



May 5, 2008

Via Email

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303

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

Dear Ms. Morris:

The Capital Markets Committee of the Securities Industry and Financial Markets Association¹ is pleased to offer comment on the referenced proposed rule change by the Securities and Exchange Commission (the "Commission") to amend Rule 12g3-2(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The proposed amendments would eliminate paper submission requirements under Exchange Act Rule 12g3-2(b) and effectively provide for an automatic exemption from SEC registration for foreign private issuers that do not list or publicly offer securities in the United States. To claim the exemption, a foreign private issuer must be a non-reporting company under the Exchange Act, must maintain a foreign listing, must meet a quantitative standard tied to trading volume, and must electronically publish certain non-U.S. disclosure documents.

SIFMA supports the proposal and commends the Commission for seeking to modernize and streamline the 12g3-2(b) exemption process for foreign private issuers while also enhancing U.S. investors' access to material non-U.S. disclosure. SIFMA believes, however, that the Commission could further refine the proposal to avoid the inadvertent application of Section 12(g) to companies that should not be subject to Exchange Act registration because they have not voluntarily entered the US market. Specifically, SIFMA endorses the comments articulated in the letter submitted by Cleary

¹ SIFMA brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

Gottlieb Steen & Hamilton LLP ("Cleary Letter"), wherein it is recommended that the revised Rule 12g3-2(b) treat distinctly two very different categories of non-U.S. companies:

- Companies that fall under Section 12(g) inadvertently, because U.S. investors choose to purchase shares that trade publicly only in the companies' home markets. These companies should be automatically and unconditionally exempt from Section 12(g).
- Companies that voluntarily seek to create a U.S. public trading market for their equity securities (typically by sponsoring an unrestricted ADR program). The Section 12(g) exemption for these companies should legitimately be subject to conditions to ensure that U.S. investors receive appropriate information, but these companies should not be subject to conditions that will motivate them to curtail U.S. trading in their securities to the detriment of U.S. investors.

While SIFMA believes the Commission's proposal is a positive step in making it easier for U.S. investors to gain access to a foreign private issuer's disclosure documents, SIFMA concurs with the points in the Cleary Letter, and would strongly urge the Commission to consider the recommendations articulated therein.

SIFMA thanks you for the opportunity to comment on this important proposal. If you have any questions or require further information, please contact the undersigned or Amal Aly, SIFMA Managing Director and Associate General Counsel at 212.313.1268.

Very truly yours,



Kevin R. Genirs

cc: The Honorable Christopher Cox, *Chairman*
The Honorable Paul S. Atkins, *Commissioner*
The Honorable Kathleen L. Casey, *Commissioner*
John W. White, *Director, Division of Corporation Finance*
Paul M. Dudek, *Chief of the Office of International Corporate Finance*
Ethiopsis Tafara, *Director, Office of International Affairs*