

SUPPORTING STATEMENT FOR FINAL RULES UNDER THE SECURITIES ACT OF 1933

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 Act of 1933 ("Securities Act") is intended to provide full and fair disclosure to investors about public securities offerings and to prevent fraud in connection with such offerings. The principal means by which the Securities Act carries out this purpose is by requiring the filing of registration statements in connection with offerings by issuers and their control persons. Schedule A of the Securities Act mandates the general types of information that must be disclosed in registration statements unless the Commission finds that such information is inapplicable to certain classes of issuers. The Commission has authority, under Section 19 of the Securities Act, to make rules governing registration statements to carry out the provisions of the Securities Act. Registration statements are available for public inspection at the Commission and part of the registration statement is required to be delivered to purchasers.

The Commission exercised its authority under the Securities Act to establish Form F-6 for the registration of American Depositary Receipts ("ADRs") of foreign companies. An ADR is a special type of security issued by a U.S. bank to designate custody of a specified amount of securities issued by a foreign company that are deposited with the bank. ADRs are designed to overcome numerous technical and mechanical problems involved in holding foreign securities in the United States, such as dividend collection. ADRs are merely substitute certificates for the foreign security.

The Commission adopted Form F-6 in order to provide investors with information concerning a foreign company's ADRs, as disclosed in the deposit agreement, which must be attached as an exhibit to the Form F-6. The disclosure items of Form F-6 reflect the Commission's experience and best judgment as to what information about an issuer and the deposit agreement should be required to be disclosed. Form F-6 requires disclosure of information regarding the terms of the deposit agreement, the depository bank, fees charged, and a description of the ADR. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must periodically furnish information to the Commission that is available for public inspection.

Form F-6 requires the filer to state that the issuer of the deposited securities is either subject to reporting obligations under the Securities Exchange Act of 1934 ("Exchange Act") or is exempt from Exchange Act Section 12(g) registration pursuant to Exchange Act Rule 12g3-2(b). The Commission recently adopted amendments to

Rule 12g3-2(b) that eliminate its current written application and paper submission requirements by enabling a foreign private issuer to claim the Rule 12g3-2(b) exemption automatically as long as it satisfies specified conditions.¹ 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 final 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.

In conjunction with the final amendments of Rule 12g3-2(b), the Commission amended Form F-6 to require a registrant to state that the issuer of the deposited securities, if not an Exchange Act reporting company, publishes information in English required to maintain the Rule 12g3-2(b) exemption on the issuer's Internet Web site or through its primary trading market's electronic information delivery system. The amendments also require the registrant to disclose the address of the issuer's Internet Web site or electronic information delivery system.

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 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 the information on Form F-6 in evaluating securities and making investment decisions with respect to such securities. In addition, all investors benefit indirectly from filings on Form F-6, as direct users affect business and operations included in such filings, thereby causing the market price of the securities to reflect such information.

It should be noted that the Commission uses very little of the collected information itself (except on an occasional basis in the enforcement of the securities laws). In this respect, these information collections differ from most other federal information collections, which are primarily for the use and benefit of the collecting agency.

¹ 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).

3. USE OF ELECTRONIC MEDIA

Form F-6 must be filed electronically using the Commission’s Electronic Data Gathering, Analysis and Retrieval (“EDGAR”) system. Once filed on EDGAR, the public has access to Form F-6 indefinitely.

DUPLICATION

Form F-6 is designed to provide investors in ADRs with information concerning the deposit agreement and the foreign company. Information regarding the deposit agreement is not available elsewhere.

5. METHODS USED TO MINIMIZE BURDEN ON SMALL BUSINESSES

All filings on Form F-6 are prepared and filed by one of fewer than ten large banks that act as depositaries. None of these banks are considered to be small entities.

6. DESCRIPTION OF CONSEQUENCES OF LESS FREQUENT COLLECTION

Persons considering investment in securities represented by ADRs would not have available relevant information concerning the deposit agreement, the ADRs, the depositary bank, or fees to which the ADRs are subject, if the information on Form F-6 were not collected.

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 on Form F-6 is public.

11. SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATE OF HOUR BURDEN

When assessing the effects that the final rule amendments will have on the annual burden estimate for Form F-6, we have assumed that a registrant incurs 25% of the burden required to produce each Form F-6. We currently estimate that, on an annual basis, 150 registrants each file one Form F-6, for a total of 150 Form F-6s. In addition, we estimate that production of these Form F-6s requires 150 burden hours, or one burden hour per Form F-6 (for all work performed by registrants and outside firms).² We further estimate that, of those total hours, registrants incur 38 hours to produce the Form F-6s, or an average of .25 hours per Form F-6.³

We estimate that, as a result of the adoption of the final rule amendments, approximately 350 additional registrants could file Form F-6 on an annual basis.⁴ We further estimate that, as a result of the adoption of the rule amendments, the burden required to produce each Form F-6 will increase by .5 hours. This increase in the number of Form F-6s and burden hours would cause:

- the number of Form F-6s filed to increase by 350 for a total of 500;
- the total hours required to produce the Form F-6s to increase by 525 hours for a total of 675 hours, or 1.35 hours per Form F-6;⁵ and
- the number of burden hours incurred by registrants to produce the Form F-6s to increase by 131 hours to 169 hours, or .34 hours per Form F-6.⁶

13. ESTIMATE OF TOTAL ANNUALIZED COST BURDEN

When assessing the effects that the final rule amendments will have on the annual cost estimate for Form F-6, we have assumed that outside firms, including legal counsel, accountants and other advisors, incur 75% of the burden required to produce each

² These estimates are based primarily on our review of the particular requirements for Form F-6 and the most recently approved PRA submission for that form.

³ $150 \text{ hrs.} \times .25 = 38 \text{ hrs.}$

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 For the additional 350 filers: $350 \times 1.5 \text{ hrs.} = 525 \text{ hrs.}$, $525 \text{ hrs.} + 150 \text{ hrs.} = 675 \text{ hrs.}$, $675 \text{ hrs.}/500 = 1.35 \text{ hrs. per Form F-6.}$

⁶ $675 \text{ hrs.} \times .25 = 169 \text{ hrs.}$, $169 \text{ hrs.} - 38 \text{ hrs.} = 131 \text{ hrs.}$, $169 \text{ hrs.}/500 = .34 \text{ hr. per Form F-6.}$

Form F-6 at an average cost of \$400 per hour. We currently estimate that outside firms perform services at a total cost of \$45,000 to produce the Form F-6s.⁷ We further estimate that the final rule amendments would result in outside firms performing services at a total cost of \$202,400 (an increase of \$157,400) to produce the Form F-6s.⁸

14. ESTIMATE OF COST TO FEDERAL GOVERNMENT

We estimate that the federal government incurs annual costs of \$1,000 to administer Form F-6. These costs include salaries paid to attorneys and an administrative assistant who process Form F-6 registration statements.

15. EXPLANATION OF CHANGES IN BURDEN

The estimated increase in the annual amount of burden hours and costs required for Form F-6 result from a program change that would occur as a result of the adoption of the final rule amendments.

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.

⁷ 150 hrs. x .75 x \$400/hr. = \$45,000.

⁸ 675 hrs. x .75 = 506 hrs. x \$400/hr. = \$202,400. \$202,400 - \$45,000 = \$157,400.