New York
Menlo Park
Washington DC
London
Paris
Madrid
Tokyo
Beijing
Hong Kong

Davis Polk

Davis Polk & Wardwell LLP
Izumi Garden Tower 33F
1-6-1 Roppongi
Minato-ku, Tokyo 106-6033

(03) 5561 4421 tel
(03) 5561 4425 fax

MEMORANDUM

Date:	October 2009[1]
To:	Interested Persons
Re:	Rule 801 and Application of U.S. Securities Laws to Japanese Rights Offerings

Rule 801 under the U.S. Securities Act of 1933, as amended (the "**Securities Act**"), provides an exemption from the registration requirements of the Securities Act for rights offerings by foreign private issuers. This memorandum discusses how Rule 801 and the Securities Act apply to rights offerings by Japanese companies ("**rights offerings**"). This memorandum does not discuss considerations relevant to a merger, share exchange or similar business combination transaction, or an exchange offer or tender offer.[2] In this memorandum, we assume that the issuer of the securities in the rights offering (the "**subject company**") is a Japanese corporation that qualifies as a "foreign private issuer".[3]

See **Annex A** for a list of practical considerations in connection with planning for a rights offering.

I. Background

The Securities Act applies broadly to offerings of securities, including foreign offerings that have some connection to the United States. If U.S. residents own shares of a Japanese company, then a rights offering by the Japanese company can trigger registration with the U.S. Securities and Exchange Commission (the "**SEC**") unless an exemption is available. Rule 801 is likely to be the only available exemption for a rights offering by a Japanese public company.

For purposes of this memorandum, references to "rights offerings" shall mean offers and sales for cash of equity securities[4] where:

- the subject company grants the existing shareholders of a particular class of equity

[1] This memorandum updates earlier versions published in March 2009 and September 2009.

[2] Please see Davis Polk memoranda on these and other topics at http://www.davispolk.com/offices/tokyo/ under "Related Publication."

[3] **Annex B** provides the meaning of the term "foreign private issuer".

[4] The term "equity security" for purposes of Rule 801 does not include convertible securities, warrants, rights or options.

securities (including holders of depositary receipts evidencing those securities) the right to purchase or subscribe for additional securities of that class; and

- the number of additional shares an existing shareholder may purchase initially is in proportion to the number of securities held on the record date. If an existing shareholder holds depositary receipts, the proportion will be calculated as if the underlying securities were held directly.

Other types of rights offerings may be conducted, such as rights offerings for noncash consideration or not made on a *pro rata* basis. Rule 801 would not, however, be available for such offerings.

Many rights offerings are underwritten by a group of underwriters (the "**standby underwriters**"). These standby underwriters agree to purchase the "rump" – a number of shares corresponding to the shares represented by the unexercised rights in the rights offering. Generally, the standby underwriters place the rump with new investors. Since Rule 801 is only available to an issuer, the standby underwriters will generally need to conduct placements of "rump" shares into the United States in a manner exempt from the registration requirements of the Securities Act – absent SEC registration to cover such placements. Rump placements are beyond the scope of this memorandum.

A. Registration Requirement

Section 5 of the Securities Act requires registration with the SEC of any offer or sale of a security – unless an exemption is available. Accordingly, unless an exemption is available, any security offered or sold in connection with a rights offering will need to be registered with the SEC under the Securities Act if it is, or is deemed to be, offered and sold into the United States.

Under Section 2(a)(3) of the Securities Act, a "sale" of a security is defined to include every contract of sale or disposition of a security or interest in a security "for value", while "offer" is defined to include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security "for value".

In rights offering transactions, it is necessary to distinguish between:

- the issuance by the subject company of rights to purchase or subscribe for additional equity securities of the subject company; and

- the exercise by the shareholders or other transferees of such rights.

Generally, the issuance of rights without payment by shareholders of consideration will not need to be registered under the Securities Act because the allocation is not "for value". The exercise of rights, however, is ordinarily conditioned upon the payment of cash. This will trigger the registration requirements of the Securities Act, unless an exemption is available. If no exemption is available, an effective Securities Act registration statement will be needed before the rights may be exercised. As a practical matter since rights are exercisable at the beginning of a subscription period, the registration statement needs to be effective at the time a rights offering commences.

B. Use of U.S. Jurisdictional Means Often Unavoidable

It may be possible to effect a rights offering without employing U.S. jurisdictional means. If so, the registration requirements of the Securities Act will not apply. However, U.S. jurisdictional means is interpreted very broadly. It may include, for example:

- making rights offering-related documentation available, electronically or physically, in the United States, including by means of posting the documentation on a company's website;
- directing communications with respect to the offering into the United States;
- permitting the participation of U.S. securities analysts or reporters in telephone conferences, meetings or other similar events relating to the transaction;
- permitting exercise of the rights from the United States; or
- sending into the United States the securities issued in the offering.

Moreover, in connection with recent amendments to Rule 801, the SEC indicated that it intends to scrutinize closely future transactions that purport to avoid the use of U.S. jurisdictional means.

Virtually all Japanese public companies have shareholders who are resident in the United States. If a Japanese public company conducts a rights offering, the use of U.S. jurisdictional means may be unavoidable. We have in the past consistently been advised by Japanese counsel that U.S. shareholders of Japanese public companies may not be excluded as a group from most offerings due to basic Japanese corporate law principles of shareholder equality, which prevent disparate treatment of shareholders. We have also been advised by a few practitioners recently that in a rights offering context, a limitation on the exercise of the rights in a manner that discriminates against certain holders, *e.g.*, U.S. holders, will not necessarily constitute a violation of the principle of shareholder equality if the limitations are carefully designed to avoid excessive costs or burdens after due consideration of their necessity and appropriateness.[5] Note, however, that we have heard that regulators may be taking a more rigid stance.

C. Other Alternatives

Issuers in jurisdictions where rights offerings are more common often consider procedural alternatives that exempt rights offerings from SEC registration. These include:

- prohibiting participation by U.S. holders; or
- implementing procedures to limit the number and type of participating U.S. holders so that the exercise of rights qualifies as a private placement under Section 4(2) of the Securities Act.

[5] We understand that there are other practical issues that may prevent wide acceptance of rights offerings in Japan. For example, the Financial Services Agency of Japan (the "**FSA**") requires delivery of a prospectus prior to the effective date of a rights offering. However, the Japan Securities Depository Center, Inc. ("**JASDEC**") treats the business day following the rights offering record date as the effective date, which would seem to make compliance with the FSA's prospectus delivery requirements difficult. We suggest that you consult with your Japanese counsel on these matters.

These alternatives may be available for Japanese rights offerings but will need to be carefully designed, including to address the requirements of Japanese law and to avoid being deemed a U.S. public offering requiring SEC registration. Please contact Davis Polk for additional information on these alternatives which are beyond the scope of this memorandum.

D. SEC Registration

Rights offerings can also be registered with the SEC under the Securities Act. This strategy may be most appropriate for a Japanese public company that already maintains or plans to seek a U.S. stock exchange listing. For subject companies that are not already reporting to the SEC, there are several important consequences of SEC registration of a rights offering which may require significant expense and lead time to address, generally including the need to:

- prepare and file a Form F-1 registration statement with the SEC;
- include in the registration statement financial statements for the subject company, prepared in accordance with International Financial Reporting Standards or U.S. generally accepted accounting principles, or accompanied by an appropriate reconciliation;
- arrange for audits of the financial statements in accordance with U.S. generally accepted auditing standards;
- include in the registration statement disclosure concerning the rights offering, management's discussion and analysis, and other disclosures comparable to those included in a registration statement for an initial U.S. listing or public offering of securities; and
- respond to SEC comments on the registration statement and obtain an effectiveness order from the SEC before the rights offered can be exercised.

Following registration, the new registrant will be subject to a number of ongoing requirements, such as the need to:

- file annual reports on Form 20-F and other periodic reports with the SEC;
- comply with the U.S. Foreign Corrupt Practices Act; and
- comply with the requirements of the U.S. Sarbanes-Oxley Act, including in some cases the Section 404 requirements for management certification and independent audits of the adequacy of internal controls.

II. The Rule 801 Exemption

Rule 801 exempts from the registration requirements of Section 5 of the Securities Act a rights offering that satisfies conditions relating to:

- limitations on U.S. ownership;

- equal treatment of U.S. shareholders;
- informational documents;
- eligibility of securities;
- limitation on transferability of rights; and
- legends.[6]

A. Limitation on U.S. Ownership

Rule 801 will apply to a rights offering only if U.S. holders (as defined below) own no more than 10% of the total number of shares outstanding.

The U.S. holder percentage ownership is determined as follows:

- *Calculation Reference Dates*. The percentage should generally be calculated on a date within a 90-day period that is no more than 60 days before and no more than 30 days after the record date in the rights offering – as a practical matter, this calculation will need to be completed prior to announcement of any rights offering, thus during the 60-day period prior to the record date; and
- *Determination of U.S. Holders.* Rule 801 refers to a ratio, expressed as a percentage, equal to (i) the number of shares of the subject securities held by U.S. holders (the *numerator*) divided by (ii) the number of outstanding shares of the subject securities (the *denominator*). Treasury shares are excluded from the numerator and the denominator.

In limited situations, where the subject company is unable to conduct the required look-through analysis for exceptional reasons, Rule 801 will allow the determination to be conducted based on an alternative "average daily trading volume" test.

For purposes of Rule 801, a "**U.S. holder**" is any security holder resident in the United States and will generally include entities organized or incorporated in the United States. The rule requires entities relying on the exemption to query some record holders and to review public beneficial holder filings to determine beneficial ownership by U.S. holders.

Note: The methodology for determining the U.S. holder percentage is complex. A detailed description of the methodology is in Annex C.

[6] In applying Rule 801, it is important to note that: (i) Rule 801 is not available for an investment company required to be registered under the U.S. Investment Company Act of 1940, as amended; (ii) a transaction or series of transactions in technical compliance with the Rule 801 exemption will be subject to registration if the transaction or series of transactions is a scheme to evade registration; and (iii) Rule 801 provides an exemption for the issuer of the securities and not for any affiliate of the issuer or for any other person engaged in resales of the issuer's securities.

B. Equal Treatment

Rule 801 will only be available if U.S. holders of the subject securities are permitted to participate in the rights offering on terms at least as favorable as those offered to other holders.

C. Informational Documents

Rule 801 contains requirements with respect to informational documents. The phrase "informational document" is not defined in Rule 801, but will generally be read to include any document (or amendment) published or otherwise disseminated by the subject company to the holders of the subject securities in connection with a rights offering. It may also include documents, such as earnings announcements, that do not mention the rights offering but that are relevant to the investment decisions to be made by holders of the subject securities.

Rule 801 contains the requirements described below with respect to informational document filing and delivery.

- *Electronic EDGAR Submissions*. Under Rule 801, informational documents must be furnished electronically to the SEC on Form CB via the SEC's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system. Submissions must be made by the first business day after publication or dissemination. The Form CB needs to include an English translation (or, if permitted, an English summary) of any report or information that, in accordance with Japanese requirements, must be made publicly available, or that is made publicly available, by the subject company in connection with the offering.

- *Form CB Submissions*. We note the following with respect to Form CB submissions:

    - in order to submit Form CB electronically, appropriate EDGAR codes need to be obtained in advance. Davis Polk can obtain these codes but will generally need a power of attorney. See **Annex D** for a sample Power of Attorney;

    - Form CB is a cover sheet which attaches an English translation (or, if permitted, an English summary) of the informational document. See **Annex E** for a copy of Form CB;

    - English summaries, rather than full translations, may be permitted for certain documents which are made available, but not published or otherwise disseminated, to holders of the subject securities;

    - although only one Form CB is generally needed for each rights offering, amendments must be submitted each time a supplemental informational document is released; and

    - Form CB is furnished to the SEC, not filed, and therefore is not subject to potential liabilities under Section 18[7] of the U.S. Securities Exchange Act of 1934, as amended

[7] Section 18 provides liability for certain damages arising based on false or misleading statements in documents filed with the SEC under the Exchange Act, unless the defendant can show that he or she acted in good faith and had no knowledge that the statement was false or misleading. As described below, Form CB submissions will still be subject to U.S. federal and state antifraud laws.

(the "**Exchange Act**"). Submissions on Form CB also will not constitute registration under the Securities Act.

- *Dissemination to U.S. Holders on a Comparable Basis*. Informational documents must be disseminated in English to U.S. holders on a basis comparable to that provided to security holders in Japan.

- *Publication Reasonably Calculated to Inform U.S. Holders*. If an informational document is disseminated by publication in Japan, it must also be published in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

- *Informational Document Legends*. A legend must be included on the cover page or other prominent location of any informational document published or disseminated to U.S. holders – including documents furnished under cover of Form CB. See **Annex F** for a sample legend.

D. Eligibility of Securities

The securities offered in the rights offering must be equity securities of the same class as the securities held by the offerees in the United States directly or through American depositary receipts ("**ADRs**").

E. Limitation on Transferability of Rights

The terms of the rights must prohibit transfers of the rights by U.S. holders except in accordance with Regulation S under the Securities Act.

We note that to the extent that the shares underlying the rights offered in a rights offering are "restricted securities" as defined in Rule 144 in the hands of a U.S. holder prior to the Rule 801 transaction, shares acquired by that holder in the transaction also will be "restricted securities". In the adopting release, the SEC noted that it was persuaded that U.S. shareholders not affiliated with the subject company should not be required to accept restricted securities in a rights offering where such holders currently hold unrestricted shares. The SEC explained, however, that it would be appropriate to require holders to receive restricted shares in the transaction if they hold restricted shares before the transaction.

F. Agent for Service of Process

The subject company will be required to submit Form F-X to the SEC along with the initial Form CB submission (but not generally with subsequent Form CB amendments). Form F-X must be submitted electronically via EDGAR.

In Form F-X, the subject company submits to the jurisdiction of U.S. courts and appoints an agent for service of process in the United States. The appointment generally needs to be maintained for a minimum of six years from the date of the final amendment to the corresponding Form CB. A U.S. subsidiary of the subject company or a professional service provider is generally appointed to serve as Form F-X agent for service of process. Upon request, Davis Polk can introduce a professional service provider. See **Annex G** for a copy of Form F-X.

III. Other U.S. Laws with Possible Application

The following other U.S. laws may apply to a rights offering whether the transaction is registered with the SEC or exempt under Rule 801. Note that additional rules and regulations not discussed herein may also apply, however, if the rights offering is registered with the SEC or the subject company is a U.S. reporting company or maintains a U.S. listing.

A. Regulation M under the Exchange Act

Regulation M under the Exchange Act generally prohibits participants (including the issuer and any affiliated purchaser) in a "distribution" from bidding for, purchasing or attempting to induce any person to bid for or purchase, a "covered security" during the applicable "restricted period". Regulation M generally applies to distributions of securities and special procedures may need to be implemented in order to ensure compliance with Regulation M – for example, a Japanese issuer may need to terminate or suspend a share buyback or similar program. The restricted period will generally begin one business day prior to the determination of the rights offering price and end upon completion of the distribution of the rights.

Particular attention should be paid to Regulation M in connection with any rights offering by a financial institution because these types of issuers often engage in securities transactions as part of their ordinary business. While Regulation M includes certain special exceptions for these types of issuers, the exceptions often are not broad enough to cover all ordinary activities and additional consultation with the SEC may be required.

B. State "Blue Sky" Registration Requirements

If a rights offering will be conducted pursuant to the Rule 801 exemption, it will still be necessary to ensure compliance with (or an exemption from) the securities laws of the various U.S. states – *i.e.*, state "blue sky" laws. Although under Rule 801 the subject company is not required to extend a rights offering to shareholders in those states or jurisdictions that require registration or qualification, we believe this may not be possible if, as we understand, basic Japanese corporate law principles of shareholder equality prevent such disparate treatment of shareholders. In this situation, blue sky law filings may be needed, which we can arrange.

C. Antifraud Laws

United States federal and state laws prohibit manipulation, fraud and misleading statements or omissions in connection with the purchase or sale of any security.

D. Section 12(g) of the Exchange Act

Section 12(g) of the Exchange Act requires an issuer to file with the SEC within 120 days of its fiscal year end a registration statement regarding a class of its equity securities[8] if, as of the last day of that fiscal year, the number of its worldwide holders of record of those securities is 500 or

[8] Although for purposes of Rule 801 the term "equity security" does not include convertible securities, warrants, rights or options, for purposes of Section 12(g) these instruments will often be considered a class of equity securities. If rights are issued prior to subject company's fiscal year end and the exercise period of those rights remains open for more than 120 days, we may need to consider how to address Section 12(g) implications.

more and its assets are US$10 million or more. A foreign private issuer that is not an SEC reporting company will generally be exempt from the registration requirements of Section 12(g) if:

- there are fewer than 300 U.S. beneficial holders of its equity securities as of the last day of its fiscal year; or
- it establishes and maintains a Rule 12g3-2(b) exemption under the Exchange Act.[9]

If, as a result of a rights offering or otherwise, the subject company has 300 or more U.S. beneficial holders of a class of its equity securities (and 500 or more worldwide record holders and US$10 million or more in assets), the subject company may wish to consider whether it will be advantageous to take action to qualify for an exemption under Rule 12g3-2(b) from the registration requirements of Section 12(g). A foreign private issuer that is not an SEC reporting company may claim the Rule 12g3-2(b) exemption automatically as long as it satisfies certain requirements relating to maintenance of a non-U.S. listing and electronic publication in English of certain non-U.S. disclosure documents.

* * * * *

If you have any questions about the matters covered in this memorandum, please contact any of the lawyers listed below or your regular Davis Polk contact:

Theodore A. Paradise

phone: 03-5561-4430
e-mail: theodore.paradise@davispolk.com

Eugene C. Gregor

phone: 03-5561-4566
e-mail: eugene.gregor@davispolk.com

Michael T. Dunn

phone: 03-5561-4433
e-mail: michael.dunn@davispolk.com

[9] For a Davis Polk memorandum addressing the requirements of Rule 12g3-2(b) and amendments to the rule which went into effect on October 10, 2008, please see "Amendments to Rule 12g3-2(b): The Foreign Private Issuer Exemption" at http://www.davispolk.com/offices/tokyo/ under "Related Publication."

Annex A

Practical Considerations in Connection with Planning for a Rights Offering

- *Consider Issues Well in Advance of Announcement*. Whether the rights offering will be registered or exempt, there will be numerous U.S. and other securities law issues to consider. Davis Polk should be contacted well in advance for assistance with planning.

- *Arrange Assistance for Identification of U.S. Holders*. Consider hiring a professional service provider to assist with identifying U.S. holders.

- *Prepare a Contingency Plan*. If it is determined that Rule 801 will not be available, a decision needs to be made whether to cancel the rights offering or register it under the Securities Act. If SEC registration is a realistic option it will likely significantly affect the timetable and require substantial additional planning, expense and activity.

- *Determine Date and Content of Communications*. It will be important to plan ahead with respect to communications. If Rule 801 will be relied upon, the duty to provide informational documents to the SEC begins at announcement and if documents are disseminated by publication, arrangements will need to be made to reserve space in a U.S. publication, such as *The Wall Street Journal*, and to hire an advertising firm to coordinate typesetting, media and production work.

- *Arrange Printer Assistance for Filings*. A financial printer may be needed to convert informational documents into EDGAR format and to submit them electronically. EDGAR codes will need to be obtained and, depending on the circumstances, translators may be needed. Davis Polk can assist in introducing financial printers and translators, and obtaining the EDGAR codes.

- *Arrange an Agent for Service of Process*. If Rule 801 will be relied upon, an agent for service of process will need to be arranged prior to the electronic filing of the Form F-X. The agent can be a U.S. affiliate of the subject company or a professional service provider.

Definition of the Term
Foreign Private Issuer

Under Rule 405 of the U.S. Securities Act of 1933, as amended, the term "foreign private issuer" means the follows:

Foreign Private Issuer. (1) 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:

(i) 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

(ii) Any of the following:

(A) The majority of the executive officers or directors are United States citizens or residents;

(B) More than 50 percent of the assets of the issuer are located in the United States; or

(C) The business of the issuer is administered principally in the United States.

(2) 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.

(3) 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 (1)(i) of this definition[10]: 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:

[10] The definition of "foreign private issuer" was amended by Release No. 33-8959, effective December 6, 2008 (see http://www.sec.gov/rules/final/2008/33-8959.pdf). Reflecting an ambiguity in the release, some securities law compilations have erroneously deleted this instruction. We have confirmed with SEC staff that the definition should retain the instruction as it appears here.

(1) the United States,

(2) your jurisdiction of incorporation, and

(3) 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.

Annex C

The Methodology for Determining the U.S. Holder Percentage

The method for determining U.S. holders and their percentage ownership for purposes of the Rule 801 exemption may be summarized as follows.

The U.S. holder percentage ownership is determined as follows:

- *Calculation Reference Dates*. The percentage should generally be calculated on a date within a 90-day period that is no more than 60 days before and no more than 30 days after the record date in the rights offering – as a practical matter, this calculation will need to be completed prior to announcement of any rights offering, thus during the 60-day period prior to the record date; as well as

- *Determination of U.S. Holders*. The percentage is calculated as a ratio of (i) the number of shares of the subject securities held by U.S. holders (the *numerator*) divided by (ii) the number of outstanding shares of the subject securities (the *denominator*). Treasury shares are excluded from the numerator and the denominator.

In limited situations, where the subject company is unable to conduct the required look-through analysis for exceptional reasons, Rule 801 will allow the determination to be conducted based on an alternative "average daily trading volume" test.

The following is a detailed description of the methodology for determining the U.S. holder percentage under Rule 801 in the context of a rights offering as well as the alternative average daily trading volume test.

I. Calculation Reference Date

The U.S. holder determination under Rule 801 is made based upon a register of beneficial holders of the subject securities dated within a 90-day period that is no more than 60 days before or 30 days after the record date in a rights offering.[11] The determination will need to be made within this 90-day period if:

- a regular register of the subject securities dated within the 90-day period is available – assuming a March 31 fiscal year end (as is common for Japanese issuers), a regular register will generally be available for rights offerings with a record date between: (i) March 1 and May 30; and (ii) August 31 and November 29; or

- a special register of the subject securities dated within the 90-day period is or can be made available – this may require pre-planning and at least nine business days' advance notice.[12]

---

[11] Rule 800(h)(1) under the Securities Act could be read to mean that the calculation of U.S. holders must be done as of the record date in a rights offering under Rule 801. However, footnote 47 of the adopting release is clear that the 90-day period applies in a Rule 801 rights offering.

[12] We understand a request for a special register will need to be made to JASDEC at least nine business days prior to the requested record date. We are told that a special register can be requested to determine

II. Determination of U.S. Holders

The Rule 801 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.[13] Securities are deemed to be held of record by each person identified as the owner on records maintained by or on behalf of the issuer. Based upon a register of the target's securities dated within the 90-day period, each holder of record should initially be classified into one of the following categories:

- *Relevant Broker, Dealer, Bank or Nominee*. A broker, dealer, bank or nominee located in Japan or the United States (each, a "**Relevant Broker, Dealer, Bank or Nominee**").[14]

- *Other Holder*. Another type of holder.

- *Unclear*. If the answer is unclear, and subject to the facts and circumstances of the specific rights offering, it should be reasonable for:

    - an entity to be treated as a Relevant Broker, Dealer, Bank or Nominee if:

        - its status as such an entity can be verified without unreasonable burden – note that this may require greater efforts to verify the status of larger holders; 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 exceptions discussed below, for purposes of Rule 801 the number of shares of the subject securities held by U.S. holders are generally determined as follows:

- *Relevant Broker, Dealer, Bank and Nominee Holders*. Securities held of record by a Relevant Broker, Dealer, Bank or Nominee for the accounts of customers resident in the United States must be counted as held by U.S. holders. Where securities are held of record by a Relevant Broker, Dealer, Bank or Nominee, direct inquiry needs to be made as to the number of securities held for the account of customers resident in the United States. If, after reasonable inquiry[15], information about the number of securities

---

whether a proposed transaction will need to be registered with the SEC. Making such a request, however, increases the risk that information about the proposed transaction will be leaked to the public.

[13] 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 disregarded if they would mandate SEC registration of the transaction.

[14] This assumes that the subject company is incorporated in Japan with a primary trading market in Japan. This explanation might differ under other circumstances. See Rule 800(h)(3) under the Securities Act.

[15] Although the meaning of "reasonable inquiry" is subject to interpretation, it should be practical and not unreasonably expensive or time-consuming. If there are known or obvious indicia of U.S. resident beneficial ownership or control, however, it may be necessary to initiate further confirmatory action. The subject company may rely in good faith on information supplied by brokers, dealers, banks or nominees. Note that an inquiry to a Relevant Broker, Dealer, Bank or Nominee increases the risk that information about the proposed transaction will be leaked to the public.

represented by accounts of customers resident in the United States cannot be obtained, the customers should generally be treated as residents of the jurisdiction in which the Relevant Broker, Dealer, Bank or Nominee has its principal place of business.

- *Other Holders*. Securities held of record by "other holders" with a U.S. address in the register of beneficial holders should be counted as held by U.S. holders. Securities held of record by other entities or individuals can generally be counted as held by non-U.S. holders.

Subject to the exceptions described below, including the need to confirm that there is no beneficial ownership information available that indicates that securities are held by U.S. residents, there is generally no need to "look through" other holders or customers of a Relevant Broker, Dealer, Bank or Nominee 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[16] would have revealed or it is already known that the entity is a "U.S. Person" under Rule 902(k) of Regulation S.[17] 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 determination of U.S. ownership is subject to exceptions whereby, for purposes of counting the number of shares held by U.S. holders:

- *Public Reports and Other Known Holders*. Securities must be counted as owned by U.S. holders when publicly filed reports of beneficial ownership or information that is otherwise available indicates that the securities are held by U.S. residents. When counting the number of shares held by U.S. holders, it is necessary to review publicly filed reports of beneficial ownership and other information provided or available to the subject company.[18] It is not clear from the rule to what extent the SEC will allow a Rule 801 U.S.

[16] A "reasonable investigation" may require greater efforts to verify the status of entities that are large shareholders or, because the potential for U.S. ownership would be greater, that are organized or incorporated in known tax havens.

[17] 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) nondiscretionary 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.

[18] The term "beneficial ownership" is not expressly defined for purposes of Rule 801. Under Rule 13d-3 of the Exchange Act, a "beneficial owner" includes any person who, directly or indirectly, through any arrangement, understanding or otherwise has or shares: (i) voting power which includes the power to vote, or to direct the

holder percentage calculation when beneficial ownership information that becomes available or otherwise known after, but not before, the completion of such calculation indicates that U.S. ownership is above 10%. We think the original calculation will be allowed if the announcement of the offering occurs before such information becomes available or otherwise known. We think it is much less clear whether the same would be true if the information becomes available or otherwise known prior to the announcement[19];

- *Known Voting Trusts*. Securities known to be held subject to a voting trust, deposit agreement or similar arrangement must be included as held by the record holders of the voting trust certificates, certificates of deposit, receipts, or similar evidences of ownership;

- *ADR Programs and Convertible Securities*. Securities underlying American depositary shares that are convertible into the subject securities should be included when calculating the number of securities held by U.S. holders. It is therefore advisable to confirm the existence of any sponsored or unsponsored ADR program[20] since the SEC takes the position that any ADRs held of record by a Relevant Broker, Dealer, Bank or Nominee for the accounts of customers resident in the United States must be counted as held by U.S. holders. Thus, where ADRs are held of record by a Relevant Broker, Dealer, Bank or Nominee, direct inquiry to each also needs to be made. Other types of outstanding securities that may be convertible or exchangeable into the subject securities – such as warrants, options and convertible securities – generally need not be included in the calculation;

- *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 will be deemed to be held of record by the beneficial owners of such securities; and

- *Miscellaneous*. Counsel should be consulted as to whether securities held by an overseas agency, branch or representative office or corporation or partnership that is a "U.S. Person" under Rule 902(k) must be counted as held by U.S. holders.

---

voting of, the subject security; (ii) investment power which includes the power to dispose, or to direct the disposition of, the subject security; or (iii) the right to acquire beneficial ownership of the subject security. While it is not clear whether the standards set forth in Rule 13d-3 are applicable, we believe that reports filed outside of the United States and other information that track Rule 13d-3-type information must be considered for purposes of Rule 801. Naturally, all beneficial ownership reports filed in the United States will need to be considered.

[19] We understand that there is no Rule 13d-3-type beneficial ownership report equivalent in Japan. Under Japanese law, record holders and certain beneficial owners are required to file a report of large shareholdings when their ownership percentage in a Japanese public company reaches 5% or more, or thereafter changes by more than 1%. We understand there is often no practical way to distinguish between "record holder" and "beneficial owner" filers of these reports. So, while the existence of such a report filed by a U.S. holder showing a greater than 10% position would not be a good fact for purposes of reliance on the Rule 801 exemption, such a report might not be dispositive.

[20] We understand that the following holders of record generally hold for ADR programs as depositary bank nominees: (i) Moxley & Co.; (ii) Nats Cumco; (iii) Hero & Co.; (iv) Depositary Nominees Inc.; and (v) Deutsche Bank Trust Company Americas. It is also possible to search the SEC website (see http://www.sec.gov/edgar/searchedgar/companysearch.html) for a Form F-6 filing to determine whether an unsponsored ADR program has been established for an issuer.

III. Alternative ADTV Test

In limited situations, which for a Japanese issuer will normally occur only in hostile transactions, where the subject company is unable to conduct the required look-through analysis described in sections I and II of this Annex C, an alternative calculation based upon an average daily trading volume ("**ADTV**") test may be available for purposes of the Rule 801 exemption. In the adopting release of the most recent amendment, the SEC cautioned that an inability to conduct the look-through analysis will depend upon the facts and circumstances and that "the need to dedicate time and resources to the look-though analysis alone will not support a finding that a bidder is unable to conduct the analysis".

In jurisdictions where shareholder lists may be prepared only at fixed intervals during the year and may not otherwise be available, the SEC advised that the alternative ADTV test may be used if:

- the information is only available as of a date outside the 90-day period, assuming that the transaction parties do not have access to more current information;[21] or

- under the laws of a foreign jurisdiction, nominees are prohibited from disclosing information, including that of country of residence, about beneficial owners on whose behalf they hold the target's securities.

When the subject company is unable to conduct the look-through analysis, U.S. holders are presumed to hold not more than 10% of the subject securities so long as each of the following is true:

- *Non-U.S. Primary Trading Market.* The issuer maintains a listing of the subject securities on one or more exchanges in a non-U.S. jurisdiction that, either singly or together with the trading in another foreign jurisdiction, constitutes the primary trading market for those securities.[22]

- *Less Than 10% U.S. ADTV*. The ADTV of the subject securities in the United States over a recent 12-month period ending no more than 60 days prior to the public

[21] We are told that upon request of the subject company, JASDEC will produce a special register of the subject company's security holders as of any requested date. If so, the alternative ADTV test for Japanese issuers will generally only be relevant in the context of a hostile transaction.

[22] To constitute a "primary trading market" at least 55% of the trading needs to take place on or through the facilities of securities markets in a single non-U.S. jurisdiction (or in no more than two non-U.S. jurisdictions) during a recent 12-month period. If the trading of the subject securities is aggregated in two non-U.S. jurisdictions for the purposes of reaching the 55% threshold, the trading of the securities in at least one of the two non-U.S. jurisdictions must be larger than the trading of the securities in the United States. Measurement of trading for the "primary trading market" determination is by reference to the ADTV of the subject securities in the relevant markets (the *numerator*) against its worldwide ADTV (the *denominator*). For purposes of calculating the numerator, only on-exchange transactions or both on-exchange and off-exchange transactions in the relevant foreign jurisdiction or jurisdictions may be included. If off-exchange transactions are included in the numerator, those transactions need to be included in the denominator as well. The denominator will be the sum of: (i) U.S. ADTV, which must include both on-exchange and off-exchange transactions in the United States; *plus* (ii) non-U.S. ADTV, which must include on-exchange transactions outside of the United States and any off-exchange transactions included in the numerator. The issuer may also, but is not required to, include off-exchange transactions from other non-U.S. jurisdictions in the denominator.

announcement of the record date for the rights offering is not more than 10% of worldwide ADTV.

- *No Indication of 10% U.S. Ownership*. The most recent annual report or information filed by the issuer with securities regulators in its home jurisdiction, the SEC or any jurisdiction in which the subject securities trade do not indicate that U.S. holders hold more than 10% of the subject securities.

- *No Knowledge of 10% U.S. Ownership*. The subject company does not know that the level of U.S. ownership exceeds 10%. For this purpose, the subject company may be deemed to know information:

    - that is publicly available and that appears in any filing with the SEC or any regulatory body in the issuer's jurisdiction of incorporation or primary trading market; and

    - can be obtained or is readily available from any other reasonably reliable source.

Annex D

Power of Attorney
for Obtaining Necessary EDGAR Codes

[Insert Date]

Re: **[Insert Company Name]**

Securities & Exchange Commission
Filer Support Branch
100 F Street, NE
Washington, D.C. 20549-0609

Dear Sir/Madam:

I, _____, of [Insert Company Name] (the "**Company**"), am writing to you in connection with submission of a Form ID. I hereby authorize [Insert Name] or such other employee of Davis Polk & Wardwell LLP to submit a Form ID on the Company's behalf and to act as agent for purposes of the Form ID.

Thank you for your assistance in this matter.

Sincerely,

_____
Name:
Title:

Annex E

Form CB and Instructions for Submitting Informational Documents[23]

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

Form CB

TENDER OFFER/RIGHTS OFFERING NOTIFICATION FORM (AMENDMENT NO. _____)

Please place an X in the box(es) to designate the appropriate rule provision(s) relied upon to file this Form:

Securities Act Rule 801 (Rights Offering)	☐
Securities Act Rule 802 (Exchange Offer)	☐
Exchange Act Rule 13e-4(h)(8) (Issuer Tender Offer)	☐
Exchange Act Rule 14d-1(c) (Third Party Tender Offer)	☐
Exchange Act Rule 14e-2(d) (Subject Company Response)	☐

Filed or submitted in paper if permitted by Regulation S-T Rule 101(b)(8) ☐

Note: Regulation S-T Rule 101(b)(8) only permits the filing or submission of a Form CB in paper by a party that is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

_____
(Name of Subject Company)

_____
(Translation of Subject Company's Name into English (if applicable))

_____
(Jurisdiction of Subject Company's Incorporation or Organization)

_____
(Name of Person(s) Furnishing Form)

_____
(Title of Class of Subject Securities)

_____
(CUSIP Number of Class of Securities (if applicable))

_____
(Name, Address (including zip code) and Telephone Number (including area code) of Person(s) Authorized to Receive Notices and Communications on Behalf of Subject Company)

_____
(Date Tender Offer/Rights Offering Commenced)

[23] The SEC has not fully updated this form to remove the implication that a party not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may submit this form in paper.

GENERAL INSTRUCTIONS

I. *Eligibility Requirements for Use of form CB*

A. Use this Form to furnish information pursuant to Rules 13e-4(h)(8), 14d-1(c) and 14e-2(d) under the Securities Exchange Act of 1934 ("Exchange Act"), and Rules 801 and 802 under the Securities Act of 1933 ("Securities Act").

Instructions

1. For the purposes of this Form, the term "subject company" means the issuer of the securities in a rights offering and the company whose securities are sought in a tender offer.

2. For the purposes of this Form, the term "tender offer" includes both cash and securities tender offers.

B. The information and documents furnished on this Form are not deemed "filed" with the Commission or otherwise subject to the liabilities of Section 18 of the Exchange Act.

II. *Instructions for Submitting Form*

A. (1) Regulation S-T Rule 101(a)(1)(vi) (17 CFR 232.101(a)(1)(vi)) requires a party to submit the Form CB in electronic format via the Commission's Electronic Data Gathering and Retrieval system (EDGAR) in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 551-8900.

(2) If the party filing or submitting the Form CB is not an Exchange Act reporting company, Regulation S-T Rule 101(b)(8) (17 CFR 232.101(b)(8)) permits the submission of the Form CB either via EDGAR or in paper. When filing or submitting the Form CB in electronic format, either voluntarily or as a mandated EDGAR filer, a party must also file or submit on EDGAR all home jurisdiction documents required by Parts I and II of this Form, except as provided by the Note following paragraph (2) of Part II.

(3) A party may also file a Form CB in paper under a hardship exemption provided by Regulation S-T Rule 201 or 202 (17 CFR 232.201 or 232.202). When submitting a Form CB in paper under a hardship exemption, a party must provide the legend required by Regulation S-T Rule 201(a)(2) or 202(c) (17 CFR 232.201(a)(2) or 232.202(c)) on the cover page of the Form CB.

(4) If filing the Form CB in paper in accordance with a hardship exemption, you must furnish five copies of this Form and any amendment to the Form (see Part I, Item 1.(b)), including all exhibits and any other paper or document furnished as part of the Form, to the Commission at its principal office. You must bind, staple or otherwise compile each copy in one or more parts without stiff covers. You must make the binding on the side or stitching margin in a manner that leaves the reading matter legible.

B. When submitting the Form CB in electronic format, the persons specified in Part IV must provide signatures in accordance with Regulation S-T Rule 302 (17 CFR 232.302). When submitting the Form CB in paper, the persons specified in Part IV must sign the original and

at least one copy of the Form and any amendments. You must conform any unsigned copies. The specified persons may provide typed or facsimile signatures in accordance with Securities Act Rule 402(e) (17 CFR 230.402(e)) or Exchange Act Rule 12b-11(d) (17 CFR 240.12b-11(d)) as long as the filer retains copies of signatures manually signed by each of the specified persons for five years.

C. You must furnish this Form to the Commission no later than the next business day after the disclosure documents submitted with this Form are published or otherwise disseminated in the subject company's home jurisdiction.

D. If filing in paper, in addition to any internal numbering you may include, sequentially number the signed original of the Form and any amendments by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of the document and any exhibits or attachments. Further, you must set forth the total number of pages contained in a numbered original on the first page of the document.

III. *Special Instructions for Complying with Form CB*

Under Sections 3(b), 7, 8, 10, 19 and 28 of the Securities Act of 1933, and Sections 12, 13, 14, 23 and 36 of the Exchange Act of 1934 and the rules and regulations adopted under those Sections, the Commission is authorized to solicit the information required to be supplied by this form by certain entities conducting a tender offer, rights offer or business combination for the securities of certain issuers.

Disclosure of the information specified in this form is mandatory. We will use the information for the primary purposes of assuring that the offer or is entitled to use the Form and that investors have information about the transaction to enable them to make informed investment decisions. We will make this Form a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes. These purposes include referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions.

PART I - INFORMATION SENT TO SECURITY HOLDERS

Item 1. Home Jurisdiction Documents

(a) You must attach to this Form the entire disclosure document or documents, including any amendments thereto, in English, that you have delivered to holders of securities or published in the subject company's home jurisdiction that are required to be disseminated to U.S. security holders or published in the United States. The Form need not include any documents incorporated by reference into those disclosure document(s) and not published or distributed to holders of securities.

(b) Furnish any amendment to a furnished document or documents to the Commission under cover of this Form. Indicate on the cover page the number of the amendment.

Item 2. Informational Legends

You may need to include legends on the outside cover page of any offering document(s) used in the transaction. See Rules 801(b) and 802(b).

Note to Item 2. If you deliver the home jurisdiction document(s) through an electronic medium, the required legends must be presented in a manner reasonably calculated to draw attention to them.

PART II - INFORMATION NOT REQUIRED TO BE SENT TO SECURITY HOLDERS

The exhibits specified below must be furnished as part of the Form, but need not be sent to security holders unless sent to security holders in the home jurisdiction. Letter or number all exhibits for convenient reference.

(1) Furnish to the Commission either an English translation or English summary of any reports or information that, in accordance with the requirements of the home jurisdiction, must be made publicly available in connection with the transaction but need not be disseminated to security holders. Any English summary submitted must meet the requirements of Regulation S-T Rule 306(a) (17 CFR 232.306(a)) if submitted electronically or of Securities Act Rule 403(c)(3) (17 CFR 230.403(c)(3)) or Exchange Act Rule 12b-12(d)(3) (17 CFR 240.12b-12(d)(3)) if submitted in paper.

(2) Furnish copies of any documents incorporated by reference into the home jurisdiction document(s).

Note to paragraphs (1) and (2) of Part II: In accordance with Regulation S-T Rule 311(f) (17 CFR 232.311(f)), a party may submit a paper copy under cover of Form SE (17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403) of an unabridged foreign language document when submitting an English summary in electronic format under paragraph (1) of this Part or when furnishing a foreign language document that has been incorporated by reference under paragraph (2) of this Part.

(3) If any of the persons specified in Part IV has signed the Form CB under a power of attorney, a party submitting the Form CB in electronic format must include a copy of the power of attorney signed in accordance with Regulation S-T Rule 302 (17 CFR 232.302). A party submitting the Form CB in paper must also include a copy of the signed power of attorney.

PART III - CONSENT TO SERVICE OF PROCESS

(1) When this Form is furnished to the Commission, the person furnishing this Form (if a non-U.S. person) must also file with the Commission a written irrevocable consent and power of attorney on Form F-X.

(2) Promptly communicate any change in the name or address of an agent for service to the Commission by amendment of the Form F-X.

PART IV - SIGNATURES

(1) Each person (or its authorized representative) on whose behalf the Form is submitted must sign the Form. If a person's authorized representative signs, and the authorized representative is someone other than an executive officer or general partner, provide evidence of the representative's authority with the Form.

(2) Type or print the name and any title of each person who signs the Form beneath his or her signature.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

_____

(Signature)

_____

(Name and Title)

_____

(Date)

Annex F

Sample Informational Document Legend

The following sample legend is for illustrative purposes only (and will require modification depending upon the particular circumstances of the offering):

> *This rights offering is made for the securities of a Japanese company. The offer is subject to Japanese disclosure requirements that are different from those of the United States. Financial statements included in the document, if any, have been prepared in accordance with Japanese accounting standards that may not be comparable to the financial statements of United States companies.*
>
> *It may be difficult for you to enforce your rights and any claim you may have arising under the federal securities laws, since the issuer is located in Japan, and some or all of its officers and directors may be Japanese residents. You may not be able to sue the company or its officers or directors in a foreign court for violations of the U.S. securities laws. It may be difficult to compel the company and its affiliates to subject themselves to a U.S. court's judgment.*

Annex G

Form F-X and Instructions For Appointing Service of Process Agent[24]

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

FORM F-X

APPOINTMENT OF AGENT FOR SERVICE OF PROCESS AND UNDERTAKING

GENERAL INSTRUCTIONS

I. Form F-X shall be filed with the Commission:

(a) By any issuer registering securities on Form F-8, F-9, F-10 or F-80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40-F under the Securities Exchange Act of 1934 (the "Exchange Act");

(c) By any issuer filing a periodic report on Form 40-F, if it has not previously filed a Form F-X in connection with the class of securities in relation to which the obligation to file a report on Form 40-F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F or 14D-9F;

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F-7, F 8, F-9, F-10 or F-80;

(f) By a Canadian issuer qualifying an offering statement pursuant to the provisions of Regulation A, or registering securities on Form SB-2; and

(g) By any non-U.S. issuer providing Form CB to the Commission in connection with a tender offer, rights offering or business combination.

A Form F-X filed in connection with any other Commission form should not be bound together with, or be included only as an exhibit to, such other form.

II. Six copies of the Form F-X, one of which must be manually signed, shall be filed with the Commission as its principal office.

A. Name of issuer or person filing ("Filer"):

B. (1) This is [check one] _____

[24] The SEC has not fully updated this form to remove the implication that a party not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may submit this form in paper.

☐ an original filing for the Filer

☐ an amended filing for the Filer

(2) Check the following box if you are filing the Form F-X in paper in accordance with Regulation S-T Rule 101(b)(8) ☐

Note: Regulation S-T Rule 101(b)(8) only permits the filing of the Form F-X in paper if filed by a Canadian issuer when qualifying an offering statement pursuant to the provisions of Regulation A (§§ 230.251–230.263 of this chapter):

(3) A filer may also file the Form F-X in paper under a hardship exemption provided by Regulation S-T Rule 201 or 202 (17 CFR 232.201 or 232.202). When submitting the Form F-X in paper under a hardship exemption, a filer must provide the legend required by Regulation S-T Rule 201(a)(2) or 202(c) (17 CFR 232.201(a)(2) or 232.202(c)) on the cover page of the Form F-X.

C. Identify the filing in conjunction with which this Form is being filed:

Name of registrant _____

Form type _____

File Number (if known) _____

Filed by _____

Date Filed (if filed concurrently, so indicate) _____

D. The Filer is incorporated or organized under the laws of (Name of the jurisdiction under whose laws the issuer is organized or incorporated) _____ and has its principal place of business at (Address in full and telephone number)
_____
_____

E. The Filer designates and appoints (Name of United States person serving as agent) _____ ("Agent") located at (Address in full in the United States and telephone number)_____
_____

as the agent of the Filer upon whom may be served any process, pleadings, subpoenas, or other papers in:

(a) Any investigation or administrative proceeding conducted by the Commission; and

(b) Any civil suit or action brought against the Filer or to which the Filer has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, where the investigation, proceeding or cause of action arises out of or relates to or concerns: (i) any offering made or purported to be made in connection with the securities

registered or qualified by the Filer on Form (name of form) _____ on (date) _____ or any purchases or sales of any security in connection therewith; (ii) the securities in relation to which the obligation to file an annual report on Form 40-F arises, or any purchases or sales of such securities; (iii) any tender offer for the securities of a Canadian issuer with respect to which filings are made by the Filer with the Commission on Schedule 13E-4F, 14D-1F or 14D-9F; or (iv) the securities in relation to which the Filer acts as trustee pursuant to an exemption under Rule 10a-5 under the Trust Indenture Act of 1939. The Filer stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon such agent for service of process, and that service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

F. Each person filing this Form in connection with:

(a) The use of Form F-9, F-10 or 40-F or Schedule 13E-4F, 14D-1F or 14D-9F stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date the issuer of the securities to which such Forms and Schedules relate has ceased reporting under the Exchange Act;

(b) The use of Form F-8, Form F-80 or Form CB stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed following the effective date of the latest amendment to such Form F-8, Form F-80 or Form CB;

(c) Its status as trustee with respect to securities registered on Form F-7, F-8, F-9, F-10 or F-80 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time during which any of the securities subject to the indenture remain outstanding; and

(d) The use of Form 1-A or other Commission form for an offering pursuant to Regulation A stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date of the last sale of securities in reliance upon the Regulation A exemption.

Each filer further undertakes to advise the Commission promptly of any change to the Agent's name or address during the applicable period by amendment of this Form, referencing the file number of the relevant form in conjunction with which the amendment is being filed.

G. Each person filing this Form, other than a trustee filing in accordance with General Instruction I. (a) of this Form, undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to: the Forms, Schedules and offering statements described in General Instructions I.(a), I.(b), I.(c), I.(d) and I.(f) of this

Form, as applicable; the securities to which such Forms, Schedules and offering statements relate; and the transactions in such securities.

The Filer certifies that it has duly caused this power of attorney, consent, stipulation and agreement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of _____, country of _____ this _____ day of _____, _____.

Filer:_____

By: (Signature and Title) _____

This statement has been signed by the following persons in the capacities and on the dates indicated.

_____
(Signature)

_____
(Title)

_____
(Date)

Instructions

1. The power of attorney, consent, stipulation and agreement shall be signed by the Filer and its authorized Agent in the United States.

2. The name of each person who signs Form F-X shall be typed or printed beneath such person's signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which such person signs Form F-X. If any name is signed pursuant to a board resolution, a copy of the resolution shall be filed with each copy of Form F-X. A certified copy of such resolution shall be filed with the manually signed copy of Form F-X. If any name is signed pursuant to a power of attorney, a copy of the power of attorney shall be filed with each copy of Form F-X. A manually signed copy of such power of attorney shall be filed with the manually signed copy of Form F-X.