

SEC Limits Policy re Non-Public Filing of Registration Statements by Foreign Registrants

On December 8, 2011, the Division of Corporation Finance of the Securities and Exchange Commission ("SEC") announced that effective immediately it was limiting its policy with respect to the non-public submission of initial registration statements by foreign private issuers.

The SEC staff stated that going forward it will review initial registration statements of foreign issuers that are submitted on a non-public basis only where the registrant is:

- (1) a foreign government registering its debt securities;
- (2) a foreign private issuer that is listed or is concurrently listing its securities on a non-U.S. securities exchange;
- (3) a foreign private issuer that is being privatized by a foreign government; or
- (4) a foreign private issuer that can demonstrate that the public filing of an initial registration statement would conflict with the law of an applicable foreign jurisdiction.

The staff stated 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.

It was the view of the SEC staff that this change in policy will promote transparency and investor protection.

In announcing the new policy, the SEC staff indicated that foreign issuers should be aware that circumstances may develop in which the staff will request a foreign issuer to publicly file its registration statement even though it comes within the general parameters of the policy. Examples of these circumstances include a competing bid in an acquisition transaction or publicity about a proposed offering or listing.

The staff also noted that non-public submissions that do not come within one of the above categories and that were received by the staff before December 8, 2011, will continue to be reviewed by staff without a public filing. The next draft of the registration statement, whether in response to comments issued by the staff or otherwise, must be filed on the EDGAR system.

The full text of the staff announcement is available at:
<http://www.sec.gov/divisions/corpfin/internatl/nonpublicsubmissions.htm>

If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212-701-3403 or cgilman@cahill.com; Jon Mark at 212-701-3100 or jmark@cahill.com; John Schuster at 212-701-3323 or jschuster@cahill.com.