

## Client Alert

## The SEC Proposes to Allow Internet Posting of Rule 12g3-2(b) Materials

Currently, non-U.S. companies<sup>1</sup> who maintain a Rule 12g3-2(b) exemption under the U.S. Securities and Exchange Act of 1934, as amended (Exchange Act), are required to submit home country documents to the U.S. Securities and Exchange Commission (SEC) in paper format rather than having the option of submitting them electronically to the SEC.<sup>2</sup>

Rule 12g3-2(b) offers non-U.S. companies the benefit of obtaining and maintaining an exemption from the registration requirements of Section 12(g) of the Exchange Act and the resulting reporting requirements under Section 13 of the Exchange Act. The Rule 12g3-2(b) exemption allows non-U.S. companies to provide to the SEC copies of reports required to be filed in their home country in lieu of filing reports under the Exchange Act. A Rule 12g3-2(b) exemption is not available to non-U.S. companies (i) whose securities are listed on a U.S. stock exchange or quoted on a U.S. automated inter-dealer quotation system, or (ii) who have made a registered public offering of their securities in the U.S. in the preceding 18 months, or (iii) who, *at the time of application* for the 12g3-2(b) exemption, have more than 300 U.S. equity holders.<sup>3</sup>

Recently, the SEC proposed revisions to Rule 12g3-2<sup>4</sup> to permit non-U.S. companies who maintain a Rule 12g3-2(b) exemption to post home country documents on their proprietary Internet websites or to publish such documents through an electronic information delivery system that is generally available to the public in the primary market in which their securities trade. If the rule proposal is adopted, electronic publication would eliminate the need for physically mailing the home country documents to the SEC.<sup>5</sup>

In order to satisfy the document submission conditions of Rule 12g3-2(b) by means of electronic publication, a non-U.S. company, who currently maintains a Rule 12g3-2(b) exemption, would need to do the following:

- provide the SEC with the address of its proprietary Internet website or the name of the electronic information delivery system to be used for electronic posting,
- electronically publish all materials currently being submitted to the SEC on an ongoing basis and maintain access to such materials for at least a 12-month period after electronic publication, and
- electronically publish *English versions* of annual reports (including annual financial statements), interim reports (including interim financial statements), press releases and all other communications and documents distributed directly to the holders of the securities to which the Rule 12g3-2(b) exemption relates.

Should you have any questions or comments on the subject of this proposed rule amendment, please contact Herman H. Raspé at 212.336.2301 (hhraspe@pbwt.com) or Karen M. McCarthy at 212.336.2529 (kmmccarthy@pbwt.com).

## Endnotes

- <sup>1</sup> For purposes of this client alert, the term "non-U.S. company" is intended to mean a "Foreign Private Issuer" (as such term is defined in the rules adopted by the SEC under the Exchange Act).
- <sup>2</sup> A non-U.S. company that has obtained a Rule 12g3-2(b) exemption under the Exchange Act must furnish its home country documents to the SEC in paper format. Such paper submissions are publicly available at the SEC's public reference room but are not accessible through the SEC's website.
- <sup>3</sup> The SEC has also proposed to liberalize the deregistration requirements for non-U.S. companies under the Exchange Act and to make the Rule 12g3-2(b) exemption available immediately upon a non-U.S. company meeting the deregistration requirements and filing the applicable deregistration form with the SEC. For more information concerning the SEC proposal to liberalize the deregistration requirements, see our client update entitled "SEC Re-Proposes Rule to Facilitate Exit From U.S. Exchange Act Registration and Reporting Requirements" at [www.pbwt.com/resources/alerts](http://www.pbwt.com/resources/alerts).
- <sup>4</sup> SEC proposed rules may be found at the SEC's website, [www.sec.gov](http://www.sec.gov), under Release No. 34-55005 (December 22, 2006).
- <sup>5</sup> Currently, in order to maintain a Rule 12g3-2(b) exemption, a non-U.S. company needs to periodically mail to the SEC English language copies of the following: (a) the information it makes public or is required to make public in its home country, (b) any document it files with any securities exchange on which its securities are listed and which is made public by the securities exchange, or (c) any information it distributes to its security holders.

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