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MEMORANDUM

Date: October 2009

To: Interested Persons

Re: Rule 12g3-2(b): The Foreign Private Issuer Exemption

Rule 12g3-2(b) under the U.S. Securities Exchange Act of 1934, as amended (the "**Exchange Act**") exempts a foreign private issuer (an "**FPI**") from having to register a class of equity securities under Section 12(g) of the Exchange Act. Absent the exemption, an FPI with 300 or more U.S. shareholders might be required to register with the U.S. Securities and Exchange Commission (the "**SEC**"). This memorandum discusses how an FPI may establish and maintain an exemption under Rule 12g3-2(b).

To qualify for the exemption, an issuer must be an FPI. **Exhibit A** provides a discussion of the scope of the term "foreign private issuer." For your reference, we attach a summary of steps that should be taken to claim the exemption under Rule 12g3-2(b) as **Exhibit B**. We also attach a copy of the text of Rule 12g3 2(b) as **Exhibit C**.

I. Background of the Rule 12g3-2(b) Exemption

Section 12(g) of the Exchange Act requires an issuer to register a class of its equity securities with the SEC within 120 days after its fiscal year end if, as of the last day of that fiscal year, the number of worldwide holders of record of those equity securities is 500 or more and its assets exceed $1 million. Rule 12g3-2(b) is one of several exemptions adopted by the SEC to grant an FPI relief from the registration requirements of Section 12(g).

Before claiming the Rule 12g3-2(b) exemption, an FPI may wish to evaluate whether it is eligible to claim the Rule 12g3-2(a) exemption. Rule 12g3-2(a) exempts an FPI with fewer than 300 holders resident in the United States, in each case as of the last day of its most recently completed fiscal year. **Exhibit D** provides the methodology for calculating the 300 U.S. holder threshold for purposes of 12g3-2(a).[1]

An FPI that is not required to register under Section 12(g) may nevertheless choose to comply with Rule 12g3-2(b) for a number of reasons, including:

[1] Another exemption is the Rule 12g-1 exemption for an issuer with $10 million or less in assets.

- to avoid an unintentional violation of the registration requirements of Section 12(g) in the event that its equity securities become widely held in the United States;[2]

- to establish a sponsored, Level I American depositary receipts ("**ADR**") program;[3] or

- to facilitate secondary market trading of equity or debt securities it sells pursuant to Rule 144A of the U.S. Securities Act of 1933, as amended (the "**Securities Act**").[4]

II. Claiming the Rule 12g3-2(b) Exemption

Rule 12g3-2(b) does not require an FPI to submit an application or notification to the SEC. The exemption is automatically available if the following requirements are satisfied:

- *Foreign Listing in Primary Trading Market*. The FPI maintains a listing of the subject class of securities on one or more exchanges in a non-U.S. jurisdiction[5] that constitutes the primary trading market for such securities;

- *No Existing Reporting Obligations*. The FPI is not subject to the reporting obligations of Sections 13(a) or 15(d) of the Exchange Act – i.e., it has not listed or publicly offered its securities in the United States; and

- *Electronic Disclosure Requirements*. The FPI has published electronically (e.g., on its web site) in English specified disclosure documents dating back to the first day of its most recently completed fiscal year. This does not require the creation of new disclosure documents; only the translation into English of disclosure documents in a foreign language.[6]

A. Potential Issues Relating to the Foreign Listing Requirement

The foreign listing and primary trading market eligibility requirements are not likely to present immediate issues for most FPIs who wish to rely on the Rule 12g3-2(b) exemption. However, the development of alternative trading markets for trading off the primary exchange, a trend encouraged by the gradual breaking down of regulatory, information and other barriers, could create issues in the future. In addition, an FPI may find itself unable to comply with the eligibility requirements in certain situations, such as the following:

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[2] A violation of the registration requirements of Section 12(g) of the Exchange Act may expose an FPI to a risk of injunctive or monetary sanctions and criminal prosecution, depending upon the circumstances.

[3] It is a condition to the effectiveness of a Form F-6 registration statement pursuant to which sponsored Level I ADR programs are established that the issuer of the deposited shares be an Exchange Act reporting issuer or exempt from registration under the Exchange Act pursuant to Rule 12g3-2(b).

[4] Under Rule 144A, the issuer of the securities must be an Exchange Act reporting issuer, satisfy the Rule 12g3-2(b) exemption or agree to provide to current or prospective investors, upon request, certain information specified in Rule 144A.

[5] The jurisdiction may constitute the primary trading market either singly or together with the trading of the securities in another jurisdiction.

[6] This requirement does not apply to an FPI when claiming the exemption upon or following a recent Exchange Act deregistration.

- an FPI whose equity securities trade entirely in over-the-counter or inter-dealer markets will not be eligible for the exemption;

- some classes of equity securities, including those issued by special purpose entities that are not listed, or are listed on a non-U.S. exchange but do not meet the primary trading market requirements, will not be eligible for the exemption;[7] and

- trading of an FPI's securities in multiple jurisdictions as a result of the continuing globalization of trading markets may prevent the issuer in the future from meeting the "primary trading market" requirement if the trading is too widely dispersed.

B. Foreign Listing in Primary Trading Market

1. Maintaining a Foreign Listing

In order to qualify for the Rule 12g3-2(b) exemption, an FPI needs to maintain a listing of the subject class of securities on one or more exchanges in a non-U.S. jurisdiction that, either singly or together with the trading of the same class of the FPI's securities in another foreign jurisdiction, constitutes the primary trading market for such securities. The stated purpose of the foreign listing condition is to help ensure that there is a non-U.S. jurisdiction that principally regulates and oversees the trading of the issuer's securities and the issuer's disclosure obligations.

To constitute a "primary trading market," at least 55% of the trading must take place on or through the facilities of a securities market or markets in a single foreign jurisdiction, or in no more than two foreign jurisdictions. The measurement period is the FPI's most recently completed fiscal year. If the FPI aggregates the trading of its subject class of securities in two foreign jurisdictions for the purposes of reaching the 55% threshold, the trading of the FPI's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the FPI's securities. Trading in the "primary trading market" for the purpose of the Rule 12g3-2(b) determination must be measured on an annual basis.

2. Measuring the Trading Volume Threshold

The "primary trading market" determination is made by reference to the average daily trading volume (the "**ADTV**") of the subject class of securities in the relevant market or markets (the numerator) measured against its worldwide ADTV (the denominator). For purposes of calculating the numerator, the FPI may choose to include only on-exchange transactions or both on-exchange and off-exchange transactions in the relevant foreign jurisdiction or jurisdictions. If it includes off-exchange transactions in the numerator, it must include off-exchange transactions in the denominator as well. In this case the denominator is the sum of:

- U.S. ADTV, including both on-exchange and off-exchange transactions in the United States; plus

- non-U.S. ADTV, including on-exchange transactions outside of the United States and any off-exchange transactions included in the numerator.[8]

[7] If the securities are held in global form in a securities clearing system, the number of record holders may never reach 500 and therefore may remain below the registration threshold.

The sources of trading volume information upon which the FPI may rely include publicly available sources, market data vendors and other commercial information service providers. However, the FPI must reasonably rely on those sources in good faith, and the information must not duplicate any other trading volume information obtained from exchanges and other sources.

C. No Existing Reporting Obligation

An FPI seeking to establish a Rule 12g3-2(b) exemption must not have an existing reporting obligation under either Section 13(a) or 15(d) of the Exchange Act.[9] Accordingly, an FPI that has listed any securities in the United States, registered a class of equity securities under Section 12(g) of the Exchange Act or made a registered public offering of equity or debt securities is not eligible for the exemption, unless it has terminated its Exchange Act registration and reporting requirements.

Certain FPIs were exempted from the Exchange Act registration and reporting obligations by order of the SEC even though their equity securities were then listed on Nasdaq.[10] However, this special exemption expired on August 1, 2009. An FPI that relied on this special exemption must have, in order to maintain compliance with U.S. securities laws, on or before that date either registered its Nasdaq-listed securities under the Exchange Act or delisted its securities from Nasdaq.

D. Electronic Disclosure Requirements

To qualify for the Rule 12g3-2(b) exemption, an FPI must publish electronically in English certain material information dating back to the first day of its most recently completed fiscal year.[11] An FPI need not file, and the SEC will not accept, written applications or submissions to establish or maintain the Rule 12g3-2(b) exemption. The Rule 12g3-2(b) exemption automatically applies to an FPI meeting each of the eligibility requirements under the rule, regardless of whether the FPI intended to qualify for the exemption.

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[8] The FPI may also, but is not required to, include off-exchange transactions from other non-U.S. jurisdictions in the denominator. We expect that FPIs will not include those transactions in the calculation, however, since inclusion would only reduce the overall percentage of trading that takes place in the relevant jurisdiction or jurisdictions making up the numerator.

[9] Section 13(a) imposes a reporting obligation on an issuer that has registered a class of securities under Section 12 of the Exchange Act, generally because its securities are listed in the United States; or because the number of its worldwide security holders of record is 500 or more and its U.S. resident holders is 300 or more. Section 15(d) imposes reporting obligations on an issuer that has filed a registration statement which has become effective under the Securities Act, i.e., that has made a registered offering of its securities in the United States. An FPI that properly terminates its reporting obligations may qualify to establish a Rule 12g3-2(b) exemption.

[10] Section 12(a) of the Exchange Act prohibits transactions in any security on a U.S. national securities exchange unless a registration is effective as to such security for such exchange. In 2006, the SEC recognized Nasdaq as a U.S. national securities exchange.

[11] The requirement to have published certain material information dating back to the first day of an FPI's most recently completed fiscal year does not apply if the FPI is claiming the exemption upon or following a recent Exchange Act deregistration.

1. Scope of Information Disclosure Obligations

An FPI must publish electronically in English any information that, since the first day of its most recently completed fiscal year, it:

- has made or is required to make public, pursuant to the law of the country of its domicile or in which it is incorporated or organized;
- has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange; or
- has distributed or is required to distribute to its security holders. We refer to these kinds of information as "**Non-U.S. Disclosure Information**".

An FPI is only required to publish Non-U.S. Disclosure Information if it is material to an investment decision regarding the subject class of securities. The rule specifies examples of material information, including financial condition or results of operations, changes in business, acquisitions or dispositions of assets, issuance, redemption or acquisitions of its securities, changes in management or control, the granting of options or the payment of other compensation to directors or officers, or transactions with directors, officers or principal security holders. We believe that these examples are intended to illustrate, and not modify, the materiality standard generally applicable under the U.S. securities laws.

2. Electronic Publishing Requirement

An FPI claiming the Rule 12g3-2(b) exemption is required to electronically publish Non-U.S. Disclosure Information by either:

- posting the information on its Internet website; or
- disclosing the information through an electronic delivery system generally available[12] to the public in its primary trading market.

Rule 12g3-2(b) does not say how long the Non-U.S. Disclosure Information must remain accessible. We suggest that an FPI publishing such information on its Internet website post it in the investor relations section and keep the information accessible for at least two years. We also suggest that an FPI maintain a record (which need not be public) of the information it has published electronically for Rule 12g3-2(b) purposes, so that it can respond appropriately in the event of any SEC inquiry or other legal action. The regular maintenance of such a record might serve as a useful reminder to the FPI's compliance staff that the information disclosure requirements of Rule 12g3-2(b) must be satisfied on an ongoing basis. An FPI publishing information pursuant to, or otherwise claiming, the Rule 12g3 2(b) exemption may but need not identify such information as being published pursuant to the rule.

[12] Under Rule 12g3-2(b), "generally available" means that the public in the primary trading market has ready access to the reports and other documents maintained on its system. Disclosure in English via an electronic delivery system that is generally available to the public in the FPI's primary trading market but is not navigable in English may fail to satisfy the information disclosure obligations of Rule 12g3-2(b).

3. English-Language Disclosure Requirements

An FPI claiming the Rule 12g3-2(b) exemption must not only publish in English any material Non-U.S. Disclosure Information, but must also, at a minimum, electronically publish full English translations of the following documents if they are written in a foreign language and are material to an investment decision regarding a class of securities to which the exemption relates:

- annual report, including or accompanied by annual financial statements;
- interim reports that include financial statements;
- press releases; and
- all other communications and documents distributed directly to holders of the subject class of securities.

The adopting release[13] says that, generally, if an FPI could submit an English summary for a non-U.S. disclosure document under cover of Form 6-K[14] or pursuant to Exchange Act Rule 12b-12(d)(3) (assuming the FPI were an SEC reporting company), it can do so when claiming or maintaining the Rule 12g3-2(b) exemption. Under Form 6-K and Exchange Act Rule 12b-12(d)(3), an English summary (instead of a full English translation) of a report required to be furnished and made public under the laws of the issuer's home country or the rules of the issuer's home country stock exchange is permitted, except for:

- press releases;
- reports which are required to be, or have been, distributed to the issuer's security holders; and
- annual and interim reports, press releases and other communications and documents listed in the immediately preceding paragraph.

As noted above, no translation of a document is required if it contains no information that is material to an investment decision. If an FPI issues a press release containing a summary of the relevant material information about an event or matter, the FPI might conclude that certain subsequently-published documents which would otherwise need to be translated need not be published or translated under Rule 12g3-2(b) because the press release has already conveyed the material information. We have confirmed this approach with the SEC staff.

For purposes of Rule 12g3-2(b), any permitted English summary must fairly and accurately summarize the terms of each material provision of the foreign language document and fairly and accurately describe the terms that have been omitted or abridged.

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[13] "Exemption from Registration Under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers," Release No. 34-58465 (September 5, 2008).

[14] To claim the Rule 12g3-2(b) exemption, an FPI is essentially required to publish the same categories of information that a U.S. reporting FPI is required to furnish to the SEC on Form 6-K. In addition, both Rule 12g3-2(b) and Form 6-K require only that material information need be provided.

4. Time Period for Which Information Must Be Published

In order to claim the exemption under Rule 12g3-2(b), an FPI must publish all of its Non-U.S. Disclosure Information dating back to the first day of its most recently completed fiscal year.[15] Thus, assuming a December 31 fiscal year end, an FPI wishing to claim the exemption as of December 15, 2009 will need to electronically publish the required information dating back to January 1, 2008, whereas an FPI wishing to claim the exemption as of January 15, 2010 will need to electronically publish the required information dating back to January 1, 2009.

5. Elimination of the 120-Day Deadline

An FPI with more than $10 million in assets, 500 or more worldwide holders of record and 300 or more U.S. resident holders as of the last day of its most recently completed fiscal year is required to file a registration statement with the SEC or establish an exemption under Rule 12g3-2(b) within 120 days of such date. An FPI that fails to do so within that time frame is in violation of the Exchange Act until it files a registration statement with the SEC or establishes a Rule 12g3-2(b) exemption. An FPI may claim the exemption at any time, provided it satisfies each of the eligibility requirements.

E. Special Considerations for an IPO

An FPI preparing for an initial public offering ("**IPO**") should be aware that when its shares are placed in the United States pursuant to Rule 144A of the Securities Act, it may need to claim the Rule 12g3-2(b) exemption for one or more of the following reasons:

- there are or will be 300 or more U.S. beneficial holders of its shares as of the last day of a fiscal year; or

- the company wishes to avoid the need to provide certain Rule 144A required information to investors on an ad hoc basis.

Pre-IPO companies may offer only minimal information about themselves on their websites, particularly in English. If the Rule 12g3-2(b) exemption will be claimed in connection with an IPO, advanced planning may be advisable to avoid delays associated with the preparation of English translations and website postings of Non-U.S. Disclosure Information.

III. Maintaining the Exemption

In order to maintain the Rule 12g3-2(b) exemption, an FPI must continue to satisfy each of the conditions for establishing the exemption. In other words, the FPI must:

- continue to maintain at least one listing of its securities in a jurisdiction outside of the United States that constitutes its primary trading market;

- not incur any Exchange Act reporting obligations; and

[15] The requirement to publish certain material information dating back to the first day of an FPI's most recently completed fiscal year does not apply if the FPI is claiming the exemption upon or following a recent Exchange Act deregistration.

- continue to publish electronically, in English, its material Non-U.S. Disclosure Information promptly after the information has originally been made public.

With respect to the last point, for information not originally disclosed in English, the SEC stated in the adopting release that what constitutes "promptly" depends on the type of document and the amount of time required to prepare an English translation. However, the SEC also noted in the adopting release that it typically expects an issuer to electronically publish a copy of a material press release on or around the same business day of its original publication.

No specific period is provided for curing non-compliance with any of the conditions needed to maintain the Rule 12g3-2(b) exemption. However, an issuer that finds itself not in compliance with any of those conditions must either re-establish compliance with the rule in a "reasonably prompt" manner or else register under the Exchange Act.

IV. Liability for Information

Information published pursuant to the Rule 12g3-2(b) exemption exposes an FPI to liability for fraudulent misstatements or omissions contained therein under the anti-fraud provisions of the U.S. federal and state securities laws, such as Rule 10b-5 under the Exchange Act. Rule 10b-5 creates a private right of action against a person knowingly or recklessly making untrue or misleading statements or omissions in connection with the purchase or sale of any security.

None of the information published pursuant to the exemption is deemed "filed" with the SEC. Accordingly, an FPI is not exposed to liability under Section 18 of the Exchange Act, which creates a private right of action against a person for false and misleading statements of material fact in documents "filed" pursuant to the Exchange Act.

We would like to remind FPIs about liability generally for information they post to their website or otherwise publish. The SEC takes the position, as expressed in its April 28, 2000 release regarding the use of electronic media, that issuers are liable for the accuracy of statements that "reasonably can be expected to reach investors or the security markets regardless of the medium through which the statements are made, including the Internet." This is true not only for information furnished electronically pursuant to Rule 12g3-2(b), but for all information published by an issuer or otherwise accessible on an issuer's website. It may also be true for hyperlinked third-party information. Liability for third-party information that is hyperlinked from an issuer's website may arise if the issuer has "explicitly or implicitly endorsed or approved the information." Whether a hyperlink constitutes implicit endorsement or approval will depend on the relevant facts and circumstances. An FPI should accordingly take care when adding, and should periodically test, hyperlinks on its website to third-party information and, to the extent not already utilized, consider including an explicit disclaimer of any endorsement or approval of such hyperlinked information. Even such a disclaimer may be considered ineffective to prevent implicit endorsement or approval.

An FPI should consider including, to the extent not already utilized, a forward-looking statement legend on its website and information it publishes under Rule 12g3-2(b). An FPI claiming the Rule 12g3-2(b) exemption may determine that the accessibility by U.S. investors to information it publishes electronically makes such a legend desirable. Should litigation be brought against the

issuer by U.S. investors in a U.S. court, such a legend could help to limit issuer liability under the "bespeaks caution" doctrine.[16]

The posting of information about securities offerings, financial projections and other information may constitute an illegal offer if deemed to comprise a general solicitation in the United States or directed selling effort into the United States. An FPI is invited to contact Davis Polk prior to the posting of this sort of information to its website for advice on how to post the information in accordance with U.S. securities laws.

[16] Companies that are subject to the reporting requirements of the Exchange Act can benefit from legislative safe harbors when they make forward-looking statements that are accompanied by sufficient cautionary language. The safe harbors are modeled after the so-called "bespeaks caution" doctrine adopted by U.S. courts to protect the disclosure of forward-looking information based on the inherent unreliability of the information or the existence of accompanying disclaimers. The safe harbors protect a forward-looking statement from private actions if it satisfies certain conditions, including that the statement be identified as forward-looking and "accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially" from those in the forward-looking statement. Although the legislative safe harbor applies only to statements made by U.S. reporting companies, officers, directors or employees of such issuers and certain other persons, the practice of including a forward-looking statement legend by a non-U.S. reporting issuer could prove useful should litigation be brought against the issuer by U.S. investors in a U.S. court because of the "bespeaks caution" doctrine.

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If you have any questions or comments with respect to the matters discussed above, please contact us.

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Exhibit A

Definition of "Foreign Private Issuer"

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Under Rule 3b-4 under the Exchange Act, as amended, the term "foreign private issuer" means the following:

Foreign Private Issuer. (a) The term "foreign private issuer" means any foreign issuer other than a foreign government, except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter:

(1) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record 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.

(b) Notwithstanding paragraph (a) above, in the case of a new registrant with the Commission, the determination of whether an issuer is a foreign private issuer shall be made as of a date within 30 days prior to the issuer's filing of an initial registration statement under either the Securities Act or the Exchange Act.

(c) Once an issuer qualifies as a foreign private issuer, it will immediately be able to use the forms and rules designated for foreign private issuers until it fails to qualify for this status at the end of its most recently completed second fiscal quarter. An issuer's determination that it fails to qualify as a foreign private issuer governs its eligibility to use the forms and rules designated for foreign private issuers beginning on the first day of the fiscal year following the determination date. Once an issuer fails to qualify for foreign private issuer status, it will remain unqualified unless it meets the requirements for foreign private issuer status as of the last business day of its second fiscal quarter.

* * * * *

Instructions to paragraph (a)(1) of this definition: To determine the percentage of outstanding voting securities held by U.S. residents:

A. Use the method of calculating record ownership in Rule 12g3-2(a) under the Exchange Act, except that your inquiry as to the amount of shares represented by accounts of customers resident in the United States may be limited to brokers, dealers, banks and other nominees located in:

   (i) the United States,

   (ii) your jurisdiction of incorporation, and

   (iii) the jurisdiction that is the primary trading market for your voting securities, if different than your jurisdiction of incorporation.

B. If, after reasonable inquiry, you are unable to obtain information about the amount of shares represented by accounts of customers resident in the United States, you may assume, for purposes of this definition, that the customers are residents of the jurisdiction in which the nominee has its principal place of business.

C. Count shares of voting securities beneficially owned by residents of the United States as reported on reports of beneficial ownership that are provided to you or publicly filed and based on information otherwise provided to you.

Exhibit B

Summary of Steps to Be Taken to Claim an Exemption Under Rule 12g3-2(b)

Assuming the FPI is not claiming the exemption upon or following a recent Exchange Act deregistration and otherwise satisfies the eligibility requirements with respect to maintaining a foreign listing in its primary trading market and having no existing SEC reporting obligation, to claim an exemption under Rule 12g3-2(b) the FPI should:

- select the date for claiming the exemption (the "**Effective Date**");
- identify the first day of its most recently completed fiscal year (the "**Start Date**");
- consider what information since the Start Date will constitute Non-U.S. Disclosure Information that is material to an investment decision regarding the subject class of securities;
- if that information has been prepared in a foreign language, determine the extent to which English language summaries of such information are both desired and permitted;
- make preparations to translate (or prepare English language summaries to the extent desired and permitted) such information by the Effective Date;
- select a permitted information delivery system for electronically posting all required Non-U.S. Disclosure Information;
- if the selected system is the issuer's website, designate a location for posting such information and determine whether to identify the information as being published pursuant to Rule 12g3-2(b) and whether to include hyperlink or forward-looking statement disclaimers;[17]
- by the Effective Date, electronically post in English all required Non-U.S. Disclosure Information to the selected electronic information delivery system; and
- establish a system for identifying, translating (or summarizing), posting and recording required Non-U.S. Disclosure Information going forward.

[17] There is no requirement to publish such documents in a single location. If an FPI already publishes annual reports and interim reports in English and places them in a specific location on its website and does the same with press releases, such publication will satisfy the requirements of Rule 12g3-2(b). However, if an FPI will need to include English translations or summaries of other documents that are prepared solely for purposes of Rule 12g3-2(b), a designated location may prove to be useful.

Exhibit C

Text of Rule 12g3-2(b)

* * * * *

(b) (1) A foreign private issuer shall be exempt from the requirement to register a class of equity securities under section 12(g) of the Act (15 U.S.C. 78l(g)) if:

(i) The issuer is not required to file or furnish reports under section 13(a) of the Act (15 U.S.C. 78m(a)) or section 15(d) of the Act (15 U.S.C. 78o(d));

(ii) The issuer currently maintains a listing of the subject class of securities on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities; and

(iii) The issuer has published in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, information that, since the first day of its most recently completed fiscal year, it:

(A) Has made public or been required to make public pursuant to the laws of the country of its incorporation, organization or domicile;

(B) Has filed or been required to file with the principal stock exchange in its primary trading market on which its securities are traded and which has been made public by that exchange; and

(C) Has distributed or been required to distribute to its security holders.

Note 1 to Paragraph (b)(1): For the purpose of paragraph (b) of this section, primary trading market means that at least 55 percent of the trading in the subject class of securities on a worldwide basis took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year. If a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for the purpose of this paragraph, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities. When determining an issuer's primary trading market under this paragraph, calculate average daily trading volume in the United States and on a worldwide basis as under Rule 12h-6 under the Act (§240.12h-6).

Note 2 to Paragraph (b)(1): Paragraph (b)(1)(iii) of this section does not apply to an issuer when claiming the exemption under paragraph (b) upon the effectiveness of the termination of its registration of a class of securities under section 12(g) of the Act, or the termination of its obligation to file or furnish reports under section 15(d) of the Act.

Note 3 to Paragraph (b)(1): Compensatory stock options for which the underlying securities are in a class exempt under paragraph (b) of this section are also exempt under that paragraph.

(2) (i) In order to maintain the exemption under paragraph (b) of this section, a foreign private issuer shall publish, on an ongoing basis and for each subsequent fiscal year, in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, the information specified in paragraph (b)(1)(iii) of this section.

(ii) An issuer must electronically publish the information required by paragraph (b)(2) of this section promptly after the information has been made public.

(3) (i) The information required to be published electronically under paragraph (b) of this section is information that is material to an investment decision regarding the subject securities, such as information concerning:

(A) Results of operations or financial condition;

(B) Changes in business;

(C) Acquisitions or dispositions of assets;

(D) The issuance, redemption or acquisition of securities;

(E) Changes in management or control;

(F) The granting of options or the payment of other remuneration to directors or officers; and

(G) Transactions with directors, officers or principal security holders.

(ii) At a minimum, a foreign private issuer shall electronically publish English translations of the following documents required to be published under paragraph (b) of this section if in a foreign language:

(A) Its annual report, including or accompanied by annual financial statements;

(B) Interim reports that include financial statements;

(C) Press releases; and

(D) All other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.

(c) The exemption under paragraph (b) of this section shall remain in effect until:

(1) The issuer no longer satisfies the electronic publication condition of paragraph (b)(2) of this section;

(2) The issuer no longer maintains a listing of the subject class of securities on one or more exchanges in a primary trading market, as defined under paragraph (b)(1) of this section; or

(3) The issuer registers a class of securities under section 12 of the Act or incurs reporting obligations under section 15(d) of the Act.

(d) Depositary shares registered on Form F-6 (§239.36 of this chapter), but not the underlying deposited securities, are exempt from section 12(g) of the Act under this paragraph.

Exhibit D

Methodology For Counting 300 U.S. Holders Under Rule 12g3-2(a)

Rule 12g3-2(a) exempts from the registration requirements of Section 12(g) under the Exchange Act securities of any class issued by a foreign private issuer if the class has fewer than 300 holders resident in the United States (each a "**U.S. holder**"). Rule 12g3-2(a) requires that all beneficial U.S. holders, not only record holders, be counted. The Rule 12g3-2(a) exemption contains ambiguities as to how the determination of U.S. holders should be made. What follows is a method we think would generally be considered reasonable.[18]

Beneficial holders may be record holders who hold for their own account or non-record holders who hold through a broker, dealer, bank or nominee (each a "**Nominee**") which is a record holder. When securities are held of record by a Nominee for the accounts of customers that are U.S. holders, each account must be counted as a U.S. holder by the number of separate accounts for which the securities are held. The issuer may rely in good faith on information as to the number of such separate accounts supplied by all owners of the class of its securities which are Nominees.

In order to count beneficial U.S. holders under Rule 12g3-2(a), the first step is to identify the record holders.[19] Each record holder should initially be classified into one of the following categories:

- Nominee;
- other holder; or
- unclear.

If the answer is unclear, and subject to the facts and circumstances, it should be reasonable for:

- an entity to be treated as a Nominee if:
  - its status as such an entity can be verified without unreasonable burden; or
  - anything in the holder's name or otherwise suggests that it is such an entity; and
- other entities to be treated as "other holders".

Based upon the foregoing and subject to the instructions discussed below, for purposes of Rule 12g3-2(a) the number of U.S. holders is generally determined as follows:

- *Nominee*. Each account holding the issuer's securities maintained by the Nominee for customers resident in the United States must be counted as a U.S. holder. Where the

[18] The SEC does not require that the determination of U.S. holders be made by a shareholder search firm. However, if such a firm is hired, its findings cannot subsequently be disregarded if they would disallow use of the Rule 12g3-2(a) exemption.

[19] If the records have not been properly maintained in accordance with accepted practice, the records should be treated as including any other persons who would have been included as record owners if the records had been properly maintained.

securities are held of record by a Nominee, direct inquiry needs to be made as to the number of accounts holding the issuer's securities that it maintains for customers that are U.S. holders.[20]

- *Other Holder*. Each other holder resident in the United States is counted as a U.S. holder. Other holders listed in the issuer's records as having a non-U.S. address are generally not counted as U.S. holders.

There is generally no need to "look through" other holders or customers of Nominees described above. If the other holder or customer is a corporation or partnership incorporated or organized outside of the United States, we believe it will generally be acceptable to assume the securities they hold are owned by a non-U.S. holder, unless a reasonable investigation[21] would have revealed or it is already known that the entity is a "U.S. Person" under Rule 902(k) of Regulation S.[22] Some entities organized outside of the United States may be deemed "U.S. Persons" under Rule 902(k). For example, a partnership or corporation that is organized or incorporated under the laws of any non-U.S. jurisdiction will be considered a "U.S. Person" if it is formed by a U.S. person principally for the purpose of investing in securities not registered under the Securities Act, unless it is organized or incorporated, and owned, by certain "accredited investors" who are not natural persons, estates or trusts.

The following instructions are to be followed when counting the number of U.S. holders for purposes of Rule 12g3-2(a):[23]

- *Corporations*. When a U.S. resident corporation, partnership, trust or other organization is recorded as holding the issuer's securities, it is to be counted as one U.S. holder;

- *Fiduciaries*. When one or more U.S. residents are recorded as holders in their fiduciary capacities as trustees, executors, guardians or custodians with respect to a single trust, estate or account, they are to be counted as a single U.S. holder;

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[20] Rule 12g3-2(a) does not instruct what should be done if after direct inquiry, it is not possible to determine how many persons resident in the U.S. beneficially hold the issuer's securities through a particular Nominee.

[21] A "reasonable investigation" may require greater efforts to verify the status of entities that are organized or incorporated in known tax havens.

[22] Under Rule 902(k) of Regulation S, a "U.S. person" includes: (i) natural persons resident in the United States; (ii) partnerships and corporations organized or incorporated under the laws of the United States; (iii) trusts and estates of which any trustee or administrator is a U.S. person; (iv) agencies or branches of a foreign entity located in the United States; (v) non-discretionary accounts (other than a trust or estate) held by a dealer or other fiduciary for the benefit or account of a U.S. person; (vi) discretionary accounts (other than a trust or estate) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and (vii) partnerships or corporations that are: (x) organized or incorporated under the laws of any foreign jurisdiction; and (y) formed by a U.S. person principally for the purpose of investing in securities not registered under the Securities Act, unless organized or incorporated, and owned, by accredited investors (as defined in Rule 501(a) of the Securities Act) who are not natural persons, estates or trusts. The term "accredited investors" in the prior sentence includes certain banks, insurance companies, investment companies, employee benefit plans, charitable organizations, corporations and partnerships, and businesses in which all the equity owners are accredited investors.

[23] A discussion of other instructions for bearer bonds, securities held through Canadian retirement accounts, and membership interests in savings and loan associations has been omitted.

- *Joint Ownership*. When two or more U.S. residents are recorded as co-owners, they are to be counted as one U.S. holder; and

- *Duplicate Names*. When the records show substantially similar names and the issuer has reason to believe because of the address or other indications that such names represent the same U.S. resident, the names may be counted as a single U.S. holder

The counting of U.S. holders is subject to exceptions whereby, for purposes of counting the number of holders under Rule 12g3-2(a):

- *Known Voting Trusts*. When the issuer knows that securities are held subject to a voting trust, deposit agreement or similar arrangement, the number of U.S. holders is to be the number of U.S. resident record holders of the voting trust certificates, certificates of deposit, receipts, or similar evidences of ownership; and

- *Form of Holding* Primarily *to Circumvent Registration*. Securities known to be held in a particular manner primarily to circumvent the registration requirements of the Securities Act are to be counted as held by the beneficial owners of such securities.