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VIA E-MAIL

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: ***Proposed Rule 12h-6 Relating to 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 - File No. S7-12-05***

Dear Mr. Katz:

We submit this letter in response to the Securities and Exchange Commission's request for comments on Securities Act Release No. 34-53020. We generally support the decision of the Securities and Exchange Commission ("Commission") to propose amendment of the rules allowing a foreign private issuer to effect deregistration under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), where there is relatively little interest in trading of such issuer's securities in the United States market. In particular, we applaud the Commission's efforts to devise a framework that provides alternative benchmarks for deregistration in recognition of the number of ways that U.S. market interest may be appropriately measured.

As practitioners involved in cross-border capital raising and business combination transactions, however, we are concerned about the consequences of a few aspects of the proposed amendments and have responded to the Commission's request for comments below.

1. *Impact of Proposed Regulations on Cross-Border Business Combination Transactions*

We believe that the requirement that a foreign private issuer file a second annual report in order to terminate its obligations under Section 15(d) of the Exchange Act imposes an unnecessary additional burden on cross-border business combination transactions.

Background

Because the submission of a business combination proposal to shareholders in the United States in which the shareholders of the target will receive stock of the acquiror is considered an "offer" under Rule 145 of the Securities Act of 1933, as amended (the "Securities Act"), such a transaction must be registered under the Securities Act unless it qualifies for the limited relief provided by Securities Act Rule 802 or is otherwise exempt. Registration under the Securities Act in turn triggers ongoing reporting obligations under Section 15(d) of the Exchange Act. Under Section 15(d) of the Exchange Act and the rules thereunder, reporting obligations may be suspended if an issuer has filed at least one annual report and has less than 300 holders of record resident in the United States at the beginning of the relevant fiscal year. Under current rules, this reporting obligation would be subject to revival if there are 300 U.S. record holders of the class of securities at the beginning of any future fiscal year.

The acquiror in a business combination transaction would be subject to these reporting obligations even if (i) both parties to the business combination transaction are foreign private issuers, (ii) both parties have never had reporting obligations under Section 12(b) of the Securities Act as a result of listing on a U.S. exchange, (iii) both parties are not required to register under Section 12(g) of the Exchange Act and the rules thereunder, (iv) both parties have never conducted a registered offering for capital raising purposes in the United States, and (v) the shares of both parties are held by less than 300 U.S. record holders.

Under proposed Exchange Act Rule 12h-6, a foreign private issuer would be able to terminate its obligations under Section 15(d) of the Exchange Act if, among other requirements, it has filed at least two annual reports. Although we welcome the certainty provided by the ability to terminate, rather than merely suspend, these reporting obligations, we believe the addition of a second annual report requirement further increases the already significant burden of preparing a registration statement on Form F-4 under the Securities Act in connection with a business combination transaction and filing at least an initial annual report on Form 20-F under the Exchange Act.

Although Securities Act Rule 802 was designed to provide a limited exemption from the registration requirements of the Securities Act for certain business combinations involving a foreign private issuer, the requirement that not more than 10% of the target class of securities be held by U.S. holders can be difficult to meet even where shareholding is limited to a relatively small number of institutional investors. In today's global markets, it is not uncommon for institutional or strategic investors to acquire sizable positions in a company through secondary transactions on overseas markets or otherwise. Although the Commission has not asked for comments on Rule 802, we would similarly respectfully suggest that the Commission consider in future rulemaking projects whether, for purposes of Rule 802, an alternative threshold or exempting from the calculation qualified institutional buyers as defined in Securities Act Rule 144A ("QIB"s) would better balance investor protection concerns and burdens on issuers, and further encourage foreign issuers to extend these proposals to shareholders in the United States.

For companies permitted under the laws of their home country to exclude U.S. holders, the addition of a second annual report requirement under proposed Exchange Act Rule 12h-6 may act as a further disincentive for including U.S. holders in a cross border business combination transaction. For companies prohibited from excluding U.S. holders under the laws of their home country, such as Japanese issuers, proposed Exchange Act Rule 12h-6 increases what is already a substantial burden. As a result the ability to meet the Securities Act Rule 802 exemption and the economic consequences of not being able to do so has been a significant issue in advising Japanese issuers on the impact of U.S. securities laws on proposed business combination transactions.

Comment

We respectfully submit that proposed Exchange Act Rule 12h-6 should be revised to limit to one annual report the Exchange Act reporting history requirements for the deregistration of a class of equity securities in the case that a foreign private issuer has reporting obligations under Section 15(d) of the Exchange Act in respect of a class of equity securities but does not have a reporting obligation under Section 12(b) or Section 12(g) of the Exchange Act. This would make the standard no less burdensome than the current standards for suspension of reporting obligations under Exchange Act Rule 15(h), and would not increase the disincentive for extending a business combination proposal to U.S. holders.

Alternatively, we would suggest that proposed Exchange Act Rule 12h-6 be revised to exclude business combination transactions (as opposed to capital-raising transactions) from the requirement to provide two annual reports.

2. *One Year Dormancy Condition for Unregistered Offerings*

Background

Assuming the other conditions under proposed Exchange Act Rule 12h-6 are met, we do not believe it is necessary to impose a one-year dormancy condition on unregistered offerings. We believe that a registered public offering, which would involve a general solicitation of investors, can appropriately be distinguished from a transaction exempt from such registration. Under proposed Exchange Act Rule 12h-6, with limited exceptions, the offer of a single security by an issuer to a single person in the United States, whether an institutional accredited investor or otherwise, in a 4(2) exempt offering would postpone the ability to deregister by at least one year. We believe such a blanket prohibition on exempt transactions is unnecessarily restrictive in light of the other requirements of proposed Exchange Act Rule 12h-6 and the self-policing incentive to limit any such activities in order to meet the deregistration criteria.

We believe that if a transaction meets the rigorous requirements for exempting an offer from registration under the Securities Act and the rules thereunder, the exempt offer should not then act to postpone deregistration under the Exchange Act. Section 4(2), Regulation D, Rule 144A, Rule 801 and Rule 802 and the other exemptions already reflect policy judgments about under what conditions (*e.g.*, limitations to accredited investors or QIBs) registration under the Securities Act is not required.

In addition, because certain types of transactions, such as business combination transactions, do not have a capital raising function, they do not implicate the Commission's stated concern that foreign private issuers engaged in recent capital raising efforts should not be able to deregister on the basis that the U.S. securities markets no longer represent a viable option for capital raising. We recognize that the effectiveness of a registration statement in respect of a business combination transaction registered under the Securities Act would itself postpone the ability to deregister. A business combination proposal exempt from such registration under Securities Act Rule 802, however, would not delay the ability to suspend reporting obligations under current rules. Such a transaction also would not have a capital-raising function.

Comment

We respectfully submit that the one-year dormancy period for unregistered offerings should be eliminated.

Alternatively, we respectfully submit that the exemptions from the one year dormancy period be expanded to cover business combination transactions exempted from registration under the Securities Act pursuant to Securities Act Rule 802.

3. *Impact on Private Foreign Issuers with Suspended Obligations under Section 15(d)*

Background

Companies that have already suspended reporting obligations by filing a certification on Form 15 would generally not be able to qualify for termination of reporting obligations unless they were to newly resume reporting for a period of up to two years. As a result companies that have a filed a Form 15 prior to proposed Exchange Act Rule 12h-6 coming into effect that would have met the requirements for termination of reporting if proposed Exchange Act Rule 12h-6 was in effect at such time (or may have otherwise taken actions to qualify for termination prior to filing a Form 15) would be subject to the perpetual potential revival of their reporting obligations under Section 15(d) of the Exchange Act.

Comment

As a transitional measure, we respectfully submit that proposed Exchange Act Rule 12h-6 should permit a foreign private issuer, if it has filed a Form 15 to suspend its reporting obligations under Section 15(d) of the Exchange Act prior to proposed Exchange Rule 12h-6 coming into effect, to terminate its Exchange Act reporting obligations without regard to the other conditions of proposed Exchange Act Rule 12h-6.

* * *

We would be pleased to discuss our comments with the staff of the Commission. Kindly direct any questions you may have to Peter T. Healy at (415) 984-8833 (telephone) and (415) 984-8701 (facsimile).

Sincerely,

Peter T. Healy, Esq.
of O'MELVENY & MYERS LLP

cc: C. Brophy Christensen, Esq.
Eric C. Sibbitt, Esq.

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