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February 12, 2007

Via Electronic Mail
Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Re: Re-proposed Rule: Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty to File Reports Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934
SEC Release No. 34-55005; File No. S7-12-05

Dear Ms. Morris:

On behalf of each of our American Depositary Receipt market participant clients and ourselves, we are pleased to have the opportunity to submit our comments on the Commission's re-proposed de-registration rules for foreign private issuers, as set forth in Release No. 34-55005, dated December 22, 2006 (the "Proposing Release"). Our firm has extensive experience in ADR related matters and, in the course of representing our clients, we have communicated frequently with foreign companies regarding the U.S. securities laws and regulations, including the registration and de-registration processes under the Securities Exchange Act of 1934 (the "Exchange Act").

We continue to support the Commission's efforts to facilitate the de-registration process for foreign private issuers, and we commend the Commission for its responsiveness to the public commentary submitted with respect to the initially proposed rules. We generally favor the proposed rule changes in their revised form. However we believe that the trading volume threshold for de-registration should be reformulated in a manner that more accurately reflects trading activity and investor interest in the U.S. market relative to offshore markets. In addition, we feel that certain other aspects of the re-proposed rules should be modified to provide greater clarity and, in some cases, to preclude inequitable results in the de-registration process. Our suggested changes are summarized below.

Trading Volume Threshold for De-Registration

Under proposed Rule 12h-6, a foreign private issuer would be able to de-register a class of equity securities if, over a 12-month period, the average daily trading volume ("ADTV") of such securities in the U.S. represents 5% or less of the ADTV in the issuer's principal trading market, which can be comprised of not more than two separate offshore markets. We would suggest that instead of using only one or two non-U.S. markets as a basis for comparison, the 5% benchmark should be measured against trading volume on a worldwide basis. With the increasing globalization of securities markets, it is becoming more common for issuers to be listed on multiple non-U.S. markets, and we believe this trend can be expected to continue. It is the Commission's stated objective to facilitate the de-registration process for foreign private issuers in circumstances where U.S. investor interest is low, and the Commission has determined that a 5% trading volume standard constitutes an appropriate threshold from that standpoint. We believe that the 5% benchmark is equally suitable whether measured against worldwide trading volume or trading volume on only one or two offshore markets. In terms of determining U.S. investor interest and assessing the need for investor protection, so long as 95% of trading occurs outside the U.S. the number of offshore markets involved should be immaterial. We do not believe there exists any policy basis for permitting de-registration by issuers who meet the 5% threshold and are listed on a single or dual markets, but not for those who meet the same threshold but choose to list on multiple markets. In either case U.S. investment activity is at the same de minimis level relative to overall trading in the issuer's securities.

In addition, we believe that trading value would be a more accurate and equitable gauge of U.S. investor interest than trading volume. The trading value of a security could be determined by multiplying its ADTV over the relevant 12-month period by the average trading price of the security over the same period. A threshold based on trading value would eliminate any uncertainty as to whether the comparison of U.S. to home market trading volumes should take into account the ratio of American Depositary Shares (ADSs) to underlying ordinary shares. An ADS can represent any number (or fractional number) of underlying securities. Except in cases where the ratio of ADSs to ordinary shares is 1:1, a comparison of trading volumes will not accurately reflect the relative level of US market interest, since each ADS traded may represent a significantly greater or lesser number of underlying shares. Moreover, even if one adjusts for the ADS ratio, there remains the fact that ADSs and the underlying shares can trade at divergent prices in their respective markets. A price disparity between the U.S. and home country markets could cause a corresponding distortion in the levels of securities traded. For example, if on a given trading day investors in both the U.S. and home country markets purchased the same aggregate dollar amount of securities, the lower-priced market would show greater trading volume notwithstanding the fact that the actual level of economic activity and investor interest in each market was equivalent. A de-registration standard based on trading value would be free of any such discrepancies, since it would reflect amounts investors have actually paid for the securities in the respective markets. Therefore we believe that trading value is a better metric than trading volume for purposes of determining relative investor interest. Additionally we believe that the information needed to determine trading value should be readily available, and as such the use of a standard based on trading value will not be unduly burdensome to issuers.

In summary, we would propose that foreign private issuers should be permitted to de-

register a class of equity securities if, over a twelve-month period, the dollar value of its ADTV for such securities in the U.S. is not greater than 5% of the dollar value of its ADTV in all non-U.S. markets worldwide.

Alternatively, should the Commission decide to retain the trading volume criterion, we would recommend that the final rule be clarified to ensure that U.S. volume is calculated on a per-underlying share basis. Thus if each ADS represents a given number of foreign shares, the U.S. trading volume should be multiplied by that number of shares, and if each ADS represents a fraction of a foreign share, the U.S. trading volume should be multiplied by that fraction.

One-Year Ineligibility Period After De-Listing

Proposed Rule 12h-6 requires that an issuer seeking to de-register must meet the 5% ADTV standard on the date it de-lists its securities from a securities exchange or automated inter-dealer quotation system, and for the 12-month period preceding the date of de-listing. If an issuer fails to meet this condition it will be ineligible to de-register until 12 months after the date of de-listing, and it will have to meet the 5% ADTV threshold at the end of such period. Pursuant to Rule 12d2-2 under the Exchange Act, an issuer wishing to withdraw its securities from listing on a national securities exchange must file an application on Form 25 with the Commission. In addition, ten days prior to such filing the issuer must publish a press release regarding its intention to de-list, and it must post the same information on its web site. The de-listing becomes effective 90 days after the filing of Form 25.

Given the current de-listing procedure, an issuer that meets the 5% ADTV threshold at the time it announces its intent to de-list could find that its ADTV has gone back above the 5% threshold on the effective date of de-listing. The public announcement of an issuer's intent to de-list could itself have an impact on trading volume, causing selling activity by investors concerned about the impact of the proposed de-listing. Thus an issuer could be penalized and precluded from de-registering if there is a temporary increase in trading activity. Additionally, under these circumstances the Commission's stated concern about creating an incentive for issuers to de-list is not applicable. If an issuer is below the 5% threshold on the date it announces the intention to de-list, investor interest is already low and there is no reason for the issuer to use the de-listing as a means of meeting the threshold. On the contrary, in this situation the one-year ineligibility potentially frustrates the intent of the proposed rules (i.e., to simplify and facilitate the de-registration process) because issuers that legitimately meet the trading volume benchmark will have no way of knowing whether they will ultimately qualify for de-registration on the date of de-listing, or whether they will have to remain under the Exchange Act reporting regime for an additional year after such date. In this regard, it seems particularly arbitrary that the ability to de-register should be subject to the 5% threshold being met on a single day, i.e., the effective date of de-listing which occurs well after the issuer initiates the de-listing process.

We believe the proposed ineligibility requirement can be structured more narrowly without undermining the intent behind the provision. As an alternative, we would suggest that the applicability of the one-year ineligibility period should not be based on trading volume on the effective date of de-listing, but rather on ADTV over the 12 months preceding the announcement date. Specifically, we would propose that an issuer should only be subject to one-

year ineligibility if it fails to meet the 5% threshold for a recent 12-month period prior to the date on which it publicly announces its intent to de-list, and the ineligibility period should run for a period of 12 months after such announcement date. There should be no requirement that the 5% threshold also be met on the actual date of the announcement (or on any isolated single date). This formulation would accomplish the Commission's objective of preventing issuers from de-listing as a means of reducing trading volume, while eliminating the inequities discussed above.

One-Year Ineligibility Period After Termination of an ADR Program

Proposed Rule 12h-6 would require a foreign private issuer that has terminated an ADR facility to wait 12 months before it is eligible to apply for de-registration. We believe this restriction should apply only if the issuer fails to meet the 5% ADTV threshold for a recent 12-month period preceding the effective date of termination of the ADR program. In this situation it is reasonable to conclude that any termination of an ADR program would not be motivated by the issuer's desire to position itself for de-registration, given that its securities have already traded at levels below the 5% threshold for a significant period of time. Additionally, the impact of any termination on investors would be mitigated by the fact that investor interest is low and has been consistently low over a one-year period. In any event, given that in this situation U.S. trading volume is already below the 5% level, any impact on investors would not be appreciably greater than that which would occur if the program were terminated immediately after de-registration, which is permissible under the proposed rules.

Rule 12g3-2(b)

We believe the Commission should require issuers to certify their compliance with the electronic publication requirement under proposed Rule 12g3-2(e). To the extent issuers electronically publish the documents required under Rule 12g3-2(b) in lieu of furnishing paper copies, the Commission will have no way of monitoring compliance with the Rule's informational requirements other than viewing issuers' web sites, which seems impractical. This raises concerns as to how the SEC can continue to maintain an accurate list of issuers that have submitted information under Rule 12g3-2(b). The accuracy of this list is important to many market participants who rely on it to determine which issuers are maintaining the Rule 12g3-2(b) exemption. Therefore we would propose that foreign issuers who electronically publish the information required under Rule 12g3-2(e) be required to provide to the Commission, on an annual basis, written certification of their compliance with the informational requirements of the Rule.

We would also suggest that the Commission provide guidance with regard to General Instruction IA(3) of Form F-6, which requires that either the issuer of the deposited securities must be subject to the reporting requirements of the Exchange Act, or that the deposited securities must be exempt from such requirements pursuant to Rule 12g3-2(b) under the Exchange Act. For purposes of meeting this requirement, we believe that if an issuer posts the information required under Rule 12g3-2(b) on its website, depositary banks and other market participants should be entitled to rely on this as confirmation that the issuer is in compliance with Rule 12g3-2(b). The same reliance should be permitted where a depositary bank seeks to issue ADRs under a prospectus which states that the issuer is in compliance with Rule 12g3-2(b).

Alternatively, if the Commission adopts our suggestion that issuers should certify compliance with Rule 12g3-2(b), market participants should be able to rely on such certification for purposes of filing Form F-6 and issuing ADRs thereunder.

Clarification of Securities Act Filing Requirements

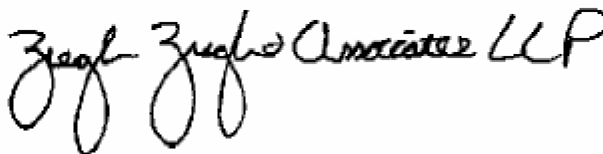
We respectfully request that the Commission address whether post-effective amendments to currently effective Form F-6 Registration Statements will be required when an issuer that de-registers chooses to maintain a Rule 12g3-2(b) exempt ADR program after the termination of its Exchange Act registration. Item 3A of Part II to Form F-6 requires that any amendment to a Deposit Agreement be filed as an amendment to Form F-6. Over the years, market participants have differed regarding the applicability of this requirement to certain types of amendments to Deposit Agreements, such as ratio changes and fee changes, with some market participants relying on Rule 424(b) of the Securities Act to publicly reflect such Deposit Agreement amendments.

Most, if not all, Deposit Agreements for issuers with a class of securities registered under the Exchange Act include a provision stating that the issuer is subject to the reporting requirements of such Act. Where an issuer transitions from a listed ADR program to an unlisted 12g3-2(b) exempt over-the-counter program, the above described language set forth in the Deposit Agreement and in the form of ADR (which serves as the prospectus) will need to be amended to reflect the new Rule 12g3-2(b) exempt status. In our view, changes referring to the status of the issuer as a reporting company are substantive but do not constitute a fundamental change in the information set forth in the registration statement. Accordingly, we would request that the Commission clarify in the final rules that a change in reporting status can be filed in the form of a prospectus supplement pursuant to Rule 424(b) under the Securities Act rather than in the form of a post-effective amendment to Form F-6. Given the potential divergence of opinions in this regard, we feel that guidance from the Commission would be helpful to market participants in terms of establishing a uniform practice.

In conclusion, we support the Commission's efforts in revising its de-registration proposals and, subject to the above comments, we favor the adoption of the re-proposed rules.

Thank you for considering our comments. Please feel free to contact Scott A. Ziegler or George Boychuk of this firm at (212) 319-7600 with any questions you may have or for additional information.

Very truly yours,



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cc: Paul M. Dudek, Esq., Chief, Office of International Corporate Finance