

## SEC FLASH REPORT

### **The SEC Adopts Rule to Allow a Foreign Private Issuer to Terminate Its Registration of Securities and Duty to File Reports**

**March 27, 2007**

Last week, the Securities and Exchange Commission (SEC) adopted long-awaited rules that will make it easier for foreign private issuers to deregister and terminate their SEC reporting obligations in the U.S. As explained today by the Commission in its press release, the elimination of conditions that had been considered a barrier to entry will encourage participation in U.S. public capital markets and increase investor choice. The adoption of new rule 12h-6 and the related Form 15F will enable a foreign private issuer meeting specified conditions to terminate its 1934 Exchange Act reporting responsibilities.

The new rules amend the existing rules that govern when a foreign private issuer may terminate the registration of a class of equity securities under Section 12(g) of the Securities Exchange Act of 1934 and the corresponding duty to file reports required under Section 13(a) of the Exchange Act. These rules also facilitate a foreign private issuer's cessation of its reporting obligations regarding a class of equity or debt securities under Section 15(d) of the Exchange Act. Under the existing rules, a foreign private issuer may exit the Exchange Act registration and reporting regime only if the class of the issuer's securities has less than 300 record holders who are U.S. residents. Not only was this hurdle a tough one for a foreign private issuer to overcome, it didn't adequately measure the level of U.S. investor interest in the issuer's securities. Because of the increased globalization of securities markets since the existing rules were adopted, foreign private issuers desiring to delist found it difficult to do so. In addition, currently a foreign private issuer can only suspend, and cannot terminate, a duty to report arising under Section 15(d) of the Exchange Act. All told, these issues have contributed to a broader concern that the burdens and uncertainties around terminating registration and reporting under the Exchange Act actually served as a disincentive to foreign private issuers accessing the U.S. public capital markets.

The new rules are intended to address these issues. They will permit a foreign private issuer of equity securities to terminate its reporting obligations under either Section 13(a) or Section 15(d) of the Exchange Act by meeting a quantitative benchmark designed to measure relative U.S. market interest for its equity securities. This so-called "trading volume standard" does not depend on a head count of the issuer's U.S. security holders, as under the previous rules. The new rule will permit a foreign private issuer, regardless of size, to compare the average daily trading volume of its securities in the U.S. with its worldwide average daily trading volume, using a 5 percent benchmark. The determination of the denominator when measuring against this 5 percent threshold is based on worldwide trading volume, rather than trading volume in the issuer's one or two primary markets. Off-market trading will be counted worldwide, and not only in the U.S., so long as the information source is reliable and not duplicative of exchange-reported trading. Convertible and other equity-linked securities are also not counted in the threshold calculation. In general, the Commission's rule amendments also provide that companies terminating their listings or ADR programs will have to wait one year before deregistering. This means that they must have

satisfied the trading volume standard as of the date of delisting, as measured over the 12 months immediately preceding the date of delisting.

While it remains to be seen how many foreign private issuers will use the new rules to delist in the U.S., it has been reported in the press that many of the largest European issuers have indicated that they intend to stay registered, at least for the time being. It is also reported that many foreign private issuers are waiting to see whether the SEC makes other changes that will reduce the costs of a U.S. listing, including improving the efficiency and effectiveness of implementing Section 404 of the Sarbanes-Oxley Act and the elimination of the requirement that foreign private issuers reconcile their financial statements, prepared according to international Financial Reporting Standards (IFRS), to U.S. GAAP. With respect to the elimination of the U.S. GAAP reconciliation requirement, this is a time consuming process because U.S. GAAP and IFRS have had major differences for a long time. During the SEC's open meeting last week, several of the SEC Commissioners expressed support for eliminating this requirement. The Commission's press release issued today indicates that it is actively considering eliminating the requirement.

The new rules also help provide U.S. investors with ready access through the Internet on an ongoing basis to material information about a foreign private issuer of equity securities that is required by its home country after it has exited the Exchange Act reporting system.

The SEC press release and the final rule amendment may be found on the SEC website at the following site: <http://www.sec.gov/news/press/2007/2007-55.htm>. The press release provides highlights of the new rule, which is effective 60 days after publication in the Federal Register. If the adopting release is published by mid-April, as expected, the new rules will be effective by the middle of June.