

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 (together the issuer's "non-U.S. disclosure documents"), and that otherwise satisfies other conditions as currently specified in Exchange Act Rule 12g3-2.¹

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

¹ 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. Many persons obtain information directly from the Commission's public files. 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 applies for the exemption under Rule 12g3-2(b) currently must submit required written materials, including copies of its non-U.S. disclosure documents published since the beginning of its last fiscal year, in paper to the Commission. The Commission recently proposed to amend Rule 12g3-2 to eliminate the written application and paper submission requirements of Rule 12g3-2(b) by enabling a foreign private issuer to claim the Rule 12g3-2(b) exemption automatically as long as it satisfies specified conditions.² Those conditions include the requirement that the issuer publish specified non-U.S. disclosure documents required to claim and maintain the Rule 12g3-2(b) exemption on its Internet web site or through an electronic information delivery system generally available to the public in its primary trading market. The primary purpose of the proposed rule amendments is to make it easier for U.S. investors to gain access to a foreign private issuer's material non-U.S. disclosure documents and thereby make better informed decisions regarding investing in the issuer's securities in the U.S. over-the-counter market or otherwise.

DUPLICATION

The information required by Rule 12g3-2(b) is designed to provide investors with home country and other non-U.S. 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.

² See SEC Release No. 34-57350 (February 19, 2008). The Commission earlier amended Rule 12g3-2 to enable a foreign private issuer to claim the Rule 12g3-2(b) exemption automatically upon the effectiveness of its deregistration under Exchange Act Rule 12h-6. See SEC Release No. 34-55540 (March 27, 2007) and 17 CFR 240.12h-6. As a condition of maintaining the Rule 12g3-2(b) exemption, the Commission similarly required that foreign private issuer to publish electronically its specified non-U.S. disclosure documents in English on an ongoing basis for subsequent fiscal years. As part of the earlier rule amendments, the Commission also permitted but did not require an issuer that had received the Rule 12g3-2(b) exemption upon application similarly to publish electronically its non-U.S. disclosure documents.

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

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

If adopted, the rule amendments described in Release No. 34-57350 would enable a foreign private issuer to claim the Rule 12g3-2(b) exemption automatically as long as it satisfies specified conditions, without having to submit a written application and without having to make paper submissions to the Commission. When assessing the effects that these rule amendments, if adopted, would have on the annual burden estimate for the non-U.S. disclosure document requirements under Rule 12g3-2(b), we have assumed that a foreign private issuer incurs 75% of the burden required to produce each Rule 12g3-2(b) submission or publication, excluding the initial application for the Rule 12g3-2(b) exemption and English translation work, and 25% of the burden required to perform work for the initial application and English translation for the Rule 12g3-2(b) submissions or publications. We further assume that English translation work constitutes on average 25% of the total work required for the Rule 12g3-2(b) submissions, and that 685 of the Rule 12g3-2(b)-exempt issuers submitted written applications, each of which took on average approximately 20 hours to complete.³

³ 685 x 20 = 13,700 hrs. for written application work.

We estimate that 1,036 foreign private issuers currently have obtained the Rule 12g3-2(b) exemption.⁴ In addition, we estimate that each Rule 12g3-2(b)-exempt issuer currently makes 12 submissions per year for a total of 12,432 Rule 12g3-2(b) submissions. We further estimate that it takes a total of 49,728 annual burden hours, or 4 annual burden hours per submission (for work performed by both foreign private issuers and outside firms), to produce the 12,432 Rule 12g3-2(b) submissions.

We estimate that foreign private issuers currently incur a total of 25,943 burden hours⁵ to produce the Rule 12g3-2(b) submissions or publications, or an average of 2.1 burden hours per submission or publication.⁶ We further estimate that, on an annual basis, approximately 150 additional foreign private issuers could claim the Rule 12g3-2(b) exemption as a result of the proposed amendments to Rule 12g3-2. 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 1,186;
- the number of Rule 12g3-2(b) publications to total 14,232;⁷
- the number of burden hours required to produce these Rule 12g3-2(b) publications to total 53,928;⁸ and
- the number of burden hours incurred by foreign private issuers to produce the Rule 12g3-2(b) publications to total 33,706 hours, or 2.4 burden hours per

⁴ This estimate is based on Commission staff's most recent annual review of the number of current Rule 12g3-2(b) exempt companies and the factors discussed in SEC Release No. 34-55540.

⁵ 49,728 hrs. - 13,700 hrs. = 36,028 hrs. for work excluding application work. 36,028 hrs. x .25 = 9,007 hrs. for English translation work. 36,028 hrs. - 9,007 hrs. = 27,021 hrs. x .75 = 20,266 hrs. for non-English translation work. 9,007 hrs. x .25 = 2,252 hrs. for English translation work. 13,700 hrs. x .25 = 3,425 hrs. for application work. 20,266 hrs. + 2,252 hrs. + 3,425 hrs. = 25,943 hrs. for total work performed by foreign private issuers. 25,943 hrs./12,432 = 2.1 hrs per submission or publication.

⁶ The last OMB submission for Rule 12g3-2(b) reported 31,080 burden hours for foreign private issuers. Our current estimate of 25,943 burden hours is due to our assessment of the average annual burden hours required to produce written applications under Rule 12g3-2(b), most of which are incurred by outside firms. We are treating the decrease in hours as an adjustment to the previous PRA burden estimate for Rule 12g3-2(b).

⁷ 1,186 x 12 = 14,232.

⁸ 14,232 hrs. x 4 = 56,928 hrs. 150 x 20hrs. = 3,000 hrs. saved by the elimination of the written application requirement. 56,928 hrs. - 3,000 hrs. = 53,928 hrs.

publication.⁹

13. ESTIMATE OF TOTAL ANNUALIZED COST BURDEN

When assessing the effects that these rule amendments, if adopted, would have on the annual cost estimate for the non-U.S. disclosure document requirements under Rule 12g3-2(b), we have assumed that outside firms, including legal counsel, accountants and other advisors satisfy 25% of the burden required to produce each Rule 12g3-2(b) submission or publication, not including the initial application for the Rule 12g3-2(b) exemption and English translation work, at an average cost of \$400 per hour, 75% of the burden required to produce the initial application at an average cost of \$400 per hour, and 75% of the burden resulting from English translation work at an average cost of \$125 per hour.

We estimate that, currently, outside firms incur a total cost of \$7,656,375¹⁰ to produce the Rule 12g3-2(b) submissions or publications.¹¹ We estimate that, if adopted, the proposed rule amendments would cause outside firms to incur total costs of \$5,308,800 to produce the Rule 12g3- 2(b) publications¹²

⁹ 53,928 hrs. x .25 = 13,482 hrs. for English translation work. 53,928 hrs. - 13,482 hrs. = 40,446 hrs.; 40,446 hrs. x .75 = 30,335 hrs. for non-English translation work; 13,482 hrs. x .25 = 3,371 hrs. for English translation work; 30,335 hrs. + 3,371 hrs. = 33,706 total hrs. incurred by foreign private issuers. 33,706 hrs./14,232 = 2.4 hrs. per publication. This represents a net increase of 2,626 hrs. from the previous PRA estimate for Rule 12g3-2(b).

¹⁰ 27,021 hrs. x .25 = 6,755 hrs. x \$400/hr. = \$2,702,000 for non-English translation work. 9,007 hrs. x .75 = 6,755 hrs. x \$125/hr. = \$844,375 for English translation work. 13,700 hrs. x .75 = 10,275 hrs. x \$400/hr. = \$4,110,000 for application work. \$2,702,000 + \$844,375 + \$4,110,000 = \$7,656,375 for total work performed by outside firms.

¹¹ The last OMB submission for Rule 12g3-2(b) reported \$4,895,100 in total costs for outside firms. Our current estimate of \$7,656,375 is due to the previously noted assessment of the average annual burden hours required to produce written applications under Rule 12g3-2(b). We are treating the increase in costs as an adjustment to the previous PRA cost estimate for Rule 12g3-2(b).

¹² 40,446 hrs. x .25 = 10,112 hrs. x \$400/hr. = \$4,044,800 for non-English translation work; 13,482 hrs. x .75 = 10,112 hrs. x \$125/hr. = \$1,264,000 for English translation work; \$4,044,800 + \$1,264,000 = \$5,308,800 for total costs incurred by outside firms. This represents a net increase of \$413,700 from the previous PRA estimate for Rule 12g3-2(b).

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 increase in the number of foreign private issuers that will claim the Rule 12g3-2(b) exemption as a result of the proposed amendments. The program adjustment reflects our updated assessment of the number of burden hours and costs currently required to produce each written application for the Rule 12g3-2(b) amendment, and the estimated effects that the proposed elimination of the written application requirement will have on issuers and outside firms. Since issuers currently rely significantly on outside firms to produce the written applications, we expect that the proposed elimination of the written application requirement, if adopted, will have the greatest effect on the costs incurred by outside firms under Rule 12g3-2(b). 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 and publications.

The estimated 33,706 hours that foreign private issuers would incur to produce the Rule 12g3-2(b) publications represents an increase of 2,626 hours from the previously submitted estimate of 31,080 hours. Of that increase, 2,193 hours would result from adoption of the proposed rule amendments while 433 hours represent an adjustment from the previous estimate. The estimated annual costs of \$5,308,800 that outside firms would incur to produce the Rule 12g3-2(b) publications represents an increase of \$413,700 from the previously submitted estimate of \$4,895,100. Of that increase, \$180,373 would result from adoption of the proposed rule amendments while + \$233,327 represents an adjustment from the previous cost estimate.

16. INFORMATION COLLECTIONS PLANNED FOR STATISTICAL PURPOSES

Not applicable.

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

Not applicable.

18. EXCEPTIONS TO CERTIFICATION

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.