

**MEMO# 2762**

May 21, 1991

# **SEC GRANTS CLASS EXEMPTIONS FROM 1934 ACT TRADING RESTRICTIONS FOR CERTAIN NON-U.S. SECURITIES AND RIGHTS OFFERINGS**

May 21, 1991 TO: INVESTMENT ADVISER MEMBERS NO. 18-91 SEC RULES MEMBERS NO. 31-91 INTERNATIONAL MEMBERS NO. 1-91 RE: SEC GRANTS CLASS EXEMPTIONS FROM 1934 ACT TRADING RESTRICTIONS FOR CERTAIN NON-U.S. SECURITIES AND RIGHTS OFFERINGS \_\_\_\_\_

The SEC's Division of Market Regulation, pursuant to delegated authority, recently granted two class exemptions that limit the extraterritorial application of restrictions imposed by Rules 10b-6, 10b-7 and 10b-8 under the Securities Exchange Act of 1934 ("1934 Act") on the trading activities of certain persons participating in the distribution of a security (including rights offerings). These exemptions should facilitate private placements of foreign securities (or rights to acquire such securities) to institutional investors, such as investment companies and investment advisers. Rule 10b-6 generally prohibits persons engaged in a distribution of securities from bidding for or purchasing such securities or certain related securities until their participation in the distribution is completed. Rule 10b-7 regulates stabilizing the price of a security to facilitate a distribution. Rule 10b-8 governs bids for and purchases of rights by persons participating in a distribution of the securities being offered through such rights, during any period when the price of the securities is being stabilized to facilitate the distribution. Previously, the Commission took the position that Rules 10b-6, 10b-7 and 10b-8 applied to the trading activity of foreign persons engaged in an offering of foreign securities outside the U.S., if any portion of the securities was being distributed simultaneously in the U.S. (regardless of whether such U.S. distribution was required to be registered under the Securities Act of 1933). The Division of Market Regulation's April 25, 1991 letter (a copy of which is attached) grants two types of exemptions provided certain conditions are met. First, the letter provides an exemption from Rules 10b-6 and 10b-7 for non-U.S. transactions during the period when foreign securities eligible under Rule 144A are being sold in the U.S. to "qualified institutional buyers" in transactions exempt from registration under the Securities Act of 1933 (pursuant to Section 4(2) of the 1933 Act or Rule 144A or Regulation D under the 1933 Act). This exemption is only available, however, where (1) the non-U.S. transactions are effected on the International Stock Exchange, the Stock Exchange Automated Quotation ("SEAQ") system or the SEAQ International system, or the Montreal, Paris, Tokyo or Toronto Stock Exchanges, and (2) the issuer has an operating history of at least three years. Second, the letter grants an exemption from Rules 10b-6, 10b-7 and 10b-8 in connection with non-U.S. transactions in securities of a foreign issuer making a rights offering, during the period when the rights, or the securities acquired

upon exercise of the rights ("new securities"), are being offered and sold in the U.S. to institutional accredited investors in transactions exempt from 1933 Act registration. This exemption is limited to transactions in which, at the time the rights offering commences, the price of the new securities reflects a discount of at least eight percent from the market price for outstanding securities of the same class. Notice to the Division of Market Regulation is required if, at any time prior to the completion of the distribution through rights in the U.S., the discount is less than eight percent. The ability to rely on either exemption is subject to the following general conditions: (1) the exemptions are limited to distributions in the U.S. of foreign securities whose principal market is outside of the U.S.; (2) the exemptions are limited to non-U.S. transactions in foreign securities whose principal market is outside the U.S.; (3) the foreign issuer must have voting stock with an aggregate market value of at least \$150 million held by persons not affiliated with the issuer; (4) the exemptions are not available to issuers or issuer-affiliated purchasers; and (5) the person seeking to rely on an exemption must file a notice containing certain information about the transaction with the Division of Market Regulation. Frances M. Stadler Assistant General Counsel Attachment

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