



## U.S. Securities and Exchange Commission

### SEC Posts Text of Rules Facilitating Foreign Private Issuer Deregistration Under the Exchange Act

**FOR IMMEDIATE RELEASE  
2007-55**

*Washington, D.C., March 27, 2007* — The Commission today published its new rules for deregistration by foreign companies as adopted by the Commission March 21, 2007. By eliminating conditions that had been considered a barrier to entry, the amended rules will encourage participation in U.S. markets and increase investor choice. The text can be found at <http://www.sec.gov/rules/final/2007/34-55540.pdf>.

"We believe that the amended rules will better serve the needs of both U.S. investors and foreign private issuers. We recognize the importance of foreign private issuers to the U.S. capital markets and expect that the new deregistration rules should in fact promote capital formation in the U.S. and make our markets more attractive to foreign companies without sacrificing important investor protections," said John W. White, Director of the Division of Corporation Finance at the SEC. "These rules represent a key step in the Commission's continuing efforts to respond to the challenges and needs of our markets' increasing globalization. This effort includes improving the efficiency and effectiveness of implementation of Section 404 of the Sarbanes-Oxley Act and actively considering eliminating the requirement that foreign private issuers reconcile their IFRS financial statements to U.S. GAAP."

On March 21, 2007, the Commission voted unanimously to adopt changes to the 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, and when it may cease its reporting obligations regarding a class of equity or debt securities under Section 15(d) of the Exchange Act. Under the 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. Because of the increased globalization of securities markets since the current rules were adopted, 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 interest in the issuer's securities among United States investors. Moreover, currently a foreign private issuer can only suspend, and cannot terminate, a duty to report arising under Section 15(d) of the Exchange Act.

New Exchange Act Rule 12h-6 will permit the termination of Exchange Act reporting regarding a class of equity securities under either Section 12(g) or Section 15(d) of the Exchange Act by a foreign private issuer that meets a quantitative benchmark designed to measure relative U.S. market interest for that class of securities. Instead of counting the number of the issuer's U.S. security holders, the new benchmark will require the comparison of the average daily trading volume of an issuer's securities in the United States with its worldwide average daily trading volume.

## Highlights of the Adopted Rules

### Trading Volume Standard

Rule 12h-6 will:

- permit a foreign private issuer to terminate its Exchange Act registration and reporting obligations regarding a class of equity securities, assuming it meets all the other conditions of Rule 12h-6, if 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 on a worldwide basis for a recent 12-month period; and
- require an issuer that delists in the U.S. or terminates a sponsored American Depositary Receipts facility prior to deregistering under Rule 12h-6 to meet the trading volume standard at the date of delisting or termination or else wait 12 months before it can proceed with deregistration in reliance on the trading volume standard.

### Other Conditions for Equity Securities Registrants

Rule 12h-6 will also require an equity securities registrant to:

- have been an Exchange Act reporting company for at least one year, to have filed or submitted all Exchange Act reports required for this period, and to have filed at least one Exchange Act annual report;
- have not sold its securities in a registered offering in the United States, except for specified offerings, during the preceding 12 months, but will allow exempted securities offerings; and
- have maintained a listing on one or more exchanges for at least a year in a foreign jurisdiction that, either singly or together with one other foreign jurisdiction, constitutes the primary trading market for the issuer's subject class of securities.

### Other Rule 12h-6 Provisions

Rule 12h-6 will also apply to a foreign private issuer that:

- terminated or suspended its Exchange Act reporting obligations under the current exit rules before the effective date of Rule 12h-6, as long as it meets specified conditions; or
- has succeeded to the Exchange Act reporting obligations of another company following a merger, acquisition or other similar transaction, by permitting that issuer to take into account the Exchange Act reporting history of its predecessor when determining whether it meets the conditions for deregistration under Rule 12h-6.

### **Rule 12g3-2(b) Amendments**

The adopted rule amendments will permit a foreign private issuer to claim the Rule 12g3-2(b) exemption:

- immediately upon its termination of Exchange Act reporting under Rule 12h-6, rather than having to wait 18 months as is currently required; and
- upon the condition that it publish in English its home country materials required by Rule 12g3-2(b) on its Internet website or through an electronic information delivery system that is generally available to the public in its primary trading market.

The adopted rule amendments will further permit a non-reporting company that has received or will receive the Rule 12g3-2(b) exemption, upon application to the Commission and not pursuant to Rule 12h-6, to publish in English its required home country documents on its Internet website or through an electronic information delivery system in its primary trading market, rather than submitting them in paper to the Commission, as is currently required.

### **Effective Date**

The effective date of the adopted rules will be 60 days from their publication in the Federal Register.

*<http://www.sec.gov/news/press/2007/2007-55.htm>*