



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 23, 1994

Ms. Michelle L. Johnson
Thelen, Marrin, Johnson & Bridges
Two Embarcadero Center
San Francisco, CA 94111-3995

Re: Thelen, Marrin, Johnson & Bridges

Dear Ms. Johnson:

In regard to your letter of November 11, 1994 our response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter.

Sincerely,

A handwritten signature in cursive script that reads "Martin P. Dunn".

Martin P. Dunn
Chief Counsel

THELEN, MARRIN, JOHNSON & BRIDGES

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IN ALLIANCE WITH
TURNER KENNETH BROWN
SOLICITORS

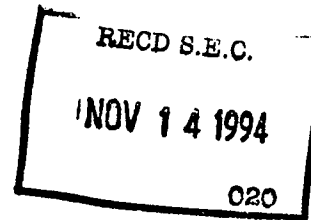
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November 11, 1994

VIA FEDERAL EXPRESS

Division of Corporation Finance
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549



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OFFICE OF CHIEF COUNSEL
SECURITIES AND EXCHANGE COMMISSION
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Re: Applicability of Section 16 to Former Foreign Private Issuers

Ladies and Gentlemen:

We represent several foreign companies that are "foreign private issuers" pursuant to the definition set forth in Rule 3b-4 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). We are submitting this letter to request that the Division of Corporation Finance Staff ("Staff") of the Securities and Exchange Commission ("Commission") concur with our views with respect to the applicability and interpretation of certain rules under Section 16 of the Exchange Act in circumstances where a foreign company has lost its foreign private issuer status.

BACKGROUND

Rule 3b-4 of the Exchange Act provides that a foreign private issuer is any foreign issuer other than a foreign government except an issuer meeting both of the following conditions: (1) more than 50 percent of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and (2) any of the following: (i) the majority of the executive officers or directors are United States citizens or residents, (ii) more than 50 percent of the assets of the issuer are located in the United States, or (iii) the business of the issuer is administered principally in the United States. Each of our clients has satisfied at least one of the conditions in clause (2) of the Rule 3b-4 and, accordingly, will lose its foreign private issuer status when its U.S.-based shareholdings exceed 50 percent.

In accordance with the guidelines set forth in Reed, Elliott, Creech & Roth (March 30, 1993), each of our foreign company clients monitors its foreign private issuer status on the last day of each fiscal quarter, and immediately following (i) any purchase or sale by the issuer of its equity securities (other than in connection with an employee benefit plan or compensation arrangement, a conversion of outstanding convertible securities, or an exercise of outstanding options, warrants or rights); (ii) any purchase or sale of assets by the issuer other than in the ordinary course of business; and (iii) any purchase of equity securities of the issuer in a public tender or exchange offer by a person unaffiliated with the issuer.

Rule 3a12-3 of the Exchange Act provides that the securities registered by a foreign private issuer "shall be exempt from sections 14(a), 14(b), 14(c) and 16 of the [Exchange] Act." When a foreign private issuer loses that status, its securities (and its directors and officers) immediately become subject to Section 16 of the Exchange Act.

QUESTIONS PRESENTED

1. Should transactions by officers or directors of a foreign company that are effected *prior* to the foreign company's loss of foreign private issuer status be subject to Section 16?
2. Should directors of a foreign company be deemed to be disinterested persons for purposes of Rule 16b-3 if they have been disinterested since the date that the foreign company ceased to be a foreign private issuer?

ANALYSIS

Transactions Prior to Losing Foreign Private Issues Status – Rule 16a-2(a)

In our view, transactions by officers and directors of a foreign company that are effected prior to the company's loss of foreign private issuer status should not be subject to Section 16.

Rule 16a-2(a) of the Exchange Act sets forth the only situation in which transactions by an officer or director *before* he or she is subject to Section 16 may be subject to reporting under Section 16(a) and short-swing liability under Section 16(b): an officer or director who becomes subject to Section 16 solely as a result of the issuer's registration of a class of equity securities pursuant to Section 12 of the Exchange Act will be subject to Section 16 with respect to transactions conducted during the six months prior to the first transaction requiring a Form 4 filing. The reason for treating officers and directors of new Section 12 registrants differently is stated in Release 34-24178 (August 18, 1989): "[I]nsiders of private