



March 1, 2006

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-9303

**Subject: File Number S7-12-05**

Dear Ms. Morris:

Pink Sheets LLC ("Pink Sheets") appreciates this opportunity to comment on the recent proposal by the U.S. Securities and Exchange Commission (the "Commission") to amend the rules allowing a foreign private issuer to terminate the registration of a class of equity securities under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") and to cease its reporting obligations regarding a class of equity or debt securities under Section 15(d) of the Exchange Act.

Pink Sheets is the leading provider of pricing and financial information for the over-the-counter ("OTC") securities markets and, among other things, operates an Internet-based, real-time quotation service for OTC equities and bonds for market makers and other broker-dealers registered under the Exchange Act.

### **General Observations**

We applaud the Commission's efforts to revise the current rules in light of the vast improvements in the quality and quantity of information available to investors internationally. Several of the concerns that served as the basis for the current rules governing the termination of registration obligations for foreign private issuers have been ameliorated through the modernization of global trading, clearing and settlement systems.

The Exchange Act disclosure regime is intended to provide adequate disclosure to market participants. However, the Federal Securities Laws often tend to focus on disclosures made to purchasers of securities in public offerings, rather than the information needs of market participants. As far back as 1966, the late Milton Cohen persuasively argued that market participants needed a more sophisticated disclosure regime.<sup>1</sup> Although we support the Commission's current proposal, we

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<sup>1</sup> In 1966, in an influential article, Milton Cohen proposed that the disclosure standards of the Exchange Act should be equivalent to those under the Securities Act: "[T]he combined disclosure requirement of these statutes would have been quite different if the 1933 and 1934 Acts (the



believe the current proposal could be revised slightly to better protect investors by considering the information needs of investors in unregistered OTC securities.

### **Summary of Pink Sheets Comments**

Pink Sheets strongly supports the current amendments as proposed, and believes that the proposed amendments, with slight modifications, would greatly improve the quality of information provided to U.S. investors. Pink Sheets' comments may be summarized as follows:

1. Pink Sheets agrees with the Commission that issuers should be encouraged to publish the home country materials required under Rule 12g3-2(b) in English on an Internet web site, but believes that such web site should be one maintained by the issuer's home market, and that issuers should have the option, alternatively, of posting such information on the Internet web site of the primary venue in the U.S. where the issuer's securities are traded;
2. Although not proposed by the Commission, Pink Sheets also believes that those foreign private issuers who currently rely on the "information supplying" exemption under Rule 12g3-2(b) should be required to display the home market information produced under the Rule on a publicly available Internet web site. Therefore, Pink Sheets suggests that the Commission amend Rule 12g3-2(b) to include such a requirement; and
3. Pink Sheets believes that the current numerical thresholds for registration and deregistration should not be adjusted as proposed under new Rule 12h-6. However, Pink Sheets believes that qualified institutional buyers ("QIBs") should not be included in the calculation of U.S. shareholders for purposes of deregistration, but that QIBs should be included in the calculation of U.S. shareholders for purposes of registration.

### **Proposed Amendments to Rule 12g3-2(b)**

The Commission has proposed to amend Exchange Act Rule 12g3-2(d) to permit a foreign private issuer to establish the Rule 12g3-2(b) exemption for a class of

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latter as extended in 1964) had been enacted in opposite order, or had been enacted as a single, integrated statute--that is, if the starting point had been a statutory scheme of continuous disclosures covering issuers of actively traded securities and the question of special disclosures in connection with public offerings had been faced in this setting. Accordingly, it is my plea that there now be created a new coordinated disclosure system having as its basis the continuous disclosure system of the 1934 Act and treating "1933 Act" disclosure needs on this foundation." Cohen, "Truth in Securities Revisited," 79 *Harv. L. Rev.* 1340, 1341-1342, as quoted by Loss and Seligman, *Securities Regulations* § 2-D-1, n. 2.



equity securities that is the subject of a Form 15F immediately upon the effectiveness of termination of Exchange Act reporting pursuant to new Rule 12h-6. As a condition to maintaining this exemption, a foreign private issuer would have to publish in English the home country materials required by Rule 12g3-2(b) on the issuer's Internet web site or through an electronic information delivery system that is generally available to the public in the issuer's primary trading market. We agree with the disclosure element of this proposal, but believe that the disclosure should be made more accessible to individual investors. We believe that the current proposal should be amended to give issuers the option of posting the required information on the web site of the primary venue in the U.S. where the issuer's securities are traded.

Our experience suggests that although the investing public seeks disclosure of information, for most OTC issuers, including foreign private issuers, there are few incentives for the issuers to provide such information to market participants. Issuers who wish to raise capital view disclosure as part of the cost of a capital raising effort. In many cases, however, an OTC issuer, having already conducted a public offering, may not expect to raise capital in the public markets for many years to come. Continued disclosure to the markets under these circumstances is a cost to the issuer for which there is little corresponding benefit and is often considered an expensive nuisance. On the other hand, public investors suffer without sufficient disclosure and can consequently become exposed to manipulative and deceptive practices. Pink Sheets has encouraged unregistered issuers to provide market disclosure through private initiatives, but there is, nonetheless, a need for regulation because economic incentives alone are inadequate to protect investors.

We strongly agree with the Commission's proposal that foreign private issuers should be required to disclose information to the investing public even after the termination of their reporting obligations; however, we believe that the disclosure should be made more easily accessible to investors residing in the U.S.. A U.S. investor, when seeking information about an issuer, will usually choose to either access the issuer's home page or the venue where the issuer is traded in the U.S. Very rarely will a U.S. investor even think to check the primary trading market of the foreign private issuer. In some circumstances, a U.S. investor may not even know what the primary foreign trading market is for the particular foreign private issuer.

The current proposal to require deregistered foreign private issuers to post information on their own Internet web sites is an improvement over current paper filing requirements. However, many foreign private issuers are large corporations with far-flung international operations. These issuers may operate many complex web sites to advertise their products. In some cases, it can be quite difficult for an investor to find information regarding an issuer's securities on an issuer's web site. Often an issuer's web site is primarily devoted to generic



advertising about the issuer's operations and products. Although the precise web site address where information can be found is disclosed on a Form 15F available on EDGAR, EDGAR can sometimes be difficult to navigate and many investors, who may be unaware of the existence of EDGAR, may never look there in order to find such information.

We believe that issuers should have the option of posting information at the primary trading market in the U.S. where the issuer's securities are traded. For example, in order to encourage issuers of unregistered securities to provide information to the market, Pink Sheets introduced the Pink Sheets News Service to allow issuers that are traded on the Pink Sheets Interdealer Quotation System to make current and historical information publicly available to investors on [www.pinksheets.com](http://www.pinksheets.com). Over 700 OTC issuers currently publish financial information or press releases on the Pink Sheets News Service. In addition, Pink Sheets recently entered into an agreement with the Bank of New York to provide financial information to Pink Sheets News Service for foreign private issuers accessing the U.S. markets through Bank of New York sponsored ADR programs. This information will be freely available to investors and provide the disclosures necessary to enable market makers to comply with their obligations under Exchange Act Rule 15c2-11. This service provides investors with the level of information they need to make informed decisions and is easily accessible.

We believe the current proposal should therefore be amended to more fully consider the needs of market participants for readily available information about the issuer and its securities.

### **Information Supplied under Rule 12g3-2(b) Should be Readily Available**

Although the Commission has not proposed amendments to the "information supplying" exemption under Exchange Act Rule 12g3-2(b), we believe that, in light of the current proposals, the Commission should consider extending enhanced disclosure requirements to the "information supplying" exemption. We believe the Commission should require all foreign private issuers to display the home market information produced under the Rule on a publicly available Internet site maintained for the benefit of market participants or on the principal trading venue for the issuer's securities in the U.S., provided that any such site is freely available to U.S. investors. Under current rules, a foreign issuer wishing to rely on the "information supplying" exemption makes a paper filing with the Commission that can only be accessed in-person at the Commission's public reference room in Washington, D.C. In the current information-rich environment where investors can access the most obscure market details through an ordinary "Google" search, this method of providing disclosure to investors is outdated and essentially makes such information unavailable to prospective or current investors.



When information is submitted to the SEC in paper form under Rule 12g3-2(b) and information is gathered by market makers under Rule 15c2-11, it is generally not readily accessible to the investing public. In contrast, the information obtained from foreign private issuers through a service such as the Pink Sheets News Service is readily accessible and freely available on the Internet to members of the investing public.

Disclosure to U.S. investors would be improved substantially by an amendment to the proposed rule requiring a foreign private issuer to post home country information in English on an Internet site that is maintained either by the issuer's home country market or by the principal trading venue for the issuer's securities in the U.S., provided that any such site is freely available to U.S. investors. U.S. investors generally expect to see relevant investor information about issuers available from the markets where the issuer's securities are traded. The securities of many foreign private issuers are traded in the U.S. through the facilities of Pink Sheets. Publicly available information regarding issuers with securities traded through Pink Sheets is made freely available to investors and regulators on the Pink Sheets News Service. Issuers are charged only a modest fee to display this information. We believe that a foreign private issuer should be encouraged to satisfy the information-supplying requirements of Rule 12g3-2(b) by posting an English version of information provided to its home country markets on the Internet site of its home market, on the Pink Sheets News Service or any other Internet site operated by the primary U.S. trading venue for the issuer's securities.

### **New Proposed Rule 12h-6 and Numerical U.S. Investor Thresholds**

In new proposed Rule 12h-6, the Commission proposes to terminate the registration of a class of securities under section 12(g) of the Exchange Act or terminate the obligation under section 15(d) of the Exchange Act to file or furnish reports required by section 13(a) of the Exchange Act, with respect to a class of equity or debt securities if an issuer certifies that, among other things, at a date within 120 days before the filing date of the Form 15F, the class of equity or debt securities is either held of record by less than 300 persons on a worldwide basis or less than 300 persons resident in the U.S.. The Exchange Act currently states under Rules 12g-4 and 12h-3 that classes of securities of a foreign private issuer will be eligible for termination of registration and suspension of reporting requirements if the class of securities is held of record by: (i) less than 300 persons resident in the U.S., (ii) less than 300 persons worldwide, or (iii) less than 500 persons resident in the U.S. where the total assets of the issuer have not exceeded \$10 million on the last day of each of the issuer's three most recent fiscal years.

The Commission has requested comment on whether the record holder threshold should be less than 300 persons on a worldwide basis or who are U.S. residents



or if the record holder threshold should be increased to less than 500, 750, or 1,000 persons in the U.S. or on a worldwide basis. We believe that the Exchange Act's current numerical thresholds for de-registration are appropriate and should remain unchanged in light of the proposed increased availability of the foreign private issuer exemption in Rule 12g3-2(b). As is the case with any bright-line number, there may be cases where it appears that the threshold is too lenient or too strict. However, these numbers generally reflect when the number of an issuer's equity holders is large enough to provide an economic justification for an anonymous trading market for its shares, therefore triggering a need for information to facilitate the creation of an efficient market.<sup>2</sup>

The Commission has requested comment on whether foreign private issuers should be permitted to exclude QIBs in the determination of the number of U.S. resident shareholders. We believe that for purposes of deregistration, QIBs should be excluded from the calculation of the number of U.S. resident shareholders. Excluding QIBs for purposes of deregistration makes deregistration a viable option for a greater number of issuers. We do not believe for purposes of registration, however, that QIBs should be excluded from the calculation of the number of U.S. resident shareholders. The "information supplying" exemption of Rule 12g3-2(b) to foreign private issuers is readily available and would have increased availability under the current proposal. Such foreign private issuers who do not qualify for an exemption under the numerical threshold due to its QIBs should be encouraged to use the exemption, since making available to the public the disclosure required by the Rule is beneficial to investors.

## Conclusion

In a regulatory regime that focuses on providing adequate disclosure of information to the markets, all publicly traded securities should be supported by adequate, current, and publicly available information. In 1964, when the Exchange Act registration regime was extended to the OTC markets, some may have thought that registration of the securities of OTC issuers would accomplish that objective. However, a majority of publicly traded OTC securities have never been required to register. With the advent of Sarbanes-Oxley, we think these conditions will continue into the foreseeable future.

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<sup>2</sup> We are aware that the Commission is considering changes to the way record holders are counted for domestic issuers that would, in many cases, cause existing unregistered issuers to register under Exchange Act Section 12(g). We express no opinion on this issue, which is not raised by the instant proposal. In passing, it should be noted that a properly-designed exemption for smaller public companies similar to the "information supplying" exemption available for foreign private issuers might supply the markets with much-needed information while avoiding expensive registration burdens on financially-constrained smaller public companies.



Nonetheless, short of registration, much can be done to ensure that adequate current information is publicly available to OTC investors. Public dissemination through the Internet of the information provided to the Commission by foreign private issuers under the "information supplying" exemption would be one giant step forward for investors. Pink Sheets has established the Pink Sheets News Service as a publicly available repository where investors and regulators can view information provided by issuers of unregistered publicly traded securities free of charge. We believe other well-known market data vendors would be willing to offer a similar service to provide information to market participants.

We believe the Commission's current proposal helps to protect investors and should increase the number of good investment options available to U.S. investors. We applaud this effort and look forward to its implementation.

Please contact the undersigned with any questions.

Very truly yours,

/s/ R. CROMWELL COULSON

R. Cromwell Coulson  
Chief Executive Officer