SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 232, 240 and 249

[RELEASE NO. 34-55540; INTERNATIONAL SERIES RELEASE NO. 1301;

FILE NO. S7-12-05]

RIN 3235-AJ38

TERMINATION OF A FOREIGN PRIVATE ISSUER'S REGISTRATION OF A CLASS OF SECURITIES UNDER SECTION 12(g) AND DUTY TO FILE REPORTS UNDER SECTION 13(a) OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to the rules that govern when a foreign private issuer may terminate the registration of a class of equity securities under section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") and the corresponding duty to file reports required under section 13(a) of the Exchange Act, and when it may cease its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Exchange Act. Under the current rules, a foreign private issuer may find it difficult to terminate its Exchange Act registration and reporting obligations despite the fact that there is relatively little interest in the issuer's U.S.-registered securities among United States investors. Moreover, currently a foreign private issuer can only suspend, and cannot terminate, a duty to report arising under section 15(d) of the Exchange Act. New Exchange Act Rule 12h-6 will permit a foreign private issuer of equity securities to terminate its reporting obligations under either section 13(a) or section 15(d) of the Exchange Act by meeting a quantitative benchmark designed to

measure relative U.S. market interest for its equity securities that does not depend on a head count of the issuer's U.S. security holders. The new rule will permit a foreign private issuer to compare the average daily trading volume of its securities in the United States with its worldwide average daily trading volume, using a 5 percent benchmark. The accompanying rule amendments will also help provide U.S. investors with ready access through the Internet on an ongoing basis to material information about a foreign private issuer of equity securities that is required by its home country after it has exited the Exchange Act reporting system. The new rule will also permit a foreign private issuer of debt securities to terminate, rather than merely suspend, its section 15(d) reporting obligations.

DATES: **Effective Date**: April 4, 2007

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SUPPLEMENTARY INFORMATION: We are adopting amendments to Commission Rule 30-1,[1] Rule 101[2] of Regulation S-T,[3] and Rules 12g3-2, 12g-4 and 12h-3[4] under the

[1] 17 CFR 200.30-1.

[2] 17 CFR 232.101.

[3] 17 CFR 232.10 et seq.

[4] 17 CFR 240.12g3-2, 240.12g-4 and 240.12h-3.

Exchange Act,[5] and adding new Rule 12h-6[6] and Form 15F[7] under the Exchange Act.

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[5] 15 U.S.C. 78a et seq.

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I. EXECUTIVE SUMMARY AND BACKGROUND

A. Introduction

In December 2005, the Commission issued proposed amendments to its current rules governing when a foreign private issuer[8] may exit the Exchange Act reporting regime.[9] Under the current rules, the primary determinant regarding whether a foreign private issuer may terminate its registration of a class of securities under section 12(g)[10] or suspend its reporting obligations under section 15(d)[11] is if its subject securities are held of record by less than 300 residents in the United States.[12] The Commission proposed to amend these rules out of concern that, due to the increased globalization of securities markets in recent decades as well as other trends, it has become difficult for a foreign private issuer to exit the Exchange Act reporting system even when there is relatively little U.S. investor interest in its U.S.-registered securities.[13]

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[8] See the definition of foreign private issuer at Exchange Act Rule 3b-4(c) (17 CFR 240.3b-4(c)).

[9] Release No. 34-53020 (December 23, 2005), 70 FR 77688 (December 30, 2005) (Original Proposing Release).

[10] This statutory section applies to equity securities only. See Exchange Act Section 12(g)(1) [15 U.S.C. 78l (g)(1)].

[11] 15 U.S.C. 78o(d). The effectiveness of a registration statement under the Securities Act of 1933 ("Securities Act") triggers Section 15(d) reporting obligations. That section provides that an issuer cannot suspend its reporting obligations unless the subject class of securities is held of record by less than 300 persons at the beginning of a fiscal year other than the year in which the Securities Act registration statement became effective. Section 15(d) does not permit an issuer to terminate, but only to suspend, its reporting obligations under that section.

[12] Exchange Act Rules 12g-4(a)(2)(i) (17 CFR 240.12g-4(a)(2)(i)) and 12h-3(b)(2)(i) (17 CFR 240.12h-3(b)(2)(i)).

[13] See Original Proposing Release, 70 FR at 77689-77690.

We recognize that U.S. investors benefit from the investment opportunities provided by foreign private issuers registering their securities with the Commission and listing and publicly offering those securities in the United States. However, because of the burdens and uncertainties associated with terminating registration and reporting under the Exchange Act, the current exit process may serve as a disincentive to foreign private issuers accessing the U.S. public capital markets.[14] In order to remove this disincentive, we proposed to amend the current Exchange Act exit rules for foreign private issuers.

As originally proposed, new Exchange Act Rule 12h-6 would have permitted a foreign private issuer of equity securities to terminate its Exchange Act registration and reporting obligations if, among other conditions, it met one of a set of alternative quantitative benchmarks that, depending on whether the issuer was a well-known seasoned issuer ("WKSI"),[15] was based either on a combination of U.S. trading volume and U.S. public float criteria or just U.S. public float data.[16] However, numerous commenters stated that the originally proposed rules would still unduly restrict a

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[14] See Part I.C of the Original Proposing Release for a discussion of the concerns raised by foreign private issuers regarding the current Exchange Act exit regime.

[15] For purposes of proposed Rule 12h-6, a "well-known seasoned issuer" meant a well-known seasoned issuer as defined in Securities Act Rule 405 (17 CFR 230.405), which would have required the worldwide market value of an issuer's outstanding voting and non-voting common equity held by non-affiliates to be $700 million or more.

[16] Under the original rule proposal, a WKSI would have been eligible to terminate its Exchange Act reporting obligations regarding a class of equity securities if the U.S. average daily trading volume ("ADTV") of the subject class of securities had been no greater than 5 percent of the ADTV of that class of securities in its primary trading market during a recent 12 month period, and U.S. residents held no more than 10 percent of the issuer's worldwide public float as of a specified date. A WKSI with greater than 5 percent U.S. ADTV or a non-WKSI would have been eligible for termination of reporting regarding a class of equity securities if, regardless of U.S. trading volume, U.S. residents held no more than 5 percent of the issuer's worldwide public float as of a specified date. See Part II.B.2.d of Release No. 34-53020.

significant portion of U.S.-registered foreign private issuers from exiting the Exchange Act reporting regime, thus making it unlikely that the proposed rules would achieve their purpose of attracting more foreign companies to U.S. public capital markets.

In light of these criticisms, we reconsidered our approach and, in December 2006, we reproposed the amendments to the Exchange Act exit rules for foreign private issuers.[17] As an alternative to the record holder standard for equity securities issuers, we proposed a quantitative benchmark based solely on a comparison of the average daily trading volume of a foreign private issuer's equity securities in the United States with that in its primary trading market. We reasoned that a standard based on trading volume may in fact be superior to the originally proposed standard, which was based primarily on a comparison of an issuer's U.S. public float with its worldwide public float, because it is a more direct measure of the issuer's nexus with the U.S. market and because trading volume data is easier to obtain than public float or record holder data.[18] We concluded that, in applying an exit standard based on trading volume data for the U.S. and an issuer's primary trading market, issuers would face reduced costs when determining whether they can terminate their registration and reporting obligations under the Exchange Act, compared to the originally proposed standards that would have required an issuer to assess the U.S. residence of its security holders.[19]

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[17] Release No. 34-55005 (December 22, 2006), 72 FR 1384 (January 11, 2007) (Reproposing Release).

[18] We reproposed the rule amendments primarily because the Commission did not fully address this trading volume approach in the Original Proposing Release.

[19] See Parts II.A.1.a and IV of the Reproposing Release.

B. Principal Comments Regarding the Reproposed Rule Amendments

We received 30 comment letters in response to the reproposed rule amendments.[20] These letters represented the views of over 40 distinct entities, including business, financial and legal associations, foreign companies, financial advisory and accounting firms, law firms, and one foreign government. While the commenters generally strongly supported the trading volume-based approach and other aspects of the reproposed rules, many offered suggestions designed primarily to fine-tune those rules.

We received the most comments concerning the reproposed trading volume benchmark for equity securities issuers. Numerous commenters urged us to adopt a quantitative benchmark that would require an issuer to measure its U.S. ADTV as a percentage of its ADTV for the same class of securities on a worldwide basis, rather than against its ADTV in its primary trading market, as reproposed. Many commenters also requested that we permit an issuer to include off-market transactions when calculating its worldwide ADTV for a class of equity securities, rather than only when calculating its U.S. ADTV, as reproposed. Some commenters further urged us to permit an issuer to include trades conducted through alternative trading systems when determining whether it meets the proposed trading volume benchmark. Still others requested that we increase the percentage in the trading volume-based measure to a percentage greater than 5 percent, as reproposed, particularly if we did not move to a worldwide ADTV standard.

Commenters expressed concern or requested guidance regarding a number of other issues, including:

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[20] These comment letters, along with the letters received at the proposing stage, are available on the Commission's Internet Web site, located at http://www.sec.gov/ rules/proposed/s71205.shtml, and in the Commission's Public Reference Room in its Washington, DC headquarters.

- the appropriateness of the proposed provision that would prohibit reliance on the trading volume standard if an issuer has delisted its securities from a U.S. exchange during the preceding 12 months when its U.S. ADTV exceeded the 5 percent threshold;
- the appropriateness of the proposed provision that would prohibit reliance on the trading volume standard if an issuer has terminated a sponsored American Depositary Receipts (ADR) facility[21] during the preceding 12 months, regardless of whether the issuer met the trading volume benchmark at the time of termination;
- whether to include convertible debt and other equity-linked securities in the definition of equity security for purposes of the new exit rule;
- whether a special financial report filed pursuant to Exchange Act Rule 15d-2[22] would constitute an Exchange Act annual report for the purpose of the reproposed prior reporting condition;
- the appropriateness of the reproposed dormancy condition for equity securities registrants,[23] including whether it would prohibit an issuer from

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[21] An ADR is a negotiable instrument that represents an ownership interest in a specified number of securities, which the securities holder has deposited with a designated bank depositary. Use of an ADR facility makes it easier for a U.S. resident to collect dividends in U.S. dollars. Moreover, because the clearance and settlement process for ADRs generally is the same for securities of domestic companies that are traded in U.S. markets, a U.S. holder of an ADR is able to hold securities of a foreign company that trades, clears and settles within automated U.S. systems and within U.S. time periods.

[22] 17 CFR 240.15d-2.

[23] As reproposed, Rule 12h-6 would prohibit an equity securities registrant from selling its securities in the United States in a registered offering under the Securities Act, except for specified registered offerings, during the 12 months preceding the filing of its Form 15F.

conducting a registered offering in which an underwriter has agreed to a standby purchase commitment but only resells the purchased securities outside the United States;

- the appropriateness of the reproposed foreign listing condition for equity securities registrants,[24] including whether it should apply to an issuer relying on the alternative 300 holder provision of Rule 12h-6, and to an issuer that delists from its non-U.S. exchange in connection with being acquired;
- the role of a predecessor in determining a successor issuer's eligibility to terminate its Exchange Act reporting obligations under reproposed Rule 12h-6, including whether, under Exchange Act Rule 12g-3(g),[25] a successor issuer would have to file an Exchange Act annual report for the predecessor's most recently completed fiscal year before it could terminate its reporting obligations under Rule 12h-6;
- whether to permit a foreign company that filed a Form 15 previously to terminate or suspend its Exchange Act reporting obligations regarding a class of equity securities before the effectiveness of new Rule 12h-6 to terminate its reporting obligations under the new exit rule without having to recount its holders, as long as it meets that rule's trading volume benchmark;
- whether to increase the threshold number of record holders in the debt securities provision; and

[24] As reproposed, Rule 12h-6 would require an equity securities issuer to have maintained a listing on an exchange in its primary trading market.

[25] 17 CFR 240.12g-3(g).

- whether an issuer that has filed a Form 15F[26] solely to terminate its reporting obligations regarding debt securities must wait until the effectiveness of that termination before it can submit an application for the Rule 12g3-2(b) exemption regarding a class of equity securities.

C. Summary of the Adopted Rule Amendments

We have carefully considered commenters' concerns regarding the reproposed rules, and have addressed many of them in the rule amendments that we are adopting today. As adopted, new Exchange Act Rule 12h-6 and the accompanying rule amendments will:

- permit a foreign private issuer, regardless of size, to terminate its Exchange Act registration and reporting obligations regarding a class of equity securities, assuming it meets all the other conditions of Rule 12h-6, if, for a recent 12-month period, the U.S. ADTV of the subject class of securities has been no greater than 5 percent of its worldwide ADTV--rather than 5 percent of the ADTV in its primary trading market, as reproposed;
- permit an issuer to include off-market transactions, including transactions through alternative trading systems, when calculating its worldwide ADTV for a class of equity securities--as discussed in connection with calculating its U.S. ADTV, as reproposed--as long as the trading volume information regarding the off-market transactions is reasonably reliable and does not duplicate other trading volume information regarding the subject class of securities;

[26] Like current Rules 12g-4 and 12h-3, which require the filing of Form 15, reproposed Rule 12h-6 would require the filing of a form--Form 15F--by which an issuer would certify that it meets the conditions for ceasing its Exchange Act reporting obligations.

- require an issuer to wait 12 months before filing its Form 15F in reliance on the trading volume standard if the issuer has delisted its class of equity securities from a national securities exchange or automated inter-dealer quotation system in the United States,[27] or terminated a sponsored ADR facility and, at the time of delisting or termination, the U.S. ADTV of the subject class of securities exceeded 5 percent of its worldwide ADTV for the preceding 12 months;
- retain the 300-holder standard as an alternative to the trading volume standard for an equity securities issuer and as the quantitative standard for a debt securities issuer, as reproposed;
- exclude convertible debt and other equity-linked securities from the definition of equity security for the purpose of new Rule 12h-6's trading volume provision;
- require an equity securities registrant to have at least one year of Exchange Act reporting, be current in reporting obligations for that period, and have filed at least one Exchange Act annual report, as reproposed;
- permit an issuer to count a special financial report filed pursuant to Exchange Act Rule 15d-2 as an Exchange Act annual report for the purpose of the new rule's prior reporting condition;

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[27] Neither the OTC Bulletin Board operated by Nasdaq nor the market operated by the Pink Sheets LLC are deemed to be automated inter-dealer quotation systems. See Release 33-6862 (April 23, 1999), n.22.

- prohibit an issuer of equity securities from selling securities in the United States in a registered offering under the Securities Act, except as specified, during the 12 months preceding the filing of its Form 15F (the "dormancy condition"), substantially as reproposed;
- require an issuer of equity securities to have maintained a listing of the subject class of securities for at least the 12 months preceding the filing of its Form 15F on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities, substantially as reproposed;
- define primary trading market to mean that at least 55 percent of the trading in a foreign private issuer's class of securities that is the subject of Form 15F took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during a recent 12-month period, as long as the trading in at least one of the two foreign jurisdictions is larger than the trading in the United States for the same class of the issuer's securities;
- permit an equity securities issuer relying on the alternative 300-holder standard, or a debt securities issuer, to use a revised counting method that limits the inquiry regarding the amount of securities represented by accounts of customers resident in the United States to brokers, dealers, banks and other nominees located in the United States, the foreign private issuer's jurisdiction of incorporation, legal organization or establishment, and the one or two

jurisdictions comprising the issuer's primary trading market if different from the issuer's jurisdiction of incorporation, legal organization or establishment, as reproposed;

- permit an issuer of equity or debt securities to rely on the assistance of an independent information services provider when determining whether the issuer falls below the 300-holder standard, as reproposed;
- permit a successor issuer meeting specified conditions to terminate its Exchange Act reporting obligations under new Rule 12h-6, as reproposed;[28]
- permit a foreign private issuer that filed a Form 15 and suspended or terminated its Exchange Act reporting obligations under the current exit rules before the effective date of Rule 12h-6 to terminate its Exchange Act reporting obligations under new Exchange Act Rule 12h-6, as long as, if regarding a class of equity securities, the issuer meets Rule 12h-6's listing condition and either the trading volume or alternative-300 holder condition or, if regarding a class of debt securities, the issuer meets the rule's 300-holder condition for debt issuers;
- extend the Rule 12g3-2(b) exemption to a foreign private issuer of equity securities, including a successor issuer and prior Form 15 filer, immediately upon its termination of reporting under Rule 12h-6, and require the issuer to maintain that exemption by publishing in English specified material home

[28] See Part II.D.1 of this release for clarification regarding the limited role of the predecessor in determining a successor issuer's eligibility to terminate its Exchange Act reporting obligations under Rule 12h-6.

country documents required by Rule 12g3-2(b)[29] on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, as reproposed;

- permit a non-reporting company that has received or will receive the Rule 12g3-2(b) exemption, upon application to the Commission and not pursuant to Rule 12h-6, to publish its "ongoing" home country documents required under Rule 12g3-2(b) on its Internet Web site or through an electronic information delivery system rather than submit them in paper to the Commission; and
- permit an issuer that has filed a Form 15F to terminate its Exchange Act reporting obligations regarding a class of debt securities to establish the Rule 12g3-2(b) exemption for a class of equity securities upon the effectiveness of its termination of reporting under Rule 12h-6, by submitting an application for the Rule 12g3-2(b) exemption after filing its Form 15F.

We are also adopting, as reproposed, procedural conditions that will:

- require a foreign private issuer to file a Form 15F providing information with respect to whether the issuer meets the requirements for terminating its reporting obligations under Rule 12h-6;
- automatically suspend an issuer's Exchange Act reporting obligations upon the filing of its Form 15F and trigger a 90-day waiting period at the end of which, assuming the Commission has no objections, the suspension will become a termination of reporting; and

[29] See Exchange Act Rule 12g3-2(b)(1)(iii) (17 CFR 240.12g3-2(b)(1)(iii)).

- require a foreign private issuer to publish a notice, such as a press release, announcing its intention to terminate its Exchange Act reporting obligations under Rule 12h-6, before or at the time of filing its Form 15F.

We believe the rules that we are adopting today provide meaningful protection of U.S. investors by permitting the termination of Exchange Act registration and reporting only by those foreign registrants with relatively low U.S. market interest in their U.S.-registered securities. Compared to the current exit rules, Rule 12h-6 will establish a more clearly defined process with a more appropriate benchmark by which a foreign private issuer can terminate its Exchange Act reporting obligations. As a result, we believe foreign private issuers should be more willing initially to register their securities with the Commission, which will provide more investment choices for U.S. investors.

At the same time, we believe the conditions that determine a foreign private issuer's eligibility to terminate its Exchange Act registration and reporting regarding a class of equity securities under new Rule 12h-6 will serve to protect U.S. investors. For example, the prior reporting condition[30] is intended to provide investors with at least one complete year's worth of Exchange Act reports, including an annual report, upon which they can base their investment decisions about a particular foreign registrant before that registrant exits the Exchange Act reporting system. The dormancy condition is designed to deter a foreign private issuer's promotion of U.S. investor interest through recent registered capital-raising shortly before exiting our reporting system. The one year reporting and dormancy conditions are consistent with the statutory requirements under section 15(d).

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[30] See p. 12 and Part II.A.2 of this release.

The foreign listing condition and U.S. trading volume benchmark support our view that, before a foreign private issuer may terminate its Exchange Act reporting obligations under Rule 12h-6, it must have been subject to an ongoing disclosure and financial reporting regime, and have a significant market following, in its primary trading market. We have set the U.S. trading volume benchmark at such a level that, although there may be some U.S. investor interest in the subject securities of an issuer meeting the benchmark, that interest would appear to be sufficiently diminished so that a foreign private issuer should not be required to continue its Exchange Act reporting if it determines that it is no longer desirable to continue as a U.S. registrant.

The condition restricting the ability of an issuer to rely on the trading volume standard under specified circumstances (U.S. delisting and termination of a sponsored ADR facility) should deter an issuer from excluding U.S. investors, particularly retail investors, from investing in their securities when U.S. market interest is still significant. The immediate availability of the exemption under Rule 12g3-2(b) will foster access by U.S. investors to ongoing home country information about an issuer after it terminates its Exchange Act registration and reporting under Rule 12h-6. Finally, the conditions relating to the filing of Form 15F and the publication of a press release or other notice will promote transparency in the exit process.

II. DISCUSSION

A. Conditions For Equity Securities Issuers

1. Quantitative Benchmarks

a. Trading Volume Benchmark

As adopted, new Exchange Act Rule 12h-6 will enable a foreign private issuer of

equity securities, regardless of size, to qualify for termination of its Exchange Act reporting by meeting a quantitative benchmark provision that does not depend on the number of its U.S. record holders or the percentage of its securities held by those holders. Under new Rule 12h-6, an issuer will be able to terminate its Exchange Act registration and reporting obligations regarding a class of equity securities, assuming it meets the other conditions of Rule 12h-6, if the ADTV of the subject class of equity securities in the United States has been 5 percent or less of the ADTV of that class of securities on a worldwide basis during a recent 12-month period.[31] This trading volume benchmark is substantially similar to the reproposed standard, except that the adopted benchmark requires an issuer to measure its U.S. ADTV as a percentage of its worldwide ADTV rather than the ADTV in its primary trading market.

A threshold matter in this regulatory initiative has been what is the most appropriate benchmark for equity securities that would best serve the interests of investors and issuers, and most commenters addressed this issue. Most of the commenters agreed that a benchmark based solely on trading volume is superior to one based on a combination of U.S. public float and trading volume criteria or just U.S. public float data, as under the originally proposed Rule 12h-6, or one based on the number of record holders in the United States or on a worldwide basis, as under the current exit rules. Most commenters stressed that trading volume data is easier to obtain and confirm than is the data required for a U.S. public float or record holder determination.[32] As commenters have noted, it is difficult for a reporting foreign private

[31] New Exchange Act Rule 12h-6(a)(4)(i) (17 CFR 240.12h-6(a)(4)(i)).

[32] See, for example, the letter, dated February 12, 2007, from Cleary Gottlieb, Steen & Hamilton LLP (Cleary Gottlieb).

issuer to determine accurately the specific country of residence of its investors.[33] Because a public float benchmark would require such a determination to varying degrees, most commenters agreed with our conclusion that the reproposed trading volume-based benchmark should result in reduced costs to issuers in determining whether they can terminate their Exchange Act reporting obligations.[34]

Some commenters supported the reproposed trading volume measure because it would provide a simple and clear measure of the degree of U.S. market interest in an issuer's equity securities.[35] Some commenters expressed the view that basing the new exit rule on a trading volume measure would help ensure that an issuer's termination of Exchange Act registration and reporting would not have a significant impact on the primary price-setting determinants of an issuer's equity securities, which would allow for U.S. investors to trade in that issuer's securities following its U.S. deregistration.[36]

Commenters expressed their belief that adoption of the reproposed trading volume standard would enable significantly more foreign private issuers to exit the Exchange Act reporting regime if they so desire.[37] Consequently, as one commenter indicated, by removing restrictions regarding the ability to exit U.S. securities markets, adoption of new Rule 12h-6 and the accompanying amendments will have a major impact on the

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[33] See the comment letters discussed in Part II.A.1.a of the Reproposing Release.

[34] See, for example, the letter, dated February 12, 2007, from the European Association for Listed Companies and other signatories (EALIC).

[35] See, for example, the letter, dated February 12, 2007, from Sullivan & Cromwell LLP (Sullivan & Cromwell) and the letter, dated January 2, 2007, from Galileo Global Advisors (Galileo).

[36] See, for example, the letter from Cleary Gottlieb.

[37] See, for example, the letter, dated February 12, 2007, from the European Commission.

perception that foreign companies have of those markets, making the U.S. capital markets "much more attractive and competitive on an international scale."[38]

For the above reasons, we are adopting a quantitative exit standard for equity securities registrants based solely on trading volume instead of one based on a combination of trading volume and public float criteria or just public float data. We also are adopting, as reproposed, one trading volume standard that will apply to all issuers of equity securities. Commenters generally supported having one benchmark applicable to any foreign private issuer, regardless of size.[39] Although we originally proposed a set of quantitative benchmarks that depended primarily on whether an issuer was a WKSI, we are adopting the same trading volume standard for a smaller issuer as for a larger issuer in order to provide increased flexibility and simplification to the Exchange Act deregistration regime, and for the other reasons discussed in the Reproposing Release.[40]

i. Calculation of the U.S. Trading Volume Benchmark as a Percentage of Worldwide Trading Volume Instead of Primary Trading Market Trading Volume

Numerous commenters requested that the Commission calculate U.S. trading volume as a percentage of worldwide trading volume rather than as a percentage of

[38] See the letter from Cleary Gottlieb.

[39] See, most recently, the letter, dated February 23, 2007, from the American Bar Association, Section of Business Law (ABA).

[40] For example, a trading volume standard that favored WKSIs could discourage smaller foreign companies from entering U.S. public capital markets, to the detriment of U.S. investors. Moreover, commenters at the proposing stage noted that the costs of continued Exchange Act reporting fall disproprotionately on smaller issuers. See Part II.A.1.a of the Reproposing Release.

ADTV in the issuer's primary trading market,[41] as reproposed.[42] The primary rationale for this request is that, with the increased globalization of securities markets, many issuers now trade on multiple non-U.S. markets. According to these commenters, since the goal of the reproposed trading volume benchmark is to determine the relative importance of the U.S. trading market for an issuer's securities, an issuer should be able to take into account all non-U.S. trading in its securities, and not just the trading that has occurred in the one or two jurisdictions comprising its primary trading market.[43]

Some commenters maintained that, while it is reasonable to base Rule 12h-6's foreign listing condition on the reproposed primary trading market definition, it is not so for the trading volume benchmark.[44] As discussed below, the purpose of the foreign listing condition is to help assure that there is a non-U.S. jurisdiction that principally regulates and oversees the issuance and trading of the issuer's securities and the issuer's disclosure obligations to investors.[45] Limiting the definition of primary trading market in this context to no more than two jurisdictions helps to further the purpose of the foreign

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[41] As discussed in Part II.A.4 of this release, we define primary trading market to mean that at least 55 percent of the trading in a foreign private issuer's subject class of securities took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during a recent 12-month period. If an issuer aggregates the trading in two foreign jurisdictions, the trading market for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the United States trading market for the same class of the issuer's securities. We proposed a substantially similar definition at the reproposing stage.

[42] See, for example, the letter, dated February 8, 2007, from BusinessEurope, the letters, dated February 12, 2007, from Davis Polk & Wardwell (Davis Polk), Linklaters, and Makinson Cowell, and the letters from Cleary Gottlieb, EALIC, and the EU. In contrast, only one commenter opposed using worldwide trading volume. See the letter from Galileo.

[43] See the letters from Cleary Gottlieb and EALIC.

[44] See the letter from Linklaters.

[45] See Part II.A.4 of this release.

listing condition. In contrast, the purpose of the trading volume benchmark is to measure the relative U.S. market interest in a foreign private issuer's equity securities. Accounting for as much of the issuer's trading as is reasonably possible would further the purpose of this rule.

We agree that, in light of the number of foreign registrants that have listings in more than two jurisdictions, and given the purpose of the trading volume benchmark, measuring an issuer's U.S. ADTV as a percentage of its worldwide ADTV would increase the likelihood of obtaining a more accurate measure of relative U.S. market interest for that issuer's equity securities. Therefore, we are adopting a trading volume benchmark for new Rule 12h-6 that will require an issuer to use as the denominator of its trading volume calculation its worldwide ADTV for the subject class of securities.[46]

ii. Inclusion of Off-Market Transactions in the Trading Volume Calculation

We reproposed to require an issuer to include both transactions occurring on a stock exchange and over-the-counter trades for the purpose of calculating U.S. ADTV for the numerator of the trading volume benchmark, but to include only on-exchange transactions for the purpose of calculating its ADTV for the denominator (its primary trading market, as reproposed). We did so based on our belief that trading volume information about over-the-counter trades was more readily available in the United States than in many foreign jurisdictions.

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[46] Worldwide ADTV includes U.S. ADTV. Some commenters favored a trading measure based on the dollar value of shares traded rather than on the number of shares traded. See the letter, dated February 12, 2007, from Ziegler, Ziegler and Associates (Ziegler) and the letter from Galileo. We decline to adopt a trading value measure because we believe that it would add an unnecessary level of complexity and cost to the non-record holder determination.

Numerous commenters[47] urged the Commission to permit an issuer to include "off-market" transactions when determining whether it meets the 5 percent trading volume standard, rather than just transactions occurring on a stock exchange, as reproposed. These commenters maintained that it was inappropriate to require an issuer to include both on-exchange and off-exchange transactions when calculating its U.S. ADTV but not when calculating its worldwide trading volume. As noted by some of these commenters, members of Euronext markets are currently required to report off-market transactions.[48] Moreover, some commenters noted that an EU Directive,[49] scheduled for effectiveness in November 2007, will generally require the reporting of off-market transactions, which will make information regarding off-market transactions generally available in Europe the same way that such information is available through a transaction reporting plan in the United States.[50]

Some of these commenters urged the Commission to permit an issuer to include not only off-market transactions that currently occur through traditional over-the-counter means, but those that may occur through alternative trading systems.[51] According to these commenters, MiFID will encourage the development of such trading systems.[52] These commenters stated that, as long as trading information is credible and the sources

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[47] See the letters from BusinessEurope, Cleary Gottlieb, Davis Polk, EALIC, the EU, Makinson Cowell, and Sullivan & Cromwell, and the letters, dated February 12, 2007, from the International Bar Association and Skadden Arps Slate Meagher & Flom (Skadden Arps).

[48] See, for example, the letter from Cleary Gottlieb.

[49] Directive 2004/39/EC, also known as the Market in Financial Instruments Directive (MiFID).

[50] See the letters from Cleary Gottlieb, the EU, and BusinessEurope.

[51] See the letters from the EU and Davis Polk.

[52] See, for example, the EU letter.

reliable, an issuer should be able to include information about securities transactions regardless of the platform on which they occur.[53]

Some commenters requested that, if the Commission does not permit an issuer to include off-market transactions when determining its worldwide trading volume for the denominator of its trading volume calculation, it should also prohibit the inclusion of off-market transactions when determining its U.S. ADTV for the numerator of that calculation.[54] In contrast, one commenter, which favored a worldwide trading volume measure, expressly requested that the Commission prohibit the inclusion of off-market transactions for both the numerator and denominator because of the difficulty of obtaining over-the-counter trading information.[55]

These comments have persuaded us that, for at least some foreign private issuers, information regarding off-exchange transactions in non-U.S. jurisdictions will be readily obtainable. Therefore, under adopted Rule 12h-6, when making its trading volume determination, an issuer must include in its calculation of U.S. ADTV both on-exchange and off-exchange transactions, as reproposed. For both on-exchange and off-exchange transactions in the United States, we expect an issuer to be able to obtain relevant trading volume information as reported pursuant to an effective transaction reporting plan,[56]

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[53] See, for example, the letter from Davis Polk.

[54] See the letters from BusinessEurope and the EU.

[55] See the letter from Skadden Arps.

[56] Rule 601 of Regulation NMS (17 CFR 242.601) requires every national securities exchange to file a transaction reporting plan regarding transactions in listed equity and Nasdaq securities.

pursuant to NASD rules,[57] or reported by a national securities exchange otherwise than pursuant to an effective transaction reporting plan. In addition, an issuer may include in its calculation of worldwide ADTV off-market transactions, including transactions conducted through alternative trading systems, in addition to transactions occurring on an exchange, as long as an issuer has obtained the information concerning the off-market transactions from publicly available sources or third-party information service providers, upon which the issuer has reasonably relied in good faith, and as long as the off-market transaction information does not duplicate any other trading volume information obtained.

In response to our request for comments on whether issuers should be required to obtain trading volume data from particular sources, a number of commenters advocated that the final rules provide issuers with sufficient flexibility to use such data sources as they deem reliable and appropriate.[58] The adopted rules do not specify any particular data sources that issuers must use to determine either its U.S. or worldwide trading volume. In this respect, when obtaining information concerning either on-exchange or off-exchange transactions, issuers will have the latitude to use market data vendors or other commercial service providers and publicly available sources of market information that they reasonably believe to be reliable and that do not duplicate trading volume

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[57] See, for example, NASD Manual Rule 6600 et seq. for rules regarding recording and reporting transactions in OTC Equity Securities. A member broker-dealer must report information concerning OTC trades not involving a listed security, including a Nasdaq security, under the NASD rules rather than pursuant to a transaction reporting plan since the latter only covers unlisted transactions involving listed (and Nasdaq) securities.

[58] See, for example, the letters from Cleary Gottlieb and EALIC.

information obtained from other sources, such as various exchanges or markets.[59] Issuers will be required to disclose their trading volume data sources on Form 15F, which will inform investors of the data sources used.[60]

iii. The 5 Percent Trading Volume Measure

Commenters expressed a variety of views on whether 5 percent U.S. ADTV was the appropriate threshold for the trading volume benchmark. Although some commenters requested that the Commission increase the percentage to 10 percent ADTV,[61] many others supported the 5 percent threshold.[62] Moreover, some of the commenters that requested an increase to 10 percent did so only if the Commission decided not to adopt a world-wide trading based benchmark.[63]

We believe that adoption of the "5 percent of worldwide trading volume" standard will permit foreign companies with relatively little U.S. market interest to deregister.[64] Moreover, by permitting an issuer to include both on-exchange and off-exchange transactions when calculating its worldwide ADTV, we have addressed the concerns of commenters who suggested the 5 percent threshold could be too low to achieve the rule's

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[59] See Instruction 3.c to Item 4 of Form 15F.

[60] See Item 4.F of Form 15F.

[61] See the letter, dated February 9, 2007, from SGL Carbon, the letter, dated February 12, 2007, from Fried Frank Harris Shriver & Jacobson (Fried Frank), and the letter from Skadden Arps. Another commenter requested an increase to 15 percent. See the letter from i-CABLE Communications Ltd. (i-CABLE).

[62] See the letters from Cleary Gottlieb, EALIC, Galileo, Sullivan & Cromwell, and the New York State Society of Certified Public Accountants (NYSSCPA).

[63] See the letters from the ABA, BusinessEurope, and Linklaters.

[64] See Part III, n. 191 of this release.

purpose of reducing the disincentive to U.S. registration that may be caused by the current exit regime.

iv. Definition of Equity Securities

We reproposed that, for purposes of new Rule 12h-6, an issuer would use the definition of equity security provided in Exchange Act Rule 3a11-1.[65] That provision includes equity-linked securities, such as convertible debt securities and warrants, within the definition of equity security. Several commenters[66] requested that the Commission exclude equity-linked securities from the definition of equity security on the grounds that trading volume information for equity-linked securities is difficult to obtain. One commenter suggested using instead the definition of equity security provided in the Securities Act cross-border rules, which explicitly excludes convertible debt and other equity-linked securities.[67]

We agree with those commenters that, because trading volume information concerning convertible debt and other equity-linked securities is more difficult to obtain than trading volume information for the underlying equity securities, an issuer should not have to include equity-linked securities when determining whether it meets the trading volume benchmark. The same reasoning applies to an issuer's determination concerning the foreign listing condition, which requires an issuer to meet the definition of primary trading market, which is a trading volume-based definition.[68] Therefore, we are adopting

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[65] 17 CFR 240.3a11-1.

[66] See the letters from BusinessEurope, the EU, EALIC and Cleary Gottlieb.

[67] See the letter from Cleary Gottlieb, which cites Securities Act Rule 800(b) (17 CFR 230.800(b)).

[68] See Part II.A.4 of this release.

a definition of equity security that is based on Rule 3a11-1, except that, for purposes of the trading volume and foreign listing provisions of Rule 12h-6, the definition explicitly excludes:

- any debt security that is convertible into an equity security, with or without consideration;
- any debt security that includes a warrant or right to subscribe to or purchase an equity security;
- any such warrant or right; or
- any put, call, straddle, or other option or privilege that gives the holder the option of buying or selling a security but does not require the holder to do so.[69]

v. One Year Ineligibility Period After Delisting

We are adopting, substantially as proposed, a condition to the use of Rule 12h-6's trading volume standard and corresponding eligibility to file Form 15F. This condition provides that if a foreign private issuer has had its equity securities delisted from a registered national securities exchange or automated inter-dealer quotation system within one year before filing the Form 15F, it must have satisfied the trading volume percentage as of the date of delisting, as measured over the 12 months preceding the date of delisting.[70] Under this condition:

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[69] New Exchange Act Rule 12h-6(f)(3) (17 CFR 240.12h-6(f)(3). These are the same categories of securities excluded from the definition of equity security under Securities Act Rule 800(b).

[70] New Exchange Act Rule 12h-6(b)(1) (17 CFR 240.12h-6(b(1)). We previously proposed to codify this delisting requirement, along with a similar requirement concerning termination of a sponsored ADR facility, as Notes to paragraph (a)(4) of reproposed Rule 12h-6. We have restructured final Rule 12h-6 to provide for these requirements in a separate paragraph and have changed the paragraph numbering of the adopted rule accordingly. As adopted, Rule 12h-6(b) does not apply to issuers terminating their reporting obligations under either Rule 12h-6(d) (the successor issuer provision) or Rule 12h-6(i) (the prior Form 15 filer provision).

- a listed foreign private issuer that satisfied the trading volume condition will be able to delist from its stock exchange and terminate its Exchange Act registration and reporting obligations concurrently; and
- a listed foreign private issuer that did not satisfy the trading volume condition will be able to delist but will not be eligible to file a Form 15F and terminate its Exchange Act registration and reporting obligations until one year after the date of delisting, assuming that, at that time, it meets the conditions of the rule.[71]

We are adopting this condition in order to prevent the new trading volume-based rule from creating an incentive for a foreign private issuer to delist its securities from a U.S. exchange for the purpose of decreasing its U.S. trading volume. As one commenter suggested early on, if we were to adopt a standard based solely on trading volume, a foreign private issuer that delisted its securities from a U.S. exchange before its trading volume fell below the applicable percentage should not be eligible to terminate its registration under such a standard.[72]

A few commenters requested that the Commission remove this delisting condition on the grounds that it imposed a restraint on the use of the new exit rule that was not necessary for the protection of U.S. investors.[73] We agree that companies should not be unnecessarily restricted in choosing the markets on which their securities are listed.

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[71] For example, an issuer that failed to meet the trading volume standard at the date of delisting would have to meet the trading volume standard one year later when filing its Form 15F. If, notwithstanding its delisting, an active U.S. over-the-counter market in the company's securities continued, the company would not be eligible to use Rule 12h-6 and file a Form 15F in reliance on the trading volume benchmark.

[72] See the letter, dated February 9, 2004, from Cleary Gottlieb.

[73] See the letters from Galileo, Makinson Cowell and SGL Carbon.

Thus, we do not believe that delisting from a U.S. exchange should result in an automatic bar against a foreign private issuer from using the new exit rule. Nonetheless, we share the concern about possible negative impacts on U.S. investors stemming from a measure based solely on trading volume. Moreover, by requiring companies to remain registered and reporting under the Exchange Act for a period of time after delisting when, before delisting, the company had a relatively active U.S. market for its securities, U.S. investors will have access to information prepared in accordance with the Commission's financial reporting and disclosure requirements for a period of time during which, most likely, the U.S. market will be diminishing. Accordingly, we are adopting the delisting condition substantially as proposed.[74]

vi. One Year Ineligibility Period After Termination of Sponsored ADR Facility

As part of the rule reproposal, we proposed an additional condition to an issuer's use of Rule 12h-6 and eligibility to file Form 15F in reliance on the trading volume provision. That condition provided that a foreign private issuer must not have terminated any sponsored ADR facility within the 12 month period before filing its Form 15F. We proposed that condition in order to encourage foreign private issuers to maintain their ADR facilities, even after they delist from a U.S. market and terminate their Exchange Act reporting obligations.

After a foreign private issuer delists and deregisters, investors will benefit if its ADRs continue to be traded in the over-the-counter market in the United States. The

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[74] Some commenters requested that we exempt from the delisting condition an issuer that has been involuntarily delisted. See, for example, the letter, dated February 22, 2007, from Cravath, Swaine & Moore (Cravath). We decline to do so since such an exemption could encourage an issuer not to comply with exchange standards in order to get delisted.

termination of ADR facilities has a detrimental impact on holders, imposing fees and other charges on investors and, when investors are cashed out, subjecting investors to unplanned tax consequences and limiting their investment choices.[75] In addition, the termination of ADR facilities will limit the ability of many U.S. investors to effect transactions in the securities of the subject foreign company.

Some commenters opposed the ADR facility termination condition on grounds similar to those raised against the delisting condition. However, these commenters also objected to the fact that, unlike the delisting condition, the proposed ADR facility condition applied regardless of whether, at the time of termination of its ADR facility, an issuer met the trading volume threshold measured for the previous 12 months.[76] One commenter stated that adoption of the reproposed condition could dissuade issuers from sponsoring ADR programs, to the detriment of U.S. investors.[77]

We continue to believe that, due to the importance of ADR facilities for U.S. investors, a sponsored ADR facility termination condition is appropriate. However, we agree with commenters that the importance of this concern significantly diminishes if, at the time of its termination of a sponsored ADR facility, an issuer's U.S. ADTV has already fallen below the trading volume threshold.

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[75] When an issuer terminates its ADR facility, the holders of ADRs generally have the option to make arrangements to hold the underlying securities directly. However, if holders are unable or unwilling to make these arrangements, or to pay the costs associated with these arrangements, the holders will have their investment cashed out, that is, the underlying securities will generally be sold into the home market and the net proceeds (after deducting fees and expenses of the selling broker and the depositary bank) remitted to the former ADR holders.

[76] See, for example, the letter, dated February 12, 2007, from the NewYork State Bar Association (N.Y. State Bar), and the letters from the ABA and Linklaters.

[77] See the letter from the N.Y. State Bar.

Therefore, we are adopting a condition providing that, if an issuer has terminated a sponsored ADR facility, and at the time of termination the average daily trading volume in the United States of the ADRs exceeded 5 percent of the average daily trading volume of the underlying class of securities on a worldwide basis for the preceding 12 months, the issuer must wait 12 months before it may file a Form 15F to terminate its Exchange Act reporting obligations in reliance on Rule 12h-6's trading volume provision.[78] We are also clarifying that, for purposes of Rule 12h-6's trading volume provision, an issuer must calculate the trading volume of its ADRs in terms of the number of securities represented by those ADRs.[79]

vii. Transition Period

In connection with our reproposal of Rule 12h-6, we solicited comment on whether the proposed delisting and ADR termination conditions should apply to a foreign private issuer that delisted its equity securities from a U.S. exchange or terminated a sponsored ADR facility before the effective date of the new exit rule. One commenter[80] requested that neither provision apply to an issuer that delisted or terminated a sponsored ADR facility before December 13, 2006, which is the date of the open meeting at which the Commission voted to repropose Rule 12h-6 and the accompanying rule amendments.

We agree that, in the interests of fairness, an issuer should not be precluded from relying on Rule 12h-6's trading volume provision because it delisted or terminated a

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[78] New Exchange Act Rule 12h-6(b)(2) (17 CFR 240.12h-6(b)(2)).

[79] Note to paragraph (a)(4) of Rule 12h-6. Typically the ratio defining the number of common or ordinary shares underlying each ADR is included as part of the deposit agreement or in an exhibit to that agreement.

[80] See the letter from the ABA.

sponsored ADR facility before the Commission had even proposed to make those acts meaningful to the application of Rule 12h-6. However, we believe that March 21, 2007 should be the dispositive date since, on that date, the Commission voted to adopt the delisting and ADR termination conditions, thus making definite its intent that those conditions apply to Rule 12h-6's trading volume provision.

Therefore, a foreign private issuer that, before March 21, 2007, delisted a class of equity securities from a national securities exchange or inter-dealer quotation system in the United States or terminated a sponsored ADR facility, may file a Form 15F in reliance on Rule 12h-6's trading volume provision even if, at the time of delisting or termination, its U.S. ADTV exceeded 5 percent of the ADTV of that class of securities on a worldwide basis for the preceding 12 months.

b. Alternative 300-Holder Condition

We are adopting, substantially as reproposed, an alternative to the trading volume benchmark provision, which will permit a foreign private issuer to terminate its Exchange Act reporting obligations regarding a class of equity securities if it has less than 300 record holders on a worldwide basis or who are U.S. residents as long as the issuer meets the rule's other conditions.[81] The purpose of this alternative 300-holder condition is to enable an issuer to terminate its Exchange Act reporting obligations if it cannot satisfy the new trading volume benchmark but does meet the current 300-holder standard. Otherwise, an issuer could find itself worse off under Rule 12h-6 than under the current exit rules.[82]

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[81] New Exchange Act Rule 12h-6(a)(4)(ii) (17 CFR 240.12h-6(a)(4)(ii)).

[82] We did not originally propose or repropose a similar 500 record holder condition, although one exists in the current rules for a small issuer with total assets that have not exceeded $10 million

The adopted alternative record holder condition is substantially the same as the proposed and reproposed condition. Although at the proposing stage, some commenters requested that the Commission significantly raise the 300-holder threshold in both the Exchange Act exit and entrance rules, and a few made a similar request at the reproposing stage,[83] we decline to adopt an increase to the 300-holder threshold for foreign private issuers either in the exit or entrance rules at this time. As we previously stated, the limited purpose for retaining the 300-holder provision in the new exit rule is to preclude disadvantaging those companies that could terminate their Exchange Act reporting obligations under the current exit rules but not under the new trading volume condition.[84] Moreover, since domestic registrants are subject to a substantially similar record holder standard, we believe any change would be more appropriately considered as part of a comprehensive evaluation of the record holder provisions in both the Exchange Act entrance and exit rules for both domestic and foreign registrants.[85] In addition, issuers relying on the alternative holder provision will be able to use the revised counting method that we are adopting today, which should make the U.S. holder determination easier for those issuers.[86]

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for its most recent three fiscal years. Based on current experience, most foreign private issuers have not relied on that provision due to the difficulty in meeting the asset test.

[83] See the letters from the ABA and the Organization for International Investment.

[84] See Part II.A.1.b of the Reproposing Release.

[85] In this regard, we note that the Advisory Committee on Smaller Public Companies has made recommendations relating to Exchange Act registration and termination of registration. See the Final Report of the Advisory Committee on Smaller Public Companies, dated April 23, 2006, which is available at http://www.sec.gov/ info/smallbus/acspc/acspc-finalreport.pdf.

[86] See Part II.C of this release.

2. Prior Exchange Act Reporting Condition

We are adopting, substantially as reproposed, a prior Exchange Act reporting condition that a foreign private issuer must meet before it can terminate its section 12(g) registration or its section 15(d) reporting obligations regarding a class of equity securities under Rule 12h-6.[87] This condition will require an issuer of equity securities to have had reporting obligations under section 13(a) or section 15(d) of the Exchange Act for at least the 12 months preceding the filing of Form 15F, to have filed or furnished all reports required for this period, and to have filed at least one annual report pursuant to section 13(a) of the Exchange Act. The purpose of this prior Exchange Act reporting condition is to provide investors in U.S. securities markets with a minimum period of time to make investment decisions regarding a foreign private issuer's securities based on the information provided in an Exchange Act annual report and the interim home country materials furnished in English under cover of Form 6-K.[88]

Originally proposed Rule 12h-6 would have required a foreign private issuer to have had Exchange Act reporting obligations for the two years preceding the filing of its Form 15F and to have filed at least two Exchange Act annual reports before it could terminate its Exchange Act reporting obligations regarding a class of equity securities. As previously noted, several commenters objected to this two year reporting condition primarily on the grounds that it would impose a stricter reporting requirement than is the

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[87] New Exchange Act Rule 12h-6(a)(1) (17 CFR 240.12h-6(a)(1)).

[88] Under cover of a Form 6-K (17 CFR 249.306), a foreign private issuer is required to furnish in English a copy of any document that it publishes or is required to publish under the laws of its home country or the requirements of its local exchange or that it has distributed to shareholders, and which is material to an investment decision.

case under the current exit rules.[89] In response to those commenters, when reproposing Rule 12h-6, we reduced the required prior reporting period to at least 12 months and proposed to require only one Exchange Act annual report.

We received only a few comments on the reproposed prior reporting condition for equity security issuers. One commenter supported the revisions made to the proposed prior reporting condition but urged the Commission to permit an issuer to terminate its Exchange Act reporting obligations regarding a class of equity securities even if it has not submitted all required Form 6-Ks.[90] That commenter pointed to the difficulties that a foreign private issuer may experience when determining whether a Form 6-K submission is required under foreign reporting and U.S. materiality requirements.

As adopted, Rule 12h-6 will require a foreign private issuer to have submitted all Form 6-Ks required during the 12 months preceding the filing of its Form 15F in order to be eligible to terminate its reporting obligations regarding a class of equity securities. This requirement will help ensure that a U.S. investor is able to access through EDGAR[91] and in English all material interim information about a foreign private issuer as required by its home country. We continue to believe that our rules should provide appropriate incentives for companies to stay current with their Exchange Act reporting obligations.

From a practical point of view, the 12-month prior reporting requirement should not be problematic since, based on current experience, most foreign companies that register securities with the Commission, including solely under Exchange Act

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[89] See Part II.A.2 of the Reproposing Release.

[90] See the letter from the ABA.

[91] EDGAR is the Commission's Electronic Data Gathering, Analysis and Retrieval System.

section 12(g), stay in the U.S. market for at least a year and file at least one Exchange Act annual report.[92] Moreover, the prior reporting condition will require that a foreign private issuer must be current in its reporting obligations, not that it must have timely filed all reports required during the 12 month period. In the event that an issuer determines that it should have filed a Form 6-K during this period, it can do so before it files its Form 15F.

Another commenter[93] requested that we permit an issuer to satisfy the prior Exchange Act annual report requirement by filing a special financial report required under Exchange Act Rule 15d-2.[94] We agree that it would be appropriate to have the special financial report satisfy the annual report filing requirement under new Rule 12h-6(a)(1). In this situation, an issuer will have recently sold securities under an effective Securities Act registration statement with non-financial information as current as the date of the prospectus, and the information in the special financial report will provide financial statements and other information as of and for the most recent fiscal year end, thus serving the same purpose as an Exchange Act annual report.

In addition, this approach is consistent with our recent implementation rules for the internal control over financial reporting requirements mandated by Section 404 of the

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[92] See, for example, the letter from Galileo.

[93] See the letter from Sullivan & Cromwell.

[94] 17 CFR 240.15d-2. This rule requires an issuer that filed a Securities Act registration statement, which did not contain audited financial statements for the last full fiscal year preceding the year in which the registration statement became effective, to file a special financial report with the Commission that includes audited financials for that last full fiscal year.

Sarbanes-Oxley Act of 2002.[95] Accordingly, we are clarifying that a special financial report, filed with the Commission pursuant to Rule 15d-2, constitutes an Exchange Act annual report for the purpose of complying with Rule 12h-6's prior reporting condition.

3. One Year Dormancy Condition

We are adopting, as reproposed, a one year dormancy condition with which a foreign private issuer must comply before it can terminate its Exchange Act registration and reporting obligations regarding a class of equity securities under Rule 12h-6.[96] New Rule 12h-6 will prohibit sales of a foreign private issuer's securities in the United States in a registered offering under the Securities Act during the 12 months preceding the filing of its Form 15F other than securities issued:

- to the issuer's employees;
- by selling security holders in non-underwritten offerings;
- upon the exercise of outstanding rights granted by the issuer if the rights are granted pro rata to all existing security holders of the class of the issuer's securities to which the rights attach;
- pursuant to a dividend or interest reinvestment plan; or
- upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer.

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[95] 15 U.S.C. 7262. See Release No. 33-8760 (December 15, 2006), 71 FR 76580 (December 21, 2006).

[96] New Exchange Act Rule 12h-6(a)(2) (17 CFR 240.12h-6(a)(2)).

The primary purpose of the dormancy condition's prohibition of registered offerings is to preclude a foreign private issuer from exiting the Exchange Act reporting system shortly after it has engaged in U.S. public capital raising.

We received relatively few comments on the reproposed dormancy condition.[97] Most welcomed the revisions made to the originally proposed dormancy condition.[98] For example, the originally proposed rule would have prohibited sales of unregistered securities, with limited exceptions. We removed this prohibition when reproposing Rule 12h-6 after commenters convinced us that adoption of the originally proposed dormancy condition could well drive many private placement financings and other unregistered offerings by foreign companies offshore, to the detriment of U.S. investors and U.S. broker-dealers, since many companies might prefer to finance outside the United States under Regulation S in order to avoid triggering the dormancy condition. Consequently, as reproposed, the adopted rule will permit the unregistered sale of securities that are exempted under the Securities Act during the dormancy period. The permitted category of securities will include sales pursuant to section 4(2),[99] Regulation D,[100] Rule 144A,[101] Rules 801 and 802,[102] and exempt securities under

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[97] See the letters from the ABA, Linklaters, the N.Y. State Bar, Sullivan & Cromwell, and Skadden Arps.

[98] See the letters from the ABA, Skadden Arps, and Sullivan & Cromwell.

[99] 15 U.S.C. 77d(2).

[100] 17 CFR 230.501 et seq.

[101] 17 CFR 230.144A.

[102] 17 CFR 230.801 and 230.802.

section 3, including section 3(a)(10) of the Securities Act.[103]

Some of the comments pertained to additional proposed exceptions to the dormancy condition. As originally proposed, Rule 12h-6 would have excepted from the dormancy condition's prohibition of sales of an issuer's registered securities in the United States only securities sold to an issuer's employees and those sold by selling security holders in non-underwritten offerings. When reproposing Rule 12h-6, we proposed three additional exceptions to the dormancy condition's prohibition of sales of an issuer's registered securities: the issuance of registered securities pursuant to pro rata rights offerings, dividend or interest reinvestment plans, and the conversion of outstanding convertible securities.[104] Like the earlier proposed exceptions, these transactions often occur for reasons unrelated to capital raising or for the benefit of the issuer, for example, to benefit current security holders or for the convenience of investors.

We also reproposed that these additional exceptions would not apply to securities issued pursuant to a standby underwritten offering or other similar arrangement in the United States. As we explained, this limitation is consistent with the Commission's previous treatment of these types of registered offerings.[105]

Two commenters requested that we clarify that an issuer would not trigger the dormancy condition if it conducted a registered offering involving, for example, a rights offering, in the United States, with a standby underwriting arrangement according to which the underwriter only resold the securities purchased in the offering outside the

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[103] 15 U.S.C. 77c and 77c(a)(10).

[104] See Part II.A.3 of the Reproposing Release.

[105] Instruction 2 to Item 8 of Form 20-F imposes a similar limitation.

United States pursuant to Regulation S.[106] We agree that this type of standby underwritten arrangement would not trigger the dormancy condition since it would not increase an issuer's involvement in public capital raising in the United States.

Also as reproposed, the adopted rule includes under the dormancy condition sales of an issuer's securities by its selling security holders in an underwritten registered offering because there is a greater likelihood of issuer involvement in a U.S. underwritten offering than in a non-underwritten offering of selling security holders.

New Exchange Act Rule 12h-6 will use the definition of "employee" under Form S-8[107] for the purpose of applying the dormancy condition under Rule 12h-6, as reproposed.[108] That definition includes any employee, director, general partner, certain trustees, certain insurance agents, and former employees as well as executors, administrators or beneficiaries of the estates of deceased employees, and a family member of an employee who has received shares through a gift or domestic relations order.[109] Otherwise, a narrow interpretation of the term "employee" could result in an issuer being disqualified from terminating its Exchange Act registration and reporting obligations under Rule 12h-6 because it engaged in a sale of securities during the dormancy period to an employee's family member or other relationship permitted under Form S-8 but not explicitly allowed under the new rule.

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[106] See the letters from Linklaters and the N.Y. State Bar.

[107] 17 CFR 239.16b. Form S-8 is the form used by an Exchange Act reporting company to register securities for issuance to its employees or those of its subsidiaries or parent under an employee benefit plan.

[108] New Exchange Act Rule 12h-6(f)(2) (17 CFR 240.12h-6(f)(2)).

[109] See General Instruction A.1 to Form S-8.

4. Foreign Listing Condition

We are adopting a foreign listing condition under Rule 12h-6, which will require that, with respect to equity securities, for at least the 12 months preceding the filing of its Form 15F, a foreign private issuer must have maintained a listing of the subject class of securities on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer' s securities in another foreign jurisdiction, constitutes the primary trading market for the issuer's subject class of securities.[110] The new rule defines "primary trading market" to mean that at least 55 percent of the trading in the foreign private issuer's subject class of securities took place in, on or through the facilities of a securities market or markets in no more than two foreign jurisdictions during a recent 12-month period.[111] That definition further provides that if an issuer aggregates the trading of its securities in two foreign jurisdictions for the purpose of Rule 12h-6's foreign listing condition, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities.[112]

The purpose of this foreign listing condition is to help assure that there is a non-U.S. jurisdiction that principally regulates and oversees the issuance and trading of

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[110] New Exchange Act Rule 12h-6(a)(3) (17 CFR 240.12h-6(a)(3)).

[111] New Exchange Act Rule 12h-6(f)(5)(i) (17 CFR 240.12h-6(f)(5)(i)). Rule 12h-6 defines "recent 12-month period" to mean a 12-calendar month period that ended no more than 60 days before the filing date of the Form 15F. New Exchange Act Rule 12h-6(f)(6) (17 CFR 240.12h-6(f)(6)).

[112] New Exchange Act Rule 12h-6(f)(5)(ii) (17 CFR 240.12h-6(f)(5)(ii)). As proposed and as adopted, measurement under this condition is by reference to average daily trading volume (ADTV) as reported by the relevant market. Although the proposing and reproposing releases noted that there are differences concerning how various markets measure and report trading volume (for example, dealer markets versus auction markets), no commenter supported a trading volume standard that would take such differences into account.

the issuer's securities and the issuer's disclosure obligations to investors. This foreign listing condition increases the likelihood that the principal pricing determinants for a foreign private issuer's securities are located outside the United States, and makes more likely the availability of a set of non-U.S. securities disclosure documents to which a U.S. investor may turn for material information when making investment decisions about the issuer's securities following the termination of its disclosure obligations under Rule 12h-6. If the United States was the sole or principal market for the foreign private issuer's securities, then the Commission would have a greater regulatory interest in continuing to subject the foreign company to the Exchange Act reporting regime.

The adopted foreign listing condition is substantially the same as the reproposed condition, except that, at the request of commenters, we have modified the rule to reflect that an issuer may be listed on multiple exchanges within a single jurisdiction.[113] Thus, the new rule provides that an issuer may aggregate trading in the same class of its equity securities on all of its exchanges within a single foreign jurisdiction or in no more than two foreign jurisdictions for the purpose of the foreign listing condition, as long as the trading in one of the foreign jurisdictions is greater than the trading in the United States.[114]

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[113] See, for example, the letter from Cravath.

[114] For the purpose of the primary trading market determination, an issuer would measure the ADTV of on-exchange transactions in its securities aggregated over one or two foreign jurisdictions against its worldwide trading volume. The issuer could include in this measure off-exchange transactions in those jurisdictions comprising the numerator only if it includes those off-exchange transactions when calculating worldwide trading volume in the denominator. This denominator would be the same as the denominator used for the trading volume benchmark. Thus, this denominator would consist of U.S. ADTV, which must include both on-exchange and off-exchange transactions, and non-U.S. ADTV, which must include on-exchange transactions, but could also include off-exchange transactions. See Part II.A.1.a.ii of this release.

We received relatively few comments on the reproposed foreign listing condition.[115] Three commenters generally approved of the changes made to the originally proposed foreign listing condition.[116] These changes included shortening the proposed foreign listing requirement from two years to one year and permitting an issuer to aggregate its trading on an exchange in one foreign jurisdiction with that in a second foreign jurisdiction.[117] These commenters agreed that the reproposed foreign listing condition would increase the flexibility of the new rule for foreign private issuers while serving to protect investors.

New Rule 12h-6's foreign listing condition will apply to any issuer of equity securities, whether that issuer is relying on the trading volume benchmark or the alternative holder provision, as reproposed. Some commenters requested that the Commission not apply the foreign listing condition to an issuer that has delisted in its primary trading market as a result of being acquired. According to these commenters, that issuer would not be able to terminate its Exchange Act reporting obligations under the 300-holder provision because it could not meet the foreign listing requirement.[118]

The foreign listing condition is an important component of the new exit regime because it increases the likelihood that U.S. investors will have a set of material disclosure documents about an issuer to which they may turn following that issuer's exit from the Exchange Act reporting system. Therefore, we decline to create an exception

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[115] See the letters from the ABA, BusinessEurope, Cravath, Davis Polk, Linklaters, and Skadden Arps.

[116] See the letters from the ABA, Linklaters, and Skadden Arps.

[117] See Part II.A.4 of the Reproposing Release.

[118] See the letters from BusinessEurope and Davis Polk.

from this condition for any issuer at this time.[119] We note that, under most circumstances, a foreign private issuer that has been acquired may exit the Exchange Act reporting regime under the provisions of the current exit rules that permit any issuer, whether domestic or foreign, or listed or unlisted, to file a Form 15 if its securities are held by less than 300 holders of record.[120]

B. Debt Securities Provision

As adopted, Rule 12h-6 will enable a foreign private issuer to terminate its Exchange Act reporting obligations regarding a class of debt securities as long as the issuer has filed or furnished all reports required under Exchange Act section 13(a) or section 15(d), including at least one Exchange Act annual report, and has its class of debt securities held of record by less than 300 holders either on a worldwide basis or who are U.S. residents.[121] This provision reflects the minimum reporting requirement and current 300 holder standard under section 15(d) and Rule 12h-3. Moreover, it is the same as the reproposed debt securities provision.[122]

Some commenters requested that we revise the 300-holder standard for termination of a foreign private issuer's Exchange Act reporting obligations under

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[119] For this reason, we decline to adopt a general exception from the foreign listing condition for equity securities issuers proceeding under the alternative 300-holder provision.

[120] Exchange Act Rules 12g-4(a)(1)(i) and 12h-3(b)(1)(i) (17 CFR 240.12g-4(a)(1)(i) and 240.12h-3(b)(1)(i)).

[121] New Exchange Act Rule 12h-6(c) (17 CFR 240.12h-6(c)).

[122] As originally proposed and reproposed, the adopted exit rule for debt securities does not include a provision comparable to Rule 12h-3's 500 record holder provision because most foreign private issuers that are debt securities registrants would likely exceed the $10 million asset threshold that accompanies the 500 record holder standard. No commenter has ever requested that we incorporate the 500 record holder and $10 million asset standard into Rule 12h-6's debt securities provision, either at the proposing or reproposing stage.

Exchange Act Section 15(d) regarding a class of debt securities that had been offered and sold pursuant to an effective registration statement under the Securities Act.[123] In the view of most of these commenters, an increase to at least 1,000 holders would be appropriate in light of the changes in the global securities markets since the 300-holder standard was adopted by Congress in the 1960s.[124]

We are not revising the 300-holder standard as it applies to debt securities. While we agree that there have been substantial changes in the global capital markets, no commenter has presented us with data or other information that supports raising the threshold from that adopted by Congress. In addition, the problems associated with determining the ownership of equity securities do not appear to apply to debt securities, as to which there is generally a single U.S.-based transfer agent. Further, the same 300-holder threshold applies to U.S. companies, and unlike the situation for equity securities, no commenter has addressed why it would be appropriate to treat U.S. and foreign registrants differently with respect to the termination or suspension of reporting obligations under section 15(d) as applied to debt securities.[125]

C. Revised Counting Method

We are adopting, as reproposed, Rule 12h-6's revised counting method, which will enable an issuer of equity securities proceeding under the alternative 300-holder provision, or a debt securities issuer, to use a modified version of the "look through"

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[123] See the letters from Cleary Gottlieb, EALIC, Davis Polk, and the EU.

[124] Davis Polk favored an increase to at least 3,000.

[125] We note that foreign private issuers that avail themselves of Rule 12h-6 will be able to terminate their reporting obligations under section 15(d) while U.S. companies will only continue to be able to suspend their reporting obligations pursuant to Rule 12h-3 and section 15(d).

counting method under Rule 12g3-2(a) when determining the number of its U.S. resident security holders.[126] Instead of having to look through the accounts of brokers, banks and other nominees on a worldwide basis to determine the number of its U.S. resident holders, as is required under the current rules, a foreign private issuer could limit its inquiry to brokers, banks and other nominees located in the United States, the issuer's jurisdiction of incorporation, legal organization or establishment and, if different, the jurisidiction of its primary trading market.[127] This revised counting method is substantially similar to the counting method that the Commission adopted under the exemptive rules for cross-border rights offerings, exchange offers and business combinations,[128] as well as under the definition of foreign private issuer.[129]

Like the reproposed rule, the adopted counting method provision requires an issuer that aggregates the trading volume of its securities in two foreign jurisdictions for the purpose of meeting Rule 12h-6's foreign listing condition to look through nominee accounts in both foreign jurisdictions, which comprise its primary trading market, and in the United States as well as in its jurisdiction of incorporation or organization, if different from the two jurisdictions that comprise its primary trading market.[130] Also as reproposed, the adopted counting method provision permits an issuer to rely on the

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[126] New Exchange Act Rule 12h-6(e) (17 CFR 240.12h-6(e)).

[127] New Exchange Act Rule 12h-6(e)(1) (17 CFR 240.12h-6(e)(1)).

[128] Securities Act Rules 800 et seq. (17 CFR 230.800 et seq.).

[129] 17 CFR 230.405 and 240.3b-4(c).

[130] New Exchange Act Rule 12h-6(e)(1)(ii) (17 CFR 240.12h-6(e)(1)(ii)).

assistance of an independent information services provider when calculating the number of its U.S. security holders.[131]

We are also adopting a presumption, included in both the originally proposed and reproposed counting method provisions, that we previously adopted under the cross-border rules and definition of foreign private issuer.[132] This presumption is that, if, after reasonable inquiry, an issuer is unable without unreasonable effort to obtain information about the amount of securities held by nominees for the accounts of customers resident in the United States, it may assume that the customers are the residents of the jurisdiction in which the nominee has its principal place of business.[133]

The reproposed rule provided that an issuer must count securities as owned by U.S. holders when publicly filed reports of beneficial ownership or information that is otherwise provided to it indicates that the securities are held by U.S. residents. One commenter requested that we clarify that an issuer is not required to take account of U.S. ownership information provided to it if the issuer determines that it is unreliable.[134] We have so clarified by revising the above provision to state that an issuer must count securities as owned by U.S. holders when publicly filed reports of beneficial ownership or other reliable information that is provided to it indicates that the securities are held by U.S. residents.[135]

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[131] New Exchange Act Rule 12h-6(e)(4) (17 CFR 240.12h-6(e)(4)).

[132] See Securities Act Rule 800(h)(4) (17 CFR 230.800(h)(4)) and Instruction B to Exchange Act Rule 3b-4(c)(1) (17 CFR 240.3b-4(c)(1)).

[133] New Exchange Act Rule 12h-6(e)(2) (17 CFR 240.12h-6(e)(2)).

[134] See the letter from Cravath.

[135] New Rule 12h-6(e)(3) (17 CFR 240.12h-6(e)(3)).

Some foreign jurisdictions have laws that provide an established and enforceable means for a public company to obtain information about its shareholders.[136] Like the reproposed rule, Rule 12h-6 does not provide that a foreign private issuer may rely solely on specified foreign statutory or code provisions when calculating the number of its U.S. resident equity or debt holders. We received only two comments in support of such a provision at the proposing stage, and none at the reproposing stage. However, as we noted in the reproposing release, as part of its inquiry regarding whether it meets any of the quantitative benchmarks under Rule 12h-6, an issuer may refer to shareholder information obtained pursuant to those foreign statutory or code provisions to the extent that this shareholder information is reasonably reliable and accurate and furthers the purpose of the inquiry.

D. Expanded Scope of Rule 12h-6

We are adopting, substantially as reproposed, an expansion of the scope of the originally proposed Rule 12h-6 in two respects. First, we are adopting a rule providing that an issuer that has succeeded to the Exchange Act reporting obligations of an acquired company may terminate those reporting obligations under Rule 12h-6 as long as it satisfies specified conditions. Second, we are extending the application of Rule 12h-6 to a foreign private issuer that previously filed a Form 15 and effected its termination of registration or suspension of reporting under the current exit rules before the effective date of Rule 12h-6, subject to conditions.

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[136] See, for example, section 212 of the United Kingdom Companies Act.

1. Application of Rule 12h-6 to Successor Issuers

As adopted, Exchange Act Rule 12h-6(d)[137] provides that, following a merger, consolidation, exchange of securities, acquisition of assets or otherwise, a foreign private issuer that has succeeded to the registration of a class of securities under Exchange Act section 12(g) pursuant to Rule 12g-3,[138] or to the reporting obligations of another issuer under Exchange Act section 15(d) pursuant to Rule 15d-5,[139] may file a Form 15F to terminate those reporting obligations if, regarding a class of equity securities, the successor issuer meets the conditions under Rule 12h-6(a), which applies to equity securities issuers.[140] Regarding a class of debt securities, the successor issuer must meet the conditions under Rule 12h-6(c), including the reporting condition.[141] New Rule 12h-6(d) then provides that, when determining whether it meets the prior reporting condition under either the equity or debt securities provision of the final rule, a successor issuer may take into account the reporting history of the issuer whose reporting obligations it has assumed pursuant to Rule 12g-3 or 15d-5.[142]

This successor issuer provision will enable a non-Exchange Act reporting foreign private issuer that acquires a reporting foreign private issuer in a transaction exempt

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[137] 17 CFR 240.12h-6(d).

[138] 17 CFR 240.12g-3.

[139] 17 CFR 240.15d-5.

[140] New Exchange Act Rule 12h-6(d)(1)(i) (17 CFR 240.12h-6(d)(1)(i)).

[141] New Exchange Act Rule 12h-6(d)(1)(ii) (17 CFR 240.12h-6(d)(1)(ii)).

[142] New Exchange Act Rule 12h-6(d)(2) (17 CFR 240.12h-6(d)(2)).

under the Securities Act, for example, under Rule 802 or section 3(a)(10), to qualify immediately for termination of its Exchange Act reporting obligations under Rule 12h-6, without having to file an Exchange Act annual report, as long as the successor issuer meets the rule's foreign listing, dormancy and quantitative benchmark conditions, and the acquired company's reporting history fulfills Rule 12h-6's prior reporting condition. Since the successor issuer will have assumed the acquired company's Exchange Act reporting obligations, we believe it is appropriate that the issuer succeed to the acquired company's reporting history for the purpose of Rule 12h-6.

The adopted successor issuer provision is substantially similar to the reproposed provision, except that the adopted rule clarifies that, in order to qualify for deregistration under the successor issuer provision, an issuer must meet all of the conditions pertaining to equity securities registrants, including the dormancy condition. We have made this clarification in order to underscore our position, stated at the reproposing stage, that if a previously non-Exchange Act reporting foreign private issuer acquires an Exchange Act reporting company by consummating an exchange offer, merger or other business combination registered under the Securities Act, most likely on a Form F-4 registration statement, the acquiror will have to fulfill Rule 12h-6's prior reporting condition without reference to the acquired company's reporting history. Since the acquiror will have triggered its own section 15(d) reporting obligations upon the effectiveness of its Securities Act registration statement, it will have to meet Rule 12h-6's full reporting condition like any other section 15(d) reporting company before it can terminate its reporting obligations under the new rule. In order to clarify that such a Securities Act registrant may not proceed under the successor issuer provision and immediately

terminate its section 15(d) reporting obligations upon completion of the Form F-4 transaction, the adopted rule provides that an issuer must meet Rule 12h-6's equity securities conditions, which includes the dormancy condition.[143]

Most of the parties that commented on the reproposed successor issuer provision supported it.[144] However, one commenter sought clarification regarding the intended role that the predecessor company would play in satisfying Rule 12h-6's requirements.[145] More particularly, this commenter was concerned that Rule 12h-6 could be construed to require an issuer to take into account the listing and trading history of an acquired company. Such an interpretation could preclude an acquiror from terminating its Exchange Act reporting obligations immediately after succession if the acquired company was unlisted or had an active U.S. trading market.

Therefore, we are clarifying that Rule 12h-6(d) permits a successor issuer to consider an acquired company's history only when determining whether the successor meets Rule 12h-6's prior reporting condition. Following an acquisition, a successor issuer must look only to its own foreign listing history, and consider its own U.S. and worldwide trading volume, when determining whether it satisfies Rule 12h-6's foreign listing and trading volume conditions.

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[143] Because some commenters stated that the dormancy condition should not apply to a foreign private issuer that filed a Securities Act registration statement solely to effect an acquisition or business combination (see, for example, the letter from Sullivan & Cromwell), we believe it is necessary to state explicitly in Rule 12h-6 that the dormancy condition applies to a successor issuer.

[144] See, for example, the letters from Cleary Gottlieb and PricewaterhouseCoopers.

[145] See the letter from Latham & Watkins.

This commenter also sought clarification regarding whether, as a condition to deregistration under Rule 12h-6, a successor issuer would have an obligation under Exchange Act Rule 12g-3(g)[146] to file an Exchange Act annual report for the predecessor's last full fiscal year prior to succession. As with the filing of a Form 15 under the current exit rules, under Rule 12h-6(g),[147] the suspension of a foreign private issuer's duty to file reports under section 13(a) or 15(d) occurs immediately upon filing a Form 15F. This suspension extends to an annual report that would be required under Rule 12g-3(g). A successor issuer would only have to file an annual report on behalf of its predecessor under Rule 12g-3(g) if, at the time of filing its Form 15F, that annual report was past due. This is consistent with the current practice involving Form 15.

2. Application of Rule 12h-6 to Prior Form 15 Filers

As adopted, Rule 12h-6(i) will extend termination of Exchange Act reporting under the new exit rule to a foreign private issuer that, before the effective date of Rule 12h-6, already effected the suspension or termination of its Exchange Act reporting obligations after filing a Form 15.[148] A prior Form 15 filer will have to meet the following conditions in order to obtain the benefits of Rule 12h-6 with respect to a class of equity securities:

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[146] 17 CFR 240.12g-3(g). This provision requires a successor issuer to file an Exchange Act annual report for the last full fiscal year of the predecessor before the issuer's succession if the predecessor has not done so.

[147] 17 CFR 240.12h-6(g).

[148] New Exchange Act Rule 12h-6(i)(1) (17 CFR 240.12h-6(i)(1)). A former section 15(d) reporting company would benefit from proceeding under Rule 12h-6 by obtaining termination, rather than mere suspension, of its reporting obligations with respect to a class of equity or debt securities. As discussed below, a former section 12(g) company also would benefit from proceeding under Rule 12h-6 by being able to claim the Rule 12g3-2(b) exemption immediately upon the effectiveness of its Rule 12h-6 termination.

- the issuer must satisfy Rule 12h-6's foreign listing condition regarding the class of equity securities that was the subject of its Form 15;
- the issuer must satisfy either Rule 12h-6's trading volume or alternative holder provision; and
- the issuer must file a Form 15F.[149]

An equity securities issuer will not have to satisfy Rule 12h-6's prior reporting or dormancy provisions since it will already be a non-reporting entity.

A prior Form 15 filer will have to meet the following conditions in order to obtain the benefits of Rule 12h-6 with respect to a class of debt securities:

- the issuer must meet Rule 12h-6's record holder provision for debt securities; and
- the issuer must file a Form 15F.[150]

As reproposed, the prior Form 15 filer provision was substantially similar to the adopted rule, except that we proposed to establish, as a condition of eligibility, that an issuer not be required to register a class of securities under section 12(g) or be required to file reports under section 15(d).[151] While the parties that commented on the reproposed provision supported extending the benefits of Rule 12h-6 to a prior Form 15 filer, most also opposed requiring that filer to determine that it had not assumed or resumed

[149] Rule 12h-6(i)(2)(i) (17 CFR 240.12h-6(i)(2)(i)).

[150] Rule 12h-6(i)(2)(ii) (17 CFR 240.12h-6(i)(2)(ii)).

[151] See Part II.D.2 of the Reproposing Release.

Exchange Act reporting obligations.[152] Those commenters noted that, since under the reproposed rule, a former equity securities registrant could not have relied on the trading volume condition, that registrant would have had once more to undertake the costly task of counting its U.S. resident holders.

We agree that, as suggested by some of those commenters, a more equitable approach would be to place former equity securities registrants in as good a position as current registrants by permitting them to meet the trading volume benchmark as an alternative to the record holder standard.[153] The adopted rule takes this approach.

E. Public Notice Requirement

We are adopting, as reproposed, a public notice requirement as a condition to termination of reporting under Rule 12h-6, except for prior Form 15 filers.[154] Pursuant to this requirement, an issuer of equity or debt securities, including a successor issuer, will have to publish, either before or on the date that it files its Form 15F, a notice in the United States that discloses its intent to terminate its section 13(a) or 15(d) reporting obligations. The issuer must publish the notice, such as a press release, through a means reasonably designed to provide broad dissemination of the information to the public in the United States. The issuer also must submit a copy of the notice, either under cover of a Form 6-K before or at the time of filing of the Form 15F, or as an exhibit to the

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[152] See the letters from the ABA, BusinessEurope, Cleary Gottlieb, EALIC, the EU, the N.Y. State Bar, and Sullivan & Cromwell.

[153] See, for example, the letters from EALIC and Sullivan & Cromwell.

[154] New Exchange Act Rule 12h-6(h) (17 CFR 240.12h-6(h)).

Form 15F. The primary purpose of this notice provision is to alert U.S. investors who have purchased the issuer's securities about the issuer's intended exit from the Exchange Act registration and reporting system.

The notice requirement will not apply to a prior Form 15 filer that files a Form 15F to terminate its registration and reporting obligations under Rule 12h-6(i). Since a prior Form 15 filer will already have ceased its Exchange Act reporting obligations, investors would gain little from the publishing of such a notice.

One commenter requested that we clarify that an issuer may satisfy this notice provision by having the press release disseminated in the United States by one of the international wire services, such as those operated by U.S. and international financial publications.[155] We have so clarified by revising Form 15F to request that the issuer identify the means, such as publication in a particular newspaper or transmission by a particular wire service, used to disseminate the notice in the United States.[156]

F. Form 15F

Like our current exit rules, adopted Rule 12h-6 will require a foreign private issuer to file electronically on EDGAR a form certifying that it meets the requirements for ceasing its Exchange Act reporting obligations.[157] By signing and filing new Form 15F,[158] a foreign private issuer will be certifying that:

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[155] See the letter from Skadden Arps.

[156] See Item 7.B of Form 15F.

[157] New Exchange Act Rule 12h-6(a).

[158] 17 CFR 249.324.

- it meets all of the conditions for termination of Exchange Act reporting specified in Rule 12h-6; and
- there are no classes of securities other than those that are the subject of the Form 15F regarding which the issuer has Exchange Act reporting obligations.[159]

Unlike current Form 15, new Form 15F will require a foreign private issuer to provide disclosure regarding several items in order to provide investors with information regarding an issuer's decision to terminate its Exchange Act reporting obligations. The information will also assist Commission staff in assessing the use of Rule 12h-6. The Form 15F filing requirement and the specified items of information are substantially the same as those under reproposed Rule 12h-6, except that we have modified some items to conform to the changes we have made to the reproposed rule.

As with Form 15, and as originally proposed and reproposed, filing of new Form 15F will immediately suspend an issuer's Exchange Act reporting obligations regarding the subject class of securities and commence a 90-day waiting period. If, at the end of this 90-day period, the Commission has not objected to the filing, the suspension will automatically become a termination of registration and reporting. If the Commission denies the Form 15F or the issuer withdraws it, within 60 days of the date of the denial or withdrawal, the issuer will be required to file or submit all reports that would have been required had it not filed the Form 15F.[160]

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[159] Form 15F General Instruction B.

[160] New Exchange Act Rule 12h-6(g) (17 CFR 240.12h-6(g)).

After filing Form 15F, an issuer will have no continuing obligation to make inquiries or perform other work concerning the information contained in the Form 15F, including its assessment of trading volume or ownership of its securities. However, Form 15F will require an issuer to undertake to withdraw its Form 15F before the date of effectiveness if it has actual knowledge of information that causes it reasonably to believe that, at the date of filing the Form 15F:

- the average daily trading volume of its subject class of securities in the United States exceeded 5 percent of the average daily trading volume of that class of securities on a worldwide basis for the same recent 12-month period that the issuer used for purposes of Rule 12h-6(a)(4)(i);
- its subject class of securities was held of record by 300 or more United States residents or 300 or more persons worldwide, if proceeding under Rule 12h-6(a)(4)(ii) or Rule 12h-6(c); or
- it otherwise did not qualify for termination of its Exchange Act reporting obligations under Rule 12h-6.[161]

This undertaking is substantially the same as that required under the reproposed rule and form, except that, in the first prong of the reproposed rule's undertaking, we referred to trading volume "during a recent 12-month period." At the request of a commenter,[162] we have clarified that the undertaking applies to an issuer relying on the trading volume provision only when it learns that its trading volume exceeded the 5 percent threshold for

[161] Form 15F Item 11.

[162] See the letter from Cleary Gottlieb.

the same recent 12-month period that the issuer used for purposes of Rule 12h-6's trading volume provision.

G. Amended Rules 12g-4 and 12h-3

Although similar to the current 300 record holder standard, Rule 12h-6's alternative record holder condition for equity securities and its debt securities provision will offer advantages compared to the current exit rules. As adopted, Rule 12h-6's revised counting method will limit the jurisdictions in which a foreign private issuer must search for records of its U.S. resident holders. Moreover, Rule 12h-6 will enable a foreign private issuer to terminate, rather than merely suspend, its section 15(d) reporting obligations regarding a class of equity or debt securities. In addition, under Rule 12h-6, a foreign private issuer will be able to claim the benefits of the Rule 12g3-2(b) exemption immediately upon the effectiveness of its termination of reporting regarding a class of equity securities under section 12(g) or 15(d). In each instance, once its termination of reporting becomes effective under Rule 12h-6, an issuer will no longer have to concern itself with whether the number of its U.S. resident or worldwide holders of the class of subject securities has risen above the statutory or regulatory threshold.

Given these advantages, we continue to believe that, following the adoption of Rule 12h-6, few, if any, foreign private issuers will elect to proceed under the provisions of Rule 12g-4 or Rule 12h-3 that allow a foreign private issuer to terminate its registration of a class of securities under section 12(g) or suspend the duty to file reports under section 15(d) if the class of securities is held by less than 300 U.S. residents or by 500 U.S. residents and the issuer has had total assets not exceeding $10 million on the

last day of each of its most recent three fiscal years.[163] Accordingly, we are adopting the amendments to eliminate these provisions in Rules 12g-4 and 12h-3, as reproposed.

H. Amendment Regarding the Rule 12g3-2(b) Exemption

We are adopting, substantially as reproposed, an amendment to Exchange Act Rule 12g3-2[164] that will apply the exemption under Exchange Act Rule 12g3-2(b) immediately to an issuer of equity securities upon the effectiveness of its termination of reporting under Rule 12h-6.[165] As a condition to the immediate application of the Rule 12g3-2(b) exemption upon its termination of reporting under Rule 12h-6, an issuer must publish subsequently in English material home country documents required under Rule 12g3-2(b)(1)(iii) on its web site or through an electronic information delivery system generally available to the public in its primary trading market.[166]

The purpose of this condition is to provide U.S. investors with access to material information about an issuer of equity securities following its termination of reporting pursuant to Rule 12h-6.[167] In addition, an issuer will be able to maintain a sponsored

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[163] See Exchange Act Rules 12g-4(a)(2) and 12h-3(b)(2) (17 CFR 240.12g-4(a)(2) and 12h-3(b)(2)).

[164] New Exchange Act Rule 12g3-2(e)(1) (17 CFR 240.12g3-2(e)(1)).

[165] Currently, foreign private issuers that registered a class of securities under section 12 must wait at least 18 months following their termination of reporting before they would be eligible to apply for the Rule 12g3-2(b) exemption. In addition, foreign private issuers with an active or suspended reporting obligation under section 15(d) have thus far not been eligible to claim the Rule 12g3-2(b) exemption. See Rule 12g3-2(d)(1) (17 CFR 240.12g3-2(d)(1)), which currently excepts from the 18 month requirement only issuers that have filed Securities Act registration statements using the Multijurisdictional Disclosure Act (MJDS) forms.

[166] New Exchange Act Rule 12g3-2(e)(2) (17 CFR 240.12g3-2(e)(2)).

[167] Any post-termination trading of a foreign private issuer's securities in the United States would have to occur through over-the-counter markets such as that maintained by the Pink Sheets, LLC since, as of April, 1998, the NASD and the Commission have required a foreign private issuer to register a class of securities under Exchange Act section 12 before its securities could be traded

ADR facility with respect to its securities.[168] This condition also will facilitate resales of that issuer's securities to qualified institutional buyers under Rule 144A.[169] Moreover, having a foreign private issuer's key home country documents posted in English on its web site will assist U.S. investors who are interested in trading the issuer's securities in its primary securities market.[170]

The adopted extension of Rule 12g3-2(b) will apply both to a class of equity securities formerly registered under section 12(g) and one that formerly gave rise to section 15(d) reporting obligations, as reproposed. The Rule 12g3-2(b) exemption received under new Rule 12g3-2(e) will remain in effect for as long as the foreign private issuer satisfies the rule's electronic publication conditions or until the issuer registers a new class of securities under section 12 or incurs section 15(d) reporting obligations by filing a new Securities Act registration statement, which has become effective.[171]

1. Extension of the Rule 12g3-2(b) Exemption Under Rule 12g3-2(e)

As adopted, because Rule 12g3-2(e) applies to any issuer that has terminated its reporting under Rule 12h-6, the rule amendment will effectively extend the

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through the electronic over-the-counter bulletin board administered by Nasdaq. See, for example, NASD Notice to Members (January 1998).

[168] In order to establish an ADR facility, an issuer must register the ADRs on Form F-6 (17 CFR 239.36) under the Securities Act. The eligibility criteria for the use of Form F-6 include the requirement that the issuer have a reporting obligation under Exchange Act section 13(a) or have established the exemption under Rule 12g3-2(b). See General Instruction I.A.3 of Form F-6.

[169] See Securities Act Rule 144A(d)(4) (17 CFR 230.144A(d)(4)).

[170] Brokers currently are exempt from complying with certain information obligations under Exchange Act Rule 15c2-11 (17 CFR 240.15c2-11) when a foreign company has established and maintains the Rule 12g3-2(b) exemption. See Release No. 34-41110 (February 25,1999), 64 FR 11124 (March 8, 1999).

[171] See New Exchange Act Rule 12g3-2(e)(3) (17 CFR 240.12g3-2(e)(3)).

Rule 12g3-2(b) exemption to:

- a foreign private issuer immediately upon its termination of reporting regarding a class of equity securities pursuant to Rule 12h-6(a);
- a successor issuer immediately upon its termination of reporting regarding a class of equity securities pursuant to Rule 12h-6(d); and
- a prior Form 15 filer immediately upon its termination of reporting regarding a class of equity securities pursuant to Rule 12h-6(i).[172]

Currently Rule 12g3-2(d)(2) precludes extending the Rule 12g3-2(b) exemption to a foreign private issuer, other than a Canadian issuer using the MJDS forms, that has issued securities in a merger or other similar transaction to acquire a company that has registered a class of securities under section 12 or has a reporting obligation under section 15(d).[173] As amended, and as reproposed, Rule 12g3-2(d)(2) will effectively extend the Rule 12g3-2(b) exemption to a successor issuer that has terminated its Exchange Act reporting obligations under Rule 12h-6(d). Since we are permitting a successor issuer to rely on its predecessor's reporting history for the purpose of Rule 12h-6, we believe the issuer should also benefit from claiming the Rule 12g3-2(b) exemption immediately upon the effectiveness of its Form 15F.

Also as reproposed, we are extending the Rule 12g3-2(b) amendment immediately upon the termination of reporting pursuant to Rule 12h-6(i) to a foreign private issuer that, before the effective date of Rule 12h-6, terminated its registration or

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[172] Most parties that commented on reproposed Rule 12g3-2(e) favored the extension of the Rule 12g3-2(b) exemption to the above categories of issuers. See, for example, the letter from the ABA.

[173] 17 CFR 240.12g3-2(d)(2).

suspended its reporting obligations regarding a class of equity securities after filing a Form 15. This is consistent with our expansion of the scope of Rule 12h-6 to encompass prior Form 15 filers. Without this change, a prior Form 15 filer would find itself subject to the 18 month waiting period that currently exists under Rule 12g3-2(d), although the issuer qualified for termination of reporting under Rule 12h-6(i).

We further are permitting a foreign private issuer that filed a Form 15F solely to terminate its reporting obligations regarding a class of debt securities to establish the Rule 12g3-2(b) exemption for a class of equity securities upon the effectiveness of its termination of reporting regarding the class of debt securities.[174] Since we are abolishing the 18 month "waiting period" for equity securities issuers that have terminated their Exchange Act reporting obligations pursuant to Rule 12h-6, it would serve no useful purpose to impose this waiting period on a debt securities issuer that determines that it will need the Rule 12g3-2(b) exemption for a class of equity securities following its termination of reporting under Rule 12h-6.

The reproposed version of Rule 12g3-2(e)(4) provided that a debt securities issuer could apply for the Rule 12g3-2(b) exemption at any time following the effectiveness of its termination of reporting regarding the class of debt securities. One commenter pointed out that this version, if adopted, would jeopardize the legality of a sponsored ADR facility maintained by a registered debt securities issuer regarding a class of equity securities.[175] A foreign private issuer that has registered only debt securities under the Securities Act may establish an ADR facility for its equity securities by filing and having

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[174] New Exchange Act Rule 12g3-2(e)(4) (17 CFR 240.12g3-2(e)(4)).

[175] See the letter from MTR Corporation.

become effective a Form F-6 registration statement because it is an Exchange Act reporting company.[176] Such an issuer would lose the legal basis for its ADR facility if, before it could apply for the Rule 12g3-2(b) exemption, it had to wait until after the completion of the 90-day waiting period, when the termination of its Exchange Act reporting obligations under Rule 12h-6 would become effective.

As we have previously stated, we value the formation of ADR facilities, because they are beneficial to U.S. investors, and we encourage foreign issuers to continue to maintain their ADR facilities after terminating their Exchange Act reporting obligations. Therefore, we are clarifying that, under adopted Rule 12g3-2(e)(4), while a debt securities issuer may establish the Rule 12g3-2(b) exemption only upon the effectiveness of its termination of reporting regarding its class of debt securities under Rule 12h-6, it may apply for the Rule 12g3-2(b) exemption after it has filed its Form 15F and commenced the 90-day waiting period.[177] The issuer must include in that application the date that it filed its Form 15F as well as the address of its Internet Web site or that of the electronic information delivery system on which it will publish the material home country information required under Rule 12g3-2(b).

2. Electronic Publishing of Home Country Documents

Currently foreign companies claim the Rule 12g3-2(b) exemption by submitting to the Commission on an ongoing basis the material required by the rule. This material

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[176] See General Instruction I.A.3 of Form F-6.

[177] Commission staff will work with issuers to coordinate the establishment of the Rule 12g3-2(b) exemption on the same day as their termination of Exchange Act reporting.

may only be submitted in paper format.[178] Because paper submissions are more difficult to access, we are adopting Rule 12g3-2(e), which relies on electronic access to a foreign company's home country securities documents, although not through the Commission's electronic database.

As part of the condition requiring an issuer to publish its home country documents required under Rule 12g3-2(b)(1)(iii) on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, Rule 12g3-2(e) will require an issuer to publish English translations of the following documents:

- its annual report, including or accompanied by annual financial statements;
- interim reports that include financial statements;
- press releases; and
- all other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.[179]

Rule 12g3-2(e) will further require a foreign private issuer of equity securities to disclose in the Form 15F the address of its Internet Web site or that of the electronic information delivery system in its primary trading market on which it will publish the

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[178] A foreign private issuer that has successfully filed an application for the Rule 12g3-2(b) exemption must currently furnish its home country documents in paper because the application is analogous to one submitted for an exemption under Exchange Act section 12(h). See Regulation S-T Rule 101(c)(16) (17 CFR 232.101(c)(16)). Although the Commission's EDGAR database contains an entry signifying the receipt of paper documents, materials received in paper are not accessible through the EDGAR system.

[179] Note 1 to Rule 12g3-2(e). Rule 12g3-2(b) requires an exempt issuer to submit substantially the same categories of home country documents as a reporting issuer must furnish to the Commission under cover of Form 6-K. Moreover, both Rule 12g3-2(b) and Form 6-K state that only material information need be furnished under the rule and form. See Rule 12g3-2(b)(3) (17 CFR 240.12g3-2(b)(3)) and General Instruction B to Form 6-K.

information required under Rule 12g3-2(b)(1)(iii).[180] The purpose of this requirement is to alert investors and the Commission regarding where investors and others may find the company's home country documents should a problem arise concerning the Internet location of those documents.

Currently non-reporting issuers that seek the Rule 12g3-2(b) exemption must submit their letter application for the exemption and their home country documents to the Commission in paper. The same primary reason for requiring an issuer to publish its home country documents electronically after it terminates its reporting obligations under Rule 12h-6 applies equally to current Rule 12g3-2(b) exempt companies and the non-reporting companies that eventually will apply for the exemption. In each case, the electronic posting of an issuer's home country documents will increase an investor's ability to access those documents.

Therefore, we are adopting, as proposed, an amendment to Rule 12g3-2 to permit a foreign private issuer that, upon application to the Commission and not after filing Form 15F, has obtained or will obtain the Rule 12g3-2(b) exemption to publish its home country documents that it is required to furnish on a continuous basis under Rule 12g3-2(b)(1)(iii) on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market.[181] As a condition to this electronic posting, an issuer that wishes to use this procedure will have

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[180] Note 3 to Rule 12g3-2(e). An issuer will not have to update the Form 15F to reflect a change in that address.

[181] New Exchange Act Rule 12g3-2(f) (17 CFR 240.12g3-2(f)). Parties that commented on the reproposed extension of Rule 12g3-2(b) supported this electronic publishing provision for issuers claiming the Rule 12g3-2(b) other than through Rule 12h-6. See, for example, the letters from the ABA and Skadden Arps.

to comply with the English translation requirements of reproposed Rule 12g3-2(e). It also will have to provide the Commission with the address of its Internet Web site or that of the electronic information delivery system in its primary trading market in its application for the Rule 12g3-2(b) exemption or in an amendment to that application.

Currently the Commission does not have an established means for a non-reporting company to submit electronically to the Commission its initial documents under Rule 12g3-2(b)(1)(i) and (ii).[182] Therefore, an applicant will have to continue to submit its letter application and the home country documents submitted in support of its initial application to the Commission in paper.[183]

At both the proposing and reproposing stages, some commenters suggested that the Commission impose a specific time limit, for example three years, governing how long an issuer must keep its home country documents on its Internet Web site.[184] We decline to adopt a specific time limit primarily because different types of home country documents may require different periods of electronic posting. While an issuer will be required to post electronically a home country document for a reasonable period of time, what constitutes a reasonable period will depend on the nature and purpose of the home country document. At a minimum, we suggest companies provide Web site access to their home country reports for at least a 12 month period.

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[182] 17 CFR 240.12g3-2(b)(1)(i) and (ii).

[183] As under current practice, the applicant should send these initial materials to the Commission's Office of International Corporate Finance in the Division of Corporation Finance.

[184] See Part II.H.2 of the Reproposing Release and, more recently, the letter from Sullivan & Cromwell.

We also suggest that, if an issuer publishes its home country documents required under Rule 12g3-2(b) on an electronic information delivery system or an Internet Web site that is not in English, the issuer provide a prominent link on its Internet Web site directing investors to those home country documents in English.

I. Concerns Regarding Securities Act Rule 701

Some commenters asked that we clarify the availability of Securities Act Rule 701[185] for a foreign private issuer that terminates its registration and reporting obligations under Rule 12h-6. By its terms, Rule 701 is available to any issuer that is not subject to the reporting requirements of Exchange Act section 13 or 15(d). Therefore, upon the effectiveness of termination of registration and reporting requirements under Rule 12h-6, a foreign private issuer would appear to satisfy this condition of Rule 701.

As we noted when originally proposing Rule 12h-6, before the filing of a Form 15F, a foreign private issuer would have to file a post-effective amendment to terminate the registration of its remaining unsold securities under any of its Securities Act registration statements.[186] This would include a Form S-8 registration statement relating to securities issuable under certain compensatory benefit plans. After the effectiveness of the Form 15F, a foreign private issuer would be able to rely on Rule 701 with respect to unsold securities that had previously been covered by the Form S-8 registration statement.

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[185] 17 CFR 230.701. Rule 701 provides a Securities Act exemption for the offer and sale of securities to employees and others pursuant to certain compensatory benefit plans and contracts relating to compensation.

[186] See the Original Proposing Release at n. 45.

III. PAPERWORK REDUCTION ACT ANALYSIS

The final rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[187] The titles of the affected collection of informations are Form 20-F (OMB Control No. 3235-0288), Form 40-F (OMB Control No. 3235-0381), Form 6-K (OMB Control No. 3235-0116), new Form 15F, and submissions under Exchange Act Rule 12g3-2 (OMB Control No. 3235-0119).[188] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information such as Form 20-F or new Form 15F unless it displays a currently valid OMB control number. Compliance with the disclosure requirements of new Form 15F and new Rule 12h-6, which will affect the above collections of information, is mandatory.

Form 20-F sets forth the disclosure requirements for a foreign private issuer's annual report and registration statement under the Exchange Act as well as many of the disclosure requirements for a foreign private issuer's registration statements under the Securities Act. We adopted Form 20-F pursuant to the Exchange Act and the Securities Act in order to provide investors with information about foreign private issuers that have registered securities with the Commission.

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[187] 44 U.S.C. 3501 et seq.

[188] A limited number of foreign private issuers file annual reports on Form 10-K. In voluntarily electing to file periodic reports using domestic issuer forms, these issuers seem to have closely aligned themselves with the U.S. market. Accordingly, for the purpose of the Paperwork Reduction Act Analysis, these issuers do not appear likely to terminate their Exchange Act registration under new Rule 12h-6, and we have assumed that none of these companies will seek to use Rule 12h-6. Foreign private issuers that file periodic reports using domestic issuer forms will be eligible, nonetheless, to use Rule 12h-6.

Form 40-F sets forth the disclosure requirements regarding the annual report and registration statement under the Exchange Act for a Canadian issuer that is qualified to use the Multijurisdictional Disclosure System ("MJDS"). We adopted Form 40-F pursuant to the Exchange Act in order to permit qualified Canadian issuers to prepare their Exchange Act annual reports and registration statements based primarily in accordance with Canadian requirements.

Form 6-K is used by a foreign private issuer to report material information that it:

- makes or is required to make public under the laws of the jurisdiction of its incorporation, domicile or organization (its "home country");
- files or is required to file with its home country stock exchange that is made public by that exchange; or
- distributes or is required to distribute to its security holders.

A foreign private issuer may attach annual reports to security holders, statutory reports, press releases and other documents as exhibits or attachments to the Form 6-K. We adopted Form 6-K under the Exchange Act in order to keep investors informed on an ongoing basis about foreign private issuers that have registered securities with the Commission.

New Form 15F is the form that a foreign private issuer must file when terminating its Exchange Act reporting obligations under new Exchange Act Rule 12h-6. Form 15F requires a filer to disclose information that will help investors understand the foreign private issuer's decision to terminate its Exchange Act reporting obligations and assist Commission staff in assessing whether the Form 15F filer is eligible to terminate its Exchange Act reporting obligations pursuant to Rule 12h-6.

Exchange Act Rule 12g3-2 is an exemptive rule that, under paragraph (b) of that rule, provides an exemption from Exchange Act section 12(g) registration for a foreign private issuer that, in addition to satisfying other requirements, submits copies of its material home country documents to the Commission on an ongoing basis. We adopted paragraph (b) of Rule 12g3-2 in order to provide information for U.S. investors concerning foreign private issuers with limited securities trading in U.S. capital markets.

The hours and costs associated with preparing, filing and sending Forms 20-F, 40-F, 6-K and 15F, and making submissions under Exchange Act Rule 12g3-2(b) constitute reporting and cost burdens imposed by those collections of information. We based our estimates of the effects that the final rule amendments will have on those collections of information primarily on our review of the most recently completed PRA submissions for Forms 20-F, 40-F, and 6-K, and for submissions under Rule 12g3-2(b), on the particular requirements for those forms and submissions, and on relevant information, for example, concerning comparative trading volume for numerous filers of those forms.

Final Rule 12h-6 will permit a foreign private issuer to terminate permanently its Exchange Act reporting obligations, including the obligation to file an annual report on Form 20-F or 40-F and the obligation to submit Form 6-K reports, after filing a Form 15F. Final Rule 12h-6 and the accompanying rule amendments will also enable a foreign private issuer to claim the Rule 12g3-2(b) exemption immediately upon the effectiveness of its termination of reporting pursuant to the new exit rule, and to publish copies of its home country documents required by Rule 12g3-2(b) on its Internet Web site instead of submitting them in paper to the Commission. We have based the annual

burden and cost estimates of the adopted rule amendments on Forms 20-F, 40-F, 6-K and 15F, and on the home country submissions required under Rule 12g3-2(b), on the following estimates and assumptions:

- a foreign private issuer incurs or will incur 25% of the annual burden required to produce each Form 20-F or 40-F report or Form 15F;
- outside firms, including legal counsel, accountants and other advisors, incur or will incur 75% of the burden required to produce each Form 20-F or 40-F report or Form 15F at an average cost of $400 per hour;
- a foreign private issuer incurs or will incur 75% of the annual burden required to produce each Form 6-K report and Rule 12g3-2(b) submission, not including English translation work, and 25% of the annual burden required to perform the English translation work for Form 6-K reports and Rule 12g3-2(b) submissions; and
- outside firms, including legal counsel, accountants and other advisors, incur or will incur 25% of the burden required to produce each Form 6-K report and Rule 12g3-2(b) submission, not including English translation work, at an average cost of $400 per hour, and 75% of the annual burden resulting from the English translation work for Form 6-K reports and Rule 12g3-2(b) submissions, at an average cost of $125 per hour.

As was the case with the originally proposed and reproposed rule amendments, the estimated effects of the adopted rule amendments reflect the initial phase-in period of the Exchange Act termination process under new Rule 12h-6 and Form 15F during the first year of availability. We expect that most of these estimated effects will occur on a

one-time, rather than a recurring, basis. While we expect that some issuers will terminate their Exchange Act reporting under Rule 12h-6 and file Form 15F in subsequent years, we do not expect the resulting burdens and costs to be of the same magnitude as the burdens and costs currently expected during the first year. Moreover, we expect that over time, the number of foreign private issuers that are encouraged to enter the Exchange Act reporting system as a result of the rule amendments will increase so that, on an annual basis, the number of foreign companies entering the Exchange Act reporting regime will exceed the number exiting that regime.

We published a notice requesting comment on the collection of information requirements in the Original Proposing Release and submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[189] OMB subsequently approved the proposed requirements without change. We received several comment letters regarding the proposed rule amendments, although none addressed their estimated effects on the collection of information requirements. We revised and reproposed Rule 12h-6 and the accompanying rule amendments in response to these comments. We also revised the estimated reporting and cost burdens for the reproposed rules.[190] Because we are adopting Rule 12h-6 and the accompanying rule amendments substantially as reproposed, the estimated reporting and cost burdens for the adopted rules remain the same as the estimated reporting and cost burdens for the reproposed rules, as discussed below.

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[189] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[190] See Part III of the Reproposing Release.

A. Form 20-F

During the first year of effectiveness of reproposed Rule 12h-6, we estimate that as many as 25% of Form 20-F filers could terminate their Exchange Act reporting obligations under the new rule.[191] However, we continue to believe that Rule 12h-6 will encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time. Consequently, during the first effective year of Rule 12h-6, the number of Form 20-F annual reports filed could increase by 5%, leading to a net decrease of 20% for Form 20-Fs filed over this same period. This net decrease would cause:

- the number of Form 20-Fs filed to decrease to 880;[192]
- the total number of burden hours required to produce Form 20-F[193] to decrease to 2,314,400 total hours;[194]
- the total number of burden hours required by foreign private issuers to produce Form 20-F to decrease to 578,600 total hours;[195] and

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[191] As noted at the reproposing stage, a review by the Commission's Office of Economic Analysis of trading volume data on a sample of foreign Exchange Act reporting companies that filed Form 20-F during 2004 suggested that approximately 30% of filers would meet the U.S. trading volume threshold of the reproposed rule. See Part III, n. 137 of the Reproposing Release. A more recent review of the Office of Economic Analysis of trading volume data on foreign Exchange Act reporting companies with common equity trading during 2005 indicates that an estimated 29% of filers would meet the U.S. trading volume threshold of the adopted rule. That percentage may vary by region.

[192] 1,100 Form 20-Fs filed annually (prior to this rulemaking) x .20 = 220; 1,100 - 220 = 880 Form 20-Fs filed annually.

[193] As in the Reproposing Release, we estimate that a foreign private issuer requires on average 2,630 hours to produce each Form 20-F.

[194] 880 Form 20-Fs filed annually x 2,630 hours per Form 20-F = 2,314,400 hours.

[195] 880 Form 20-Fs x 2,630 hours per Form 20-F x .25 = 578,600 hours. Thus, we estimate that, during the first year of effectiveness of Rule 12h-6, foreign private issuers could incur a reduction of 144,650 hours in the number of burden hours required to produce Form 20-F. 220 Form 20-Fs x 2,630 hrs x .25 = 144,650 hours. Using an estimated hourly rate of $175 for in-house work,

- the cost incurred by outside firms[196] to produce Form 20-F to total $694,320,000.[197]

B. Form 40-F

During the first year of effectiveness of Rule 12h-6, we estimate that as many as 10% of Form 40-F filers could terminate their Exchange Act reporting obligations under the new rule.[198] However, the reproposed rule could encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time, including some that would be eligible to use the MJDS forms, including the Form 40-F annual report. Consequently, over this same period, the number of Form 40-F annual reports filed could increase by approximately 3%, resulting in a net decrease of 7% for Form 40-Fs filed over this same period.[199] This net decrease would cause:

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foreign private issuers could incur Form 20-F cost savings of $25,313,750 during Rule 12h-6's first year of effectiveness. 144,650 hrs. x $175/hr. = $25,313,750.

[196] We estimate cost savings of $173,580,000 regarding outside firms' production of Form 20-Fs during Rule 12h-6's first year of effectiveness. 220 Form 20-Fs x 2,630 hrs. x .75 x $400/hr. = $173,580,000. Thus, during the first year of its effectiveness, Rule 12h-6 could result in total estimated Form 20-F cost savings of $198,893,750. $25,313,750 + $173,580,000 = $198,893,750.

[197] 880 Form 20-Fs x 2,630 hours x .75 x $400/hour = $694,320,000. The $108,487,500 increase reflects the increase in the estimated outside firm hourly rate from $300 to $400.

[198] We do not expect the expanded scope of reproposed Rule 12h-6 to have as great an effect on MJDS filers as other foreign reporting companies since, typically, the U.S. trading volume relating to those shares is significant. Moreover, because of their close proximity to U.S. capital markets, we believe MJDS filers are less likely to seek to terminate their Exchange Act reporting obligations than other foreign private issuers. Accordingly, based on current experience, we expect no more than 10% of Form 40-F filers will terminate their Exchange Act reporting obligations under Rule 12h-6.

[199] This is the same percentage previously estimated under the originally proposed rule amendments.

- the number of Form 40-Fs filed to total 125;[200]
- the number of burden hours required to produce Form 40-F[201] to total 53,375 total hours;[202]
- the number of burden hours required by foreign private issuers to produce Form 40-F to total 13,344 hours;[203] and
- the cost incurred by outside firms to produce Form 40-F to total $16,012,500.[204]

C. Form 6-K

During the first year of effectiveness of Rule 12h-6, we estimate that as many as 23% of foreign private issuers that furnish Form 6-K reports could terminate their Exchange Act reporting obligations under the new rule.[205] However, the adopted rule

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[200] 134 Form 40-Fs filed annually (prior to this rulemaking) x .07 = 9; 134 - 9 = 125 Form 40-Fs filed annually.

[201] As in the Reproposing Release, we estimate that it takes 427 hours on average to produce a Form 40-F report.

[202] 125 Form 40-Fs filed annually x 427 hours per Form 40-F = 53,375 hours.

[203] 125 Form 40-Fs filed annually x 427 hours per Form 40-F x .25 = 13,344 hours. Thus, we estimate that, during the first year of effectiveness of Rule 12h-6, foreign private issuers could incur a reduction of 961 hours in the number of burden hours required to produce Form 40-F. 9 Form 40-Fs x 427 hrs. x .25 x = 961 hrs. This could result in estimated Form 40-F cost savings for foreign private issuers of $168,175. 961 hrs. x $175/hr. = $168,175.

[204] 125 Form 40-Fs filed annually x 427 hours per Form 40-F x .75 x $400/hour = $16,012,500. This estimate corresponds to estimated cost savings of $1,152,900 in connection with outside firms' production of Form 40-F during reproposed Rule 12h-6's first year of effectiveness. 9 x 427 hrs. x .75 x $400/hr. = $1,152,900. Thus, during the first year of its effectiveness, Rule 12h-6 could result in estimated total Form 40-F cost savings of $168,175 + $1,152,900 = $1,321,075.

[205] This estimate is based on the estimated number of Form 20-F and Form 40-F filers that are expected to terminate their Exchange Act reporting obligations under 2h-6. 1,100 Form 20-Fs x .25 = 275; 134 Form 40-Fs x .10 = 13; 288 = .23 x 1,234.

could encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time, including those that will furnish Form 6-K reports. Consequently, over this same period, the number of Form 6-K reports furnished could increase by as much as 5%,[206] resulting in a net decrease of 18% for Form 6-Ks furnished over this same period. This net decrease would cause:

- the number of Form 6-K reports furnished to decrease to 12,022;[207]
- the total number of burden hours required to produce the Form 6-Ks[208] to decrease to 104,591 total hours;[209]
- the total number of burden hours required by foreign private issuers[210] to produce Form 6-K to decrease to 65,369 hours;[211] and

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[206] This estimate is based on the estimated number of foreign private issuers that are expected to enter the Exchange Act reporting regime and file Form 20-Fs or Form 40-Fs as a result of this rulemaking during the first year of effectiveness. 1,100 Form 20-Fs x .05 = 55; 134 Form 40-Fs x .03 = 4; 59 = .05 x 1,234.

[207] 14,661 Form 6-K reports x .18 = 2,639; 14,661-2,639 = 12,022 Form 6-K reports.

[208] In the Original and Reproposing Releases, we estimated that, prior to this rulemaking, it took a total of 127,197 annual burden hours to produce the 14,661 Form 6-Ks, or approximately 8.7 hours per Form 6-K (for work performed by foreign private issuers and outside firms). We continue to use this 8.7 hour estimate for the final rule amendments.

[209] 12,022 Form 6-K reports x 8.7 hours = 104,591 hours.

[210] We estimate that, during the first year of effectiveness of Rule 12h-6, foreign private issuers could incur a reduction of 14,349 hours in the number of burden hours required to produce Form 6-K. 2,639 Form 6-Ks x 8.7 hours = 22,959 hours; 22,959 hours x .25 = 5,740 hours of English translation work; 5,740 hours x .25 = 1,435 hours of English translation work for foreign private issuers; 22,959 x .75 = 17,219 hours of non-English translation work; 17,219 x .75 = 12,914 hours of non-English translation work for foreign private issuers; 1,435 + 12,914 = 14,349 hours. This could result in estimated Form 6-K cost savings of $2,511,075 for foreign private issuers during the first year of Rule 12h-6's effectiveness. 14,349 hrs. x $175/hr. = $2,511,075.

[211] 104,591 hours x .25 = 26,148 hours for English translation work; 104,591 hours - 26,148 hours = 78,443 hours for non-English translation work; 78,443 hours x .75 = 58,832 hours for non-English translation work performed by foreign private issuers; 26,148 hours x .25 = 6,537 hours of English translation work performed by foreign private issuers; 58,832 hours + 6,537 hours =

- the cost incurred by outside firms[212] to produce Form 6-K to total $10,295,775.[213]

D. Form 15F

During the first year of effectiveness of Rule 12h-6, we estimate that as many as 351 foreign private issuers[214] could file a Form 15F to terminate their Exchange Act reporting obligations, which would cause:

- the number of burden hours required to produce Form 15F[215] to total 10,530 hours;[216]

65,369 total hours for Form 6-K work performed by foreign private issuers, or 5.4 hours for foreign private issuer work per Form 6-K.

[212] We estimate cost savings of $2,260,025 in connection with outside firms' production of Form 6-K during Rule 12h-6's first year of effectiveness. 5,740 hrs. x .75 x $125/hour = $538,125 for English translation work; 17,219 x .25 x $400/hour = $1,721,900 for non-English translation work. $538,125 + $1,721,900 = $2,260,025 in Form 6-K cost savings for outside firms. Thus, Rule 12h-6 could result in total estimated Form 6-K cost savings of $4,771,100. $2,511,075 + $2,260,025 = $4,771,100.

[213] 78,443 hours x .25 = 19,611 hours x $400/hour = $7,844,400 for non-translation work; 26,148 hours x .75 = 19,611 hours x $125/hour = $2,451,375 for English translation work; $7,844,400 + $2,451,375 = $10,295,775 for total work performed by outside firms. The $2,078,475 increase reflects the increase in the estimated outside firm hourly rate from $300 to $400.and the increase in the estimated outside firm rate for English translation work from $75 to $125/hour based on current information provided by financial printer representatives.

[214] We derived this estimate from the number of Form 20-F filers (275) and Form 40-F filers (13) estimated to elect to terminate their Exchange Act reporting obligations under Rule 12h-6 during the first year of the rule's effectiveness. We then added to this sum (288) the number of prior Form 15 filers (63) estimated to file a Form 15F during the first year of Rule 12h-6's effectiveness in order to make their Form 15 termination or suspension of reporting obligations permanent. The latter number is based on the approximate number of foreign private issuers that filed a Form 15 from 2003 through the present.

[215] In the Original and Reproposing Releases, we estimated that the production of each Form 15F would require 30 hours. We continue to use this estimate for the final rule amendments.

[216] 351 Form 15Fs x 30 = 10,530 hours.

- foreign private issuers to incur a total of 2,633 hours to produce Form 15F;[217] and
- outside firms to incur a total cost of $3,159,200[218] to produce Form 15F.[219]

E. Rule 12g3-2(b) Submissions

We estimate that 685 foreign private issuers currently have obtained the Rule 12g3-2(b) exemption.[220] In addition, we estimate that each Rule 12g3-2(b) exempt issuer currently makes 12 Rule 12g3-2(b) submissions per year for a total of 8,220 Rule 12g3-2(b) submissions. We further estimate that it takes a total of 32,880 annual burden hours, or 4 annual burden hours per submission (for work performed by foreign private issuers and outside firms), to produce the 8,220 Rule 12g3-2(b) submissions.[221]

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[217] 10,530 hours x .25 = 2,633 hours. This could result in estimated Form 15F costs for foreign private issuers of $460,775 during Rule 12h-6's first year of effectiveness. 2,633 hrs. x $175 = $460,775.

[218] 10,530 hours x .75 = 7,898 hours; 7,898 hours x $400/hour = $3,159,200. The $3,159,200 increase reflects the increase in the number of estimated Form 15F filers and the increase in the estimated outside firm hourly rate from $300 to $400.

[219] Thus, Rule 12h-6 could result in total estimated Form 15F costs of $3,619,975 during its first year of effectiveness. $460,775 + $3,159,200 = $3,619,975.

[220] This estimate is based on Commission staff's most recent annual review of the number of current Rule 12g3-2(b) exempt companies, which will be available soon on our Internet Web site at http://www.sec.gov/divisions/corpfin.shtml.

[221] These estimates are the same as the estimates presented in the Reproposing Release. As we stated in that release, the estimates represent an adjustment of 31,080 hours from the 1,800 total hours previously reported for Rule 12g3-2(b) submissions. They reflect a re-evaluation of the number of foreign private issuers that currently claim the Rule 12g3-2(b) exemption, the number of Rule 12g3-2(b) submissions made by them, and the number of burden hours required for their production, in addition to assessing the effects on Rule 12g3-2(b) submissions expected to result from adoption of the final rule amendments. We believe these estimates more accurately reflect the current burden hours required for the collections of information submitted under Rule 12g3-2(b).

During the first year of effectiveness of reproposed Rule 12h-6, we estimate that as many as 351 foreign private issuers could claim the Rule 12g3-2(b) exemption immediately upon the effectiveness of their termination of reporting under new Rule 12h-6.[222] This increase in the number of Rule 12g3-2(b) exempt issuers would cause:

- the number of issuers claiming the Rule 12g3-2(b) exemption to total 1,036;
- the number of Rule 12g3-2(b) submissions made annually to total 12,432;
- the number of annual burden hours required to produce these Rule 12g3-2(b) submissions to total 49,728 hours;
- foreign private issuers to incur a total of 31,080 annual burden hours to produce these Rule 12g3-2(b) submissions, or 2.5 annual burden hours per submission;[223] and
- outside firms to incur a total cost of $4,909,275[224] to produce the

[222] This amount includes the estimated 288 Form 20-F and 40-F filers expected to terminate their Exchange Act reporting obligations under Rule 12h-6 as well as the estimated 63 prior Form 15 filers expected to file a Form 15F to make their prior termination or suspension of reporting under Rule 12h-6.

[223] Because the home country document submission requirement under Rule 12g3-2(b) is similar to the home country document submission requirement under Form 6-K, we have used the same assumptions regarding the English and non-English translation work required under Rule 12g3-2(b) that we adopted for Form 6-K submissions. Accordingly: 49,728 hours x .25 = 12,432 total annual burden hours for English translation work; 49,728 - 12,432 = 37,296 total annual burden hours required for non-English translation work; 37,296 hours x .75 = 27,972 total annual burden hours incurred by foreign private issuers for non-English translation work; 12,432 hours x .25 = 3,108 total annual hours incurred by foreign private issuers for English translation work; 27,972 + 3,108 = 31,080 total annual burden hours incurred by foreign private issuers for Rule 12g3-2(b) submissions, or 2.5 annual burden hours per submission. Of the 31,080 hours, 10,530 hours would result from adoption of the new rules and 20,550 hours represents an adjustment from the previous PRA estimates for Rule 12g3-2 submissions.

[224] 49,728 hours x .25 = 12,432 hours for English translation work; 12,432 hours x .75 = 9,324 hours; 9,324 hours x $125 = $1,165,500 for English translation work; 49,728 hours - 12,432 hours = 37,296 hours for non-English translation work; 37,296 hours x .25 = 9,324 hours; 9,324

Rule 12g3- 2(b) submissions.[225]

IV. COST-BENEFIT ANALYSIS

A. Expected Benefits

New Exchange Act Rule 12h-6 and the accompanying rule amendments will benefit U.S. investors to the extent that they remove a possible disincentive for foreign companies that are not currently Exchange Act reporting companies to register their equity and debt securities with the Commission. In response to foreign companies' concerns about Exchange Act reporting and other obligations, these rules will expand the criteria by which a foreign company may terminate those obligations. In so doing, the adopted rule amendments should over time remove an impediment to foreign company access and participation in U.S. public capital markets while still providing U.S. investors with the protections afforded by our Exchange Act reporting regime.

The adopted rule amendments should remove a disincentive for foreign firms to enter our Exchange Act reporting regime by lowering the cost of exiting from that regime. Investors are expected to benefit from the amendments by being able to purchase

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hours x $400 = $3,729,600 for non-English translation work; $1,165,500 + $3,729,600 = $4,895,100 for total work performed by outside firms. Of that total amount, $1,658,475 would result from adoption of the new rules and $3,236,625 constitutes an adjustment from the previous PRA estimates for Rule 12g3-2 submissions.

[225] We further estimate that new Rule 12h-6 and the accompanying rule amendments could result in total estimated Rule 12g3-2(b) costs of $3,501,225 during the first year of their effectiveness. 351 issuers x 12 submissions/issuer x 2.5 hrs./submission = 10,530 hours; 10,530 hours x $175/hr. = $1,842,750 in Rule 12g3-2(b) submission costs for foreign private issuers. For outside firm costs: 351 issuers x 12 submissions/issuer x 4 hrs./submission = 16,848 hours; 16,848 x .25 = 4,212 hours of English translation work; 4,212 x .75 x $125 = $394,875 of English translation costs for outside firms. 16,848 hours x .75 = 12,636 hours of non-English translation work; 12,636 x .25 x $400 = $1,263,600 of non-English translation costs for outside firms. $394,875 + $1,263,600 = $1,658,475 in total Rule 12g3-2(b) submission costs for outside firms. $1,842,750 + $1,658,475 = $3,501,225 in total estimated Rule 12g3-2(b) costs.

shares in foreign firms that have been registered with the Commission and that, therefore, provide a high level of investor protection. In addition, U.S. investors may incur lower transaction costs when trading a foreign company's shares on a U.S. exchange relative to a foreign exchange.

To remove a disincentive for foreign companies to enter U.S. public capital markets, the adopted rule amendments will benefit U.S. investors by enabling a foreign Exchange Act reporting company to lower its costs of compliance in connection with Exchange Act deregistration. This reduction in the cost of compliance will directly benefit both foreign companies and their investors, including those resident in the United States.

The final rule amendments will result in foreign private issuers incurring lower costs of Exchange Act compliance in four possible ways. First, rather than require a foreign private issuer to determine the number of its U.S.holders, as is the case under the current exit rules, new Rule 12h-6 will enable a foreign private issuer to rely solely on trading volume data regarding its securities in the United States and on a worldwide basis when determining whether it may terminate its Exchange Act reporting obligations. Because trading volume data is more easily obtainable than information regarding its U.S. shareholders, the new rule should lower the costs of Exchange Act termination for foreign private issuers.

Second, new Rule 12h-6 will allow a foreign firm to terminate its Exchange Act reporting obligations regarding a class of equity securities and immediately obtain the Rule 12g3-2(b) exemption. Accordingly, such a terminating foreign private issuer would

be able to avoid the costs associated with continued annual verification that its number of holders of record remains below 300.

Third, new Rule 12h-6 will permit an issuer to rely on the assistance of an independent information services provider when determining whether it falls below the 300-holder standard. The option to hire an independent information services provider may be a more efficient and cost-effective mechanism to make that determination. Moreover, a foreign company may save costs when assessing its eligibility to terminate its registration and reporting under the 300-holder provision of Rule 12h-6, since the rule will limit the number of jurisdictions in which a foreign private issuer must search for the amount of securities represented by accounts of customers resident in the United States held by brokers, dealers, banks and other nominees. The current rules require a foreign private issuer to conduct a worldwide search for such U.S. customer accounts.

Fourth, once having terminated its reporting obligations under new Rule 12h-6, a foreign company will no longer be required to incur costs associated with producing an Exchange Act annual report or interim Form 6-K reports.[226] Based on estimates and assumptions used for the purpose of the Paperwork Reduction Act, these estimated cost savings could total approximately $200,000,000 for the first year of Rule 12h-6's effectiveness.[227]

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[226] We recognize that, as a result of terminating their Exchange Act reporting obligations under Rule 12h-6, foreign firms may accrue other cost savings that are not specifically quantified in this section. One such example is an investment in an internal control system in order to comply with the Sarbanes-Oxley Act.

[227] As discussed in Part III of this release, for the first year of Rule 12h-6's effectiveness, estimated cost savings in connection with Forms 20-F, 40-F and 6-K could amount to, respectively, $198,893,750, $1,321,075, and $4,771,100, for a total of $204,985,925. These cost savings could be less to the extent that more foreign private issuers register with the Commission over time as a result of the adoption of Rule 12h-6.

B. Expected Costs

Investors could incur costs from the adopted rule amendments to the extent that currently registered foreign companies respond to the rule changes by terminating their Exchange Act registration and reporting obligations with respect to their equity and debt securities. If Exchange Act disclosure requirements provide more information or protection to U.S. or other investors than is provided in an issuer's primary trading market, then all investors, both U.S. and foreign, may suffer the costs of losing that information and protection upon Exchange Act termination.[228] If this is the case, the announcement that a foreign firm is terminating its Exchange Act reporting may result in a loss of share value and the incurrence by investors of higher costs from trading in the firm's equity and debt securities.

There are costs associated with the filing of new Form 15F, which is a requirement for a foreign private issuer that terminates its Exchange Act registration and reporting under Rule 12h-6.[229] A foreign private issuer will also incur costs in connection with having to post on its Internet Web site in English its material home country documents required to maintain the Rule 12g3-2(b) exemption that it will have received upon the effectiveness of its termination of reporting under new Rule 12h-6.[230]

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[228] Conversely, in countries that have similar regulatory regimes and levels of investor protection, the impact of U.S. deregistration may be mitigated.

[229] As discussed in Part III of this release, based on estimates and assumptions adopted for the purpose of the Paperwork Reduction Act, these costs could total $3,619,975 during the first year of the new form's use.

[230] As discussed in Part III of this release, based on estimates and assumptions adopted for the Paperwork Reduction Act, these resulting Rule 12g3-2(b) costs could amount to $3,501,225.

We expect that new Rule 12h-6 will enable some foreign registrants to avoid other recent U.S. regulation, such as the Sarbanes-Oxley Act. Investors will lose the benefits afforded by the Sarbanes-Oxley Act to the extent a current foreign registrant is not fully subject to that Act.

Some U.S. investors might seek to trade in the equity securities of a foreign company following its termination of Exchange Act reporting under Rule 12h-6. U.S. investors seeking to trade the former reporting company's securities in the U.S. may be forced to trade in over-the-counter markets such as the one administered by Pink Sheets, LLC, which could result in higher transaction costs than if the foreign company had continued to have a class of securities registered with the Commission.

U.S. investors seeking to trade the former reporting company's securities in its primary trading market also could incur additional costs. For example, U.S. investors who held the securities in the form of ADRs could incur costs associated with the depositary's conversion of the ADRs into ordinary shares.[231] Moreover, some U.S. investors could incur costs associated with finding and contracting with a new broker-dealer who is able to trade in the foreign reporting company's primary trading market. U.S. investors may face additional costs due to the cost of currency conversion and higher transaction costs trading the securities in a foreign market.

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[231] A foreign company may terminate its ADR facility whether or not it is an Exchange Act registrant, and adopted Rule 12h-6 does not require the termination of ADR facilities. In fact, by granting foreign private issuers the Rule 12g3-2(b) exemption immediately upon their termination of reporting with regard to a class of equity securities, Rule 12h-6 will enable foreign private issuers to retain their ADR facilities as unlisted facilities following their termination of reporting under Rule 12h-6. As adopted, Rule 12h-6 will require an issuer that has terminated a sponsored ADR facility to wait a year before it may file a Form 15F in reliance on the trading volume provision of Rule 12h-6 if, on the date of termination, the issuer does not meet the trading volume benchmark.

Some investors who wish to make investment decisions regarding former Exchange Act reporting foreign companies also may incur costs to the extent that the information provided by such companies pursuant to any home country regulations is different from that which currently is required under the Exchange Act. Such investors could incur costs associated with hiring an attorney or investment adviser, to the extent that they have not already done so, to explain the material differences, if any, between a foreign company's home country reporting requirements, as reflected in its home country annual report posted on its Internet Web site, and Exchange Act reporting requirements.

V. CONSIDERATION OF IMPACT ON THE ECONOMY, BURDEN ON COMPETITION AND PROMOTION OF EFFICIENCY, COMPETITION AND CAPITAL FORMATION ANALYSIS

When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act[232] requires us to consider the impact that any new rule will have on competition. Section 23(a)(2) also prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act[233] requires the Commission to consider whether the action will promote efficiency, competition and capital formation.

In the Reproposing Release, we considered reproposed Rule 12h-6 and the accompanying reproposed rule amendments in light of the standards set forth in the

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[232] 15 U.S.C. 78w(a)(2).

[233] 15 U.S.C. 78c(f).

above statutory sections. We solicited comment on whether, if adopted, reproposed Rule 12h-6 and the other reproposed rule amendments would result in any anti-competitive effects or promote efficiency, competition and capital formation. We further encouraged commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that might result from adoption of reproposed Rule 12h-6 and the other reproposed rule amendments.

We did not receive any comments or any empirical data in this regard concerning reproposed Rule 12h-6 and the accompanying rule amendments. Accordingly, since the adopted rules are substantially similar to the reproposed rules, we continue to believe the new rules will provide a foreign reporting company with a more efficient option of exiting the Exchange Act reporting system when U.S. investor interest has become relatively scarce. In so doing, new Rule 12h-6 and the other rule amendments should encourage foreign private issuers to register their equity and debt securities with the Commission by reassuring foreign private issuers that, should interest in the U.S. market for their securities decline sufficiently, they may exit the Exchange Act reporting system with little difficulty.

By providing increased flexibility for foreign private issuers regarding our Exchange Act reporting system, the adopted rules should encourage foreign companies to participate in U.S. capital markets as Exchange Act reporting companies to the benefit of investors. In so doing, the adopted rules should foster increased competition between domestic and foreign firms for investors in U.S. capital markets.