



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

DIVISION OF
MARKET REGULATION

February 20, 2007

Izumi Akai
Sullivan & Cromwell LLP
Otemachi First Square
5-1, Otemachi 1-chome
Chiyoda-ku, Tokyo 100-0004, Japan

**Re: Exemptive Relief for Purchases Pursuant to Statutory Puts in
Japanese Tender Offers**
File No.: TP 07-46

Dear Mr. Akai:

In your letter dated February 19, 2007,¹ as supplemented by conversations with the staff of the Division of Market Regulation ("Staff"), you request exemptive relief from the restrictions of Rule 14e-5 under the Securities Exchange Act of 1934 ("Exchange Act") for purchases by Japanese target companies during the period from the time of the announcement of a tender offer for the target's securities until the expiration of the tender offer (the "relevant period").

Specifically you request a limited exemption on behalf of any Japanese target company that is a "covered person" as defined in Rule 14e-5 under the Exchange Act and that is required to make purchases of its shares during the relevant period, pursuant to the Statutory Put under the Corporation Law of Japan (the "Corporation Law") where such option is exercised by odd-lot shareholders. As you note in your letter, the Securities and Exchange Commission ("Commission") has granted relief substantially similar to that requested in a number of instances for similarly situated Japanese target companies who are required to make purchases pursuant to the Corporation Law at the option of odd-lot shareholders.

The Commission hereby grants an exemption from Rule 14e-5 under the Exchange Act on the basis of your representations and the facts presented, but without necessarily concurring in your analysis, to permit any Japanese target company to comply

¹ A copy of your letter is attached with this response. By including a copy of your correspondence, we avoid having to repeat or summarize the facts you presented. The defined terms in this letter have the same meaning as in your letter, unless otherwise noted.

with the Corporation Law and purchase its shares in the event that one or more odd-lot shareholders exercise their Statutory Puts during the relevant period of the tender offer. This exemption is subject to the following conditions:

1. The target company must be a foreign private issuer within the meaning of Rule 3b-4(c) under the Exchange Act;
2. The target company shall have no class of securities registered under Section 12 of the Exchange Act and shall not be subject to the periodic reporting requirements of the Exchange Act;
3. Apart from the limited exemption to allow purchases pursuant to the Statutory Put, the tender offer must comply with the provisions of Regulation 14E of the Exchange Act and the other applicable rules and regulations promulgated under the Exchange Act;
4. The Corporation Law provides for a Statutory Put for all holders of shares constituting less than one unit;
5. The tender offer shall be subject to, and shall be structured to comply with, applicable Japanese statutory and regulatory requirements governing tender offers and the rules and regulations of the relevant Japanese stock exchanges on which the target's shares are listed; and
6. The tender offeror shall include appropriate disclosure in the Japanese offering materials regarding the possibility of the exercise by odd-lot holders of the Statutory Put during the tender offer.

The foregoing exemption from Rule 14e-5 under the Exchange Act is based solely on your representations and the facts presented to Staff, and is strictly limited to the application of Rule 14e-5 under the Exchange Act to the transactions described above and in your letter dated February 19, 2007. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations.

This exemption is subject to modification or revocation if at any time the Commission or Staff determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 10(b) and 14(e) of the Exchange Act, and Rule 10b-5

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thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. The Division of Market Regulation expresses no view with respect to any other questions that the described transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of any other federal or state laws to, the transactions described.

For the Commission,
by the Division of Market Regulation,
pursuant to delegated authority,



James A. Brigagliano
Associate Director
Division of Market Regulation

Attachment

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February 19, 2007

Securities and Exchange Commission,
100 F Street, N.E.,
Washington, D.C. 20549.

Office of Trading Practices and Processing,
Division of Market Regulation,
Attention: James A. Brigagliano, Esq.

Re: Request for Exemption from Rule 14e-5 for Statutory Put in
Japanese Tender Offers

Dear Mr. Brigagliano:

We are writing to request that the Securities and Exchange Commission (the "Commission") grant an exemption from compliance with the provisions of Rule 14e-5 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") for certain purchases required by Japanese law for Japanese target companies that are affiliates of tender offerors.

Recently, there has been a significant increase in merger and acquisition activities among Japanese companies and in many of these cases, cash tender offers for shares of common stock of target Japanese companies are involved. In connection with such tender offers, in cases where target companies are "covered persons" under Rule 14e-5 because they are affiliates of the tender offerors and the tender offers are conducted in compliance with the provisions of Regulation 14E of the Exchange Act, the tender offerors have typically obtained no action relief on behalf of the target companies from the Commission from the restriction on purchase of target shares outside of the tender offers under Rule 14e-5 of the Exchange Act.¹

¹ See letters from James A. Brigagliano to Kirin Beverage Corporation (available May 11, 2006), World Co., Ltd. (available July 27, 2005), Mefos Ltd. (available July 18, 2005), Fuji Television Network, Incorporated (available January 6, 2005), Daibiru Corporation (available September 8, 2004), Matsushita Electric Works, Ltd. (available December 19, 2003), Banyu Pharmaceutical Co., Ltd. (available September 12, 2003) and Banyu Pharmaceutical Co., Ltd. (available January 9, 2003).

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Primary Qualification: New York * 原資格国: アメリカ合衆国ニューヨーク州

We request that the Commission grant a relief for any Japanese target companies subject to the Statutory Put (described below) under the circumstances similar to those described in the individual letters cited here and as described below.

I. Applicable Japanese Corporation Law

The Corporation Law (*kaisha-hō*) of Japan (the "Corporation Law") provides for a unit share system under which a certain number of shares of a joint stock corporation as specified in its articles of incorporation constitute a unit. A Japanese company's articles of incorporation would often provide that a certain number of shares, typically 100, 500 or 1,000 shares, constitute a unit. The Corporation Law imposes significant restrictions and limitations on holdings of common stock that do not represent one unit or integral multiples of a unit. For example, under the Corporation Law, companies may choose not to issue certificates for shares representing less than one unit by providing so in their articles of incorporation, in which case certificates for shares representing less than one unit may only be issued in certain limited circumstances. Because the transfer of shares of a listed company currently requires delivery of share certificates, fractions of a unit for which no certificates have been issued are not transferable. In addition, a holder of shares representing less than one unit cannot exercise any voting rights with respect to such shares.

Due to these limitations and restrictions, Japanese companies are required by the Corporation Law to purchase, when requested by a holder, such holder's common stock representing less than a unit (the "Statutory Put"). Japanese companies must make such purchases at a price equal to the closing price of the shares on the relevant market or markets on the day when the request is served on the Japanese company's transfer agent.

Typically, between 0 to 2% of the outstanding shares of Japanese companies are held in odd-lot shares. According to the data published by the Tokyo Stock Exchange, the number of odd-lot shares constituted 0.6% of all shares listed on the Tokyo Stock Exchange as of March 31, 2006.

II. Overview of Request and Relief

A. Description of Tender Offer

In a typical tender offer for a Japanese target company contemplated by this letter, the tender offeror would make a cash tender offer to all holders of common stock including holders located in the United States (excluding any treasury shares) of the target company. The offer would be for the number of shares of the target company necessary to give the tender offeror significant control over the target company, with settlement occurring in Japan and the cash purchase price expressed in Japanese yen. The offer would be structured so as to comply with the laws of Japan. Pursuant to

applicable disclosure practice in Japan, the tender offeror would include disclosure in the Japanese offering materials regarding the possibility of the exercise by odd-lot holders of the Statutory Put during the offer. The offer would be coordinated by a securities firm in Japan as the tender offer agent.

The target company will be a Japanese joint stock corporation for which the principal trading market for its common stock is a Japanese stock exchange. The target company will also be an affiliate of the tender offeror.² Holders of common stock may tender shares in tender offers by submitting to the tender offer agent in Japan a completed tender offer application form, accompanied by share certificates representing the number of shares to be tendered pursuant to the offer. In order to participate in the offer, holders of common stock outside of Japan will first have to notify their respective standing agents in Japan. Such standing agents will submit completed tender offer application forms and share certificates to the tender offer agent on behalf of such foreign holders who wish to tender into the offer.

B. Rule 14e-5

Pursuant to Rule 14e-5 under the Exchange Act, a “covered person” may not purchase any shares outside of the offer while the offer remains open unless such purchase falls under enumerated excepted activities. For the aforementioned reasons, in a Japanese tender offer, the target is often an affiliate of the tender offeror, making the target a “covered person” under Rule 14e-5. As noted above, the Corporation Law mandates the Statutory Put for all holders of shares constituting less than a unit. The Statutory Put enables a holder of less than a unit to require such target company to purchase such shares at any time, including during the offer.

C. Basis for Exemption

We note that in the past, the Commission has granted substantially similar exemptive relief under Rule 14e-5 to permit purchases pursuant to the Statutory Put by the target companies that are “covered persons” during a tender offer.³ Rule 14e-5 is designed to protect investors by “preventing an offeror from extending greater or different consideration to some security holders by offering to purchase their shares

² The target company will be an affiliate of the tender offeror because the tender offeror may have made a strategic equity investment in the target company or the tender offer may be a management-led buyout where the target company’s officers and shareholders are actively engaged in the transaction, among other possible circumstances.

³ *Id.* at 1. Prior to the adoption of Rule 14e-5, similar exemptive relief was granted under Rule 10b-13. *See, e.g.*, Letter of the Staff Regarding Tender Offer for Shares of Japanese Issuer (available November 15, 1999) and Letter of the Staff Regarding Amway Japan Limited Issuer Tender Offer (available July 15, 1996).

outside the offer, while other security holders are limited to the offer's terms."⁴ The Commission has recognized that a strict application of Rule 14e-5 could disadvantage U.S. security holders in some situations. In this context, the Commission has noted that "flexible application of Rule 14e-5 is necessary and appropriate to encourage offerors for the securities of foreign private issuers to extend their offers to U.S. security holders."⁵

III. Conditions to Relief

Based on the foregoing, we respectfully request that the Commission grant a limited exemption from Rule 14e-5 under the Exchange Act to permit any Japanese target companies that are "covered persons" under Rule 14e-5 to comply with the Corporation Law in the event that one or more odd-lot holders exercise the Statutory Put prior to the expiration of a pending tender offer.

The requested relief shall be subject to the following conditions:

1. The target company shall be a foreign private issuer within the meaning of Rule 3b-4(c) under the Exchange Act;
2. The target company shall have no class of securities registered under Section 12 of the Exchange Act and shall not be subject to the periodic reporting requirements of the Exchange Act;
3. Apart from the limited exemption to allow purchases pursuant to the Statutory Put, the tender offer shall comply with the provisions of Regulation 14E of the Exchange Act and other applicable rules promulgated under the Exchange Act;
4. The Corporation Law provides for a Statutory Put for all holders of shares constituting less than one unit;
5. The tender offer shall be subject to, and shall be structured to comply with applicable Japanese statutory and regulatory requirements governing tender offers and the rules and regulations of the relevant Japanese stock exchanges on which the target's shares are listed; and
6. The tender offeror shall include appropriate disclosure in the Japanese offering materials regarding the possibility of the

⁴ Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings, Release No. 34-42054, International Series Release No. 1208 (October 28, 1999), Section II.C.1.

⁵ *Id.*

exercise by odd-lot holders of the Statutory Put during the tender offer.

* * *

Should you have any questions regarding the foregoing, please contact Joung W. Hwang at 81-3-3213-6142 or me at 81-3-3213-6145.

Very truly yours,


Izumi Akai

cc: Racquel Russell, Branch Chief
(Division of Market Regulation
Securities and Exchange Commission)

Stanley F. Farrar
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