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Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty To File Reports Under Section 15(d) of the Securities Exchange Act of 1934; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 232, 240 and 249

[Release No. 34–53020; International Series Release No. 1295; File No. S7–12–05]

RIN 3235–AJ38

Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty To File Reports Under Section 15(d) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We propose to amend the rules allowing a foreign private issuer to terminate the registration of a class of equity securities under section 12(g) of the Securities Exchange Act of 1934 (and thus stop filing reports required as a result of registration) and to cease its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Exchange Act. Under the current rules, a foreign private issuer may find it difficult to terminate its Exchange Act registration and reporting obligations despite the fact that there is relatively little interest in the issuer's securities among United States investors. Moreover, currently a foreign private issuer can only suspend, and cannot permanently terminate, a duty to report arising under section 15(d). The proposed rules would permit the termination of Exchange Act reporting regarding a class of equity securities under either section 12(g) or section 15(d) by a foreign private issuer that meets specified criteria designed to measure U.S. market interest for that class of securities. The proposed rules would also permit a foreign private issuer to terminate, and not merely suspend, its section 15(d) reporting obligations regarding a class of debt securities as long as it meets conditions similar to the current requirements for suspending its reporting obligations relating to that class of debt securities. At the same time, the proposed rules would seek to provide U.S. investors with ready access through the Internet to material information about a foreign private issuer that is required by its home country on an ongoing basis after it has exited the Exchange Act reporting system.

DATES: Comments should be received on or before February 28, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's *Internet comment form (http://www.sec.gov/rules/proposed.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–12–05 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number S7–12–05. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Special Counsel, at (202) 551–3450, in the Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We propose to amend Commission Rule 30–1,[1] Rule 101[2] of Regulation S–T,[3] and Rules 12g3–2, 12g–4 and 12h–3[4] under the Securities Exchange Act of 1934 (''Exchange Act''),[5] and to add Rule 12h–6[6] and Form 15F[7] under the Exchange Act.

I. Background

A. Overview of the Current Rules Governing Exiting the Exchange Act Reporting Regime

Under the current Exchange Act reporting regime, whether a domestic or foreign private issuer[8] can terminate its reporting obligations under section 13(a) of the Act[9] depends on how it became subject to those obligations. An issuer may have become subject to section 13(a) reporting obligations by:

- Listing a class of either equity or debt securities on a national securities exchange and registering this class under section 12(b) of the Exchange Act;[10]
- Registering a class of equity securities under section 12(g)[11] either voluntarily or because it had 500 or more security holders of record and more than $10 million in total assets[12] and, if a foreign private issuer, more than 300 shareholders resident in the United States on the last day of its most recently completed fiscal year;[13] or
- Registering either equity or debt securities under a Securities Act registration statement, which has gone effective, thus triggering section 13(a) reporting obligations under Section 15(d) of the Exchange Act.[14]

An issuer may be subject to reporting obligations under more than one of the above statutory sections and rules. While an issuer is deemed to have only one active set of reporting obligations, when an issuer attempts to exit the Exchange Act reporting system, it must consider whether there are any dormant or suspended reporting obligations that would preclude the issuer from ceasing its Exchange Act reporting.

For example, an issuer may have active section 13(a) reporting obligations because it has a class of equity securities listed on a national securities exchange and registered with the Commission

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[1] 17 CFR 200.30–1.

[2] 17 CFR 232.101.

[3] 17 CFR 232.10 *et seq.*

[4] 17 CFR 240.12g3–2, 240.12g–4 and 240.12h–3.

[5] 15 U.S.C. 78a *et. seq.*

[6] 17 CFR 240.12h–6, as proposed.

[7] 17 CFR 249.324, as proposed.

[8] As defined in Rule 3b-4(c) (17 CFR 240.3b–4(c)), a foreign private issuer is a corporation or other organization incorporated or organized in a foreign country that either has 50 percent or less of its outstanding voting securities held of record by United States residents or, if more than 50 percent of its voting securities are held by U.S. residents, about which none of the following are true:

(1) A majority of its executive officers or directors are U.S. citizens or residents;

(2) More than 50 percent of its assets are located in the United States; and

(3) The issuer's business is administered principally in the United States.

[9] 15 U.S.C. 78m(a).

[10] 15 U.S.C. 78*l*(b).

[11] This statutory section only applies to equity securities. *See* Exchange Act Section 12(g)(1) [15 U.S.C. 78*l*(g)(1)].

[12] Exchange Act Rule 12g–1 (17 CFR 240.12g–1).

[13] Exchange Act Rule 12g3–2(a) (17 CFR 240.12g3–2(a)). A foreign private issuer may avoid an Exchange Act registration obligation under section 12(g) by establishing the exemption under Exchange Act Rule 12g3–2(b) (17 CFR 240.12g3–2(b)).

[14] 15 U.S.C. 78o(d). There are other methods by which an issuer may be obliged to file reports under section 13(a), such as, for example, under Exchange Act Rule 12g-3 (17 CFR 240.12g–3) in the case of a successor registrant.

under section 12(b) of the Exchange Act. When attempting to exit the Exchange Act reporting system, the registrant not only must take steps to effect its delisting from the national securities exchange,[15] but also it must consider whether it has any dormant or suspended reporting obligations under section 12(g)[16] or 15(d) that will become operative once its section 12(b) registration ceases.[17]

Exchange Act Rule 12g-4 currently governs whether an issuer may terminate its registration of a class of securities under section 12(g) of the Exchange Act and its corresponding section 13(a) reporting obligations.[18] Under this rule, a foreign private issuer may seek termination of its registration of a class of securities under section 12(g) by certifying in Form 15 [19] that the subject class of securities is held by less than 300 residents in the United States or by less than 500 U.S. residents when the issuer's total assets have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years.[20] For the purpose of determining the number of U.S. resident shareholders under this rule, a foreign private issuer must use the method of counting provided under Exchange Act Rule 12g3–2(a).[21] This method requires looking through the record ownership of brokers, dealers, banks or other nominees on a worldwide basis and counting the number of separate accounts of customers resident in the United States for which the securities are held.[22] Under this rule, issuers are required to make inquiries of all nominees, wherever located and wherever in the chain of ownership, for the purpose of assessing the number of U.S. resident holders.

An issuer that has determined that it meets the threshold requirements for termination of registration of a class of securities under Rule 12g–4, and has also never engaged in a registered offering under the Securities Act, may seek termination of its Exchange Act reporting obligations by filing the Form 15 certification.[23] However, an issuer that has registered securities under an effective Securities Act registration statement must determine if it has any suspended reporting obligations under section 15(d) that will become operative after it has terminated the registration of a class of securities under Exchange Act section 12(g).

Rule 12h–3 [24] is the Exchange Act rule governing when an issuer may suspend its reporting obligations under section 15(d).[25] While Rule 12h–3's standards are substantially similar to those under Rule 12g–4,[26] there are two important differences. First, an issuer may generally not suspend its section 15(d) reporting obligations until it has filed one Exchange Act annual report after the offering in question. Second, an issuer cannot permanently terminate its reporting obligations under section 15(d) but can only suspend those obligations.[27] Therefore, for as long as the subject class of securities is outstanding, a foreign private issuer must also determine at the end of each fiscal year whether the number of U.S. resident security holders or total number of record holders has increased enough to trigger anew its section 15(d) reporting obligations.

B. The Increased Internationalization of the U.S. Securities Markets

It has been almost four decades since the Commission first adopted the ''300 U.S. resident shareholder'' standard as the benchmark for determining both when a foreign private issuer must register a class of equity securities under section 12(g) and when it may terminate that registration.[28] Moreover, it has been over two decades since the Commission adopted Form 15 under Rules 12g–4 and 12h–3.[29]

Since then, market globalization, advances in information technology, the increased use of American Depositary Receipt (''ADR'') [30] facilities by foreign companies to sell their securities in the United States,[31] and other factors have increased significantly the number of foreign companies that have engaged in cross-border activities and sought listings in U.S. securities markets, as well as increased the amount of U.S. investor interest in the securities of foreign companies. For example:

- The number of foreign companies with Exchange Act reporting obligations increased from approximately 300 in 1985 to over 1,200 in 2004; [32]
- The number of foreign companies listed on the New York Stock Exchange (''NYSE'') increased from 54, or approximately 3.5% of the total number of NYSE-listed companies in 1985, to

[15] Exchange Act Rule 12d2–2 (17 CFR 240.12d2–2) governs the process of the delisting of a class of securities from a national securities exchange. To effect the delisting and subsequent termination of an issuer's registration of a class of securities under section 12(b), the national securities exchange or issuer must file a Form 25 with the Commission. We recently adopted amendments to our rules and Form 25 to streamline the procedures for removing from listing, and withdrawing from registration, securities under section 12(b). *See* Release No. 34–52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[16] A registrant may have section 12(g) reporting obligations following its termination of registration under section 12(b): (1) If it had initially registered the class of securities under section 12(g) prior to listing the securities on a national securities exchange; or (2) under Exchange Act Rule 12g–2 (17 CFR 240.12g–2). That rule provides that any class of securities that would have been required to be registered under section 12(g) except for the fact that it was listed and registered on a national securities exchange shall be deemed to be registered under section 12(g) upon the termination of registration under section 12(b) as long as the class of securities are not exempt from registration under section 12 and are held of record by 300 or more persons.

[17] Exchange Act section 15(d) automatically suspends the duty to file reports under that section regarding securities registered under an effective Securities Act registration statement once the issuer has registered the class of securities under section 12 of the Exchange Act.

[18] An issuer must look to this rule both when it has only registered a class of securities under section 12(g) and following the termination of registration of a class of equity securities under section 12(b).

[19] 17 CFR 249.323.

[20] Exchange Act Rule 12g–4(a)(2) (17 CFR 240.12g-4(a)(2)). Alternatively, a foreign private issuer may seek to terminate its section 12(g) registration under the Rule 12g-4 provision that applies to any issuer, whether domestic or foreign. Under this provision, an issuer must certify on Form 15 that its class of equity securities is held of record by less than 300 persons or by less than 500 persons when the issuer's total assets have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years. Exchange Act Rule 12g-4(a)(1) (17 CFR 240.12g–4(a)(1)).

[21] 17 CFR 240.12g3–2(a).

[22] *See* 17 CFR 240.12g3–2(a)(1).

[23] Filing this form immediately suspends the issuer's Exchange Act reporting obligations. If, after 90 days from the date of filing the Form 15, the Commission has not objected, the suspension becomes a termination. *See* Rule 12g-4(b) (17 CFR 12g-4(b)).

[24] 17 CFR 240.12h–3.

[25] Section 15(d) itself provides that an issuer cannot suspend its reporting obligations unless the subject class of securities is held of record by less than 300 persons at the beginning of a fiscal year other than the year in which the Securities Act registration statement triggering the section 15(d) reporting obligations became effective.

[26] *See*, *in particular*, Rule 12h–3(b)(2) (17 CFR 240.12h–3(b)(2)).

[27] Exchange Act Rule 12h–3(a) (17 CFR 240.12h–3(a)).

[28] *See* Release No. 34–8066 (April 28, 1967).

[29] *See* Release No. 34–20784 (March 22, 1984), 49 FR 12688 (March 30, 1984).

[30] An ADR is a negotiable instrument that represents an ownership interest in a specified number of securities, which the securities holder has deposited with a designated bank depositary. Use of an ADR facility makes it easier for a U.S. resident to collect dividends in U.S. dollars. Moreover, because the clearance and settlement process for ADRs generally is the same for securities of domestic companies that are traded in U.S. markets, a U.S. holder of an ADR is able to hold securities of a foreign company that trades, clears and settles within automated U.S. systems and within U.S. time periods.

[31] For example, the number of ADR issues traded on the NYSE increased from 134 in 1993 to 344 in 2004. During this same period, the market capitalization of NYSE-traded ADRs nearly quadrupled. *See* ''Summary Data on NYSE-Listed Non-U.S. Companies'' located at *http://www.nyse.com/attachment/nonussum0916.xls*.

[32] *See* ''International Registered and Reporting Companies'' located at *http://www.sec.gov/divisions/corpfin/internatl/companies.shtml*; *see also The New Economy Handbook*, Derek C. Jones, editor, pp. 428–429 (2003).

460 or over 16% of the total number of NYSE-listed companies in 2004; [33] and

• The average daily trading value of NYSE-traded foreign securities increased from over $350 million, or over 5% of the total value of NYSE-traded securities in 1991, to over $4.5 billion, or over 10% of the total value of NYSE-traded securities in 2000.[34]

C. Concerns Regarding the Exchange Act Reporting Exiting Rules for Foreign Private Issuers

Representatives of foreign companies and foreign industry associations have recently voiced their concerns to the Commission about the rules that govern whether a foreign private issuer may exit the Exchange Act registration and reporting regime.[35] These representatives maintain that, due to the increased internationalization of U.S. investor interest, the ''300 U.S. resident shareholder'' standard has become outdated and too easily exceeded by a foreign company that may have engaged in very little recent selling activity in the United States. According to these representatives, after a few years of listing its securities in the United States, a foreign company may discover that there is little U.S. market interest in its securities. Yet because it has not been able to reduce the number of its U.S. shareholders to below 300, it must continue to incur the costs of being an Exchange Act reporting company.

These representatives have further criticized the exit rules' reliance on the number of U.S. resident shareholders because, with the advent of book-entry recording,[36] it is difficult and costly to arrive at an accurate count of a foreign company's U.S. resident shareholders. These representatives also are critical of Rule 12h–3 because it merely suspends rather than permanently terminates a company's section 15(d) reporting obligations. As such, years after filing a Form 15, a foreign company may find that it has once again exceeded the 300 U.S. resident shareholder threshold, and thereupon again become subject to section 15(d) reporting duties, without regard to its U.S. market activity.

Finally, these representatives disagree with the fact that our current rule does not permit a foreign private issuer to obtain the Exchange Act Rule 12g3–2(b) exemption [37] if, during the previous 18 months, it has had a class of securities registered under section 12 or a reporting obligation, suspended or active, under section 15(d) of the Exchange Act.[38]

II. Discussion

A. Summary of the Proposed Rule Amendments

In light of the increased internationalization of the U.S. securities markets that has occurred, we believe that it is time to reconsider the rules allowing a foreign private issuer to exit the Exchange Act registration and reporting regime. We propose to amend Rules 12g–4 and 12h–3 to eliminate the provisions that primarily condition a foreign private issuer's eligibility to cease its Exchange Act reporting obligations on whether the number of its U.S. resident security holders has fallen below the 300 or 500 person threshold. In their place, we propose new Exchange Act Rule 12h–6 that would permit a foreign private issuer that meets the conditions discussed below to achieve the following:

• Termination of the registration of a class of equity securities under section 12(g) and its resulting section 13(a) reporting obligations;

• Permanent termination of its section 15(d) reporting obligations regarding a class of equity securities; and

• Permanent termination of its section 15(d) reporting obligations regarding a class of debt securities.

A foreign private issuer would be eligible to terminate its Exchange Act reporting obligations regarding a class of equity securities under proposed Rule 12h–6 if it met the following conditions:

• The issuer has been an Exchange Act reporting company for the past two years, has filed or furnished all reports required for this period, and has filed at least two annual reports under section 13(a);

• The issuer's securities have not been sold in the United States in either a registered or unregistered offering under the Securities Act during the preceding 12 months other than securities:

- Sold to the issuer's employees;
- Sold by selling security holders in non-underwritten offerings;
- Exempt from registration under section 3 of the Securities Act, except section 3(a)(10); [39] and
- Constituting obligations having a maturity of less than nine months at the time of issuance and offered and sold in transactions exempted from registration under section 4(2) of the Securities Act; [40] and

• For the preceding two years, the issuer has maintained a listing of the subject class of securities on an exchange in its home country, as defined in Form 20–F,[41] which constitutes the primary trading market for the securities.

Rule 12h–6 would further permit a foreign private issuer seeking to terminate its registration and reporting obligations regarding a class of equity securities to meet one of a set of alternative benchmarks, which are not based on a record holder count, and which depend on whether the issuer is a well-known seasoned issuer.[42] If a

[33] *See* ''Stocks of non-U.S. Corporate Issuers'' located at *http://www.nysedata.com/factbook*; *see also* ''Listed Company Directory'' located at *http://www.nyse.com/about/listed/listed.html*. A similar increase occurred on Nasdaq. *See The New Economy Handbook* at p. 429.

[34] *See* ''NYSE Value of Trading—U.S. and non-U.S. Companies'' located at *http://www.nyse.com/attachment/sumdolv051005.xls*. In September 2005, the average daily trading value of NYSE-traded foreign securities was over 9% of the total value of NYSE-traded securities.

[35] *See, for example*, the letters from the Association Francaise Des Entreprises Privees (''AFEP'') and other European industry group representatives, dated February 9, 2004 and March 18, 2005 (the ''AFEP letters''), which we will make publicly available on our Web site and in the Commission's Public Reference Room in its Washington, DC headquarters, together with comment letters received concerning this proposed rulemaking.

[36] The last three decades have seen the development of a U.S. clearance and settlement system that relies on electronic book-entry to settle securities transactions and transfer ownership rather than one dependent on the use of paper certificates. For an overview of this development, *see* Release No. 33–8398 (March 11, 2004), 69 FR 12922 (March 18, 2004), the text surrounding n. 104. This movement to electronic book-entry clearance and settlement systems has taken place on a global basis as well, as both developed and developing securities markets have sought to improve efficiency.

[37] 17 CFR 240.12g3–2(b). Rule 12g3–2(b) provides an exemption from registration under section 12(g) with respect to a foreign private issuer that submits to the Commission, on a current basis, the home country materials required by the rule.

[38] Exchange Act Rule 12g3–2(d)(1) (17 CFR 12g3–2(d)(1)). This exception to the Rule 12g3–2(b) exemption does not apply to registered Securities Act offerings filed by Canadian companies on certain Multijurisdictional Disclosure System (''MJDS'') forms. Exchange Act Rule 12g3–2(d) also precludes the Rule 12g3–2(b) exemption to a foreign private issuer's securities issued to acquire by merger or similar transaction an issuer that had securities registered under section 12 or a reporting obligation, suspended or active, under section 15(d), except for a transaction registered on specified MJDS forms. *See* Exchange Act Rule 12g3–2(d)(2) (17 CFR 240.12g3–2(d)(2)).

[39] 15 U.S.C. 77c(a)(10).

[40] 15 U.S.C. 77d(2).

[41] 17 CFR 249.220f. Form 20–F General Instruction F defines ''home country'' as the jurisdiction in which the issuer is legally organized, incorporated or established and, if different, the jurisdiction where it has its principal listing.

[42] For purposes of Rule 12h–6 a ''well-known seasoned issuer'' means a well-known seasoned issuer as defined in Securities Act Rule 405 (17 CFR 230.405) that meets the requirements of paragraph (1)(i)(A) of that definition. Under Rule 12h–6, therefore, a ''well-known seasoned issuer'' must have a worldwide market value of its outstanding voting and non-voting common equity held by non-affiliates of $700 million or more, and must satisfy

well-known seasoned issuer, then a foreign private issuer could terminate its Exchange Act registration and reporting obligations as long as either:

• The U.S. average daily trading volume of the subject class of securities has been no greater than 5 percent of the average daily trading volume of that class of securities in its primary trading market during a recent 12 month period, and U.S. residents held no more than 10 percent of the issuer's worldwide public float [43] at a date within 60 days before the end of that same period; or

• Regardless of U.S. trading volume, U.S. residents held no more than 5 percent of the issuer's worldwide public float at a date within 120 days before the filing date of the Form 15F, which is the form that a foreign private issuer would have to file to certify that it meets the conditions for terminating its Exchange Act registration and reporting obligations under proposed Rule 12h–6.

If not a well-known seasoned issuer, then a foreign private issuer could terminate its Exchange Act registration and reporting obligations regarding a class of equity securities as long as, regardless of U.S. trading volume, U.S. residents held no more than 5 percent of the issuer's worldwide public float at a date within 120 days before the filing date of the Form 15F.

Under proposed Rule 12h–6, if a foreign private issuer is unable to meet one of these proposed benchmarks, but satisfies the other conditions of the rule, it could still terminate its Exchange Act registration and reporting obligations regarding a class of equity securities as long as that class of securities is held of record by less than 300 persons on a worldwide basis or less than 300 persons resident in the United States at a date within 120 days before the filing date of the Form 15F.

A foreign private issuer would be eligible to terminate its section 15(d) reporting obligations regarding a class of debt securities under proposed Rule 12h–6 if it met the following conditions:

• The issuer has filed or furnished all required reports under section 15(d), including at least one annual report pursuant to section 13(a) of the Act; and

• At a date within 120 days before the filing date of the Form 15F the class of debt securities is either held of record by less than 300 persons on a worldwide basis or less than 300 persons resident in the United States.

Rules 12g–4 and 12h–3 currently require the filing of Form 15 by which an issuer certifies that it meets the conditions for ceasing its Exchange Act reporting obligations. Unlike Form 15, proposed new Form 15F would require a foreign private issuer to provide specified information regarding several items that would enable investors to obtain information regarding the issuer's decision to terminate its Exchange Act reporting obligations. In addition, proposed new Form 15F would help Commission staff to assess whether the issuer qualifies for termination of its Exchange Act reporting obligations. As under current Rules 12g–4 and 12h–3, the filing of Form 15F would automatically suspend an issuer's reporting duties. If the Commission has not objected, the suspension would become a permanent termination 90 days after the filing of the Form 15F.[44]

Proposed Rule 12h–6 would further require a foreign private issuer, no later than fifteen business days prior to the filing of the Form 15F, to publish a notice, such as a press release, in the United States that discloses its intent to terminate its section 13 reporting obligations, and to submit a copy of the press release either under cover of a Form 6–K, before or at the time of filing of the Form 15F, or as an exhibit to the Form 15F.

Finally, we propose to amend Exchange Act Rule 12g3–2(d) to permit a foreign private issuer to establish the Rule 12g3–2(b) exemption for a class of equity securities that is the subject of a Form 15F immediately upon the effectiveness of termination of Exchange Act reporting pursuant to Rule 12h–6. As a condition to maintaining this exemption, a foreign private issuer would have to publish in English the home country materials required by Rule 12g3–2(b) on its Internet Web site or through an electronic information delivery system that is generally available to the public in its primary trading market.

We recognize that U.S. investors benefit from the investment opportunities provided by the registration of foreign private issuers with the Commission and listing and publicly offering securities in the United States. The current exit process may serve as a disincentive to foreign private issuers accessing the U.S. public capital markets because of the burdens and uncertainties associated with terminating registration and reporting under the Exchange Act. We believe that these changes to the exit process for foreign private issuers, if adopted, should provide those issuers with a meaningful option to terminate their Exchange Act reporting obligations when, after electing to access the U.S. public capital markets, they find a diminished level of U.S. investor interest in their securities. As a result, foreign private issuers should be more willing initially to register their securities with the Commission when there is a clearly defined process with more appropriate benchmarks by which they can terminate their Exchange Act reporting obligations if after a period of time U.S. investor interest is not significant relative to non-U.S. investor interest.

In addition, we believe the conditions under proposed Rule 12h–6 are consistent with the interests of U.S. investors in other ways. The two-year reporting and the one-year dormancy conditions are intended to provide sufficient time periods of Commission reporting and of not promoting U.S. investor interest through recent capital raising. The conditions relating to trading on a non-U.S. securities exchange and the benchmarks based on relevant U.S. public float and (for well-known seasoned issuers) relative U.S. trading volume support our view that foreign private issuers that would terminate Exchange Act reporting under proposed Rule 12h–6 should be subject to an ongoing disclosure and financial reporting regime, and have a significant market following, in their home market. The conditions relating to the publication of a press release or other notice, the filing of proposed Form 15F, and the immediate availability of the exemption under Rule 12g3–2(b) promote transparency of the exit process as well as access by U.S. investors to ongoing home country information

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the other requirements of the definition in Securities Act Rule 405 (for example, the issuer must not be an ''ineligible issuer''). The time of determination of well-known seasoned issuer status under Rule 12h–6 would be a date within 120 days of the filing of proposed Form 15F. Although Rule 405 also defines ''well-known seasoned issuer'' alternatively to mean an issuer that has registered a specified amount of non-convertible securities other than equity over a three-year period, that part of the definition is inapplicable under proposed Rule 12h–6. Only the equity prong of the definition is relevant for purposes of termination of registration and reporting requirements under proposed Rule 12h–6. The proposed conditions that would permit a foreign private issuer to terminate its section 15(d) reporting obligations regarding a class of debt securities do not distinguish between well-known seasoned issuers and other issuers.

[43] The term ''public float'' refers to the outstanding voting and non-voting equity securities held by an issuer's non-affiliates. As proposed, when calculating the percentage of its worldwide public float held by U.S. residents, an issuer would include in its worldwide public float only the class or classes of equity securities regarding which there is an Exchange Act reporting obligation.

[44] The Commission is also proposing to amend its delegated authority rules to permit the Division of Corporation Finance to accelerate the effectiveness of a Form 15F termination of reporting sooner than the 90th day at the request of the issuer. *See* the proposed amendment to 17 CFR 200.30–1(e). This delegation of authority currently exists with respect to Form 15, although it is rarely used.

about issuers that terminate their Exchange Act reporting obligations.

B. Proposed Exchange Act Rule 12h–6

1. Purpose and Scope of Proposed Rule 12h–6

Like current Rule 12g–4, proposed Rule 12h–6 would permit a foreign private issuer meeting specified criteria to terminate its registration of a class of securities under section 12(g) and its corresponding section 13 reporting obligations after filing a certification with the Commission. However, unlike the current Exchange Act reporting exiting regime, proposed Rule 12h–6 would also permit a foreign private issuer to terminate permanently, rather than merely suspend, its reporting obligations regarding a class of equity or debt securities, or both, under section 15(d).

As discussed below, proposed Rule 12h–6 would permit termination of Exchange Act registration and reporting regarding a class of a foreign private issuer's equity securities for which U.S. investor interest is small relative to non-U.S. investor interest, and the expected risk of harm to U.S. investors of termination of registration and reporting is low. Once a foreign company has met the proposed Rule 12h–6 criteria, and taken the other necessary steps to effect termination of reporting,[45] we believe that it is unlikely that, following termination of its reporting obligations, U.S. trading in the subject class of securities would increase to such an extent as to justify reimposing Exchange Act reporting obligations, and the proposed rule would not do so.

We have proposed to require a foreign company that terminates its Exchange Act registration and reporting under Rule 12h–6 regarding a class of equity securities to provide material home country documents in English under Rule 12g3–2(b) on its Internet Web site or through an electronic information delivery system that is generally available to the public in its primary trading market.[46] We believe that this proposed ''home country disclosure'' requirement should provide continued access to issuer information for U.S. investors that continue to own the subject class of equity securities following a foreign company's termination of Exchange Act registration and reporting. Merely suspending a foreign company's section 15(d) reporting obligations could discourage foreign companies from initially registering their securities with the Commission and joining our Exchange Act reporting system, to the detriment of investors in U.S. securities markets.[47]

Proposed Rule 12h–6 would further permit a foreign private issuer to terminate permanently its section 15(d) reporting obligations regarding a class of debt securities as long as the issuer met conditions similar to the current requirements for suspending its reporting obligations under Rule 12h-3. One of these conditions would require a foreign private issuer's debt securities to be held either by less than 300 persons on a worldwide basis or by less than 300 U.S. residents.[48] Once the number of a foreign private issuer's debt holders has fallen below either of these thresholds, we believe that it is unlikely that the number of its debt holders would increase enough to warrant reimposing Exchange Act reporting obligations. Moreover, by providing a definite means of exiting the Exchange Act reporting system, we would remove one possible disincentive for foreign companies to register their debt securities with the Commission, to the benefit of U.S. investors.

Comment Solicited

We solicit comment on the purpose and scope of proposed Rule 12h–6.

- Should we permit a foreign company to terminate permanently its section 15(d) reporting obligations regarding a class of equity securities, as proposed?
- Should we instead merely permit a foreign company to suspend its section 15(d) reporting obligations regarding a class of equity securities on the condition that those obligations would resume once it no longer meets the criteria specified under proposed Rule 12h–6?
- If so, should we also merely suspend section 12(g) reporting on the same grounds?
- Should we permit a foreign company to terminate its section 15(d) reporting obligations regarding a class of debt securities, as proposed?
- Should we prohibit a foreign company whose sole Exchange Act reporting obligations arise from a class of debt securities under section 15(d) to terminate those reporting obligations under proposed Rule 12h–6?
- Should we merely permit a foreign company to suspend its section 15(d) reporting obligations regarding certain classes of debt securities? If so, what classes of debt securities should we exclude from the proposed Rule 12h–6 termination process?
- Should we require a foreign company that has terminated its Exchange Act reporting obligations under proposed Rule 12h–6 to resume Exchange Act reporting if it reaches a certain number or percentage of U.S. resident shareholders? If so, what number or percentage of U.S. shareholders should trigger renewed Exchange Act reporting?
- Should we add additional conditions to proposed Rule 12h–6, such as a requirement that the issuer self-tender for securities held by U.S. residents?
- Should proposed Rule 12h–6 require issuers to establish a share-sale facility as a condition to termination of registration, through which U.S. holders of securities would be able to dispose of securities without incurring brokerage or other fees? If so, for what period of time would an issuer be required to maintain such a facility—one month, two months, or longer or shorter?
- How frequently do foreign companies find that, after filing Form 15, the number of their U.S. resident shareholders has increased and exceeds the 300 U.S. resident shareholder threshold?
- How unlikely is it that, once a foreign company has met the proposed Rule 12h–6 criteria and taken the other steps to effect termination of its reporting, U.S. trading or U.S. resident holdings in the subject class of securities would increase to an extent that could justify reimposing Exchange Act reporting obligations? How unlikely is it that, once the number of a foreign private issuer's debt holders drops below 300 persons on a worldwide basis or 300 U.S. residents, the number of its debt holders would increase to an extent that could justify reimposing Exchange Act reporting obligations?

2. Conditions for Equity Securities Registrants

a. The Two Year Exchange Act Reporting Condition

In order to be eligible to terminate its Exchange Act reporting obligations regarding a class of equity securities

[45] For example, a section 15(d) reporting company would have to file a post-effective amendment to terminate the registration of its remaining unsold securities under any of its Securities Act registration statements.

[46] Proposed Rule 12g3–2(e).

[47] Representatives of foreign industry associations have stated that the inflexibility of the current Exchange Act reporting regime is one reason why their member companies are reluctant to list in the United States at the present time. As an example of this inflexibility, these representatives have stated the risk that a foreign company with limited U.S. interest could withdraw from the U.S. market only to become subject to renewed U.S. reporting because U.S. investors have acquired its shares in its home market. See the AFEP letter, dated February 4, 2004, at pp. 3–4.

[48] See Part II.B.4 of this release for a discussion regarding the proposed methodology for counting holders of securities.

under proposed Rule 12h–6, a foreign private issuer must have been an Exchange Act reporting company for the two years preceding its filing of the Form 15F. It also must have filed or furnished all reports required for this period.[49] Proposed Rule 12h–6 would also provide that an issuer must have filed at least two Exchange Act annual reports.[50]

The purpose of this Exchange Act reporting condition is to provide investors in U.S. securities markets with a reasonable period of time to make investment decisions regarding a foreign private issuer's securities based on the information provided in Exchange Act annual reports and the interim home country materials furnished in English under cover of Form 6–K.[51] Without this Exchange Act reporting condition, a foreign private issuer could conduct a U.S. registered offering of equity securities under the Securities Act and then seek to terminate its section 15(d) reporting duties in less than a year, after filing an Exchange Act annual report.[52] The value of securities of a foreign issuer may be discounted, and the level of interest among U.S. investors in such securities may be lowered, if U.S. investors are not confident that the foreign private issuer will be subject to Exchange Act reporting for a sufficient period of time. In addition, without this condition, a foreign private issuer could promote U.S. investor interest in its equity securities by listing on a U.S. stock market and registering a class of securities under section 12(b) or section 12(g), and then shortly thereafter terminate its registration without even filing one Exchange Act annual report. Once a foreign private issuer has elected to list equity securities or otherwise sell equity securities publicly to investors in U.S. securities markets, we believe that the issuer should have to provide Exchange Act reports for a reasonable period of time to enable investors to discern trends about and to otherwise evaluate their investment in the issuer. A balance of prudence against the burden on a foreign private issuer that has attracted limited U.S. investor interest leads us to propose setting this requirement at two years.

Comment Solicited

We solicit comment on the proposed Exchange Act reporting requirement.

- Should we require a foreign private issuer to be an Exchange Act reporting company for a specified period and to have filed or furnished all reports required during that period before it can terminate its reporting obligations regarding a class of equity securities under proposed Rule 12h–6?
- If so, should we set this Exchange Act reporting requirement at two previous years, as proposed?
- Should we require an issuer to have provided two Exchange Act annual reports, as proposed?
- Should we instead adopt a longer reporting period that requires an issuer to have provided at least three Exchange Act annual reports?
- Should we adopt an Exchange Act reporting requirement that covers a shorter period, such as one year, and requires a foreign private issuer to have filed at least one Exchange Act annual report?
- Or should we permit a foreign private issuer to terminate its Exchange Act reporting obligations regarding a class of equity securities under proposed Rule 12h–6 even if it has not yet filed one Exchange Act annual report?
- If we should impose an Exchange Act reporting requirement under proposed Exchange Act Rule 12h–6, should this requirement relate only to annual report filings under the Exchange Act and not to filings or submissions on Form 6–K?
- Should this requirement relate only to specified materials likely to be filed or furnished on Form 6–K (such as annual reports to shareholders, proxy statements and other materials relating to meetings of shareholders, earnings releases, and interim period financial statements), and if so, what should they be?

b. The One Year Dormancy Condition

Proposed Rule 12h–6 would require a foreign private issuer not to have sold any securities in a registered offering in the United States during the preceding 12 months, other than securities sold to its employees and those sold by its selling security holders in non-underwritten offerings, before it could terminate its Exchange Act reporting obligations regarding a class of equity securities. The purpose of this condition is to help ensure that Rule 12h-6 would only be available to a foreign issuer when the U.S. securities markets have relatively little interest and the issuer is not trying to create or take advantage of such interest. A foreign company that has actively engaged in U.S. capital raising efforts and sold securities to U.S. investors relatively recently should not be permitted to exit the Exchange Act reporting regime under Rule 12h-6 on the grounds that the U.S. securities markets no longer represent as viable an option for capital raising.

The proposed ''one year dormancy'' condition would further prevent a foreign company from exiting the Exchange Act reporting system within a year after it has conducted a U.S. registered offering under the Securities Act and garnered investors who are entitled to the protections afforded by our Exchange Act reporting regime. We have excluded from this proposed dormancy period securities sold to a foreign company's U.S. employees, since such sales are undertaken primarily for purposes other than capital formation. Similarly, we have excluded from this proposed dormancy period securities sold by a foreign company's selling security holders in non-underwritten offerings registered under the Securities Act since such sales are not undertaken primarily for the benefit of the issuer.

The proposed condition would also prohibit a foreign company from engaging in unregistered offerings in the United States, other than securities sold to its employees, and securities exempt from registration under section 3 of the Securities Act, except section 3(a)(10), during the previous 12 months.[53] Our reasoning regarding an issuer actively seeking U.S. investors would apply equally to unregistered offerings. In addition, if we only proscribed registered offerings, that condition could act as a disincentive to a foreign private issuer to conduct a registered offering in the United States.

We have generally excluded from the proposed one year dormancy requirement securities exempt from registration under section 3 of the Securities Act[54] because, given their

[49] *See* proposed Exchange Act Rule 12h–6(a)(1).

[50] While typically a foreign private issuer would file its Exchange Act annual report on Form 20–F, one that filed on the domestic Form 10–K or on the MJDS Form 40–F would also potentially qualify for termination under proposed Rule 12h–6.

[51] Under cover of a Form 6–K (17 CFR 249.306), a foreign private issuer is required to furnish in English a copy of any document that it publishes or is required to publish under the laws of its home country or the requirements of its local exchange or that it has distributed to shareholders, and which is material to an investment decision.

[52] For example, without this condition, a foreign private issuer with a calendar year end could complete a Securities Act registered offering late in the year, file its Form 20–F annual report as soon as possible in the following year, and seek termination of its section 15(d) reporting obligations under Rule 12h–6 after only a few months of reporting under the Exchange Act.

[53] This proposed condition would prohibit, for example, offers and sales under section 4(2), Rule 144A and Rules 801 and 802 under the Securities Act. The proposed condition would not prohibit offers and sales effected under Regulation S since such offers and sales, which occur outside the United States, are deemed to fall outside the scope of Securities Act section 5. *See* Securities Act Rule 901 (17 CFR 230.901).

[54] 15 U.S.C. 77c.

exemptive nature and their limited role in capital formation, they do not raise the same concerns as other securities transactions. We also propose to exclude from the prohibition obligations having a maturity at the time of issuance of less than nine months and exempted from registration under section 4(2) of the Securities Act, on the theory that so-called ''4(2) commercial paper'' is analogous for these purposes to commercial paper exempt from registration under section 3(a)(3) of the Securities Act.[55]

However, we have proposed to preclude the issuance of securities pursuant to a court-approved scheme of arrangement under section 3(a)(10) of the Securities Act[56] during the one year dormancy period. Such schemes of arrangement typically possess characteristics of registered offerings, including the solicitation of numerous U.S. resident security holders.

Comment Solicited

We solicit comment on the ''one year dormancy'' condition.

- Is it appropriate to prohibit an issuer from selling securities in the United States for a period preceding its termination of Exchange Act reporting regarding a class of equity securities under Rule 12h–6?
- If so, should we adopt a one year dormancy period, as proposed? Should the period be more than one year, for example, 18 months or two years? Should it be less than one year, for example, three or six months?
- If it is appropriate to adopt a dormancy condition, should it prohibit both registered and unregistered offerings, as proposed? Should it prohibit only registered offerings? If so, why should the rule distinguish between registered and unregistered offerings?
- Should the dormancy condition exclude from its prohibition securities sold to an issuer's employees and those sold by its selling security holders in registered, non-underwritten offerings, as proposed? Should we distinguish between smaller security holders and those who may have control or have other significant interests and sell without ending their relationship with the issuer?
- Should the dormancy condition exclude from its prohibition securities exempted under Securities Act section 3 other than section 3(a)(10), as proposed? Should we exclude from the one year prohibition securities issued under Securities Act section 3(a)(10) as well?
- Should we exclude ''4(2) commercial paper'' from the prohibition, as proposed?
- Are there any other types of securities offerings that should be excluded from the prohibition, for example, rights offers, certain exchange offers, and offers under Securities Act Rule 144A?[57]
- Should the dormancy period for unregistered offerings only extend to equity securities?

c. The Home Country Listing Condition

Proposed Rule 12h–6 would require a foreign private issuer to have maintained a listing of the subject class of equity securities for the preceding two years on an exchange in its home country. As proposed, the term ''home country'' would have the same meaning as under Form 20–F, which defines ''home country'' as the jurisdiction in which the issuer is legally organized, incorporated or established and, if different, the jurisdiction where it has its principal listing.[58]

Proposed Rule 12h–6 would further require that a foreign private issuer's home country constitutes its primary trading market. As proposed, the term ''primary trading market'' would mean that at least 55 percent of the trading in the foreign private issuer's securities took place in, on or through the facilities of a securities market in a single foreign country during a recent 12 month period.[59] Proposed Rule 12h–6 would define ''recent 12 month period'' to mean a 12 calendar month period that ended no more than 60 days before the filing date of the Form 15F.[60]

The purpose of this condition is to provide for a non-U.S. jurisdiction that principally regulates and oversees the issuance and trading of the issuer's securities and disclosure obligations by the issuer to its investors. If the United States was the sole or principal market for the foreign private issuer's securities, then the Commission would have a greater regulatory interest in continuing to subject the foreign company to the Exchange Act reporting regime. In contrast, if 55 percent or more of the average daily trading volume of the company's securities occurred through the facilities of its home country securities market, then there is a greater likelihood that the principal pricing determinants for the company's securities are within the jurisdiction of its home country regulator.[61] There also is a greater likelihood that the foreign company will be subject to a body of reporting and other securities regulatory requirements in its home jurisdiction. Consequently, for a company meeting these requirements, there should be less interruption in the flow of material information about the company once it exits the Exchange Act reporting system.

Comment Solicited

We solicit comment on the proposed ''home country listing'' condition.

- Should we require that a company have maintained a listing of the subject class of equity securities on an exchange in its home country for the last two years, as proposed?
- Do other countries have markets or facilities that are not an ''exchange''? If so, should the listing requirement be satisfied by means of quoting the subject class of securities on foreign markets operated other than as an exchange?
- Should we impose a home country listing requirement that is shorter than two years, say, one year? Should we impose a home country listing requirement that is longer than two years? Should we not impose a home country listing requirement at all?
- Should the Commission's rule be sensitive to particular characteristics of the listing market or the home country? If so, how should this be accomplished?
- Should we require that a foreign private issuer represent that it is in compliance with the rules of, or otherwise in good standing with, its home country securities regulator or listing authority?
- Should we require that a foreign private issuer's home country constitutes its primary trading market, as proposed?
- If so, should we require that 55 percent or more of the average daily

[55] 15 U.S.C. 77c(a)(3).

[56] Foreign private issuers have frequently relied on Securities Act section 3(a)(10) to effect acquisitions and corporate restructurings. *See, for example, Anglogold Limited* no-action letter (January 15, 2004) and *Constellation Brands, Inc.* no-action letter (dated January 29, 2003). Section 3(a)(10) exempts from Securities Act registration securities issued in an exchange pursuant to terms that have been approved by a court or other governmental authority following a hearing regarding their fairness in which all interested parties have been given an opportunity to be heard. The exemption does not apply to securities issued in a U.S. federal proceeding under Title 11 of the United States Code.

[57] 17 CFR 230.144A.

[58] *See* Form 20–F General Instruction F.

[59] Proposed Rule 12h–6(d)(6). We similarly used ''55 percent of trading through the securities market facilities of a single foreign country'' as one of the benchmarks for determining whether there is substantial U.S. market interest for a foreign private issuer's securities under Regulation S. *See* Securities Act Rule 902(j)(1)(ii) (17 CFR 230.902(j)(1)(ii)).

[60] Proposed Rule 12h–6(d)(7).

[61] This ''primary trading market'' requirement would also help ensure that an issuer's foreign listing represents a significant trading market for its equity securities rather than a listing on a non-trading market such as the Luxembourg Stock Exchange.

trading volume of a foreign company's securities occurred through the facilities of a single foreign country securities market during a recent 12 month period, as proposed?

• Should we require that a higher percentage, for example, 60 or 75 percent or a lower percentage, for example, 50 percent of the average daily trading volume of a foreign company's equity securities occurred through the facilities of its home country securities market during a recent 12 month period?

• Should we permit a foreign company to terminate its Exchange Act reporting obligations regarding a class of equity securities if the percentage of the average daily trading volume of its securities that occurred in its home country market is less than 50 percent as long as that percentage when aggregated with the percentage of the average daily trading volume of the company's securities occurring in another non-U.S. jurisdiction was at least 55 percent or some other percentage greater than 55 percent? Would another test better accomplish the goals of the home country listing condition?

• Should we adopt the definition of ''recent 12 month period'', as proposed?

Should we adopt a period that is longer or shorter than 12 months?

• Should we adopt the 60-day window to the 12 month period, as proposed?

Should the window be longer or shorter than 60 days?

d. Public Float and Trading Volume Benchmarks

Proposed Rule 12h–6 would next permit a foreign private issuer to meet one of a set of quantitative conditions designed to measure the relative level of U.S. market interest in a foreign company's equity securities, and which is not based on a record holder count. The particular condition applicable to a foreign company would depend upon whether the foreign company met the definition of a well-known seasoned issuer under Rule 405 of the Securities Act.[62]

If the issuer is a well-known seasoned issuer, and the average daily trading volume of the subject class of equity securities in the United States has been 5 percent or less of the average daily trading volume of that class of securities in its primary trading market during a recent 12 month period, then the foreign company would be eligible to terminate its Exchange Act registration and reporting obligations under proposed Rule 12h–6 as long as U.S. residents held no more than 10 percent of the class of company's outstanding voting and non-voting equity securities, regarding which there is an Exchange Act reporting obligation, held by the company's non-affiliates on a worldwide basis (''worldwide public float'') at a date within 60 days before the end of the same 12 month period.[63] Otherwise, a foreign private issuer that is a well-known seasoned issuer could terminate its Exchange Act registration and reporting obligations under proposed Rule 12h–6 regarding a class of equity securities if its U.S. resident shareholders held no more than 5 percent of the company's worldwide public float at a date within 120 days before the filing date of the Form 15F.[64]

A foreign company that is not a well-known seasoned issuer could terminate its Exchange Act registration and reporting under proposed Rule 12h–6 if U.S. residents held no more than 5 percent of the company's worldwide public float at a date within 120 days before the filing date of the Form 15F, regardless of its U.S. trading volume.[65]

One of the principal reasons that we are proposing to replace the current standard for a foreign private issuer's termination of reporting, which rests solely on a ''300 U.S. holder'' benchmark (or ''500 U.S. holder'' benchmark for companies with $10 million or less in assets), with benchmarks based upon, among other things, relative U.S. ownership of a foreign company's worldwide public float, is that the proposed benchmarks should liberalize a foreign private issuer's exiting of the Exchange Act registration and reporting regime. At the same time, the proposed benchmarks should work with the other proposed conditions to permit a foreign private issuer to exit the Exchange Act registration and reporting regime only when the impact of the issuer's termination of reporting on the U.S. investor community is expected to be low.

Our expectation that the proposed benchmarks will liberalize exiting the Exchange Act reporting regime for foreign private issuers arises from an evaluation of data developed by our staff in the Division of Corporation Finance and the Office of Economic Analysis regarding the number of foreign private issuers that would be eligible to deregister under the proposal. The staff developed a database of 510 foreign private issuers for which data was sufficient to make the necessary calculations.[66] The data show that approximately 26% of these foreign private issuers would be eligible to deregister under the proposals.[67] The breakdown of that 26% is as follows:

• Well-known seasoned issuers with 5% or less U.S. trading volume and 10% or less U.S. ownership—26% of WKSIs or 16% of total;

• Well-known seasoned issuers with more than 5% U.S. trading volume and 5% or less U.S. ownership—8% of WKSIs or 5% of total; and

• Other issuers with 5% or less U.S. ownership—15% of other issuers or 5% of total.

The proposed benchmarks do not take a ''one size fits all'' approach. Although any foreign private issuer may meet the public float condition if U.S. residents hold 5 percent or less of the issuer's worldwide public float, we have proposed an additional benchmark for a foreign company that is a well-known seasoned issuer. For the following reasons, we believe that a well-known seasoned issuer that is at or below the proposed U.S. trading volume threshold should be able to exit the registration and reporting system under Rule 12h–6 even though the percentage of its worldwide public float held by U.S. investors is greater than the public float benchmark applied to a non-well-known seasoned issuer.

It is more likely that a very large, well-followed foreign company will have a greater percentage of its shares held by U.S. residents than smaller foreign companies. Large companies, including those that are foreign private issuers, are included in various securities indices that are tracked by many U.S. institutional investors. Thus, a large foreign company may especially find it unduly difficult to terminate its Exchange Act reporting obligations, despite the lack of recent U.S. securities offerings and other transactions by that company, because a significant portion of its public float continues to be held by index-based U.S. investors.

In addition, in order to satisfy investor interest around the world as

[62] Proposed Rules 12h–6(a)(4) and 12h–6(a)(5).

[63] Proposed Rule 12h–6(a)(4)(i). The combination of the 60-day period for calculating trading volume percentage and the 60-day period for calculating U.S. percentage ownership would in effect generally provide a 120-day window for calculating percentage ownership.

[64] Proposed Rule 12h–6(a)(4)(ii).

[65] Proposed Rule 12h–6(a)(5).

[66] Of the 510 foreign private issuers, 320 were WKSIs and 190 were non-WKSIs.

[67] Because the counting rules that we propose, discussed below, are not currently in use, these figures may be conservative, although they may overstate the effect of the proposed conditions to the extent that issuers perceive themselves to be already eligible to terminate their Exchange Act registration and reporting obligations under the current record holder standard in Rules 12g–4 and 12h–3.

well as home country requirements, large foreign companies are more likely to provide a steady flow of financial and non-financial information that is easily accessible. Because of their extensive market following, this information is more likely to be the subject of analysis and comment. After a large foreign company's termination of Exchange Act reporting under proposed Rule 12h–6, it is likely that both this steady flow of information from the company and the ensuing analysis will continue, to the benefit of U.S. and other investors.

Although some foreign company representatives have proposed using a benchmark based solely on trading volume as the determinant of a foreign private issuer's ability to exit the Exchange Act reporting regime, we have declined to do so.[68] A benchmark based solely on trading volume could result in an inaccurate gauge of U.S. investor interest. For example, some U.S. investors, particularly large institutional investors, are more likely to purchase and sell securities of foreign well-known seasoned issuers and other foreign companies through foreign markets rather than U.S. markets. These U.S. investors may look to the information contained in a foreign private issuer's Exchange Act reports when investing in the foreign private issuer's home market. A benchmark based solely on U.S. trading volume as a percentage of worldwide trading volume would not capture these U.S. investors and, therefore, would understate the degree of U.S. interest in a foreign company's securities.

Moreover, some economists have noted that various securities markets measure trading volume differently. Accordingly, adoption of a benchmark that relies only on trading volume could result in overstating the trading volume of a particular foreign company's securities either in its home country or the United States.[69] Reliance solely on trading volume could also induce attempts to affect the trading volume of a foreign private issuer's securities in global markets in order to affect the determination of whether the issuer could exit the U.S. reporting system.

As U.S. trading volume increases as a percentage of the trading volume of a foreign company's securities in its primary trading market, so does the concern that U.S. investor interest in that foreign company's securities may be large enough to warrant establishing a stricter ownership threshold before the company could exit the Exchange Act reporting regime. In order to mitigate this concern, under the rule proposal, if a foreign well-known seasoned issuer has a U.S. average daily trading volume that is greater than 5 percent of its average daily trading volume in its primary trading market for a class of securities, it must have a smaller percentage of its worldwide public float held by U.S. investors than a foreign well-known seasoned issuer that has a U.S. average daily trading volume below 5 percent of its average daily trading volume in its primary trading market.

We have not proposed a similar benchmark based on trading volume for non-well-known seasoned issuers because, based on our review of data for non-well-known seasoned issuers, it does not appear that U.S. trading volume as a percentage of worldwide trading volume is a dispositive factor that would permit a significant number of these smaller issuers to terminate their Exchange Act registration and reporting under proposed Rule 12h–6. Instead we have proposed to permit a smaller foreign company to rely on the percentage of its worldwide public float held by U.S. investors as the primary benchmark governing whether it may terminate its Exchange Act registration and reporting.[70]

In proposing these benchmark conditions, we believe that a foreign company that meets any of them is more likely to be one for which the protections afforded by the Exchange Act registration and reporting regime are no longer justified in light of the costs and burdens borne by the company in complying with that regime. We hold this view because the benchmarks suggest that the relative interest of U.S. investors in the foreign private issuer's securities would be low. Moreover, for such a foreign company, the U.S. securities markets would generally have played little role in determining the prevailing price of its equity securities in world markets. Consequently, once such a foreign company has exited the Exchange Act reporting system, there should be little disruption in the information flow relating to, and the global pricing of, its securities. U.S. investors would be able to look to a foreign company's primary trading market should they desire to trade the company's equity securities in an established securities market once it has exited the Exchange Act reporting system.[71]

A Canadian issuer that files its Exchange Act annual report on Form 40–F under the MJDS would be eligible to terminate its Exchange Act registration and reporting obligations under proposed Rule 12h–6. However, because a MJDS filer is not eligible to be a well-known seasoned issuer as defined under Rule 405 of the Securities Act, a MJDS filer would not be able to proceed under the well-known seasoned issuer provisions of proposed Rule 12h–6.[72] However, a MJDS filer could take advantage of the non-WKSI conditions regarding a class of equity securities and the debt securities provision of proposed Rule 12h–6.

Comment Solicited

We solicit comment on the proposed U.S. trading volume and public float benchmarks. In particular, we solicit comment on the trading volume and ownership information developed by Commission staff and our conclusions derived from them, as discussed in this section, and also solicit additional information regarding trading volume and ownership data.

- Should we adopt a termination of reporting condition for well-known seasoned issuers that relies on two measures—trading volume and public float—as proposed?
- If not, should we adopt a benchmark that uses just trading volume, public float, or some other measure?
- Does the potential for manipulation of trading volume make it an inappropriate benchmark, either alone or in combination with other benchmarks?
- Should we instead adopt a benchmark that uses some combination of measures excluding trading volume?

[68] Some foreign company representatives have suggested an exit rule based solely on a foreign company's U.S. trading volume as a percentage of its global trading volume. According to these representatives, if the U.S. trading volume of a foreign company's securities were to fall below a specified percentage of its global trading volume, that would signify that the U.S. market is not a determinative factor in the pricing of the company's securities. As a result, little disruption should occur in the global market for the company's securities once the company ceases to provide its Exchange Act reports. *See* the AFEP letter, dated March 18, 2005, at p. 4. Although we do not believe that a termination benchmark should be based solely on trading volume for the reasons discussed, it appears appropriate to use it as part of an overall assessment of U.S. market interest in a foreign private issuer's equity securities.

[69] *See, for example,* Anne-Marie Anderson and Edward A. Dyl, ''Market Structure and Trading Volume,'' *The Journal of Financial Research,* Vol. XXVIII, No. 1, pp.115–131 (Spring 2005).

[70] Both a smaller foreign company and a WKSI may also rely on proposed Rule 12h–6(a)(6), which uses a ''300 record holder'' standard, as discussed below.

[71] As discussed in Part II.C of this release, following a foreign private issuer's termination of reporting under proposed Rule 12h–6, its securities, including its ADRs, could be traded in the unlisted over-the-counter market in the United States.

[72] *See* question 16 of the Securities Offering Reform FAQ located at *http://www.sec.gov/divisions/corpfin/faqs/securities_offering_reform_qa.pdf.*

• For example, should we adopt a condition requiring a foreign well-known seasoned issuer to have U.S. residents holding no more than a specified percentage, say 10 percent or 5 percent of its worldwide public float at the end of a recent 12 month period, and having U.S. resident shareholders numbering no greater than 1,000, 2,000, 3,000 or some other number? Should we adopt a similar condition for non-well-known seasoned issuers?

• Should we adopt a benchmark that requires a foreign private issuer to have a specified U.S. public float expressed in dollars rather than as a percentage of the issuer's worldwide public float?

• Should we adopt a benchmark that excludes using public float?

• Should we adopt one set of conditions for well-known seasoned issuers and another for foreign companies that are not well-known seasoned issuers, as proposed? Should we instead have one set of conditions that applies to all?

• Proposed Rule 12h–6 would use the same definition of well-known seasoned issuer as under Securities Act Rule 405. That definition contains various conditions in addition to the $700 million public float requirement. Should proposed Rule 12h–6 incorporate all of those conditions or just some of them?

• A company that is an ''ineligible issuer'' under Securities Act Rule 405 does not qualify as a well-known seasoned issuer. Should we require an ''ineligible issuer'' to meet the more stringent benchmarks under Rule 12h–6, as proposed?

• Should we preclude a MJDS filer from using the well-known seasoned issuer benchmarks, as proposed? Should we instead allow a MJDS filer to proceed under the well-known seasoned issuer benchmarks as long as it meets the $700 million public float requirement?

• Should the date of determination of well-known seasoned issuer status be a date within 120 days of filing the proposed Form 15F, as proposed?

• Should we use the ''well-known seasoned issuer'' definition at all as the basis for making distinctions between foreign private issuers regarding termination of reporting? Should we instead use the definition of ''large accelerated filer'', which we are adopting in a separate release? [73]

• Should we develop another measure based on a higher public float (for example, $1 billion) or a lower public float (for example, $500 billion)?

Should we rely on a $75 million public float threshold, which we have previously used as a benchmark for eligibility to engage in certain U.S. securities transactions?[74]

We encourage commenters in this area specifically to support the use of other thresholds with information about a foreign private issuer's market following. With respect to trading volume information, the proposed rule would require a comparison between the United States and the issuer's primary trading market.

• Should we require the comparison of trading volume information in the United States with worldwide trading volume information instead of solely with trading volume information in the issuer's primary trading market?

• Do many foreign well-known seasoned issuers have significant trading volume activity in two or more markets, other than the United States, so that a benchmark based on U.S. trading volume as a percentage of worldwide trading volume would be more meaningful?

• Are many foreign well-known seasoned issuers subject to home country reporting standards that require disclosure of worldwide trading volume information? If so, should proposed Rule 12h–6 use worldwide trading volume information instead of primary trading market information as well?

• Should we adopt alternative conditions for a foreign well-known seasoned issuer depending upon whether the U.S. average daily trading volume of a foreign company's class of securities is no greater than 5 percent of the average daily trading volume of that class of securities in its primary trading market during a recent 12 month period, as proposed? Should the threshold percentage instead be larger than 5 percent? Should it be smaller than 5 percent?

• Should we adopt a different period than a ''recent 12 month period''? For example, should we adopt a period that is longer than 12 months, say 18 or 24 months? Should we adopt a period that is shorter than 12 months, for example, 6 or 3 months?

• Should we adopt the dual 60-day windows for determining U.S. trading volume and U.S. percentage of ownership? Should the periods be longer or shorter?

• If we should adopt the proposed ''5 percent of primary trading market trading volume'' benchmark, should we also adopt the condition that a well-known seasoned issuer that meets this trading volume benchmark must have U.S. residents holding no more than 10 percent of the foreign company's worldwide public float at the end of the recent 12 month period, as proposed?

• Should we instead adopt a percentage that is greater than 10 percent, for example, 15 or 20 percent? Should we adopt a percentage that is less than 10 percent, for example, 5 or 7 percent?

• Similarly, should we adopt the condition that would permit a well-known seasoned issuer to terminate its Exchange Act reporting obligations as long as U.S. residents held no more than 5 percent of its worldwide public float at a date within 120 days of the filing date of the Form 15F even if its U.S. average trading volume was greater than 5 percent of the average trading volume in its primary trading market, as proposed?

• Should we instead adopt a public float percentage that is larger than 5 percent, for example, 7, 10 or 15 percent, or smaller than 5 percent, for example, 3 percent?

• Should we adopt the condition permitting a foreign company that is not a well-known seasoned issuer to terminate its Exchange Act reporting obligations as long as U.S. residents held no more than 5 percent of its worldwide public float at a date within 120 days of the filing date of the Form 15F, regardless of its U.S. trading volume, as proposed?

• If not, should we adopt a public float percentage that is greater than 5 percent, for example, 7 or 10 percent, or less than 5 percent, for example, 3 percent?

We have proposed a single benchmark for non-well-known seasoned issuers based on the proportion of U.S. residents who hold their securities.

• Should we adopt dual benchmarks, based on trading volume and U.S. ownership, similar to the dual benchmarks proposed for well-known seasoned issuers?

• Does a single benchmark provide an adequate measure in determining when a non-well-known seasoned issuer may terminate its Exchange Act reporting obligations under the proposed scheme, or would dual benchmarks provide a more refined classification that is supported by data and experience?

• For example, should we adopt a condition that permits a non-well-known seasoned issuer to terminate its Exchange Act registration and reporting obligations if the U.S. average daily trading volume of its class of securities is no greater than a certain percentage,

[73] *See* Release No. 33–8644, 34–52989 (December 21, 2005).

[74] For example, a public float of $75 million is the eligibility threshold that a foreign private issuer must meet to use Form F–3 for a primary issuance of securities. *See* General Instruction I.B.1 to Form F–3.

say 5 percent, of the average daily trading volume of that class of securities in its primary trading market during a recent 12 month period, and U.S. residents held no more than 5 percent of its worldwide public float at a date within 60 days of that recent 12 month period?

• If so, should either of the U.S. trading volume or U.S. public float thresholds be larger or smaller than 5 percent?

e. Alternative Threshold Record Holder Condition

Proposed Rule 12h–6(a)(6) would permit a foreign private issuer that could not meet one of the benchmarks in proposed Rule 12h–6(a)(4) or (5), but met the other conditions of the rule, to terminate its Exchange Act registration and reporting obligations with regard to a class of equity securities as long as that class of securities was held of record by less than 300 persons on a worldwide basis or less than 300 U.S. residents at a date within 120 days before the filing date of the Form 15F. This threshold record holder condition is similar to that found in current Rules 12g–4 and 12h–3. Those rules also permit a foreign private issuer to cease its reporting obligations if the class of securities is held by less than 500 persons on a worldwide basis or by less than 500 U.S. residents where the issuer's total assets have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years.[75] We have not proposed a similar 500 record holder condition because, based on current experience, we believe that foreign private issuers seldom use the current standard.

The purpose of this 300 record holder condition is to provide that the new exit rules for a foreign private issuer are no more rigorous than the current rules. A foreign private issuer that cannot meet one of the proposed benchmarks, but is eligible under the current 300 record holder standard, should be allowed to terminate its Exchange Act registration and reporting, assuming that it meets the other conditions of proposed Rule 12h–6(a).

Although similar to the current standard, the proposed alternative threshold record holder condition would offer advantages compared to the current exit rules. As discussed below, proposed Rule 12h–6 would adopt a counting method that limits the jurisdictions in which a foreign private issuer must search for records of its U.S. resident holders.[76] Moreover, in addition to enabling a foreign private issuer to terminate, rather than merely suspend, its section 15(d) reporting obligations regarding a class of securities, proposed Rule 12h–6 would impose a prior Exchange Act reporting requirement that is potentially shorter than that under current Rule 12h–3.[77]

Given these advantages, if proposed Rule 12h–6 is adopted, we believe that few, if any, foreign private issuers would choose to proceed under the provisions of Rule 12g–4 or Rule 12h–3 that allow a foreign private issuer to terminate its registration of a class of securities under section 12(g) or suspend the duty to file reports under section 15(d) if the class of securities is held by less than 300 U.S. residents or by 500 U.S. residents and the issuer has had total assets not exceeding $10 million on the last day of each of its most recent three fiscal years.[78] Accordingly, we are proposing to amend these rules to eliminate the above provisions.

Comment Solicited

We solicit comment on proposed Rule 12h–6(a)(6).

• Should we permit an issuer that cannot meet the proposed benchmarks in proposed Rule 12h–6(a)(4) or (5) to terminate its Exchange Act registration and reporting as long as it has satisfied the other requirements of proposed Rule 12h–6 and has its class of equity securities held of record by less than 300 persons worldwide or by less than 300 U.S. resident holders, as proposed?

• Should we raise the record holder threshold to 500, 600, 750, 1,000 or some other number?

• Should we adopt a record holder threshold that is higher for a well-known seasoned issuer than a non-well-known seasoned issuer?

• Should we require a minimum total assets threshold in addition to a record holder threshold as under current Rules 12g–4 and 12h–3? For example, should we adopt the ''less than 500 U.S. residents and $10 million asset'' standard currently provided under Rules 12g–4 and 12h–3? If so, should we require that the asset test be met for only the registrant's most recently completed fiscal year or for two or more previous years?

• Should we adopt an asset threshold that is more than $10 million, for example, $25, 50, 75, or 100 million? In conjunction with an assets test, should we adopt a record holder threshold that is greater than 500, for example, 750, 1,000, 2,000, or 3,000?

• Should we amend Rules 12g–4 and 12h–3 to eliminate the provisions permitting a foreign private issuer to cease its reporting obligations, as proposed? Should we retain these provisions in addition to adopting proposed Rule 12h–6?

3. Conditions for Debt Securities Registrants

a. Section 15(d) Reporting Requirement

Proposed Rule 12h–6 would require a foreign private issuer to meet the minimum Exchange Act reporting requirement under section 15(d) before it could terminate its section 15(d) reporting obligations regarding a class of debt securities.[79] Under section 15(d), an issuer cannot suspend its Exchange Act reporting obligations even if its record holders have fallen below 300 during the year in which the Securities Act registration statement that triggered the section 15(d) reporting obligations became effective. Consequently, section 15(d) requires that, at a minimum, a foreign private issuer must file one annual report pursuant to section 13, and furnish Form 6–K reports until it has filed that one annual report, before it can effect a suspension based upon the number of its record holders.

Proposed Rule 12h–6 would impose this minimum reporting requirement on a debt securities registrant rather than a longer period, as would be required for an equity securities registrant, in order to prevent the new exiting standard from being more burdensome than is currently the case for debt securities registrants under section 15(d). Because debt securities offerings typically result in fewer securities holders than equity securities offerings, it is generally easier for a debt securities registrant to fall below the 300 record holder threshold. Consequently, on several occasions, debt securities registrants have filed Form 15 to suspend their section 15(d) reporting obligations after having filed only one Exchange Act annual report. Proposed Rule 12h–6 would permit this practice to continue.

Comment Solicited

We solicit comment on proposed Rule 12h–6's Exchange Act reporting

[75] Exchange Act Rules 12g–4(a)(1)(ii) and (a)(2)(ii) (17 CFR 12g–4(a)(1)(ii) and (a)(2)(ii)) and 12h–3(b)(1)(ii) and (b)(2)(ii) (17 CFR 240.12h–3(b)(1)(ii) and (b)(2)(ii)).

[76] *See* Part II.B.4 of this release.

[77] Rule 12h–3(a) requires a company that has been an Exchange Act reporting company for at least three fiscal years to have filed all Exchange Act reports for those three years and for the portion of the current year preceding the filing of the Form 15. Proposed Rule 12h–6 would only require an issuer to have filed all required reports for a prior two year period, and have filed two Exchange Act annual reports.

[78] *See* Exchange Act Rules 12g–4(a)(2) and 12h–3(b)(2).

[79] *See* proposed Rule 12h–6(b)(1).

requirement for debt securities registrants.

• Should we permit a foreign private issuer to terminate its section 15(d) reporting obligations regarding a class of debt securities after filing only one Exchange Act annual report and furnishing Form 6–Ks only up to the filing of that annual report, as proposed? Should we require a debt securities registrant to file at least two annual reports and furnish Form 6–Ks until it has filed its second annual report, as we have proposed to require for an equity securities registrant, before it can terminate its section 15(d) reporting obligations?

• Should we permit a foreign private issuer only to suspend rather than terminate its section 15(d) obligations regarding certain classes of debt securities? If so, what are those classes of debt securities?

b. Threshold Record Holder Condition

Proposed Rule 12h–6 would require the record holders of a foreign private issuer's debt securities to be either less than 300 persons on a worldwide basis or less than 300 U.S. residents as of a date within 120 days before the filing of the Form 15F.[80] As with the alternative threshold record holder condition for equity securities registrants, we have based these thresholds on current statutory and rule conditions governing an issuer's suspension of reporting under section 15(d).[81] Accordingly, the proposed record holder condition for termination of a debt securities registrant's reporting obligations would in most instances not pose any additional burdens.

Rule 12h–3 alternatively permits a foreign private issuer to suspend its section 15(d) reporting obligations if its class of debt securities is held of record by less than 500 U.S. residents and its total assets have not exceeded $10 million on the last day of each of the issuer's three most recent fiscal years.[82] We have not proposed to adopt this alternative condition for a debt securities registrant under proposed Rule 12h–6 because we believe that most foreign private issuers that are debt securities registrants would likely exceed that asset threshold.[83]

For purposes of Rule 12h–6, the term ''debt securities'' refers not only to traditional debt securities but also to non-convertible preferred securities, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer (referred to as ''non-participating preferred stock''). The preferred securities have market characteristics more similar to traditional debt securities than to equity securities. This treatment of non-participating preferred stock under Rule 12h–6 is consistent with the treatment under other rules under the Federal securities laws.[84]

Comment Solicited

We solicit comment on proposed Rule 12h–6's threshold record holder condition for debt securities registrants.

• Should we require that the subject class of debt securities be held of record by less than 300 persons on a worldwide basis or less than 300 U.S. residents, as proposed?

• Should we increase the record holder threshold to, for example, less than 500, 750 or 1,000 persons on a worldwide basis or who are U.S. residents?

• If we do increase the threshold number of record holders, should we also impose a threshold asset standard? Should we adopt the ''less than 500 U.S. residents and $10 million asset'' standard currently provided under Rule 12h–3? If so, should we require that the asset test be met for only the registrant's most recently completed fiscal year?

• Should we adopt an asset threshold that is more than $10 million, for example, $25, 50, 75, or 100 million? If so, should we adopt a record holder threshold as well that is greater than 500?

• Should we instead adopt a record holder condition that would vary depending on whether a debt securities registrant was a well-known seasoned issuer?

We also solicit comment on the definition of debt securities under proposed Rule 12h–6.

• Should we treat as debt securities non-participating preferred securities, as proposed?

• Are there any other types of debt securities that should be included or excluded from the proposed definition of debt securities?

4. Counting Method

In order to facilitate a foreign private issuer's determination regarding whether U.S. residents hold no more than the applicable threshold percentage of its worldwide public float, or whether the number of its equity or debt securities record holders meet the applicable threshold condition, proposed Rule 12h–6 would permit an issuer to use a method of calculating record ownership that is substantially similar to that we have adopted under the exemptive rules for cross-border rights offerings, exchange offers and business combinations,[85] as well as under the definition of foreign private issuer.[86] After instructing an issuer to use the method of calculating record ownership under Rule 12g3–2(a),[87] proposed Rule 12h–6(e) would provide that an issuer may limit its inquiry regarding the amount of securities represented by accounts of customers resident in the United States to brokers, dealers, banks and other nominees located in the United States, the foreign private issuer's jurisdiction of incorporation, legal organization or establishment, and the jurisdiction of the foreign private issuer's primary trading market if different from the issuer's jurisdiction of incorporation, legal organization or establishment.[88]

The purpose of this provision is to limit the number of jurisdictions in which an issuer must search for records regarding its U.S. resident shareholders. The rule would permit an issuer to restrict its search to those jurisdictions that represent the most probable locations for brokers, dealers, banks and other nominees to hold the issuer's securities on behalf of U.S. customers.[89]

[80] *See* proposed Rule 12h–6(b)(2).

[81] The ''less than 300 persons'' standard appears both in section 15(d) and in Rule 12h–3(b)(1)(i) (17 CFR 240.12h–3(b)(1)(i)). The ''less than 300 U.S. residents'' standard appears in Rule 12h–3(b)(2)(i) (17 CFR 240.12h–3(b)(2)(i)). *See* Part II.B.4 of this release for a discussion of proposed modifications in the method of counting U.S. residents.

[82] Exchange Act Rule 12h–3(b)(2)(ii).

[83] A foreign private issuer could still seek to suspend its section 15(d) reporting obligations under Rule 12h–3's alternative provision, which applies to any issuer, and which imposes the same asset standard but requires the subject class of securities to be held of record by less than 500 persons on a worldwide basis. *See* Exchange Act Rule 12h–3(b)(1)(ii).

[84] *See, for example,* Securities Act Rule 902(a)(1) under Regulation S (17 CFR 230.902(a)(1)).

[85] Securities Act Rule 800(h) (17 CFR 230.800(h)).

[86] Securities Act Rule 405 and Exchange Act Rule 3b–4. The Regulatory Flexibility Act Agenda most recently published by the Commission states that Commission staff are considering recommendations with respect to rule amendment proposals relating to the definition of securities ''held of record'' under the Exchange Act. Release 33–8608 (September 2, 2005), 70 FR 65680 (October 31, 2005). Today's proposals relating to foreign private issuers are unrelated to that consideration.

[87] 17 CFR 240.12g3–2(a). Used to determine whether a foreign private issuer has fewer than 300 U.S. resident holders, that method requires looking through the record ownership maintained by brokers, dealers, banks or other nominees and counting the number of separate accounts held by them on behalf of U.S. customers.

[88] Proposed Rule 12h–6(e)(1).

[89] This counting method would not apply to a foreign private issuer that is terminating its reporting because its equity or debt securities record holders are less than 300 persons on a worldwide basis. Like the current 300 worldwide

Continued

Proposed Rule 12h–6(e) would further provide that, if, after reasonable inquiry, an issuer is unable without unreasonable effort to obtain information about the amount of securities represented by accounts of customers resident in the United States, it may assume that the customers are the residents of the jurisdiction in which the nominee has its principal place of business. However, the proposed rule would further instruct that an issuer must count securities as owned by U.S. holders when publicly filed reports of beneficial ownership or information that is otherwise provided to the issuer indicates that the securities are held by U.S. residents.[90]

We are aware that domestic and foreign issuers use third party service providers for the purpose of obtaining information relating to the identification of their security holders. In general, the primary purpose of obtaining this information is usually not to satisfy a regulatory requirement, but to assist company management in communicating with security holders and otherwise to promote good investor relations. Nonetheless, foreign private issuers currently use these services for the purpose of determining whether they fall below the current 300 U.S. holder threshold.

In light of the difficulties associated with determining levels of U.S. ownership of securities, we believe it is appropriate to permit foreign private issuers to rely on a third party information service provider that is in the business of supplying security holder information to issuers generally. Accordingly, proposed Rule 12h–6(e) would provide that, when calculating the number of its U.S. resident security holders under proposed Rule 12h–6, a foreign private issuer could rely in good faith on the assistance of an independent information services provider that in the regular course of business assists issuers in determining the number of, and collecting other information regarding, their shareholders.[91] By allowing a foreign private issuer to retain an expert when making the determination of the extent to which its securities are held by U.S. residents, this proposed provision should help increase the accuracy of that determination while reducing the burden posed by it for the issuer and its employees.

Comment Solicited

We solicit comment on proposed Rule 12h–6(e).

- Should we permit an issuer to restrict its inquiry regarding the number of its U.S. resident holders to the jurisdictions referenced in that rule, as proposed?
- Are there other jurisdictions in which an issuer must search for evidence of U.S. ownership of its securities when calculating the percentage of its worldwide public float held by U.S. holders or the number of U.S. residents who hold its equity or debt securities under proposed Rule 12h–6?
- Is there another method of accurately determining the percentage of an issuer's worldwide public float held by U.S. residents that does not require using the counting method in Rule 12g3–2(a)?
- Should we permit a foreign private issuer to exclude institutional investors when determining the number of its U.S. resident shareholders?
- Should we permit a foreign private issuer to rely in good faith on the assistance of an independent information services provider when making its public float determination or calculating the number of U.S. residents who hold its equity or debt securities, as proposed? Should we also allow an issuer to rely on an information services provider when calculating the number of its record holders worldwide?

We understand that some foreign jurisdictions have laws that provide an established and enforceable means for a public company to obtain information about their shareholders.[92]

- Should we allow a foreign private issuer to rely on information obtained through these foreign statutory or code provisions when calculating the percentage of its worldwide public float held by U.S. residents or the number of its U.S. resident equity or debt holders? If so, should we permit reliance on only certain specified foreign provisions?

Interested persons are requested to provide detailed information about such foreign provisions in their comments.

5. Form 15F

Like our current exit rules, proposed Rule 12h–6 would require a foreign private issuer to file a form certifying that it meets the requirements for ceasing its Exchange Act reporting obligations. By signing and filing proposed new Form 15F,[93] a foreign private issuer would be certifying that:

- It meets all of the conditions for termination of Exchange Act reporting specified in Exchange Act Rule 12h–6 (17 CFR 240.12h–6); and
- There are no classes of securities other than those that are the subject of the Form 15F regarding which the issuer has Exchange Act reporting obligations.

Unlike current Form 15, proposed new Form 15F would require a foreign private issuer to provide disclosure regarding several items in order to provide investors with information regarding an issuer's decision to terminate its Exchange Act reporting obligations. That information would also help Commission staff to assess whether the issuer meets the requirements for termination of reporting under Rule 12h–6. We believe that this disclosure approach is appropriate because of the multiple conditions that a foreign company would have to meet under proposed Rule 12h–6. Moreover, some of the proposed conditions, such as the trading volume and public float benchmarks, have not previously been the subject of mandatory disclosure under our Exchange Act reporting regime. Accordingly, without the proposed Form 15F items, investors would not be informed about, and Commission staff would not be able to assess readily, whether a foreign company was eligible to terminate its reporting under proposed Rule 12h–6.

The proposed Form 15F items would solicit information regarding:

- An issuer's Exchange Act reporting history;
- When it last sold securities in the United States other than those excluded from consideration under proposed Rule 12h–6;
- The primary trading market for its equity securities being deregistered;
- Whether it is a well-known seasoned issuer;
- Trading volume data for a well-known seasoned issuer's securities, both in the United States and in its primary trading market;
- Its worldwide public float and the portion held by U.S. residents

record holder provisions under Rules 12g–4 and 12h–3, proposed Rule 12h–6's worldwide record holder provisions would generally not require an issuer to look through nominee accounts when determining its record ownership.

[90] Proposed Rule 12h–6(e)(2) and (3).

[91] Proposed Rule 12h–6(e)(4).

[92] *See, for example,* Section 212 of the Companies Act of the United Kingdom, which gives a public company the power to investigate the ownership of its shares by sending a written notice to any person or company whom it believes has or had an interest in its relevant share capital during the preceding three years.

[93] An issuer would have to file proposed Form 15F through the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR''). *See* the proposed amendment to Regulation S–T Rule 101(a)(1)(xii) (17 CFR 232.101(a)(1)(xii)), which would also clarify that, as currently interpreted by the Commission, Regulation S–T also requires an issuer to file a Form 15 on EDGAR.

determined pursuant to the proposed rules with respect to the equity securities being deregistered, if applicable;

- The number of its equity or debt securities record holders, if applicable; and
- The classes of equity and debt securities, if any, that are the subject of the Form 15F.[94]

As under the current deregistration regime, filing of the Form 15F would immediately suspend the issuer's Exchange Act reporting obligations regarding the subject class of securities and commence a 90-day waiting period.[95] During this period, Commission staff may review the Form 15F. If, at the end of the 90-day period, the Commission has not objected to the filing, the suspension would automatically become a termination of registration and reporting. If the Commission denies the Form 15F or the issuer withdraws it, within 60 days of the date of the denial or withdrawal, the issuer would be required to file or submit all reports that would have been required had it not filed the Form 15F.[96]

We are also proposing to revise the rules governing the Commission's delegated authority to permit staff of the Division of Corporation Finance to accelerate the effectiveness of an issuer's termination of registration and reporting under proposed Rule 12h–6 prior to the 90th day at the issuer's request. The issuer would have to make this request in writing and file it on EDGAR.[97] Nevertheless, Division of Corporation Finance staff may submit requests to accelerate the effectiveness of an issuer's termination of registration and reporting pursuant to proposed Rule 12h–6 to the Commission for consideration, as appropriate.

We are aware that in today's investing and technological environment, it would be overly burdensome and costly to require foreign private issuers to assess the level of U.S. ownership of their securities with absolute certainty. Accordingly, we have proposed methods that should provide a reasonable level of certainty to the process by which a foreign private issuer determines the level of U.S. ownership of its securities.[98]

As proposed, after filing its Form 15F, an issuer would have no continuing obligation to make inquiries or perform other work concerning the information contained in the Form 15F, including its assessment of U.S. ownership of its securities. However, proposed Form 15F would require an issuer to undertake to withdraw its Form 15F prior to the date of its effectiveness if it becomes aware of information that causes it reasonably to believe that U.S. holders held more than the applicable threshold percentage of its worldwide public float or exceeded the threshold number of debt securities record holders, or otherwise causes the issuer no longer to believe that it meets the conditions for terminating its Exchange Act reporting obligations under proposed Rule 12h–6.

Comment Solicited

We solicit comment on the proposed Form 15F.

- Should the Form 15F constitute an issuer's certification regarding each of the specified conditions, as proposed?
- Are there some conditions that we should exclude from the proposed Form 15F certification? Are there other conditions that we should include in the proposed Form 15F certification?
- Should we request an issuer to provide information on each of the enumerated items in the Form 15F, as proposed? Should we revise or omit some or all of the items on the proposed Form 15? Are there any other items that should be included on the proposed Form 15F?
- Should we adopt a 90-day waiting period following the filing of the Form 15F before termination of reporting could become effective, as proposed? Should we instead adopt a shorter or longer period?
- Should we adopt a 60-day period in which an issuer would have to file or submit all required reports should its Form 15F be denied or withdrawn, as proposed? Should we adopt instead a shorter or longer period?
- In the ordinary course, we anticipate that terminations pursuant to proposed Form 15F will become effective 90 days after filing, without Commission action. Should proposed Rule 12h–6 provide for some required processing or action by the Commission before any Form 15F termination of reporting would become effective?
- Should we require an issuer to provide the undertaking, as proposed? Are there other undertakings that we should require on Form 15F? For example, should we also require an issuer to undertake to issue a press release in the United States announcing its withdrawal of the Form 15F? Should we not require any undertakings at all?
- Are there other means to address the possibility of temporary shifts in an issuer's security holders to outside the United States? For example, should we require a foreign private issuer to assess the number of its U.S. security holders at the beginning and end of a three or six-month period before filing a Form 15F?
- Are there other means to address the difficulties associated with determining the level of U.S. ownership of a foreign private issuer's securities through book-entry systems and nominee holders?

6. Notice Requirement

As a condition to termination of reporting, proposed Rule 12h–6 would require a foreign private issuer, not later than 15 business days before it files its Form 15F, to publish a notice in the United States disclosing its intent to terminate its Exchange Act registration and reporting obligations regarding each class of securities under section 12(g) or section 15(d) or both. The issuer would be required to publish the notice through a means, such as a press release, reasonably designed to provide broad dissemination of the information to the public in the United States.[99] The issuer would be required to submit a copy of the notice either under cover of a Form 6–K, before or at the time of filing of the Form 15F, or as an exhibit to the Form 15F.[100] The primary purpose of this provision is to alert U.S. investors who have purchased the issuer's securities about the intended exiting of the issuer from the Exchange Act registration and reporting system. The notice requirement would also serve to alert investors and other U.S. market participants that, in the future, they will have to look to the issuer's home country documents, and not Exchange Act reports, for information regarding the issuer.

Comment Solicited

We solicit comment regarding proposed Rule 12h–6(c)'s notice requirement.

[94] Proposed Form 15F would also seek confirmation that the issuer has met the notice requirement of proposed Rule 12h–6(c) (17 CFR 240.12h–6(c)) discussed in Part II.B.6 of this release.

[95] During this period, although the issuer would not be required to file Exchange Act reports, its equity securities would continue to be registered. Consequently, security holders and others might continue to have obligations under Exchange Act sections 13(d) and 14(d) [15 U.S.C. 78m(d) and 78n(d)].

[96] Proposed Rule 12h–6(f).

[97] As noted earlier, there is currently a similar delegation relating to Form 15, which is rarely used.

[98] *See* the proposed counting method and reliance on an independent information services provider discussed in Part II.B.4 of this release.

[99] There are no specific proposed requirements relating to the form or content of the press release or other notice, although such matters may be addressed under the rules of a U.S. securities market in which the issuer's securities are listed.

[100] Proposed Rule 12h–6(c) (17 CFR 240.12h–6(c)).

- Should we require a foreign private issuer to issue a notice, such as a press release, disclosing its intention to terminate its Exchange Act reporting obligations, as proposed?
- If so, should we prescribe the form or content of the notice other than that it be broadly disseminated in the United States?
- Should a foreign private issuer be permitted to submit a copy of the notice to the Commission either prior to or at the time of filing the Form 15F?
- Does the filing of the Form 15F provide enough notice regarding a foreign private issuer's intentions to make the notice requirement unnecessary?
- Should a foreign private issuer be required to issue a notice upon the effectiveness of the termination of its Exchange Act registration and reporting obligations under proposed Rule 12h–6?

C. Proposed Amendment Regarding Rule 12g3–2(b)

Under Rule 12g3–2(b), a foreign private issuer may avoid registering under Exchange Act Section 12(g) if, prior to incurring a registration obligation, it establishes and maintains the exemption by submitting to the Commission various materials that are made public in its home market. As part of our proposals, we are proposing two amendments under this exemption:

- We are proposing to amend Rule 12g3–2(d), which currently prohibits a foreign private issuer from availing itself of the Rule 12g3–2(b) exemption for a period of 18 months after terminating its registration under Section 12(g) or an active or suspended reporting obligation under Section 15(d);[101] and
- We are proposing new Rule 12g3–2(e), which would facilitate compliance with the information submission requirements by foreign private issuers that terminate their reporting obligations under proposed Rule 12h–6 by having them publish required materials on their Internet Web sites instead of submitting materials to the Commission on an ongoing basis.

The proposed amendment to Rule 12g3–2(d) would except from its 18-month prohibition a foreign private issuer that receives the Rule 12g3–2(b) exemption pursuant to new proposed Rule 12g3–2(e). As proposed, a foreign private issuer that has filed a Form 15F with regard to a class of equity securities would receive the Rule 12g3–2(b) exemption immediately upon the effective date of the termination of its Exchange Act reporting obligations pursuant to Rule 12h–6.[102] Thereafter, a foreign private issuer would have to publish in English on its Internet Web site the home country materials that it is required to furnish on a continuous basis[103] under Rule 12g3–2(b).[104] If a foreign private issuer's primary trading market has an electronic information delivery system that is generally available to the public, the issuer instead could publish its home country materials in English through that system.[105]

Proposed Exchange Act Rule 12g3–2(e) would clarify that, at a minimum, in order to satisfy the conditions of the exemption, a foreign private issuer would have to publish electronically English translations of the following home country documents:

- Its annual report, including or accompanied by annual financial statements;
- Interim reports that include financial statements;
- Material press releases; and
- All other material communications and documents distributed directly to security holders of each class of securities to which the exemption relates.[106]

Proposed Exchange Act Rule 12g3–2(e) would further condition the exemption on requiring a foreign private issuer to disclose in its Form 15F the address of its Internet Web site or of the electronic information delivery system on which it will publish its home country materials.[107] The purpose of this proposed extension of Rule 12g3–2(b) is to provide U.S. investors with access to material information about an issuer of equity securities following its termination of reporting pursuant to proposed Rule 12h–6.[108] In addition, an issuer would be able to maintain a sponsored ADR facility with respect to its securities.[109] It also would facilitate resales of that issuer's securities to qualified institutional buyers under Rule 144A.[110] Moreover, having a foreign private issuer's key home country documents posted in English on its Web site would assist U.S. investors who are interested in trading the issuer's securities on its home country exchange.[111]

The proposed extension of Rule 12g3–2(b) would apply to both a class of equity securities formerly registered under section 12(g) and one that formerly gave rise to section 15(d) reporting obligations.[112] The Rule 12g3–2(b) exemption received under proposed Rule 12g3–2(e) would remain in effect for as long as the foreign private issuer satisfied the rule's electronic publication conditions or until the issuer registered a new class of securities under section 12 or incurred section 15(d) reporting obligations by filing a new Securities Act registration statement, which became effective.[113] However, absent a new effective Securities Act registration statement, under proposed Rule 12h–6, the termination of reporting obligations under section 15(d) would be permanent and would not be

[101] As a result, under the current rules, a foreign private issuer is at risk that, during the 18 months after terminating registration under Section 12(g), it may exceed the registration thresholds under Section 12(g) and be required to re-register under the Exchange Act.

[102] *See* proposed Exchange Act Rule 12g3–2(e)(1).

[103] Proposed Rule 12g3–2(e)(2).

[104] Under Rule 12g3–2(b), a foreign private issuer must furnish information that it: (a) has made or is required to make public under the laws of its incorporation, organization or domicile; (b) has filed or is required to file with a non-U.S. stock exchange on which its securities are traded and which has been made public by that exchange; and (c) has distributed or is required to distribute to its security holders. *See* Exchange Act Rules 12g3–2(b)(1)(i) and (iii) (17 CFR 240.12g3–2(b)(1)(i) and (iii)).

[105] For example, a Canadian issuer would be able to fulfill its Exchange Act Rule 12g3–2(e) requirements by filing its home country documents through the Canadian Securities Administrators' System for Electronic Document Analysis and Retrieval (''SEDAR'').

[106] Note 1 to proposed Rule 12g3–2(e). Exchange Act Rule 12g3–2(b)(3) (17 CFR 240.12g3–2(b)(3)) currently provides that the information required to be furnished under the Rule 12g3–2(b) exemption is that which is material to an investment decision. This materiality standard would continue to apply to Rule 12g3–2(b) materials furnished electronically under proposed Rule 12g3–2(e).

[107] There would be no obligation to amend the Form 15F to update the address of the Internet Web site or electronic information delivery system should it change subsequent to the effective date of an issuer's termination of reporting under proposed Rule 12h–6.

[108] Any post-termination trading of a foreign private issuer's securities in the United States would have to occur through over-the-counter markets such as that maintained by the Pink Sheets, LLC since, as of April, 1998, the NASD and the Commission have required a foreign private issuer to register a class of securities under Exchange Act section 12 before its securities could be traded through the electronic over-the-counter bulletin board administered by Nasdaq. *See, for example,* NASD Notice to Members (January 1998).

[109] In order to establish an ADR facility, an issuer must register the ADRs on Form F–6 (17 CFR 239.36) under the Securities Act. The eligibility criteria for the use of Form F–6 include the requirement that the issuer have a reporting obligation under Exchange Act section 13(a) or have established the exemption under Rule 12g3–2(b).

[110] *See* Securities Act Rule 144A(d)(4) (17 CFR 230.144A(d)(4)).

[111] Brokers currently are exempt from complying with certain information obligations under Exchange Act Rule 15c2–11 (17 CFR 240.15c2–11) when a foreign company has established and maintains the Rule 12g3–2(b) exemption. *See* Release No. 34–41110 (February 25, 1999), 64 FR 11124 (March 8, 1999).

[112] Our primary authority for the proposed extension of Rule 12g3–2(b) is Exchange Act Section 12(h) [15 U.S.C. 78l(h)].

[113] *See* proposed Rule 12g3–2(e)(3).

conditioned on continued maintenance of the Rule 12g3–2(b) exemption.

Currently foreign companies maintain the Rule 12g3–2(b) exemption by submitting to the Commission on an ongoing basis the material required by the rule. This material may only be submitted in paper format.[114] Although the Commission's EDGAR database contains an entry signifying the receipt of paper documents, materials received in paper are not accessible through the EDGAR system. Because paper submissions are more difficult to access, we have proposed the amendment to Rule 12g3–2, which relies on electronic access to a foreign company's home country securities documents, although not through the Commission's electronic database.

Comment Solicited

We solicit comment on the proposed amendment to Rule 12g3–2(d) and on proposed new Rule 12g3–2(e).

- Should we require a foreign private issuer that has terminated its Exchange Act reporting with regard to a class of equity securities under proposed Rule 12h–6 to comply with the home country publication requirements under Rule 12g3–2(b) by immediately granting the issuer the Rule 12g3–2(b) exemption upon the effectiveness of its termination of reporting, as proposed?
- Should we instead permit but not require such a foreign private issuer to apply for the Rule 12g3–2(b) exemption following termination of reporting under proposed Rule 12h–6?
- Or should we leave unamended Rule 12g3–2(d) and require a foreign private issuer to wait 18 months before it could apply for the Rule 12g3–2(b) exemption?
- If we should extend the Rule 12g3–2(b) exemption to a foreign private issuer that has terminated its Exchange Act reporting under proposed Rule 12h–6, should we require the issuer to publish electronically on its Internet Web site the home country documents required to be furnished under Rule 12g3–2(b)?
- If so, should we also allow the issuer to publish its home country documents through an electronic information delivery system in its primary trading market?
- Should we permit the issuer either to publish the required home country documents electronically or submit them in paper to the Commission?
- Should we require the issuer only to submit the required home country documents in paper to the Commission as is currently the requirement for non-Exchange Act reporting companies that have received the Rule 12g3–2(b) exemption?
- Should we require a foreign private issuer that has received the Rule 12g3–2(b) exemption under proposed Rule 12g3–2(e) to publish electronically English translations of the home country documents listed in proposed Note 1 to that proposed rule?
- Should we exclude any of the specified home country documents from the English translation and electronic publication condition? Are there other home country documents not mentioned in the proposed rule that should be translated in English and published electronically?
- Should we require the issuer to post its home country documents in English on its Internet Web site for a specified period of time? For example, should the issuer be required to keep its annual report in English available on its Internet Web site for at least 1, 2 or 3 or more years? Should the issuer be required to keep its material press releases in English for at least 6 months or a year?

As proposed, foreign companies that obtain the Rule 12g3–2(b) exemption by filing a Form 15F would be able to maintain the exemption through their Web site postings without the need for submitting material to the Commission. We would continue to require all other foreign companies that have the Rule 12g3–2(b) exemption to submit the required materials in paper to the Commission. In light of developments relating to information dissemination and information technology, we solicit comments generally on the Exchange Act exemptive scheme for foreign private issuers.

- Should we modify the registration thresholds under Rule 12g3–2(a) from 300 U.S. resident holders to some other measure?
- Does the Rule 12g3–2(b) exemption continue to serve a useful purpose for investors seeking information on foreign companies?
- Should we consider methods of compliance with Rule 12g3–2(b), such as Web site postings, as an alternative to the submission of paper documents to the Commission? How would such alternative methods operate in practice, and how would Commission staff oversee compliance?
- Does oversight by Commission staff in this area continue to be necessary or appropriate and serve to further investor protection? Is such oversight necessary or appropriate for a company that has obtained the Rule 12g3–2(b) exemption after terminating its reporting obligations under proposed Rule 12h–6?

General Request for Comments

We solicit comment on proposed Rule 12h–6, proposed Form 15F, proposed amendments to Rules 12g–4, 12h–3, 12g3–2(d) and 12g3–2(e) as well as to all other aspects of the proposed rule amendments. Here and throughout the release, when we solicit comment, we are interested in hearing from all interested parties, including members and representatives of the investing public, representatives of foreign companies and foreign industry groups, representatives of broker-dealers, domestic issuers, and other participants in U.S. securities markets. We are further interested in learning from all parties what aspects of the rule proposal they deem essential, what aspects they believe are preferred but not essential, and what aspects they believe should be modified.

III. Paperwork Reduction Act Analysis

This rule proposal contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[115] We are submitting our proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[116] The titles of the affected collection of informations are Form 20–F (OMB Control No. 3235–0288), Form 40–F (OMB Control No. 3235–0381), Form 6–K (OMB Control No. 3235–0116), and proposed new Form 15F.[117] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information such as Form 20–F or proposed new Form 15F unless it displays a currently valid OMB control number. Compliance with the disclosure requirements of proposed Form 15F and proposed Rule 12h–6,

[114] A non-Exchange Act reporting issuer that has successfully filed an application for the Rule 12g3–2(b) exemption must currently furnish its home country documents in paper because the application is analogous to one submitted for an exemption under Exchange Act section 12(h). *See* Regulation S–T Rule 101(c)(16) (17 CFR 232.101(c)(16)).

[115] 44 U.S.C. 3501 *et seq.*

[116] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[117] A limited number of foreign private issuers file annual reports on Form 10–K. In voluntarily electing to file periodic reports using domestic issuer forms, these issuers seem to have closely aligned themselves with the U.S. market. For purposes of the Paperwork Reduction Analysis therefore, these issuers would appear unlikely to terminate their Exchange Act registration using proposed Rule 12h–6, and we have assumed that none of these companies would seek to use proposed Rule 12h–6. Foreign private issuers that file periodic reports using domestic issuer forms would, nonetheless, be eligible to use proposed Rule 12h–6.

which will affect the above collections of information, will be mandatory.

Form 20–F sets forth the disclosure requirements for a foreign private issuer's annual report and registration statement under the Exchange Act as well as many of the disclosure requirements for a foreign private issuer's registration statements under the Securities Act. The Commission adopted Form 20–F pursuant to the Exchange Act and the Securities Act in order to provide investors with information about foreign private issuers that have registered securities with the Commission.

Form 40–F sets forth the disclosure requirements regarding the annual report and registration statement under the Exchange Act for a Canadian issuer that is qualified to use the Multijurisdictional Disclosure System (''MJDS''). The Commission adopted Form 40–F pursuant to the Exchange Act in order to permit qualified Canadian issuers to prepare their Exchange Act annual reports and registration statements based primarily in accordance with Canadian requirements.

Form 6–K is used by a foreign private issuer to report material information that it:

- Makes or is required to make public under the laws of the jurisdiction of its incorporation, domicile or organization (its ''home country'');
- Files or is required to file with its home country stock exchange that is made public by that exchange; or
- Distributes or is required to distribute to its security holders.

A foreign private issuer may attach annual reports to security holders, statutory reports, press releases and other documents as exhibits or attachments to the Form 6–K. The Commission adopted Form 6–K under the Exchange Act in order to keep investors informed on an ongoing basis about foreign private issuers that have registered securities with the Commission.

Proposed Form 15F is the form that a foreign private issuer would have to file when terminating its Exchange Act reporting obligations under proposed Exchange Act Rule 12h–6. Proposed Form 15F would require a filer to disclose information that would help investors understand the foreign private issuer's decision to terminate its Exchange Act reporting obligations and assist Commission staff in assessing whether the Form 15F filer is eligible to terminate its Exchange Act reporting obligations pursuant to proposed Rule 12h–6.

The hours and costs associated with preparing, filing and sending Forms 20–F, 40–F, and 6–K and proposed Form 15F constitute reporting and cost burdens imposed by those collections of information. We have based our estimates of the effects that the rule proposal would have on those collections of information primarily on our review of the most recently completed PRA submissions for Forms 20–F, 40–F, and 6–K, on those forms' requirements and on the proposed requirements of Form 15F, and on relevant information, for example, concerning comparative trading volume and public float for numerous filers of those forms.

The estimated effects of the rule proposal reflect the initial phase-in period of the Exchange Act termination process under proposed Rule 12h–6 and under proposed Form 15F during the first year of use. We expect that most if not all of these estimated effects will occur on a one time, rather than a recurring, basis. While we expect that some issuers will terminate their Exchange Act reporting under proposed Rule 12h–6 and file Form 15F in subsequent years, we do not expect the resulting burdens and costs to be of the same magnitude as the burdens and costs currently expected during the first year.

A. Form 20–F

We estimate that currently foreign private issuers file 1,100 Form 20–Fs each year. We further estimate that it requires a total of 2,893,000 annual burden hours to produce these Form 20–Fs or 2,630 hours on average for each Form 20–F. We estimate that foreign private issuers incur 25% of the burden, or 723,250 annual burden hours, required to produce the Form 20–Fs. We further estimate that outside firms, including legal counsel, accountants and other advisors, account for 75% of the burden required to produce the Form 20–Fs at an average cost of $300 per hour for a total annual cost of $650,925,000.

Proposed Rule 12h–6 would permit a foreign private issuer to terminate its Exchange Act reporting obligations, including the obligation to file an annual report on Form 20–F, regarding a class of securities under section 12(g) or pursuant to section 15(d) of the Exchange Act. It is possible that, if adopted, as many as 15% of Form 20–F filers could terminate their Exchange Act reporting obligations under the rule proposal in the first year. However, if adopted, the rule proposal also may encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time. As a result, during this same period, the number of Form 20–F annual reports filed could increase by 5%, leading to a net decrease of 10% for Form 20–Fs filed over this same period. This would result in a decrease for this 1 year period in:

- The number of Form 20–Fs filed by 110 to 990 Form 20–Fs;
- The total number of burden hours for Form 20–F by 289,300 to 2,603,700 hours;
- The total number of burden hours incurred by foreign private issuers to produce Form 20–F by 72,325 to 650,925 hours; and
- The total cost incurred by outside firms to produce Form 20–F by $65,092,500 to $585,832,500.

B. Form 40–F

We estimate that foreign private issuers file 134 Form 40–Fs each year. We further estimate that it requires a total of 57,240 annual burden hours to produce these Form 40–Fs or 427 hours on average for each Form 40–F. We estimate that foreign private issuers incur 25% of the burden, or 14,310 annual burden hours, required to produce the Form 40–Fs. We further estimate that outside firms, including legal counsel, accountants and other advisors, account for 75% of the burden required to produce the Form 40–Fs at an average cost of $300 per hour for a total annual cost of $12,879,000.

Proposed Rule 12h–6 would permit a foreign private issuer filing on the MJDS forms to terminate its Exchange Act reporting obligations, including the obligation to file its annual report on Form 40–F. It is possible that, if adopted, as many as 10% of Form 40–F filers could terminate their Exchange Act reporting obligations under the rule proposal in the first year. However, if adopted, the rule proposal may encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time, including some that would be eligible to use the MJDS forms, including the Form 40–F annual report. As a result, over this same period, the number of Form 40–F annual reports filed could increase by approximately 3%, so that there would be a net decrease of 7% for Form 40–Fs filed over this same period. This would result in a decrease for this 1 year period in:

- The number of Form 40–Fs filed by 9 to 125 Form 40–Fs;
- The total number of burden hours for Form 40–F by 3,865 to 53,375 hours;
- The total number of burden hours incurred by foreign private issuers to

produce Form 40–F by 966 to 13,344; and

• The total cost incurred by outside firms to produce Form 40–F by $869,625 to $12,009,375.

C. Form 6–K

We estimate that foreign private issuers file 14,661 Form 6–Ks each year. We further estimate that it requires a total of 127,197 annual burden hours for the Form 6–K, of which 9,909 annual burden hours relate to the work required to translate foreign language text into English. We estimate that foreign private issuers incur 75% of the burden of preparing the Form 6–K, not including the English translation work (87,966 hours) and 25% of the burden required to translate foreign language text into English (2,477 hours), which results in 90,443 total annual foreign private issuer burden hours to produce the Form 6–Ks, or 6.2 burden hours on average for each response.

We estimate that outside firms, including legal counsel, accountants and other advisors, account for 25% of the burden required to produce the Form 6–Ks, not including the English translation work, (29,322 hours) at an average cost of $300 per hour for an annual cost of $8,796,600. We estimate that each year 367 Form 6–K filings result in costs to translate into English 8 pages of foreign language text per filing. We estimate that outside firms incur 75% of these English translation costs at a cost of $75 per page, which results in additional annual costs of $165,150 for outside firms, and total annual costs of $8,961,750 incurred by outside firms in the preparation and translation of the Form 6–K.

Proposed Rule 12h–6 would permit a foreign private issuer to terminate its Exchange Act reporting obligations, including the obligation to file Form 6–K reports. It is possible that, if adopted, as many as 14% of Form 6–K filers (including those that file their Exchange Act annual reports either on Form 20–F or Form 40–F) might terminate their Exchange Act reporting obligations under the rule proposal in the first year. However, if adopted, the rule proposal could encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time. As a result, over the same period, the number of Form 6–K reports filed could increase by as much as 5%, resulting in a net decrease of 9% for Form 6–Ks filed over this same period. This would result in a decrease for this 1 year period in:

• The number of Form 6–Ks filed by 1,319 to 13,342 Form 6–Ks;

• The total number of burden hours for Form 6–K by 10,552 to 116,645; [118]

• The total number of burden hours incurred by foreign private issuers to produce Form 6–K by 7,502 to 82,941 hours (of which 2,272 relate to English translation burden hours); and

• The total cost incurred by outside firms to produce Form 6–K by $744,450 to $8,217,300.[119]

D. Proposed Form 15F

The rule proposal would further require a foreign private issuer seeking to terminate its Exchange Act reporting obligations under proposed Rule 12h–6 to file a Form 15F. As proposed, Form 15F would require a foreign private issuer to provide information regarding several items, including its Exchange Act reporting history, its primary trading market, and its U.S. securities market.

It is possible that as many as 178 foreign private issuers may file Form 15F if adopted during the initial 1 year period. We estimate that it will take approximately 30 burden hours on average to produce each Form 15F. The filing of 178 forms 15F would take a total of 5,340 burden hours. We estimate that foreign private issuers would incur 25% of this burden or approximately 1,335 burden hours to produce the Form 15Fs. We further estimate that outside firms, including legal counsel, financial analysts and other advisors, would account for 75% of the burden required to produce the Form 15Fs at an average cost of $300 per hour for a total cost of $1,201,500.

[118] Although the total number of burden hours required to produce the 1,319 Form 6–Ks amounts to 11,443 hours, 891 of these hours relate to the burden of translating Form 6–K documents into English. We have subtracted these hours from the total burden hours expected to be reduced by the proposal (11,443–891 = 10,552) because we expect a foreign private issuer to incur approximately the same burden hours and costs related to English translation work when it fulfills the requirement under the rule proposal to publish its home country documents required under Exchange Act Rule 12g3–2(b) in English on its Internet Web site. Those home country documents are substantially the same as the home country documents that a reporting foreign private issuer must furnish under cover of a Form 6–K.

[119] We have derived these estimated costs as follows: 116,645 − 9,087 = 107,558 burden hours related to non-English translation work. 107,558 × 0.25 = 26,890 burden hours borne by outside firms. 26,826,90 hours × $300/hour = $8,067,000 000 in costs borne by outside firms for non-English translation work. In addition, we estimate outside firms would incur an additional $150,300 in costs relating to English translation work, derived as follows: 334 Form 6–Ks would each require 8 pages of foreign language text to be translated (a total of 2,672 pages) at a cost of $75 per page ($200,400), of which outside firms would incur 75% ($200,400 400 × .75 = $150,300). $8,067,000 + $150,300 = $8,217,300.

Comment Solicited

We solicit comment on the expected effects of the rule proposal on Form 20–F, Form 40–F, and Form 6–K and on the expected effects of proposed Form 15F under the PRA. In particular, we solicit comment on:

• The extent to which foreign private issuers would respond to proposed Rule 12h–6 by electing to file Form 15F to terminate their registration and reporting in the U.S.;

• How many foreign private issuers would join the Exchange Act registration and reporting regime for the first time as a result of the proposed rule;

• How accurate are our burden hour and cost estimates for Forms 20–F, 40–F and 6–K expected to result from proposed Rule 12h–6;

• How accurate are our burden hour and cost estimates for proposed Form 15F; and

• Whether most of the effects of proposed Rule 12h–6 would occur during the first year, as expected, or over a longer period, for example, during the first two or three years.

We further solicit comment in order to:

• Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

• Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

• Evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and

• Evaluate whether the rule proposal will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning these burden and cost estimates and any suggestions for reducing the burdens and costs. Persons who desire to submit comments on the collections of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–12–05.

Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–12–05, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Cost-Benefit Analysis

A. Expected Benefits

Proposed Rule 12h–6 and the accompanying proposed rule amendments would benefit investors to the extent that they remove a disincentive for foreign companies that are not currently Exchange Act reporting companies to register their equity and debt securities with the Commission by lessening their concerns that the Exchange Act reporting system is one that is difficult to leave once a company joins it. In so doing, the rule proposal would help encourage more foreign companies to initiate participation in U.S. public capital markets while providing U.S. investors with the protections afforded by our Exchange Act reporting regime.

The rule proposal would offer foreign firms stronger incentives to enter into our Exchange Act reporting regime by lowering the cost of exiting from that regime. Investors would benefit because they generally receive a high level of investor protection from trading in securities registered with the Commission. In addition, U.S. investors typically incur lower transaction costs when trading on U.S. exchanges relative to foreign exchanges. U.S. investors may further benefit as more foreign companies list on U.S. exchanges, to the extent that trading on U.S. exchanges exhibit economies of scale or scope.

To offer incentives for foreign companies to enter U.S. public capital markets, the proposed rules would provide foreign Exchange Act reporting companies with lower costs of compliance, which may benefit foreign companies and their investors. These costs of compliance are incurred directly by the foreign companies, yet accrue to investors in those foreign companies.

The proposal may result in foreign private issuers incurring lesser costs of Exchange Act compliance in three possible ways. The first is that it would decrease the issuer's cost of verifying whether it qualifies for Exchange Act termination of registration and reporting. That is, the rule proposal would enable a foreign private issuer to rely on the assistance of an independent information services provider when making that determination. The option to hire an independent information services provider may allow some foreign firms to save costs, which would benefit U.S. and foreign investors. Moreover, proposed Rule 12h–6 would limit the number of jurisdictions in which a foreign private issuer would have to search for the amount of securities represented by accounts of customers resident in the United States held by brokers, dealers, banks and other nominees when determining whether it qualifies for termination of reporting. The current rules require a foreign private issuer to conduct a worldwide search for such U.S. customer accounts.

Second, once having terminated its reporting obligations under proposed Rule 12h–6, a foreign company would no longer be required to incur costs associated with producing an Exchange Act annual report or having to submit Form 6–K interim reports.

Third, a foreign private issuer would face lower costs of compliance under proposed Rule 12h–6 and the accompanying rule amendments than under the current regime because the proposed rules would allow the foreign firm to terminate permanently its Exchange Act reporting obligations regarding a class of equity or debt securities. Accordingly, such a terminating foreign private issuer would be able to avoid the costs associated with continued annual verification that its number of holders of record remains below 300.

B. Expected Costs

Investors could incur costs from the proposed rules to the extent that foreign companies respond by terminating their Exchange Act registration and reporting obligations with respect to their equity and debt securities. First, investors could face lesser investor protection upon Exchange Act termination. Second, around or after the time of Exchange Act termination, investors may incur higher costs from trading in the equity and debt securities.

Depending on the implementation date of proposed Rule 12h–6, it is possible that by quickly terminating their Exchange Act registration and reporting, some current foreign registrants could avoid other recent U.S. regulation, such as the Sarbanes-Oxley Act.[120] If the initial costs of implementing the Sarbanes-Oxley Act are high, then the proposal might induce some foreign registrants to terminate their Exchange Act registration and reporting under Rule 12h–6 as soon as possible. To the extent that the Sarbanes-Oxley Act is beneficial to investors, they would be harmed if a current foreign registrant does not implement the Sarbanes-Oxley Act.

Some U.S. investors might seek to trade in the equity securities of a foreign company following its termination of Exchange Act reporting under proposed Rule 12h–6. Those U.S. investors seeking to trade the former reporting company's securities in the U.S. unlisted over the counter market such as the one administered by Pink Sheets, LLC could encounter additional costs of transacting as a result of the proposed rule to the extent that brokerage fees and other costs incurred are higher than if the foreign company had continued to have a class of securities registered with the Commission.

Those U.S. investors seeking to trade the former reporting company's securities in its primary trading market could also incur additional costs. For example, those U.S. investors who held the securities in the form of ADRs could incur costs associated with the depositary's conversion of the ADRs into ordinary shares.[121] Moreover, some U.S. investors could incur costs associated with finding and contracting with a new broker-dealer who is able to trade in the foreign reporting company's primary trading market. U.S. investors may face additional costs due to cost of currency conversion and higher transaction costs trading the securities in a foreign market.

Some investors who wish to make investment decisions regarding former Exchange Act reporting foreign companies also may incur costs to the extent that the information provided by such companies pursuant to any home country regulations is different from that which currently is required under the Exchange Act. Such investors could incur costs associated with hiring an attorney or investment adviser, to the

[120] Pub. L. 107–204, 116 Stat. 745 (2002).

[121] A foreign company could terminate its ADR facility whether or not it is an Exchange Act registrant, and proposed Rule 12h–6 does not require the termination of ADR facilities. In fact, by granting foreign private issuers the Rule 12g3–2(b) exemption immediately upon their termination of reporting with regard to a class of equity securities, the rule proposal would enable foreign private issuers to retain their ADR facilities as unlisted facilities following their termination of reporting under proposed Rule 12h–6. Therefore, the proposed rule should not significantly increase costs to investors in this area.

extent that they have not already done so, to explain the material differences, if any, between a foreign company's home country reporting requirements, as reflected in its home country annual report posted on its Internet Web site, and Exchange Act reporting requirements.

Following termination of reporting under proposed Rule 12h–6, a foreign private issuer would have to publish electronically its home country documents in English required under Rule 12g3–2(b) on its Internet web site or through an electronic information delivery system that is generally available to the public in its primary trading market. Since the home country materials required under Rule 12g3–2(b) are substantially the same as the home country materials required to be submitted under cover of Form 6–K on EDGAR, we do not expect a foreign private issuer to incur any additional significant costs resulting from the proposed rule's electronic publishing requirement.

Comment Solicited

We solicit comment on the costs and benefits to U.S. and other investors, foreign private issuers, and others who may be affected by proposed Rule12h–6, proposed Form 15F and the associated proposed rule amendments. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of the rule proposal. We also request data to quantify the costs and value of the benefits identified. In particular, we solicit comment on:

- The number of current foreign private issuers that are expected to terminate their Exchange Act registration and reporting as a result of proposed Rule 12h–6 and the accompanying rule proposals and the timing of such termination;
- The number of prospective foreign companies that are expected to join the Exchange Act reporting regime as a result of the rule proposals and the timing of such intial registration and reporting;
- Whether a U.S. investor would incur costs by trading a foreign company's securities through the U.S. unlisted over-the-counter market such as the one administered by the Pink Sheets, LLC following the foreign company's termination of reporting under the proposed rules, and, if so, what costs;
- Whether a U.S. investor would incur costs by trading a foreign company's securities in its home country market following the company's termination of reporting under the proposed rules and, if so, what costs;
- Whether some foreign private issuers would choose to terminate quickly their Exchange Act reporting obligations under proposed Rule 12h–6 to avoid having to comply with the Sarbanes-Oxley Act and, if so, whether that should affect the rule proposals; and
- Whether investors would benefit both directly and indirectly from the rule proposals, as discussed in this section.

V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation Analysis

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[122] we solicit data to determine whether the proposals constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposals on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act[123] requires us to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, when engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act[124] requires the Commission to consider whether the action will promote efficiency, competition and capital formation.

Proposed Rule 12h–6, proposed Form 15F and the other proposed rule amendments would encourage foreign private issuers to register their equity and debt securities with the Commission by reducing concerns of some foreign private issuers that our Exchange Act reporting system is difficult to leave once one joins it. By providing increased flexibility for foreign private issuers regarding our Exchange Act reporting system, the proposed rules would encourage foreign companies to participate in U.S. capital markets as Exchange Act reporting companies to the benefit of investors. In so doing, the proposed rules should foster increased competition between domestic and foreign firms for investors in U.S. capital markets. Moreover, by requiring a foreign private issuer that has terminated its Exchange Act reporting under the proposed rules to publish its home country documents required under Exchange Act Rule 12g3–2(b) in English on its Internet web site or through an electronic information delivery system that is generally available to the public in its primary trading market, the proposed rules would help ensure that U.S. investors continue to have ready access to material information in English about the foreign private issuer. Thus, the proposed rules should foster increased efficiency in the trading of the issuer's securities for U.S. investors following the issuer's termination of Exchange Act reporting.

We solicit comment on whether the proposed rules would impose a burden on competition or whether they would promote efficiency, competition and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Regulatory Flexibility Act Certification

The Securities and Exchange Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that proposed Rule 12h–6 and proposed Form 15F under the Exchange Act, the proposed amendments to Rules 12g3–2, 12g–4 and 12h–3 under the Exchange Act, and the proposed amendments to Rule 30–1 of its Delegation of Authority rules and Rule 101 of Regulation S–T, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The reason for this certification is as follows.

Proposed Rule 12h–6, proposed Form 15F and the accompanying proposed rule amendments would permit the termination of Exchange Act reporting by a foreign private issuer regarding a class of equity securities under either

[122] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[123] 15 U.S.C. 78w(a)(2).

[124] 15 U.S.C. 78c(f).

Exchange Act section 12(g) or section 15(d) for which there is little U.S. investor interest. The proposed rules would further permit a foreign private issuer that seeks termination of reporting regarding a class of equity or debt securities to also terminate its section 15(d) reporting obligations regarding a class of debt securities as long as it meets conditions similar to those currently required for suspending reporting obligations under section 15(d). The proposed rule amendments would also automatically extend the Exchange Act Rule 12g3–2(b) exemption to a foreign private issuer that has terminated its Exchange Act reporting obligations with regard to a class of equity securities pursuant to proposed Rule 12h–6 on the condition that it publish material information required by its home country in English on its Internet Web site or through an electronic information delivery system that is generally available to the public in its primary trading market.

Because proposed Rule 12h–6 and the accompanying rule amendments would only apply to foreign private issuers, they would directly affect only foreign companies and not domestic companies. Similarly, proposed Form 15F would only affect foreign companies since only foreign private issuers would be permitted to use this form.

Based on an analysis of the language and legislative history of the Regulatory Flexibility Act, Congress did not intend that the Act apply to foreign issuers. Accordingly, the entities directly affected by the proposed rule and form amendments will fall outside the scope of the Act. For this reason, proposed Exchange Act Rule 12h–6, proposed Form 15F, and the accompanying proposed rule amendments should not have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We request in particular that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Statutory Basis and Text of Rule Amendments

We propose to amend Rule 30–1 of Part 200, Rule 101 of Regulation S–T, and Exchange Act Rules 12g3–2, 12g–4 and 12h–3, and to add Exchange Act Rule 12h–6 and Form 15F under the authority in Sections 6, 7, 10 and 19 of the Securities Act [125] and Sections 3(b), 12, 13, 23 and 36 of the Exchange Act.[126]

[125] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s.

[126] 15 U.S.C. 78c, 78*l*, 78m, 78w, and 78mm.

Text of Proposed Rule Amendments

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

17 CFR Parts 232, 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

2. Amend § 200.30–1 by adding paragraph (e)(17) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(e) * * *

(17) At the request of a foreign private issuer, pursuant to Rule 12h–6 (§ 240.12h–6 of this chapter), to accelerate the termination of the registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) or the duty to file reports under section 15(d) of the Act (15 U.S.C. 78o(d)).

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

3. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

4. Amend § 232.101 by:

a. Removing the word ''and'' at the end of paragraph (a)(1)(x);

b. Removing the period and adding ''; and'' at the end of paragraph (a)(1)(xi); and

c. Adding paragraph (a)(1)(xii).

The additions read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xii) Forms 15 and 15F (§ 249.323 and § 249.324 of this chapter).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

6. Amend § 240.12g3–2 by revising paragraph (d)(1) and adding paragraph (e) to read as follows:

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

* * * * *

(d) * * *

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act (other than arising solely by virtue of the use of Form F–7, F–8, F–9, F–10 or F–80), except as provided by paragraph (e) of this section;

* * * * *

(e)(1) A foreign private issuer that has filed a Form 15F (§ 249.324 of this chapter) pursuant to § 240.12h–6 shall receive the exemption provided by paragraph (b) of this section for a class of equity securities immediately upon the effectiveness of the termination of registration of that class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) or the termination of the duty to file reports regarding that class of securities under section 15(d) of the Act (15 U.S.C. 78o(d)), or both.

(2) Notwithstanding any provision of § 240.12g3–2(b), in order to satisfy the conditions of the § 240.12g3–2(b) exemption received under this paragraph, the issuer shall publish in English the information required under paragraph (b)(1)(iii) of this section on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market.

(3) The § 240.12g3–2(b) exemption received under this paragraph will remain in effect for as long as the foreign private issuer satisfies the electronic publication condition of paragraph (e)(2) of this section or until

the issuer registers a class of securities under section 12 of the Act or incurs reporting obligations under section 15(d) of the Act regarding securities that were not the subject of the Form 15F.

Notes to Paragraph (e): 1. In order to maintain the § 240.12g3–2(b) exemption obtained under this paragraph, at a minimum, a foreign private issuer shall electronically publish English translations of the following documents required to be furnished under paragraph (b)(1)(iii) of this section if in a foreign language:

a. Its annual report, including or accompanied by annual financial statements;

b. Interim reports that include financial statements;

c. Press releases; and

d. All other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.

2. *Primary trading market* has the same meaning as under § 240.12h–6(d).

3. A foreign private issuer shall disclose in the Form 15F the address of its Internet Web site or of the electronic information delivery system in its primary trading market on which it will publish the information required under paragraph (b)(1)(iii) of this section. An issuer need not update the Form 15F to reflect a change in that address.

7. Amend § 240.12g–4 by:

a. Removing the authority citations following the section; and

b. Revising paragraph (a) to read as follows:

§ 240.12g–4 Certifications of termination of registration under section 12(g).

(a) Termination of registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer certifies to the Commission on Form 15 (17 CFR 249.323) that the class of securities is held of record by:

(1) Less than 300 persons; or

(2) Less than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years.

* * * * *

8. Amend § 240.12h–3 by:

a. Removing the authority citations following the section;

b. Adding the word ''and'' at the end of paragraph (b)(1)(ii);

c. Removing paragraph (b)(2), including the undesignated paragraph;

d. Redesignating paragraph (b)(3) as (b)(2);

e. Revising the cite ''paragraphs (b)(1)(ii) and (2)(ii)'' to read ''paragraph (b)(1)(ii)'' in paragraph (c); and

f. Revising the phrase ''criteria (i) and (ii) in either paragraph (b)(1) or (2)'' to read ''either criteria (i) or (ii) of paragraph (b)(1)'' in paragraph (d).

9. Add § 240.12h–6 to read as follows:

§ 240.12h–6 Certification by a foreign private issuer regarding the termination of registration of a class of securities under section 12(g) or the duty to file reports under section 15(d).

(a) A foreign private issuer may terminate the registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) or terminate the obligation under section 15(d) of the Act (15 U.S.C. 78o(d)) to file or furnish reports required by section 13(a) of the Act (15 U.S.C. 78m(a)) with respect to a class of equity securities, or both, after certifying to the Commission on Form 15F (17 CFR 249.324) that:

(1) The foreign private issuer has had reporting obligations under section 13(a) or 15(d) of the Act for the two years preceding the filing of the Form 15F, has filed or furnished all reports required for this period, and has filed at least two annual reports pursuant to section 13(a) of the Act;

(2)(i) The foreign private issuer's securities have not been sold in the United States in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) during the preceding 12 months other than securities:

(A) Sold to the issuer's employees; or

(B) Sold by selling security holders in non-underwritten offerings;

(ii) The foreign private issuer has not sold securities in unregistered offerings in the United States during the preceding 12 months other than securities:

(A) Sold to the issuer's employees;

(B) Exempted from registration under section 3 of the Securities Act (15 U.S.C. 77c), except under section 3(a)(10) of that Act; or

(C) Constituting obligations having a maturity of less than nine months at the time of issuance and offered and sold in transactions exempted from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2));

(3) The foreign private issuer has maintained a listing of the subject class of securities for the preceding two years on an exchange in its home country, which constitutes the primary trading market for the securities;

(4) If the foreign private issuer is a well-known seasoned issuer, either:

(i)(A) The average daily trading volume of the subject class of securities in the United States during a recent 12 month period has been no greater than 5 percent of the average daily trading volume of that class of securities in the issuer's primary trading market during the same period; and

(B) United States residents held no more than 10 percent of the outstanding voting and non-voting equity securities, regarding which there is a reporting obligation under section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)), held by the issuer's non-affiliates on a worldwide basis at a date within 60 days before the end of the same 12 month period; or

(ii) United States residents held no more than 5 percent of the outstanding voting and non-voting equity securities, regarding which there is a reporting obligation under section 13(a) or 15(d) of the Act, held by the issuer's non-affiliates on a worldwide basis at a date within 120 days before the filing date of the Form 15F;

(5) If the foreign private issuer is not a well-known seasoned issuer, United States residents held no more than 5 percent of the outstanding voting and non-voting equity securities, regarding which there is a reporting obligation under section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78(o)(d)), held by the issuer's non-affiliates on a worldwide basis at a date within 120 days before the filing date of the Form 15F; and

(6) If the foreign private issuer does not meet the requirements of paragraph (a)(4) or (a)(5) of this section, at a date within 120 days before the filing date of the Form 15F, the class of equity securities is either held of record by:

(i) Less than 300 persons on a worldwide basis; or

(ii) Less than 300 persons resident in the United States.

(b) A foreign private issuer may terminate its duty under section 15(d) of the Act to file or furnish reports required by section 13(a) of the Act with respect to a class of debt securities after certifying to the Commission on Form 15F that:

(1) The foreign private issuer has filed or furnished all reports required under section 15(d) of the Act, including at least one annual report pursuant to section 13(a) of the Act; and

(2) At a date within 120 days before the filing date of the Form 15F, the class of debt securities is either held of record by:

(i) Less than 300 persons on a worldwide basis; or

(ii) Less than 300 persons resident in the United States.

(c) As a condition to termination of reporting under this section, a foreign private issuer must, not later than 15

business days before it files its Form 15F, publish a notice in the United States that discloses its intent to terminate its section 13 reporting obligations regarding each class of securities under section 12(g) or section 15(d) of the Act or both. The issuer must publish the notice through a means reasonably designed to provide broad dissemination of the information to the public in the United States. The issuer must also submit a copy of the notice either under cover of a Form 6–K (17 CFR 249.306) before or at the time of filing of the Form 15F, or as an exhibit to the Form 15F.

(d) *Definitions.* For the purpose of this section:

(1) *Affiliate* has the same meaning as under § 240.12b–2).

(2) *Debt security* means any security other than an equity security as defined under § 240.3a11–1, including non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer.

(3) *Equity security* has the same meaning as under § 240.3a11–1.

(4) *Foreign private issuer* has the same meaning as under § 240.3b–4.

(5) *Home country* has the same meaning as under § 249.220f.

(6) *Primary trading market* means that at least 55 percent of the trading in the foreign private issuer's securities took place in, on or through the facilities of a securities market in a single foreign country during a recent 12 month period.

(7) *Recent 12 month period* means a 12 calendar month period that ended no more than 60 days before the filing date of the Form 15F.

(8) *Well-known seasoned issuer* means a well-known seasoned issuer as defined in § 230.405 of this chapter that meets the requirements of paragraph (1)(i)(A) of that definition; *provided, however*, that the determination date of well-known seasoned issuer status shall be a date within 120 days of filing the Form 15F.

(e) *Counting method.* When determining under this section the percentage of a foreign private issuer's outstanding equity shares held by its non-affiliates on a worldwide basis that are held by U.S. residents or the number of U.S. residents holding a foreign private issuer's equity or debt securities:

(1) Use the method for calculating record ownership § 240.12g3–2(a), except that you may limit your inquiry regarding the amount of securities represented by accounts of customers resident in the United States to brokers, dealers, banks and other nominees located in:

(i) The United States;

(ii) The foreign private issuer's jurisdiction of incorporation, legal organization or establishment; and

(iii) The jurisdiction of the foreign private issuer's primary trading market if different than the issuer's jurisdiction of incorporation, legal organization or establishment.

(2) If, after reasonable inquiry, you are unable without unreasonable effort to obtain information about the amount of securities represented by accounts of customers resident in the United States, for purposes of this section, you may assume that the customers are the residents of the jurisdiction in which the nominee has its principal place of business.

(3) You must count securities as owned by U.S. holders when publicly filed reports of beneficial ownership or information that is otherwise provided to you indicates that the securities are held by U.S. residents.

(4) When calculating the number of your U.S. resident security holders under this section, you may rely in good faith on the assistance of an independent information services provider that in the regular course of its business assists issuers in determining the number of, and collecting other information concerning, their security holders.

(f) Suspension of a foreign private issuer's duty to file reports under section 13(a) or section 15(d) of the Act shall occur immediately upon filing the Form 15F with the Commission. If there are no objections from the Commission, termination of the foreign private issuer's duty to file section 13 reports under section 15(d) of the Act or regarding a class of securities under section 12(g) of the Act shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer has filed its Form 15F. However, if the Form 15F is subsequently withdrawn or denied, the issuer shall, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had the issuer not filed the Form 15F.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

11. Add § 249.324 to read as follows:

§ 249.324 Form 15F, certification by a foreign private issuer regarding the termination of registration of a class of securities under section 12(g) or the duty to file reports under section 15(d).

This form shall be filed by a foreign private issuer to disclose and certify the information on the basis of which it meets the requirements specified in Rule 12h–6 (§ 240.12h–6 of this chapter) to terminate a class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) or the duty under section 15(d) of the Act (15 U.S.C. 78(o)(d)) to file reports required by section 13 of the Act (15 U.S.C. 78m(a)), or both. In each instance, unless the Commission objects, termination occurs 90 days, or such shorter time as the Commission may direct, after the filing of Form 15F.

12. Add Form 15F (referenced in § 249.324) to read as follows:

(Note: The text of Form 15F will not appear in the Code of Federal Regulations.)

OMB APPROVAL

OMB Number: 3235–

Expires:

Estimated average burden hours per response * * *

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 15F

CERTIFICATION OF A FOREIGN PRIVATE ISSUER'S TERMINATION OF REGISTRATION OF A CLASS OF SECURITIES UNDER SECTION 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934 OR ITS TERMINATION OF THE DUTY UNDER SECTION 15(d) TO FILE REPORTS REQUIRED BY SECTION 13 OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number _____

(Exact name of registrant as specified in its charter)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Title of each class of securities covered by this Form)

Place an X in the appropriate box(es) to indicate the provision(s) relied upon to terminate the duty to file reports

under the Securities Exchange Act of 1934:

Rule 12h–6(a) ☐
Rule 12h–6(b) ☐

GENERAL INSTRUCTIONS

A. Who May Use Form 15F and When

A foreign private issuer may file Form 15F, pursuant to Rule 12h–6(a) (17 CFR 240.12h–6(a)) under the Securities Exchange Act of 1934 (''Exchange Act''), when seeking to terminate:

- The registration of a class of securities under section 12(g) of the Exchange Act and the corresponding duty to file or furnish reports required by section 13(a) of the Exchange Act;
- The obligation under section 15(d) of the Exchange Act to file or furnish reports required by section 13(a) of the Act regarding a class of equity securities; or
- Both of the above.

A foreign private issuer may also file Form 15F, pursuant to Rule 12h–6(b) (17 CFR 240.12h–6(b)), when seeking to terminate its reporting obligations under section 15(d) of the Exchange Act regarding a class of debt securities.

B. Certification Effected by Filing Form 15F

By completing and signing this Form, the issuer certifies that:

- It meets all of the conditions for termination of Exchange Act reporting specified in Rule 12h–6 (17 CFR 240.12h–6); and
- There are no classes of securities other than those that are the subject of this Form 15F regarding which the issuer has Exchange Act reporting obligations.

C. Effective Date

The issuer's duty to file any reports required under section 13(a) of the Exchange Act will be suspended immediately upon filing the Form 15F. If there are no objections from the Commission, termination of registration of a class of securities under section 12(g) of the Act, or termination of the issuer's duty to file or submit reports under section 15(d) of the Act, or both, will take effect 90 days, or a shorter period as the Commission may determine, after the issuer has filed its Form 15F. An issuer that seeks an effective date sooner than 90 days after filing the Form 15F must submit its request to the Commission in writing. Grant of the Rule 12g3–2(b) exemption will occur upon the effective date of an issuer's termination of Exchange Act reporting pursuant to Rule 12h–6 (17 CFR 240.12h–6).

D. Other Filing Requirements

You must file Form 15F and related materials, including correspondence, in electronic format via our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232). The Form 15F and related materials must be in the English language as required by Regulation S–T Rule 306 (17 CFR 232.306). You must provide the signature required for Form 15F in accordance with Regulation S–T Rule 302 (17 CFR 232.302). If you have technical questions about EDGAR, call the EDGAR Filer Support Office at (202) 551–8900. If you have questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 551–3610.

If the Form 15F is subsequently withdrawn or denied, you must, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had you not filed the Form 15F. *See* Rule 12h–6(f) (17 CFR 240.12h–6(f)).

E. Rule 12g3–2(b) Exemption

A foreign private issuer that has filed Form 15F to terminate its Exchange Act reporting obligations regarding a class of equity securities shall receive the exemption under Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) for the subject class of equity securities immediately upon the effective date of its termination of registration and reporting under Rule 12h–6. Refer to Rule 12g3–2(e) (17 CFR 240.12g3–2(e)) for the conditions that a foreign private issuer must meet in order to maintain the Rule 12g3–2(b) exemption following its termination of Exchange Act registration and reporting.

PART I

The purpose of this part is to assist the Commission in assessing whether you meet the requirements for terminating your Exchange Act reporting under Rule 12h–6.

Item 1. Exchange Act Reporting History

A. State when you first incurred the duty to file reports required under section 13(a) of the Exchange Act.

B. State whether you have filed or submitted all reports required under Exchange Act section 13(a) and corresponding Commission rules for the two calendar years preceding the filing of this form, and whether you have filed two annual reports under section 13(a).

Item 2. Recent United States Market Activity

State when your securities were last sold in the United States in either a registered or unregistered offering.

Instructions to Item 2

1. For registered offerings, do not include securities sold to your employees or those sold by selling security holders in non-underwritten offerings. If you have registered equity securities on a shelf or other registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) under which securities remain unsold, disclose the last sale of securities under that registration statement. If no sale has occurred during the preceding 12 months, disclose whether you have filed a post-effective amendment to terminate the registration of unsold securities under that registration statement.

2. For unregistered offerings, do not include securities sold to your employees, and securities exempted from registration under section 3 of the Securities Act (15 U.S.C. 77c), except that you must disclose securities sold under section 3(a)(10) of that Act. In addition, do not include securities constituting obligations having a maturity of less than nine months at the time of issuance and offered and sold in transactions exempted from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)).

Item 3. Primary Trading Market

A. Identify the exchange in your home country on which you have maintained a listing of the class of securities that is the subject of this Form. Further provide the date of initial listing on this exchange.

B. Explain whether this home country exchange constitutes the primary trading market for the class of securities that is the subject of this Form.

Instruction to Item 3

When responding to this item, refer to the definitions of ''home country'' and ''primary trading market'' in Rule 12h–6(d) (17 CFR 240.12h–6(d)).

Item 4. Well-known Seasoned Issuer Disclosure

State whether you are a well-known seasoned issuer.

Instruction to Item 4

When responding to this item, refer to the definition of, and time of determination of status of, a ''well-known seasoned issuer'' in Rule 12h–6(d).

Item 5. Comparative Trading Volume Data

A. Identify the last day of the recent 12-month period used to meet the requirements of Rule 12h–6(a)(4)(i)(A) (17 CFR 240.12h–6(a)(4)(i)(A)).

B. For the same recent 12-month period, disclose the average daily trading volume of the class of securities that is the subject of this Form both in the United States and in your primary trading market.

C. For the recent 12-month period, disclose the average daily trading volume of the subject class of securities in the United States as a percentage of the average daily trading volume for that class of securities in your primary trading market.

Instructions to Item 5

1. ''Recent 12-month period'' means a 12-calendar-month period that ended no more than 60 days before the filing date of this form, as defined under Rule 12h–6(d). You may disclose the comparative trading volume data in response to this item in tabular format and attached as an exhibit to this Form.

2. If you are not relying on Rule 12h–6(a)(4)(i), mark Item 5 as inapplicable.

Item 6. Comparative Share Ownership Information

A. Disclose the amount of your outstanding voting and non-voting equity securities, regarding which there is an Exchange Act reporting obligation, held by your non-affiliates on a worldwide basis at a date within 60 days before the end of the 12-month period identified in Item 5 of this Form, or, if Item 5 is inapplicable, at a date within 120 days before filing this Form. Disclose the date utilized for purposes of Item 6.

B. Disclose the amount and percentage of your outstanding voting and non-voting equity securities, regarding which there is an Exchange Act reporting obligation, held by your non-affiliates on a worldwide basis that are held by United States residents at the date identified in Item 6.A.

C. If you are proceeding under Rule 12h–6(a)(6) (17 CFR 240.12h–6(a)(6)), disclose the number of record holders of the subject class of equity securities on a worldwide basis or who are U.S. residents at a date within 120 days before filing this Form.

Instruction to Item 6

1. When determining the number of record holders of your equity securities or the percentage of your outstanding equity shares held by non-affiliates on a worldwide basis that are held by U.S. residents, refer to Rule 12h–6(e) (17 CFR 240.12h–6(e)) for the appropriate counting method.

2. In your response to Item 6.B, specify the provision under Rule 12h–6(a)(4) or Rule 12h–6(a)(5) (17 CFR 240.12h–6(a)(4) or 240.12h–6(a)(5)) upon which you have relied when filing this Form.

3. You need not respond to Items 6.A and 6.B if proceeding under Rule 12h–6(a)(6).

4. If you have relied upon the assistance of an independent information services provider to determine the number of your U.S. resident shareholders or the comparative share ownership information required by this item, identify this party in your response.

Item 7. Debt Securities

Disclose whether you seek to terminate your reporting obligations under section 15(d) of the Exchange Act regarding a class of debt securities. If so, disclose the number of record holders of your debt securities either on a worldwide basis or who are U.S. residents at a date within 120 days before the date of filing of this Form.

Instruction to Item 7.

1. When determining the number of record holders of your debt securities who are U.S. residents, refer to Rule 12h–6(e) for the appropriate counting method.

2. If you have relied upon the assistance of an independent information services provider to determine the number of record holders of your debt securities required by this item, identify this party in your response.

Item 8. Notice Requirement

Disclose the date on which, pursuant to Rule 12h–6(c) (17 CFR 240.12h–6(c)), you have issued a notice, such as a press release, in the United States disclosing your intent to terminate the registration of a class of securities under section 12(g) or your duty under section 15(d) to file reports under section 13(a) of the Exchange Act.

Instruction to Item 8.

If you have submitted a copy of the notice under cover of a Form 6–K (17 CFR 249.306), disclose the submission date of the Form 6–K. If not, you must attach a copy of the notice as an exhibit to this Form. See Rule 12h–6(c).

PART II

Item 9. Rule 12g3–2(b) Exemption

Disclose the address of your Internet Web site or of the electronic information delivery system in your primary trading market on which you will publish the information required under Rule 12g3–2(b)(1)(iii) (17 CFR 240.12g3–2(b)(1)(iii)).

Instruction to Item 9.

Refer to Note 1 to Rule 12g3–2(e) for instructions regarding providing English translations of documents published pursuant to Rule 12g3–2(b)(1)(iii) (17 CFR 240.12g3–2(b)(1)(iii).

PART III

Item 10. Exhibits

List the exhibits attached to this Form.

Instruction to Item 10.

In addition to exhibits specifically mentioned on this Form, you may attach as an exhibit any document providing information that is material to your eligibility to terminate your reporting obligations under Exchange Act Rule 12h–6. You should refer to any relevant exhibit when responding to the items on this Form.

Item 11. Undertakings

Furnish the following undertaking:

The undersigned issuer hereby undertakes to withdraw this Form 15F if, at any time prior to the effectiveness of its termination of reporting under Rule 12h–6, it becomes aware of information that causes it reasonably to believe that:

(1) U.S. residents hold more than the applicable percentage of its outstanding voting and non-voting equity securities held by the issuer's non-affiliates on a worldwide basis as determined under Rule 12h–6(a)(4) or 12h–6(a)(5);

(2) If proceeding under Rule 12h–6(a)(6), its subject class of equity securities is held of record by 300 or more U.S. residents or 300 or more persons worldwide;

(3) Its debt securities are held of record by 300 or more U.S. residents or 300 or more persons worldwide; or

(4) It otherwise no longer qualifies for termination of its Exchange Act reporting obligations under Rule 12h–6.

Instruction to Item 11.

After filing this Form, an issuer has no continuing obligation to make inquiries or perform other work concerning the information contained in this Form, including its assessment of U.S. ownership of its securities.

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934, [name of registrant as specified in charter] has duly authorized the undersigned person to sign on its behalf this certification on

Form 15F. In so doing, [name of registrant as specified in charter] certifies that, as represented on this Form, it has complied with all of the conditions set forth in Rule 12h–6 for terminating its registration under section 12 of the Exchange Act, its obligation to file reports required by section 13(a) or section 15(d) of the Exchange Act, or both.

By: _____

Title: _____

Date: _____

By the Commission.

Dated: December 23, 2005.

Jonathan G. Katz,

Secretary.

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