's securities takes place in the jurisdiction where it is listed and at most one other non-U.S. jurisdiction (Primary Trading Market Condition) and (iii) trading volume in at least one of the non-U.S. jurisdictions comprising the Primary Trading Market exceeds trading volume in the U.S., then it is highly likely that a foreign securities regulator has substantial interest in regulating that foreign issuer and its disclosure to investors. We also believe that under those conditions, the Commission should leave regulation of that foreign issuer and its disclosure to investors to the non-U.S. securities regulator that has an interest in conducting that regulation that is substantial and is greater than the interest that the Commission would have.

We Oppose the U.S. Volume Limit Condition.

We believe that imposing the U.S. Volume Limit Condition in addition to the Primary Trading Market Condition, the Foreign Listing Condition and the Largest Single Market is Foreign Condition is unnecessary. Doing so would create a risk that foreign issuers that are regulated in a non-U.S. jurisdiction, have a clear majority of the trading in their securities taking place in that non-U.S. jurisdiction and have not offered or listed any securities in the U.S. could nevertheless be required to register under the 34 Act and comply with U.S. reporting requirements, including the requirements under the Sarbanes-Oxley Act, if as little as 21 percent of the trading in its securities took place in the U.S. We think doing so would impose unnecessary uncertainty and regulatory burdens on those foreign issuers. We also think regulation of those foreign issuers by the Commission may duplicate regulation that is already being provided by non-U.S. regulatory authorities.

In addition, foreign issuers that rely on the proposed Rule and take all the steps that are under their control to maintain eligibility, such as publishing material information on their websites and maintaining a listing and a primary trading market in a non-U.S. jurisdiction could nevertheless become subject to 34 Act reporting obligations solely because their securities prove popular with U.S. investors and U.S. trading volume grows to the point that it comprises more than the amount permitted under the U.S. Volume Limit Condition. Our research indicates there are at least four foreign issuers today for which we act as Level I ADR depositary that would lose exemption under the Proposal solely because of the proposed U.S. Volume Limit Condition.[1] It is reasonable to assume that additional foreign issuers could similarly lose their exemptions in the future under the U.S. Volume Limit Condition, especially if, as we expect, interest of U.S. investors in foreign securities continues to grow.

We are concerned that this possibility of foreign issuers inadvertently being "trapped" into 34 Act reporting, including compliance with the requirements of the Sarbanes-Oxley Act, through no fault or action whatever on their part could prove a disincentive for foreign issuers to comply with the requirements of the Rule at all. To the extent that happened, less information would be made available to U.S. investors and the anticipated benefits to U.S. investors from the Proposal would not be realized.

So long as a clear majority (at least 55 percent) of the trading in a foreign issuer's securities takes place on a Primary Trading Market and trading in at least one non-U.S. jurisdiction exceeds trading in the U.S. market, we think that non-U.S. regulation should

[1] This information is based on an analysis of 333 existing Level I ADR facilities for which we act as depositary. Eleven (about 3%) of those issuers would lose eligibility under the proposed U.S. Volume Limit Condition, including seven (about 2%) that would also lose eligibility under the proposed Primary Trading Market Condition. Therefore, we conclude that four (about 1%) of those issuers would lose eligibility solely by reason of the proposed U.S. Volume Limit Condition.

take precedence and the foreign issuer should be eligible for exemption under the Rule even if up to 45 percent of the trading volume were in the U.S.

We Believe that Foreign Issuers that are Exempt Under the Existing Rule Should be Grandfathered Under the Proposal

We believe that foreign issuers that have established their exemptions from 34 Act reporting under the existing Rule should remain exempt so long as they (i) do not offer or list their securities in the U.S. and (ii) continue to make required home market information available to U.S. investors. In other words, we think that foreign issuers that are exempt under the existing Rule should never be made subject to the Primary Trading Market Condition, the Foreign Listing Condition, the Largest Single Market Is Foreign Condition or the U.S. Volume Limit Condition under the Proposal so long as they meet the other conditions for exemption under the amended Rule.

We think that foreign issuers that have relied on exemption under Rule in the past should not lose their exemption under the Proposal based on new conditions they may be unable to meet. Unless grandfathering is permitted, foreign issuers that now rely on exemption under the Rule could be required to file reports under the 34 Act, including requirements under the Sarbanes-Oxley Act, which we think would impose unfair burdens of expense and effort on those issuers.

The Adopting Release Should Clarify that the Rule Is Self-Executing

We believe one of the principal effects of the Proposal, if adopted, should be to make the Rule fully self-executing, as we believe it was always intended to be. Under the Proposal, a foreign issuer would be exempt pursuant to the Rule if the specified qualifying facts exist, without any action on the part of the foreign issuer to apply for or claim the exemption. Because the Proposal would make the Rule fully self-executing, we think the adopting release and the Rule should not contain any references to a foreign issuer "claiming" the exemption. We support the Proposal in that, if the qualifying facts exist, a foreign issuer would be exempt, regardless of whether it "claims" the exemption or not.

All Persons Should Be Able to Rely in Good Faith on Information Reasonably Available to Them as to Applicability of the Rule

An important implication of making the Rule fully self-executing is that the Commission staff will no longer be required to make any determinations as to whether a foreign issuer is exempt or not at any time. Determinations as to whether a foreign issuer is exempt will instead be made by other persons based on the facts available to them and their judgment about whether the qualifying facts exist. Clearly, foreign issuers will have to make these determinations because they will need to determine if they are required to file Form 20-F.

However, we point out that depositary banks that wish to file Forms F-6 to establish unsponsored registered ADR facilities will also have to make a determination that the foreign issuer is exempt before filing the Form F-6. Therefore, we think it would be useful if, in an adopting release, the Commission should state that any person may rely in good faith on facts reasonably available to it in making a determination that a foreign issuer is exempt under the Rule. Accordingly, a depositary bank should be permitted to form a good faith belief as to Rule eligibility based on information reasonably available to it and should be permitted to file Form F-6 and obtain effectiveness of that F-6 based on that belief, even if it should later prove that the foreign issuer did not qualify for the exemption on the date of filing, or on any subsequent date.

For example, if a depositary bank wished to establish an unsponsored registered ADR facility for ordinary shares of a foreign issuer, the depositary bank might proceed as follows:

- determine that the issuer's ordinary shares are listed on a non-U.S. securities exchange;

- look at the foreign issuer's Internet website and determine that the foreign issuer has posted (i) its most recent annual report including financial statements and (ii) press releases disclosing developments involving the issuer and its business;

- consult Bloomberg or another commercial financial market information service to obtain aggregate trading volume in the issuer's ordinary shares for the preceding calendar year (i) in the U.S., (ii) in the two largest trading markets and (iii) in all trading markets;

- determine that the market where the issuer is listed is one of the two largest trading markets;

- divide each aggregate trading volume number by 250 (the approximate number of trading days in a year) to obtain average daily trading volume; and

- determine, based on the average daily trading volume numbers determined as described above, that the issuer appears to have satisfied the Primary Trading Market Condition, the Largest Single Market is Foreign Condition and (if it should be adopted) the U.S. Trading Volume Condition for the preceding calendar year.

Based on the above checks, we believe the depositary bank should be able to file a Form F-6 and obtain effectiveness of that Form F-6 to establish an unsponsored registered ADR facility for ordinary shares of that foreign issuer. We believe the depositary bank, acting in good faith, should be able to proceed in this manner without fear of liability even though:

- the depositary bank does not know if the foreign issuer has 34 Act reporting obligations with which it has not complied;

- the depositary bank does not know if the foreign issuer has in fact posted on its website all the information it ought to have posted to comply with the Rule;

- the depositary bank does not know if the foreign issuer will comply with the information-posting requirements of the Rule in the future; and

- the trading volume information provided by Bloomberg maybe inaccurate or incomplete.

Unless persons are entitled to rely, and will be protected in relying, in good faith on facts reasonably available to them in determining applicability of the Rule, we believe that depositary banks will not be able to create unsponsored registered ADR programs and many anticipated benefits of the Proposal will not be realized.

Detailed Comments on the Commission's Proposing Release

We have set forth above our general and most significant comments on the Proposal. The following are additional specific comments on certain of the issues on which the Commission requested comment in the proposing release. For your convenience in reading and tabulating these comments, we have reproduced from the proposing release the heading designations and wording of the specific requests for comment to which we are responding.

A. Proposed Non-Reporting Condition

• Should we permit an issuer to claim the Rule 12g3-2(b) exemption if it meets the trading volume condition and the other proposed conditions although the statutory 120-day period has lapsed, as proposed? If not, why should we retain the 120-day statutory requirement for Rule 12g3-2(b) when that provision pertains to a shareholder-based requirement? What are the benefits to investors of eliminating or retaining the 120-day requirement?

-- Yes. Regardless of the number of U.S. investors that a foreign issuer may have, we believe that, other things being equal, it is better for a foreign issuer to make more rather than less information available to U.S. investors. Disqualifying a foreign issuer that has filed Form 20-F within 120 days of its fiscal year-end even though it had more than 300 U.S. beneficial owners would not encourage that issuer to begin providing more information to U.S. investors. Allowing that foreign issuer to qualify for the exemption by commencing to provide additional information to U.S. investors at any time, on the other hand, would always encourage foreign issuers to provide more information, so U.S. investors should benefit.

• Should we require an issuer not to have Exchange Act reporting obligations over a specified period before claiming the exemption? Should the specified period be 3, 6, 12, 18, or 24 months, or some other specified period?

-- No. We believe re-imposing a "blackout period" would not encourage foreign issuers to qualify for the exemption by providing information to U.S. investors and thus would not benefit U.S. investors.

• Should we permit an otherwise eligible issuer to claim the Rule 12g3-2(b) exemption immediately upon the termination of its Section 12(g) registration or the suspension of its Section 15(d) reporting obligations, as proposed?

-- Yes. We have observed that many foreign issuers have sought to qualify under the Rule immediately upon suspension or termination of their 34 Act reporting obligations. We believe continuing to allow foreign issuers to qualify for exemption in this way will encourage them to qualify for the exemption by providing information to U.S. investors and thus would benefit U.S. investors.

B. Proposed Foreign Listing Condition

• Should we require an issuer to maintain a listing on one or more exchanges in one or two foreign jurisdictions comprising its primary trading market as a condition to the Rule 12g3-2(b) exemption, as proposed? Should we require that the foreign exchange be part of a recognized national market system or possess certain characteristics? If so, what characteristics would be appropriate?

-- Yes. We support this proposal for the reasons set forth in our general comments. However, we have no comment on whether that the foreign exchange should be required to have any particular other characteristics.

• Should we define primary trading market to mean that at least 55 percent of the trading in the issuer's subject class of securities took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year, as proposed? If not, is there another percentage, such as 50, 51, 60, or some other percent, that is more appropriate?

-- Yes. We support this proposal.

• Should we permit the trading volume in an issuer's primary trading market to be less than 50 percent of its worldwide trading volume as long as the primary trading market's trading volume is greater than its U.S. trading volume?

-- No. We are not sure it would be clear that a particular non-U.S. securities regulatory authority would have primary regulatory interest in the foreign issuer under those circumstances.

• Should we also require that, if a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for the purpose of the foreign listing condition, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities, as proposed? Should we instead permit an issuer to count the trading of its securities only in one foreign jurisdiction or only

on one exchange in each of two foreign jurisdictions for the purpose of the foreign listing condition?

-- We are in favor of the proposed requirement. We believe that relying on regulation and disclosure in a foreign primary trading market is justifiable only if a securities regulatory authority in a non-U.S. jurisdiction clearly has more interest in regulating the issuer's disclose than does the Commission, based on the volume of trading in that foreign market compared with the volume of trading in the U.S.

• Should we require an issuer to maintain a listing in its jurisdiction of incorporation, organization or domicile instead of, or in addition to, a listing in its primary trading market? Would such a requirement increase the likelihood that a non-U.S. jurisdiction is principally regulating the trading in an issuer's securities?

-- No. We believe that so long as there is a primary trading market outside the U.S., it should not matter if that market is the issuer's jurisdiction of incorporation. We believe there are a large number of foreign issuers that are listed and primarily traded in a jurisdiction other than their jurisdiction of incorporation, and that arrangements of that kind are becoming increasingly common outside the U.S.

• Should we permit an unlisted issuer to claim the Rule 12g3-2(b) exemption as long as it publishes voluntarily the same documents that a listed company is required to publish in its home jurisdiction?

-- No. We do not believe that relying on voluntary disclosure provides a reliable basis to justify continuing exemption from U.S. disclosure requirements. We believe that reliance of that kind would make it hard for market participants in the U.S. to determine whether a foreign issuer is in fact qualified for the exemption at any given time.

C. Proposed Quantitative Standard

• Should an issuer be able to claim the Rule 12g3-2(b) exemption if the U.S. trading volume of its subject class of securities is no greater than a specified percentage of its worldwide trading volume for the previous 12 months, even if the number of its U.S. shareholders is 300 or greater, as proposed?

-- Yes. We believe that trading volume is a better measure of qualification for the exemption than counting U.S. beneficial owners, both because it is easier to do and because we believe that trading volume is a better indicator of whether a foreign jurisdiction has a greater interest in regulating an issuer's disclosure than does the U.S.

• If so, should the U.S. trading volume standard be no greater than 20 percent of worldwide trading volume, as proposed? Should the U.S. trading volume standard instead be no greater than 5, 10, 15, 25, 30 or some other percent of worldwide trading volume?

-- We oppose the U.S. trading volume standard, as set forth in our general comments. We believe that so long as the Foreign Listing Condition and the Primary Trading Market Condition are met, it is not necessary to impose a separate U.S. trading volume ceiling. We think that if there is more trading volume in the primary trading market than there is in the U.S. the primary trading market would have a greater interest in regulating the issuer's disclosure than would the U.S. and the exemption would be justified.

• Is there another quantitative measure that is a more appropriate measure of relative U.S. investor interest in a foreign private issuer's securities than the proposed trading volume standard?

-- We believe that relative trading volume in the U.S. and in the primary trading market is the appropriate measure. We believe that the key question should be whether the primary trading market for the security is outside U.S., based on relative trading volume in primary trading market and in the U.S. If the primary trading market is outside the U.S., we believe it is advisable to rely on the securities regulatory authority in the non-U.S. primary trading market to provide regulation of the issuer and its disclosure to investors.

• Should we not impose any quantitative measure relating to U.S. market interest when determining whether a foreign private issuer should be subject to Exchange Act registration?

-- We believe that so long as the foreign listing and primary trading market standards are met, it is not necessary to impose a separate U.S. trading volume ceiling. We think that if there is more trading volume in the primary trading market than there is in the U.S., the primary trading market would have a greater interest in regulating the issuer's disclosure than would the U.S. and the exemption would be justified.

• Should we require an issuer to calculate its U.S. and worldwide trading volumes as under Rule 12h-6, as proposed? Should we require additional, or different, requirements or guidance regarding off-exchange transactions?

-- We believe that reporting of off-exchange trading may be more comprehensive in the U.S. than it is in non-U.S. markets. Therefore, we see potential for biasing of determinations comparing U.S. and non-U.S. trading if reported off-exchange U.S. trading must be included but comparable off-exchange trading information is not available for non-U.S. markets. We support allowing persons making the required determinations to use any available information in a way that they believe in good faith will produce a reasonably reliable result.

• Should we permit an issuer's sources of trading volume information to include publicly available sources, market data vendors or other commercial information service providers upon which the issuer has reasonably relied in good faith? Are there other parties or services that we should specify as permissible sources of trading volume information?

-- We support allowing persons making the required determinations to use any available information sources if they do so in a way that they believe in good faith will produce a reasonably reliable result.

• Should we permit an issuer that has satisfied Rule 12h-6's trading volume benchmark to claim the Rule 12g3-2(b) exemption upon the effectiveness of its Rule 12h-6 deregistration, assuming it meets the proposed Rule 12g3-2(b) foreign listing requirement, as proposed?

-- Yes. We support this proposal.

• Similarly should we permit an issuer that has satisfied Rule 12h-6's alternative record holder condition to claim the Rule 12g3-2(b) exemption upon the effectiveness of its Rule 12h-6 deregistration as long as it meets the proposed Rule 12g3-2(b) foreign listing requirement, as proposed?

-- Yes. We support this proposal.

• Are there some currently Rule 12g3-2(b)-exempt companies that would lose the exemption upon the effectiveness of the proposed rule amendments because their U.S. trading volume exceeds the proposed threshold and the number of their U.S. holders is 300 or greater? If so, are there a significant number of such companies and how should we treat them? Should we provide a transition period for those companies that would grant them a longer period of time before they would have to register their securities under Exchange Act Section 12(g)? Should we provide a "grandfather" provision or issue an order that would permit issuers that have currently claimed the exemption under Rule 12g3-2(b), but would exceed the proposed trading volume threshold, to continue to be exempt from Section 12(g) provided that they comply with all other conditions? Provide specific examples of such companies.

-- Yes. Our research indicates that there are at least four foreign issuers that currently rely on the Rule and for which we act as depositary that would become ineligible under the Proposal based solely on the proposed 20 percent U.S. trading volume standard. As set forth in our general comments, we oppose the separate 20% U.S. Trading Volume Condition, although we support the Primary Trading Market Condition, the Foreign Listing Condition and the Largest Single Market Is Foreign Condition.

D. Proposed Electronic Publishing of Non-U.S. Disclosure Documents

• Is it reasonable to expect that all electronic information delivery systems that are generally available to the public will be accessible and useable by U.S. investors? Should we require an issuer to publish its non-U.S. disclosure documents on its Internet Web site if the electronic delivery system is not navigable in English or requires users to register or pay a fee for access? Should we require an issuer to note on its Internet Web site that documents supplied to maintain the Rule 12g3-2(b) exemption are available on an electronic delivery system, and provide a link to that system?

-- We believe that the issuer that makes information available on an information delivery system other than its Internet website should not be required to publish a link or notice as to the location of that information.

• Should the Commission permit or require an issuer to publish its non-U.S. disclosure documents on EDGAR or through another specified central electronic repository for documents instead of requiring the publishing of those documents on an issuer's Internet Web site or through an electronic information delivery system in its primary trading market?

-- We believe an issuer should meet the information publication requirement if its information is generally available to investors in the U.S. Accordingly, we believe that so long as the information is generally accessible by investors in the U.S., it should not matter where the information delivery system on which the information is published is based.

E. Proposed Elimination of the Written Application Requirement

• Should we permit an issuer, which has not terminated its registration and reporting obligations under Rule 12h-6, to claim the Rule 12g3-2(b) exemption as long as it meets the proposed rule's conditions, without submitting a written application to the Commission, as proposed?

-- Yes, we support this proposal.

• Should we continue to permit an issuer to claim the Rule 12g3-2(b) exemption automatically upon the effectiveness of its deregistration under Rule 12h-6, as proposed?

-- Yes, we support this proposal.

• As a condition of claiming or maintaining the Rule 12g3-2(b) exemption, should we require an issuer to publish, and to update as necessary, a list of its non-U.S. disclosure requirements on its Internet Web site or its primary trading market's electronic information delivery system?

-- No. We believe that the key point is that material information about the issuer should be available to U.S. investors. We do not believe that it is necessary to require issuers to take any action other than making material information available.

• As a condition of claiming or maintaining the Rule 12g3-2(b) exemption, should we require an issuer to publish electronically other information with respect to its eligibility for the Rule 12g3-2(b) exemption, for example, identification of its non-U.S. primary market, and its U.S. trading volume as a percentage of its worldwide trading volume for its most recently completed fiscal year?

-- No. We do not believe it is necessary to require issuers to take any action other than making material information available to U.S. investors.

• If it is appropriate to eliminate the application process for the Rule 12g3-2(b) exemption, as proposed, should we at least require an issuer to notify the Commission that it is claiming the Rule 12g3-2(b) exemption? If so, what form should the notification take? Would the filing of an amended Form F-6, as proposed, serve as sufficient notice for most issuers claiming the Rule 12g3- 2(b) exemption?

-- No. We do not believe it is necessary to require issuers to take any action other than making material information available to U.S. investors.

F. Proposed Duration of the Amended Rule 12g3-2(b) Exemption

• Should an issuer lose the Rule 12g3-2(b) exemption if its U.S. trading volume exceeds 20 percent of its worldwide trading volume for its most recently completed fiscal year, other than the year in which the issuer first claimed the exemption, even if the issuer has fully complied with Rule 12g3-2(b)'s non-U.S. jurisdiction publication requirement, as proposed? Should an issuer have to make the trading volume determination for the fiscal year in which the issuer first claims the exemption as well? Or should compliance with the rule's non-U.S. publication and foreign listing requirements suffice as a basis for continuing the exemption, regardless of the relative U.S. trading volume of its securities?

-- No. We oppose the separate U.S. trading volume standard, as set froth in our general comments.

G. Proposed Elimination of the Successor Issuer Prohibition

• Should we permit a successor issuer to claim the Rule 12g3-2(b) exemption upon the effectiveness of its exit from the Exchange Act reporting regime under Rule 12g-4, Rule 12h-3 or Section 15(d), as proposed?

-- Yes. We support this proposal.

J. Proposed Revisions to Form F-6

Comment Solicited

• Should we require a Form F-6 registrant to disclose on Form F-6 that, if the issuer of deposited securities is not an Exchange Act reporting company, such issuer electronically publishes the documents required to maintain the Rule 12g3-2(b) exemption, and to provide the address of the issuer's Internet Web site or electronic information delivery system in its primary trading market, as proposed?

-- We support the proposal, except that a registrant on Form F-6 for an unsponsored ADR program should be required to state only that the Depositary reasonably believed, as of the date of filing, that the Rule 12g3-2(b) materials were available on a specified Internet website, or other specified electronic information delivery system, that is generally accessible to investors in the U.S.

We believe that the key point is that material information about the foreign issuer should be available to U.S. investors, but it should not otherwise matter where the information delivery system on which the information is available is based or who operates it.

• Should we clarify the proposed requirement that a registrant that already has an effective Form F-6 for either a sponsored or unsponsored facility has to disclose the address where the issuer of the underlying securities has electronically published its non-U.S. disclosure documents under Rule 12g3- 2(b) when the registrant files its first post-effective amendment to the Form F-6 following the effective date of the proposed rule amendments, as intended?

-- We believe that the amended instructions to Form F-6 should expressly state that disclosure as to the location where information about the foreign issuer is published is not required until an amendment to the Form F-6 or a new F-6 is filed for another reason. Otherwise, we believe the Commission may be inundated with a very large number of post-effective Form F-6 amendments on or shortly following the effective date of this rulemaking.

• As a condition to the registration of ADRs on Form F-6 relating to the shares of a foreign private issuer, should we require that the issuer give its consent to the depositary? Should we require that the depositary have notified the foreign private issuer of its intention to register ADRs and have either received an affirmative statement of no objection from the issuer or not received an affirmative statement of objection from the issuer?

-- No. We do not believe that any consent by a foreign issuer or notice to a foreign issuer should be required as a condition of a Form F-6 becoming effective to register an unsponsored ADS facility. Since the Commission is proposing to eliminate the requirement that a foreign issuer make an application or take any other action (other than making material information available to U.S. investors) to qualify for the Rule exemption, it is illogical to require foreign issuer consent or any other specific action by a foreign issuer in connection with filing of a Form F-6 for an unsponsored ADR facility.

We believe that the objective of the Proposal is to give U.S. investors more access to securities of foreign issuers for which material information is available. That objective would not be served by allowing foreign issuers that otherwise make material information available to investors to elect to disqualify themselves for the Rule exemption or to block filing or effectiveness of a Form F-6 to establish an unsponsored ADS facility.

Furthermore, if foreign issuers that otherwise make material information available are given an opportunity to take specific action to disqualify themselves under the Rule or to block filing or effectiveness of a Form F-6 to establish an unsponsored ADS facility but do not do so, it could be argued that such failure could constitute sufficient purposeful action by the foreign issuer within the U.S. for regulatory jurisdiction to attach to that foreign issuer, which presumably would be an unintended result.

The Proposal does not address the position of foreign issuers that have established sponsored unregistered DR facilities, including restricted (Rule 144A) facilities and offshore issuing (Regulation S) facilities. Even though we generally oppose giving foreign issuers that qualify for exemption under the Rule a right to prevent establishment of unsponsored registered ADR facilities for their securities, we think that foreign issuers that have established sponsored unregistered DR facilities present a special case. We would support a rule that would prevent establishment of unsponsored registered ADR facilities for those foreign issuers. Those foreign issuers have explicitly appointed one depositary bank, although they have also explicitly chosen not to establish a sponsored registered ADR program. They value the benefits of dealing with a single depositary bank and want to be assured that multiple unsponsored programs for the same class of securities will not be permissible. Our proposal in this regard would formalize the existing practice of preventing duplication of registered sponsored ADR facilities and the filing of unsponsored registered ADR facilities for a class of securities that already has a sponsored registered ADR facility.

L. Proposed Transition Periods

1. Regarding Section 12 Registrations

• Should we adopt a three-year transition period for currently-exempt issuers that cannot claim the Rule 12g3-2(b) exemption on the effective date of the rule amendments, as proposed?

As set forth in our general comments, we believe that foreign issuers that are exempt under the existing Rule should never be made subject to the Primary Trading Market Condition, the Foreign Listing Condition, the Largest Single Market is Foreign Condition or the U.S. Volume Limit Condition under the Proposal so long as they meet the other conditions for exemption under the amended Rule. In other words, we think the foreign issuers that have qualified for exemption under the existing Rule should be grandfathered for an indefinite period.

However, if the Commission does not adopt a grandfathering rule, we would support a transition period. We believe that a foreign private issuer that was exempt under the Rule on the date this rulemaking becomes effective should continue to be exempt unless it fails to qualify for exemption under the new Rule for three consecutive years. Further, we think that a foreign issuer that qualifies under the Proposal should also remain exempt unless it subsequently fails to qualify for exemption for three consecutive years.

We believe there will be foreign issuers that have average U.S. trading volume that is almost as great as average trading volume in their primary market. These issuers might, therefore, fail to qualify for the exemption in one year but qualify in the following year. We believe it would be very burdensome and confusing to require an issuer to register in one year even though it was exempt the previous year or may be exempt in the following year. Therefore, we think a three-year rolling qualification period should be adopted. If a foreign issuer was unable to qualify for the exemption for three consecutive years, it is unlikely that the issuer will qualify in future, and it would be reasonable to require that issuer to register.

2. Regarding Processing of Paper Submissions

• Is a transition period necessary to provide issuers with sufficient time to publish electronically their non-U.S. disclosure documents required under Rule 12g3-2(b) or to enable investors to learn how to access those electronically published documents?

-- Yes. We believe that some foreign issuers that are currently Rule 12g3-2(b) exempt do not maintain Internet websites, and those issuers should be afforded time to decide if they wish to establish websites or to make arrangements for their information to be published on a website operated by another person.

• If so, would the three-month transition period be sufficient? Should it be less than three months, such as one month, or two months? Should it be longer than three months, such as six months or one year?

-- We suggest a one-year transition period for foreign issuers that do not maintain Internet websites as of the date of effectiveness of the Proposal.

We would be happy to respond to any questions that the Commission or its staff may have or to provide any further information available to us that the Commission or it staff feels may be useful to it in connection with this rulemaking proposal. For those purposes, please feel free to contact Michael F. Finck, Managing Director at 212-815-2190, e-mail Michael.finck@bnymellon.com.

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