July 25, 2008

Florence Harmon, Acting Secretary
Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303

Re: File No. S7-04-08
Release No. 34-57350; International Series Release No. 1307;
Exemption from Registration under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers

Ladies and Gentlemen:

The undersigned attorneys, each of whom regularly advises clients on securities law issues affecting executive compensation, are writing to comment on an aspect of the proposed amendments to Rule 12g3-2(b) under the Securities Exchange Act of 1934 (the "Exchange Act") that we have recently identified and that would adversely affect equity compensation arrangements of foreign private issuers. This comment reflects the views of the undersigned and may not reflect the views of others in their respective firms or of their firms' clients.

Under current Rule 12g3-2(b), if a foreign private issuer furnishes the required information, all securities of that issuer, with certain enumerated exceptions, are exempt from Section 12(g) of the Exchange Act.[1] By contrast, the proposed amendment to Rule 12g3-2 would limit the Section 12(g) exemption to the particular class of securities that satisfies the conditions of the Rule. Among such conditions, as currently proposed, is that the class of securities be listed on a foreign securities exchange. The effect of this combination of provisions is that even if a foreign private issuer's common stock satisfied the conditions for the exemption, its stock options (and any other arrangements that may be deemed to involve a class of equity securities that it may use to provide equity compensation) would not be eligible for the Rule 12g3-2(b) exemption from Section 12(g) because such classes of securities are not listed on a securities exchange.[2]

We note that a number of comment letters on the proposed amendments have suggested that listing on a securities exchange should not be a condition of the Rule 12g3-2(b) exemption. Elimination of this condition would address the concern expressed in this letter. However, even if the Commission

---

1. The exceptions from the blanket exemption from Section 12(g) are set forth in Rule 12g3-2(d) and generally involve securities that were registered under the Securities Act of 1933 or the Exchange Act, quoted in an "automated inter-dealer quotation system," or issued to acquire a company that was subject to Exchange Act reporting.

2. The condition regarding average daily trading volume of the subject class of securities should also be made inapplicable to classes of equity securities that are not publicly traded.

determines to impose a listing condition with respect to the Rule 12g3-2(b) exemption generally, we believe that such a condition should not apply to equity compensation arrangements that satisfy the remaining conditions of Rule 12g3-2(b).

An exemption for equity compensation arrangements of foreign private issuers is needed within the rubric of Rule 12g3-2(b) because the two exemptions for compensatory stock options adopted by the Commission in December 2007 do not adequately address the needs of foreign private issuers who would use the Rule 12g3-2(b) exemption for their common stock. Rule 12h-1(g) is only available to issuers that are subject to the Exchange Act reporting requirements, which would exclude all issuers eligible for the Rule 12g3-2(b) exemption.

Rule 12h-1(f), which is available for issuers that are not subject to the Exchange Act reporting requirements, contains a number of conditions that are inappropriate for foreign private issuers. First, the Rule's conditions may be read to apply to all stock options of the issuer, including those granted to non-U.S. employees. These conditions include the limitations set forth in Rule 701 as to permissible optionees and transferees, regardless of whether the issuer's home country would permit making option grants or permit transfers to a broader class of persons. Second, Rule 12h-1(f) requires the issuer to provide the risk factor and financial statement disclosure required by Rule 701(e) every six months, with the financial statements being not more than 180 days old. These timing requirements may be appropriate for issuers that prepare quarterly financial statements, but are particularly onerous for foreign issuers, many of which provide only semi-annual financial statements under home country requirements.[3] Moreover, where the Commission has determined that compliance with home country disclosure requirements is sufficient to protect U.S. holders of the foreign issuer's common stock, there is no reason to impose a greater disclosure requirement for securities held by employees. Finally, Rule 12h-1(f) exempts only stock options. If other instruments issued by foreign private issuers to provide equity compensation are deemed to be classes of equity securities, an alternative exemption from Section 12(g) is necessary.

For the reasons set forth above, we believe that foreign private issuers who satisfy the conditions for the Rule 12g3-2(b) exemption should be entitled to use such exemption for all classes of equity securities issued in compensatory arrangements without regard to whether those securities are listed on a securities exchange. Failure to adopt such an exemption is likely to be detrimental to U.S. employees

3. For the same reason, we believe Rule 701 should also be amended to clarify the timing requirements for foreign private issuers. Rule 701(e)(4) includes a similar 180-day financial delivery requirement. The recent amendment of Rule 701 to permit delivery of financial statements prepared under IFRS raises questions as to the applicability of the 180-day rule because this timing is inconsistent with practices under IFRS (which contemplates only semi-annual financial statements). Applying a 180-day rule to foreign private issuers who report using IFRS would in many cases lead foreign private issuers to restrict the number of equity securities granted to their U.S. employees to a level that does not trigger these disclosures. We believe foreign private issuers should be permitted to fulfill the enhanced disclosure requirements of Rule 701 by providing plan participants with the same level of disclosure as is called for by Rule 12g3-2(b).

because foreign private issuers are likely to choose to limit grants of equity compensation to U.S. employees so as to keep the number of U.S. holders below 300 (and thereby within the Rule 12g3-2(a) exemption) rather than register under the Exchange Act.

One or more of the undersigned would be pleased to meet with you, if appropriate, to more fully discuss the views expressed in this letter.

Very truly yours,

Gloria W. Nusbacher,
Hughes Hubbard & Reed LLP

Troy M. Calkins,
Drinker Biddle & Reath LLP
Meredith B. Cross,
Wilmer Cutler Pickering Hale and Dorr LLP
Christine M. Daly,
Holme Roberts & Owen LLP
Howard Dicker
Joseph Ferraro,
Dewey & Leboeuf LLP
Michael L. Hermsen,
Mayer Brown LLP
Keith F. Higgins,
Ropes & Gray LLP
Richard R. Howe,
Sullivan & Cromwell LLP
Julie H. Jones,
Ropes & Gray LLP
Stanley Keller,
Edwards Angell Palmer & Dodge LLP
Linda Y. Kelso,
Foley & Lardner LLP
Arthur H. Kohn,
Cleary Gottlieb Steen & Hamilton LLP
Jean M. McLoughlin,
Davis, Polk & Wardwell LLP
Sue Morgan,
Perkins Coie LLP
Ronald O. Mueller,
Gibson, Dunn & Crutcher LLP
Anne G. Plimpton,
McDermott Will & Emery LLP
Linda E. Rappaport,
Shearman & Sterling LLP
Louis Rorimer,
Jones Day
Jeffrey W. Rubin,
Hogan & Hartson LLP
Susan P. Serota,
Pillsbury Winthrop Shaw Pittman LLP
Scott P. Spector,
Fenwick & West LLP
Martha N. Steinman,
Dewey & Leboeuf LLP
George H. White III,
Sullivan & Cromwell LLP
Joseph Yaffe,
Latham & Watkins LLP

cc: Amy Starr (Senior Special Counsel),
Mauri L.Osheroff (Associate Director)
Paul Dudek (Chief, Office of International Corporate Finance)
Gerald Laporte (Chief, Office of Small Business Policy)