

empirical data to support the extent of the impact.

VIII. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,²⁹ a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) of the Securities Act³⁰ and Section 3(f) of the Exchange Act³¹ require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act³² requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The purpose of this proposed amendment is to improve the ability of foreign companies to control the form in which their securities are traded in U.S. markets and to avoid potential investor confusion. We think that the proposal

would promote efficiency by enhancing the ability of foreign issuers to access their U.S. shareholders. We also believe that the proposal would update the regulatory framework for ADRs to reflect the globalization and technological developments that have occurred in securities markets, eliminate the potential for differential treatment between foreign issuers with directly listed shares and domestic issuers, and make the U.S. capital markets more attractive to foreign issuers. In fact, we expect that the proposals would enhance competition among foreign issuers seeking to list in the United States by encouraging them to list in ordinary or global share form. The proposal may create a competitive burden for depositaries that would seek to establish unsponsored ADR facilities relating to foreign shares that are listed in the United States, and to any investors who would prefer to own such ADRs rather than ordinary shares.

We solicit comment on these matters with respect to the proposed rules. Would the proposals have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Securities Act? Would eliminating the use of Form F-6 for unsponsored ADRs related to listed securities give an unfair advantage to other market participants? Would the proposed amendments, if adopted, promote efficiency, competition and capital formation? Commenters are requested to provide empirical data and other factual support for their views, if possible.

IX. Statutory Basis and Text of Proposed Rule Amendment

We propose the amendment to Securities Act Form F-6 pursuant to sections 6, 7, 10, and 19 of the Securities Act, as amended,³³ and sections 12, 13, 15(d), and 23(a) of the Exchange Act.³⁴

Text of Proposed Amendment

List of Subjects in 17 CFR Part 239

Reporting requirements, Securities.

In accordance with the foregoing, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Amend Form F-6 (referenced in § 239.36), General Instruction I.A., by adding paragraph 4 to read as follows:

Note: The text of Form F-6 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F-6

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General Instructions

I. Eligibility Requirements for Use of Form F-6

A. General.

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(4) The deposited securities are not listed on a registered national securities exchange or automated inter-dealer quotation system of a national securities association, unless the issuer of the deposited securities sponsors the ADR arrangement.

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By the Commission.

Dated: September 11, 2003.

J. Lynn Taylor,

Assistant Secretary.

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²⁹ Pub. L. 104-121, Title II, 110 Stat. 857 (1996).

³⁰ 15 U.S.C. 77b(b).

³¹ 15 U.S.C. 78c(f).

³² 15 U.S.C. 78w(a)(2).

³³ 15 U.S.C. 77f, 77g, 77j, and 77s.

³⁴ 15 U.S.C. 78l, 78m, 78o(d), and 78w.