SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
SAN FRANCISCO
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

DIRECT DIAL
202-371-7990
DIRECT FAX
202-661-8245
EMAIL ADDRESS
RBARUSCH@SKADDEN.COM

June 25, 2008

Nancy Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303
VIA EMAIL: rule-comments@sec.gov

RE: Revisions to the Cross-Border Tender Offer, Exchange Offer, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions, Release Nos. 33-8917; 34-57781; File No. S7-10-08

Dear Ms. Morris:

We are pleased to submit this comment letter to the Securities and Exchange Commission (the "SEC" or the "Commission") on behalf of our client, Tweedy, Browne Company LLC ("Tweedy"), in response to the Commission's request for comments on the above-identified Release issued May 6, 2008.

Tweedy, a major institutional investor and money manager domiciled in the United States ("U.S."), is a registered investment advisor under the Investment Advisors Act of 1940 and manages separate accounts for institutions and certain high net worth retail investors. It also manages a number of affiliated mutual funds registered under the Investment Company Act of 1940. Most of Tweedy's clients are accredited investors as defined by Rule 501 under the Securities Act of 1933, as amended (the "Securities Act") and certain of its clients are qualified institutional buyers as defined by Rule 144A under the Securities Act.

Tweedy, which services numerous foreign customers, has substantial expertise and experience investing on behalf of its customers in securities issued by foreign private issuers, as defined by Rule 3b-4 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). At any particular time, its customers hold substantial amounts of securities issued by

foreign private issuers in their respective portfolios. As such, the regulation of cross-border business combination transactions is of great interest to Tweedy and its customers.

Background

Tweedy particularly is interested in and concerned by the long-standing practice by foreign bidders of excluding U.S. security holders from cross-border business combination transactions, particularly tender offers (hereinafter, "Exclusionary Offers").[1] Tweedy's customers are disadvantaged significantly in two ways by Exclusionary Offers. First, while its customers can seek alternatives such as the sale of their shares into the secondary market, Exclusionary Offers prevent them from benefiting from (i) the risk arbitrage spread between the offer consideration and the trading price of the security in the market, (ii) the opportunity for a higher subsequent takeover bid, and (iii) any avoidance of brokerage fees that would be incurred upon sale into the secondary market. Second, in certain situations, foreign law does not contemplate a compulsory "squeeze out" transaction subsequent to the acquisition of control by the offeror. As such, Tweedy's customers may suffer an immediate and substantial loss in the value of the securities held in what has become a controlled entity because of inability of minority security holders to be cashed out in a back-end merger as would be typical in the U.S. and the reduced liquidity in respect of the securities of the controlled entity. In short, Exclusionary Offers effectively serve to materially harm Tweedy's clients as outlined above and further explained below.

In Tweedy's experience, notwithstanding the 1999 amendments to the cross-border rules,[2] a significant number of foreign bidders continue to exclude U.S. security holders from cross-border takeover bids involving foreign private issuers, including when the consideration offered is wholly cash. Moreover, Exclusionary Offers are common even under circumstances where a bidder need not provide the full disclosure and procedural protections generally required by the U.S. tender offer rules, e.g., where (i) the subject securities are not registered under Section 12 of the Exchange Act, such that the transaction would be subject only to Section 14(e) and Regulation 14E, or (ii) the relief under Tier I would exempt the bidder from most of the filing, dissemination, and procedural requirements of the U.S. tender offer rules.

---

1 Tweedy also is concerned about Exclusionary Offers in respect of cross-border rights offerings, which also are commonplace. With respect to Tweedy's Proposal (as defined below), Tweedy recognizes that the registration issues arising under the Securities Act of 1933, as amended (the "Securities Act"), in connection with rights offerings add a layer of complexity not present in cash tender offers. While Tweedy believes the Commission must address the disadvantageous treatment of U.S. security holders in connection with such offers, this letter focuses on Exclusionary Offers in respect of takeover bids.

2 Cross-Border Tender Offer and Exchange Offers, Business Combinations and Rights Offerings, Release 33-7759 (Oct. 22, 1999).

Foreign bidders routinely cite potential liability and litigation in the U.S. as the bases for Exclusionary Offers. However, after discussing the issue with a number of foreign bidders, Tweedy believes that this claim oversimplifies the issue. Although potential U.S. liability and litigation always is a significant concern for foreign bidders, Tweedy does not believe that anti-fraud liability alone would account for the significant number of Exclusionary Offers that it currently encounters, particularly as it relates to all-cash tender offers where U.S. liability would be limited to violations of the Exchange Act and the regulations and rules thereunder.[3] Rather, in addition to the uncertainties and possibly exaggerated perceptions regarding potential litigation brought by the Commission or others arising from violations of the federal securities laws, Tweedy believes that foreign bidders often revert to Exclusionary Offers because of significant inexperience in navigating what is perceived by many to be a potentially complex, burdensome U.S. regulatory process. In this regard, in its experience, foreign bidders and their non-U.S. counsel (i) generally do not want to retain U.S. counsel for an offer that has relatively little connection to the U.S., (ii) encounter or believe they would encounter practical difficulty in establishing the threshold eligibility determination under the Tier I exemption, and/or (iii) believe that compliance with Regulation 14E (which most U.S. counsel view as relatively straightforward) would require, from their perspective, substantial analysis and interpretations related to an unfamiliar body of law and could significantly disadvantage the bidder and potentially conflict with home country regulation.

For these reasons, Tweedy does not think the Proposed Rules likely will change the default reaction of most foreign bidders to exclude U.S. security holders from largely foreign cross-border takeover bids unless the participation of U.S. security holders is critical to the success of the transaction. The latter point, in Tweedy's view, is of minimal value because in its experience participation of U.S. security holders often is not critical to the success of cross-border takeover bids, particularly in the case of foreign private issuers where the subject class of securities is not registered under Section 12 of the Exchange Act. Further, Tweedy, not unlike any small investor that does not have a foreign presence, has found that notwithstanding its size and sophistication it has from time to time been unable to transfer investment discretion to an overseas office or affiliate to facilitate the decision to tender into the Exclusionary Offer.[4]

While Tweedy applauds the Commission's policy goal of encouraging the inclusion of U.S. security holders in cross-border takeover bids, it believes that the Proposed Rules, not

---

[3] Tweedy recognizes that the Commission likely will not exempt largely foreign cross-border business combination transactions from the general anti-fraud and general anti-manipulation rules and civil liability provisions and, therefore, it is not suggesting that the Commission do so in order to curtail Exclusionary Offers.

[4] The Commission has not stated clearly whether or under what circumstances the transfer of investment discretion to an offshore office or affiliate is an appropriate method to tender into an Exclusionary Offer.

unlike the existing rules, actually will continue to encourage Exclusionary Offers. Tweedy strongly believes that the Proposed Rules should be revised to permit the inclusion of U.S. security holders under circumstances where the U.S. regulatory interest and the protections afforded by the federal securities laws are both relatively minimal. We believe this best serves the economic interests of U.S. security holders, particularly smaller, retail investors, many of whom own the securities of foreign private issuers through their ownership of U.S. registered mutual funds but currently are excluded from many cross-border takeover bids.

Tweedy's Proposal

Tweedy respectfully suggests that the Commission consider making the following modest addition to the Proposed Rules:

Cross-border tender offers (including exchange offers) in which the target company is a foreign private issuer and where the target company subject securities are not registered under Section 12 of the Exchange Act automatically—without the need for any filing or other precondition—would be exempt from Regulation 14E if the target company had a primary trading market, as that term is defined in Exchange Act Rule 12h-6(f)(5), outside the U.S. (hereinafter, "Tweedy's Proposal"). If the broad exemption were not possible, however, Tweedy would support an exemption that would be limited to cross-border tender offers (including exchange offers) where the offer for the securities of the foreign private issuer would be subject to a foreign regulatory system deemed by the Commission (or the Staff pursuant to delegated authority) to provide adequate protection to U.S. investors (hereinafter, an "Eligible Jurisdiction").[5] The exemption(s) would be limited to Regulation 14E and would not extend to Section 14(e) of the Exchange Act or any of the anti-fraud provisions not found in Regulation 14E.

Tweedy's Proposal is Consistent with the Public Interest and Protection of U.S. Security Holders

Adopting Tweedy's Proposal would be in the public interest and fully adequate for the protection of U.S. investors. In this regard, Tweedy's Proposal would help eliminate the discriminatory treatment of U.S. security holders under Exclusionary Offers. Further, given the limited connection to the U.S. securities markets and, in the case of the alternative proposal, the extensive home country regulation underlying the Eligible Jurisdiction determination, the U.S. would not have an overriding investor protection interest in insisting on compliance with the requirements of Regulation 14E.

---

[5] For example, and without limitation, the United Kingdom ("U.K.") is an obvious example of a jurisdiction with a sophisticated and well-established body of law and regulation in respect of takeover bids which covers many of the same areas as Regulation 14E. Tweedy respectfully submits that the investor protections required in connection with U.K. takeover bids are consistent the protections underlying the Williams Act.

Limited or No Market Activity in the U.S. for the Relevant Target Companies

As the Commission is aware, an issuer must register a class of securities, including American Depositary Receipts ("ADRs"), under Section 12 of the Exchange Act before it lists that class on a national securities exchange. Absent a listing on a national securities exchange, there often is limited and frequently only insignificant trading of the securities of foreign private issuers in the U.S. Any trading in the U.S. generally would take place either on the over-the-counter bulletin board, if the foreign private issuer had established and maintained an exemption under Exchange Act Rule 12g3-2(b), or in the pink sheets.[6] With respect to foreign private issuers taking advantage of the exemption under Rule 12g3-2(b), the Commission does not impose any requirement as to the form or content of their disclosures. Rather, foreign private issuers that avail themselves of the exemption furnish to the Commission English-language versions of information that the issuer: (i) has made, or is required to make, public under the laws of its jurisdiction of organization, (ii) has made public pursuant to its non-U.S. stock exchange filing requirements, and (iii) has distributed, or is required to distribute, to its security holders information that the issuer makes public or is required to make public pursuant to its home country laws. Notwithstanding the lack of Exchange Act level disclosure, the Commission has not prevented U.S. persons, including retail investors, from investing in the secondary market for the securities of these foreign private issuers—and has, in fact, facilitated such investment by permitting foreign private issuers to establish and maintain Level 1 ADR programs. Thus, by definition, U.S. investors who currently invest in the securities of foreign private issuers that have not registered and listed that class of securities generally look to the issuer's primary market for the regulation of market trading in these securities.[7]

Tweedy respectfully submits that persons in the U.S. who invest in these securities are not currently looking to the Commission's regulations and rules for their protections in connection with market transactions but instead look to (and must look to) the home country jurisdictions and the jurisdiction in which the security is listed on an exchange.

The Limited Protections of Regulation 14E

Section 14(d) and Regulation 14D and the extensive filing, disclosure, and procedural protections thereunder apply only to third party tender offers for equity securities registered

---

[6] Because of the lack of a U.S. market, U.S. security holders looking for a robust market, as a practical matter, may engage brokers who do business in the jurisdiction of the target foreign private issuer's primary market.

[7] While Tweedy's Proposal would cover foreign private issuers that have a "Level 1" ADR program, the ADRs would trade only through the over the counter market as indicated above.

under Section 12 of the Exchange Act.[8] On the other hand, the more basic anti-fraud protections under Section 14(e) and procedural protections under Regulation 14E apply to all tender offers extended into the U.S. Thus, a third party tender offer for equity securities that are not registered under Section 12 of the Exchange Act generally would need to comply only with Section 14(e) and Regulation 14E.

We note, however, that the protections under Regulation 14E are generally limited in number and effect. Moreover, cross-border takeover bids eligible for the exemptions under Tier I already are carved out from some of the more significant protections required under Regulation 14E.[9] Finally, we believe that in many instances the takeover regulations of foreign jurisdictions include investor protection provisions substantially similar to those found under Regulation 14E.[10] Because the protections under Regulation 14E are limited from the outset, not applicable in part under certain circumstances, and/or often redundant to foreign regulation, Tweedy believes that Regulation 14E likely would not be significant in the context of the offers subject to Tweedy's Proposal.

Why This Will Help

Tweedy acknowledges that the rules under Regulation 14E are not particularly burdensome in connection with most cross-border takeover bids. Indeed, with respect to takeover bids, many foreign jurisdictions have more burdensome regulations. Notwithstanding this, in the view of many foreign bidders and their non-U.S. counsel, the federal securities laws, including in this instance Regulation 14E, remain complex, if not daunting. Given the choice of trying to conform a takeover bid made in accordance with home country law and custom to applicable Commission regulations and Staff precedent (and possibly having to engage the Staff with respect to certain conflicting regulations or precedent), our client's experience is that under these circumstances foreign bidders frequently will exclude U.S. security holders from the cross-border takeover bid.

---

[8] Rule 13e-4, promulgated under Section 13(e) of the Exchange Act, applies to all tender offers by an issuer for its equity securities when the issuer has a class of equity securities registered under Section 12 or when the issuer files periodic reports under Section 15(d) of the Exchange Act. Rule 13e-4 also applies to a tender offer by an affiliate of the issuer for the issuer's securities where the tender offer is not subject to Section 14(d). Rule 13e-4 provides for disclosure, filing and procedural safeguards that generally mirror those provided under Section 14(d) and Regulation 14D.

[9] Rule 14d-1(c).

[10] Although U.S. withdrawal rights are a protection afforded under Regulation 14D rather than Regulation 14E, Tweedy notes that in its experience withdrawal rights derived from foreign law or custom often are extended to security holders in connection with cross-border takeover bids that are subject only to Regulation 14E.

Tweedy believes that if the rules under Regulation 14E were not applied to cross-border takeover bids in which the target company is a foreign private issuer and where the target company subject securities are not registered under Section 12 of the Exchange Act if the target company had a primary trading market outside the U.S., significantly more foreign bidders and their non-U.S. counsel would include U.S. security holders in all-cash tender offers, which are the primary concern of our client. While there may still be concern about U.S. liability under Section 14(e) of the Exchange Act and Exchange Act Rule 10b-5, Tweedy believes that the practical liability exposure in an all-cash tender offer generally is so small that institutions such as Tweedy (on behalf of their clients) would be able to persuade most bidders into including U.S. security holders in the takeover bid. Further, Tweedy strongly believes that, in terms of investor protection and economic harm, U.S. security holders will be better served by Tweedy's Proposal as compared to the current practice of being excluded from many cross-border takeover bids, particularly where the tender offer will be subject to a well-established body of law in a foreign jurisdiction that has experience regulating takeover bids. Finally, adopting the limited exemption(s) suggested would further the Staff's publicly stated goal of respecting the all holders requirements of foreign jurisdictions by providing leverage to foreign regulators in their efforts to pressure foreign private issuers not to exclude U.S. security holders when there is no legitimate reason to do so.

Obviously, there are a number of issues not addressed by Tweedy's Proposal. For example, it does not address the registration issues arising under the Securities Act. However, consistent with the guidance in the Proposing Release, a foreign bidder could arrange a vendor placement for U.S. retail security holders and, under certain circumstances, include U.S. institutional security holders in the takeover bid via a concurrent private placement.

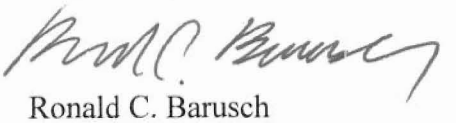
Because it is likely that U.S. security holders will continue to be excluded from cross-border takeover bids for foreign private issuers where the subject class of securities is registered under Section 12 of the Exchange Act, our client also supports an exemption or accommodation that would permit accredited investors and similarly sophisticated investors to participate in such takeover bids even where a foreign bidder excludes U.S. retail security holders from the takeover bid. Further, Tweedy requests that the Commission consider even broader exemptions from or accommodations in respect of the requirements of Regulation 14D with respect to cross-border takeover bids subject to the regulatory oversight of an Eligible Jurisdiction.

Conclusion

Tweedy strongly believes that its proposal is in the public interest because it would significantly decrease the number of Exclusionary Offers which work to the significant detriment of U.S. security holders. Further, Tweedy believes that the proposal is narrowly drawn and for the reasons set forth above adequately protects U.S. investors.

Please contact me at 202-371-7990 (Ronald.Barusch@skadden.com) with any questions relating to this comment letter.

Very truly yours,



Ronald C. Barusch

cc: Michele Anderson
Chief, Office of Mergers and Acquisitions, Division of Corporate Finance

Christina Chalk
Senior Special Counsel, Division of Corporate Finance

Kenneth E. Leopold
Tweedy, Browne Company LLC

Richard T. Prins
Skadden, Arps, Slate, Meagher & Flom LLP

Andrew Brady
Skadden, Arps, Slate, Meagher & Flom LLP

Keba Riley
Skadden, Arps, Slate, Meagher & Flom LLP