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SEC Permits Electronic Publication by Foreign Private Issuers Maintaining Exemptions under Exchange Act Rule 12g3-2

The SEC reforms of the de-registration process in June 2007 include a sometimes missed but important amendment to Rule 12g3-2 permitting non-reporting foreign private issuers that have claimed exemptions from registration on the basis of Rule 12g3-2(b) to comply with the ongoing requirement to furnish material public information by means of electronic publication rather than paper submissions.

Background

Under current rules, a foreign private issuer may claim exemption from the registration and reporting regime under the Securities Exchange Act of 1934 on the basis that the class of the issuer's securities registered under the Act has fewer than 300 record holders who are U.S. residents. Many foreign private issuers have claimed this exemption. In the past, issuers have maintained their Rule 12g3-2(b) exemption by submitting to the SEC, on an ongoing basis, paper copies of the material information required pursuant to Rule 12g3-2(b)(iii). However the SEC has now concluded that paper filings are difficult to access and that electronic postings would increase an investor's ability to access material documents of the issuer. Therefore, the SEC adopted new Rules 12g3-2(e) and (f), effective June 4, 2007. Rule 12g3-2(e) extends the amendment to issuers who file Form 15-F while subsection (f) extends it to issuers claiming exemption under Rule 12g3-2(b).

Amendments

New Rule 12g3-2(f) provides that a foreign private issuer may publish materials required by Rule 12g3-2(b)(iii) on its Internet web site *or* through an electronic information delivery system that is generally available to the public in its primary trading market. As a condition to this electronic publication, an issuer would have to comply with the English translation requirements of new Rule 12g3-2(e). Therefore, any issuer that chooses to publish the material required by Rule 12g3-2(b)(iii) electronically cannot use English summaries or versions but must at a minimum, electronically publish full English language documents (including English translations of the following documents required to be furnished under Rule 12g3-2(b)(1)(iii) if originally prepared in a foreign language: (i) its annual report, including or accompanied by annual financial statements; (ii) interim reports that include financial statements; (iii) press releases; and (iv) all other communications and documents distributed directly to security holders of the class of securities to which the exemption relates).

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Any issuer that is already exempt under Rule 12g3-2(b) and who wishes to switch to electronic publication of its home country materials must file an amendment to its initial letter application for exemption. Such application for amendment must be made on paper. The amendment should provide the SEC with the address of the Internet website of the issuer *or* the address of the electronic information delivery system that the issuer is going to use to publish the required information.

In addition, any initial letter application for exemption and any supporting documentation will have to continue to be submitted in paper.

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This memorandum is not intended to provide legal advice with respect to any particular situation, and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this memorandum should be directed to:

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