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MTR Corporation

January 25, 2007

Via E-Mail

Ms. Nancy Morris
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303
U.S.A.

Re: Comments on Re-Proposed Rules 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 13(a) or 15(d) of the Securities Exchange Act of 1934 – File No. S7-12-05

Dear Ms. Morris,

MTR Corporation Limited, a company incorporated under the laws of the Hong Kong Special Administrative Region ("MTR"), is submitting this letter in response to the request of the Securities and Exchange Commission (the "SEC" or the "Commission") for comments on SEC Release No. 34-55005.

By way of background, the ordinary shares of MTR are listed on the Hong Kong Stock Exchange, with the government of the Hong Kong Special Administrative Region owning approximately 76% of MTR's outstanding ordinary shares. MTR is currently subject to the reporting obligations under Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), due to MTR having registered and publicly offered and sold debt securities in the United States, as well as having filed and maintained a debt shelf registration statement with the SEC. Accordingly, MTR has been filing Form 20-Fs and Form 6-Ks pursuant to the relevant SEC rules.

MTR fully welcomes and supports the Commission's efforts to make it easier for foreign private issuers like ourselves to exit, and to be granted exemption, from the registration and reporting obligations under the Exchange Act. However, we believe that the re-proposed rules require further clarifications and amendments to provide adequate relief for foreign private issuers, such as ourselves, that are: (i) reporting under Section 15(d) of the Exchange Act in respect of debt securities; (ii) whose securities are subject to low investor interest in the United States; and (iii) that have existing Level I American Depository Receipt ("ADR") programs that they would like to maintain after ceasing to be an Exchange Act reporting issuer. Specifically, such issuers would need to be able to take advantage of the Rule 12g3-2(b) exemption at a time that is sooner than what is currently provided under the re-proposed rules.

Comments

1. To ensure that foreign private issuers filing a Form 15F pursuant to re-proposed Rule 12h-6(b) can maintain existing Level I ADR programs prior to the effectiveness of the Rule 12g3-2(b) exemption, the SEC should (i) clarify that furnishing of Rule 12g3-2(b) information beginning with the filing of Form 15F would be deemed to have complied with General Instruction I.A.3 of Form F-6 and (ii) synchronize the timing for the Rule 12g3-2(b) exemption application pursuant to re-proposed Rule 12g3-2(e)(4) with the Rule 12h-6(b) procedure.

We very much welcome and support the Commission's policy to encourage and enable foreign private issuers that terminate their Exchange Act reporting obligations to maintain their existing ADR programs. In this regard, we agree with the Commission's proposal to eliminate the 18-month waiting period for the availability of the Rule 12g3-2(b) exemption for foreign private issuers that filed a Form 15F solely to terminate their reporting obligations regarding a class of debt securities and the Commission's overall efforts to make the Rule 12g3-2(b) exemption more easily available to such issuers, as we have previously requested in our comment letter, dated February 27, 2006 (the "First Comment Letter"). However, we believe that the re-proposed rules do not adequately address the issue raised in the First Comment Letter as to the timely availability of the Rule 12g3-2(b) exemption for issuers that terminate a Section 15(d) reporting obligation in respect of debt securities and that maintain a Level I ADR program. Specifically, we believe that the clarifications set forth below would be necessary and the procedure set forth in the re-proposed rules for the application of the Rule 12g3-2(b) exemption would need to be more closely synchronized with the procedure for the termination by foreign private issuers of their reporting obligations under Section 15(d) in respect of debt securities to ensure that existing Level I ADR programs can actually be maintained.

Specifically, we note that under re-proposed Rule 12g3-2(e)(4), a foreign private issuer that filed a Form 15F solely relating to a Section 15(d) reporting obligation in respect of debt securities may only apply for the Rule 12g3-2(b) exemption *"at any time following the effectiveness of the termination of such reporting obligation"* (i.e., 90 days or such shorter period as the SEC may determine after filing of the Form 15F). Accordingly, the Rule 12g3-2(b) exemption procedure under re-proposed Rule 12g3-2(e)(4) would result in a time gap between the suspension of the reporting obligations upon filing of the Form 15F and the grant of the Rule 12g3-2(b) exemption sometime after the effectiveness of the termination of the Section 15(d) reporting obligation. Since the filing of the Form 15F by a foreign private issuer immediately suspends the Section 15(d) reporting obligations and the Rule 12g3-2(b) exemption at that time would not yet be available, to the extent such issuer (such as MTR) has an existing Level I ADR program, a technical problem would arise regarding the compliance of such issuer's existing Level I ADR program with General Instruction I.A.3 of Form F-6 (i.e., with the requirement that such issuer be either an Exchange Act reporting issuer or exempt from such reporting obligations pursuant to Rule 12g3-2(b)).

Accordingly, we respectfully submit that Rule 12g3-2 be clarified, or that express clarifying statements be included in the adopting release, to the effect that a foreign private issuer with an existing Level I ADR program filing a Form 15F solely relating to a Section 15(d) reporting obligation in respect of debt securities pursuant to re-proposed Rule 12h-6(b), would be deemed to have complied with General Instruction I.A.3 of Form F-6, and would thus be permitted to maintain its existing Level I ADR program, during the period beginning on the date of the filing of Form 15F and ending on the earlier of (x) the date of the approval, withdrawal, or denial of the Rule 12g3-2)(b) exemption and (y) 60 days after the withdrawal or denial of the Form 15F (the "Interim Suspension Period"), if such issuer satisfies the following conditions:

(i) such issuer begins furnishing Rule 12g3-2(b) information in accordance with re-proposed Rule 12g3-2(f) concurrently with the filing of Form 15F and continues to do so during the Interim Suspension Period; and

(ii) such issuer submits its Rule 12g3-2(b) exemption application concurrently with the filing of Form 15F, including the information required pursuant to Rule 12g3-2(b)(1)(v) showing that such issuer is not required to register its equity securities under Section 12(g) (i.e., that such issuer does not meet the so-called "entrance test").

Moreover, we respectfully submit that re-proposed Rule 12g3-2(e)(4) should also be amended to the effect that the application for the Rule 12g3-2(b) exemption by a foreign private issuer filing a Form 15F solely relating to a Section 15(d) reporting obligation in respect of debt securities pursuant to re-proposed Rule 12h-6(b) may be submitted concurrently with the filing of the Form 15F.

As discussed above, we believe the above suggested rule clarifications and amendments are necessary to ensure that a foreign private issuer with an existing Level I ADR program that terminates its reporting obligations under Section 15(d) in respect of debt securities pursuant to re-proposed Rule 12h-6(b) could actually maintain such ADR program. Furthermore, we believe the above suggested rule clarifications and amendments are consistent with the Commission's policy of encouraging and enabling foreign private issuers that terminate their Exchange Act reporting obligations to maintain their existing ADR programs, while addressing the Commission's concern not to prematurely grant Rule 12g3-2(b) exemptions. In particular, we note the Commission's concern not to permit a debt securities issuer to claim the Rule 12g3-2(b) exemption immediately upon effectiveness of termination of its "debt securities" Exchange Act reporting obligations "on the possibility that, at some future date, it may require the exemption for a class of equity securities".[1] This concern does not apply here, since a foreign private issuer with a Level I ADR program has an immediate need for the Rule 12g3-2(b) exemption when it ceases to report under the Exchange Act. At the same time, by requiring an application for the Rule 12g3-2(b) exemption (instead of an automatic grant of such exemption) and information that the issuer is not required to register its equity securities under Section

[1] See SEC Release No. 34-55005, p. 75.

12(g) (i.e., such issuer does not meet the "entrance test"), the above rule clarifications and amendments would ensure that Rule 12g3-2(b) exemptions are not prematurely granted, but rather only when they are actually needed (specifically, to maintain an existing Level I ADR program) and only when the SEC is provided with U.S. ownership information about such issuer's outstanding equity securities.

2. New counting method to be applicable to "entrance test" under Rule 12g3-2(a) under the Exchange Act

We welcome and support the Commission's proposed streamlined counting method set forth in re-proposed Rule 12h-6(d) for determining the number of U.S. resident holders of a foreign private issuer's debt and equity securities.

However, it appears that, under the re-proposed rules, the new counting method will only apply to the "exit tests" but not to the "entrance test" under Section 12(g) and Rule 12g3-2(a) of the Exchange Act. As a result, a foreign private issuer applying for the Rule 12g3-2(b) exemption under re-proposed Rule 12g3-2(e)(4) would not be able to take advantage of the new counting method to calculate the U.S. ownership information that is required in support of the Rule 12g3-2(b) exemption application. We believe that such an issuer should be able to equally benefit from the new counting method, such as being permitted to rely in good faith on the assistance of an independent information services provider. We therefore respectfully reiterate our comment made in the First Comment Letter that the new counting method set forth in re-proposed Rule 12h-6(d) should apply equally in connection with the "entrance test" and suggest that Rule 12g3-2(a) be amended accordingly.

Conclusion

For the reasons discussed above, we respectfully submit that the re-proposed Rule 12h-6 and Rule 12g3-2 should be further revised, and/or the adopting release contain statements, to:

(i) clarify that the furnishing of Rule 12g3-2(b) information in accordance with re-proposed Rule 12g3-2(f) beginning with the filing of Form 15F (i.e., upon suspension of the Exchange Act reporting obligations upon filing of Form 15F and prior to the effectiveness of the Rule 12g3-2(b) exemption) for a foreign private issuer with an existing Level I ADR program that filed a Form 15F solely relating to a Section 15(d) reporting obligation in respect of debt securities pursuant to re-proposed Rule 12h-6(b) and submitted its Rule 12g3-2(b) exemption application concurrently with the filing of Form 15F, would be deemed to have satisfied General Instruction I.A.3 of Form F-6, and would thus permit such issuer to maintain its existing Level I ADR program, during the Interim Suspension Period;

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(ii) clarify that a foreign private issuer that is not subject to Section 12(g) registration and reporting requirements (i.e., that does not meet the "entrance test" thresholds) and is only subject to Section 15(d) reporting obligations in respect of *debt* securities, would be able to apply for the Rule 12g3-2(b) exemption concurrently with the filing of the Form 15F; and

(iii) ensure that the proposed new counting method set forth in re-proposed Rule 12h-6(d) applies equally in connection with the "entrance test" under Section 12(g) and Rule 12g3-2(a).

We would be pleased to discuss with the staff of the Commission the various issues raised and the suggestions we have made. If you have any enquiries, please feel free to contact Mr. Jimmy Lau, General Manager – Financial Control & Treasury, at (852) 2993-2403.

Very truly yours,

Lincoln Leong
Finance Director