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MEMORANDUM

Date: October 2009[1]

To: Interested Persons

Re: Rule 802 and Application of U.S. Securities Laws to Japanese Business Combination Transactions

Rule 802 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 certain cross-border exchange offers and business combinations by foreign private issuers involving the issuance of securities. This memorandum discusses how Rule 802 and the Securities Act apply to Japanese mergers, share exchanges and similar business combination transactions. This memorandum does not discuss considerations relevant to a rights offering, exchange offer or tender offer.[2] In this memorandum, we assume that the companies merging or consolidating in the business combination transactions are Japanese corporations that qualify as "foreign private issuers".[3]

See **Annex A** for a list of practical considerations in connection with planning for a Japanese merger, share exchange or similar business combination transaction.

I. Background

The Securities Act applies broadly to business combination transactions involving the offering or issuance of securities, including foreign transactions that have some connection to the United States. If U.S. residents own shares of a Japanese company, a Japanese merger, share exchange or similar business combination transaction may need to be registered with the U.S. Securities and Exchange Commission (the "**SEC**") unless an exemption is available. For a business combination involving listed companies, Rule 802 is likely to be the only available exemption.

A. Exchange Transactions

Japanese business combinations involving share issuances are typically structured as:

- *Mergers (Kyushu Gappei)*. One company is merged into another company;

[1] This memorandum updates earlier versions published in December 2008, 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 Publications".

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

- *Three-Party Mergers (Shinsetsu Gappei)*. Two or more companies merge into a newly formed company;

- *Joint Share Transfers (Kyodo Kabushiki Iten)*. Two or more companies (the "**incorporators**") jointly form a new holding company to acquire all their shares;

- *Independent Share Transfers (Tandoku Kabushiki Iten)*. One company (an "**incorporator**") forms a new holding company to acquire all of its shares; and

- *Going-Private Share Exchanges (Kanzen Oyagaisha Kabushiki wo Taika tosuru Kabushiki Kokan)*. A company acquires all the shares of another company in a "going-private" share exchange.

These transactions are collectively referred to in this memorandum as "**Exchange Transactions**". In this memorandum, we refer to each company offering securities – the surviving company in a merger, the newly formed holding company and the incorporators in a joint or independent share transfer and the acquiror in a going-private share exchange – as the "**Offeror**". We refer to each company being acquired – non-surviving companies in a merger, the incorporators in a joint or independent share transfer and the target in a going-private share exchange – as the "**Subject Company**". (The incorporators are considered to be included in both.)

Japanese business combinations involving cash payments include:

- *Share Exchanges for Cash (Genkin wo Taika tosuru Kabushiki Kokan)*. A share exchange in which shares of another company are converted into cash;

- *Redemption Recapitalizations (Shutoku Jokotsuki Kabushiki niyoru Shihon Saikosei).* A multi-step recapitalization, sometimes referred to as the "redeemable shares method", in which (i) each share of a subsidiary is converted into redeemable shares, (ii) the subsidiary then redeems each redeemable share in exchange for a smaller number of shares of a new class, (iii) the exchange ratio is established such that minority shareholders receive only fractional new shares and (iv) all fractional new shares are converted into cash; and

- *Reverse Stock Splits (Kabushiki Heigo)*. A reverse stock split of shares of a subsidiary in which (i) shares are combined into a smaller number of shares of the same class, (ii) the combination ratio is established such that no minority shareholder will receive a full share and (iii) all resulting fractional shares are converted into cash.

The share exchange for cash, redemption recapitalization and reverse stock split transactions generally do not need to be registered with the SEC, as discussed below. Consequently, they are excluded from the definition of Exchange Transactions and are not covered by this memorandum.

B. 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. Rule 145(a) under the Securities Act extends the terms

"offer" and "sale" to include mergers and other transactions involving the exchange of securities. Transactions outside the United States, even if solely between non-U.S. companies, are subject to Section 5 if U.S. jurisdictional means are used – a concept we explain later in this memorandum.

1. Transactions Potentially Subject to Registration

Exchange Transactions will generally need to be registered under the Securities Act, unless Rule 802 is available. From the perspective of the Securities Act:

- *Mergers*. The surviving company's shares are offered to the non-surviving company's shareholders.

- *Three-Party Mergers*. Shares of the newly formed company are offered to shareholders of the incorporators.

- *Joint Share Transfers*. Holding company shares are offered to the incorporators' shareholders.

- *Independent Share Transfers*. Holding company shares are offered to the incorporator's shareholders.

- *Going-Private Share Exchanges*. The acquiror's shares are offered to target shareholders.

2. Transactions Not Subject to Registration

The following transactions will generally qualify for an alternative exemption:

- *Share Exchange for Cash*. A share exchange for cash does not involve an "offer" or "sale" of a security.

- *Redemption Recapitalizations.* In a redemption recapitalization, the parties may be able to conclude that no shares are offered or sold in the transaction. Accordingly, there is no need to register shares under Section 5 of the Securities Act. Alternatively, the parties may conclude that, even if the transaction involves an offer and sale of shares, the exemption under Section 3(a)(9) of the Securities Act, which is described in more detail below, is available.

- *Reverse Stock Splits.* Under Rule 145(a)(1), a reverse stock split generally will not constitute an "offer" or "sale" of securities.

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

An Exchange Transaction may be effected 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:

- mailing a notice of meeting and a form of proxy to the agents in Japan acting as standing proxies (*jonin dairi nin*) if the agents are required or expected to forward the materials to beneficial holders resident in the United States;

- making transaction-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 a transaction 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 votes or consents to be mailed from the United States; or

- sending into the United States the securities issued in the transaction.

Additionally, even if none of these actions are taken, the SEC is likely to conclude that U.S. jurisdictional means have been used if the voting power held by U.S. shareholders or if their participation is necessary for the success of a transaction. Moreover, in connection with recent amendments to Rule 802, 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 is the Subject Company in an Exchange Transaction, the use of U.S. jurisdictional means may be unavoidable.

We are advised by Japanese counsel that U.S. shareholders of Japanese public companies cannot be excluded as a group from Exchange Transactions due to basic Japanese corporate law principles of shareholder equality, which prevent disparate treatment of shareholders. We understand that equal treatment is required even when compliance is costly or burdensome.

D. Other Alternatives Typically Unavailable

In other jurisdictions, parties often consider procedural alternatives that exempt business combination transactions 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 transaction qualifies as a private placement under Section 4(2) of the Securities Act.

These alternatives will generally not be available for Exchange Transactions because of the Japanese legal principles requiring equal treatment of shareholders.

Section 3(a)(10) under the Securities Act exempts some transactions from registration. The Section 3(a)(10) exemption is available if the terms and conditions of the exchange of securities are approved by a governmental authority after a hearing on the fairness of such terms and

conditions. Such approvals are required under the laws of some jurisdictions. Exchange Transactions of Japanese companies generally do not involve such an approval.

In situations where U.S. residents hold only shares that do not entitle the holders to make any investment decision in connection with an Exchange Transaction, such as, for example, non-voting preferred shares that automatically become a different security as a result of the vote of common shareholders, it may be possible to conclude that the Exchange Transaction does not involve the offer or sale of a security to a U.S. resident. However, any decision-making authority of the U.S. resident shareholder, such as the right to seek appraisal of its shares, will cause the U.S. registration requirements to apply.

E. SEC Registration

Exchange Transactions can also be registered with the SEC under the Securities Act. Registration may be an acceptable alternative for a Japanese public company that already maintains a U.S. stock exchange listing. For companies that are not already SEC reporting companies, there are several important consequences of SEC registration of an Exchange Transaction, generally including the need to:

- file a registration statement on Form F-4 with the SEC;
- include in the registration statement financial statements for the Offeror and the Subject Company, prepared in accordance with International Financial Reporting Standards or U.S. generally accepted accounting principles ("**U.S. GAAP**"), or accompanied by an appropriate U.S. GAAP reconciliation;
- arrange for audits of the financial statements in accordance with U.S. generally accepted auditing standards;
- include in the registration statement *pro forma* financial information showing the *pro forma* effects of the proposed Exchange Transaction;
- include in the registration statement disclosure concerning the transaction, 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 notice of shareholder meeting is sent to shareholders of the Subject Company, which can pose significant timing issues for the transaction timetable.

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.

These obligations will generally continue as long as the company is an SEC reporting company. If the company does not wish to remain an SEC reporting company, it may seek to terminate its SEC registration. Assuming proper structuring, such a termination can often be completed within just over a year and soon enough to avoid the need to comply with Section 404. In connection with such a termination, the deregistering company will be required to establish and maintain a Rule 12g3-2(b) exemption under the U.S. Securities Exchange Act of 1934, as amended (the "**Exchange Act**").[4]

II. The Rule 802 Exemption

Rule 802 exempts from the registration requirements of Section 5 of the Securities Act a business combination that satisfies conditions relating to:

- limitations on U.S. ownership;
- equal treatment of U.S. shareholders;
- informational documents; and
- legends.[5]

A. Limitation on U.S. Ownership

The Rule 802 exemption will be available for an Exchange Transaction only if U.S. holders (as defined below) own no more than 10% of the total number of shares outstanding. This limitation generally applies in the following manner to Exchange Transactions:

- *Merger*. U.S. holders must hold no more than 10% of the shares of the non-surviving company;
- *Three-Party Merger*. U.S. holders must hold no more than 10% of the shares of the newly formed company, calculated on a *pro forma* combined basis and assuming completion of the transaction;

[4] 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."

[5] In applying Rule 802, it is important to note that: (i) Rule 802 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 802 exemption will be subject to registration if the transaction or series of transactions is a scheme to evade registration; and (iii) Rule 802 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.

- *Joint Share Transfer*. U.S. holders of the incorporators must hold no more than 10% of the shares of the holding company, calculated on a *pro forma* combined basis and assuming completion of the transaction;[6]

- *Independent Share Transfers*. U.S. holders must hold no more than 10% of the shares of the incorporator; and

- *Going-Private Share Exchange*. U.S. holders must hold no more than 10% of the shares of the target.

B. Determining U.S. Holder Percentage Ownership

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 (in some cases 120 days) before and no more than 30 days after the public announcement of the Exchange Transaction;[7] and

- *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*). Shares owned by the Offeror or the Subject Company are excluded from the numerator and the denominator.

In limited situations, where the parties to an Exchange Transaction are unable to conduct the required look-through analysis for exceptional reasons, Rule 802 will allow the determination to be conducted based on an alternative "average daily trading volume" test.

For purposes of Rule 802, 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.

C. Equal Treatment

Rule 802 will only be available if U.S. holders of the subject securities are permitted to participate in the Exchange Transaction on terms at least as favorable as those offered to other holders. In

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[6] Rule 802 provides that in the case of a business combination in which the securities are to be issued by a "successor registrant", U.S. holders may hold no more than 10% of the class of securities of the successor registrant, as if measured immediately after completion of the business combination. The SEC interprets the phrase "successor registrant" to refer to a new company formed for purposes of the transaction, like the holding company.

[7] The adopting release for the most recent amendment of Rule 802 says that "public announcement" is any oral or written communication by an acquiror or any party acting on its behalf, which is reasonably designed to inform or has the effect of informing the public or security holders in general about the transaction. *See* http://www.sec.gov/rules/final/2008/33-8957.pdf

theory, equal treatment under Rule 802 should permit an Offeror to offer cash to U.S. holders while offering securities to non-U.S. holders so long as the Offeror has a reasonable basis to believe that the cash being offered to U.S. holders is substantially equivalent to the value of the consideration being offered to non-U.S. holders. As noted above, however, we are not aware of an Exchange Transaction where this has been attempted and we are advised by Japanese counsel that an Offeror in an Exchange Transaction may not offer cash to some holders of a Japanese public company while offering securities to other holders.

D. Informational Documents

Rule 802 contains requirements with respect to informational documents. The phrase "informational document" is not defined in Rule 802, but will generally be read to include any document (or amendment) published or otherwise disseminated by an Offeror or Subject Company to the holders of the subject securities in connection with an Exchange Transaction. It may also include documents, such as earnings announcements, that do not mention the Exchange Transaction but that are relevant to the voting decisions to be made by holders of the subject securities.

Rule 802 contains the requirements described below with respect to informational document filing and delivery.

- *Electronic EDGAR Submissions*. Under Rule 802, 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 Offeror or the Subject Company in connection with the transaction.

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

    - either the Offeror or the Subject Company may submit an informational document under Form CB – regardless of which entity actually disseminates or publishes the document. For practical reasons Offerors normally make Form CB submissions, including for documents published by Subject Companies;

    - in order to submit Form CB electronically, appropriate EDGAR codes (for both the Offeror and the Subject Company) need to be obtained in advance. Davis Polk can obtain these codes but will generally need a power of attorney from the respective companies. 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 Exchange Transaction, 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[8] of 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.

E. Agent for Service of Process

A Form F-X will need to be submitted 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 furnishing entity 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 furnishing 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. Exemption under Section 3(a)(9) of the Securities Act[9]

Section 3(a)(9) exempts from registration any security exchanged by an issuer "with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange". Securities exchanged in a redemption recapitalization should be eligible for the Section 3(a)(9) exemption if the following conditions are met:

- *Issuer Securities Only.* The exemption extends only to securities of the issuer exchanged for securities of the same issuer. This precludes transactions in which, for

[8] A defendant can be liable under Section 18 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.

[9] There is much published and unpublished guidance on the application of this exemption. An issuer should consult with U.S. counsel before deciding to proceed on this basis.

example, a parent or successor corporation will exchange its shares for those of a subsidiary or predecessor corporation.

- *Exclusivity of Exchange.* According to prevailing SEC interpretations, a transaction meeting the requirements of the exemption must generally be exclusively an "exchange" of new securities for old (*i.e*., security holders may not be required to deliver additional consideration) [10] and the new offering must be made exclusively to existing security holders of the issuer (*i.e*., the offering may not include offers to third parties).

- *No Payment of Commission or Remuneration for Solicitation*. The exemption prohibits payment of remuneration in consideration of efforts to solicit the exchange, whether such remuneration is paid directly or indirectly.

- *Good Faith*. The exemption requires that the security exchange must be *bona fide*, *i.e*., not conducted merely as a means of avoiding registration.

IV. Other U.S. Laws with Possible Application

The following U.S. laws may apply to an Exchange Transaction, whether the transaction is registered with the SEC or exempt under Rule 802. Note that additional rules and regulations not discussed herein may also apply, however, if the Exchange Transaction is registered with the SEC or either of the transaction parties 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 in connection with mergers, share exchanges and similar business combination transactions by prohibiting, during the restricted period applicable to the transaction, purchases of the Offeror's shares (or other similar transactions) by the Offeror and related persons. Thus, in connection with an Exchange Transaction, 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. Particular attention should be paid to Regulation M in connection with any Exchange Transaction in which the Offeror is a financial institution because these types of Offerors often engage in securities transactions as part of their ordinary business. While Regulation M includes certain special exceptions for these types of Offerors, the exceptions often are not broad enough to cover all ordinary activities and additional consultation with the SEC may be required.

The restricted period will generally begin when proxy or offering materials are first disseminated and end at the time of the shareholder vote or the expiration of the offer. If there is a valuation or

[10] SEC interpretive rules do allow an "exchange" to be accompanied by certain payments in cash by security holders "as may be necessary to effect an equitable adjustment, in respect of dividends or interest paid or payable on the securities involved in the exchange, as between such security holder and other security holders of the same class accepting the offer of exchange". In addition, the conversion into cash of fractional interests in the new shares in a redemption recapitalization or reverse stock split will generally not be an issue under Section 3(a)(9).

election period that occurs outside the proxy solicitation period, an additional restricted period may commence one day or five days (depending on the average daily trading volume of the subject securities and the public float value of the issuer) prior to the commencement of such period and continue until the value or election period ends.

B. State "Blue Sky" Registration Requirements

If an Exchange Transaction is conducted pursuant to the Rule 802 exemption, it will be necessary to ensure compliance with (or exemption from) the securities laws of the various U.S. states. Many states exempt mergers from the application of their securities laws. In other states, a notice filing may be required if there are shareholders resident in that state.

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. U.S. Antitrust Laws

U.S. antitrust laws, including the U.S. Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, may apply in connection with an Exchange Transaction – even where each of the Offeror and Subject Company is a foreign company. Davis Polk can provide additional information on this topic upon request.

E. 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 if, as of the last day of that fiscal year, the number of its worldwide holders of record of those securities is 500 or 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.

If, as a result of an Exchange Transaction or otherwise, the Offeror 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 Offeror 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.

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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:

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This memorandum is a summary for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice.

Annex A

Practical Considerations in Connection with Planning for an Exchange Transaction

- *Consider Issues Surrounding the Confirmation of Rule 802 Availability Well in Advance of Announcement*. The availability of a regular shareholder registry 60 days prior to announcement of an Exchange Transaction will often permit confirmation prior to the announcement of the transaction of satisfaction of the U.S. ownership element of the Rule 802 exemption. In other situations, transaction parties may need to obtain a special registry (i) prior to announcement, which could signal to the market that a transaction is in contemplation, or (ii) after announcement, which may raise issues since it will not be known until well thereafter whether SEC registration will be required or Rule 802 will be available. Whether the transaction will be registered or exempt, because the duty to provide transaction-related information to the SEC often begins at announcement, Davis Polk should be contacted well in advance of that date 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. The SEC rules do not require companies to retain these professionals but the SEC might well consider the failure to do so as a factor weighing against any company that attempts to rely on Rule 802 and later determines that U.S. ownership exceeds the 10% threshold.

- *Prepare a Contingency Plan*. If it is determined that Rule 802 will not be available, a decision needs to be made whether to modify the transaction or register the transaction 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 transaction communications. If Rule 802 will be relied upon and 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*. If Rule 802 will be relied upon, a financial printer may be needed to convert informational documents into EDGAR format and to submit them electronically on Form CB. 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 802 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 a transaction party or a professional service provider.

Definition of the Term
Foreign Private Issue

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

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.

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Instructions to paragraph (1)(i) of this definition[11]: 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:

[11] 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

Methodology for Determining the U.S. Holder Percentage

The method for determining U.S. holders and their percentage ownership for purposes of the Rule 802 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 (in some cases, as described below, 120 days) before and no more than 30 days after the public announcement of the Exchange Transaction; and

- *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*). Shares owned by the Offeror or the Subject Company are excluded from the numerator and the denominator.

In limited situations, where the parties to an Exchange Transaction are unable to conduct the required look-through analysis for exceptional reasons, Rule 802 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 802 in the context of an Exchange Transaction as well as the alternative average daily trading volume test.

I. Calculation Reference Dates

A. The 90-Day Determination Period

The U.S. holder determination under Rule 802 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 public announcement of the Exchange Transaction. The determination will generally 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 Exchange Transactions publicly announced 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]

[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 whether a

The Rule 802 exemption will not be available if publicly filed reports of beneficial ownership or other information provided to transaction parties indicate that as of the relevant reference date the U.S holder level is greater than 10%.

B. The 120-Day Determination Period

If the U.S. holder determination cannot be made within the 90-day period, Rule 802 provides that the determination may be made as of the most recent practicable date before public announcement, but in no event earlier than 120 days before announcement of the Exchange Transaction. The calculation will need to be made within this 120-day period if:

- a regular register of the subject securities within the 90-day period is not available;
- a special register of the subject securities within the 90-day period is not available;
- publicly filed reports of beneficial ownership or other information provided to the transaction parties do not indicate U.S ownership of the outstanding subject securities within the 90-day period is greater than 10%; and
- a shareholder register of the subject securities dated within the 120-day period is otherwise available – assuming a March 31 fiscal year end, a regular register dated within the 120-day period will generally be available for Exchange Transactions publicly announced between: (i) March 31 and July 29; and (ii) September 30 and January 28.

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 120-day determination period for Japanese issuers will generally only be relevant in the context of hostile transactions.

C. Exception for Certain Multi-Step Transactions

In certain multi-step transactions – such as where an Exchange Transaction is the second step of a two-step transaction (*e.g.*, a tender offer followed by a share exchange) – the U.S. holder determination may be calculated based upon a register of beneficial holders current as of a date relating to the initial step.[13]

When an Exchange Transaction constitutes the second step of a two-step transaction, this first step/single calculation approach will generally be permitted if:

- the Offeror properly relies for the first step on the Tier I exemption from the more expansive requirements of the U.S. tender offer rules;[14]

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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] *Manual of Publicly Available Telephone Interpretations, Third Supplement,* § II.E.9 (July 2001), at http://www.sec.gov/interps/telephone/phonesupplement3.htm.

[14] See Rule 13e-4(h)(8) under the Exchange Act. See also the adopting release at http://www.sec.gov/rules/final/2008/33-8957.pdf. In general, the Tier I exemption to the tender offer rules is

- the disclosure document for the first step discloses the Offeror's intent to conduct the second step and the terms of the second transaction[15]; and

- the second step is consummated within a reasonable time following the first step.

SEC staff have informally advised that this approach to a two-step Exchange Transaction may not be available if the Offeror conducts the first step in compliance with the broader requirements of the U.S. tender offer rules – even if the Offeror could have, but chose not to, rely on the Tier I exemption.

II. Determination of U.S. Holders

The Rule 802 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.[16] 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 Subject Company'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**").[17]

- *Other Holder*. Another type of holder.

- *Unclear*. If the answer is unclear, and subject to the facts and circumstances of the specific Exchange Transaction, 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

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analogous to the Rule 802 exemption under the Securities Act in that it applies only when U.S. ownership is no more than 10%. A tender offer conducted in compliance with the Tier I exemption need only comply with Regulation 14E and certain other of the U.S. regulations relating to tender offers. Tender offers for shares of an entity that has no securities registered under the Exchange Act are subject only to the tender offer provisions of Regulation 14E. However, Offerors may elect, under certain circumstances, to rely on the Tier I exemption in connection with tender offers for shares of one of these entities.

[15] Statements to the effect that the Offeror "may engage in" or "is considering engaging in" or "reserves the right to engage in" the second step transaction generally will not be sufficient to permit the single calculation approach.

[16] 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.

[17] This assumes that each of the Offeror and 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.

- other entities to be treated as “other holders”.

Based upon the foregoing and subject to the exceptions discussed below, for purposes of Rule 802 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[18], information about the number of securities 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[19] would have revealed or it is already known that the entity is a “U.S. Person” under Rule 902(k) of Regulation S.[20] Some entities organized outside of the

[18] 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. Reliance in good faith on information supplied by brokers, dealers, banks or nominees is permitted. 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.

[19] 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.

[20] 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.

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 transaction parties.[21] It is not clear from the rule to what extent the SEC will allow a Rule 802 U.S. 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 public announcement of the transaction 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[22];

- *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 American depositary receipts ("**ADRs**") program[23] since the SEC takes the position that any ADRs held of record by a

[21] The term "beneficial ownership" is not expressly defined for purposes of Rule 802. 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 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 802. Naturally, all beneficial ownership reports filed in the United States will need to be considered.

[22] 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 in a Subject Company would not be a good fact for purposes of reliance on the Rule 802 exemption, such a report might not be dispositive.

[23] 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

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 how securities held through a discretionary or non-discretionary account or by an overseas agency, branch or representative office, corporation or partnership that is potentially a "U.S. Person" under Rule 902(k) should be counted.

III. Alternative ADTV Test

In limited situations, which for a Japanese issuer will normally occur only in hostile transactions, where the parties to an Exchange Transaction are 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 802 exemption. In the adopting release of the most recent amendment, the SEC cautioned that a transaction party's 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 and 120-day periods – and assuming that the transaction parties do not have access to more current information;[24] 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 subject securities.

When the transaction parties are 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:

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.

[24] 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.

- *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.[25]

- *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 announcement of the transaction 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 transaction parties do not know that the level of U.S. ownership exceeds 10%. For this purpose, the transaction parties 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.

[25] 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.

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[26]

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)

[26] 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 transaction):

The Offeror and Subject Company are Japanese companies. Information distributed in connection with the proposed Exchange Transaction and the related shareholder vote is subject to Japanese disclosure requirements that are different from those of the United States. Financial statements and financial information included herein are prepared in accordance with Japanese accounting standards that may not be comparable to the financial statements or financial information of United States companies.

It may be difficult for you to enforce your rights and any claim you may have arising under the U.S. federal securities laws in respect of the Exchange Transaction, since the companies are located in Japan and all of their officers and directors are residents of Japan. You may not be able to sue the companies or their officers or directors in a Japanese court for violations of the U.S. securities laws. Finally, it may be difficult to compel the companies and their affiliates to subject themselves to a U.S. court's judgment.

You should be aware that the companies may purchase shares of the Subject Company otherwise than under the Exchange Transaction, such as in open market or privately negotiated purchases, at any time during the pendency of the proposed offer.

Annex G

Form F-X and Instructions For Appointing Service of Process Agent[27]

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] _____

[27] 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.