

SUPPORTING STATEMENT FOR FINAL 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 adopting 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

Until recently, in order to obtain the Rule 12g3-2(b) exemption, a foreign private issuer had to submit a written application and supporting materials, including copies of its non-U.S. disclosure documents published since the beginning of its last fiscal year, in paper to the Commission. On September 5, 2008, the Commission adopted amendments to Rule 12g3-2, which 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 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.

4. 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. 34-58465 (September 5, 2008). The effective date of the rule amendments is October 10, 2008. The Commission proposed amendments to Rule 12g3-2(b) in SEC Release No. 34-57350 (February 19, 2008).

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

The rule amendments described in Release No. 34-58465 will 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 final rule amendments will 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 it takes approximately 20 hours to produce each written application.

We estimate that 1,036 foreign private issuers currently have obtained the Rule 12g3-2(b) exemption. 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 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 further estimate that foreign private issuers currently incur a total of 31,080 burden hours to produce the Rule 12g3-2(b) submissions or publications, or an average of 2.5 burden hours per submission or publication.³

We estimate that, on an annual basis, approximately 350 additional foreign private issuers could claim the Rule 12g3-2(b) exemption as a result of the final amendments to Rule 12g3-2.⁴ 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 1,386;
- the number of Rule 12g3-2(b) publications to total 16,632;⁵
- the number of burden hours required to produce these Rule 12g3-2(b) publications to total 59,528 hours (for all work performed by issuers and outside firms);⁶ and
- the number of burden hours incurred by foreign private issuers to produce the Rule 12g3-2(b) publications to total 37,206 hours, or 2.2 burden hours per publication.⁷

³ These estimates are based on the most recent OMB-approved submission for Rule 12g3-2(b) publications and submissions as discussed in SEC Release No. 34-55540 (March 27, 2007).

⁴ We previously estimated that, as discussed in SEC Release No. 34-57350, proposed amendments to Rule 12g3-2(b) would cause approximately 150 additional foreign private issuers to claim the Rule 12g3-2(b) exemption. Due to changes made in the final rule amendments, we have increased our estimate of the number of additional foreign private issuers that could claim the Rule 12g3-2(b) exemption as a result of the final rules.

⁵ $1,386 \times 12 = 16,632$ publications.

⁶ $16,632 \times 4 \text{ hrs.} = 66,528 \text{ hrs.}$ $350 \times 20 \text{ hrs.} = 7,000 \text{ hrs.}$ of work saved by the elimination of the written application requirement. $66,528 \text{ hrs.} - 7,000 \text{ hrs.} = 59,528 \text{ hrs.}$

⁷ $59,528 \text{ hrs.} \times .25 = 14,882 \text{ hrs.}$ for English translation work. $59,528 \text{ hrs.} - 14,882 \text{ hrs.} = 44,646 \text{ hrs.}$; $44,646 \text{ hrs.} \times .75 = 33,485 \text{ hrs.}$ for non-English translation work; $14,882 \text{ hrs.} \times .25 = 3,721 \text{ hrs.}$ for English translation work; $33,485 \text{ hrs.} + 3,721 \text{ hrs.} = 37,206 \text{ total hrs.}$ incurred by foreign private issuers. $37,206 \text{ hrs.} / 16,632 = 2.2 \text{ hrs. per publication.}$ This represents an increase of 6,126 hrs. from the most recent OMB-approved burden estimate for Rule 12g3-2(b) submissions or publications.

13. ESTIMATE OF TOTAL ANNUALIZED COST BURDEN

When assessing the effects that the final rule amendments will 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 \$4,895,100 to produce the Rule 12g3-2(b) submissions or publications.⁸ We further estimate that the final rule amendments would cause outside firms to perform services at a total cost of \$5,860,050 to produce the Rule 12g3- 2(b) publications.⁹

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 final rule amendments. The program adjustment reflects our updated assessment of the total number of burden hours and costs currently required under Rule 12g3-2(b) after considering the estimated burden hours and costs currently required to produce each written application for the Rule 12g3-2(b) exemption. We have made this program adjustment in order to estimate the effects that the elimination of the written application requirement will have on issuers and outside firms. 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.

⁸ This is based on the most recent OMB-approved submission for Rule 12g3-2(b) publications and submissions as discussed in SEC Release No. 34-55540.

⁹ $44,646 \text{ hrs.} \times .25 = 11,162 \text{ hrs.} \times \$400/\text{hr.} = \$4,464,800$ for non-English translation work; $14,882 \text{ hrs.} \times .75 = 11,162 \text{ hrs.} \times \$125/\text{hr.} = \$1,395,250$ for English translation work; $\$4,464,800 + \$1,395,250 = \$5,860,050$ for total costs incurred by outside firms. This represents an increase of \$964,950 from the most recent OMB-approved cost estimate for Rule 12g3-2(b) submissions or publications.

The estimated 37,206 hours that foreign private issuers would incur to produce the Rule 12g3-2(b) publications represents an increase of 6,126 hours from the previously submitted estimate of 31,080 hours. Of that increase, 5,483 hours is expected to result from the program change caused by adoption of the rule amendments while 643 hours represent an adjustment, as discussed, from the previous estimate. The estimated annual costs of \$5,860,050 that outside firms would incur to produce the Rule 12g3-2(b) publications represents an increase of \$964,950 from the previously submitted estimate of \$4,895,100. Of that increase, \$863,630 is expected to result from the program change caused by adoption of the rule amendments while \$101,320 represents an adjustment, as discussed, 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.