

## CAPITAL MARKETS BULLETIN

October 15, 2008

### **U.S. SECURITIES AND EXCHANGE COMMISSION (“SEC”) ADOPTS FINAL RULES STREAMLINING ITS EXEMPTION FROM SEC REGISTRATION FOR CERTAIN FOREIGN PRIVATE ISSUERS.**

Under SEC Rule 12g3-2(b) (the “Rule”), certain foreign private (i.e., non-governmentally owned) issuers whose primary trading market is outside of the U.S. may avail themselves of a special exemption from SEC reporting mandated by the Securities Exchange Act of 1934 (the “Exchange Act”) even though their securities trade in the U.S. “over-the-counter” markets on an unrestricted basis. The rule changes adopted by the SEC, which became effective on October 10, 2008, eliminate the written application and paper submissions previously required by automatically exempting a company that meets the following eligibility criteria:

1. The company’s securities are listed on an exchange in a foreign jurisdiction and that jurisdiction constitutes the primary trading market for those securities. Primary trading market means that for the company’s most recently completed fiscal year, at least 55% of the trading volume of the company’s securities on a worldwide basis took place in, on or through the facilities of a securities market in a single foreign jurisdiction or in a maximum of two foreign jurisdictions during the company’s most recently completed fiscal year, which may be aggregated for the purpose of determining the primary trading market, at least one of which must have a greater trading volume than in the United States;
2. The company is not required to file or furnish any reports under Section 13(a) or 15(d) of the Exchange Act (i.e., the company has not issued securities in the public markets in the U.S.); and

3. The company has published promptly in English on its internet website or through an electronic information delivery system generally available to the public in its primary trading market (e.g., for U.K. companies, the Reuters News Service in the United Kingdom), from the first day of its most recently completed fiscal year, the following:

- Information made public or information required to be made public pursuant to the laws of its home country;
- Information filed or required to be filed with the principal stock exchange in its primary securities trading market and that has been made public by the exchange; and
- Information distributed or to be distributed to its security holders. (Collectively, “Electronic Publishing Requirements”)

Companies that currently have a Rule 12g3-2(b) exemption but fail to meet all the above requirements will be required to become Exchange Act registrants by October 10, 2011.

The main impacts of the Rule are:

- The Rule extends the exemption to all companies meeting these criteria regardless of the number of shareholders resident in the U.S.;
- The exemption from registration may be lost if a company (i) fails to satisfy the Electronic Publishing Requirements (the SEC will stop processing written applications and paper submissions on

January 10, 2009); (ii) a company no longer maintains a listing of its securities in its primary trading market; or (iii) registers a class of securities or otherwise incurs reporting obligations under the Exchange Act; and

- A company without a current ADR facility will be unable to restrict the establishment of an unsponsored ADR facility by a depositary bank, since exemption from registration under the Rule is automatic. A depositary bank may establish an unsponsored ADR facility based on its reasonable, good faith belief after exercising reasonable diligence that the subject company is exempt from registration under Rule 12g3-2(b).

We will continue to monitor developments in the SEC's rules concerning the private issuer exemption and provide further updates for material developments.

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## SEWARD & KISSEL LLP

IF YOU HAVE ANY QUESTIONS OR COMMENTS ABOUT THIS BULLETIN, PLEASE FEEL FREE TO CONTACT GARY J. WOLFE (212-574-1223), ROBERT E. LUSTRIN (212-574-1420) OR ANY OF THE OTHER PARTNERS, COUNSEL AND ASSOCIATES IN OUR CORPORATE SECURITIES GROUP VIA EMAIL BY TYPING IN THE ATTORNEY'S LAST NAME FOLLOWED BY [@SEWKIS.COM](mailto:@SEWKIS.COM)

SEWARD & KISSEL LLP

One Battery Park Plaza, New York, New York 10004

**Telephone:** (212) 574-1200 **Fax:** (212) 480 8421

**Email:** [sknyc@sewkis.com](mailto:sknyc@sewkis.com)

[www.sewkis.com](http://www.sewkis.com)