

Foreign Private Issuers--New SEC Policy
REGARDING NON-PUBLIC SUBMISSIONS
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The SEC's Division of Corporation Finance issued a notice on December 8, 2011 stating that it has revised its policy regarding foreign private issuers submitting first-time registration statements on a non-public basis. Under the new policy, the staff will review initial registration statements of foreign private issuers submitted on a non-public basis only when the foreign private issuer 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 which can demonstrate that the public filing of an initial registration statement would conflict with the law of an applicable foreign jurisdiction.

The staff notice also states that shell companies, blank-check companies and issuers with no, or substantially no business operations will not be permitted to use the non-public submission procedure. The staff reserved the right to request that a foreign private issuer publicly file its registration statement under certain circumstances, even when the statement was originally submitted on a non-public basis based on the new policy. Possible circumstances cited by the staff include when there are competing bids in an acquisition transaction and publicity about a proposed offering or listing.

The new policy took effect immediately. The notice states that non-public submissions submitted before December 8, 2011, by foreign private issuers who do not come within one of the above categories, will continue to be reviewed by staff without a public filing. However, the next draft of the registration statement, whether in response to comments issued by the staff or otherwise, must be filed publicly on the EDGAR system.

The notice reminds issuers that the non-public submission of a registration statement does not constitute the filing of a registration statement under the Securities Act of 1933. Accordingly, under Section 5(c) of the Securities Act, offers of securities cannot be made in the United States until a registration statement is publicly filed with the Commission using the EDGAR system.

The Division has established a dedicated email box for submissions, and the Division should be contacted in advance of any non-public submission.

A copy of the notice is available by clicking on this link:
<http://www.sec.gov/divisions/corpfin/internatl/nonpublicsubmissions.htm>

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