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VIA E-MAIL

April 18, 2008

Re: Proposed Amendments to Exchange Act
Rule 12g3-2(b) – File No. S7-04-08

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Ms. Morris:

We are submitting this letter in response to the Securities and Exchange Commission's request for comments on Release No. 34-57350. We welcome and support the Commission's recent initiatives to rationalize its approach to securities regulation in a number of areas in light of the rapid globalization of capital markets. We concur with the Staff's assessment that Rule 12g3-2 is a logical candidate for revision in keeping with these initiatives, particularly following the Staff's prior revisions to the rules governing termination of Exchange Act registration and reporting by foreign private issuers.

We understand the objectives of the proposing release include adjusting the Commission's exercise of the authority delegated by Congress to exempt foreign issuers from Section 12(g) of the Exchange Act in light of internationalized markets and balancing the exertion of U.S. regulatory authority against the regulatory interests of other trading markets. As set forth in detail below, we respectfully submit there are a number of ways in which the proposed amendments could better achieve these goals.

Background

Our practice regularly involves advising Japanese – and other non-U.S. – corporations regarding the U.S. securities laws, including compliance with the registration and reporting requirements of the U.S. Securities and Exchange Act of 1934. In particular, we regularly represent Japanese issuers and their underwriters in connection with global offerings of securities exempt from registration in the United States in reliance on the Rule 144A and Regulation S exemptions adopted under the U.S. Securities Act of 1933. Issuers

in these offerings typically seek to obtain the Rule 12g3-2(b) exemption at the request of the underwriters in order to comply with the information provision requirements of Rule 144A.

In the first two months of 2008, statistics of the World Federation of Exchanges show that the Tokyo Stock Exchange Group was the world's second largest exchange by domestic market capitalization and fourth largest by trading volume. In keeping with trends in other markets, the percentage of shares in Japan held by foreign shareholders has increased dramatically. After first exceeding 10% in the year ended March 31, 1996, foreign shareholders accounted for over 20% of the market value of all domestic stock exchanges in Japan at year-end for each year in the four-year period ended March 31, 2007, reaching 28% as of that date.

From our participation in Rule 144A/Regulation S offerings by Japanese issuers and in light of the size and liquidity of the Japanese securities market, we would note:

- such global offerings do not take the form of ADRs or GDRs as overseas institutional investors, including U.S. institutions, have custodial arrangements allowing them to invest directly in shares of Japanese issuers to take advantage of the secondary market liquidity offered by Japanese exchanges;

- a listed Japanese company may easily exceed 300 U.S. beneficial holders without conducting an overseas offering and may have great difficulty establishing the exact number of U.S. beneficial holders with any certainty;

- investor relations practices vary greatly and many Japanese issuers with largely domestic operations do not prepare English-language translations of press releases or regulatory filings in the ordinary course. Such issuers may have limited or no in-house ability to prepare such translations; and

- listed Japanese companies are subject to extensive home-country regulation, including exchange-mandated timely disclosure regimes that require press releases concerning significant business developments and periodic reporting requirements that from the current fiscal year include internal control reports and internal control audit reports.

Comments to Proposed Amendments

Exemption provided by Rule 12g3-2(a)

As drafted, the proposed amendments would make no change to Rule 12g3-2(a). Currently, that rule exempts from Section 12(g) any foreign private issuer the equity securities of which are held of record by less than 300 U.S. residents as of the end of its most recently completed fiscal year. In determining the number of U.S. resident holders, an issuer must look through ownership of record by brokers, dealers, banks or nominees for any of them to determine the number of separate accounts for customers resident in the United States. As noted in the proposing release, Rule 12g3-2(a) establishes a threshold below which there is insufficient U.S. interest to apply the requirements of Section 12(g). An eligible foreign private issuer is not required to make any submission or translation of its home-country disclosures to avail itself of the exemption so long as it remains below the threshold.

We respectfully submit that the Rule 12g3-2(a) exemption also should be reconsidered in light of the increasing globalization of capital markets. As noted in the comments and the adopting release for the rules governing deregistration by foreign private issuers, the use of custodians and nominees for administrative convenience and the limited ability of Japanese and other foreign private issuers to obtain ultimate beneficial ownership information mean a traditional shareholder test is in practice very difficult for issuers to evaluate and comply with. We would suggest the Staff consider also using a trading volume benchmark to establish the threshold for automatic exemption under Rule 12g3-2(a). A trading volume benchmark would link the regulatory interest directly to trading activity occurring within the United States and also create a standard more easily measured by foreign private issuers.

In addition, we believe there are issuers listed on major world markets such as the Tokyo Stock Exchange that accumulate 300 U.S. beneficial owners without ever conducting a public or private offering in the United States or engaging in investor relations activities in the United States. For such issuers, the accumulation of 300 U.S. holders via secondary trading on their home-country exchange appears an insufficient connection to the United States to justify application of Section 12(g). Continuing the existing standard could perpetuate an image of U.S. regulation as overreaching. Even if the current shareholder test is not replaced in its entirety with a trading volume benchmark, we would suggest the addition of an alternative standard that would exempt an issuer under Rule 12g3-2(a) if it met a trading volume test and also had not conducted offering or investor relations activities in the United States.

Elimination of 120-day submission requirement under Rule 12g3-2(b)

We strongly support the proposed amendment to eliminate the 120-day submission requirement under Rule 12g3-2(b), so long as an issuer meets the other standards adopted. The current 120-day requirement at times has frustrated the ability of foreign

private issuers to provide home-country information to U.S. investors and establish the 12g3-2(b) exemption in circumstances under which there is no realistic expectation the issuer will register under the Exchange Act.

Proposed listing condition and quantitative standard under Rule 12g3-2(b)

The proposed amendments to the Rule 12g3-2(b) exemption in their current form would:

- require the issuer to have a primary trading market, which would include listing on one or more foreign exchanges, that accounted for at least 55% of the trading in the subject class of securities for the issuer's most recently completed fiscal year; and

- set a limit of 20% of average daily trading volume of the subject class of securities in the United States for the issuer's most recently completed fiscal year.

We respectfully submit that if a primary trading market requirement is adopted as proposed, a separate limitation based on the level of U.S. trading volume does not appear warranted. An issuer with an overseas primary trading market will be subject to the disclosure regime and primary regulation of such market or markets. At least with respect to major developed markets, there appears to be a developing trend toward convergence of disclosure standards and mutual recognition. In that light, mandating full Exchange Act reporting where the U.S. is clearly not the primary market for the subject class of securities seems directly at odds with the Commission's other initiatives with respect to foreign private issuers.

In practice, we believe virtually all Japanese listed companies would be able to meet the 20% trading volume test. Imposing a separate annual calculation condition on such issuers, however, seems unduly burdensome if not clearly warranted. If the Staff is concerned about less established markets, one alternative would be to require only the primary trading market condition in cases where the primary trading market includes a "designated offshore securities market" as defined in Regulation S and supplementally require a trading volume test in other cases.

Electronic publication requirements under Rule 12g3-2(b)

In connection with the adoption of revised deregistration requirements for foreign private issuers under Rule 12h-6, the Staff previously amended Rule 12g3-2(b) to permit, but not require, electronic publication of home-country information by an issuer that has obtained or will obtain the 12g3-2(b) exemption other than after filing a Form 15F. Consistent with the requirements included in the proposed amendments, such electronic publication would need to include, at a minimum, full English translations of:

- an issuer's annual report, including or accompanied by annual financial statements;
- interim reports that include financial statements;
- press releases; and
- all other communications and documents distributed directly to security holders of each class of securities to which the Rule 12g3-2(b) exemption relates.

By contrast, current Rule 12g3-2(b)(4) provides that only press releases and other communications or materials distributed directly to securityholders of each class of securities to which the exemption relates shall be in English and permits the use of adequate summaries in English.

It appears that the proposed amendments to Rule 12g3-2(b) and the Staff's paperwork reduction analysis are based on the assumption that translation of home-country documents into English is a low hurdle. Our experience is that the translation of home-country documents can present a substantial burden to Japanese issuers. While some Japanese companies with global businesses publish press releases and shareholder materials in English as a matter of course, many listed Japanese companies have largely domestic operations and limited or no capacity to prepare English translations or even review English documents.

Since the adoption of the electronic publication option which requires full English translations, we have had many discussions with Japanese issuers and Japanese counsel regarding the existing Rule 12g3-2(b) translation requirements and those under the electronic publication option. They have uniformly expressed the strong view that the existing regime, which allows for flexibility in the preparation of English summaries, is greatly preferable. We respectfully propose retention of the flexible current standard, under which local practices have evolved based on dialogue with the Staff. In particular, in keeping with the Staff's existing administration of Rule 12g3-2(b), we respectfully propose that the focus be on the English translation of financial statements, while retaining the flexibility to provide adequate English summaries of other information.

To the extent the description of required English language translations of home-country documents is amended from the current standard, we would support the proposal that guidance be provided on the submission of English summaries for certain documents in lieu of line-by-line translations. To cite specific examples:

- the financial statements of Japanese issuers are normally published first in the form of an earnings release prior to later inclusion in a periodic report filed with the home-country securities regulator and, in the case of annual financial statements, in a business report attached to the convocation

notice for the issuer's annual general meeting. Under existing practice, Japanese issuers will generally provide an English version of the financial statements in the original earnings release but will then elect to summarize later documents that contain the same substantive information if there have been no material changes; and

- common Japanese market practice is to not prepare a literal translation of the annual securities report filed with the home-country securities regulator. Instead, following the preparation of the annual securities report, issuers will prepare an English-language annual report containing the same financial statements but formatted in a manner more familiar to international investors.

Similarly, we believe the unique factors applicable to various jurisdictions would make it very difficult to establish uniform specific due dates for the publication of materials under Rule 12g3-2(b). Accordingly, we respectfully support the proposed requirement that electronic publishing occur "promptly" and suggest that this requirement be interpreted reasonably depending on the nature of the documents and in light of local circumstances.

Proposed elimination of written application requirements

Subject to our comments on the scope of information required to be electronically published, we support the Staff's proposal to eliminate the current written application requirement.

Without any affirmative statement of an issuer's intent to claim the Rule 12g3-2(b) exemption, however, we believe it would be difficult for a depositary bank to determine eligibility of a class of shares for the creation of an ADR facility. It might also be problematic for underwriters to confirm compliance with a covenant to establish and maintain the exemption. Accordingly, we suggest that a requirement for affirmative notification of intent to claim the exemption, either in the form of a letter to the Commission or a statement on the issuer's corporate website, be adopted. Amending Form F-6 would not address this issue because depositary banks are not in a position to judge compliance and numerous companies establish the 12g3-2(b) exemption without the creation of either a sponsored or an unsponsored ADR program.

If electronic publication is substituted for initial written applications, we would also appreciate the Staff's guidance on the initial establishment of the Rule 12g3-2(b) exemption in connection with the conduct of an offering in reliance on the Rule 144A and Regulation S exemptions under the Securities Act. Because Rule 144A provides a safe harbor for private transactions with qualified institutional buyers, issuers are cautioned to refrain from general solicitation or general advertising in the United States. Similarly, one condition to the Regulation S safe harbor is the absence of "directed selling efforts" meant to condition the market in the United States. For global offerings by foreign private issuers

made in reliance on Rule 144A and Regulation S, we would normally advise an issuer not to initiate or significantly expand the publication of English-language information on its corporate website prior to or during the conduct of the offering.

As noted above, our issuer clients commonly seek to establish the Rule 12g3-2(b) exemption in connection with such Rule 144A/Regulation S offerings, in many cases in fulfillment of an underwriting agreement covenant to submit a written application to the Commission prior to closing. If an issuer with no established history of internet publication of English-language materials were to post the materials required by the 12g3-2(b) exemption prior to or during the conduct of a Rule 144A/Regulation S offering, however, such posting could be problematic under the publicity restrictions imposed by those offering exemptions. Guidance from the Staff that electronic publication of English versions of home-country documents at a specified interval following such an offering in order to establish the 12g3-2(b) exemption would not constitute general solicitation or directed selling efforts in the United States would be of assistance to market participants.

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We would be pleased to discuss our comments with the Staff. Kindly direct any questions you may have to Alan G. Cannon via telephone at 81-3-5562-6200, fax at 81-3-5562-6202 or email at acannon@stblaw.com.

Very truly yours,

Simpson Thacher & Bartlett LLP

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