April 18, 2008

Via Electronic Mail
Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule: Exemption from Registration under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers
SEC Release No. 34-57350; File No. S7-04-08.

Dear Ms. Morris:

JPMorgan Chase Bank, N.A. ("JPMorgan") is pleased to have the opportunity to submit this letter regarding the proposed rule referenced above in response to the Commission's request for comment as set forth in Release No. 34-57350, dated February 19, 2008 (the "Proposing Release").

JPMorgan is a leading depositary bank and, through its Depositary Receipt Group, maintains American Depositary Receipt ("ADR") and Global Depositary Receipt "(GDR") programs throughout the world for a large number of foreign private issuers. Our ADR programs include many "Level 1" facilities in which the issuer of the underlying securities is exempt from the reporting requirements of the Securities Exchange Act of 1934 (the "Exchange Act") pursuant to Rule 12g3-2(b) promulgated thereunder.

JPMorgan is strongly in favor of the Commission's efforts to modernize the exemption under Rule 12g3-2(b). We believe that the proposed amendments would be beneficial to investors and foreign private issuers alike. Investors and other market participants clearly benefit from having electronic access to foreign issuers' home country disclosure documents, and the proposed amendments would help ensure that such information is made available by those foreign issuers that do not currently provide online English language versions of their disclosure documents. Electronic disclosure provides a more cost-effective, timely and convenient means of obtaining information than the existing Rule 12g3-2(b) regime, which remains predominantly paper-based. Currently it is very difficult for investors to obtain access to information submitted to the Commission in compliance with Rule 12g3-2(b), as the information is only available through third party service providers at a fee or at the offices of the Commission itself. As such, we believe that most investors seeking access to foreign issuer disclosure documents currently obtain that information via the internet through issuer websites or other third party sites.

From the standpoint of foreign issuers, we concur with the Commission's view that the proposed amendments would facilitate the process of obtaining an exemption under Rule 12g3-2(b) and potentially encourage more issuers to establish Level 1 ADR programs in the United States. Notwithstanding this, however, we also believe that certain modifications and clarifications to the proposed rules are warranted in order to more effectively achieve the Commission's objectives.

Trading Volume Condition

In order to claim the Rule 12g3-2(b) exemption under the proposed amendments, a foreign private issuer would be required to have an average daily trading volume ("ADTV") of its securities in the United States, as measured over the most recently completed fiscal year, which does not exceed 20% of its worldwide ADTV over the same period. Subsequently, the issuer must continue to meet the 20% trading volume condition for each fiscal year other than the year in which the exemption is first claimed.

We respectfully recommend that the trading volume condition apply only at the time a foreign private issuer first claims the Rule 12g3-2(b) exemption, and not on a continuous basis thereafter. This would ensure greater consistency between the amended rules and the current exemption, and would better promote the Commission's stated policy goals of encouraging foreign private issuers to claim the Rule 12g3-2(b) exemption and thereby increasing over-the-counter trading in foreign companies' securities.

At present, foreign private issuers must apply for the Rule 12g3-2(b) exemption before they incur an Exchange Act reporting obligation, which effectively requires issuers to apply before or shortly after they reach the 300 U.S. investor threshold. However once the exemption is established, issuers can remain exempt indefinitely without regard to the number of U.S. holders, provided they continue to meet the other conditions of Rule 12g3-2(b). We believe the ability to continuously maintain the exemption is of great importance to foreign issuers seeking to establish Level 1 ADR facilities. This gives such issuers the assurance that they will not lose their exempt status and become subject to additional regulation after taking on the obligation of launching and maintaining an ADR program. The proposed amendments diverge from the current approach by conditioning the continued availability of Rule 12g3-2(b) on a factor over which issuers have no direct control, i.e., trading volume. As a result, even if an issuer were to fully comply with all other requirements under the amended rules, it could be forced to register as a result of external circumstances. Such a result would act as a significant disincentive to foreign issuers considering a Level 1 ADR program, and could potentially cancel out any positive impact the proposed amendments may otherwise have in terms of encouraging foreign issuers to enter the U.S. over-the-counter markets. Similarly, to the extent the proposed amendments are designed to increase over-the counter trading in securities of foreign issuers, it seems inconsistent and inequitable to disqualify those issuers whose securities in fact achieve successful trading levels in our markets.

We also believe the trading volume condition would undermine the benefits achieved through the Commission's revised de-registration rules of 2007, which were intended to attract foreign issuers to the U.S. market by making it easier for them to exit the Exchange Act

reporting regime. Currently, once a foreign private issuer has terminated its Exchange Act registration, it cannot be required to re-register so long as it remains in compliance with Rule 12g3-2(b). However under the proposed amendments, de-registered issuers would no longer have certainty about their ability to maintain exempt status, as they could be forced to re-register based on trading volume. In our view this would tend to discourage foreign issuers that might otherwise wish to initially enter the U.S. market as Exchange Act reporting issuers. As such, the trading volume condition would be contrary to the Commission's objective of attracting foreign issuers to the U.S. capital markets by removing the burdens and uncertainties associated with de-registration.

Additionally, the trading volume condition creates potential inequities insofar as it could require foreign private issuers to register on an involuntary basis. This is not the case under the current rules. At present foreign private issuers may be subject to involuntary registration under the Exchange Act if they have more than 300 U.S. holders, but they generally have the alternative of establishing a Rule 12g3-2(b) exemption prior to reaching such shareholder level rather than proceeding with registration. Once the exemption is established, a foreign issuer is not subject to mandatory registration based on the number of shareholders, level of trading, or any other factor beyond its direct control. The proposed amendments, however, would not provide similar relief. If trading in an exempt foreign issuer's securities were to exceed the trading volume threshold, the foreign issuer would likely have no other exemption upon which it could rely and, as a result, such foreign issuer could be forced to register under the Exchange Act. Given the current environment in which foreign issuers are increasingly reluctant to enter the U.S. capital markets and capital-raising activities are migrating offshore, we believe it would be counterproductive to adopt rules that increase the regulatory burdens on those foreign issuers that do wish to access our markets. In our view it would be more equitable to require registration only as a result of issuers' own actions or inactions, i.e., either failing to maintain compliance with those conditions of Rule 12g3-2(b) over which they have direct control, or taking the affirmative step of listing their securities on a U.S. exchange.

Moreover, in our view the trading volume condition would not meaningfully contribute to investor protection. The proposed amendments would provide sufficient safeguards to U.S. investors without the need to impose a trading volume condition. This is accomplished through the provisions requiring electronic access to issuers' home country disclosure documents and ensuring that foreign issuers are subject to regulation in an offshore market. These protections will be equally effective whether U.S. trading volumes are low or high. If a foreign issuer is successful and U.S. market interest increases accordingly, we do not believe there is a heightened need for investor protection. To the contrary, greater investor interest can improve the amount and quality of information regarding a foreign issuer that is available through market participants and the financial media. Therefore we believe investors in highly traded companies do not have a greater need for regulatory protection than those who invest in lesser-known issuers.

In this regard, trading volume does not have the same significance in relation to Rule 12g3-2(b) that it has in the de-registration context. If an issuer seeks to de-register, the level of U.S. market interest directly correlates to the impact of the de-registration on U.S. investors.

Where market interest is high there will likely be a correspondingly greater number of investors who will no longer receive the same kind of disclosure from the foreign issuer. However in the context of the Rule 12g3-2(b) exemption, allowing foreign issuers to maintain the exemption at 20% or higher trading volumes would not adversely impact investors, as they would continue to receive the very same level of disclosure that existed when trading volumes were lower. Although requiring Exchange Act registration could enhance disclosure in some cases, we respectfully believe that forced registration is not warranted where the increased disclosure requirements would negatively affect foreign issuers, as discussed above, whereas U.S. investors will be no worse off absent such registration since they will continue to benefit from the established disclosure regime under amended Rule 12g3-2(b).

Should the Commission disagree with our recommendation of eliminating ongoing compliance with the trading volume condition, we believe the applicable threshold should be higher than 20% of worldwide ADTV for fiscal years following the year in which the exemption is established. Establishing a higher threshold would help mitigate the uncertainty and potential burdens and inequities created by subjecting foreign issuers to involuntary Exchange Act registration. This would also be consistent with the current approach under Rule 12g3-2(b), which requires foreign issuers to have fewer than 300 U.S. holders in order to first obtain the exemption, but gives issuers the flexibility to subsequently grow their U.S. shareholder base once the exemption has been established. By the same token, we would recommend that the trading volume threshold for continued maintenance of the Rule 12g3-2(b) exemption should be higher than the initial 20% threshold. In our view a foreign private issuer should remain eligible under Rule 12g3-2(b) if its U.S. ADTV does not exceed 35% of its worldwide ADTV for each fiscal year other than the year in which the exemption is first claimed. This modification would better enable foreign issuers to support and expand their Level 1 ADR programs, and would accommodate (rather than penalize) ADR programs that are successful, thereby advancing the Commission's objective of increasing over-the-counter trading in securities of foreign issuers. In addition a higher threshold would help reduce the disincentives to entry that we believe would be created by imposing a trading volume limitation.

Additionally, if the Commission decides to retain a trading volume condition, such condition should not apply to unsponsored ADR programs. In the unsponsored context, the issuer is not involved in establishing the ADR facility and does not otherwise take any affirmative steps to enter the U.S. markets. Therefore it would be patently unfair to require the issuer to register under the Exchange Act should its U.S. trading volume reach a specified level. Currently issuers can easily obtain an exemption from registration where their securities are the subject of an unsponsored ADR program, as they simply need to comply with Rule 12g3-2(b) by furnishing copies of home country disclosure documents. However under the proposed amendments the issuer could be required to register despite providing the required information, based on U.S. trading activity that is not under the issuer's control. Therefore it is imperative to ensure that foreign issuers not be subject to any trading volume requirement where they have not sponsored an ADR program in the U.S.

Grandfathering of Currently Exempt Issuers

To the extent a trading volume condition is adopted, we strongly urge the Commission to permit foreign issuers that are currently exempt under Rule 12g3-2(b) to retain the exemption even if they exceed the applicable ADTV threshold. Many issuers that presently rely on Rule 12g3-2(b) are well-established and highly respected companies that have maintained Level 1 ADR programs for substantial periods of time. If any such foreign issuers exceed the trading volume condition, either at the time the proposed amendments become effective or thereafter, they may be forced to register under the Exchange Act without any viable alternative for exiting the U.S. market. This would be fundamentally unfair to foreign issuers that have validly entered our markets and complied with our legal and regulatory requirements, only to then have the rules changed in a manner that involuntarily subjects them to greater regulatory burdens and provides no means for them to opt out. We believe such a result would engender broad distrust of the U.S. legal regime among foreign issuers. The adoption of a transition period would not address this concern, but merely delay the impact. We therefore propose that any trading volume condition adopted under the proposed amendments should not apply to issuers that established an exemption under Rule 12g3-2(b) prior to the effective date of the amendments.

Foreign Listing Condition

Under the proposed amendments, a foreign issuer would be required to maintain a listing in a foreign jurisdiction which, either alone or together with one other jurisdiction, accounts for at least 55% of worldwide trading volume. If trading in two jurisdictions is aggregated for purposes of meeting this 55% threshold, at least one such jurisdiction must have higher trading volume than the U.S. market. We generally support the inclusion of a requirement that issuers maintain a listing in one or more foreign jurisdictions. However in our view there is no evident rationale for limiting the principal trading market to not more than two overseas jurisdictions, nor for establishing a 55% minimum threshold for foreign trading rather than a simple 50% threshold to ensure that a majority of trading occurs offshore.

Limitation of "Primary Trading Market" to Two Jurisdictions. As indicated in the Proposing Release, the foreign listing condition is intended to ensure that an issuer claiming the Rule 12g3-2(b) exemption is regulated in an offshore jurisdiction, and to increase the likelihood that foreign disclosure documents will be available to U.S. investors. We believe these objectives would not be compromised by expanding the home country listing requirement to encompass listings in multiple foreign jurisdictions rather than a maximum of two. Accordingly we would suggest that the definition of "primary trading market" be revised to mean any number of foreign jurisdictions on which, in the aggregate, a majority (i.e., more than 50%) of trading in a foreign issuer's securities takes place, provided that the trading volume in at least one such jurisdiction exceeded the issuer's U.S. trading volume during the relevant fiscal year.

In our view investor protection would not be enhanced by limiting the number of jurisdictions in which a majority of a foreign issuer's securities would be required to trade. Under the proposed amendments, investors are protected by virtue of having access to non-U.S. disclosure documents. In this regard, U.S. investors are equally well protected whether a foreign

issuer is listed only in a single foreign jurisdiction, or whether the issuer expands its trading market to encompass multiple jurisdictions. In either case, U.S. investors will continue to have access to the same level of disclosure based on the regulatory requirements of the foreign issuer's principal non-U.S. trading market. Moreover, a limitation on multiple trading markets could have negative economic effects on issuers and investors. By diversifying their shareholder base across multiple markets, foreign issuers can help reduce price volatility and improve long-term valuations, which benefit all investors in the foreign issuer. Therefore Rule 12g3-2(b) should not disqualify foreign issuers that choose to expand into multiple trading markets, nor should the Rule function in a manner that would tend to discourage geographic diversification.

While the changes we propose would diverge from the definition of "primary trading market" under the Commission's de-registration rules, we believe a different approach is warranted in the context of Rule 12g3-2(b). The de-registration rules were designed to make it easier for foreign issuers to exit the Exchange Act reporting regime. In contrast, the proposed foreign listing condition under Rule 12g3-2(b) would represent a burden rather than a benefit to foreign issuers, as it could result in forfeiture of the exemption. As such, we believe that as a matter of comity and deference to foreign law, it is appropriate to define the primary trading market in a less restrictive manner for purposes of Rule 12g3-2(b).

55% Foreign Trading Threshold. We would also recommend reducing the foreign trading threshold to provide that more than 50% of worldwide trading (rather than 55% as proposed) must take place in a foreign issuer's primary trading market. The Proposing Release does not set out the Commission's rationale for the 55% foreign trading threshold. However, in adopting the revised de-registration rules in 2007, the Commission cited several reasons for implementing a similar foreign trading threshold. These included increasing the likelihood that the pricing for a foreign issuer's securities will be determined principally in markets located outside the U.S., making more likely the availability of non-U.S. securities disclosure documents to U.S. investors, and ensuring that the U.S. is not the sole or principal market for the issuer's securities, which would increase the Commission's level of regulatory interest. In our view, all of these objectives can be achieved by adopting a 50% trading threshold together with a requirement that trading volumes in at least one foreign jurisdiction must exceed U.S. trading volume.

With respect to pricing determinants, as long as more than 50% of trading occurs in foreign jurisdictions and at least one such jurisdiction has greater trading volume than the U.S. market, prices will be primarily a function of offshore market activity. From this standpoint, any benefit gained by imposing a higher 55% trading threshold would be minimal. However the potential effect on foreign issuers would be significant, as it could cause a loss of the Rule 12g3-2(b) exemption. With respect to the availability of disclosure documents, this is strictly a function of the foreign issuer being subject to regulation in a foreign market, and is not impacted by trading levels. Finally, assurance that the U.S. will not be the principal trading market can be attained through the combination of a 50% foreign trading threshold and a requirement that at least one foreign jurisdiction must account for greater trading volume than the U.S. We therefore urge that the proposed amendments should adopt a 50% foreign trading threshold, as this would reduce the compliance burden and level of uncertainty for foreign issuers while continuing to

ensure appropriate investor protection.

Non-Reporting Condition

Under the proposed amendments, a foreign private issuer would have to be free of any requirement to file reports under the Exchange Act in order to be eligible for the Rule 12g3-2(b) exemption. However, it appears to be the Commission's intent that foreign private issuers could have an obligation to register their securities under Section 12(g) of the Exchange Act based on having more than 300 holders in the U.S., yet still be eligible for the exemption. The Proposing Release states that an issuer's ability to claim the Rule 12g3-2(b) exemption would not depend on a count of its United States security holders. In addition, the Commission has specifically proposed to eliminate the requirement that an issuer must claim the exemption within 120 days after the end of any fiscal year in which the issuer exceeded the 300 U.S. holder threshold under Section 12(g). This indicates that a foreign private issuer would be eligible to claim the Rule 12g3-2(b) exemption even if it has more than 300 U.S. holders and is subject to registration under Section 12(g), but has not filed the required registration statement. Accordingly, we would recommend that the amendments to Rule 12g3-2(b) should clarify this point. Otherwise, if read literally, the Exchange Act reporting obligation could disqualify foreign private issuers that exceed the 300 U.S. holder threshold. Arguably, an issuer that is subject to registration under Section 12(g) could be deemed to have a reporting obligation based on the fact that the issuer should have registered. Therefore the non-reporting condition should specifically exclude any reporting obligation arising under Section 12(g) of the Exchange Act.

Electronic Publishing Requirement

We generally support the Commission's proposal requiring issuers to electronically publish the information required under Rule 12g3-2(b). However we would recommend a clarification to the effect that the foreign issuer need only publish information disclosed or required to be disclosed in its largest non-U.S. trading market, rather than in its "primary trading market" as defined in the proposed amendments, which could consist of more than one jurisdiction. The latter formulation could result in duplicative information being published, creating investor confusion and unnecessary costs and burdens for issuers.

We would also recommend that foreign issuers be given the option to publish the required information through an electronic information delivery system only if such delivery system is navigable in English and does not require users to register or pay any fees. The elimination of these potential barriers to access would increase the likelihood that U.S. investors will be able to identify and retrieve the information to which they are entitled under Rule 12g3-2(b). We would further suggest eliminating the requirement that the electronic information delivery system be located in the issuer's primary trading market, provided the issuer indicates on its website the address of such information delivery system. The physical location of the system should be of no relevance to U.S. investors so long as they can readily access it and obtain the requisite information.

Other Comments

Form F-6 Eligibility for Unsponsored Programs. We would propose that, for unsponsored ADR programs, the Commission should eliminate the requirement that the foreign issuer of the deposited securities be either an Exchange Act reporting company or exempt under Rule 12g3-2(b) in order to establish eligibility to use Form F-6. Such a requirement would place an undue burden on depositary banks to determine whether a foreign issuer is in fact exempt under Rule 12g3-2(b). Historically, the Commission has maintained a list of foreign issuers claiming exemption under Rule 12g3-2(b). This enabled depositary banks to ascertain which foreign issuers were eligible for unsponsored ADR programs. However it appears that under the proposed amendments the Commission would no longer maintain a list of exempt companies, since foreign issuers would neither submit applications nor furnish documents to the Commission. As a result, depositary banks would be in the untenable position of having to determine foreign issuers' compliance with Rule 12g3-2(b). For example, depositaries may not be able to determine whether a given foreign issuer is meeting the publication requirement, since that could require knowledge of what filings must be made and what information is required to be disclosed under the laws of the foreign issuer's home jurisdiction, as well as when such disclosure obligations arise and when the foreign issuer actually published such information on its website. In the context of an unsponsored ADR program, depositary banks should be entitled to file a Registration Statement on Form F-6 without being subject to the condition that the foreign issuer is exempt under Rule 12g3-2(b). However it would be beneficial to include a requirement that the foreign issuer maintains a listing on an overseas trading market. This would ensure that the foreign issuer is subject to regulatory oversight outside the U.S., but would leave it up to the foreign issuer to ensure that it meets the informational and other requirements of Rule 12g3-2(b). To the extent the Commission believes the Form F-6 eligibility requirements should remain, with respect to unsponsored ADRs we would strongly recommend that eligibility be based upon the depositary bank's reasonable belief.

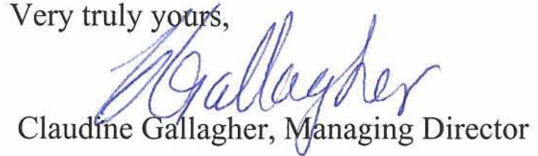
Translation Requirements. We believe it would be helpful for foreign issuers to have specific guidance from the Commission regarding their ability to provide English summaries or versions of certain documents rather than full translations. In our experience, foreign issuers relying on Rule 12g3-2(b) often express uncertainty about the translation requirements. Given that Rule 12g3-2(b) would be self-implementing under the proposed amendments, it is important that foreign issuers have a high degree of clarity regarding their informational obligations. This will enable them to understand what disclosure must be provided and reduce translation costs for non-critical documents. Investors will also benefit because summaries of less important documents will likely be published more quickly than full translations and will be easier to review and comprehend, while full translations of important documents will still be available.

Conclusion

JPMorgan generally commends and supports the Commission's proposals to amend Rule 12g3-2(b) under the Exchange Act, but we believe the modifications suggested in our letter would help achieve a more balanced regulatory structure that takes into account the legitimate interests of foreign issuers without sacrificing investor protection or the other objectives underlying the proposed amendments.

Thank you for considering our comments. We would be pleased to answer any questions you may have or provide additional information.

Very truly yours,



Claudine Gallagher, Managing Director

cc: Paul M. Dudek, Esq.
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