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12 February 2007

BY EMAIL

Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission
One Station Place
100 F Street, N.E.
Washington, D.C. 20549-9303
U.S.A.

File No. S7-12-05

Dear Ms. Morris:

We are pleased to submit this letter in response to the request of the U.S. Securities and Exchange Commission ("Commission") for comments regarding its re-proposals on the termination of a foreign private issuer's ("FPI") registration and reporting obligations under the Securities Exchange Act of 1934 ("Exchange Act"), published in Release No. 34-55005, International Series Release No. 1300 (22 December 2006) (the "Release").

We support the Commission's use of trading volume as the chief criterion for terminating an FPI's Exchange Act registration and reporting obligations in the case of equity securities. We believe such an approach will bring much needed clarity to an FPI's determination of its eligibility for deregistration. We also support the reproposal in addressing several of the points we expressed in our comment letter of 28 February 2006, most notably that the benefit of termination of registration and reporting obligations and use of Rule 12g3-2(b) should be extended to FPIs that have terminated registration or suspended reporting obligations under the existing rules.

We continue to have concerns, however, that a number of practical issues that arise for FPIs terminating Exchange Act registration or reporting are not addressed, most notably as related to options and other equity-based compensation awards held by U.S. resident employees of an FPI that otherwise meets the criteria for termination of registration and reporting obligations.[1] We address these in more detail below.

Where an FPI has filed a Form 15F in respect of shares underlying employee options or other compensation awards, the Rule 12g3-2(b) exemption should automatically also extend to the employee options or other compensation awards.

Under proposed Rule 12g3-2(e)(1), an FPI that files a Form 15F in respect of a class of equity securities would receive the 12g3-2(b) exemption immediately upon effectiveness for that class of securities. We believe that, in the case of an FPI with options or other compensation awards issued to U.S. employees, where the FPI files a Form 15F in respect of the related shares the FPI should also receive the automatic Rule 12g3-2(b) exemption in respect of the employee options or other compensation awards. Otherwise, a new registration obligation may be created if the only remaining class of unregistered equity securities is employee options or other equity compensation awards and if there are over 300 U.S. resident holders of such options or awards. This would clearly run counter to the purpose and effectiveness of proposed Rule 12h-6.

Accordingly, we suggest that proposed Rule 12g3-2(e)(1) refer not only to the class of equity security being deregistered and for which reporting obligations are being terminated but also to any outstanding class of employee options or other equity compensation awards related to that class of equity security.

Securities Act Rule 701 should be made expressly applicable to FPIs that deregister for existing options and awards.

As stated in our letter of 28 February 2006, we believe an FPI's ability to rely on Rule 701 of the Securities Act of 1933 ("Securities Act") to issue shares underlying options and other equity-based compensation awards it has granted prior to termination of registration should be explicitly provided for in the new rules or in a statement in the adopting release.

Presently, an Exchange Act registrant that issues shares underlying options granted to its U.S. employees must register the share issuance under the Securities Act on a Form S-8 before the options become exercisable in order to permit the shares to be freely tradable. A company not subject to Exchange Act reporting requirements may issue shares underlying options and other equity-based compensation awards without Securities Act registration in reliance on Rule 701 provided that, among other requirements, the aggregate sales price of the issued

[1] All references in this letter to "other equity-based compensation awards" or "other awards" refer to those equity-based compensation awards for which registration or an exemption from registration is required under the Securities Act (e.g., employee stock purchase plans).

shares does not exceed the three-pronged aggregate sales threshold within any 12-month period.[2]

To date, the Commission has not affirmatively addressed by rulemaking whether an FPI that terminates registration may thereafter rely on Rule 701 to cover the issuance of shares underlying U.S. options and other equity-based compensation awards it has granted prior to termination, provided the aggregate sales price of such shares did not exceed the three-pronged aggregate sales threshold in any of the relevant prior 12-month periods.[3] We see no logical basis to distinguish between FPIs that terminate their registration and companies that have never registered in this regard. To treat these categories of issuers differently would have the effect of penalising FPIs for their prior U.S. registration, which would contravene the Release's objective of facilitating an FPI's exit from U.S. registration.

Rule 701's enhanced disclosure requirements

Under Rule 701, shares underlying options and other equity-based compensation awards are deemed sold at the date the options or awards are granted. While Rule 701 does not require any specific disclosure in connection with share sales of less than U.S.$5 million in any 12-month period, the Rule does require enhanced disclosure, primarily in the form of risk factors and financial statements reconciled to U.S. generally accepted accounting principles ("GAAP"), in the case of sales in excess of U.S.$5 million. Such disclosure must be provided a reasonable period of time prior to the sale of the shares or, in the case of options, a reasonable period of time prior to their exercise.

Consistent with applying Rule 701 retroactively if the three–pronged aggregate sales test is met, we believe the U.S.$5 million threshold should, at a minimum, also be applied retroactively. If less than U.S.$5 million of sales occurred in any 12-month period, then the issuer should be permitted to issue shares upon exercise of options or awards as if it had been subject to Rule 701 when the options or awards were granted, i.e., without the enhanced disclosure.

If more than U.S.$5 million of sales occurred in a prior 12-month period, then the further question arises how future share issuances should be treated. The grants would have occurred when the FPI was registered and subject to Exchange Act reporting, which by

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2 The three-pronged aggregate sales threshold is the greatest of: (i) U.S.$1 million, (ii) 15% of the total assets of the company, and (iii) 15% of the outstanding amount of the class of shares being offered and sold (in the case of (ii) and (iii), as of the company's most recent balance sheet date if not older than its last fiscal year-end).

3 See *DOCdata N.V.* (SEC No-Action Ltr., Jan. 18, 2001); *New City Communications* (SEC No-Action Ltr., Sept. 9, 1988); and *Peoria Journal Star, Incorporated* (SEC No-Action Ltr., Oct. 6, 1988).

definition would have included the enhanced disclosure. We believe it is consistent with the objective of the Release to facilitate deregistration that a one-time grandfathering be permitted for options and other equity based compensation awards outstanding at the time of deregistration such that future issuances of shares in relation to those existing options and awards would not require enhanced disclosure so long as the issuer has maintained its listing in its primary market and has continued to make available Rule 12g3-2(b) information.

Of course, future grants of options and awards by an issuer that has terminated registration and reporting obligations would be subject to Rule 701, including the enhanced disclosure requirements.

Accordingly, we would propose a new paragraph to Rule 12h-6 that would provide (i) that shares issuable pursuant to options or other equity-based compensation awards outstanding at the date of effectiveness of termination of registration and reporting will be deemed to be eligible for the exemption from registration provided by Rule 701 so long as at the dates of grant the provisions of Rule 701(d) would have been met and (ii) that the disclosure required by Rule 701(e) will not be required so long as at the date of issue of such shares the issuer has maintained its listing in its primary market and has continued to make available Rule 12g3-2(b) information from the date of termination of registration and reporting.

Other comments

Instruction 2 to Item 2 of Form 15F should make clear that it does not relate to Form S-8.

Instruction 2 to Item 2 of Form 15F requires disclosure of the last sale of securities by the filer under a shelf registration statement or other Securities Act registration statement under which securities remain unsold. By its terms this description can include sales under Form S-8 and other offerings exempt from the dormancy requirements and from Instruction 1, although it does not appear this was the Commission's intent. Instruction 1 to Item 2 specifically exempts from disclosure of registered offerings any offerings to employees and certain other offerings, as does Rule 12h-6(a)(2) itself as part of the dormancy condition. We believe a carve-out for these sales should be explicitly provided for in Instruction 2.

The Release should establish presumptions about U.S. nominee accounts in the absence of other information.

Under the Release, FPIs intending to deregister debt securities, as well as FPIs intending to deregister equity securities that do not qualify for termination of registration based on trading volume, must determine the actual number of U.S. residents that hold the relevant security, whether such U.S. residents hold directly or through nominee accounts. Nominees in the U.S. often fail or refuse to reply to inquiries about persons on whose behalf they hold securities, even if the information solicited is limited to the number of U.S. resident accounts rather than the identities of the account holders. The Release's proposed facilitation in counting method under Rule 12h-6(d)—namely, that after a reasonable but unsuccessful inquiry an FPI may assume that customers holding through nominees are resident in the jurisdiction in which the nominee has its principal place of business—does not assist those FPIs that need to determine the actual number of U.S. resident accounts behind U.S. nominees.

To address this situation, we propose that the Commission provide for a fall-back presumption of one U.S. resident account per U.S. nominee if, after reasonable inquiry, an FPI is unable without unreasonable effort to obtain information about the number of U.S. resident accounts held by a U.S. nominee. Alternatively, we propose that the Commission instruct the Depository Trust Company to condition a nominee's participation in the clearance system upon the nominee making information available to issuers about the number of U.S. residents on whose behalf it holds the issuer's securities.

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We appreciate the opportunity to comment on the Release and would be pleased to discuss any questions the Commission or its staff may have in respect of our comments. Please do not hesitate to contact Jim Bartos, Pamela Gibson or Mehran Massih at 011 44 20 7655 5000.

Very truly yours,

SHEARMAN & STERLING LLP