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April 25, 2008

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

With copy to:
Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Kathleen L. Casey
John W. White, Director, Division of Corporation Finance
Brian Breheny, Deputy Director (Legal and Regulatory), Division of Corporation Finance
Mauri Osheroff, Associate Director (Regulatory Policy), Division of Corporation Finance
Paul Dudek, Chief, Office of International Corporate Finance
Wayne Carnall, Chief Accountant, Office of the Chief Accountant
Katrina A. Kimpel, Professional Accounting Fellow, Office of the Chief Accountant

Re: Comments on proposed exemption from registration under Section 12(g) of the Securities Exchange Act of 1934 for foreign private issuers
File No. S7-04-08

Dear Ms. Morris:

The International Bar Association is pleased to comment on the Commission's proposal to amend the rule that exempts a foreign private issuer from having to register a class of equity securities under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") based on the submission of certain information published outside the United States as set forth in Release No. 34-57350; International Series Release No. 1307; File No. S7-04-08 (the "Release").

The International Bar Association, the global voice of the legal profession, includes 30,000 individual lawyers and 195 bar associations and law societies worldwide. We are submitting our comments on behalf of the Securities Committee which has over 900 members from 85 different countries. The IBA and the Securities Law Committee are currently very active in the arena of cross-border reform of securities regulation as part of the IBA Task Force on Extraterritorial Jurisdiction and to this end has compiled a report, the final version of which will be presented at our next annual meeting from October 12 to October 17 in Buenos Aires. The IBA has published a draft report making recommendations in the areas

of convergence and mutual recognition. This report can be found on the Social Science Research Network website at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1109061 .

We support the Commission's proposal to abolish the application for exemption from registration, although we believe that a better solution would give foreign private issuers the ability to "opt in" rather than be automatically included in the ambit of Rule 12g3-2(b) of the Exchange Act (the "Rule"). In addition, we agree with the Commission's proposal to switch to electronic, Internet publication for non-US disclosure documents instead of paper filings because it demonstrates the Commission's commitment to the modernization and simplification of regulatory requirements.

While we welcome the Commission's continued commitment to simplify the regulatory environment and modernize the regulations applicable to foreign private issuers, we believe that several of the specific proposed amendments run contrary to the overall goal of regulatory convergence and creating a stable US regulatory environment for foreign private issuers. Indeed, one of the current Rule 12g3-2(b)'s main benefits is the certainty it provides to foreign private issuers. The proposed Rule removes that certainty and is therefore a surprising reversal on the heels of the March 2007 amendments regarding deregistration and the more recent amendments eliminating US GAAP reconciliation for registrants filing IFRS financial statements. We recommend that the SEC first evaluate the impact of the deregistration rules before adopting new regulations that could inadvertently subject foreign private issuers to Exchange Act registration where they have not sought a public market in the United States. In addition, since the Commission recently announced plans to propose amendments to Exchange Act Rule 15a-6 which would, in the words of Commissioner Atkins, "make it easier for US investors to deal directly with foreign broker-dealers and thereby trade foreign securities," it would seem advisable to wait for those proposals before dramatically altering eligibility for the Rule 12g3-2(b) exemption. Amendments to Rule 15a-6 could dramatically increase the number of foreign private issuers who would require relief under Rule 12g3-2(b) as the number of US shareholders increased, with the assistance of the Commission and through no action by the issuer, while potentially making the exemption less certain.

We have reviewed the letter prepared by the European Issuers and generally support the specific comments and suggestions made in that letter but would like to add several additional comments with respect to specific amendments.

1. Proposed 20% Quantitative Benchmark

At its inception, the Commission adopted Rule 12g3-2(b) of the Exchange Act to provide exemptive relief from Section 12(g) to foreign private issuers that had not sought a public market in the United States for their equity securities. Under the current Rule, a foreign private issuer is not required to register under Section 12 unless the issuer engages in a public offering of securities in the United States or lists its securities on a national securities exchange. All other foreign private issuers may submit an application for the Rule 12g3-2(b) exemption. Those who have timely submitted an application and obtained the Rule 12g3- 2(b) exemption may rely on such an exemption even though they may at a later date surpass the record holder thresholds, irrespective of trading volume, provided that they continue to submit the required non-US documents to the SEC.

The proposed 20% trading volume quantitative benchmark for an issuer to claim the Rule 12g3-2(b) exemption, however, runs counter both to the original purpose of the Rule to

provide exemptive relief from reporting for issuers who had not sought a public market in the United States and takes away the certainty that the current exemption affords. Under such a test, foreign private issuers who have never "sought" a public market in the United States could find themselves under the obligation to register their securities with the SEC. A foreign private issuer cannot always exercise complete and direct control over trading of its securities. It can, however, decide to engage in a public offering of securities in the United States or list its securities on a national securities exchange.

We do not believe that the Commission should promulgate rules which require foreign private issuers to register securities under the Exchange Act when they have neither taken steps to raise capital in the US markets nor list on a US national securities exchange. A survey of our members representing jurisdictions from around the globe revealed that none of the local securities regulators in their jurisdictions impose reporting requirements on foreign private issuers unless they have issued securities in the jurisdiction or have listed their securities on the local exchange.[1] A rule such as the proposed Rule may well be the only one of its kind and potentially could have a chilling effect on the attractiveness of the US markets.

Issuers wishing to avoid registration under the proposed rule would likely take measures to reduce the volume of trading in their shares. For example we would expect many foreign private issuers to consider adopting charter provisions allowing them to prohibit US resident shareholders if necessary in order to maintain US resident ownership below 300 holders. In addition, issuers could decide to terminate their sponsored ADR programs or install website filters to prevent access to corporate information by persons in the United States. As a result, US investors would be disadvantaged in the global marketplace and would have more limited access to important disclosure documents, the very opposite of the effect intended by the current Rule 12g3-2(b). Furthermore, such actions would cause US investors to lose investment opportunities and/or require them to open accounts in foreign jurisdictions, at a higher cost and without the requirement for foreign private issuers to provide certain non-US disclosure documents to US investors. Consequently, US capital markets and US investors will suffer.

Nonetheless, if the Commission believes that it is necessary to amend the Rule to include a threshold based on trading volume, we believe that the Commission should modify the proposal so that its substantive conditions only apply to issuers that were previous Exchange Act reporting companies that have had one or more registered offerings, or issuers with sponsored, unrestricted ADR programs as proposed by the European Issuers. We also agree with the European Issuers that, to the extent trading volume is adopted as part of the final rule, it should be raised to 50%. Alternatively, we believe Section 12(g) registration should only be imposed if an issuer's ADTV in the US exceeds 20% and less than 55% of its worldwide ADTV takes place in two jurisdictions. This approach would be consistent with the definition of "Substantial US Market Interest" and is a more appropriate test for deciding when to impose US regulation.

2. Proposed foreign listing condition

Under the proposed Rule, an issuer would lose the Rule 12g3-2(b) exemption if it no longer was listed on an exchange in its primary trading market. The SEC believes this provision is necessary in order to ensure that there is a non-US jurisdiction that principally regulates and oversees the issuance and trading of the issuer's securities and the issuer's

[1] A list of the members of the Securities Law Committee who responded to the survey is provided in Annex A.

disclosure obligations to investors. In that way, investors may have a clear regulatory authority to whom to turn when making decisions regarding an issuer's securities.

We believe that this condition, taken together with the 20% quantitative benchmark, will only serve to further deprive a foreign private issuer of its ability to make business decisions with regards to delisting in its home country for fear of falling under the extraterritorial reach of Section 12(g). Unlike the obligation to maintain a foreign listing following deregistration under Rule 12h-6 of the Exchange Act, issuers seeking the Rule 12g3-2(b) exemption have not sought a public market in the United States. The SEC argues that this foreign listing condition makes more likely the availability of a set of non-US disclosure documents or that the issuer otherwise meets certain minimum information requirements, such as those already promulgated under Rules 144 and 144A. If the main concern of the SEC is the availability of non-US disclosure documents to which investors may turn for material information when making investment decisions about over-the-counter securities, we believe a foreign private issuer should be able to claim the exemption as long as it voluntarily publishes the same documents that a listed company is required to publish in its home jurisdiction. Furthermore, most countries have company law requirements under which all corporations must make public information relevant to regulatory authorities and stakeholders. For Rule 12g3-2(b) issuers, the SEC should be seeking to provide US investors with access to certain minimum information, without being overly burdensome and inconsistent with home country disclosures regimes.

3. Proposed duration of the exemption

As discussed above, we do not agree with the 20% trading volume quantitative benchmark and therefore do not believe that an issuer should lose the Rule 12g3-2(b) exemption should its US trading volume exceed 20% where it has complied with the non-US disclosure requirement. Such an amendment to the Rule would only result in more uncertainty for foreign private issuers and lead them to take actions to prevent US investors from acquiring their shares. The requirement to publish non-US disclosure documents should sufficiently serve the goals of the Commission, i.e. the protection of the US investor. However, we would welcome guidance from the Commission on the length of time an issuer is required to maintain the publication of documents on its Internet website and would recommend to this end that issuers be required to keep documents on their website for a period of three years for annual information and one year for interim.

4. Proposed elimination of the written application requirement

As previously stated, we wholly support the elimination of the written application requirement which simplifies the procedure and reduces costs for foreign private issuers. In order to help investors identify with certainty which issuers claim the exemption and facilitate investors' access to non-US disclosure documents, we believe that the SEC should require issuers to notify it that they have claimed the exemption and provide the SEC with a hyperlink to the Internet website where the issuer intends to publish the required non-US disclosure documents. The SEC should then publish this information and the hyperlink on its Internet website.

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In conclusion, we would like to emphasize our support for the Commission's continued efforts to modernize and simplify the regulations applicable to foreign private issuers. However, in order to make the US markets more attractive to foreign private issuers without compromising investor protection, we believe the Commission should delay this initiative until such time as we have more experience with the impacts of deregistration and mutual recognition.

We thank you for the opportunity to comment on this proposal and look forward to a dialogue on these issues.

Sincerely yours,

/s/ René Bösch
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Co-Chair, Securities Law Committee
Zurich

/s/ Philip Boeckman
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Co-Chair, Securities Law Committee
London

/s/ Pere Kirchner
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Senior Vice-Chair, Securities Law Committee
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Nigel Wilson
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/s/ Uwe Eyles
Uwe Eyles
Vice-Chair, Securities Law Committee
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/s/ Cecilia Carrara
Cecilia Carrara
Secretary, Securities Law Committee
Rome

/s/ Linda Hesse
Linda Hesse
Chair, Subcommittee for Regulatory Affairs
Securities Law Committee
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/s/ Florian Khol
Florian Khol
Chair, Subcommittee for Mergers & Acquisitions
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/s/ Vince Pisano
Vince Pisano
Vice-Chair, Subcommittee for Underwriting and Distribution
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New York

/s/ Ricardo C. Veirano
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/s/ Masayuki Watanabe
Masayuki Watanabe
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Securities Law Committee
Tokyo

/s/ Pit Reckinger
Pit Reckinger
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/s/ Jonathan Ross
Jonathan Ross
Senior Vice-Chair, Securities Law Committee
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/s/ Philip Moore
Philip Moore
Regional Representative North America
Securities Law Committee
Toronto, Ontario

Annex A

List of Securities Law Committee members who participated in the survey

Non-US Jurisdiction:	**Law Firm:**	**Lawyer:**
Argentina	Brons & Salas	José Luis GALIMBERTI
Australia	Owen Dixon Chambers	Peter WILLIS
Belgium	Freshfields Bruckhaus Deringer	Chris SUNT
Brazil	Pinheiro Neto	Carlos ALEXANDRE LOBO
Brazil	Walter Stuber Consultoria Jurídica	Walter STUBER
Canada	Stikeman Elliot LLP	Simon ROMANO
Canada	Borden Ladner Gervais LLP	Alfred PAGE
Denmark	Jonas Bruun	Gitte DEHN LANSNER
Denmark	Lett Advokatfirma	Dan MOALEM
Denmark	Kromann Reumert	Marianne PHILIP
Egypt	Sarwat A. Shahid Law Firm	Girgis ABD EL-SHAHID
Finland	Waselius & Wist	Tarja WIST
Hungary	Szecskay Attorneys at Law	Judit BUDAI
Ireland	Mc Keever Rowan	Andrew CLARKE, Paul FOLEY

Non-US Jurisdiction:	**Law Firm:**	**Lawyer:**
Japan	Anderson Mori & Tomotsune	Masayuki WATANABE
Luxembourg	Linklaters LLP	Janine BIVER / Nicki KAYSER
Netherlands	Stibbe N.V.	Derk LEMSTRA
Netherlands	De Brauw Blackstone Westbroek N.V.	Bernardina ZUIDEVELD
Netherlands Antilles	Spigthoff Attorneys at Law & Tax Advisers	Maike BERGERVOET
Portugal	Abreu Advogados	Miguel CASTRO PEREIRA / Mónica CAYOLLA DA VEIGA
Slovenia	Dolzan, Vidmar & Zemljaric	Mitja VIDMAR
Switzerland	Homburger AG	Dieter GERICKE
Switzerland	Schellenberg Wittmer	Martin LANZ