



MAKINSON COWELL

By e-mail to: rule-comments@sec.gov

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

February 12, 2007

Re: 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 - File No. S7-12-05

Dear Ms Morris

As noted in our comments on the original proposal for a new deregistration rule, our firm has assisted a number of UK and continental European companies who have sought deregistration under the current rule. Our role has been helping them with the counting and monitoring process. Our comments focus on the practical issues in obtaining and using the data required under the re-proposed rule.

We have placed particular emphasis on ways to help simplify the accommodation of off-exchange trading volumes, which is one of the issues that the Commission noted as being complex.

We propose that the overall data collection process and the off-exchange trading issue could be somewhat simplified through several modifications or clarifications to the re-proposed rule without compromising its objectives:

1. For the US volumes used in the ADTV numerator, specify that for companies trading on NYSE or Nasdaq that the total trading volumes as aggregated by NYSE or Nasdaq would be acceptable. They already capture on-exchange and off-exchange data from alternative trading systems and other sources. The issuer should not be required to have to go to all of the original sources, which would be complex, costly and error prone.
2. Similarly for the ADTV denominator, specify that for any jurisdiction it would be acceptable to rely on total trading data as aggregated by the local exchanges or regulators without going to the original sources.
3. We agree with your comments that consistent with other rules, there is no need to make distinctions based on how various markets may measure and report trading volume differently. It should be left up to companies to find the most practical and representative methods.

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4. Specify that ADRs should be counted in terms of their equivalent number of underlying shares. One ADR often equals some multiple of the underlying shares.
5. Expressly exclude derivatives trading from the ADTV calculation.
6. Separate the determination of having a primary trading market that is outside the US from the requirement to use that primary market as the denominator in calculating ADTV.

The stated objectives of requiring a primary market as defined in the re-proposed rule are to assure that the primary trading market is not the US and that the issuer is subject to an overseas regulator with principal authority for regulating the issuance and trading of the issuer's securities and the issuer's disclosure to investors. These objectives would be met by setting as a precondition for deregistration that the class of security must have a primary trading market outside the US that meets the rule's definition i.e. "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" and that "the trading market for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the U.S. trading market for the issuer's securities." If a company did not meet those criteria then it would not be qualified to deregister.

Separately, the company would calculate its ADTV using worldwide volume as the denominator. The use of worldwide volume would be able to capture the off-exchange volumes that are publicly available, and which may be outside the two jurisdictions defining the primary market.

The inclusion of only markets in which the company has a listing is appropriate for the definition of the primary market, but is probably not necessary for the ADTV calculation. It should suffice to use the guideline that the sourcing of the volume data be obtained from appropriate markets where the information is generally widely available from a number of reliable sources.

7. Clarify the definition of a securities market to include all of the trading that comes under the jurisdiction of a single regulator. In the UK, for example, the market would be defined by all of the exchange and off-exchange activity regulated by the FSA including cross-border electronic trading platforms regulated out of London.

Regarding the 300 resident holder alternative, we strongly support all of the changes in the re-proposed rule's counting methodology. They will make the system much more practical and efficient for those companies that choose that course.

Regarding the 12-month waiting periods for delisting and ADR termination for companies that do not currently meet the deregistration criteria, we would be strongly in favor of eliminating these provisions and allowing the company and the market to determine whether a listing and ADR make sense in their individual circumstances.

We appreciate the SEC's thoughtful approach to the development of this rule. Please feel free to contact us to discuss any of the points above.

Yours sincerely

Handwritten signature of Bill Jenks in blue ink.

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Handwritten signature of Marian S. MacBryde in blue ink.

Marian MacBryde