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Change in SEC Policy on Draft Securities Act Submissions By Foreign Issuers

December 8, 2011

The SEC's Division of Corporation Finance announced today that it will limit the types of initial Securities Act of 1933 registration statements and amendments that foreign issuers may submit for review and comment on a non-public basis. For those foreign issuers impacted by this policy change, the Division will continue to review those registration statements or amendments that have been submitted on a non-public basis; however, the Division will require that all future amendments to those registration statements be filed publicly on the EDGAR system. We discuss the details of the Division's new policy below.

Securities Act registration statements generally are available to the public upon filing on the EDGAR system. Recognizing the unique circumstances facing foreign issuers accessing U.S. public markets for the first time, the Division historically has allowed those foreign issuers to submit Securities Act registration statements and amendments on a non-public basis. This policy has permitted those issuers to receive and respond to Division comments before making a public filing on the EDGAR system.

New Division Policy Regarding Initial Submissions of Securities Act Registration Statements

The Division announced on December 8, 2011 that it has modified its policy regarding the non-public submission of Securities Act registration

statements and amendments by foreign issuers. The Division's new policy is available **here**. Under its new policy, the Division will review non-public submissions of initial Securities Act registration statements and amendments by foreign issuers only if the issuer is:

- a foreign government registering its debt securities;
- a foreign private issuer that is listed or is concurrently listing its securities on a non-U.S. securities exchange;
- a foreign private issuer that is being privatized by a foreign government; or
- a foreign private issuer that can demonstrate that the public filing of an initial registration statement would conflict with the law of an applicable foreign jurisdiction.

The Division also stated that it may still require those foreign private issuers who fall into one of these categories to file their Securities Act registration statement or amendment publicly on the EDGAR system, particularly where there has been publicity about a proposed offering or listing or the presence of a competing bid in an acquisition transaction.

Transition -- The Treatment of Securities Act Registration Statements or Amendments That Have Been Submitted Confidentially Prior to the Division's Change in Policy

The Division addressed the application of its new policy to Securities Act registration statements or amendments that have been already submitted on a non-public basis. In this circumstance, the Division indicated that Securities Act registration statements or amendments that were submitted on a non-public basis and received by the Division prior to December 8, 2011 but do not fall within one of the four categories discussed above will continue to be reviewed by staff without a public filing. Importantly, the Division also indicated that the next amendment to the registration statement, whether in response to comments issued by the Division or otherwise, must be filed publicly on the EDGAR system.

Treatment of Specific Types of Filings Under the New Division Policy

The Division's new policy establishes three categories of foreign issuers that will receive special treatment with regard to the non-public submission of Securities Act registration statements or amendments. Specifically, the Division stated that shell companies, blank check companies, and issuers with no or substantially no business operations will not be permitted to make non-public submissions of Securities Act registration statements or amendments.

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