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May 2, 2008

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

File No. S7-04-08

Dear Ms. Morris:

We are pleased to submit this letter in response to the request of the U.S. Securities and Exchange Commission (the "Commission") for comments regarding the proposed changes relating to the exemption from registration under section 12(g) of the Securities Exchange Act of 1934, as amended ("Exchange Act") available to foreign private issuers ("FPIs"). The proposals were published in Release No. 34-57350; International Series Release No. 1307, Exemption from Registration Under Section 12(g) of the Securities Exchange Act for Foreign Private Issuers (February 19, 2008) (the "Release").

We generally support the Commission's proposed procedural changes to current Rule 12g3-2(b) to immediately and automatically exempt any FPI that meets the requirements of the rule from having to register a class of equity securities under section 12(g) of the Exchange Act. We strongly object, however, to the proposed trading volume benchmark criterion. If the Commission decides to revise the eligibility criteria in a manner adverse to issuers who are exempt under the current rule, we strongly recommend that the Commission adopt a permanent "grandfather" provision enabling FPIs that have obtained Rule 12g3-2(b) exemptions prior to the effective date of the rule changes to retain their exempt status. We discuss these points below, as well as suggest modifications to the proposals. In addition, our Firm's Tokyo office has submitted a separate comment letter regarding the proposed translation requirements.

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Proposed Rule 12g3-2 Amendments

Current Rule 12b3-2(b) exempts a FPI from registration under Exchange Act section 12(g) when the issuer perfects the exemption and furnishes paper copies of specific on-going information to the Commission which the Release refers to as "non-U.S. disclosure documents." As the Commission notes in the Release, this relief was appropriate when the exemptive rule was adopted in 1967 to address the circumstances of a FPI becoming subject to Exchange Act section 12(g) registration requirements due to actions taken by investors. This same rationale is just as relevant today. More importantly, we find it noteworthy that the Release does not reference or discuss the existence of any abusive practices under the existing system as reasons for the proposals nor the apparent change in the Commission's efforts, most recently with the March 2007 adoption of Rule 12h-6, to eliminate disincentives that arise due to trading of FPI securities in the U.S. markets.[1] Rather the Release refers generally to several developments over the past 40 years, including globalization of the securities markets, advances in information technology, increased use of ADR facilities to trade securities in the U.S., increased cross-border activities and increased U.S. investor interest in securities of foreign issuers as reasons for the proposals. While these developments, some of which we believe have been encouraged by the Commission and its staff, may have facilitated U.S. investor interest in, and access to, equity securities of FPIs, they have not changed the fundamental fact that Exchange Act registration should not attach to issuers who have not accessed the U.S. public securities markets either through a public offering or by listing their equity securities in the U.S. public markets. Further, in our view, the benefits that flow to a FPI under either Rule 144A or an unlisted American Depositary Receipt ("ADR") program from obtaining a Rule 12g3-2(b) exemption do not change the long standing basis for the exemption.

Further, the proposed benchmark is more, rather than less, burdensome on FPIs and runs contrary to the Commission's efforts over the years to reduce regulatory burdens on FPIs when consistent with investor protection. In this regard, the Commission should publicly consider the burdens and costs to FPIs associated with a trading volume criterion, especially with respect to Level 1 ADR programs, programs that the Commission and its staff have a long history of encouraging FPIs to sponsor, as well as the trading execution costs and efficiencies provided by Level 1 ADR programs.

Finally, it appears that the Rule 12g3-2(b) exemption as proposed to be amended is more

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[1] Release No. 34-55540; International Series Release No. 1301, 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 (March 27, 2007) ("March 2007 Release").

burdensome than Rule 12h-6 which permits termination of Exchange Act registration and reporting if specified conditions are met. Such a result is not supportable.

Proposed Non-Reporting Condition

In our view the Rule 12g3-2(b) exemption, consistent with section 12(g), should operate with respect to each class of equity securities and not be conditioned upon whether a FPI otherwise has an Exchange Act reporting obligation with respect to another class of securities. Accordingly, we recommend that exemption be available with respect to a class of equity securities without having to deregister, for example a class of debt securities or another class of equity securities.

An issuer should be able to claim the exemption even if the 120-day period has lapsed. Availability of the exemption should look to issuer compliance with the disclosure conditions of the exemption.

We support the change to allow an issuer that has had a section 15(d) reporting obligation suspended to be able to claim the Rule 12g3-2(b) exemption. The exemption should continue even when the issuer's section 15(d) reporting obligation is reinstated with respect to another class of securities other than the class of securities covered by the Rule 12g3-2(b) exemption.

Foreign Listing Condition

We would support a criterion that an issuer should be subject to home country or primary market disclosure framework, whether it be through a foreign listing of the particular class of equity securities trades or through another supervisory body that has regulatory oversight authority over the issuer's disclosures. We do not, however, believe that the exemption should be limited to a foreign listing requirement, nor do we believe that the rule should attempt to either define the framework or specify the characteristics of the trading market.

Proposed Quantitative Standard – Trading Volume Benchmark

The requirements of the U.S. securities laws should not become more burdensome to issuers without identifying what regulatory practice, abuse or problem the requirements are intended to address and explaining how the requirements are intended to address the identified practice, abuse or problem. The Release is strikingly silent in this regard. Absent that information and based on our experience, we strongly oppose the use of a trading volume benchmark as the chief criterion for the exemption and recommend retention of the current ownership criterion.

Should the Commission determine to use an average daily trading volume benchmark, we suggest that the level be substantially higher than the proposed 20 percent. We specifically recommend a benchmark of 50 percent and above. Depending upon what practices, problems or abuses the Commission is attempting to address or the investor and market interest intended to be protected, the Commission could tailor the exemption to address the particular matter. For instance, and as in other situations, the Commission could make certain classes of issuers ineligible to use the Rule 12g3-2(b) exemption if such action is necessary for the protection of investors. For example, the Commission could revise the current exemption to provide that an issuer or its predecessor that is or has been a blank check company, as defined in Rule 405 of Regulation C, or a shell company (other than a business combination related shell company), as defined in Rule 405 of Regulation C under the Securities Act of 1933, as amended ("Securities Act") and Rule 12b-2 under the Exchange Act, would be ineligible. Ineligibility could terminate when the issuer has audited financial statements covering its most recent completed fiscal year during which period the issuer, or its predecessor, were neither a blank check company nor a shell company. The specific scope of ineligibility of an issuer should relate to the specific investor and market protections intended to be furthered by any amendments to the rule.

If, however, the Commission decides to implement a trading volume criterion, we would recommend that the criterion be substantially the same as that imposed by Rule 12h-6, which compares the U.S. average daily trading volume ("ADTV") of the particular class of equity securities with the worldwide ADTV for the same class of securities, rather than against the proposed ADTV in the primary trading market. As under Rule 12h-6, issuers should be able to include off-market transactions, including transactions executed through alternative trading systems, provided such information is reasonably reliable. FPIs should not become subject to section 12(g) where U.S. investors decide to invest in equity securities of FPIs that are not listed for trading on a primary trading market. We believe that the criterion should be met so long as the U.S. ADTV is less than 50 percent of the worldwide ADTV during the issuer's most recently completed fiscal year.

In addition to our suggestions discussed above, we have several additional recommendations in the event that the Commission determines to use a trading volume benchmark.

- U.S. trading volume on trading systems restricted to qualified institutional buyers as defined in Rule 144A under the Securities Act of 1933, as amended, and/or qualified purchasers as defined in section 2(a)(51) of the Investment Company Act of 1940, as amended, should be excluded from the trading volume calculation as those systems are not public trading markets.
- as discussed later, there should be a "grandfather" provision to allow those issuers who currently rely on a Rule 12g3-2(b) exemption to retain the exemption as to the class of securities currently covered.

Proposed Electronic Publishing of Non-U.S. Disclosure Documents

We believe the exemption should require an issuer to electronically publish its non-U.S. disclosure documents on its own website or through an electronic information delivery system that is generally available without cost to the public and is accessible in English. The rule should make clear that all of the enumerated documents must be electronically available at one location so as to facilitate investor and market access to those documents. We agree that the publication of non-U.S. disclosure documents should be a condition to claiming the exemption initially and going forward. As a condition to claiming the exemption initially, we suggest that the issuer be current within a specified time period such as 75 days since the first day of its most recently completed fiscal year. A transition period is important so as to give issuers sufficient time to implement appropriate disclosure procedures designed to comply with the electronic publishing requirement.

We suggest that the English translation or summary of the required documents be published promptly, rather than specifying a time period. Whether or not a document is promptly published will depend upon the facts and circumstances of the particular document, including, for example, the document's complexity, availability of qualified translators, and review by an issuer's lawyers and auditors.

If an issuer otherwise has an Exchange Act reporting obligation with respect to another class of securities, we suggest that the electronic publishing requirement be suspended with respect to the subject class of equity securities, except with respect to documents that specifically relate to the class of securities covered by the exemption, are material to investors of that class and are not otherwise filed or furnished with the Commission.

An issuer should publish electronically all documents that relate to the subject class of equity securities covered by the exemption that the issuer has made or is required to make public by the issuer's home country and/or primary securities regulator and trading market(s) on which the class of equity securities trade and that are material to investors. Further, Commission guidance regarding when an English summary may be provided would assist an issuer in satisfying the electronic publishing condition. We do not support a general requirement that an issuer publish a non-U.S document that the issuer may provide to its non-U.S. regulator or non-U.S. exchange that is not made public by that regulator or exchange.

Elimination of the Written Application Requirement

We support the proposal to eliminate the written application requirement, whether the exemption is based upon a trading volume benchmark at the higher level we've suggested or the current holder of record criterion. Alternatively, if the application process is retained, we suggest that

the process be modernized. For instance, the Commission could provide that the application be submitted electronically to an email address published on its website. All approved applications could be posted on a section in the Division of Corporation Finance's home page to allow investors and others to access the final approved application.

We believe public notice of reliance upon the exemption would provide important information to investors and the markets. Therefore, we suggest that the exemption require an issuer to include a statement accompanying the English translation or summary of its annual report that gives notice of its reliance upon the Rule 12g3-2(b) exemption. In addition, or in the alternative, the Commission should consider receiving notice of reliance upon the exemption. This notice could then be posted on a specified section of the Division of Corporation Finance's home page.

Proposed Duration of the Amended Rule 12g3-2(b) Exemption

We agree that an issuer should be able to claim the exemption as long as it complies with the rule's non-U.S. publication requirement. Because of the consequences to an issuer for failure to comply with the electronic publishing requirement, we suggest the exemption be maintained where an issuer has made a good faith and reasonable attempt to comply with the electronic publishing requirement. We further suggest that the rule provide that when a document that is not published promptly, it must be published as soon as practicable after discovery of the failure to publish.

In our view, compliance with a non-U.S. publication requirement and foreign securities regulator oversight, whether through a listing on a foreign market or through the issuer's home country securities regulator having enforcement authority should suffice as a basis for continuing the exemption, regardless of the U.S. trading volume. In addition, an issuer should be able to maintain the Rule 12g3-2(b) exemption for a class of equity securities even when it incurs an Exchange Act reporting obligation for another class of securities, whether equity or debt. Again, section 12(g) looks to each class of equity securities.

We do not believe that offerings exempt under the Securities Act should have any effect on an issuer's Rule 12g3-2(b) exemption. In our experience, these offerings usually are structured as private placement/Rule 144A offerings to qualified institutional buyers or large institutional accredited investors who do not expect or need the disclosure protections associated with section 12(g) of the Exchange Act and the Commission's rules and regulations thereunder.

We concur with the Commission's proposals relating to a successor issuer's ability to claim the Rule 12g3-2(b) exemption.

Proposed Transition Periods – Regarding Section 12 Registration

As discussed earlier, should the Commission adopt a trading volume criterion, we strongly recommend that the Commission grandfather all issuers that currently have the Rule 12g3-2(b) exemption even if their U.S. trading volume exceeds the final benchmark. In our view, the analogy to the transition period provided to Nasdaq-traded foreign issuers referred to in footnote 116 is not on point. Rather, we view the grandfather relief granted to non-Canadian foreign private issuers in 1983 when the Commission amended Rule 12g3-2(b) to deny the exemption to issuers who voluntarily listed on Nasdaq as being more directly relevant.

Other Observations

The determination of holders of record for purposes of section 12(g) should be the same for FPIs and U.S. issuers. Today, U.S. issuers need only look at the number of record holders and need not look through to the number of separate accounts as Rule 12g3b-2(a)(1) requires of FPIs with respect to securities held of record by banks, brokers, dealers and other nominees resident in the U.S. There is no support for having different look through provisions depending on the status of the issuer. Accordingly, we recommend that the Commission revise the rules to be consistent among issuers and reflective of how securities are held.

As noted earlier, we have serious concerns that the proposed trading volume criterion will effectively shut down the Level 1 ADR platform as FPIs either terminate existing programs or not allow the formation of new programs. For years the Commission and its staff have encouraged such programs as providing a more efficient means for investors to trade in securities of certain FPIs. In light of the significant adverse consequences to investors and issuers, we believe the Commission must fully discuss and consider the benefits, burdens and consequences of the proposals to investors, issuers and U.S. market competitiveness prior to adopting the proposed changes.

When the Commission adopted Rule 12h-6 in March 2007, it appeared that the rule was intended to provide eligible issuers with a permanent termination of registration and reporting. However, the Release appears to indicate that this is not the case. We find this result, if correct, unfortunate. However, if this is not the case, we do not see any basis upon which the exemption should be more burdensome than an exemption resulting from termination of registration and reporting.

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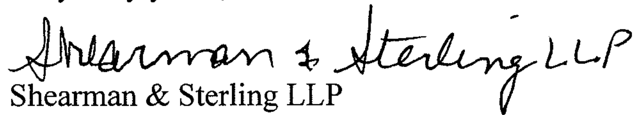
We appreciate the opportunity to comment on the Release and would be pleased to discuss any questions with the Commission or its staff may have in respect of our comments. Please do not hesitate to contact Abigail Arms at 202-508-8025 or Antonia Stolper at 212-848-5009.

Very truly yours,



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