

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 239

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RIN 3235–A189

Additional Form F–6 Eligibility Requirement Related to the Listed Status of Deposited Securities Underlying American Depositary Receipts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment a proposed amendment to Form F–6 to make the form unavailable to register under the Securities Act of 1933 depositary shares evidenced by unsponsored American depositary receipts if the foreign issuer has separately listed the deposited securities on a registered national securities exchange or automated inter-dealer quotation system of a national securities association. The proposed amendment is intended to benefit U.S. investors by ensuring that investors in the equity securities of the same foreign issuer all enjoy a similar level of shareholder rights and by minimizing potential investor confusion. It also is intended to improve the ability of foreign companies to control the form in which their securities are traded in U.S. markets.

DATES: Please submit your comments on or before October 17, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–16–03. This file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet website (<http://www.sec.gov>).¹

¹ We do not edit personal, identifying information, such as names or electronic mail

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The Commission is publishing for comment a proposed amendment to Form F–6,² the registration statement form under the Securities Act of 1933 (“Securities Act”)³ for depositary shares evidenced by American depositary receipts.

I. Background and Overview of the Proposal

American depositary receipts (“ADRs”)⁴ are certificates that represent an ownership interest in foreign securities on deposit with an intermediary. ADRs were developed as a means to facilitate U.S. trading in foreign securities when direct ownership would have been impractical. With the increasing globalization of securities markets and technological advancements in clearance procedures, an increasing number of foreign issuers⁵ today choose to list their ordinary shares in the United States directly, rather than as ADRs. To better adapt the regulatory treatment of ADRs to the evolution of the market for foreign securities, the Commission is soliciting public comment on a proposed amendment to the eligibility requirements of Form F–6, the Securities Act registration form for ADRs. The Commission's proposed action has been prompted by proposals by market participants to issue unsponsored ADRs relating to the ordinary shares of a foreign issuer that

addresses, from electronic submissions. Submit only information that you wish to make publicly available.

² 17 CFR 239.36.

³ 15 U.S.C. 77a *et seq.*

⁴ Since 1983, the Commission's regulations have made a distinction between ADRs and American depositary shares (“ADSs”). Under this distinction, an ADR is the physical certificate that evidences ADSs (in much the same way as a stock certificate evidences shares of stock), and an ADS is the security that represents an ownership interest in deposited securities (in much the same way as a share of stock represents an ownership interest in a corporation). Although conceptually accurate, it appears that ADR market participants largely do not differentiate between ADRs and ADSs. In this release, the term “ADS” is not used, and the term “ADR” may, depending on the context, refer to either the physical certificate or the security evidenced by the certificate.

⁵ The term “foreign issuer” is defined in Securities Act Rule 405 [17 CFR 230.405]. A foreign issuer is any issuer that is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country.

are separately listed on a U.S. exchange.⁶ The proposed amendment would not permit the use of Form F–6 to register ADRs that a foreign issuer has not sponsored if that issuer has listed its securities in ordinary share form on a national securities exchange or automated quotation system of a national securities association.

A. American Depositary Receipts

An American depositary receipt represents an ownership interest in a specified number or fraction of securities that have been deposited with a depositary (“deposited securities”). The deposited securities are typically equity securities⁷ of a foreign issuer, and the depositary is usually a U.S. bank or trust company. ADRs were developed primarily to facilitate the transfer of ownership of foreign securities in the United States and the conversion of foreign currency dividends into U.S. dollars, as an alternative to purchasing ordinary shares on foreign markets.

ADRs were developed in an era of physical securities and physical settlement as a means to facilitate the transfer of ownership of foreign securities in the United States. Because a foreign company's stock transfer books were generally maintained outside the United States, and because of differences in clearance and settlement practices, ADRs were a more convenient way to trade foreign securities. Even with vastly improved communications and clearance and settlement technology, ADRs remain the most common form in which foreign securities trade in the United States.

An ADR facility may be “sponsored” or “unsponsored.” Although sponsored and unsponsored facilities are similar in many respects, for example each represents a fixed number or fraction of underlying securities on deposit with a depositary, there are a number of differences between them with regard to foreign issuer involvement, the rights and obligations of the ADR holders, and the practices of market participants.

1. Unsponsored ADRs

An unsponsored facility is established by the depositary acting on its own,

⁶ This is not the first time the Commission has addressed questions relating to unsponsored ADRs. In 1991, the Commission published a concept release to seek comment on several questions relating to ADRs. (Release No. 33–6894, May 23, 1991). One of the main issues at that time related to unsponsored ADRs that would essentially duplicate and be fungible with sponsored ADRs for the same securities of the same foreign issuer. The Commission did not propose or adopt any rules as a result of the concept release.

⁷ Debt securities may also underlie ADRs.