

LEVEL I DR PROGRAMS: SARBANES-OXLEY IMPLICATIONS

October 18, 2002

As you are no doubt aware, on July 30, 2002, the President of the United States signed the Sarbanes-Oxley Act of 2002 (the “**Act**”) into law. The Act introduces a broad range of accounting and corporate governance reforms which have important implications for both U.S. and non-U.S. issuers. This memorandum addresses frequent questions that non-U.S. issuers having sponsored Level I depository receipt facilities have asked about the Act, and makes certain recommendations.

1. “Do non-U.S. issuers of Level I DRs fall in any way within the scope of the Act?”

The Act does not apply to non-U.S. issuers which have sponsored Level I DR facilities and which appear on the list of companies claiming an exemption from the registration requirements of U.S. securities laws pursuant to Rule 12g3-2(b) of the U.S. Securities Exchange Act of 1934 (the “**1934 Act**”) (“**12g3-2(b) companies**”) as published from time to time by the U.S. Securities and Exchange Commission (the “**Commission**”). The Act’s provisions apply to all U.S. and non-U.S. issuers that have registered securities under U.S. securities laws or are required to file periodic reports under such laws. Most Level I DR issuers do not have securities registered under U.S. securities laws (DRs are registered securities of the depository receipt facility itself) and are not required to file periodic reports. By establishing a sponsored Level I program, the participating company initially becomes a 12g3-2(b) company. **You should confirm that your company is on the most recent list of 12g3-2(b) companies published by the Commission in May 2002. Please see “4” below.**

2. “Which provisions of the Act do you rely upon?”

Section 2(a)(7) of the Act defines “issuers” that are included within the Act as “issuers” which have registered securities under U.S. securities laws or are required to file periodic reports under such laws. The Act then sets forth an array of required and prohibited actions for an “issuer”. For example, Section 301 of the Act indirectly prohibits the listing of

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securities of any “issuer” that does not have the requisite audit committee structure, and Section 402 in part makes it unlawful for any “issuer” to make a loan to one of its directors. For the reasons set forth in “1” above, 12g3-2(b) companies are generally not “issuers” under the Act as enacted. In addition, we also rely on footnote 42 in Release 33-8124 (August 29, 2002), the report certification release of the Commission mandated by the Act. There the Commission expressly states that 12g3-2(b) companies that are “foreign private issuers” (as defined in Rule 3b-4(c) promulgated under the 1934 Act) are not subject to the implementing rules regarding certification mandated by the Act. **You should confirm that your company continues to be a “foreign private issuer” within the meaning of Rule 3b-4(c).**¹

3. “Even if 12g3-2(b) companies do not fall within the scope of the Act, does the Act have any direct or indirect consequence for these companies?”

We believe 12g3-2(b) companies should be mindful of direct or indirect consequences of the Act because (i) the Act could be (although it is not presently proposed to be) extended so as to include these companies and other companies whose stocks trade in the United States, (ii) a company could alter its involvement in the U.S. financial markets and become subject to the Act thereby, and (iii) given historic trends towards global disclosure and corporate governance standards, non-U.S. regulatory authorities could impose requirements and restrictions similar to those set forth in the Act. If a 12g3-2(b) company were to issue equity and seek a listing of its shares (directly or in depositary receipt form) in the United States, as part of a larger pre-planning exercise for the offering/listing, the company would need to implement the various prescriptions of the Act (such as adoption of an ethics policy and implementation of a disclosure committee) as well as to assess whether its relationship with its directors was consonant with the limitations of the Act (such as the prohibition of loans to directors).

4. “What if my company is not listed on the Commission’s most recent list of 12g3-2(b) companies published in May 2002?”

If not listed, your company should apply for a reinstatement of exemption as soon as practicable or risk becoming a reporting company under the 1934 Act and thereby risk being subject to the Act. Reapplication should not be substantially burdensome. It will, however, be necessary to submit to the Commission (and provide English language summaries of, to the extent such items were only released in a language other than English) all general mailings to shareholders, press releases and non-financial statement filings with any stock exchange and securities regulatory authorities for the preceding 24 months. Financial statement information released during this period must also be submitted and must be fully translated

¹ Rule 3b-4(c) of the 1934 Act defines a “foreign private issuer” as “any foreign issuer other than a foreign government except an issuer meeting the following conditions: (1) more than 50 percent of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States and (2) any of the following: (i) the majority of the executive officers or directors are United States citizens or residents, (ii) more than 50 percent of the assets of the issuer are located in the United States or (iii) the business of the issuer is administered principally in the United States.”

(rather than summarized) into English if an English-language version was not initially prepared. A letter requesting reinstatement upon all appropriate attachments (and setting forth the former Commission file number) should be addressed to Mr. Paul Dudek, Office Chief, Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

5. “Is there a probability that, in the future, the Act’s provisions will be extended to (or have any consequences on) companies that have issued Level I DRs?”

We do not believe it is likely that the Act will be extended to embrace 12g3-2(b) companies. Our belief is based on (i) the Commission’s election not to do so earlier (see “2” above) when it could easily have done so, (ii) recently announced considerations by the Commission of concessions under the Act in favor of non-U.S. banks and (iii) the fact that the Director of the Commission’s Division of Corporation Finance, Alan Beller, has spent many years working with non-U.S. companies and is aware of the burdens any expansion of the Act would impose.

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Any questions concerning the foregoing should be addressed to Ken Mason (212.836.7630), Jonathan Gottsegen (212.836.7263), or by email, kmason@kayescholer.com or jgottsegen@kayescholer.com.