(e) An issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) according to paragraph (a), (b), (c) or (d) of this section shall file reports on the same forms and such class of securities shall be subject to the provisions of sections 14 and 16 of the Act (15 U.S.C. 78n and 78p) to the same extent as the predecessor issuers, except as follows:

(1) An issuer that is not a foreign issuer shall not be eligible to file on Form 20–F (§ 249.220f of this chapter) or to use the exemption in § 240.3a12–3.

(2) A foreign private issuer shall be eligible to file on Form 20–F (§ 249.220f of this chapter) and to use the exemption in § 240.3a12–3.

(f) An issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) according to paragraphs (a), (b), (c) or (d) of this section shall indicate in the Form 8–K (§ 249.308 of this chapter) report filed with the Commission in connection with the succession, pursuant to the requirements of Form 8–K, the paragraph of section 12 of the Act under which the class of securities issued by the successor issuer is deemed registered by operation of paragraphs (a), (b), (c) or (d) of this section. If a successor issuer that is deemed registered under section 12(g) of the Act (15 U.S.C. 78*l*(g)) by paragraph (d) of this section intends to list a class of securities on a national securities exchange, it must file a registration statement pursuant to section 12(b) of the Act (15 U.S.C. 78*l*(b)) with respect to that class of securities.

(g) An issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) according to paragraph (a), (b), (c) or (d) of this section shall file an annual report for each fiscal year beginning on or after the date as of which the succession occurred. Annual reports shall be filed within the period specified in the appropriate form. Each such issuer shall file an annual report for each of its predecessors that had securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) covering the last full fiscal year of the predecessor before the registrant's succession, unless such report has been filed by the predecessor. Such annual report shall contain information that would be required if filed by the predecessor.

[62 FR 39767, July 24, 1997]

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

(a) Securities of any class issued by any foreign private issuer shall be exempt from section 12(g) (15 U.S.C. 78*l*(g)) of the Act if the class has fewer than 300 holders resident in the United States. This exemption shall continue until the next fiscal year end at which the issuer has a class of equity securities held by 300 or more persons resident in the United States. For the purpose of determining whether a security is exempt pursuant to this paragraph:

(1) Securities held of record by persons resident in the United States shall be determined as provided in § 240.12g5–1 except that securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers resident in the United States shall be counted as held in the United States by the number of separate accounts for which the securities are held. The issuer may rely in good faith on information as to the number of such separate accounts supplied by all owners of the class of its securities which are brokers, dealers, or banks or a nominee for any of them.

(2) Persons in the United States who hold the security only through a Canadian Retirement Account (as that term is defined in rule 237(a)(2) under the Securities Act of 1933 (§ 230.237(a)(2) of this chapter)), shall not be counted as holders resident in the United States.

(b)(1) Securities of any foreign private issuer shall be exempt from section 12(g) of the Act if the issuer, or a government official or agency of the country of the issuer's domicile or in which it is incorporated or organized:

(i) Shall furnish to the Commission whatever information in each of the following categories the issuer since the beginning of its last fiscal year (A) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (B) has filed or is required to file with a stock exchange on which its securities are traded and

which was made public by such exchange, or (C) has distributed or is required to distribute to its security holders;

(ii) Shall furnish to the Commission a list identifying the information referred to in paragraph (b)(1)(i) of this section and stating when and by whom it is required to be made public, filed with any such exchange, or distributed to security holders;

(iii) Shall furnish to the Commission, during each subsequent fiscal year, whatever information is made public as described in paragraphs (b)(1)(i) (A), (B) or (C) of this section promptly after such information is made or required to be made public as described therein;

(iv) Shall, promptly after the end of any fiscal year in which any changes occur in the kind of information required to be published as referred to in the list furnished under paragraph (b)(1)(ii) of this section or any subsequent list, furnish to the Commission a revised list reflecting such changes; and

(v) Shall furnish to the Commission in connection with the initial submission the following information to the extent known or which can be obtained without unreasonable effort or expense: the number of holders of each class of equity securities resident in the United States, the amount and percentage of each class of outstanding equity securities held by residents in the United States, the circumstances in which such securities were acquired, and the date and circumstances of the most recent public distribution of securities by the issuer or an affiliate thereof.

(2) The information required to be furnished under paragraphs (b)(1)(i) and (ii) of this section shall be furnished on or before the date on which a registration statement under section 12(g) of the Act would otherwise be required to be filed. Any issuer furnishing information under paragraph (b)(1)(i) of this section shall notify the Commission that it is furnished under that paragraph.

(3) The information required to be furnished under this paragraph (b) is information material to an investment decision such as: the financial condition or results of operations; changes in business; acquisitions or dispositions of assets; issuance, redemption or acquisitions of their 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.

(4) Only one complete copy of any information or document need be furnished under paragraph (b)(1) of this section. Such information and documents need not be under cover of any prescribed form and shall not be deemed to be ''filed'' with the Commission or otherwise subject to the liabilities of section 18 of the Act. Press releases and all other communications or materials distributed directly to securityholders of each class of securities to which the exemption relates shall be in English. English versions or adequate summaries in English may be furnished in lieu of original English translations. No other documents need be furnished unless the issuer has prepared or caused to be prepared, English translations, versions, or summaries of them. If no English translations, versions, or summaries have been prepared, a brief description in English of any such documents shall be furnished. Information or documents in a language other than English are not required to be furnished. If practicable, the Commission file number shall appear on the information furnished or in an accompanying letter. Any information or document previously sent to the Commission under cover of Form 40–F or Form 6–K need not be furnished under paragraph (b)(1) of this section.

(5) The furnishing of any information or document under paragraph (b) of this rule shall not constitute an admission for any purpose that the issuer is subject to the Act.

(c) 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 (c).

(d) The exemption provided by paragraph (b) of this rule shall not be available for the following securities:

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or

active) under section 15(d) of the Act (other than arising solely by virtue of the use of Form F–7, F–8, F–9, F–10 or F–80) ;

(2) Securities of a foreign private issuer issued in a transaction (other than a transaction registered on Form F–8, F–9, F–10 or F–80) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act; and

(3) Securities quoted in an ''automated inter-dealer quotation system'' or securities represented by American Depositary Receipts so quoted unless all the following conditions are met:

(i) Such securities were so quoted on October 5, 1983 and have been continuously traded since;

(ii) The issuer is in compliance with the exemption in paragraph (b) of this section on October 5, 1983 and has continuously maintained the exemption since; and

(iii) After January 2, 1986, the issuer is organized under the laws of any country except Canada or a political subdivision thereof.

[48 FR 46739, Oct. 14, 1983, as amended at 49 FR 12689, Mar. 30, 1984; 56 FR 30068, July 1, 1991; 65 FR 37676, June 15, 2000]

§ 240.12g–4 Certifications of termination of registration under section 12(g).

(a) Termination of registration of a class of securities shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer certifies to the Commission on Form 15 that:

(1) Such class of securities is held of record by:

(i) Less than 300 persons; or

(ii) By less than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years; or

(2) Such class of securities of a foreign private issuer, as defined in Rule 3b–4 (§ 240.3b–4), is held of record by:

(i) Less than 300 persons resident in the United States or

(ii) Less than 500 persons resident in the United States where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years.

For purposes of this paragraph, the number of persons resident in the United States shall be determined in accordance with the provisions of Rule 12g3–2(a) (§ 240.12g3–2(a)).

(b) The issuer's duty to file any reports required under section 13(a) shall be suspended immediately upon filing a certification on Form 15; *Provided, however,* That if the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days after the date of such withdrawal or denial, file with the Commission all reports which would have been required had the certification on Form 15 not been filed. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the certification shall be filed by the successor issuer.

(Secs. 12(g)(4), 12(h), 13(a), 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 78*l*(g)(4), 78*l*(h), 78m(a), 78o(d), 78w(a))

[49 FR 12689, Mar. 30, 1984, as amended at 51 FR 25362, July 14, 1986; 61 FR 21356, May 9, 1996]

§ 240.12g5–1 Definition of securities "held of record".

(a) For the purpose of determining whether an issuer is subject to the provisions of sections 12(g) and 15(d) of the Act, securities shall be deemed to be ''held of record'' by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the issuer, subject to the following:

(1) In any case where the records of security holders have not been maintained in accordance with accepted practice, any additional person who would be identified as such an owner on such records if they had been maintained in accordance with accepted practice shall be included as a holder of record.

(2) Securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person.