SIMPSON THACHER & BARTLETT LLP
GAIKOKUHO JIMU BENGOSHI JIMUSHO
ARK MORI BUILDING - 37TH FLOOR
12-32, AKASAKA 1-CHOME
MINATO-KU, TOKYO 107-6037, JAPAN

81-3-5562-6200

FACSIMILE: 81-3-5562-6202 E-MAIL ADDRESS

VIA E-MAIL

January 25, 2006

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

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

Dear Mr. Katz:

We are submitting this letter in response to the Securities and Exchange Commission's request for comments on Release No. 34-53020. As a general matter, we welcome and support the Commission's decision to amend the rules allowing a foreign private issuer to "exit" the registration and reporting regime of the Securities Exchange Act of 1934 where there is relatively little interest in trading of its securities in the United States market.

We respectfully submit, however, that proposed Rule 12h-6, as set forth in the Release, should be revised to ease the Exchange Act reporting history requirements for the deregistration of a class of equity securities in the relatively rare case that a foreign private issuer has reporting obligations under Exchange Act Section 15(d) in respect of a class of equity securities but does not have a reporting obligation under either Section 12(b) or Section 12(g). Requiring a two-year reporting history in these circumstances, including the filing of at least two annual reports, would contravene the Commission's intention, expressed at the Commission's open meeting of December 14, 2005, of not making the new exit rules more rigorous than the current rules. We also respectfully submit that Rule 12h-6 should incorporate a transitional mechanism to permit a foreign private issuer that has previously filed a Form 15 to suspend its reporting obligations under Section 15(d) to terminate its Exchange Act reporting obligations and rely upon proposed Rule 12g3-2(e) without regard to the other conditions of proposed Rule 12h-6.

Background

Our practice regularly involves advising Japanese – and other non-U.S. – corporations regarding the U.S. securities laws, including the application of the U.S. Securities Act of 1933 to the issuance of shares in connection with a business combination. Under Securities Act Rule 145, the submission to shareholders of a plan or agreement pursuant to which they are asked to elect whether to accept different securities in exchange for their existing securities is an offer of new securities that generally must be registered under the Securities Act. Though Securities Act Rule 802 provides an exemption from the registration requirement for securities issued in exchange for the shares of a non-U.S. target company, the exemption is only available if no more than 10% of the relevant class of securities of the target company is held by U.S. holders.

If a foreign private issuer engages in a business combination in which the 10% threshold of Rule 802 is exceeded, absent another exemption from registration, it will be required to file a Securities Act registration statement on Form F-4 and will thereby become subject to Exchange Act Section 15(d) reporting obligations. A foreign private issuer in this situation may become subject to reporting obligations even if it has fewer than 300 shareholders resident in the United States and it has never previously:

- elected to participate in the U.S. securities markets by registering a class of securities under Exchange Act Section 12(b) in order to list those securities on a national securities exchange;
- elected to participate in the U.S. securities markets by registering a class of securities under the Securities Act in order to sell those securities to investors in the U.S. securities markets; or
- been required to register a class of equity securities under Exchange Act Section 12(g).

We are aware of at least two Japanese foreign private issuers that filed registration statements on Form F-4 in these circumstances during the past five years. We have been informed by Japanese counsel that, unlike in some other jurisdictions, Japanese corporations are not permitted under Japanese law to exclude from voting shareholders located in a particular jurisdiction because doing so may violate principles of equal treatment of shareholders and, consequently, invalidate any vote conducted.

Comments to Proposed Rule 12h-6

As drafted, proposed Rule 12h-6 would apply the same set of deregistration criteria to the equity securities of all foreign private issuers, regardless of the source of the issuer's Exchange Act reporting obligations. For the reasons discussed below, we respectfully submit that subsection (a)(1) of proposed Rule 12h-6 should be revised to apply less stringent reporting history requirements to issuers of equity securities whose only

reporting obligation is under Section 15(d). Specifically, we request that subsection (a)(1) be revised to provide that such an issuer need only have met the reporting obligations currently required under Rule 12h-3 before it becomes eligible to terminate its Exchange Act reporting obligations by filing a Form 15F. We also respectfully submit that Rule 12h-6 should incorporate a transitional mechanism to permit a foreign private issuer that has previously filed a Form 15 to suspend its reporting obligations under Section 15(d), and has not been required to resume reporting under current Rule 12h-3, to terminate its Exchange Act reporting obligations and rely upon proposed Rule 12g3-2(e) without regard to the other conditions of proposed Rule 12h-6.

1. Adopting Rule 12h-6 in the form currently proposed would make the new exit rules more burdensome than the current exit rules.

Under current Exchange Act Rule 12h-3, a foreign private issuer with reporting obligations on a class of equity securities solely under Section 15(d) is eligible to suspend, but not terminate, its reporting obligations by filing a Form 15 during the first fiscal year following the fiscal year in which the registration statement became effective if:

(i) it has filed all reports required by Section 13(a) since the effective date of the registration statement; and

(ii) the class of securities registered under the registration statement is held of record by less than 300 persons resident in the United States on the first day of the fiscal year following the fiscal year the Form F-4 became effective.

In effect, the foreign private issuer may suspend its reporting obligations as soon as it has filed an annual report with respect to the fiscal year during which the Form F-4 registration statement became effective.

By contrast, subsection (a)(1) of proposed Rule 12h-6 would require that the foreign private issuer:

(i) have been subject to Section 13(a) reporting obligations for at least two years; and

(ii) have filed at least two annual reports pursuant to Section 13(a)

before it would be eligible to terminate its reporting obligations.

The requirements of subsection (a)(1) as drafted conflict with the Commission's stated goal of ensuring that the new exit rules for foreign private issuers are no more rigorous than the current exit rules because they would in fact impose a substantially higher burden in these limited circumstances.

We also note that the one-year dormancy condition proposed in Rule 12h-6 would separately require at least a one-year reporting history from the time an issuer conducts a registered offering under the Securities Act, so that a foreign private issuer with a reporting obligation on a class of equity securities under Section 15(d) would still need to meet that minimum reporting history requirement even if the reporting history requirement in subsection (a)(1) is eased as we are proposing.

2. Foreign private issuers with Exchange Act reporting obligations in respect of a class of equity securities solely under Section 15(d) present different investor protection concerns than foreign private issuers that become subject to Exchange Act reporting obligations for other reasons.

We respectfully submit that the number of foreign private issuers with Exchange Act reporting obligations in respect of a class of equity securities solely under Section 15(d) will be limited and will present different investor protection concerns than in the case of issuers listed on U.S. securities exchanges. In the case of a business combination involving two foreign private issuers not listed in the United States, and in which the surviving company will have fewer than 300 U.S. resident holders, we believe the U.S. resident holders are typically large, sophisticated institutional investors that have originally purchased the subject securities in secondary transactions outside the United States without any expectation of future reporting under the U.S. Exchange Act. Such investors will also have received the information required on a registration statement on Form F-4 in a timely manner to evaluate the business combination prior to voting.

We also believe it is unlikely that a foreign private issuer will conduct a registered offering of equity securities in the United States under other circumstances that only give rise to a Section 15(d) reporting obligation. The availability of the Rule 144A exemption for offerings to qualified institutional buyers, in particular, makes it unlikely that a foreign private issuer would register an equity offering unless it is listing on a U.S. securities exchange and/or marketing the offering widely enough that it expects to have a Section 12(b) and/or 12(g) reporting obligation following the transaction.

While the Release includes a description of the increased internationalization of the U.S. securities markets, it does not include similar information on the internationalization of foreign markets. For example, as of December 2005, the Tokyo Stock Exchange was the world's second largest stock exchange by market capitalization, and stock ownership by overseas investors in the aggregate accounted for over 20% of the total value of securities listed on Japanese stock exchanges as of March 31, 2005. In our experience, it is not unusual for large institutional investors, including U.S. institutional investors, to accumulate significant shareholdings in Japanese companies which have no Exchange Act reporting obligations and which have not conducted any public or private offering in the U.S. market. We note that such institutional investors include U.S. registered investment companies and pension funds, which are subject to extensive direct regulation on their investment activities.

We would also encourage the Commission to continue considering more generally the comity concerns raised by the application of U.S. securities laws and regulations to foreign private issuers as a result of the overseas activities of U.S. institutional investors, particularly in the case of foreign private issuers that have never listed in the U.S. or accessed the U.S. market for fundraising. With respect to proposed Rule 12h-6 (and, indeed, with respect to Rule 802 under the Securities Act), we believe consideration of higher thresholds of U.S. ownership than those in the proposed rule and/or the exclusion of the shareholdings of certain types of U.S. institutional investors from the U.S. ownership calculation is warranted, if not generally then at least in the case of foreign private issuers not listed on a U.S. securities exchange.

3. A transitional mechanism is needed for foreign private issuers whose reporting obligations under Section 15(d) have already been suspended prior to the adoption of proposed Rule 12h-6.

As currently drafted, the provision in Rule 12h-6(a)(1) requiring a foreign private issuer to have had Exchange Act reporting obligations for the preceding two years prior to filing a Form 15F would apply even to an issuer that, under existing Rule 12h-3, has filed a Form 15 to suspend its reporting obligations under Section 15(d) and has not been required to resume reporting subsequently. Considering

- the Commission's intention of not making the exit rules more rigorous; and
- any such foreign private issuer has been subject to an ongoing requirement to confirm that resumption of Exchange Act reporting is not required for the protection of U.S. investors in accordance with the current standards of Rule 12h-3,

we respectfully submit that a transitional mechanism to permit any such foreign private issuer to terminate its reporting obligations under Section 15(d) and to rely upon the proposed Rule 12g3-2(e) without regard to the other conditions of proposed Rule 12h-6 would be appropriate.

Conclusion

For the reasons discussed above, we respectfully submit that subsection (a)(1) of proposed Rule 12h-6 be revised to provide that a foreign private issuer with reporting obligations solely under Section 15(d) need only have filed or furnished all reports required under Section 15(d), including at least one annual report pursuant to Section 13(a), before it becomes eligible to terminate its Exchange Act reporting obligations. We also respectfully request that the Commission consider a transitional mechanism to permit foreign private issuers which have suspended their Section 15(d) reporting obligations in accordance with Rule 12h-3 prior to the adoption of the proposed new rules to terminate those reporting obligations without regard to the other conditions of proposed 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 Alan G. Cannon via telephone at 81-3-5562-6200, via fax at 81-3-5562-6202 or via email at acannon@stblaw.com.

Very truly yours,

Simpson Thacher & Bartlett LLP

SIMPSON THACHER & BARTLETT LLP