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SECURITIES REGULATION

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Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attention: Nancy M. Morris,
Secretary, Securities and Exchange Commission

Re: Comments on Proposed Amendments to Exemption from Registration under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers File No. S7-04-08

Ladies and Gentlemen:

This letter is submitted on behalf of the Committee on Securities Regulation of the New York City Bar in response to the proposal of 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 proposal is discussed in Release No. 34-57350; International Series Release No. 1307; File No. S7-04-08 (the "Release").

Our Committee is composed of lawyers with diverse perspectives on securities issues, including members of law firms, counsel to corporations, investment banks and investors, and academics. Please note that Mr. David Rosenfeld, a member of the Staff of the Commission and a member of our Committee, did not participate in the

preparation of this letter or the decision by our Committee to submit this letter to the Commission.

Introduction

Our Committee expresses its appreciation for the substantial efforts of the Commission and its Staff to update and upgrade the rules relating to foreign private issuers. We believe the Commission's proposals are the right response to address the significant changes that have occurred in the global capital markets since the original adoption and amendment of these rules. At the same time, we are concerned that some of the substantive aspects of the Commission's proposals could significantly increase the burden on foreign private issuers without providing material benefits to U.S. investors. Please also see our accompanying letter regarding the proposed amendments to the Rules relating to foreign private issuer reporting under the Exchange Act File No. S7-05-08 for our comments on those related proposals.

1. **The Commission should consider the amendments in light of the current context of global securities markets.**

We strongly support the Commission's proposal to exempt eligible non-U.S. companies automatically from registration under the Exchange Act, rather than requiring them to apply for an exemption. The monumental changes that have recently occurred in the global securities markets have made the application of Section 12(g) of the Exchange Act outside the United States considerably more complex than it was in the past. Forty years ago when the original exemption was adopted, most non-U.S. companies would have had to actively seek to create a U.S. public market, generally by establishing sponsored, unrestricted ADR programs in order to become subject to Section 12(g). Today, many non-U.S. companies regularly find themselves with numerous U.S. shareholders, who in today's market search the globe for investment opportunities, aided by a wide array of information technology tools. These companies can easily fall within the Section 12(g) regime without taking any action, and often without even knowing about the regime.

We see the Commission's proposal to amend the Rule 12g3-2(b) exemption as an important opportunity to update and improve the functioning of the Section 12(g) regime in light of the current context of the global securities markets. By proposing to make the Rule 12g3-2(b) exemption automatic, the Commission has effectively recognized that the current regime leaves many companies in an irregular or uncertain status through no fault of their own. We support the Commission's proposal to change this situation, and we hope that the Commission will agree with us that it should go even further.

2. **Non-U.S. companies should be unconditionally exempt from Exchange Act registration unless they voluntarily create a U.S. public trading market for their shares.**

The Commission's proposed modifications to Rule 12g3-2(b) go a long way to addressing many of the problems described above by making the exemption automatic for companies that meet the required conditions. A large number of these companies would become exempt under the Commission's proposal without even knowing about the exemption simply because their financial communications policy and practices inadvertently meet the proposed conditions. While this is an important step in the right direction, we are concerned that most companies would only accidentally meet the proposed rule conditions. In other cases, the ordinary policies and practices of non-U.S. companies will not satisfy the conditions of the exemption in the form proposed by the Commission, as a result of the proposed trading volume test. As a result, these companies, which have not actively sought to promote trading of their shares in the U.S. market, would find themselves subject to Section 12(g), even though the Commission would have no reason to require these companies to register under the Exchange Act.

We believe the Commission should automatically exempt non-U.S. companies from Exchange Act registration in reliance on Rule 12g3(b) without requiring them to make any representations to the Commission, unless they voluntarily create a U.S. public trading market for their shares. In the absence of such voluntary steps, a company should not be subject to U.S. registration regardless of the level of U.S. demand for the company's shares.

3. **The Commission should eliminate or modify the 20% trading volume test for non-U.S. companies with sponsored ADR programs.**

We recognize that it is appropriate for the Commission to establish minimum standards for the exemption from Exchange Act registration of companies that voluntarily create a U.S. public market for their securities. However, we believe these standards should focus on the availability of English language information, as has traditionally been the case, rather than on a trading volume threshold. We recommend that the Commission eliminate or substantially modify the proposed 20% trading volume test, and that it make some technical modifications to the other conditions.

Exchange Act reporting has traditionally been required only for non-U.S. companies that publicly offer or list their securities in the United States. In the absence of such voluntary action, companies have been eligible for the Rule 12g3-2(b) exemption, subject only to a requirement to submit home country information documents to the Commission. As a result, U.S. investors are well aware that they have access to U.S. periodic reports of non-U.S. companies only when they invest in securities that have been publicly offered or listed in the United States, and that they must rely on home country information when they invest in ADRs of other non-U.S. companies. Secondary market investors in unlisted non-U.S. companies will have no expectation that they will ever receive Exchange Act reports from the issuer. They will have invested in a non-reporting, non-U.S. company in an offshore or over-the-counter transaction on the basis of the issuing company's home country documents. The imposition of a substantive condition will not change this expectation. When a U.S. investor purchases an over-the-

counter ADR, the investor, like the issuer, has no way of knowing whether the issuer's trading volume will exceed the 20% threshold at some future date.

If the Commission were to maintain a substantive condition such as the 20% volume trading test, U.S. investors would likely be harmed more than benefited by such a condition, as it is unlikely that any companies would register under the Exchange Act as a result. Rather than facing the effort, expense and liability risk of Exchange Act registration, many companies with trading that approaches the 20% threshold would take actions to discourage U.S. trading, such as terminating their sponsored ADR programs and limiting the information provided to U.S. investors. Some companies might decide never to establish ADR programs, or might include provisions in their governing documents permitting them to take unilateral action to reduce U.S. share ownership.

The 20% trading volume test would unnecessarily change the nature of the exemption for companies with sponsored, unrestricted ADR programs from one based on the provision of information to one based on fluctuating market interest. A trading volume test would unduly penalize thinly traded companies, subjecting them to the risk of Exchange Act registration due to U.S. trading that is outside their control. Over the years, there have been periods where U.S. investors have concentrated on investments in certain areas of the world. In addition, a company with very limited trading, such as a permanent capital vehicle, could conceivably become subject to Exchange Act registration under the proposed rule amendments, based on one or two large purchases by U.S. qualified institutional buyers in over the counter transactions.

In addition, a volume-based test could present some challenges from an implementation standpoint. We understand that the rules involved in trade reporting and public dissemination of trade data, particularly in the context of foreign securities and ADRs, have as a matter of practice been inconsistently applied and interpreted (sometimes on a country by country basis), and have been subject to change under SRO rules.[1] As a result, issuers will be unable to control or verify whether reported transactions in fact take place in the United States, or whether reporting by broker-dealers accurately reflects over-the-counter activity.

We therefore recommend that the Commission eliminate the trading volume threshold when it adopts the final rule amendments. Alternately, if the Commission decides not to follow our recommendation, we urge the Commission to raise the threshold significantly, subjecting companies to registration only when trading in their sponsored, unrestricted ADRs represents over 50% of worldwide trading volume. These changes would limit the risk that non-U.S. companies could become subject to Exchange Act reporting due to events completely outside their control. A company whose U.S. trading volume is above the 50% level may also be less likely to take steps to discourage U.S. trading, through termination of an ADR program or otherwise, reducing the risk that U.S. investors would be harmed by the threshold.

[1] See, e.g., SR-FINRA-2007-18 (proposed rule filing to disseminate all last sale reports of transactions in the over-the counter ("OTC") American Depositary Receipts ("ADRs") and Canadian issues immediately upon receipt of such reports by FINRA).

Conclusion

We appreciate that the Commission has undertaken a thoughtful and thorough review of the application of Section 12(g) to non-U.S. companies in light of the changes in the global securities marketplace. We believe our suggestions would enable the Commission to better achieve the objectives of its proposals while protecting the interests of U.S. investors in the global securities markets.

Our Committee appreciates the opportunity to participate in this process, and we look forward to its successful conclusion.

Respectfully Submitted,

/s/ N. Adele Hogan_____

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