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## SEC Staff Announces New Restrictions on Its Policy of Reviewing Foreign Issuer Registration Statements on a Non-Public Basis

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On Thursday, December 8, 2011, the staff of the Division of Corporation Finance (the "Staff") at the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") announced that with immediate effect it has significantly narrowed the availability of confidential review of draft registration statements for initial public offerings and initial listings of foreign issuers. Importantly, confidential review will no longer be available in most cases for foreign private issuers that are not listed (or in the process of listing) on an exchange outside the U.S. Also, for issuers that currently have registration statements under review on a confidential basis that do not qualify under the new policy, the next submission must be publicly filed on the SEC's EDGAR system.

The Staff's announcement is available on the Commission's website at <http://www.sec.gov/divisions/corpfin/internat/nonpublicsubmissions.htm>.

Until yesterday's announcement, the Staff had allowed foreign private issuers and foreign governments to submit registration statements and amendments on a non-public basis in connection with an initial registration with the Commission. Those registration statements and amendments were then reviewed by the Staff on a confidential basis. The Staff will now allow such confidential submissions only under limited circumstances. Specifically, the Staff will review initial registration statements of foreign issuers that are submitted on a non-public basis only where the registrant 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 Staff also used its public announcement of this new policy to remind foreign issuers that notwithstanding its confidential review procedures, there may be times when the Staff will require a foreign issuer to file its registration statement publicly. Examples of circumstances in which the Staff may require a public filing include circumstances where there is a competing bid in an acquisition transaction or matters in which there has been publicity about a proposed offering or listing. The Staff also indicated that shell companies, blank check companies and issuers with no or substantially no business operations will not be permitted to use the confidential submission procedures under any circumstances.

## **PROCEDURES FOR CONFIDENTIAL SUBMISSION**

The Staff noted that when the conditions for the Staff's non-public review procedures have been met, the registration statement must be complete when it is submitted to the Staff or it will not be reviewed. The Division of Corporation Finance has established a dedicated email box, [oicf\\_fpi\\_submissions@sec.gov](mailto:oicf_fpi_submissions@sec.gov), to which all registration statements and related materials should be sent for review under the Staff's confidential submission procedures. Registrants or their attorneys should also contact the Office of International Corporate Finance, which is currently headed by Paul Dudek, in advance of any non-public submission (+1-202-551-3450).

## **IMPLICATIONS FOR PENDING REGISTRATION STATEMENTS ALREADY FILED CONFIDENTIALLY BY FOREIGN ISSUERS**

Foreign issuers whose initial registration statements are currently being reviewed on a confidential basis but who do not meet the new standards for confidential submission will be required to file any subsequent amendments through the Commission's EDGAR system. We believe all correspondence will also eventually become public pursuant to the Staff's existing procedures for publication of these documents on the EDGAR system. Of note, the Staff recently announced that such correspondence will generally become public 20 days after the Staff's review of a filing is complete (the prior standard was 45 days after the review was complete). Issuers should receive a notice from the Staff that it has completed its review which, in connection with initial registration statement filings, typically corresponds to the registration statement being declared effective by the Staff.

*This memorandum relates to general information only and does not constitute legal advice. Facts and circumstances vary. We make no undertaking to advise recipients of any legal changes or developments.*

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