

VI. Cost-Benefit Analysis

Globalization of capital markets and technological developments have contributed to increased interest among U.S. investors in foreign securities. Those factors also have led a greater number of foreign companies to list their shares directly in the United States. We are proposing to amend Form F-6 to not permit registration of unsponsored American depositary receipts relating to shares of foreign companies that are listed on a national securities exchange or automated quotation system of a national securities association. We are sensitive to the costs and benefits of our proposal, which we discuss below.

A. Expected Benefits

The proposed amendment to Form F-6 should benefit both U.S. investors and foreign issuers who have their shares listed directly in the United States. The proposed amendment should benefit U.S. investors by ensuring that equity investors in the same foreign issuer enjoy a comparable level of shareholder rights. Unlike ordinary or global shareholders, unsponsored ADR holders typically neither receive shareholder communications from the issuer nor enjoy voting rights, and are therefore less able to participate in corporate actions. By eliminating unsponsored ADRs for listed foreign securities, the proposed amendment would provide that U.S. investors in equity securities of the same foreign company benefit from the rights attached to holding ordinary or global shares.

We also expect that the proposed amendment would benefit investors by minimizing potential confusion between unsponsored ADRs that trade in the over-the-counter market and global or ordinary shares of the same foreign issuer that trade on an exchange or automated quotation system of a national securities association. We also anticipate that because the proposed rule may encourage more foreign issuers to seek listings of their shares in the United States in ordinary or global share form, U.S. investors may benefit by having a greater number of foreign issuers in which they may invest directly.

Foreign issuers who have chosen to list their shares directly on a U.S. exchange or automated quotation system of a national securities association should, as a result of the proposed amendment, have more control over the form in which their securities are traded in the United States. This should discourage the detrimental segmentation of the market

for their shares in the United States and avoid a potential imbalance as compared to the shares of U.S. issuers, for which a depositary would be less likely to create a depositary receipt. We believe this may encourage more foreign companies to enter U.S. capital markets.

Foreign issuers may choose to list as global or ordinary shares directly in the United States for reasons related to corporate governance, including more direct access to U.S. shareholders. This decision to pursue a direct listing may entail greater financial, administrative and other costs to the company, as compared to listing in ADR form. The proposed amendment, if adopted, should allow foreign issuers that have chosen to list their shares directly in the United States to derive more completely the intended benefits of a direct listing as compared to listing as an ADR, and for which they have undertaken the greater expense.

B. Expected Costs

The proposed amendment to Form F-6 may result in some costs to institutions that act as depositaries and other participants in the ADR market. If the amendment were adopted, depositaries seeking to establish unsponsored ADRs would be required to ascertain whether the securities of the foreign issuer to be deposited were already listed on a national exchange or automated quotation system of a national securities association. This would increase the time necessary to prepare a Form F-6 registration statement. For purposes of the PRA, we have estimated that the proposed amendment would increase the annual compliance cost for Form F-6 by 37.5 hours and \$11,250. The proposed amendment also may create a competitive cost to depositaries, which would no longer be able to establish unsponsored ADRs to compete with directly listed foreign securities.

The proposed amendment may also create a cost to investors who may prefer ADRs as the form in which they invest in a foreign company. To the extent unsponsored ADRs for listed companies would no longer be permitted if the proposal were adopted, the investment choice of these investors may be limited. These other costs are difficult to quantify.

C. Comment Solicited

We request your views on the costs and benefits described above, particularly with regard to the questions raised in Sections III and IV, as well as on any other costs and benefits that could result from adoption of the proposed amendment to Form F-6. For

example, what benefits do unsponsored ADRs that relate to listed securities bring to depositaries, investors or others? What effect would eliminating this particular product have on depositaries, investors or others? Would those parties incur a cost if the ADRs were not available? Would there be any effect on the trading of other securities? What is the likely economic impact of these or other costs or benefits? Can they be quantified in any meaningful way? If so, how and what conclusions should be drawn? The Commission also requests data to quantify the expected costs and the value of the anticipated benefits.

VII. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b), that the amendment to Form F-6 under the Securities Act contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposal would add one new eligibility requirement to Form F-6 that would preclude the use of Form F-6 to register unsponsored ADRs if the shares of the foreign issuer to be deposited already trade in the United States in ordinary or global share form on a registered national securities exchange or an automated quotation system of a national securities association. Unsponsored ADR facilities are established by institutions that act as depositaries, which are typically large banks; these depositaries are not small entities. The ordinary or global shares underlying the unsponsored ADRs are listed foreign issuers; these foreign issuers are not small entities.²⁸ The ordinary or global shares underlying the unsponsored ADRs are listed on registered securities exchanges or an automated quotation system of a national securities association; these exchanges and national securities associations are not small entities. For this reason, the proposed amendment should not have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment as to whether the proposed changes could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide

²⁸ Based on an analysis of the language and legislative history of the Act, Congress does not appear to have intended the Regulatory Flexibility Act to apply to foreign issuers.