Federal Register

Monday,
February 25, 2008

Part II

Securities and Exchange Commission

17 CFR Parts 239, 240 and 249

Exemption From Registration Under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240 and 249

[Release No. 34–57350; International Series Release No. 1307; File No. S7–04–08]

RIN 3235–AK04

Exemption From Registration Under Section 12(G) of the Securities Exchange Act of 1934 for Foreign Private Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to the rule that exempts a foreign private issuer from having to register a class of equity securities under Section 12(g) of the Securities Exchange Act of 1934 (''Exchange Act'') based on the submission to the Commission of certain information published outside the United States. The exemption allows a foreign private issuer to exceed the registration thresholds of Section 12(g) and effectively have its equity securities traded on a limited basis in the over-the-counter market in the United States. Currently, in order to obtain the exemption under Exchange Act Rule 12g3–2(b), a non-reporting foreign private issuer must submit to the Commission written materials in paper, including a list of information that the issuer must disclose publicly pursuant to its home jurisdiction laws or stock exchange requirements, or that is sent to its security holders, along with paper copies of documents containing the required information that the issuer has published for its last fiscal year. A successful applicant may maintain the exemption by submitting to the Commission paper copies of these documents on an ongoing basis. The proposed amendments would eliminate paper submission requirements by automatically granting the Rule 12g3–2(b) exemption to a foreign private issuer that meets specified conditions, which do not depend on a count of an issuer's United States security holders, and which would require an issuer to publish electronically in English specified non-United States disclosure documents. As a result, the proposed amendments should make it easier for U.S. investors to gain access to a foreign private issuer's material non-United States disclosure documents and make better informed decisions regarding whether to invest in that issuer's equity securities through the over-the-counter market in the United States or otherwise.

DATES: Comments must be received on or before April 25, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's *Internet comment form (http://www.sec.gov/rules/proposed.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–04–08 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–04–08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Special Counsel, at (202) 551–3450, in the Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We propose to amend Commission Rules 12g3–2 [1] and 15c2–11 [2] under the Exchange Act,[3] Forms 15,[4] 15F,[5] 40–F,[6] and 6–K [7] under the Exchange Act, and Form F–6 [8] under the Securities Act of 1933 (''Securities Act'').[9]

Table of Contents

I. Executive Summary and Background
A. Introduction
B. Current Rule 12g3–2(b) Requirements
C. Proposed Rule 12g3–2 Amendments
II. Discussion
A. Proposed Non-Reporting Condition
1. Non-Reporting Issuers
2. Deregistered Issuers
B. Proposed Foreign Listing Condition
C. Proposed Quantitative Standard
1. Trading Volume Benchmark
2. Rule 12h–6 Issuers
D. Proposed Electronic Publishing of Non-U.S. Disclosure Documents
1. Electronic Publishing Requirement to Claim Exemption
2. Electronic Publishing Requirement to Maintain Exemption
E. Proposed Elimination of the Written Application Requirement
F. Proposed Duration of the Amended Rule 12g3–2(b) Exemption
G. Proposed Elimination of the Successor Issuer Prohibition
H. Proposed Elimination of the Rule 12g3–2(b) Exception for MJDS Filers
I. Proposed Elimination of the ''Automated Inter-Dealer Quotation System'' Prohibition and Related Grandfathering Provision
J. Proposed Revisions to Form F–6
K. Proposed Amendment of Exchange Act Rule 15c2–11
L. Proposed Transition Periods
1. Regarding Section 12 Registration
2. Regarding Processing of Paper Submissions
M. Revisions to Form 15
III. Paperwork Reduction Act Analysis
IV. Cost-Benefit Analysis
V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation Analysis
VI. Regulatory Flexibility Act Certification
VII. Statutory Basis and Text of Proposed Amendments

I. Executive Summary and Background

A. Introduction

Congress adopted Section 12(g) of the Exchange Act [10] in order to provide investors trading in over-the-counter securities, in which there was significant public interest, with the same fundamental disclosure protections afforded to investors trading in securities listed on a national securities exchange.[11] When read in conjunction with the subsequently adopted Exchange Act Rule 12g–1,[12]

[1] 17 CFR 240.12g3–2.
[2] 17 CFR 240.15c2–11.
[3] 15 U.S.C. 78a, *et seq.*
[4] 17 CFR 249.323.
[5] 17 CFR 249.324.
[6] 17 CFR 249.240f.
[7] 17 CFR 249.306.
[8] 17 CFR 239.36.
[9] 15 U.S.C. 77a, *et seq.*
[10] 15 U.S.C. 78*l*(g).
[11] Congress adopted Exchange Act Section 12(g) as part of the Securities Act Amendments of 1964 [Pub. L. 88–467 (August 20, 1964)]. *See* the 88th Congress, 2d Session, *U.S. House of Representatives Report No. 1418* (May 19, 1964).
[12] 17 CFR 240.12g–1.

Section 12(g) requires an issuer [13] to file an Exchange Act registration statement regarding a class of equity securities within 120 days of the last day of its fiscal year if, on that date, the number of its record holders is 500 or greater, and the issuer's total assets exceed $10 million.[14]

When adopting Section 12(g), Congress expressly granted the Commission the power to exempt any security of a foreign issuer from that section if it found that ''such exemption is in the public interest and is consistent with the protection of investors.'' [15] The Commission initially adopted a provisional exemption from Section 12(g) for the securities issued by any foreign government, foreign national or foreign corporation so that it could study more fully the extent to which Section 12(g) should apply to foreign securities.[16] This initiative involved a review of the disclosure requirements and practices of many of the foreign countries with issuers whose securities were traded in the United States over-the-counter market.[17]

Following completion of its work, in 1967 the Commission adopted Exchange Act Rule 12g3–2,[18] which established two exemptions from Section 12(g) for foreign private issuers.[19] Exchange Act Rule 12g3–2(a) exempts a foreign private issuer whose equity securities are held of record by less than 300 residents in the United States, although it has 500 or more record holders on a worldwide basis as of the end of its most recently completed fiscal year.[20] An issuer that relies on this exemption must reassess the number of its U.S. shareholders at the end of each fiscal year in order to determine whether the exemption remains valid.

Although, for this first exemption, the Commission used a traditional shareholder test to determine whether there was sufficient U.S. investor interest to warrant requiring Section 12(g) registration,[21] it adopted a different approach for the second exemption. Exchange Act Rule 12g3–2(b)[22] exempts a foreign private issuer from Section 12(g) registration if, among other requirements, the issuer furnishes to the Commission on an ongoing basis information it has made public or is required to make public under the laws of its jurisdiction of incorporation, organization or domicile, pursuant to its non-U.S. stock exchange filing requirements, or that it has distributed or is required to distribute to its security holders (collectively, its ''non-U.S. disclosure documents'').[23] The Commission adopted this exemption because there was improvement in the reporting of financial information by foreign issuers, due to changes in foreign corporate laws, stock exchange requirements, and voluntary disclosure by the foreign companies themselves.[24] Because of the continued and expected improvement in the quality of information being made public by foreign issuers, the Commission determined that Section 12(g) exemptive relief was appropriate for a foreign private issuer that has not sought a public market in the United States for its equity securities, and that furnishes to the Commission its non-U.S. disclosure documents.[25] These documents would then be available for review by U.S. investors through the Commission's public reference facilities.

B. Current Rule 12g3–2(b) Requirements

As a condition to obtaining the Exchange Act Rule 12g3–2(b) exemption, an issuer must initially submit to the Commission a list of its non-U.S. disclosure requirements as well as copies of its non-U.S. disclosure documents published since the beginning of its last fiscal year.[26] The Rule clarifies that an issuer need only submit copies of information that is material to an investment decision for the purpose of obtaining or maintaining the exemption.[27] As examples of material information, the Rule lists an issuer's financial condition or results of operations, changes in its business, the acquisition or disposition of assets, the issuance, redemption or acquisition of securities, changes in management or control, the granting of options or other payment to directors or officers, and transactions with directors, officers or principal security holders. At the time of the initial submission, an issuer must also provide the Commission with the number of U.S. holders of its equity securities and the percentage held by them, as well as a brief description of how its U.S. holders acquired those shares.[28]

Rule 12g3–2(b) currently requires that an applicant submit all of the necessary non-U.S. disclosure documents and other information before the date that a registration statement would otherwise become due under Section 12(g).[29] Once an issuer has timely submitted its application and obtained the exemption, the issuer may surpass the record holder thresholds as long as it maintains the exemption by submitting the required non-U.S. documents.

From its inception, the Rule 12g3–2(b) disclosure regime has mandated paper submissions. Even after the adoption of EDGAR filing rules for foreign private issuers, the Commission has required a foreign private issuer to submit its

[13] Application of Section 12(g) requires that the issuer have the necessary jurisdictional nexus with interstate commerce in the United States. 15 U.S.C. 78*l*(g)(1).

[14] Through successive amendments of Rule 12g–1, the Commission raised the statutory asset threshold from an amount exceeding $1,000,000 to an amount exceeding $10,000,000.

[15] Exchange Act Section 12(g)(3) [15 U.S.C. 78*l*(g)(3)]. In an earlier draft of the 1964 amendments, the U.S. Senate justified an exemptive provision for the securities of foreign issuers based on the serious difficulties that would result from the enforcement of Exchange Act Section 12(g)'s registration and reporting requirements ''against foreign issuers outside the jurisdiction of the United States who do not voluntarily seek funds in the American capital markets or listing on an exchange. * * *'' 88th Congress, 1st Session, *U.S. Senate Report No. 379* 1, 29 (July 24, 1963).

[16] Release No. 34–7427 (September 15, 1964). At that time, while expressing its belief that, to the extent practicable, U.S. investors in foreign securities should be afforded the same investor protections to which U.S. investors in domestic securities are entitled, the Commission also recognized the practical problems ''of enforcement and compliance and of differing foreign laws'' raised by the application of Section 12(g) to foreign companies.

[17] *See* Release No. 34–7746 (November 16, 1965).

[18] Release No. 34–8066 (April 28, 1967).

[19] As defined in Rule 3b–4(c) (17 CFR 240.3b–4(c)), a foreign private issuer is a corporation or other organization incorporated or organized in a foreign country that either has 50 percent or less of its outstanding voting securities held of record by United States residents or, if more than 50 percent of its voting securities are held by U.S. residents, about which none of the following are true:

(1) A majority of its executive officers or directors are U.S. citizens or residents;

(2) more than 50 percent of its assets are located in the United States; and

(3) the issuer's business is administered principally in the United States.

[20] 17 CFR 240.12g3–2(a).

[21] The Commission reasoned that having fewer than 300 U.S. shareholders evidenced such an insufficient public interest that it could not justify applying Section 12(g) although a foreign private issuer may have breached the statutory threshold. The Commission further relied on Exchange Act Section 12(g)(4) [15 U.S.C. 78*l*(g)(4)], which provides that an issuer may file a certification with the Commission to terminate its registration when its record holders have fallen below 300. Release No. 34–7746.

[22] 17 CFR 240.12g3–2(b).

[23] Exchange Act Rule 12g3–2(b)(1)(iii) (17 CFR 240.12g3–2(b)(iii)).

[24] Release No. 34–8066.

[25] *Id.*

[26] Exchange Act Rule 12g3–2(b)(1)(i) (17 CFR 240.12g3–2(b)(1)(i)). Historically, an issuer has submitted its home jurisdiction materials as part of a letter application to the Commission, which has been processed through the Office of International Corporate Finance in the Division of Corporation Finance.

[27] Exchange Act Rule 12g3–2(b)(3) (17 CFR 240.12g3–2(b)(3)).

[28] Exchange Act Rule 12g3–2(b)(1)(v) (17 CFR 240.12g3–2(b)(1)(v)). An issuer must also disclose the dates and circumstances of the most recent public distribution of securities by the issuer or an affiliate.

[29] Exchange Act Rule 12g3–2(b)(2) (17 CFR 240.12g3–2(b)(2)).

initial Rule 12g3–2(b) supporting materials in paper.[30] The Commission has based this treatment of Rule 12g3–2(b) materials on the analogous treatment of applications for an exemption from Exchange Act reporting obligations filed pursuant to Exchange Act Section 12(h).[31]

Once a foreign private issuer has obtained the Rule 12g3–2(b) exemption, it may have its equity securities traded on a limited basis in the over-the-counter market in the United States. Typically a foreign private issuer obtains the Rule 12g3–2(b) exemption in order to have established an unlisted, sponsored or unsponsored depositary facility for its American Depositary Receipts (''ADRs'').[32] Establishing the Rule 12g3–2(b) exemption also facilitates resales of an issuer's securities to qualified institutional buyers (''QIBs'') under Rule 144A.[33] It further permits registered broker-dealers to fulfill their current information delivery obligations concerning foreign private issuers' securities for which they seek to publish quotations.[34]

The Rule 12g3–2(b) exemption has generally not been available to a foreign private issuer that had a class of securities registered under Exchange Act Section 12 or had a Section 15(d) reporting obligation, active or suspended, during the previous 18 months.[35] The exemption has similarly been unavailable to an issuer that succeeded to the Exchange Act reporting obligations of another company following a merger, consolidation, acquisition or exchange of shares.[36]

However, in March 2007, the Commission adopted amendments to Rule 12g3–2, which enable a foreign private issuer to claim the Rule 12g3–2(b) exemption immediately upon the effectiveness of its termination of Exchange Act registration and reporting pursuant to newly adopted Exchange Act Rule 12h–6.[37] While these amendments eliminated the 18-month and successor issuer prohibitions for issuers terminating their Exchange Act registration and reporting under Rule 12h–6, the prohibitions still apply to foreign private issuers that have exited the Exchange Act reporting regime under Exchange Act Rule 12g–4 or 12h–3.[38]

In order to maintain the Rule 12g3–2(b) exemption, an issuer must furnish to the Commission on an ongoing basis its non-U.S. disclosure documents. Until the March 2007 amendments, the Commission required an issuer to submit those documents in paper to the Commission. The March amendments require an issuer that has obtained the Rule 12g3–2(b) exemption, upon the effectiveness of its termination of registration and reporting pursuant to newly adopted Rule 12h–6, to publish its non-U.S. disclosure documents on an ongoing basis on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, rather than submit that information in paper to the Commission.[39] The amendments further permit a foreign private issuer that has obtained or will obtain the Rule 12g3–2(b) exemption, upon application to the Commission and not pursuant to Rule 12h–6, to publish electronically in the same manner its non-U.S. documents required to maintain the exemption.[40]

The March 2007 amendments further clarified the English translation requirements under Rule 12g3–2(b).[41] The amendments provide that, when electronically publishing its non-U.S. documents required to maintain the Rule 12g3–2(b) exemption, at a minimum, a foreign private issuer must electronically publish English translations of the following documents if in a foreign language:

- Its annual report, including or accompanied by annual financial statements;
- Interim reports that include financial statements;
- Press releases; and
- All other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.[42]

The March 2007 amendments also provide that, for a foreign private issuer that electronically publishes its non-U.S. disclosure documents, the Rule 12g3–2(b) exemption remains in effect for as long as the issuer fulfills the ongoing non-U.S. disclosure requirement, or until the issuer registers a class of securities under Section 12 of the Exchange Act or incurs reporting obligations under Section 15(d) of the Exchange Act.[43] This is consistent with the Commission's treatment of issuers making paper submissions under Rule 12g3–2(b).

C. Proposed Rule 12g3–2 Amendments

Since the initial adoption of Rule 12g3–2(b) four decades ago, the globalization of securities markets, advances in information technology, the increased use of ADR facilities by foreign companies to trade their securities in the United States, and other factors have increased significantly the number of foreign companies that have engaged in cross-border activities, as well as increased the amount of U.S. investor interest in the securities of foreign companies. These developments led us recently to re-evaluate and revise the Commission rules governing when a foreign private issuer may terminate its Exchange Act registration and reporting obligations.[44]

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[30] *See* Release No. 33–8099 (May 14, 2002), 67 FR 36678 (May 24, 2002).

[31] 15 U.S.C. 78*l*(h). We require the filing of Section 12(h) exemptive applications in paper pursuant to Regulation S–T Rule 101(c)(16) (17 CFR 232.101(c)(16)).

[32] An ADR is a negotiable instrument that represents an ownership interest in a specified number of securities, which the securities holder has deposited with a designated bank depositary. The filing of Securities Act Form F–6 (17 CFR 239.36) is required in order to establish an ADR facility. The eligibility criteria for the use of Form F–6 include the requirement that the issuer of the deposited securities have a reporting obligation under Exchange Act section 13(a) or have established the exemption under Rule 12g3–2(b). See General Instruction I.A.3 of Form F–6. While required to be registered on Form F–6 under the Securities Act, ADRs are exempt from registration under Exchange Act Section 12(g) pursuant to Exchange Act Rule 12g3–2(c) (17 CFR 240.12g3–2(c)).

[33] See Securities Act Rule 144A(d)(4) (17 CFR 230.144A(d)(4)).

[34] Brokers currently can comply with their obligations under Exchange Act Rule 15c2–11 (17 CFR 240.15c2–11) when a foreign company has established and maintains the Rule 12g3–2(b) exemption by, in part, reviewing the information furnished to the Commission under the exemption. See Rule 15c2–11(a)(4) (17 CFR 240.15c2–11(a)(4)).

[35] Exchange Act Rule 12g3–2(d)(1) (17 CFR 240.12g3–2(d)(1)). The 18-month prohibition does not apply to a Canadian issuer that incurred Section 15(d) reporting obligations solely from the filing of a registration statement under the Commission's Multijurisdictional Disclosure System (''MJDS'').

[36] Exchange Act Rule 12g3–2(d)(2) (17 CFR 240.12g3–2(d)(2)). Similarly, MJDS filers are not subject to this restriction.

[37] 17 CFR 240.12h–6. The Commission adopted these Rule 12g3–2 amendments and Rule 12h–6 in Release No. 34–55540 (March 27, 2007), 72 FR 16934 (April 5, 2007).

[38] 17 CFR 240.12g–4 and 240.12h–3. Both Rules 12g–4 and 12h–3 permit an issuer to exit the Exchange Act reporting regime following the filing of a Form 15 (17 CFR 249.323), which certifies that it has fewer than 300 record holders or less than 500 record holders and total assets not exceeding $10 million on the last day of each of its most recent 3 fiscal years.

[39] Exchange Act Rule 12g3–2(e) (17 CFR 240.12g3–2(e)).

[40] Exchange Act Rule 12g3–2(f) (17 CFR 240.12g3–2(f)).

[41] Rule 12g3–2(b)(4) (17 CFR 240.12g3–2(b)(4)) provides that copies furnished to the Commission of press releases and any materials distributed directly to security holders must be in English, and states that English summaries and versions may be used instead of English translations. However, the rule does not specify what other documents must be translated fully into English, and when summaries or versions may be used.

[42] Note 1 to Exchange Act Rule 12g3–2(e).

[43] 15 U.S.C. 78o(d).

[44] Several commenters on Rule 12h–6 encouraged the Commission to address the registration

We believe these same factors warrant reconsidering the Commission rules that determine when a foreign private issuer must enter the Section 12(g) regime as well.

We propose to amend Exchange Act Rule 12g3–2 to permit a foreign private issuer to claim the Rule 12g3–2(b) exemption, without having to submit an application to the Commission, as long as:

- The issuer is not required to file or furnish reports under Exchange Act Section 13(a)[45] or 15(d) of the Act;
- The issuer currently maintains a listing of the subject class of securities on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities;
- Either:
  - ○ The average daily trading volume of the subject class of securities in the United States for the issuer's most recently completed fiscal year has been no greater than 20 percent of the average daily trading volume of that class of securities on a worldwide basis for the same period; or
  - ○ The issuer has terminated its registration of a class of securities under Section 12(g) of the Act, or terminated its obligation to file or furnish reports under Section 15(d) of the Act, pursuant to Exchange Act Rule 12h–6; and
- Unless claiming the exemption in connection with or following its recent Exchange Act deregistration, the issuer has published specified non-U.S. disclosure documents, required to be made public from the first day of its most recently completed fiscal year, in English on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market.

All foreign private issuers that met the above requirements would be immediately exempt from Exchange Act registration under Rule 12g3–2(b) without having to apply to, or otherwise notify, the Commission, concerning the exemption. Thus, a foreign private issuer that exceeds the 300 U.S. holder threshold could automatically claim the exemption as long as it is not otherwise subject to Exchange Act reporting, meets the foreign listing condition, has 20 percent or less of its worldwide trading market in the United States, and electronically publishes the specified non-U.S. disclosure documents, as required under the proposed amendments.[46]

An issuer could also immediately claim the Rule 12g3–2(b) exemption upon the effectiveness of, or following its recent Exchange Act deregistration, whether pursuant to Rule 12g–4, 12h–3, or 12h–6, or the suspension of its reporting obligations under Section 15(d),[47] if it met the above requirements absent the electronic publication condition for its most recently completed fiscal year. Since a recently deregistered company will already have filed its Exchange Act reports on EDGAR for its most recently completed fiscal year, such a prior year publication requirement is not necessary to protect investors.

Like the March 2007 amendments, the proposed rules would require any issuer, whether a prior registrant or not, to maintain the Rule 12g3–2(b) exemption by publishing, on an ongoing basis and for each subsequent fiscal year, in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, the information specified for its last fiscal year. The proposed rules would require the electronic publication in English of the same types of information required under the March 2007 amendments.

The proposed rules provide that the Rule 12g3–2(b) exemption will remain in effect for as long as a foreign private issuer satisfies the electronic publication condition, or until:

- The issuer no longer maintains a listing for the subject class of securities on one or more exchanges in its primary trading market;
- The average daily trading volume of the subject class of securities in the United States exceeds 20 percent of the average daily trading volume of that class of securities on a worldwide basis for the issuer's most recently completed fiscal year, other than the year in which the issuer first claims the exemption; or
- The issuer registers a class of securities under section 12 of the Act or incurs reporting obligations under section 15(d) of the Act.

By requiring the electronic publication in English of specified non-U.S. disclosure documents for an issuer claiming the Rule 12g3–2(b) exemption, the proposed amendments should make it easier for U.S. investors to gain access to a foreign private issuer's material non-U.S. disclosure documents, and make better informed decisions regarding whether to invest in that issuer's equity securities through the over-the-counter market in the United States or otherwise. Thus, the proposed amendments should foster increased efficiency in the trading of the issuer's securities for U.S. investors.

By enabling a qualified foreign private issuer to claim the Rule 12g3–2(b) exemption automatically, and without regard to the number of its U.S. shareholders, the proposed rule amendments should encourage more foreign private issuers to claim the Rule 12g3–2(b) exemption. That would enable the establishment of additional ADR facilities, make it easier for broker-dealers to fulfill their obligations under Exchange Act Rule 15c2–11 to investors with respect to the equity securities of a non-reporting foreign company, and facilitate the resale of a foreign company's securities to QIBs in the United States under Securities Act Rule 144A. Consequently, the proposed rule amendments should foster the increased trading of a foreign company's securities in the U.S. over-the-counter market, which could benefit investors.

II. Discussion

A. Proposed Non-Reporting Condition

Proposed Exchange Act Rule 12g3–2(b) would require a foreign private issuer to have no reporting obligations under Exchange Act Section 13(a) or 15(d) as a condition to the exemption under the Rule.[48] Like the current non-Exchange Act reporting condition of Rule 12g3–2(b),[49] the purpose of this provision is to prevent an issuer from claiming the Rule 12g3–2(b) exemption when it already has incurred active Exchange Act reporting obligations.

1. Non-Reporting Issuers

A foreign private issuer would satisfy the proposed non-reporting condition if it did not already have reporting obligations under either Exchange Act Section 13(a) or 15(d). Since Section 13(a) imposes reporting obligations on an issuer that has registered a class of securities under Section 12, a foreign private issuer that has an effective registration statement filed with the Commission under Section 12(b), for

requirements under Section 12(g) for foreign private issuers as well as the rules relating to termination of Exchange Act registration and reporting.

[45] 15 U.S.C. 78m(a).

[46] An issuer that has fewer than 300 U.S. resident shareholders would continue to be exempt from Exchange Act registration without any other conditions unless it also sought to establish the Rule 12g3–2(b) exemption.

[47] An issuer may suspend its Section 15(d) reporting obligations under Rule 12h–3 or Section 15(d) itself. The statutory section provides that suspension occurs if, on the first day of the fiscal year, other than the year in which the issuer's registration statement went effective, the issuer's record holders number less than 300.

[48] Proposed Exchange Act Rule 12g3–2(b)(1).

[49] Rule 12g3–2(d)(1) (17 CFR 240. 12g3–2(d)(1)).

example, covering a class of debt securities, or Section 12(g), covering a particular class of equity securities, would be ineligible to claim the exemption. This treatment is consistent with the current Exchange Act reporting prohibition under Rule 12g3–2(b).[50]

Currently an issuer may apply for the Rule 12g3–2(b) exemption, although it may have exceeded the Section 12(g) shareholder thresholds on the last day of its most recently completed fiscal year, as long as the statutory 120-day period for filing a Section 12(g) registration statement has not lapsed.[51] We propose to eliminate this 120-day submission requirement because, under the proposed revised Rule 12g3–2(b) exemptive scheme, we do not believe that this requirement is necessary to protect investors.

The proposed revised exemptive scheme does not depend on an issuer's determination of the number of its worldwide or U.S. shareholders, and does not require that it submit a written application disclosing that information. Instead, it requires a foreign private issuer to satisfy a U.S. trading volume standard measured for its most recently completed fiscal year, meet a foreign listing requirement, and electronically publish specified material non-U.S. disclosure documents in English. If we also required an issuer to claim the exemption within the 120-day period, we believe some issuers, particularly smaller ones, would be unable to meet that deadline.[52] Assuming that those issuers continued to satisfy the other conditions to Rule 12g3–2(b), they would have to wait until the end of their current fiscal year and the start of a new 120-day period before they could claim the exemption. We see little benefit in making investors wait several months before being able to gain electronic access to the issuer's material non-U.S. disclosure documents in English.

As is currently the case, an issuer that, on the last day of its most recently completed fiscal year, has not exceeded the 500 worldwide holder threshold under Exchange Act Section 12(g), the 300 U.S. holder threshold under Rule 12g3–2(a), or the $10 million annual asset threshold under Rule 12g–1, could claim an exemption from Section 12(g) registration for a class of equity securities based upon one or more of those provisions, and would not have to comply with Rule 12g3–2(b)'s conditions, if it chose not to rely on that rule for its exemption from Section 12(g) registration. However, such an issuer would have to claim the Rule 12g3–2(b) exemption, and satisfy all of its conditions, if it sought to have established an ADR facility for its equity securities. ADRs must be registered on a Form F–6, which requires an issuer of the deposited securities to be either an Exchange Act reporting company or have the Rule 12g3–2(b) exemption.

2. Deregistered Issuers

A foreign private issuer that has suspended its Exchange Act reporting obligations upon the filing of Form 15, pursuant to Rule 12g–4 or 12h–3, or Form 15F, pursuant to Rule 12h–6, would satisfy the non-reporting requirement upon the effectiveness of its deregistration, assuming that it had not otherwise incurred additional Exchange Act reporting obligations. Similarly, a foreign private issuer that suspended its reporting obligations pursuant to the statutory terms of Section 15(d) would satisfy the non-reporting condition immediately upon its determination that it had less than 300 shareholders as of the beginning of its most recent fiscal year.

Thus, unlike the current rule, the proposed provision would not require an issuer to look back over the previous eighteen months and determine whether it had Exchange Act reporting obligations during that period.[53] We eliminated the eighteen month requirement when adopting the March 2007 rule amendments that granted the Rule 12g3–2(b) exemption automatically to a foreign private issuer upon the effectiveness of its termination of Exchange Act registration and reporting pursuant to Rule 12h–6. We see no reason to treat differently foreign private issuers that have terminated their Section 12(g) registration under the older Rule 12g–4 following the filing of a Form 15.[54] Elimination of a lengthy waiting period would help hasten the publishing of a foreign private issuer's non-U.S. disclosure documents required under the exemption and, thus, help improve the ability of U.S. investors to make informed decisions regarding that issuer's securities.

For the same reason, proposed Rule 12g3–2(b) would eliminate the current rule's general prohibition against making the exemption available to an issuer that has had active or suspended reporting obligations under Section 15(d) during a prescribed period.[55] The current rule precludes any issuer that suspended its reporting obligations under Section 15(d) from ever being able to obtain the Rule 12g3–2(b) exemption, no matter how much time has elapsed from the effectiveness of its suspension. We permitted an issuer to claim the Rule 12g3–2(b) exemption immediately upon the effectiveness of its deregistration under Rule 12h–6, although its reporting obligations derived from Section 15(d). Similarly, we propose that an otherwise eligible issuer could claim the Rule 12g3–2(b) exemption upon the effectiveness of the suspension of its reporting obligations under Section 15(d) or pursuant to Rule 12h–3 and following the filing of a Form 15. As long as it has not once again incurred active Section 15(d) reporting obligations,[56] an issuer would be able to claim the Rule 12g3–2(b) exemption and publish its non-U.S. disclosure documents accordingly.

Comment Solicited

We solicit comment on the proposed non-Exchange Act reporting condition.

- Should we require an issuer not to have Exchange Act reporting obligations as a condition to claiming the Rule 12g3–2(b) exemption, as proposed?
- Should we permit an issuer that has Exchange Act reporting obligations regarding a class of debt securities to claim the Rule 12g3–2(b) exemption for a class of equity securities without having first to deregister the class of debt securities? Should we permit an issuer that has Exchange Act reporting obligations regarding a particular class of equity securities to claim the Rule 12g3–2(b) exemption regarding a different class of equity securities?
- Should we permit an issuer to claim the Rule 12g3–2(b) exemption if it meets the trading volume condition and the other proposed conditions although the statutory 120-day period has lapsed, as proposed? If not, why should we retain the 120-day statutory requirement for Rule 12g3–2(b) when that provision pertains to a shareholder-based requirement? What are the benefits to investors of eliminating or retaining the 120-day requirement?

[50] Exchange Act Rule 12g3–2(d)(1).

[51] Exchange Act Rule 12g3–2(b)(2).

[52] Under current Rule 12g3–2(b), several issuers have requested Commission staff to accept their applications although the 120-day period has lapsed.

[53] Exchange Act Rule 12g3–2(d)(1) provides that the Rule 12g3–2(b) exemption is generally not available to a foreign private issuer that, during the preceding 18 months, has registered a class of securities under Exchange Act Section 12 or had an active or suspended Section 15(d) reporting obligation.

[54] Although a qualifying prior Form 15 filer may terminate its Exchange Act registration and reporting under Rule 12h–6, only a small number have done so.

[55] Rule 12g3–2(d)(1). Unlike under Section 12(g) and Rule 12g–4, an issuer can only suspend, and cannot terminate, its reporting obligations under Section 15(d) and Rule 12h–3.

[56] Following deregistration, an issuer would once again incur Section 15(d) reporting obligations upon the effectiveness of a new Securities Act registration statement.

• Should we require an issuer not to have Exchange Act reporting obligations over a specified period before claiming the exemption? Should the specified period be 3, 6, 12, 18, or 24 months, or some other specified period?

• Should we permit an otherwise eligible issuer to claim the Rule 12g3–2(b) exemption immediately upon the termination of its Section 12(g) registration or the suspension of its Section 15(d) reporting obligations, as proposed?

B. Proposed Foreign Listing Condition

As a second condition to the use of the Rule 12g3–2(b) exemption, the proposed amendments would require an issuer currently to maintain a listing of the subject class of securities on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities. These proposed rule amendments are substantially similar to the foreign listing condition and definition of primary trading market adopted as part of the March 2007 amendments.[57]

The purpose of the foreign listing condition is to help assure that there is a non-U.S. jurisdiction that principally regulates and oversees the issuance and trading of the issuer's securities and the issuer's disclosure obligations to investors. This foreign listing condition makes more likely the availability of a set of non-U.S. securities disclosure documents to which a U.S. investor may turn for material information when making investment decisions about the issuer's securities in the U.S. over-the-counter market. This foreign listing condition is also consistent with the Commission staff's past and current practice of administering the Rule 12g3–2(b) exemption.

The proposed rule amendments define primary trading market to mean that at least 55 percent of the trading in the issuer's subject class of securities took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year. The proposed amendments further instruct that, if a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for the purpose of this paragraph, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities.

Like the 2007 amendments, the proposed amendments would permit an issuer to aggregate its securities over multiple markets in one or two foreign jurisdictions in recognition that many foreign private issuers have listings on more than one exchange in one or more non-U.S. markets. Unlike the earlier amendments, however, the proposed rule amendments would not require an issuer establishing the exemption, but not deregistering, to have maintained a foreign listing for the previous twelve months, or for some other specified period of time, since we see no reason to exclude newly listed foreign companies from eligibility. We note that many foreign exchanges require substantial initial disclosure before a listing is accepted. In addition, there is currently no similar requirement for a non-reporting company applying for the Rule 12g3–2(b) exemption.

Under Rule 12h–6, an issuer must certify that, at the time it files its Form 15F,[58] it meets that rule's foreign listing requirement. That issuer would also have to meet the proposed foreign listing requirement upon the effectiveness of its Exchange Act termination of registration and reporting under Rule 12h–6 in order to be able to claim the Rule 12g3–2(b) exemption. Since typically that effectiveness occurs 90 days from the date of filing of the Form 15F, we expect most Form 15F filers will satisfy the proposed foreign listing requirement under Rule 12g3–2(b).[59]

Comment Solicited

We solicit comment on the proposed foreign listing condition.

• Should we require an issuer to maintain a listing on one or more exchanges in one or two foreign jurisdictions comprising its primary trading market as a condition to the Rule 12g3–2(b) exemption, as proposed? Should we require that the foreign exchange be part of a recognized national market system or possess certain characteristics? If so, what characteristics would be appropriate?

• Should we define primary trading market to mean that at least 55 percent of the trading in the issuer's subject class of securities took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year, as proposed? If not, is there another percentage, such as 50, 51, 60, or some other percent, that is more appropriate?

• Should we permit the trading volume in an issuer's primary trading market to be less than 50 percent of its worldwide trading volume as long as the primary trading market's trading volume is greater than its U.S. trading volume?

• Should we also require that, if a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for the purpose of the foreign listing condition, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities, as proposed? Should we instead permit an issuer to count the trading of its securities only in one foreign jurisdiction or only on one exchange in each of two foreign jurisdictions for the purpose of the foreign listing condition?

• Are there a significant number of issuers that may be listed on a foreign exchange but that would not meet the 55 percent threshold under the primary trading market definition, for example, due to being traded on more than two foreign exchanges, and which would otherwise satisfy the current or proposed conditions of Rule 12g3–2(b)? If so, what are specific examples of those issuers? Should we require those issuers to meet a lower U.S. relative trading volume threshold to be eligible for the Rule 12g3–2(b) exemption? If so, should the threshold be 3, 5, 7, 10 or some other percent of worldwide trading volume? What would be the advantages or disadvantages of such an approach?

• Should we require an issuer to maintain a listing in its jurisdiction of incorporation, organization or domicile instead of, or in addition to, a listing in its primary trading market? Would such a requirement increase the likelihood that a non-U.S. jurisdiction is principally regulating the trading in an issuer's securities?

• Should we permit an unlisted issuer to claim the Rule 12g3–2(b) exemption as long as it publishes voluntarily the same documents that a listed company is required to publish in its home jurisdiction?

[57] Exchange Act Rule 12h–6(a)(3) (17 CFR 240.12h–6(a)(3)) and Exchange Act Rule 12h–6(f)(5) (17 CFR 240.12h–6(f)(5)).

[58] 17 CFR 249.324. Similar to a Form 15, Form 15F is the form that a foreign private issuer must file to certify that it meets the conditions for terminating its Exchange Act registration and reporting obligations under Rule 12h–6.

[59] Unless the Commission objects, termination of an issuer's reporting and registration under Rule 12h–6 is effective 90 days after the filing of its Form 15F. Exchange Act Rule 12h–6(g)(1) (17 CFR 240.12h–6(g)(1)).

C. Proposed Quantitative Standard

1. Trading Volume Benchmark

Proposed Rule 12g3–2(b) would permit an otherwise eligible issuer to claim an exemption from Section 12(g) registration by meeting a quantitative standard that does not depend on a count of the issuer's U.S. holders. Under the proposed rule amendments, regardless of the number of its U.S. holders, an issuer would be eligible to claim the Rule 12g3–2(b) exemption if the average daily trading volume of the subject class of securities in the United States for the issuer's most recently completed fiscal year has been no greater than 20 percent of the average daily trading volume of that class of securities on a worldwide basis for the same period.[60]

We adopted a trading volume benchmark as part of the 2007 amendments concerning foreign deregistration because we believed it to be a more direct and less costly measure of the relative U.S. market interest in a foreign private issuer's securities than one based on a count of the issuer's shareholders.[61] We believe the same considerations apply to the proposed amendments of the rules that determine when a foreign private issuer must register a class of equity securities under Section 12(g). If only 20 percent or less of an issuer's worldwide trading volume occurs in the United States, we believe the relative U.S. market interest in those securities does not warrant subjecting the issuer to Exchange Act reporting requirements.

The 2007 amendments established a trading volume standard that permits a qualified foreign private issuer to terminate its Exchange Act registration and reporting obligations if its U.S. average daily trading volume is no greater than 5 percent of its worldwide average daily trading volume. We believe it is appropriate to have a stricter trading volume standard for determining when an issuer may exit the Exchange Act registration and reporting regime compared to when it must enter that regime. In the former instance, an issuer has availed itself of U.S. market facilities and filed Exchange Act reports upon which U.S. investors have relied. A similar relationship exists between the current shareholder-based standards governing entrance into and exit from the Exchange Act reporting regime.[62]

The proposed rule amendments would require an issuer to calculate U.S. and worldwide trading volume in the same fashion as under Rule 12h–6.[63] Under that rule, when determining its U.S. average daily trading volume, an issuer must include all transactions, whether on-exchange or off-exchange. When determining its worldwide average daily trading volume, an issuer must include on-exchange transactions, and may include off-exchange transactions. The sources of trading volume information may include publicly available sources, market data vendors or other commercial information service providers upon which an issuer has reasonably relied in good faith, and as long as the information does not duplicate any other trading volume information obtained from exchanges or other sources.

The proposed amendments would require an issuer to measure its trading volume for its most recently completed fiscal year. In contrast, Rule 12h–6 enables an issuer to make its trading volume determinations for a recent 12-month period, which is defined as a 12-calendar-month period that ended no more than 60 days before the filing date of an issuer's Form 15F.[64] A rolling 12-month period is appropriate in the context of deregistration since the relevant rules do not require an eligible issuer to deregister within a particular time frame. However, we are not proposing a similar rolling 60-day window for the Rule 12g3–2 amendments since Section 12(g) posits the last day of an issuer's fiscal year as the measuring date for determining whether an issuer must register a class of securities under that statutory section.

2. Rule 12h–6 Issuers

An issuer that terminates its Exchange Act registration and reporting regarding a class of equity securities under Rule 12h–6 must meet either that rule's trading volume benchmark or its record holder standard.[65] Rule 12h–6's trading volume standard requires an issuer's U.S. trading volume to be no greater than 5 percent of its worldwide trading volume, and to be measured over a recent 12-month period.[66] Rule 12h–6's alternative record holder standard requires an issuer's worldwide or U.S. holders to be less than 300.[67] An issuer that has proceeded under either of Rule 12h–6's quantitative provisions obtains the Rule 12g3–2(b) exemption upon the termination of its registration and reporting under Rule 12h–6.

Because a Rule 12h–6 issuer will have met a more stringent trading volume test, although most likely for a different 12-month period, we do not believe it is necessary to require that issuer to recalculate its relative U.S. trading volume for the previous 12 months upon the effectiveness of its deregistration under Rule 12h–6 for the purpose of determining whether it may claim the Rule 12g3–2(b) exemption. Similarly, we believe that an issuer that has satisfied Rule 12h–6's strict record holder standard should continue to be able to claim the Rule 12g3–2(b) exemption upon the termination of its registration and reporting under Rule 12h–6 as long as it meets the proposed Rule 12g3–2(b) foreign listing requirement.

Comment Solicited

We solicit comment on the proposed Rule 12g3–2(b) quantitative provision.

- Should an issuer be able to claim the Rule 12g3–2(b) exemption if the U.S. trading volume of its subject class of securities is no greater than a specified percentage of its worldwide trading volume for the previous 12 months, even if the number of its U.S. shareholders is 300 or greater, as proposed?
- If so, should the U.S. trading volume standard be no greater than 20 percent of worldwide trading volume, as proposed? Should the U.S. trading volume standard instead be no greater than 5, 10, 15, 25, 30 or some other percent of worldwide trading volume?
- Is there another quantitative measure that is a more appropriate measure of relative U.S. investor interest in a foreign private issuer's securities than the proposed trading volume standard?

[60] Proposed Exchange Act Rule 12g3–2(b)(3)(i).

[61] *See* Release No. 34-55540, Parts I.A and II.A.1.a.ii. We also adopted a 20 percent trading volume benchmark in the definition of ''substantial U.S. market interest'' under Regulation S. *See* 17 CFR 230.902(j).

[62] Compare Exchange Act Section 12(g)'s 500 or greater shareholder standard compelling registration with the less than 300 U.S. or worldwide shareholder standard permitting deregistration under Exchange Act Rules 12h–6, 12g–4 and 12h–3.

[63] The instructions for calculating trading volume are set forth in Instruction 3 to Item 4 of Form 15F and in Release No. 34–55540, Part II.A.1.a.ii.

[64] Exchange Act Rule 12h–6(f)(6) (17 CFR 240.12h–6(f)(6)).

[65] Exchange Act Rule 12h–6(a)(4) (17 CFR 240.12h–6(a)(4)). Thus far, most issuers that have terminated their registration and reporting requirements under Rule 12h–6 have relied on the trading volume standard.

[66] Exchange Act Rule 12h–6(a)(4)(i) (17 CFR 240.12h–6(a)(4)(i)). Rule 12h–6(f)(6) (17 CFR 240.12h–6(f)(6)) defines a recent 12-month period to mean a 12-calendar-month period that ended no more than 60 days before the filing date of Form 15F.

[67] Exchange Act Rule 12h–6(a)(4)(ii) (17 CFR 240.12h–6(a)(4)(ii)).

• Should we not impose any quantitative measure relating to U.S. market interest when determining whether a foreign private issuer should be subject to Exchange Act registration?

• Should we require an issuer to determine its relative U.S. trading volume for its most recently completed fiscal year, as proposed? If not, should the measuring period be a shorter period, such as 3 or 6 months? Should it be a longer period, such as 18 or 24 months? Should the measuring period be the same as a recent 12-month period, as under Rule 12h–6?

• Should we require an issuer to calculate its U.S. and worldwide trading volumes as under Rule 12h–6, as proposed? Should we require additional, or different, requirements or guidance regarding off-exchange transactions?

• Should we permit an issuer's sources of trading volume information to include publicly available sources, market data vendors or other commercial information service providers upon which the issuer has reasonably relied in good faith? Are there other parties or services that we should specify as permissible sources of trading volume information?

• Should we permit an issuer that has satisfied Rule 12h–6's trading volume benchmark to claim the Rule 12g3–2(b) exemption upon the effectiveness of its Rule 12h–6 deregistration, assuming it meets the proposed Rule 12g3–2(b) foreign listing requirement, as proposed?

• Similarly should we permit an issuer that has satisfied Rule 12h–6's alternative record holder condition to claim the Rule 12g3–2(b) exemption upon the effectiveness of its Rule 12h–6 deregistration as long as it meets the proposed Rule 12g3–2(b) foreign listing requirement, as proposed?

• Are there some currently Rule 12g3–2(b)-exempt companies that would lose the exemption upon the effectiveness of the proposed rule amendments because their U.S. trading volume exceeds the proposed threshold and the number of their U.S. holders is 300 or greater? If so, are there a significant number of such companies and how should we treat them? Should we provide a transition period for those companies that would grant them a longer period of time before they would have to register their securities under Exchange Act Section 12(g)?[68] Should we provide a ''grandfather'' provision or issue an order that would permit issuers that have currently claimed the exemption under Rule 12g3–2(b), but would exceed the proposed trading volume threshold, to continue to be exempt from Section 12(g) provided that they comply with all other conditions? Provide specific examples of such companies.

• Should we establish a different U.S. trading volume threshold for companies from certain countries or regions, for example, Canada, which may have a greater relative U.S. market presence than other foreign companies? If so, should that threshold be 25, 30, 35 or some higher percent of worldwide trading volume?

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

1. Electronic Publishing Requirement To Claim Exemption

Unless in connection with or following a recent Exchange Act deregistration, in order to claim the Rule 12g3–2(b) exemption, the proposed amendments would require an issuer to have published in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, information that, from the first day of its most recently completed fiscal year, it:

• Has made public or been required to make public pursuant to the laws of the country of its incorporation, organization or domicile;

• Has filed or been required to file with the principal stock exchange in its primary trading market on which its securities are traded and which has been made public by that exchange; and

• Has distributed or been required to distribute to its security holders.[69]

These are the same categories of information that the Commission has historically required a non-reporting company to submit in paper when applying for the exemption under Rule 12g3–2(b).[70] They also are the same non-U.S. disclosure documents that, more recently, the Commission has required an issuer to publish electronically in order to maintain its Rule 12g3–2(b) exemption claimed upon the effectiveness of its deregistration under Rule 12h–6.[71]

The purpose of this non-U.S. publication condition is to provide U.S. investors with ready access to material information when trading in the issuer's equity securities in the over-the-counter market.[72] This condition also would assist U.S. investors who are interested in trading the issuer's securities in its primary securities market. Moreover, having a foreign private issuer's key non-U.S. disclosure documents electronically published in English would assist broker-dealers in meeting their Rule 15c2–11 obligations to investors and facilitate resales of that issuer's securities to qualified institutional buyers under Rule 144A.

As under the current rule, the proposed amendments would require an issuer only to publish electronically information that is material to an investment decision regarding the subject securities,[73] such as:

• Results of operations or financial condition;

• Changes in business;

• Acquisitions or dispositions of assets;

• The issuance, redemption or acquisition of securities;

• Changes in management or control;

• The granting of options or the payment of other remuneration to directors or officers; and

• Transactions with directors, officers or principal security holders.[74]

As is currently required of an issuer that has terminated its Exchange Act registration and reporting obligations under Rule 12h–6,[75] the proposed rule amendments would require any issuer claiming the Rule 12g3–2(b) exemption to publish electronically, at a minimum, English translations of the following documents if in a foreign language:

• Its annual report, including or accompanied by annual financial statements;

• Interim reports that include financial statements;

• Press releases; and

• All other communications and documents distributed directly to security holders of each class of

[68] *See* Part II.L. of this release for discussion of a proposed three-year transition period.

[69] Proposed Exchange Act Rule 12g3–2(b)(4)(i).

[70] Exchange Act Rules 12g3–2(b)(1)(i).

[71] Exchange Act Rule 12g3–2(e)(2) (17 CFR 240. 12g3–2(e)(2)).

[72] Any trading of a foreign private issuer's Rule 12g3–2(b) exempt securities in the United States would have to occur through an over-the-counter market such as that maintained by the Pink Sheets, LLC since, as of April, 1998, the NASD has required a foreign private issuer to register a class of securities under Exchange Act Section 12 before its securities could be traded through the electronic over-the-counter bulletin board administered by Nasdaq. See, for example, NASD Notice to Members (January 1998).

[73] Proposed Exchange Act Rule 12g3–2(b)(4)(ii). Athough the substantive requirements are the same, we have proposed conforming changes to General Instruction E and Part II, Item 9 of Form 15F to reflect the proposed renumbering of the non-U.S. publication requirements of Rule 12g3–2(b).

[74] These are the same types of information specified in current Exchange Act Rule 12g3–2(b)(3)) (17 CFR 240.12g3–2(b)(3)).

[75] Note 1 to Exchange Act Rule 12g3–2(e) (17 CFR 240.12g3–2(e)).

securities to which the exemption relates.[76]

These are the same documents for which the Commission staff has historically required English translations because of their importance to investors.[77]

As proposed, an issuer that claimed the Rule 12g3–2(b) exemption, in connection with or following the recent effectiveness of its Exchange Act deregistration, would not have to comply with the electronic publication requirement for its last fiscal year.[78] Since a recently deregistered company will already have filed its Exchange Act reports on EDGAR for its most recently completed fiscal year, such a prior year publication requirement is not necessary to protect investors.

2. Electronic Publishing Requirement To Maintain Exemption

In order to maintain the Rule 12g3–2(b) exemption, the proposed amendments would require an issuer to publish the same information specified in the prior fiscal year provision, on an ongoing basis and for subsequent fiscal years, on its Internet Web site or through an electronic information delivery system in its primary trading market.[79] This requirement would apply to any issuer claiming the exemption, whether or not a former Exchange Act registrant. Like the prior fiscal year publication condition, this ongoing publication condition would help assure that investors and other market participants have access to an issuer's specified non-U.S. disclosure documents, in English, which are material to an investment decision.

Similar to the current rule,[80] the proposed rule amendments would require an issuer to publish electronically its non-U.S. disclosure documents promptly after the information has been made public, pursuant to its home jurisdiction laws, non-U.S. stock exchange rules, or shareholder rules and practices.[81] As under current Commission staff practice, what constitutes ''promptly'' would depend on the type of document and the amount of time required to prepare an English translation. Currently an issuer typically must electronically publish or submit in paper a copy of a material press release on the same business day of its original publication.

The proposed amendments would permit an issuer to meet Rule 12g3–2(b)'s electronic publication requirement concurrently with the publishing in English of a non-U.S. disclosure document through an electronic information delivery system generally available to the public in its primary trading market. Thus, if an issuer's non-U.S. stock exchange or securities regulatory authority permits the issuer to publish electronically a required report on its electronic delivery system, and the public has ready access to the report and other documents maintained on the system,[82] that electronic publication solely would satisfy the proposed Rule 12g3–2(b)'s electronic publishing requirements.

Comment Solicited

We solicit comment on the proposed condition requiring an issuer to publish electronically its non-U.S. disclosure documents.

- Should we require an issuer to publish its non-U.S. disclosure documents, made public since the beginning of its most recently completed fiscal year, on its Internet Web site or through an electronic information delivery system in its primary trading market, as a condition to claiming the Rule 12g3–2(b) exemption, other than in connection with or following the issuer's recent deregistration, as proposed? Should we also require an issuer that has recently deregistered to publish those non-U.S. disclosure documents on its Internet Web site or through an electronic information delivery system if it has not already done so as a condition to claiming the exemption?
- Should we require an issuer to publish electronically its non-U.S. disclosure documents on an ongoing basis and for subsequent fiscal years as a condition to maintaining the Rule 12g3–2(b) exemption, as proposed?
- Since one purpose of the proposed foreign listing condition is to increase the likelihood that another jurisdiction has regulatory oversight of an issuer, should we expand the jurisdictional scope of the required non-U.S. disclosure documents such that it includes all documents that the issuer has made or is required to make public under the law of any jurisdiction in its primary trading market? Should all documents, provided they are material, required to be published by an issuer pursuant to any governmental authority or stock exchange be included in the scope of non-U.S. disclosure documents?
- Where an issuer is organized in one jurisdiction and domiciled in another, should the issuer have to comply voluntarily with the obligations of both jurisdictions, or only one? If only one, should the issuer be permitted to elect which one or should the manner of choosing be specified by rule? If so, what standards should govern the decision?
- For both the conditions to claim and maintain the Rule 12g3–2(b) exemption, should we require an issuer to publish electronically the types of information deemed to be material as specified in the proposed rule? Are there other types of information that should be expressly stated in the non-exclusive list of deemed material information? Are there types of information that should be excluded from the list of required material documents?
- For both the conditions to claim and maintain the Rule 12g3–2(b) exemption, should we permit an issuer to publish its non-U.S. disclosure documents through an electronic information delivery system that is generally available to the public, even if that system is located outside of the issuer's primary trading market?
- Should we permit an issuer to satisfy the rule's electronic publication requirements concurrently with the publishing of its non-U.S. disclosure document through an electronic information delivery system that is generally publicly available in the issuer's primary trading market, as proposed? Should we also require the issuer to publish its non-U.S. document on its Internet Web site?
- Is it reasonable to expect that all electronic information delivery systems that are generally available to the public will be accessible and useable by U.S. investors? Should we require an issuer to publish its non-U.S. disclosure documents on its Internet Web site if the electronic delivery system is not navigable in English or requires users to register or pay a fee for access? Should we require an issuer to note on its Internet Web site that documents supplied to maintain the Rule 12g3–2(b) exemption are available on an electronic

[76] Proposed Exchange Act Rule 12g3–2(b)(4)(iii).

[77] Current Rule 12g3–2(b)(4) (17 CFR 240.12g3–2(b)(4)) specifies only that press releases and shareholder communications must be in English. It also states that an issuer may provide an English summary or version instead of an English translation. However, Commission staff has consistently administered the current rule to require English translations of financial statements and the other specified documents because of their importance to investors.

[78] Proposed Note 3 to proposed Exchange Act Rule 12(g)3–2(b).

[79] Proposed Exchange Act Rule 12g3–2(c)(1).

[80] Exchange Act Rule 12g3–2(b)(1)(iii).

[81] Proposed Exchange Act Rule 12g3–2(c)(2). Form 6–K imposes a similar requirement.

[82] An example of such a system is the System for Electronic Document Analysis and Retrieval (''SEDAR'') maintained by the Canadian Securities Administrators.

delivery system, and provide a link to that system?

• Should we require an issuer to publish electronically an English translation of the specified non-U.S. documents, as proposed? Are there other documents that should be subject to an English translation requirement? Should we exclude any of the specified documents from the English translation requirement? Will a translation requirement into English inadvertently encourage issuers to provide the minimal level of disclosure in their primary trading market in order to limit the burden of translating such documents into English?

• Should we provide specific guidance regarding when an issuer may provide an English summary instead of a line-by-line English translation of a required non-U.S. disclosure document? For example, should we permit an issuer to provide English summaries of certain non-U.S. documents, for example, interim reports, or sections of such reports, that do not contain financial statements, and other foreign language documents for which English summaries are permitted under cover of Form 6–K, as long as the English summaries are permitted by, and meet the requirements of Exchange Act Rule 12b–12(d)?[83]

• Should we require an issuer to publish electronically a non-U.S. document required to be filed with its non-U.S. regulator or non-U.S. exchange, but which is not made public by that non-U.S. regulator or non-U.S. exchange, if it is material to investors?

• Should we require an issuer to maintain the publishing of specified documents on its Internet Web site for a particular length of time? If so, which documents and for what length? For example, should we require an issuer to post its annual report on its Internet Web site for 1, 2 or 3 years, interim or current reports for 1 or 2 years, and press releases for 6 months or 1 year?

• Should we require an issuer to commence publishing electronically the required non-U.S. disclosure documents before the date that its Section 12(g) registration statement would be due, as a condition to the Rule 12g3–2(b) exemption?

• For the condition to maintain the Rule 12g3–2(b) exemption, should we require an issuer to publish electronically a required non-U.S. disclosure document promptly after the document has been published pursuant to its home jurisdiction laws, stock exchange rules, or shareholder rules and practices, as proposed? Should we instead provide a particular due date for the electronic publication of a specified document?

• Should the Commission permit or require an issuer to publish its non-U.S. disclosure documents on EDGAR or through another specified central electronic repository for documents instead of requiring the publishing of those documents on an issuer's Internet Web site or through an electronic information delivery system in its primary trading market?

E. Proposed Elimination of the Written Application Requirement

Currently in order to obtain the Rule 12g3–2(b) exemption, if not proceeding under Rule 12h–6, a foreign private issuer must submit written materials, typically in the form of a letter application, to the Commission. These materials must include a list of the issuer's non-U.S. disclosure requirements, the number of U.S. holders of its subject securities and the percentage of outstanding shares held by them, the circumstances in which its U.S. holders acquired those securities, and the date and circumstances of the most recent public distribution of the securities of the issuer or its affiliate.[84] As part of the written application, an issuer must also submit copies of its non-U.S. disclosure documents published since the first day of its most recently completed fiscal year.[85] An issuer must submit this information, together with all of the supporting documents, in paper only.

We are proposing to eliminate Rule 12g3–2(b)'s written application process for all foreign private issuers. As proposed, an issuer may claim the Rule 12g3–2(b) exemption as long as it satisfies the rule's conditions. This proposal is consistent with our adoption of an automatic grant of the Rule 12g3–2(b) exemption upon the effectiveness of an issuer's deregistration under Rule 12h–6. Moreover, since we are proposing to permit an issuer to claim the Rule 12g3–2(b) exemption based on a trading volume measure, regardless of the number of its U.S. shareholders, the current shareholder information requirement would be of marginal use. Further, since, as proposed, as a condition to claiming and maintaining the Rule 12g3–2(b) exemption, an issuer would have to publish electronically its non-U.S. disclosure documents, investors would be able to ascertain many of the issuer's non-U.S. disclosure requirements from a review of those publicly available documents.[86]

Comment Solicited

We solicit comment on the proposed elimination of the written application process for the Rule 12g3–2(b) exemption.

• Should we permit an issuer, which has not terminated its registration and reporting obligations under Rule 12h–6, to claim the Rule 12g3–2(b) exemption as long as it meets the proposed rule's conditions, without submitting a written application to the Commission, as proposed?

• Should we continue to permit an issuer to claim the Rule 12g3–2(b) exemption automatically upon the effectiveness of its deregistration under Rule 12h–6, as proposed?

• As a condition of claiming or maintaining the Rule 12g3–2(b) exemption, should we require an issuer to publish, and to update as necessary, a list of its non-U.S. disclosure requirements on its Internet Web site or its primary trading market's electronic information delivery system?

• As a condition of claiming or maintaining the Rule 12g3–2(b) exemption, should we require an issuer to publish electronically other information with respect to its eligibility for the Rule 12g3–2(b) exemption, for example, identification of its non-U.S. primary market, and its U.S. trading volume as a percentage of its worldwide trading volume for its most recently completed fiscal year?

• What use do investors currently make of the information contained in an initial application under Rule 12g3–2(b)? Does it assist them in making informed investment decisions?

• If it is appropriate to eliminate the application process for the Rule 12g3–2(b) exemption, as proposed, should we at least require an issuer to notify the Commission that it is claiming the Rule 12g3–2(b) exemption? If so, what form should the notification take? Would the filing of an amended Form F–6, as proposed, serve as sufficient notice for most issuers claiming the Rule 12g3–2(b) exemption?

[83] 17 CFR 240.12b–12(d).

[84] Exchange Act Rules 12g3–2(b)(1), (2) and (5). An issuer is also required to furnish a revised list of its non-U.S. disclosure requirements at the end of any fiscal year in which those requirements changed. Rule 12g3–2(b)(1)(iv) (17 CFR 240.12g3–2(b)(1)(iv)).

[85] Exchange Act Rule 12g3–2(b)(1)(i).

[86] From time to time, the Commission has published a list of issuers claiming the Rule 12g3–2(b) exemption that have submitted relatively current information pursuant to that rule. *See,* for example, Release No. 34–51893 (June 21, 2005), 70 FR 37128 (June 28, 2005). Commission staff has compiled this list based on a review of submitted paper documents. As part of the streamlining of the Rule 12g3–2(b) process that the proposed rule amendments are intended to effect, the Commission anticipates it would no longer publish these lists subsequent to the effective date of the new rules.

• What effects, if any, would the proposed elimination of the written application requirement and the lack of a formal notice requirement have on other market participants, for example, broker-dealers and their ability to fulfill their Rule 15c2–11 obligations to investors or facilitate the resale of a foreign company's securities to QIBs in the United States under Securities Act Rule 144A?

F. Proposed Duration of the Amended Rule 12g3–2(b) Exemption

The proposed Rule 12g3–2(b) exemption would remain in effect for as long as a foreign private issuer satisfies the electronic publication condition, or until:

• The issuer no longer maintains a listing for the subject class of securities on one or more exchanges in its primary trading market;

• The average daily trading volume of the subject class of securities in the United States exceeds 20 percent of the average daily trading volume of that class of securities on a worldwide basis for the issuer's most recently completed fiscal year, other than the year in which the issuer first claims the exemption; or

• The issuer registers a class of securities under Section 12 of the Act or incurs reporting obligations under Section 15(d) of the Act.[87]

This proposed duration would apply to both non-reporting issuers as well as issuers claiming the Rule 12g3–2(b) exemption following their deregistration pursuant to Rule 12h–6, 12g–4, or 12h–3 or the statutory terms of Section 15(d).

The proposed duration of the amended Rule 12g3–2(b) exemption is similar to the duration of the current exemption. Both depend on an issuer's continued compliance with the non-U.S. publication requirements. Under both provisions, Section 12 registration or the incurrence of Section 15(d) reporting obligations terminates the exemption.[88] Moreover, currently, if an issuer can no longer claim the Rule 12g3–2(b) exemption because it has not complied with the rule's non-U.S. publication requirements, it must determine on the last day of the fiscal year whether, because of its record holder count, it must register a class of securities under Section 12(g). The same would hold true under the proposed rule amendments for a non-compliant issuer.

As proposed, an issuer would lose the Rule 12g3–2(b) exemption if it no longer was listed on an exchange in its primary trading market. We believe this provision is necessary in order to help ensure the continued availability of a set of non-U.S. disclosure documents to which investors may turn when making decisions regarding an issuer's securities. We imposed a similar foreign listing condition when we adopted Rule 12h–6, although we did not explicitly provide that an issuer that ceased to meet the foreign listing condition would not be eligible to claim or maintain the Rule 12g3–2(b) exemption following its deregistration under Rule 12h–6. The proposed amendments would clarify that, because of the importance of the foreign listing requirement, any issuer that ceases to comply with that requirement would lose the Rule 12g3–2(b) exemption.

Under the proposed rule amendments, if relying on Rule 12g3–2(b)'s 20 percent trading volume standard, an issuer would have to determine at the end of each fiscal year, other than the year in which it first claims the exemption, whether it still met that standard, even if the issuer was in compliance with the non-U.S. publication requirements. We believe this treatment is warranted in order to protect investors. Moreover, trading volume information is more easily obtainable than information regarding a foreign private issuer's U.S. and worldwide shareholders, and the trading volume standard provides a more direct measure of relative U.S. market interest in an issuer's securities. An issuer would not have to make the trading volume determination for the fiscal year in which the issuer first claimed the exemption, however, in order to provide a reasonably long enough period to assess relative U.S. market interest for the issuer's securities.

Comment Solicited

We solicit comment on the proposed duration of the Rule 12g3–2(b) exemption.

• Should an issuer be able to claim the Rule 12g3–2(b) exemption only for as long as it complies with the rule's non-U.S. publication requirement, as proposed?

• Should an issuer lose the Rule 12g3–2(b) exemption if its U.S. trading volume exceeds 20 percent of its worldwide trading volume for its most recently completed fiscal year, other than the year in which the issuer first claimed the exemption, even if the issuer has fully complied with Rule 12g3–2(b)'s non-U.S. jurisdiction publication requirement, as proposed? Should an issuer have to make the trading volume determination for the fiscal year in which the issuer first claims the exemption as well? Or should compliance with the rule's non-U.S. publication and foreign listing requirements suffice as a basis for continuing the exemption, regardless of the relative U.S. trading volume of its securities?

• Should an issuer be able to claim the Rule 12g3–2(b) exemption only for as long as it maintains a listing in its primary trading market, as proposed? Should it instead be able to continue to claim the exemption if, despite being delisted in its primary trading market, it voluntarily continues to publish electronically the documents required by its former foreign exchange and its U.S. trading volume remains at 20 percent or less of its worldwide trading volume?

• Should an issuer no longer be able to claim the Rule 12g3–2(b) exemption if it registers the same or a different class of securities under Exchange Act Section 12(g) or incurs reporting obligations as to such a class under Section 15(d), as proposed? Should an issuer instead be able to maintain the Rule 12g3–2(b) exemption for a class of equity securities if it incurs Section 15(d) reporting obligations regarding debt securities?

• Should other factors or conditions cause an issuer to lose the Rule 12g3–2(b) exemption? For example, if an issuer sells a significant percentage of its equity securities to U.S. investors in one or more exempt transactions during a specified period of time, such as six months or a year, should it be able to continue to claim the Rule 12g3–2(b) exemption as long as its U.S. trading volume does not exceed 20 percent of its worldwide trading volume at the end of that year? Is there a point when the percentage of outstanding shares owned by U.S. investors becomes as or more important than relative U.S. trading volume as a measure of U.S. market interest for determining the duration of the Rule 12g3–2(b) exemption? If so, what is that point?

G. Proposed Elimination of the Successor Issuer Prohibition

Currently an issuer may not obtain the Rule 12g3–2(b) exemption if, following the issuance of shares to acquire by merger, consolidation, exchange of securities or acquisition of assets, it has succeeded to the Exchange Act reporting obligations of another issuer.[89] The sole exception has been for

[87] Proposed Rule 12g3–2(d).

[88] *See,* for example, Exchange Act Rule 12g3–2(e)(3) (17 CFR 240.12g3–2(e)(3)).

[89] Exchange Act Rule 12g3–2(d)(2). An issuer succeeds to the Exchange Act reporting obligations of another either under Exchange Act Rule 12g–3 (17 CFR 240. 12g–3) or 15d–5 (17 CFR 240.15d–5).

Canadian companies that registered the securities to be issued in the transaction on specified MJDS registration statements under the Securities Act.[90]

As part of the 2007 rule amendments, we adopted a provision that permits a successor issuer to terminate its newly acquired Exchange Act reporting obligations as long as it meets Rule 12h–6's substantive requirements for equity or debt securities issuers.[91] That provision permits a successor issuer to take into account the reporting history of its predecessor when determining whether it meets Rule 12h–6's prior reporting condition.[92] Under that rule, a non-Exchange Act reporting foreign private issuer that has acquired a reporting foreign private issuer in a transaction exempt under the Securities Act, for example, under Rule 802 [93] or Securities Act Section 3(a)(10),[94] may qualify immediately for termination of its Exchange Act reporting obligations under Rule 12h–6, without having to file an Exchange Act annual report, as long as the acquired company's reporting history fulfills Rule 12h–6's prior reporting condition and the successor issuer meets the rule's other conditions.

When adopting Rule 12h–6's successor issuer provision, we amended Exchange Act Rule 12g3–2(d) to permit a successor issuer to claim the Rule 12g3–2(b) exemption upon the effectiveness of its termination of Exchange Act registration and reporting under Rule 12h–6. We see no reason to treat differently a successor issuer that qualifies for deregistration under one of the older exit rules or under Section 15(d). Accordingly, we propose to eliminate the successor issuer provision in its entirety, which would permit a successor issuer to claim the Rule 12g3–2(b) exemption upon the effectiveness of its exit from the Exchange Act reporting regime whether under Rule 12h–6, 12g–4 or 12h–3 or Section 15(d).

Comment Solicited

We solicit comment on the proposed elimination of the successor issuer prohibition.

- Should we permit a successor issuer to claim the Rule 12g3–2(b) exemption upon the effectiveness of its exit from the Exchange Act reporting regime under Rule 12g–4, Rule 12h–3 or Section 15(d), as proposed?

H. Proposed Elimination of the Rule 12g3–2(b) Exception for MJDS Filers

When the Commission adopted its Multijurisdictional Disclosure System (MJDS) for Canadian issuers, it amended Rule 12g3–2 to make the Rule 12g3–2(b) exemption available to Canadian issuers that have only filed with the Commission specified MJDS registration statements,[95] although they may have filed those registration statements within the previous 18 months or to effect transactions in which they would succeed to Exchange Act reporting obligations.[96] The reason for these exemptions was to encourage Canadian issuers to use the MJDS.[97] Bercause the proposed amendments would eliminate the 18 month and successor issuer prohibitions under Rule 12g3–2(b), they would remove as unnecessary the MJDS filer exceptions to those prohibitions.

When adopting the MJDS, the Commission also permitted a Canadian issuer that already had the Rule 12g3–2(b) exemption, but that subsequently acquired Exchange Act reporting obligations as a MJDS filer, for example, with regard to a class of debt securities, to retain the Rule 12g3–2(b) exemption for its equity securities. The Commission permitted that issuer to submit its non-U.S. disclosure documents simultaneously to fulfill its Exchange Act reporting obligations under the MJDS and its non-U.S. publication obligations under Rule 12g3–2(b). The Commission then amended Form 40–F [98] and Form 6–K [99] to require an issuer to disclose on the cover page that it was filing the form for that dual purpose.[100] Under the current rules, a Canadian issuer that checks the appropriate box on the cover of each filed Form 40–F and submitted Form 6–K is able to use those Exchange Act reports to maintain its Rule 12g3–2(b) exemption as well.

This dual use of MJDS Exchange Act reports was reasonable at the time that the Commission adopted the MJDS since a Canadian issuer had to file or submit substantially the same Canadian disclosure documents for Exchange Act purposes as it did to maintain the Rule 12g3–2(b) exemption. However, this is no longer the case. Since the enactment of the Sarbanes-Oxley Act,[101] and Commission rules adopted under that Act, Canadian issuers must respond to several U.S. disclosure requirements when preparing their Form 40–F annual reports.[102]

Accordingly, we are proposing to eliminate the current, but rarely used, ability of a Canadian company, which has Exchange Act reporting obligations solely from having filed an effective MJDS registration statement under the Securities Act, to claim simultaneously the Rule 12g3–2(b) exemption. Under the proposed rule amendments, a MJDS registrant would be eligible to claim the Rule 12g3–2(b) exemption on the same grounds as other foreign registrants. If it has recently exited the Exchange Act reporting regime under Rule 12h–6, 12g–4 or 12h–3 or Section 15(d), it could claim the exemption, assuming it satisfied the proposed rule amendments' other conditions. Otherwise, the filing of a MJDS registration statement under the Securities Act or Exchange Act would trigger Exchange Act reporting obligations and preclude that issuer from claiming the exemption.[103]

Comment Solicited

We solicit comment on the proposed elimination of the Rule 12g3–2(b) exception for MJDS filers.

- Should we eliminate the ability of a MJDS issuer to claim the Rule 12g3–2(b) exemption while having Exchange Act reporting obligations, as proposed?

I. Proposed Elimination of the "Automated Inter-Dealer Quotation System" Prohibition and Related Grandfathering Provision

Under the existing rules, a foreign private issuer generally may not claim the Rule 12g3–2(b) exemption if it has securities or ADRs quoted in the United States on an automated inter-dealer quotation system,[104] which, until recently, referred to the inter-dealer quotation system administered by the National Association of Securities

[90] The specified MJDS registration statements are Forms F–8, F–9, F–10 and F–80 (17 CFR 239.38, 239.39, 239.40, and 239.41).

[91] 17 CFR 240.12h–6(d).

[92] Exchange Act Rule 12h–6(d)(2) (17 CFR 240.12h–6(d)(2)).

[93] Securities Act Rule 802 (17 CFR 230.802).

[94] 15 U.S.C. 77c(a)(10).

[95] Release No. 33–6902 (June 21, 1991), 56 FR 30036 (July 1, 1991). The MJDS generally permits a qualified Canadian issuer to file with the Commission its Canadian registration statements and reports under cover of the MJDS forms.

[96] Exchange Act Rules 12g3–2(d)(1) and (2).

[97] Release No. 33–6879 (October 22, 1990), 55 FR 462881 (November 2, 1990), as adopted in Release No. 33–6902.

[98] 17 CFR 249.240f. Form 40–F is the MJDS form used for the filing of an Exchange Act registration statement or annual report.

[99] Like non-MJDS foreign registrants, a MJDS filer uses Form 6–K to submit its interim home jurisdiction documents.

[100] Release Nos. 33–6902 and 33–6879.

[101] Pub. L. 107–204, 116 Stat. 745 (2002).

[102] *See,* for example, Form 40–F's certifications required concerning an issuer's disclosure controls and procedures and its internal controls over financial reporting, and the disclosure required concerning its audit committee financial expert, its code of ethics, and its off-balance sheet arrangements.

[103] The proposed amendments would remove the instruction on the cover page of Form 40–F and Form 6–K requiring a registrant to indicate whether it also was furnishing the materials pursuant to Rule 12g3–2(b).

[104] Exchange Act Rule 12g3–2(d)(3) (17 CFR 240.12g3–2(d)(3)).

Dealers Inc., and known as Nasdaq. The Commission adopted this prohibition in 1983 because of its belief that, since its establishment in 1971, Nasdaq had so matured into a trading system with substantial similarities to a national securities exchange that Nasdaq-traded companies should be required to meet the same disclosure standards as exchange-traded companies.[105] We are proposing to eliminate this prohibition because Nasdaq has since become a national securities exchange.[106]

When the Commission adopted the automatic inter-dealer quotation system prohibition, it recognized that the general prohibition could cause some Nasdaq-quoted foreign companies that already had obtained the Rule 12g3–2(b) exemption to withdraw from Nasdaq. Therefore, the Commission excepted from that prohibition securities that:

- Were quoted on Nasdaq on October 5, 1983 and have been continuously traded since;
- were exempt under Rule 12g3–2(b) on October 5, 1983 and have remained so since; and
- after January 2, 1986, were issued by a non-Canadian company.[107]

Since the adoption of this grandfathering provision, only nine of the grandfathered issuers remain listed on Nasdaq.[108] Pursuant to Commission order, Nasdaq is now a national securities exchange, and these issuers must register their securities under Exchange Act Section 12(b)[109] by August 1, 2009 if they wish to remain listed on Nasdaq.[110] Given these developments, we no longer believe it is necessary to maintain the grandfathering provision for those Nasdaq-listed companies. Pursuant to the terms of the Commission order, as long as the nine grandfathered issuers continue to comply with the conditions of Rule 12g3–2(b), brokers and dealers may trade their securities in reliance on the Rule 12g3–2(b) exemption until the above deadline for Exchange Act registration.

Comment Solicited

We solicit comment on the proposed elimination of Rule 12g3–2(b)'s automatic inter-dealer quotation system prohibition and related grandfathering provision.

- Should we eliminate the automatic inter-dealer quotation system prohibition, as proposed?
- Are there alternative trading systems or other non-exchange trading platforms that raise similar concerns as those that caused the Commission to adopt the Nasdaq-focused automatic inter-dealer quotation system prohibition? If so, should we prohibit an issuer whose securities are traded on those non-exchange systems from relying on the Rule 12g3–2(b) exemption?
- Should we eliminate the grandfathering provision to Rule 12g3–2(b)'s automatic inter-dealer quotation system prohibition, as proposed?

J. Proposed Revisions to Form F–6

We propose to make one revision to Form F–6, the registration statement used to register ADRs under the Securities Act. Currently a registrant of ADRs must state on Form F–6 that the issuer of the deposited securities against which the ADRs will be issued is either an Exchange Act reporting company or furnishes public reports and other documents to the Commission pursuant to Rule 12g3–2(b). The proposed revision would require a Form F–6 registrant to state that, if the issuer of deposited securities is not an Exchange Act reporting company, such issuer publishes information in English required to maintain the Rule 12g3–2(b) exemption on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market. The registrant would also have to disclose the issuer's address of its Internet Web site or the electronic information delivery system in its primary trading market.[111]

Currently an ADR facility may be either sponsored or unsponsored.[112] Under our current regulations, in order for a depositary bank to establish an ADR facility with respect to the shares of a specific foreign private issuer, the issuer must either be an Exchange Act reporting company or furnish public reports and other documents to the Commission pursuant to Rule 12g3–2(b). As a result, a foreign private issuer that does not seek to have its securities traded in the United States in the form of ADRs is able, by not formally claiming the Rule 12g3–2(b) exemption and submitting documents to the Commission, to restrict the ability of ADR depositary banks to establish an unsponsored ADR facility.

We are not proposing to revise our requirement under Form F–6 that the issuer of the deposited securities be either an Exchange Act reporting company or be exempt from registration under Rule 12g3–2(b). Because we are proposing to expand the availability of the Rule 12g3–2(b) exemption so that it will be available to all otherwise eligible foreign private issuers that post materials to their Web sites or make them available through an electronic information delivery system in their primary trading market, ADR depositaries will be able to establish unsponsored ADRs on this expanded group of foreign private issuers. ADR depositaries will also be able to establish sponsored ADR facilities with foreign private issuers that choose to have their shares represented by ADRs in the United States.

Comment Solicited

- Should we require a Form F–6 registrant to disclose on Form F–6 that, if the issuer of deposited securities is not an Exchange Act reporting company, such issuer electronically publishes the documents required to maintain the Rule 12g3–2(b) exemption, and to provide the address of the issuer's Internet Web site or electronic information delivery system in its primary trading market, as proposed?
- Should we clarify the proposed requirement that a registrant that already has an effective Form F–6 for either a sponsored or unsponsored facility has to disclose the address where the issuer of the underlying securities has electronically published its non-U.S. disclosure documents under Rule 12g3–2(b) when the registrant files its first post-effective amendment to the Form F–6 following the effective date of the proposed rule amendments, as intended?
- Should we delete the requirement under Form F–6 that the foreign private issuer whose securities are to be represented by an ADR be an Exchange

[105] Release No. 34–20264 (October 6, 1983), 48 FR 46736 (October 14, 1983).

[106] Nasdaq ceased operations as an automated inter-dealer quotation system and became a national securities exchange effective August 1, 2006. *See* Release No. 34–53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

[107] Exchange Act Rule 12g3–2(d)(3). The Commission based the more limited grandfathering of Canadian securities on the more active U.S. market for those securities, which had led to abuses under Rule 12g3–2(b). Release No. 34–20264.

[108] Letter from Edward S. Knight to Nancy M. Morris (July 31, 2006), attached to Release No. 34–54240 (July 31, 2006), 71 FR 45246 (August 8, 2006).

[109] 15 U.S.C. 78l(b).

[110] Release No. 34–54241 (July 31, 2006), 71 FR 45359 (August 8, 2006). The Commission granted the grandfathered issuers an additional three years to register their securities under Section 12(b) in order to avoid disruptions in the trading of their securities caused by their delisting from Nasdaq and to provide them with time to meet U.S. disclosure requirements.

[111] Proposed amended Part I, Item 2 of Form F–6.

[112] With a sponsored facility, the issuer of the deposited securities is a party to the deposit agreement along with the depositary and is able to exercise some control regarding the terms and operations of the facility. With an unsponsored facility, the depositary solely controls the terms and operations of the facility.

Act reporting company or be exempt from registration under Rule 12g3–2(b)?

• As a condition to the registration of ADRs on Form F–6 relating to the shares of a foreign private issuer, should we require that the issuer give its consent to the depositary? Should we require that the depositary have notified the foreign private issuer of its intention to register ADRs and have either received an affirmative statement of no objection from the issuer or not received an affirmative statement of objection from the issuer?

K. Proposed Amendment of Exchange Act Rule 15c2–11

Exchange Act Rule 15c2–11 [113] contains requirements that are intended to deter broker-dealers from initiating or resuming quotations for covered over-the-counter securities that may facilitate a fraudulent or manipulative scheme. The Rule currently prohibits a broker-dealer from publishing (or submitting for publication) a quotation for a covered over-the-counter security in a quotation medium unless it has obtained and reviewed current information about the issuer.[114] One of the specified types of information required by Rule 15c2–11 is information furnished to the Commission pursuant to Rule 12g3–2(b). A broker-dealer must make this information reasonably available upon request to any person expressing an interest in a proposed transaction involving the security with the broker-dealer.[115]

We propose to amend Rule 15c2–11 to conform to the proposed rule amendments so that a broker-dealer must have available the information that, since the beginning of its last fiscal year, the issuer has published in order to maintain the Rule 12g3–2(b) exemption. Because some issuers currently still make paper submissions to maintain their Rule 12g3–2(b) exemption, we expect that, during the first year of the amended rules' effectiveness, a broker-dealer may have to resort to both paper submissions and electronically published materials in order to fulfill its Rule 15c2–11 obligations regarding a particular issuer. Eventually, however, a broker-dealer will only have to look to an issuer's electronically published materials for the purpose of Rule 15c2–11.

The proposed amended Rule 15c2–11 would still require a broker-dealer to make reasonably available upon request the information published pursuant to Rule 12g3–2(b). However, a broker-dealer would be able to satisfy this requirement by providing the requesting person with appropriate instructions regarding how to obtain the information electronically. This reflects our view that most investors will have ready access to the electronically published documents of Rule 12g3–2(b)-exempt issuers.

Comment Solicited

We solicit comment on the proposed amendments to Rule 15c2–11.

• Should we require a broker-dealer to have available the information published by an issuer to maintain the Rule 12g3–2(b) exemption, as proposed?

• Should we continue to require a broker-dealer to make this information reasonably available upon request, as proposed? Should a broker-dealer be able to satisfy this requirement by providing appropriate instructions regarding how to obtain the information electronically, as intended?

L. Proposed Transition Periods

1. Regarding Section 12 Registration

While we believe most issuers that currently have the Rule 12g3–2(b) exemption will continue to be able to claim the exemption upon the effectiveness of the proposed rule amendments, some may not be able to do so because their U.S. trading volume exceeded 20 percent of their worldwide trading volume on the last day of their most recently completed fiscal year. Those issuers would have to file a Section 12 registration statement if they are unable to meet all of the amended rule's conditions. In order to provide those issuers with sufficient time to prepare for and complete the Section 12 registration process, including obtaining required audited financial statements, we are proposing to require that those issuers become Exchange Act registrants no later than three years from the effective date of the proposed rule amendments.[116]

We believe this proposed three-year transition period is necessary for the benefit not just of issuers, but of broker-dealers and investors as well. If a currently exempt issuer is unable to claim the Rule 12g3–2(b) exemption upon the effectiveness of the proposed amendments because it cannot satisfy the trading volume threshold, but meets the amended rule's other conditions, it may continue to rely on the exemption during the transition period as long as it complies with the electronic publishing and other conditions, except for the trading volume condition, required to maintain the exemption. Accordingly, during this transition period, a broker-dealer would be able to rely on that issuer's electronic postings to meet its Rule 15c2–11 obligations to investors and to facilitate resales of that issuer's securities in Rule 144A transactions.

Comment Solicited

We solicit comment on the proposed three-year transition period.

• Should we adopt a three-year transition period for currently-exempt issuers that cannot claim the Rule 12g3–2(b) exemption on the effective date of the rule amendments, as proposed?

• Should we instead adopt a shorter transition period, such as a one or two-year transition period? Should we adopt a longer transition period, such as a four or five-year period? Should we not adopt any transition period?

2. Regarding Processing of Paper Submissions

Although the 2007 amendments permitted an issuer that received the Rule 12g3–2(b) exemption upon application to the Commission to publish electronically its non-U.S. disclosure documents required to maintain the exemption, many issuers still submit those documents in paper. The Commission continues to process those paper documents and make them publicly available in the Public Reference Room at its Washington, DC headquarters.

We expect that, following the effectiveness of the proposed rule amendments, some Rule 12g3–2(b)-exempt companies will continue to submit their non-U.S. disclosure documents in paper to the Commission either because they are unaware of the amendments or lack electronic publishing capabilities. Because there may be some investors who currently do not have ready access to the Internet, we are proposing to continue to process paper Rule 12g3–2(b) submissions and make them publicly available in the Public Reference Room for three months following the effectiveness of the rule amendments. Thereafter, the Commission will no longer process paper Rule 12g3–2(b) submissions. An issuer that continues to make Rule 12g3–2(b) submissions in paper after

[113] 17 CFR 240.15c2–11.

[114] Rule 15c2–11(a) (17 CFR 240.15c2–11(a)). The broker-dealer must also have a reasonable basis for believing that the issuer information, when considered along with any supplemental information, is accurate and is from a reliable source.

[115] Rule 15c2–11(a)(4).

[116] We adopted a similar three-year transition period to enable those grandfathered Nasdaq-traded foreign companies that were Rule 12g3–2(b)-exempt to register under Section 12(b) after Nasdaq became an exchange. *See* Release No. 34–54241 (July 31, 2006), 71 FR 45359 (August 8, 2006).

this three-month period, and does not publish the submitted documents electronically as required, would no longer be able to claim the Rule 12g3–2(b) exemption.

We anticipate that three months would be sufficient time for all Rule 12g3–2(b)-exempt issuers to develop the capabilities to publish electronically their non-U.S. disclosure documents. We further anticipate that the proposed three-month transition period would be sufficient to permit investors and other interested persons to determine how and where to access those electronically published documents.

Comment Solicited

We solicit comment on the proposed three-month transition period for the processing of paper Rule 12g3–2(b) submissions.

- Is a transition period necessary to provide issuers with sufficient time to publish electronically their non-U.S. disclosure documents required under Rule 12g3–2(b) or to enable investors to learn how to access those electronically published documents?
- If so, would the three-month transition period be sufficent? Should it be less than three months, such as one month, or two months? Should it be longer than three months, such as six months or one year?

M. Revisions to Form 15

As part of the 2007 amendments, we revised Exchange Act Rules 12g–4 and 12h–3, the older exit rules, by eliminating foreign private issuer provisions that were no longer needed because of the adoption of Rule 12h–6, and by renumbering the remaining provisions accordingly.[117] However, we did not correspondingly revise the cover page of Form 15, which requires an issuer to indicate under which provision of Rule 12g–4 or 12h–3 it is terminating its Section 12(g) registration or suspending its Section 15(d) reporting obligations. Because Form 15 refers to the pre-March 2007 version of Rules 12g–4 and 12h–3, it has understandably engendered some confusion among issuers seeking to file the form. We are today adopting revisions to the cover page of Form 15 to reflect the current version of Rules 12g–4 and 12h–3.[118]

General Request for Comments

We solicit comment on the proposed amendments to Rule 12g3–2(b), (c), (d), (e), and (f), Rule 15c–2(11), and Forms F–6, 40–F, 6–K, and 15F, as well as to all other aspects of the proposed rule amendments. Here and throughout the release, when we solicit comment, we are interested in hearing from all interested parties, including members and representatives of the investing public, representatives of foreign companies and foreign industry groups, representatives of broker-dealers, domestic issuers, and other participants in U.S. securities markets. We are further interested in learning from all parties what aspects of the proposed rule amendments they deem essential, what aspects they believe are preferred but not essential, and what aspects they believe should be modified.

III. Paperwork Reduction Act Analysis

This rule proposal contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[119] We are submitting our proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[120] The title of the affected collections of information are submissions under Exchange Act Rule 12g3–2 (OMB Control No. 3235–0119) and Securities Act Form F–6 (OMB Control No. 3235–0292). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the proposed amendments to Rule 12g3–2 and Form F–6 will be mandatory.

Exchange Act Rule 12g3–2 is an exemptive rule that, under paragraph (b) of that rule, provides an exemption from Exchange Act section 12(g) registration for a foreign private issuer that, on an ongoing basis, either submits copies of its material non-U.S. disclosure documents to the Commission in paper or publishes those documents on its Internet Web site or through an electronic information delivery system in its primary trading market. We adopted paragraph (b) of Rule 12g3–2 in order to provide information for U.S. investors concerning foreign private issuers with limited securities trading in U.S. capital markets.

Securities Act Form F–6 is the form used to register American Depositary Receipts (''ADRs''), which are a special type of security issued by a U.S. bank, representing a specified amount of securities issued by a foreign company that are deposited with the bank. We adopted Form F–6 in order to provide investors with information concerning a foreign company's ADRs, as disclosed in the deposit agreement, which must be attached as an exhibit to the Form F–6.

The hours and costs associated with making submissions under Exchange Act Rule 12g3–2(b) and preparing, filing and sending Form F–6 constitute reporting and cost burdens imposed by those collections of information. We based our estimates of the effects that the proposed rule amendments would have on those collections of information primarily on our review of the most recently completed PRA submissions for Rule 12g3–2(b) documents and Form F–6, on the particular requirements for those submissions and form, and on other information, for example, concerning relative U.S. trading volume for foreign private issuers whose equity securities trade in the U.S. over-the-counter market.

The proposed amendments to Exchange Act Rule 12g3–2 would permit a foreign private issuer to claim the Rule 12g3–2(b) exemption, without having to submit paper copies of written materials to the Commission, if, among other requirements, its U.S. average daily trading volume has been no greater than 20 percent of its worldwide average trading volume for its most recently completed fiscal year. The proposed amendments would require a qualifying issuer to publish on an ongoing basis copies of its non-U.S. disclosure documents required by Rule 12g3–2(b) on its Internet Web site, or through an electronic information delivery system in its primary trading market, instead of permitting their submission in paper to the Commission.

The proposed amendments of Form F–6 would require a registrant to state that the issuer of the deposited securities, which is not an Exchange Act reporting company, publishes information in English required to maintain the Rule 12g3–2(b) exemption on the issuer's Internet Web site or through its primary trading market's electronic information delivery system. The proposed amendments would also require the registrant to disclose the address of the issuer's Internet Web site or electronic information delivery system. A registrant that already has an effective Form F–6 would have to disclose the address of where the issuer electronically publishes its non-U.S.

[117] The March 2007 amendments eliminated Exchange Act Rules 12g–4(a)(2)(i) and (ii) (17 CFR 240.12g–4(a)(2)(i) and (ii)) and Rules 12h–3(b)(2)(i) and (ii) (17 CFR 240.12h–3(b)(2)(i) and (ii)), and renumbered Rule 12g–4(a)(1)(i) and (ii) as Rule 12g–4(a)(1) and (2) (17 CFR 240.12g–4(a)(1) and (2)).

[118] As amended, Form 15's cover page refers to Exchange Act Rule 12g–4(a)(1) or (2) and Rule 12h–3(b)(1)(i) or (ii), in addition to Rule 15d–6 (17 CFR 240.15d–6), which remains unchanged. We are adopting these revisions today without soliciting comment because they involve solely a technical matter that does not give rise to any substantive change in the Commission's rules.

[119] 44 U.S.C. 3501, *et seq.*

[120] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

disclosure documents under Rule 12g3–2(b) when the registrant first amends its Form F–6 following the effective date of the proposed rule amendments.

We have prepared the annual burden and cost estimates of the proposed rule amendments on Rule 12g3–2(b) submissions or publications and Form F–6 based on the following current estimates and assumptions:

- A foreign private issuer incurs 75% of the burden required to produce each Rule 12g3–2(b) submission or publication, excluding the initial application for the Rule 12g3–2(b) exemption and English translation work, and 25% of the burden required to perform work for the initial application and English translation for the Rule 12g3–2(b) submissions or publications;
- Outside firms, including legal counsel, accountants and other advisors satisfy 25% of the burden required to produce each Rule 12g3–2(b) submission or publication, not including the initial application for the Rule 12g3–2(b) exemption and English translation work, at an average cost of $400 per hour, 75% of the burden required to produce the initial application at an average cost of $400 per hour, and 75% of the burden resulting from English translation work at an average cost of $125 per hour;
- English translation work constitutes on average 25% of the total work required for the Rule 12g3–2(b) submissions;
- A registrant satisfies 25% of the burden required to produce each Form F–6; and
- Outside firms, including legal counsel, accountants and other advisors, satisfy 75% of the burden required to produce each Form F–6 at an average cost of $400 per hour.

A. Rule 12g3–2(b) Submissions or Publications

We estimate that, under current Rule 12g3–2(b), on an annual basis:

- 1,036 foreign private issuers claim the Rule 12g3–2(b) exemption;
- Each issuer makes on average 12 submissions or publications, for a total of 12,432 submissions or publications under Rule 12g3–2(b);
- Production of those Rule 12g3–2(b) submissions or publications requires a total of 49,728 burden hours, or an average of 4 burden hours per submission or publication (for all work performed by foreign private issuers and outside firms);
- Of those total burden hours, 13,700 hours result from work incurred by 685 issuers to produce their initial Rule 12g3–2(b) applications;[121]
- Foreign private issuers incur a total of 25,943 burden hours [122] to produce the Rule 12g3–2(b) submissions or publications, or an average of 2.1 burden hours per submission or publication;[123] and
- Outside firms perform service at a total cost of $7,656,375 [124] to produce the Rule 12g3–2(b) submissions or publications.[125]

We estimate that, on an annual basis, approximately 150 additional foreign private issuers could claim the Rule 12g3–2(b) exemption as a result of the proposed amendments to Rule 12g3–2. This increase in the number of Rule 12g3–2(b) exempt issuers would cause:

- The number of issuers claiming the Rule 12g3–2(b) exemption to total 1,186;
- The number of Rule 12g3–2(b) publications to total 14,232;[126]
- The number of burden hours required to produce these Rule 12g3–2(b) publications to total 53,928;[127]
- The number of burden hours incurred by foreign private issuers to produce the Rule 12g3–2(b) publications to total 33,706 hours, or 2.4 burden hours per publication;[128] and
- Outside firms perform services at a total cost of $5,308,800 to produce the Rule 12g3–2(b) publications.[129]

B. Form F–6

We currently estimate that, on an annual basis:

- 150 registrants file Form F–6;
- Each registrant files one Form F–6, for a total of 150 Form F–6s;
- Production of these Form F–6s requires 150 burden hours, or one burden hour per Form F–6 (for all work performed by registrants and outside firms);
- Of those total hours, registrants incur 38 hours to produce the Form F–6s, or an average of .25 hours per Form F–6;[130] and
- Outside firms perform services at a total cost of $45,000 to produce the Form F–6s.[131]

We estimate that, on an annual basis, approximately 150 additional registrants could file Form F–6 as a result of the proposed rule amendments. We further estimate that, as a result of the proposed rule amendments, the burden required to produce each Form F–6 would increase by .5 hours. This increase in the number of Form F–6s and burden hours would cause:

- The number of Form F–6s filed to increase by 150 for a total of 300;
- The total hours required to produce the Form F–6s to increase by 225 hours

[121] We previously estimated that 685 issuers obtained the Rule 12g3–2(b) exemption before the adoption of Rule 12h–6, which eliminated the application process for issuers that deregister pursuant to that new rule. *See* Release No. 34–55540. All of the 685 issuers obtained the Rule 12g3–2(b) exemption after having submitted a letter application to the Commission. Based on a review of several Rule 12g3–2(b) applications, and an assessment of Rule 12g3–2(b)'s requirements and current practice, we estimate that it takes approximately 20 hours on average to complete a Rule 12g3–2(b) letter application. 685 × 20 hrs. = 13,700 hrs.

[122] 49,728 hrs. − 13,700 hrs. = 36,028 hrs. for work excluding application work. 36,028 hrs. × .25 = 9,007 hrs. for English translation work. 36,028 hrs. − 9,007 hrs. = 27,021 hrs. × .75 = 20,266 hrs. for non-English translation work. 9,007 hrs. × .25 = 2,252 hrs. for English translation work. 13,700 hrs. × .25 = 3,425 hrs. for application work. 20,266 hrs. + 2,252 hrs. + 3,425 hrs. = 25,943 hrs. for total work performed by foreign private issuers. 25,943 hrs./12,432 = 2.1 hrs per submission or publication.

[123] The last OMB submission for Rule 12g3–2(b) reported 31,080 burden hours for foreign private issuers. Our current estimate of 25,943 burden hours is due to our assessment of the average annual burden hours required to produce written applications under Rule 12g3–2(b), most of which are incurred by outside firms. We are treating the decrease in hours as an adjustment to the previous PRA burden estimate for Rule 12g3–2(b).

[124] 27,021 hrs. × .25 = 6,755 hrs. × $400/hr. = $2,702,000 for non-English translation work. 9,007 hrs. × .75 = 6,755 hrs. × $125/hr. = $844,375 for English translation work. 13,700 hrs. × .75 = 10,275 hrs. × $400/hr. = $4,110,000 for application work. $2,702,000 + $844,375 + $4,110,000 = $7,656,375 for total work performed by outside firms.

[125] The last OMB submission for Rule 12g3–2(b) reported $4,895,100 in total costs for outside firms. Our current estimate of $7,656,375 is due to the previously noted assessment of the average annual burden hours required to produce written applications under Rule 12g3–2(b). We are treating the increase in costs as an adjustment to the previous PRA cost estimate for Rule 12g3–2(b).

[126] 1,186 × 12 hrs. = 14,232.

[127] 14,232 hrs. × 4 = 56,928 hrs. 150 × 20hrs. = 3,000 hrs. saved by the elimination of the written application requirement. 56,928 hrs. − 3,000 hrs. = 53,928 hrs.

[128] 53,928 hrs. × .25 = 13,482 hrs. for English translation work. 53,928 hrs. − 13,482 hrs. = 40,446 hrs.; 40,446 hrs. × .75 = 30,335 hrs. for non-English translation work; 13,482 hrs. × .25 = 3,371 hrs. for English translation work; 30,335 hrs. + 3,371 hrs. = 33,706 total hrs. incurred by foreign private issuers. 33,706 hrs./14,232 = 2.4 hrs. per publication. Of the 33,706 hrs., + 7,763 hrs. result from the proposed rule change and − 5,137 hrs. result from the previously noted program adjustment. 7,763 hrs. − 5,137 hrs. = a net increase of 2,626 hrs. from the previous PRA estimate for Rule 12g3–2(b).

[129] 40,446 hrs. × .25 = 10,112 hrs. × $400/hr. = $4,044,800 for non-English translation work; 13,482 hrs. × .75 = 10,112 hrs. × $125/hr. = $1,264,000 for English translation work; $4,044,800 + $1,264,000 = $5,308,800 for total costs incurred by outside firms. Of the total costs, − $2,347,575 result from the proposed rule change and + $2,761,275 result from the previously noted program adjustment. $2,761,275 − $2,347,575 = a net increase of $413,700 from the previous PRA estimate for Rule 12g3–2(b).

[130] 150 hrs. × .25 = 38 hrs.

[131] 150 hrs. × .75 × $400/hr. = $45,000.

for a total of 375 hours, or 1.25 hours per Form F–6;[132]

- The number of burden hours incurred by registrants to produce the Form F–6s to increase by 56 hours to 94 hours, or .33 hours per Form F–6;[133] and
- Outside firms to perform services at a total cost of $112,400 (an increase of $67,400) to produce the Form F–6s.[134]

IV. Cost-Benefit Analysis

A. Expected Benefits

The proposed rule amendments are designed to encourage more foreign companies with relatively limited U.S. market interest to claim the Rule 12g3–2(b) exemption, and thereby publish on the Internet material documents in English, enhancing the ability of U.S. investors to trade equity securities of such companies in the U.S. over-the-counter market. The Rule 12g3–2(b) exemption permits a foreign company to have established an ADR facility under which its equity securities are traded as ADRs in the U.S. over-the-counter market for the convenience of U.S. investors, even if its U.S. investors exceed the Section 12(g) shareholder thresholds.[135] The Rule 12g3–2(b) exemption also permits a foreign company to trade its equity securities in the form of ordinary shares through the U.S. over-the-counter market, makes it easier for broker-dealers to fulfill their obligations under Exchange Act Rule 15c2–11 to investors, and facilitates the resale of a foreign company's securities to qualified institutional buyers in the United States under Securities Act Rule 144A. By encouraging more foreign companies to claim the Rule 12g3–2(b) exemption, the proposed rule amendments should benefit investors by enhancing their ability to invest in foreign securities in the United States over-the-counter market.

The proposed rule amendments would encourage more foreign companies to claim the Rule 12g3–2(b) exemption by reducing the costs of obtaining that exemption for foreign private issuers in two ways. First, the proposed amendments would enable an otherwise eligible issuer to claim the Rule 12g3–2(b) exemption, regardless of the number of its U.S. security holders, as long as the U.S. trading volume for its subject class of equity securities was no greater than ten percent of its worldwide trading volume for its most recently completed fiscal year. Currently Rule 12g3–2(b) requires an issuer to disclose the number of its U.S. security holders and the percentage of its outstanding securities held by them when applying for the Rule's exemption from Exchange Act registration.[136] Since it is typically more difficult for a foreign company to calculate the number of its U.S. holders than to determine its relative U.S. trading volume, the proposed rule amendments should make it easier for more foreign companies to determine whether they qualify for the exemption.

Second, the proposed rule amendments would eliminate the current written application process that requires an issuer to submit in paper specified information concerning, for example, its non-U.S. disclosure requirements, along with paper copies of its non-U.S. disclosure documents published since the beginning of its last fiscal year. Since outside law firms typically perform most of the work required for the application, the proposed rule amendments should reduce Rule 12g3–2(b) costs for foreign companies and encourage more of them to claim the Rule 12g3–2(b) exemption.

The proposed rule amendments would further benefit investors by requiring any foreign company that claims the Rule 12g3–2(b) exemption to publish in English specified non-U.S. disclosure documents on its Internet Web site or through an electronic information delivery system that is generally available to the public in its primary trading market. Currently an issuer that has obtained the Rule 12g3–2(b) exemption upon application may submit its non-U.S. documents on an ongoing basis in paper to the Commission. By requiring the electronic publication in English of specified non-U.S. documents for any issuer claiming the Rule 12g3–2(b) exemption, the proposed amendments should make it easier for U.S. investors to gain access to a foreign private issuer's material non-U.S. disclosure documents and make better informed decisions regarding whether to invest in that issuer's equity securities.

B. Expected Costs

Investors could incur costs from the proposed rule amendments to the extent that the proposed amendments encourage more foreign companies, which otherwise would be required to register their equity securities under the Exchange Act, to claim the Rule 12g3–2(b) exemption, where the information, enforcement remedies, and other effects of registration are valuable to investors. We estimate that, on an annual basis, approximately 150 additional foreign private issuers could claim the Rule 12g3–2(b) exemption as a result of the proposed amendments to Rule 12g3–2. Some less technologically capable investors may also incur costs resulting from the search and retrieval of a foreign company's electronically published documents.

A foreign company would incur costs resulting from the amended rule's requirement to publish electronically specified non-U.S. disclosure documents in English to the extent that it is not already required to, or does not already, do so pursuant to any applicable law or rule. A foreign private issuer would also incur costs resulting from its required annual determination regarding whether it is still in compliance with the Rule 12g3–2(b) conditions.

If, because of those costs, the foreign company does not claim or maintain the Rule 12g3–2(b) exemption, U.S. investors interested in trading in the securities of that company would have to resort to trading in the company's non-U.S. primary trading market. Those U.S. investors could incur costs associated with finding and contracting with a broker-dealer who is able to trade in the foreign reporting company's primary trading market. U.S. investors could also face additional costs resulting from currency conversion and higher transaction costs trading the securities in a foreign market.

Comment Solicited

We solicit comment on the costs and benefits to U.S. and other investors, foreign private issuers, and others who may be affected by the proposed amendments to Exchange Act Rule 12g3–2 and the associated proposed rule amendments. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of the proposed rule amendments. We also request data to quantify the costs and value of the benefits identified. We are particularly interested in receiving

[132] For the additional 150 filers: 150 × 1.5 hrs. = 225 hrs., 225 hrs. + 150 hrs. = 375 hrs., 375 hrs./300 = 1.25 hrs. per Form F–6.

[133] 375 hrs. × .25 = 94 hrs., 94 hrs. − 38 hrs. = 56 hrs., 94 hrs./300 = .31 hr. per Form F–6.

[134] 375 hrs. × .75 = 281 hrs. × $400/hr. = $112,400. $112,400 − $45,000 = $67,400.

[135] Use of an ADR facility makes it easier for a U.S. investor to collect dividends in U.S. dollars. Moreover, because the clearance and settlement process for ADRs generally is the same for securities of domestic companies that are traded in U.S. markets, a U.S. holder of an ADR is able to hold securities of a foreign company that trades, clears and settles within automated U.S. systems and within U.S. time periods.

[136] An issuer must also currently recalculate the number of its U.S. security holders when applying for reinstatement of the Rule 12g3–2(b) exemption should it lose that exemption due to non-compliance with the Rule's ongoing home jurisdiction disclosure requirements.

information concerning an issuer's expected costs of determining its relative U.S. trading volume under the proposed rule compared to its costs of having to determine the number of its U.S. holders and the percentage of shares held by them as required under the current rule.

V. Consideration of Impact On the Economy, Burden On Competition and Promotion of Efficiency, Competition and Capital Formation Analysis

A. Small Business Regulatory Enforcement Fairness Act of 1996 Considerations

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[137] we solicit data to determine whether the rule proposals constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed rule amendments on these factors. Commenters are requested to provide empirical data and other factual support for their views if possible.

B. Securities Act Section 2(b) and Exchange Act Section 3(f) and Section 23(a)(2) Considerations

When engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, Securities Act Section 2(b)[138] and Exchange Act Section 3(f)[139] require the Commission to consider whether the action will promote efficiency, competition and capital formation. Further, when adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act[140] requires us to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The rule proposals would amend the rules that determine when a foreign private issuer may claim the exemption from Exchange Act Section 12(g) registration under Exchange Act Rule 12g3–2(b). That exemption permits limited trading of an issuer's exempted equity securities in the over-the-counter market in the United States as long as the issuer submits its non-U.S. disclosure documents to the Commission, notwithstanding that the issuer exceeds the Section 12(g) registration thresholds. Many foreign private issuers rely on the Rule 12g3–2(b) exemption to have established ADR facilities, which make it easier for U.S. investors to trade in those issuers' equity securities. The Rule 12g3–2(b) exemption also makes it easier for broker-dealers to meet their Exchange Act Rule 15c2–11 obligations to investors, and effect the resale of a foreign private issuer's securities to QIBs under Securities Act Rule 144A.

The proposed rule amendments would permit a foreign private issuer to claim the Rule 12g3–2(b) exemption without having to submit a paper application to the Commission, as is currently required, if, among other conditions, the U.S. average daily trading volume of its equity securities was no greater than 20 percent of its worldwide average daily trading volume for its most recently completed fiscal year. The proposed rule amendments would also require an issuer to publish in English specified non-U.S. disclosure documents on its Internet Web site or through an electronic information delivery system that is generally available to the public in its primary trading market. Currently an issuer that has obtained the Rule 12g3–2(b) exemption by application may submit its non-U.S. disclosure documents in paper to the Commission.

By enabling a qualified foreign private issuer to claim the Rule 12g3–2(b) exemption automatically, and without regard to the number of its U.S. shareholders, as is currently the case, the proposed rule amendments should encourage more foreign private issuers to claim the Rule 12g3–2(b) exemption by lowering the costs of obtaining that exemption. Consequently, the proposed rule amendments should foster the trading of foreign companies' equity securities in the U.S. over-the-counter market, for example, by enabling the establishment of additional ADR facilities and making it easier for broker-dealers to meet their Rule 15c2–11 obligations to investors with respect to foreign securities. The enhanced ability of investors to trade foreign securities in the United States should help encourage competition between domestic and foreign firms for investors in the U.S. over-the-counter market.

Moreover, by requiring the electronic publication in English of specified non-U.S. disclosure documents for any issuer claiming the Rule 12g3–2(b) exemption, the proposed amendments should make it easier for U.S. investors to gain access to a foreign private issuer's material non-U.S. disclosure documents and make better informed decisions regarding whether to invest in that issuer's equity securities. Thus, the proposed amendments should foster increased efficiency in the trading of the issuer's securities.

We solicit comment on whether the proposed rules would impose a burden on competition or whether they would promote efficiency, competition and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Regulatory Flexibility Act Certification

The Securities and Exchange Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Exchange Act Rules 12g3–2 and 15c2–11, Exchange Act Forms 40–F, 6–K, 15, and 15F, and Securities Act Form F–6, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The reason for this certification is as follows.

The proposed rule amendments would permit a foreign private issuer to claim the exemption from registration under Exchange Act Rule 12g3–2(b) if, among other conditions, the U.S. average daily trading volume of its equity securities was no greater than 20 percent of its worldwide average daily trading volume for its most recently completed fiscal year. The proposed rule amendments would also require an issuer to publish electronically its non-U.S. disclosure documents rather than submit them in paper to the Commission, as under the current rule.

Because the proposed amendments would only apply to foreign private issuers, they would directly affect only foreign companies and not domestic companies. Based on an analysis of the language and legislative history of the Regulatory Flexibility Act, Congress did not intend that the Act apply to foreign issuers. Accordingly, the entities directly affected by the proposed rule and form amendments will fall outside the scope of the Act. For this reason, proposed amended Exchange Act Rule 12g3–2 and the other proposed rule and

[137] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[138] 15 U.S.C. 77b(b).

[139] 15 U.S.C. 78c(f).

[140] 15 U.S.C. 78w(a)(2).

form amendments should not have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We request in particular that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Statutory Basis and Text of Proposed Amendments

We propose to amend Securities Act Form F–6, Exchange Act Rules 12g3–2 and 15c2–11, and Exchange Act Forms 40–F, 6–K, 15, and 15F under the authority in Sections 6, 7, 10 and 19 of the Securities Act [141] and Sections 3(b), 12, 13, 23 and 36 of the Exchange Act.[142]

Text of Proposed Rule Amendments

List of Subjects in 17 CFR Parts 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend Form F–6 (referenced in § 239.36) by revising Item 2 of Part I to read as follows:

Note: The text of Form F–6 does not and this amendment will not appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, DC 20549

FORM F–6

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 FOR DEPOSITARY SHARES EVIDENCED BY AMERICAN DEPOSITARY RECEIPTS

* * * * *

PART I—INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 2. Available Information

Provide the information in either (a) or (b) below, whichever is applicable.

(a) State that the foreign issuer publishes information in English required to maintain the exemption from registration under Rule 12g3–2(b) of the Securities Exchange of 1934 on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market. Then disclose the address of the foreign issuer's Internet Web site or the electronic information delivery system in its primary trading market.

(b) State that the foreign issuer is subject to the periodic reporting requirements of the Securities Exchange Act of 1934 and accordingly files reports with the Commission. Then disclose that these reports are available for inspection and copying through the Commission's EDGAR system or at public reference facilities maintained by the Commission in Washington, DC.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201, *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Amend § 240.12g3–2 by revising paragraphs (b), (c), (d), and (e), and removing paragraph (f), to read as follows:

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

* * * * *

(b) A foreign private issuer shall be exempt from the requirement to register a class of equity securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) if:

(1) The issuer is not required to file or furnish reports under section 13(a) of the Act (15 U.S.C. 78m(a)) or section 15(d) of the Act (15 U.S.C. 78o(d));

(2) The issuer currently maintains a listing of the subject class of securities on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities;

(3)(i) The average daily trading volume of the subject class of securities in the United States for the issuer's most recently completed fiscal year has been no greater than 20 percent of the average daily trading volume of that class of securities on a worldwide basis for the same period; or

(ii) The issuer has terminated its registration of a class of securities under section 12(g) of the Act, or terminated its obligation to file or furnish reports under section 15(d) of the Act, pursuant to § 240.12h–6; and

(4)(i) The issuer has published in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, information that, since the first day of its most recently completed fiscal year, it:

(A) Has made public or been required to make public pursuant to the laws of the country of its incorporation, organization or domicile;

(B) Has filed or been required to file with the principal stock exchange in its primary trading market on which its securities are traded and which has been made public by that exchange; and

(C) Has distributed or been required to distribute to its security holders.

(ii) The information required to be published electronically under paragraph (b)(4)(i) of this section is information that is material to an investment decision regarding the subject securities, such as information concerning:

(A) Results of operations or financial condition;

(B) Changes in business;

(C) Acquisitions or dispositions of assets;

(D) The issuance, redemption or acquisition of securities;

(E) Changes in management or control;

(F) The granting of options or the payment of other remuneration to directors or officers; and

(G) Transactions with directors, officers or principal security holders.

(iii) At a minimum, a foreign private issuer shall electronically publish English translations of the following documents required to be published under paragraph (b)(4)(i) of this section if in a foreign language:

(A) Its annual report, including or accompanied by annual financial statements;

(B) Interim reports that include financial statements;

(C) Press releases; and

(D) All other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.

Note 1 to Paragraph (b): For the purpose of paragraph (b)(2) of this section, *primary trading market* means that at least 55 percent of the trading in the subject class of securities took place in, on or through the facilities of a

[141] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s.

[142] 15 U.S.C. 78c, 78*l*, 78m, 78w, and 78mm.

securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year. If a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for the purpose of this paragraph, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities.

Note 2 to Paragraph (b): For the purpose of paragraph (b)(3) of this section, calculate United States trading volume and worldwide trading volume as under § 240.12h–6.

Note 3 to Paragraph (b): Paragraph (b)(4)(i) of this section does not apply to an issuer when claiming the exemption under paragraph (b) in connection with or following the recent effectiveness of the termination of its registration of a class of securities under section 12(g) of the Act, or the termination of its obligation to file or furnish reports under section 15(d) of the Act.

(c)(1) In order to maintain the exemption under paragraph (b) of this section, a foreign private issuer shall publish, on an ongoing basis and for each subsequent fiscal year, in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, the information specified in paragraph (b)(4) of this section.

(2) An issuer must electronically publish the information required by paragraph (c)(1) of this section promptly after the information has been made public.

(d) The exemption under paragraph (b) of this section shall remain in effect until:

(1) The issuer no longer satisfies the electronic publication condition of paragraph (c) of this section;

(2) The issuer no longer maintains a listing for the subject class of securities on one or more exchanges in its primary trading market;

(3) The average daily trading volume of the subject class of securities in the United States exceeds 20 percent of the average daily trading volume of that class of securities on a worldwide basis for the issuer's most recently completed fiscal year, other than the year in which the issuer first claimed the exemption under paragraph (b) of this section; or

(4) The issuer registers a class of securities under section 12 of the Act or incurs reporting obligations under section 15(d) of the Act.

(e) Depositary shares registered on Form F–6 (§ 239.36 of this chapter), but not the underlying deposited securities, are exempt from section 12(g) of the Act under this paragraph.

5. Amend § 240.15c2–11 by revising paragraph (a)(4) to read as follows:

§ 240.15c2–11 Initiation or resumption of quotations without specific information.

* * * * *

(a) * * *

(4) The information that, since the beginning of its last fiscal year, the issuer has published pursuant to § 240.12g3–2(b) to maintain the exemption from registration under section 12(g) of the Act, and which the broker or dealer shall make reasonably available upon the request of a person expressing an interest in a proposed transaction in the issuer's security with such broker or dealer; or

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, and 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

7. Amend Form 40–F (referenced in § 249.240f), the cover page, by removing the second to last paragraph, which pertains to information furnished pursuant to Rule 12g3–2(b), including the check boxes.

Note: The text of Form 40–F does not and this amendment will not appear in the Code of Federal Regulations.

8. Amend Form 6–K (referenced in § 249.306), the cover page, by removing the two paragraphs, which pertain to information furnished pursuant to Rule 12g3–2(b), following the second Note, including the check boxes.

Note: The text of Form 6–K does not and this amendment will not appear in the Code of Federal Regulations.

9. Amend Form 15 (referenced in § 249.323) by revising the check boxes on the cover page to read as follows:

Note: The text of Form 15 does not and this amendment will not appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, DC 20549

FORM 15

CERTIFICATION AND NOTICE OF TERMINATION OF REGISTRATION UNDER SECTION 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934 OR SUSPENSION OF DUTY TO FILE REPORTS UNDER SECTIONS 13 AND 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.

* * * * *

Rule 12g–4(a)(1) ☐
Rule 12g–4(a)(2) ☐
Rule 12h–3(b)(1)(i) ☐
Rule 12h–3(b)(1)(ii) ☐
Rule 15d–6 ☐

* * * * *

10. Amend Form 15F (referenced in § 249.324) by revising General Instruction E and Item 9 of Part II to read as follows:

Note: The text of Form 15F does not and this amendment will not appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, DC 20549

FORM 15F

CERTIFICATION OF A FOREIGN PRIVATE ISSUER'S TERMINATION OF REGISTRATION OF A CLASS OF SECURITIES UNDER SECTION 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934 OR ITS TERMINATION OF THE DUTY TO FILE REPORTS UNDER SECTION 13(a) OR SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

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GENERAL INSTRUCTIONS

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E. Rule 12g3–2(b) Exemption

Regardless of the particular Rule 12h–6 provision under which it is proceeding, a foreign private issuer that has filed a Form 15F regarding a class of equity securities shall receive the exemption under Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) for the subject class of equity securities immediately upon the effective date of its termination of registration and reporting under Rule 12h–6. Refer to Rule 12g3–2(c) and (d) (17 CFR 240.12g3–2(c) and (d)) for the conditions that a foreign private issuer must meet in order to maintain the Rule 12g3–2(b) exemption following its termination of Exchange Act registration and reporting.

* * * * *

PART II

Item 9. Rule 12g3–2(b) Exemption

Disclose the address of your Internet Web site or of the electronic information delivery system in your primary trading market on which you have published and will publish the information required under Rule 12g3–2(b)(4) (17 CFR 240.12g3–2(b)(4)) and Rule 12g3–2(c) to maintain the exemption under Rule 12g3–2(b).

Instruction to Item 9.

Refer to Rule 12g3–2(b)(4)(iii) (17 CFR 240.12g3–2(b)(4)(iii)) for instructions regarding providing English translations of documents required to maintain the Rule 12g3–2(b) exemption.

* * * * *

Dated: February 19, 2008.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E8–3424 Filed 2–22–08; 8:45 am]

BILLING CODE 8011–01–P