

## **SUPPORTING STATEMENT FOR PROPOSED RULES UNDER THE SECURITIES EXCHANGE ACT OF 1934**

This submission, pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq., consists of this supporting statement and the accompanying proposing release.

### **A. JUSTIFICATION**

#### **1. NECESSITY FOR THE INFORMATION COLLECTION**

The Securities Exchange Act of 1934 ("Exchange Act") is intended to ensure that secondary markets for publicly traded securities are fair and honest. The principal means by which the Exchange Act carries out this purpose include regulation of broker-dealers, registration of exchanged-traded and other securities, remedial provisions for fraud in securities transactions and manipulation of regulated securities markets, and limits on the extension of credit for securities purposes. In addition, they include issuer registration and periodic reporting requirements prescribed by the Securities and Exchange Commission ("Commission") pursuant to its authority in Sections 12(b), 12(g), 13(a) and 15(d) of the Exchange Act.

Exchange Act Section 12(g)(3) provides that the Commission may exempt from the registration requirements of Section 12(g)(1) any security of a foreign issuer if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors. The Commission has exercised its authority under Section 12(g)(3) by providing an exemption from such requirements to a foreign private issuer that provides certain information to the Commission that is publicly available in accordance with the laws of the foreign jurisdiction in which the foreign private issuer is domiciled, incorporated or organized, or the rules of the foreign stock exchange on which its securities are traded, or that has been distributed or is required to be distributed to its security holders, and that otherwise satisfies other conditions as currently specified in Exchange Act Rule 12g3-2.<sup>1</sup>

In 1992 the Commission received approval to use Forms 12-F and 12-FA to collect the information required by Rule 12g3-2. However, the Commission never adopted those forms. Therefore, the information required by Rule 12g3-2 currently is not submitted to the Commission on a prescribed form.

#### **2. PURPOSE OF THE INFORMATION COLLECTION**

The principal function of the Commission's forms, schedules and rules under the securities laws' disclosure provisions is to make information available to investors. The information required to be filed with and submitted to the Commission permits verification of compliance with securities law requirements and assures the public availability and dissemination of such information. Private contractors currently

---

<sup>1</sup> This exemption is codified as Exchange Act Rule 12g3-2(b) (17 CFR 240.12g3-2(b)).

reproduce much of the submitted information and provide it to private parties. Other persons obtain information directly from the Commission's files located in the Commission's Public Reference Room. Security holders, investors, broker-dealers, investment banking firms, professional securities analysts and others can use this information in evaluating securities and making investment decisions with respect to such securities. In addition, all investors benefit from submissions under Rule 12g3-2(b) as direct users effecting transactions in securities on the basis of current information about the issuer's business and operations thereby cause the market price of the securities to reflect such information.

### **3. USE OF ELECTRONIC MEDIA**

A foreign private issuer that has received the exemption under Rule 12g3-2(b) currently must submit its required home country documents in paper to the Commission. A recent proposal to amend Rule 12g3-2 would increase investors access to current information required to be submitted under that rule by enabling a foreign private issuer that has obtained the exemption to publish required material information in English on its Internet web site or through an electronic information delivery system that is generally available to the public in the issuer's primary trading market.<sup>2</sup>

### **4. DUPLICATION**

The information required by Rule 12g3-2(b) is designed to provide investors with home country information concerning foreign private issuers and their securities. This information is not otherwise readily available in the United States.

### **5. METHODS USED TO MINIMIZE BURDEN ON SMALL BUSINESSES**

There are no qualifications for the use of Rule 12g3-2(b) based on the size of an applying foreign private issuer. Thus, Rule 12g3-2(b) does not discriminate against small issuers.

### **6. DESCRIPTION OF CONSEQUENCES OF LESS FREQUENT COLLECTION**

Persons in the United States considering investment in securities issued by foreign private issuers would find it more difficult and expensive to obtain the necessary information if not required by the Commission.

### **7. EXPLANATION OF SPECIAL CIRCUMSTANCES**

Not applicable.

### **8. CONSULTATION OUTSIDE THE AGENCY**

---

<sup>2</sup> See SEC Release No. 34-55005 (December 22, 2006). The Commission originally proposed similar rule amendments in SEC Release No. 34-53020 (December 23, 2005).

The Commission has an ongoing dialogue with foreign private issuers and their representatives. The Commission proposes and solicits public comment regarding rules of interest to foreign private issuers.

**9. PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY**

Information submitted under Rule 12g3-2(b) is public.

**11. SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATE OF HOUR BURDEN**

We estimate that 685 foreign private issuers currently have obtained the Rule 12g3-2(b) exemption.<sup>3</sup> We further estimate that each Rule 12g3-2(b) exempt issuer currently makes 12 submissions per year for a total of 8,220 Rule 12g3-2(b) submissions. In addition, we estimate that it takes a total of 32,880 annual burden hours, or 4 annual burden hours per submission (for work performed by foreign private issuers and outside firms), to produce the 8,220 Rule 12g3-2(b) submissions.

These estimates represent an adjustment from the 1,800 total hours previously reported for Rule 12g3-2(b) submissions. In connection with the rule proposal described in Release No. 34-55005, the Commission re-evaluated the number of foreign private issuers that currently claim the Rule 12g3-2(b) exemption, the number of Rule 12g3-2(b) submissions made by them, and the number of burden hours required for their production, in addition to assessing the effects on Rule 12g3-2(b) submissions expected to result from adoption of the rule amendments. We believe these estimates more accurately reflect the current burden hours required for the collections of information submitted under Rule 12g3-2(b).

If adopted, the rule amendments described in Release No. 34-55005 would enable a foreign private issuer to claim the Rule 12g3-2(b) exemption immediately upon its termination of Exchange Act reporting under the proposed new Exchange Act Rule 12h-6. As a condition of maintaining the exemption, a foreign private issuer would have to publish specified material home country documents required under Rule 12g3-2(b) in English on its Internet web site or through an electronic information delivery system that is generally available to the public in the issuer's primary trading market.

---

<sup>3</sup> This estimate is based on Commission staff's most recent annual review of the number of current Rule 12g3-2(b) exempt companies.

The rule amendments would further permit a foreign private issuer that has obtained the Rule 12g3-2(b) exemption upon application to the Commission, and not pursuant to Rule 12h-6, similarly to publish electronically its home country documents required to maintain the exemption, instead of having to submit them in paper to the Commission, as is currently the case.

When assessing the effects that these proposed rules, if adopted, would have on the annual burden estimate for the home country submissions required under Rule 12g3-2(b), we have assumed that a foreign private issuer incurs or will incur 75% of the annual burden required to produce each Rule 12g3-2(b) submission, not including English translation work, and 25% of the annual burden required to perform the English translation work for Rule 12g3-2(b) submissions.

The estimated effects of the proposed rules reflect the initial phase-in period of the Exchange Act termination process under new Rule 12h-6 during the first year of use.<sup>4</sup> We expect that most of these estimated effects would occur on a one-time, rather than a recurring, basis. While we expect that some issuers would terminate their Exchange Act reporting under Rule 12h-6 in subsequent years, we do not expect the resulting burdens and costs to be of the same magnitude as the burdens and costs currently expected during the first year.

During the first year of effectiveness of proposed Rule 12h-6, we estimate that as many as 351 foreign private issuers could claim the Rule 12g3-2(b) exemption immediately upon the effectiveness of their termination of reporting under Rule 12h-6.<sup>5</sup> 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 1,036;
- the number of Rule 12g3-2(b) submissions made annually to total 12,432;
- the number of annual burden hours required to produce these Rule 12g3-2(b) submissions to total 49,728 hours; and

---

<sup>4</sup> We similarly used a one-year phase-in period when estimating the effects of the originally proposed rules in Release No. 34-53020.

<sup>5</sup> See Part IV.E. of Release No. 34-55005.

- foreign private issuers to incur a total of 31,080 annual burden hours to produce these Rule 12g3-2(b) submissions, or 2.5 annual burden hours per submission.<sup>6</sup>

### **13. ESTIMATE OF TOTAL ANNUALIZED COST BURDEN**

We estimate that, during the first year of effectiveness of proposed Rule 12h-6 and the accompanying rule amendments, outside firms, including legal counsel, accountants and other advisors, would incur a total cost of \$4,895,100 to produce the Rule 12g3-2(b) submissions, or \$393.75 per submission.<sup>7</sup> When making this estimate, we have assumed that outside firms incur or will incur 25% of the burden required to produce each Rule 12g3-2(b) submission, not including English translation work, at an average cost of \$400 per hour, and 75% of the annual burden resulting from the English translation work for Rule 12g3-2(b) submissions, at an average cost of \$125 per hour.

### **14. ESTIMATE OF COST TO FEDERAL GOVERNMENT**

We estimate that the federal government incurs annual costs of \$50,000 in administering the Rule 12g3-2(b) program. These costs include salaries paid to attorneys and an administrative assistant who review and process the Rule 12g3-2(b) submissions.

### **15. EXPLANATION OF CHANGES IN BURDEN**

The estimated increase in the annual amount of burden hours and costs required to produce Rule 12g3-2(b) submissions results from both a program change and a program adjustment. The program change reflects the estimated effects that proposed Rule 12h-6 and the accompanying rule amendments would have on Rule 12g3-2(b) submissions during the first year of the rules' effectiveness. The program adjustment reflects our updated assessment of the annual number of respondents that make Rule 12g3-2(b) submissions, the number of such submissions per respondent, the division of labor between issuers' internal staff and outside firms required to produce the Rule 12g3-2(b) submissions, and the estimated burden hours and costs for the Rule 12g3-2(b) submissions.

---

<sup>6</sup> 49,728 hours x .25 = 12,432 total annual burden hours for English translation work; 49,728 - 12,432 = 37,296 total annual burden hours required for non-English translation work; 37,296 hours x .75 = 27,972 total annual burden hours incurred by foreign private issuers for non-English translation work; 12,432 hours x .25 = 3,108 total annual hours incurred by foreign private issuers for English translation work; 27,972 + 3,108 = 31,080 total annual burden hours incurred by foreign private issuers for Rule 12g3-2(b) submissions, or 2.5 annual burden hours per submission.

<sup>7</sup> 49,728 hours x .25 = 12,432 hours for English translation work; 12,432 hours x .75 = 9,324 hours; 9,324 hours x \$125 = \$1,165,500 for English translation work; 49,728 hours - 12,432 hours = 37,296 hours for non-English translation work; 37,296 hours x .25 = 9,324 hours; 9,324 hours x \$400 = \$3,729,600 for non-English translation work; \$1,165,500 + \$3,729,600 = \$4,895,100 for total work performed by outside firms, or \$393.75 per submission.

Based on our recent review of the Rule 12g3-2(b) program, we believe that the previous annual estimate of 1,800 hours is low and does not accurately reflect the multiple submissions made annually by each respondent under Rule 12g3-2(b). Moreover, the previous estimate assumed that foreign private issuers incurred all of the burden, and outside firms incurred no costs, when producing Rule 12g3-2(b) submissions. We believe the updated assumed division of labor between issuers and outside firms more accurately reflects the actual production process of, and resulting hour and cost burdens for, the Rule 12g3-2(b) submissions.

The estimated 31,080 hours that foreign private issuers would incur to produce the Rule 12g3-2(b) submissions represents an increase of 29,280 hours from the previously submitted estimate of 1,800 hours. Of that increase, 10,530 hours would result from adoption of the proposed rules while 18,750 hours represent an adjustment from the previous estimate.<sup>8</sup> Of the estimated annual costs of \$4,895,100 that outside firms would incur to produce the Rule 12g3-2(b) submissions, \$1,658,475 would result from adoption of the proposed rules while \$3,236,625 represents an adjustment from the previously submitted estimate for Rule 12g3-2(b) submissions.<sup>9</sup>

**16. INFORMATION COLLECTIONS PLANNED FOR STATISTICAL PURPOSES**

Not applicable.

**17. EXPLANATION AS TO WHY EXPIRATION DATE WILL NOT BE DISPLAYED**

Not applicable.

---

<sup>8</sup> As noted earlier, before assessing the effects of proposed Rule 12h-6 and the related rule amendments on the estimated burden hours and costs of Rule 12g3-2(b) submissions, we have made an adjustment to these estimates by increasing the estimated number of total hours required to produce Rule 12g3-2(b) submissions annually from 1,800 to 32,880 hours. After assessing the effects of the proposed rules, we have estimated that the number of total hours required to produce Rule 12g3-2(b) submissions during the new rules' first year of effectiveness would increase by 16,848 hours to 49,728 hours (49,728 - 32,880 = 16,848). Of the 16,848 hour increase, 12,636 hours would consist of non-English translation work (16,848 x .75 = 12,636) and 4,212 hours would comprise English translation work. Foreign private issuers would account for 9,477 hours of the non-English translation work (12,636 x .75 = 9,477) and 1,053 hours of the English translation work (4,212 x .25 = 1,053 hours) for a total of 10,530 hours.

<sup>9</sup> 16,848 hours x .75 = 12,636 hours of non-English translation work; 12,636 hours x .25 x \$400/hour = \$1,263,600 for non-English translation work. 16,848 hours x .25 = 4,212 hours of English translation work; 4,212 hours x .75 x \$125/hour = \$394,875 for English translation work. \$1,263,600 + \$394,875 = \$1,658,475 for total costs incurred by outside firms as a result of adoption of the proposed rules. \$4,895,100 - \$1,658,475 = \$3,236,625 in outside firm costs resulting from the program adjustment.

**18. EXCEPTIONS TO CERTIFICATION**

Not applicable.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.