Summary of SEC Rule 15a-6

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The principal exemption of potential use to a foreign broker-dealer to facilitate limited contacts with persons physically located in the United States is Rule 15a-6, adopted by the SEC in July 1989 (attached as **Exhibit A**) in recognition of the growing internalization of markets and the very broad scope of the registration provisions set forth in the Securities Exchange Act of 1934.

Rule 15a-6, as supplemented by SEC no-action letters, can be used, at the federal level, to permit

(a) Transactions with U.S. registered broker-dealers acting as a principal or as an agent for their customers;

(b) Unsolicited transactions. However, *solicitation* is a very broad concept that includes any effort to induce transactional business, including the sending of research reports and softdollar arrangements;

(c) Transactions with foreign persons temporarily present in the United States with whom the foreign firm had a bona fide, pre-existing relationship before the foreign person entered the United States. For this purpose, non-resident status is a fact-specific inquiry. However, based upon Footnote 211 in the Rule 15a-6 Adopting Release, a reasonable interpretation would be to regard a foreign national visiting the United States for fewer than 183 days in a calendar year as meeting this test. This determination should be backed up with appropriate written certifications from he customer.

In addition to the foregoing exemptions, Rule 15a-6 can be used to facilitate contacts by representatives of a Canadian firm with "*U.S. Institutional Investors*" and "*Major U.S. Institutional Investors*" (as defined in each case) if the account is maintained by a U.S. registered broker-dealer (which can either be affiliated or unaffiliated with the Foreign firm). Non-U.S. dealers, including foreign affiliates of U.S. dealers, should also limit their contacts to institutional investors and registered broker-dealers, thereby benefiting from state broker-dealer registration exemptions, as discussed below.

U.S. Institutional Investors are defined in material part as (i) registered investment companies, (ii) banks, (iii) savings and loan associations, (iv) insurance companies, (v) pension plans directed by defined fiduciaries, (vi) tax-exempt entities, and (vii) trusts with sophisticated fiduciaries with total assets in excess of $5 million.

Major U.S. Institutional Investors are entities, regardless of whether they fall in the foregoing categories, with assets or assets under management in excess of $100 million.

The functions required to be performed by the U.S. dealer in the case of *U.S. Institutional Investors* and *Major U.S. Institutional Investors* areas follows:

(a) Issue all required confirmations and account statements;

(b) Maintain required capital related to such transactions;

(c) Receive, deliver and safeguard funds and securities on behalf of the customer;

(d) Maintain required books and records related to the transaction;

(e) Be responsible for extending or arranging margin to or for the customer;

(f) Serve as agent for service of process for civil actions brought by the SEC or SROs (not limited to matters arising in connection with Rule 15a-6 transactions); and

Whether a customer is a *U.S. Institutional Investor* or *Major U.S. Institutional Investor* determines the scope of the foreign firm's permissible contacts.

In the case of *U.S. Institutional Investor*, the U.S. firm would generally have to participate in telephone contacts and personal visits in the United States by the non-U.S. firm's personnel.

In the case of *Major Institutional Investors*, the foreign firm's institutional brokers can have telephone contacts that are not "chaperoned" by the U.S. firm, and "unchaperoned" personal visits in the United States limited to 30 days per year, provided that no orders are accepted during these visits.

Rule 15a-6 chaperoning arrangements could potentially be used to facilitate U.S. private placements of foreign securities with the involvement of foreign securities firms. However, the chaperoning firms will be reluctant to assume potential liability for primary offerings in which they have had limited involvement.

As a result of an interpretation reiterated by the SEC in the *Rule 15A-6* Adopting Release, a non-U.S. firm can distribute research reports to persons in the United States (whether or not institutional investors) if certain conditions are met. These conditions are that (a) a U.S. firm prominently states on the report that it accepts responsibility for its contents, (b) the report prominently indicates that persons receiving the report should effect transactions in securities discussed in the report through the U.S. firm, and (c) transactions in such securities by recipients of the report are actually effected only through the U.S. firm.

NASD Rule 2711 and corresponding NYSE rules relating to research analyst conflicts of interest do not apply to foreign broker-dealers distributing research to U.S. persons through NASD or NYSE member firms in accordance with Rule 15a-6 under the Exchange Act and related SEC interpretations. However, certain provisions of the new Rules with respect to research reports would apply to the NASD or NYSE member firms distributing such reports.

The SROs have acknowledged that the distribution of research reports prepared by non-member firms raises complex issues that will vary depending on the type of report, the entity that created the report, and the member's participation in the production or distribution of the report. The SROs intend to further examine the issue of member distribution of third party research, including research prepared by affiliated entities.

Generally, though, where a member firm is distributing research prepared by a non-member firm, such as an affiliated foreign dealer, the member firm is only required to disclose applicable conflicts of interest related to the member firm only. The new Rules do not require the member firm to include disclosures in such third party reports relating to their non-member affiliates or their affiliate's employees. However, the requirement on the member to disclose 1 % beneficial ownership of common equity securities by the members or its affiliates will require the member firm to aggregate holdings by unregistered affiliates in such disclosure.

Many international firms, however, are giving consideration to applying the U.S. SRO rules, together with the requirements specified in the Global Settlement involving research conflicts of interest, which was reached on April 28, 2003, to all research distributed by these firms worldwide.

In cases where a member disseminates research prepared by a foreign broker-dealer and chooses not to fully comply with U.S. standards, a disclosure should be made in the report that the non-member affiliate and its employees are not subject to the disclosure requirements of the New Rules.

In general, non-registered broker-dealers providing research to United States persons under Rule 15a-6 must provide analyst certifications in distributed research reports in accordance with Regulation AC. However, a narrow exception was created for foreign persons located outside the United States and not associated with a registered broker-dealer that prepare and provide research on foreign securities to major U.S. institutions in accordance with the provisions of Rule 15a-6(a)(2). In these instances, the foreign person is excepted from the requirements of Regulation AC. In addition, where a research analyst is employed outside the United States by a foreign person located outside the United States, analyst certifications in connection with public appearances are only required while the research analyst is physically present in the United States.

Regulation AC would apply to all other instances in which a foreign non-registered broker-dealer furnishes research to United States persons pursuant to Rule 15a-6 or otherwise, including the provision of research to United States persons pursuant to the interpretive position affirmed in the Rule 15a-6 adopting release, as well as the provision of research to major U.S. institutional investors through an affiliated United States registered broker-dealer pursuant to Rule 15a-6(a)(2).

Another SEC position providing potential relief at he federal regulatory level to foreign dealers is an SEC no-action letter[1], that permits non-U.S. firms to treat U.S. investment advisers with discretionary authority for "*Offshore Clients*" as non-U.S. clients, even if the advisers are solicited in the United States, in respect to transactions in "*Foreign Securities*." Offshore Clients are limited to certain high net worth individuals and entities. *Foreign Securities* do not include those interlisted in the United States when the transaction is executed on a U.S. exchange or NASDAQ. The conditions applicable to this relief are discussed below and should be reflected in a certificate obtained from the U.S. investment adviser by the non-U.S. firm.

The investment adviser must be duly appointed as an investment adviser by each of the *Offshore Clients* (as defined below) for which it will transact business through the foreign firm. The investment adviser must have authorization to direct orders to buy and sell (or otherwise transact business in) securities in a discretionary manner for the accounts of all such *Offshore Clients*.

Any securities transactions submitted by the investment adviser to the foreign firm must be limited to *Foreign Securities* (as defined below) and in all such transactions, the investment adviser must allocate all investment activity transacted through the non-U.S. firm only to the accounts of *Offshore Clients* and not to any other clients.

Offshore Client means (1) any entity not organized or incorporated under the laws of the United States and not engaged in a trade or business in the United States for U.S. federal income tax purposes; (2) any natural person who is not a U.S. resident, or who is a U.S. citizen residing in a foreign country who (a) has $500,000 or more under the management of he investment adviser or (b) has, together with his or her spouse, a net worth in excess of $1,000,000; or (3) any entity nor organized or incorporated under the laws of the United States substantially all (i.e., at least 85%) of the outstanding voting securities of which are beneficially owned by persons described in (1) and (2) above.

Foreign Security means (1) a security issued by an issuer not organized or incorporated under the laws of the United States when the transaction in such security is not effected on a U.S. exchange or through the NASDAQ system, including an American Depository Receipt issued by a U.S. bank that is initially offered and sold outside the United Stats in accordance with Regulation S under the Securities Act of 1933, as amended (the "*Securities Act*"); or (2) a debt security (including a convertible debt security) issued by an issuer organized or incorporated in the United States in connection with a distribution conducted outside the United States.

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1 Cleary, Gottlieb, Steen & Hamilton, SEC No-action Letter (Jan. 30, 1996) 1996 WL 38823.

Securities issued in a distribution outside the United States include securities offered and sold in accordance with *Regulation S under the* Securities Act. Debt securities of an issuer organized or incorporated under the laws of the United States are not *Foreign Securities* if they were offered and sold as part of a "global offering" involving both a distribution of the securities in the United States under a U.S. *Securities Act* registration statement and a contemporaneous distribution outside the United States. For purposes of the definition of *Foreign Security*, the status of *over-the-counter* ("OTC") derivative instruments may be determined by reference to the underlying instrument. (An OTC derivative on a *Foreign Security* is a *Foreign Security*. An OTC derivative on a security other than a *Foreign Security* is not a *Foreign Security*.)

If you have any questions, please do not hesitate to contact Charles L. Potuznik at 612-340-2914 or; Benjamin Catalano at 212-415-9346.

EXHIBIT A

SEC Rule 15a-6

Reg. 240.15a-6. (a) A foreign broker or dealer shall be exempt from the registration requirements of sections 15(a)(1) or 15B(a)(1) of the Act to the extent that the foreign broker or dealer:

effects transactions in securities with or for persons that have not been solicited by the foreign broker or dealer; or

furnishes research reports to major U.S. institutional investors, and effects transactions in the securities discussed in the research reports with or for those major U.S. institutional investors, provided that:

the research reports do not recommend the use of the foreign broker or dealer to effect trades in any security;

the foreign broker or dealer does not initiate contact with those major U.S. institutional investors to follow up on the research reports, and does not otherwise induce or attempt to induce the purchase or sale of any security by those major U.S. institutional investors;

if the foreign broker or dealer has a relationship with a registered broker or dealer that satisfies the requirements of paragraph (a)(3) of this rule, any transactions with the foreign broker or dealer in securities discussed in the research reports are effected only through that registered broker or dealer, pursuant to the provisions of paragraph (a)(3); and

the foreign broker or dealer does not provide research to U.S. persons pursuant to any express or implied understanding that those U.S. persons will direct commission income to the foreign broker or dealer; or

induce or attempts to induce the purchase or sale of any security by a U.S. institutional investor or a major U.S. institutional investor, provided that:

the foreign broker or dealer:

effects any resulting transactions with or for the U.S. institutional investor or the major U.S. institutional investor through a registered broker or dealer in the manner described in paragraph (a)(3)(iii) of this rule; and

provides the Commission (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, as specified in section 3(a)(50) of the Act, and the Commission or the U.S. Government) with any information or documents within the possession, custody, or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to transactions under paragraph (a)(3) of this rule, except that if, after the foreign broker or dealer has exercised its best efforts to provide the information, documents, testimony, or assistance, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the foreign broker or dealer to provide the information, documents, testimony, or assistance to the Commission, the foreign broker or dealer is prohibited from providing this information, documents, testimony, or assistance by applicable foreign law or regulations,

then this paragraph (a)(3)(i)(B) shall not apply and the foreign broker or dealer will be subject to paragraph (c) of this rule;

the foreign associated person of the foreign broker or dealer effecting transactions with the U.S. institutional investor or the major U.S. institutional investor:

conducts all securities activities from outside the United States, except that the foreign associated persons may conduct visits to U.S. institutional investors and major United States institutional investors within the United States, provided that:

the foreign associated person is accompanied on these visits by an associated person of a registered broker or dealer that accepts responsibility for the foreign associated person's communications with the U.S. institutional investor or the major U.S. institutional investor; and

transactions in any securities discussed during the visit by the foreign associated person are effected only through the registered broker or dealer, pursuant to paragraph (a)(3) of this rule; and

is determined by the registered broker or dealer to:

not be subject to a statutory disqualification specified in section 3(a)(39) of the Act, or any substantially equivalent foreign

expulsion or suspension from membership,

bar or suspension from association,

denial of trading privileges,

order denying, suspending, or revoking registration or barring or suspending association, or finding with respect to causing any such effective foreign suspension, expulsion, or order;

not to have been convicted of any foreign offense, enjoined from any foreign act, conduct, or practice, or found to have committed any foreign act substantially equivalent to any of those listed in sections 15(b)(4)(B), or (E) of the Act; and (3) not to have been found to have made or caused to be made any false foreign statement or omission substantially equivalent to any of those listed in section 3(a)(39)(E) of the Act; and

the registered broker or dealer through which the transaction with the U.S. institutional investor or the major U.S. investor is effected:

is responsible for:

(1) effecting the transactions conducted under paragraph (a)(3) of this rule, other than negotiating their terms;

(2) issuing all required confirmations and statements to the U.S. institutional investor or the major U.S. institutional investor;

(3) as between the foreign broker or dealer and the registered broker or dealer, extending or arranging for the extension of any credit to the U.S. institutional investor or the major U.S. institutional investor in connection with the transactions;

(4) maintaining required books and records relating to the transactions, including those required by Rules 17a-3 and 17a-4 under the Act (17 CFR 240.17a-3 and 17a-4);

(5) complying with Rule 15c3-1 under the Act (17 CFR 240.15c3-1) with respect to the transactions; and

(6) receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or the major U.S. institutional investor in compliance with Rule 15c3-3 under the Act (17 CFR 240.15c3-3);

participates through an associated person in all oral communications between the foreign associated person and the U.S. institutional investor, other than a major U.S. institutional investor;

has obtained from the foreign broker or dealer, with respect to each foreign associated person, the types of information specified in Rule 17a-3(a)(12) under the Act (17 CFR 240.17a-3(a)(12)), provided that the information required by paragraph (a)(12)(d) of that Rule shall include sanctions imposed by foreign securities authorities, exchanges, or associations, including without limitation those described in paragraph (a)(3)(ii)(B) of this rule;

has obtained from the foreign broker or dealer and each foreign associated person written consent to service or process for any civil action brought by or proceeding before the Commission or a selfregulatory organization (as defined in section 3(a)(26) of the Act), providing that process may be served on them by service on the registered broker or dealer in the manner set forth on the registered broker's or dealer's current Form BD; and

maintains a written record of the information and consents required by paragraphs (a)(3)(iii)(C) and (D) of this rule, and all records in connection with trading activities of the U.S. institutional investor or the major U.S. institutional investor involving the foreign broker or dealer conducted under paragraph (a)(3) of this rule, in an office of the registered broker or dealer located in the United States (with respect to nonresident registered brokers or dealers, pursuant to Rule 17a-7(a) under the Act (17 CFR 240.17a7(a))), and makes these records available to the Commission upon request; or

effects transactions in securities with or for, or induces or attempts to induce the purchase or sale of any security by:

a registered broker or dealer, whether the registered broker or dealer is acting as principal for its own account or as agent for others, or a bank acting in a broker or dealer capacity as permitted by U.S. law;

the African Development Bank, the Asian Development Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the United Nations, and their agencies, affiliates, and pension funds;

a foreign person temporarily present in the United States, with whom the foreign broker or dealer had a bona fide, pre-existing relationship before the foreign person entered the United States;

any agency or branch of a U.S. person permanently located outside the United States, provided that the transactions occur outside the United States; or

U.S. citizens resident outside the United States, provided that he transactions occur outside the United States, and that the foreign broker or dealer does not direct its selling efforts toward identifiable groups of U.S. citizens resident abroad.

(b) When used in this rule,

(1) the term “family of investment companies” shall mean:

(i) except for insurance company separate accounts, any two or more separately registered investment companies under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services; and

(ii) with respect to insurance company separate accounts, any two or more separately registered separate accounts under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and function under operational or accounting or control systems that are substantially similar.

(2) the term “foreign associated person” shall mean any natural person domiciled outside he United States who is an associated person, as defined in section 3(a)(18) of the Act, of the foreign broker or dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under paragraph (a)(3) of this rule.

(3) the term “foreign broker or dealer” shall mean any non-U.S. resident person (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of “broker” or “dealer” in sections 3(a)(4) or 3(a)(5) of the Act.

(4) the term “major U.S. institutional investor” shall mean a person that is:

(i) a U.S. institutional investor that has, or has under management, total assets in excess of $100 million; provided, however, that for purposes of determining the total assets of an investment company under this rule, the investment company may include the assets of any family of investment companies of which it is a part; or

(ii) an investment adviser registered with the Commission under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.

(5) the term “registered broker or dealer” shall mean a person that is registered with the Commission under sections 15(b), 15B(a)(2), or 15C(a)(2) of the Act.

(6) the term “United States” shall mean the United States of America, including the States and any territories and other areas subject to its jurisdiction.

(7) the term “U.S. institutional investor” shall mean a person that is:

(i) an investment company registered with the Commission under section 8 of the Investment Company Act of 1940; or

(ii) a bank, savings and loan association, insurance company, business development company, small business investment company, or employee benefit plan defined in Rule 501(a)(1) of Regulation D under the Securities Act of 1933 (17 CFR 230.501(a)(1)); a private business development company defined in

Rule 501(a)(2) (17 CFR 230.501(a)(2)); an organization described in section 501(c)(3) of the Internal Revenue Code, as defined in Rule 501(a)(3) (17 CFR 230.5010(a)(3))); or a trust defined in Rule 501 (a)(7) (17 CFR 230.501(a)(7)).

(c) The Commission, by order after notice and opportunity for hearing, may withdraw the exemption provided in paragraph (a)(3) of this rule with respect to the subsequent activities of a foreign broker or dealer or class of foreign brokers or dealers conducted from a foreign country, if the Commission finds that the laws or regulations of that foreign country have prohibited the foreign broker or dealer, or one of a class of foreign brokers or dealers, from providing, in response to a request from the Commission, information or documents within its possession, custody, or control, testimony of foreign associated persons, or assistance in taking the evidence of other persons, wherever located, related to activities exempted by paragraph (a)(3) of this rule.