STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS

Pete Wilson
Governor

Brian A. Thompson
Acting Commissioner of Corporations

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RELEASE No. 92-C

SECURITIES OF FOREIGN ISSUERS

This release comments on the changes to Rule 260.105.11 (10 C.C.R. Sec. 260.105.11) relating to the secondary trading exemption from the qualification requirements of the Corporate Securities Law of 1968 for securities of foreign-country issuers. These changes are effective on August 6, 1993.

Prior to the adoption of the changes, the secondary trading or non-issuer exemption from the qualification requirements of Corporations Code Section 25130 was available for a security listed on a securities exchange located in a foreign country the laws of which had been determined by the Commissioner of Corporations to provide "substantially similar protection" to investors as provided by the federal Securities Exchange Act of 1934 (the "Exchange Act") with respect to securities listed on a national securities exchange in the United States. The exemption afforded by prior Rule 260.105.11 also applied in the case where a foreign-country issuer was required to file with the Securities and Exchange Commission information and reports pursuant to Section 15(d) of the Exchange Act and in the case where a security was exempted from the provisions of Section 12(g) of the Exchange Act by virtue of SEC Rule 12g3-2(b)(1) [17 C.F.R. Sec. 240.12g3-2(b)(1)].

After a review of the bases underlying the exemption, and after discussions with the broker-dealer industry, the Commissioner amended Rule 260.105.11 to limit the exemption for non-issuer trading of foreign-country issuer securities to: (1) those issuers currently filing with the Securities and Exchange Commission information and reports pursuant to Section 15(d) of the Exchange Act; (2) those securities appearing in the most recent Federal Reserve Board List of Foreign Margin Stocks; and (3) those issuers not subject to the reporting requirements of Section 13 or 15(d) of the Securities Act of 1934 where the issuer meets certain "worldwide" issuer requirements. A "worldwide" issuer is one that:

has been in continuous operations for at least five years and is a going concern actually engaged in business and not in the organization stage or in bankruptcy or receivership; has at least 2.5 million shares outstanding and at least 5,000 shareholders worldwide; has a market value of its outstanding shares, other than debt securities and preferred stock, of at least US$100 million worldwide; has net tangible assets of at least US$100 million worldwide as reflected in its most recent financial statements (which may not be more than 18-months old and which have been audited in accordance with the generally accepted accounting principles of its country of domicile); has net income after all charges, including taxes and extraordinary losses, and excluding extraordinary gains, of either at least US$50 million in total for the last 3 fiscal years or at least US$20 million in each of the last 2 fiscal years; and, in the case of a debt security or preferred stock, has not during the past 5 years or during the period of its existence, if shorter, defaulted in the payment of any dividend, principal, interest or sinking fund installment thereon.

As a result of the amendments to Rule 260.105.11, the Commissioner will no longer review the laws of a foreign country to determine whether these laws provide substantially similar protection to investors as provided by the Exchange Act. Securities of foreign private issuers which are listed on any stock or securities exchange in Japan, as well as those securities listed on the Manilla Stock Exchange, the Tel-Aviv Stock Exchange, Limited, and the Australian Associated Stock Exchanges, will be no longer able to rely on the trading exemption under Rule 260.105.11, unless the new requirements are met, or unless another exemption from qualification under the Corporate Securities Law of 1968 is available. (E.g., Corporations Code Sections 25100(b) and (o), 25101(a) and (b), 25104(a), (b), (c), and (h), as well as the exemption provided by Commissioner's Rule 260.105.2.) The exemption for securities which are exempted from the provisions of Section 12(g) of the Exchange Act under SEC Rule 12g3-2(b)(1) has been eliminated, as well, by the changes to Rule 260.105.11.

Finally, as a result of the amendments to Rule 260.105.11, effective August 6, 1993, Commissioner of Corporations' Release Nos. 11-C, 12-C, 14-C, 22-C, 28-C and 71-C are repealed.

By Order of
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