



U.S. Securities and Exchange Commission

SEC Votes to Propose Rules on Tender Offers, Foreign Issuer Deregistration; Also Votes to Adopt Filing Acceleration Changes

FOR IMMEDIATE RELEASE
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Washington, D.C., Dec. 14, 2005 - The Securities and Exchange Commission today voted to publish for comment rule proposals concerning the best-price rule on tender offers and the process whereby a foreign private issuer can terminate reporting requirements for classes of its securities registered under the Securities Exchange Act of 1934. The Commission also adopted rules concerning acceleration of filing deadlines for periodic reports required under the Exchange Act.

1. Proposed Amendments to the Tender Offer Best-Price Rule

The tender offer best-price rule requires that the consideration paid to any security holder in a tender offer is the highest consideration paid to any other security holder in the offer. This rule applies to offers by third parties - Exchange Act Rule 14d-10(a)(2) - and issuers - Exchange Act Rule 13e-4(f)(8)(ii). A split has emerged among federal circuit courts as to whether the tender offer best-price rule applies to arrangements, usually compensatory in nature, entered into by a bidder in a tender offer and the employees or directors of the target company in contemplation of the acquisition.

The Commission voted to propose revisions that would reinforce the original premise of the tender offer best-price rule - ensuring that all shareholders who tender their securities in an offer are paid the same consideration. The proposed revisions also would allow bidders and target companies to proceed with a tender offer with greater certainty as to the manner in which the best-price rule will be applied to employment and severance arrangements.

The proposed amendments would revise the best-price rule in the following manner.

- **Clarify the application of the tender offer best-price rule** - The issuer and third-party best-price rules would be revised to clarify that the best-price rule applies only with respect to the consideration paid for securities tendered in an issuer or third-party tender offer. The best-price rules also would be revised to make clear that there is not a time restriction on its application.

- **Exempt certain compensation, severance or employee benefit arrangements from the tender offer best-price rule** - The third-party best-price rule would be revised to add a specific exemption from the rule for the negotiation, execution or amendment of an employment compensation, severance or other employee benefit arrangement, so long as the amount payable under the arrangement relates solely to past services performed, future services to be rendered or refrained from rendering and is not based on the number of shares the employee or director owns or tenders.
- **Provide a safe harbor for the exemption from the tender offer best-price rule for certain compensation, severance or employee benefit arrangements** - The third-party best-price rule would be revised to include a safe harbor provision that would allow the independent compensation committee or a committee of the target's or bidder's board of directors - depending on whether the target or the bidder is the party to the arrangement - to approve an employment compensation, severance or other employee benefit arrangement and thereby have it deemed to be such an arrangement within the meaning of the exemption.

Comments on the proposal should be received by the Commission within 60 days of its publication in the Federal Register.

2. Proposals to Allow Foreign Private Issuers to Exit the Exchange Act Reporting System

Introduction

Under current rules, a foreign private issuer may exit the Exchange Act registration and reporting regime if the class of the issuer's securities has less than 300 record holders who are U.S. residents. Under these rules, a foreign private issuer may find it difficult to terminate its Exchange Act registration and reporting obligations despite the fact that there is relatively little investor interest in the United States. In light of the increased internationalization of the U.S. securities markets that has occurred since the adoption of these rules, new Exchange Act Rule 12h-6 would allow a foreign private issuer to

terminate its registration of a class of equity securities under Exchange Act Section 12(g) and its resulting Section 13(a) reporting obligations or terminate, and not merely suspend, its Section 15(d) reporting obligations regarding a class of equity securities as long as the issuer meets specified criteria designed to measure U.S. market interest for that class of securities; and

terminate, and not merely suspend, its Section 15(d) reporting obligations regarding a class of debt securities as long as it

meets conditions similar to the current requirements for suspending its reporting obligations relating to that class of debt securities.

Equity Securities

A foreign private issuer would be eligible to terminate its Exchange Act registration and reporting obligations regarding a class of equity securities under proposed Rule 12h-6 if it meets the following conditions:

the issuer has been an Exchange Act reporting company for the past two years, has filed or furnished all reports required for this period, and has filed at least two annual reports under section 13 (a) of the Exchange Act;

the issuer has not directly or indirectly sold its securities, with certain exceptions, in the United States in either a registered or unregistered offering under the Securities Act during the preceding 12 months; and

during the preceding two years, the issuer has maintained a listing of the securities on an exchange in its home country, as defined on Form 20-F, which constitutes the primary trading market for the securities.

An eligible foreign private issuer would then have to meet one of a set of alternative benchmarks, depending primarily on whether the issuer is a well-known seasoned issuer:

If the issuer is a well-known seasoned issuer, either:

the U.S. average daily trading volume of the subject class of securities has been no greater than 5 percent of the average daily trading volume of that class of securities in its primary trading market and U.S. residents held no more than 10 percent of the issuer's worldwide public float; or

regardless of U.S. trading volume, U.S. residents held no more than 5 percent of the issuer's worldwide public float.

If the issuer is not a well-known seasoned issuer, regardless of U.S. trading volume, U.S. residents held no more than 5 percent of the issuer's worldwide public float.

Also, proposed Rule 12h-6 would provide that a foreign private issuer that is unable to meet one of the proposed new benchmarks, but does satisfy the rule's other conditions, could still terminate its Exchange Act registration and reporting obligations regarding a class of equity securities as long as that class of securities is held of record by less than 300 persons on a worldwide

basis or less than 300 persons resident in the United States.

Today's proposals also would apply the exemption under Exchange Act Rule 12g3-2(b) to a foreign private issuer immediately upon its termination of Exchange Act registration and reporting regarding a class of equity securities. Under the exemption, however, a foreign private issuer would have to publish in English the home country materials required by Rule 12g3-2(b) on its Internet web site or through an electronic information delivery system that is generally available to the public in its primary trading market. It is intended that a foreign private issuer that regularly posts corporate information on its web site would be able to maintain this exemption.

Debt Securities

A foreign private issuer would be eligible to terminate its Section 15(d) reporting obligations regarding a class of debt securities under proposed Rule 12h-6 if it meets the following conditions:

the issuer has filed or furnished all required reports under Section 15(d), including at least one annual report pursuant to Section 13(a) of the Act; and

the class of debt securities is either held of record by less than 300 persons on a worldwide basis or less than 300 persons resident in the United States.

Counting Method

In order to facilitate a foreign private issuer's determination regarding whether U.S. residents hold no more than the applicable threshold percentage of its worldwide public float or whether the number of its U.S. resident equity or debt securities record holders meet the applicable threshold condition, proposed Rule 12h-6 would permit an issuer to

limit its inquiry regarding the amount of securities represented by accounts of customers resident in the United States to brokers, dealers, banks and other nominees located in the United States, the foreign private issuer's jurisdiction of incorporation, legal organization, or establishment and, if different, the jurisdiction of the foreign private issuer's primary trading market; and

rely in good faith on the assistance of an independent information services provider that in the regular course of business assists issuers in determining the number of, and collecting other information regarding, their shareholders.

New Form 15F

Under proposed Rule 12h-6, a foreign private issuer would have to file new Form 15F with the Commission, certifying the issuer's compliance with the requirements for termination of its Exchange Act reporting obligations and providing specified supporting information. As with the filing of Form 15 under the current rules, the filing of Form 15F would automatically suspend an issuer's reporting duties. If the Commission has not objected, the suspension would become a permanent termination 90 days after the filing of the Form 15F.

Comments on the proposal should be received by the Commission within 60 days of its publication in the Federal Register.

3. Adoption of Revisions to Periodic Report Filing Deadlines and to the Definition of an Accelerated Filer

Summary

Next year, larger public companies will be subject to the final phase-in of accelerated periodic report filing deadlines. The Commission voted to adopt amendments to the periodic report filing deadlines and the Exchange Act Rule 12b-2 definition of an accelerated filer. The amendments will

- create a new category of companies called "large accelerated filers";
- redefine the category of "accelerated filers";
- establish longer Form 10-K annual report and Form 10-Q quarterly report deadlines for accelerated filers, except that only the category of large accelerated filers would be subject to a final phase-in of the 60-day Form 10-K annual report deadline beginning with fiscal years ending on or after Dec. 15, 2006;
- amend the definition of an accelerated filer to modify the requirements for exiting out of accelerated filer status; and
- amend the definition of an accelerated filer to establish requirements for exiting out of large accelerated filer status.

Background

In September 2002, the Commission adopted rules that subjected companies with \$75 million or more in public float to accelerated deadlines for their annual reports on Form 10-K and quarterly reports on Form 10-Q. The accelerated deadlines were to be phased-in gradually over a three-year period. In November 2004, the Commission postponed the final phase-in of the accelerated deadlines. Currently, an accelerated filer's annual report on Form 10-K is due within 75 days after fiscal year end and its quarterly reports on Form 10-Q are due within 40 days after fiscal quarter end. Beginning with the annual reports for the fiscal years ending on or after Dec.

15, 2005, an accelerated filer's annual report on Form 10-K would be due within 60 days after fiscal year end and its quarterly reports on Form 10-Q would be due within 35 days after fiscal quarter end. On Sept. 22, 2005, we published for notice and public comment proposals that would revise the periodic report filing deadlines to maintain the 75-day Form 10-K deadline for accelerated filers that are not large accelerated filers and to maintain the 40-day Form 10-Q deadline for both accelerated filers and large accelerated filers.

Large Accelerated Filers and Accelerated Filers

The Commission voted to adopt amendments that will create a new category of "large accelerated filers" that will include companies with a public float of \$700 million or more. The amendments also will redefine "accelerated filers" as companies that have at least \$75 million, but less than \$700 million, in public float.

Amendments to Filing Deadlines

Under the amendments, the deadlines will be changed in the following manner:

- large accelerated filers will be subject to a 60-day Form 10-K annual report deadline starting in fiscal years ending on or after Dec. 15, 2006, and to a 75-day deadline until then;
- large accelerated filers will be subject to a 40-day Form 10-Q quarterly report deadline;
- the redefined accelerated filers will be subject to a 75-day Form 10-K annual report deadline; and
- the redefined accelerated filers will be subject to a 40-day Form 10-Q quarterly report deadline.

The periodic report filing deadlines for the other reporting companies will not be changed. Non-accelerated filers will continue to file their annual reports on Form 10-K or 10-KSB under the 90-day deadline and quarterly reports on Form 10-Q or 10-QSB under the 45-day deadline. The amendments also will not impact Form 20-F or Form 40-F filing deadlines applicable to foreign private issuers.

Amendments to the Accelerated Filer Definition

The amendments will modify the exit requirements out of accelerated filer status by permitting an accelerated filer whose public float has dropped below \$50 million to file an annual report on a non-accelerated basis for the same fiscal year that the determination of public float is made. The amendments also will provide for similar requirements for exiting out of large

accelerated filer status, permitting a large accelerated filer to exit promptly out of large accelerated filer status once its public float has dropped below \$500 million.

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The full text of detailed releases concerning each of these items will be posted to the SEC Web site as soon as possible.

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