Why a Non-U.S. Company Would Voluntarily Subject Itself to SEC Reporting Requirements

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Most directors and officers of non-U.S. companies cringe at the thought of subjecting their company to the U.S. securities laws, especially the onerous requirements that were imposed by the Sarbanes-Oxley Act of 2002 and subsequent regulation. However, there are certain benefits to non-U.S. companies if they register their common stock or other class of securities under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act").

Qualifying as a Foreign Private Issuer and Benefits to Filing a Section 12(g) Registration Statement

Foreign private issuers are generally treated more favorably under the U.S. securities laws than domestic issuers. Most non-U.S. companies will qualify as a "foreign private issuer" because the non-U.S. company has less than 50% of its issued and outstanding stock held by U.S. residents as of the last day of the second quarter of its most recent fiscal year. The majority of Canadian companies can be classified as "foreign private issuers" unless the U.S. shareholder base becomes too large. See "U.S. Securities Laws: Keeping Company Status as a Foreign Private Issuer."

Many foreign private issuers do not file reports with the SEC because they meet the requirements for an exemption from reporting under Rule 12g3-2 of the Exchange Act. Some foreign private issuers that could rely on these exemptions choose to file a Form 20-F or Form 40-F to become reporting companies for the following beneficial reasons:

- Greater transparency for U.S. investors as filings are available on EDGAR
- Greater blue sky compliance in the 50 states as a covered security for the same purpose
- After 12 months of filing reports with the SEC, U.S. holders of securities of former shells can resell their shares using the safe harbor provision of Rule 144
- Easy conversion to listing on U.S. exchanges such as NYSE or NASDAQ

Reporting Company Requirements Not Applicable to Foreign Private Issuers
Once the company files a registration statement under the Exchange Act, as long as the company remains a foreign private issuer, it is exempt from many of the reporting requirements applicable to domestic issuers such as:

- No reconciliation of financials to U.S. GAAP required as long as reporting under International Financial Reporting Standards ("IFRS") in home country
- Not subject to U.S. proxy rules
- Exempt from Section 16 (short-swing profit rules and insider reporting)
- Limited compliance with Sarbanes-Oxley

In addition, foreign private issuers may use their home country currency when filing reports, and material information and any information required by the Toronto Stock Exchange or TSX Venture Exchange is filed as an exhibit on Form 6-K.

Although the risk of liability increases when a foreign private issuer registers a class of securities with the SEC, the benefits of increased visibility, greater transparency, and liquidity often outweigh the risks. Foreign private issuers listed on either the Toronto Stock Exchange or the TSX Venture Exchange are already subject to stringent disclosure requirements in Canada that are not unlike those in the U.S.

For further inquiry regarding registration a class of securities of a foreign private issuers, please contact Victoria Bantz or Theresa Mehringer at 303-796-2626 or vbantz@bfwlaw.com or tmehringer@bfwlaw.com. The firm's website is located at www.bfwlaw.com.