

DR Advisor Alert

December 12, 2011

SEC Limits Conditions Under Which Non-U.S. Issuers Can Submit Initial Registration Statements and Amendments on a Non-Public Basis

On December 8, 2011, the U.S. Securities and Exchange Commission (SEC) announced changes to its policy for reviewing non-public submissions of initial registration statements¹ and amendments by foreign private issuers and foreign governments.

Because these non-U.S. issuers often face “unique circumstances” when registering securities to access the U.S. capital markets, the SEC has allowed these issuers to submit on a non-public basis first-time registration statements and amendments to them. This policy has allowed the SEC to review and comment on disclosures contained in these “draft” registration statements, and a foreign issuer or government to respond to SEC comments, before a filing is made public via the SEC’s EDGAR system.

As of December 8, 2011, the SEC will review a foreign issuer’s initial registration statements submitted on a non-public basis only where this registrant is: (i) a foreign government registering its debt securities; (ii) a foreign private issuer that is listed or is concurrently listing its securities on a non-U.S. securities exchange; (iii) a foreign private issuer that is being privatized by a foreign government; or (iv) 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.

Even if a non-U.S. issuer meets the above general parameters, in certain circumstances the SEC may request this issuer to publicly file its registration statement. As examples of such circumstances the SEC cited a competing acquisition bid or publicity about a proposed offering or listing.

Although the SEC’s new review policy does not apply to non-public submissions made before December 8, 2011, it will apply to subsequent amendments submitted by a non-U.S. issuer. In other words, these amendments would have to be made via the EDGAR system.

¹ Under the U.S. Securities Act of 1933 or the U.S. Securities Exchange Act of 1934

The SEC advised in its announcement that it has established a dedicated e-mail box to receive registration statements and other materials submitted by non-U.S. issuers, the address of which is oicf_fpi_submissions@sec.gov. The SEC also advised that its Office of International Corporate Finance should be contacted in advance of any non-public submission. Questions may be addressed to any staff attorney in this office at 202-551-3450, or submitted through the SEC's web-based question form at: https://tts.sec.gov/cgi-bin/corp_fin_interpretive.

The SEC's December 8, 2011 announcement can be accessed at: <http://sec.gov/divisions/corpfin/internatl/nonpublicsubmissions.htm>

For more information, please contact your Depositary Receipts Group representative at J.P. Morgan.

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