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U.S. Securities and Exchange Commission
To the att. of Ms. Nancy M. Morris
Secretary 100 F Street, NE
Washington, D.C. 20549-9303
USA

Brussels, 25 April 2008

Re: Comments on Proposed Amendments to 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,

We are submitting this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments on the Commission's proposal to amend Rule 12g3-2(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The proposal is discussed in Release No. 34-57350; International Series Release No. 1307; File No. S7-04-08 (the "Release").

EuropeanIssuers is a pan European organisation that represents the vast majority of publicly quoted companies in Europe. EuropeanIssuers was formed when EALIC, the European Association of Listed Companies, and UNIQUE, the Union of Issuers Quoted in Europe, combined their organisations in early 2008. Its members are national associations and companies from the following countries: Austria, Belgium, Bulgaria, Cyprus, Finland, France, Germany, Greece, Italy, the Netherlands, Poland, Portugal, Spain, Switzerland and the United Kingdom. These markets count some 9,200 listed companies with a combined market value of some € 8,500 billion. EuropeanIssuers is an International Non Profit Association under Belgian law with registered seat and permanent secretariat in Brussels.

EuropeanIssuers strongly supports the Commission's proposal to exempt eligible non-U.S. companies automatically from registration under the Exchange Act, rather than requiring them to apply for an exemption.

At the same time, we are concerned that the substantive aspects of the proposal may inadvertently subject non-U.S. companies to Exchange Act registration in cases where this is not appropriate. We suggest that the Commission modify the proposed rule so that its substantive conditions will apply only to non-U.S. companies that voluntarily take steps to create a U.S. public trading market for their shares, primarily by establishing sponsored,

unrestricted ADR programs. For companies that take such steps, we suggest that the Commission eliminate or modify the proposed 20% trading volume test.

1. The Commission should consider the amendments in light of the current context of global securities markets.

From an international perspective, Section 12(g) of the Exchange Act is quite unusual. Most non-U.S. companies would never think that they could become subject to U.S. registration without taking any voluntary steps to access or create a U.S. public trading market for their securities. It would not occur to many of these companies that an exemption from U.S. registration might be needed, or that the exemption might require them to comply with conditions found in the Commission's regulations.

Non-U.S. listed companies might see their securities traded in the United States, without any action on their part, through broker-dealers or trading screens. If a mutual recognition regime is put in place in the future, this will become even more likely. In addition, intermediaries might spread among U.S. investors the English translation of documents taken from issuers' websites, creating interest in the securities of these issuers. We believe strongly that issuers that do not seek to reach public investors in the U.S. should not be subject to U.S. registration rules.

The guiding principle for rethinking the application of this regime to non-U.S. companies should be that the U.S. securities laws do not apply outside the United States. While this general point may seem obvious, the current Section 12(g) regime would appear to come from a different perspective.

As the regime currently operates, a non-U.S. company is generally deemed to be subject to the U.S. registration regime unless an exemption is available. We think that the overall philosophy should be the other way around. A non-U.S. company should not be subject to U.S. registration unless its voluntary actions make a registration requirement appropriate.

We understand that the Commission and its staff have effectively applied a philosophy similar to ours in the enforcement of the current Section 12(g) regime with respect to non-U.S. companies. As the securities markets have become globalized and U.S. investors have diversified their investment portfolios, the number of non-U.S. companies with more than 300 U.S. resident shareholders has undoubtedly grown exponentially (and certainly more quickly than the number of companies that have applied for registration exemptions). The Commission has wisely refrained from taking enforcement action in these cases, presumably in recognition of the practical difficulties that would arise from a significant enforcement program against non-U.S. companies.

By proposing to make the Rule 12g3-2(b) exemption automatic, the Commission has effectively recognized that a regime that leaves so many companies in an irregular or uncertain status through no fault of their own is not satisfactory. We support the Commission's proposal to change this situation, and we hope that the Commission will agree with us that it should go even further.

If the Commission successfully applies this philosophy, it could have an important positive impact on the perception of the U.S. market by European companies. As the Commission is aware, when the New York Stock Exchange merged with Euronext, many European companies were concerned that the merger might subject them involuntarily to U.S. regulation. Whether or not these perceptions were justified, they were very real to many companies. The fears resulted in large part from a growing awareness on the part of many companies that they were required to depend on the Commission's decision not to enforce Section 12(g) in order to avoid U.S. registration.

2. <u>Non-U.S. companies should be automatically and unconditionally exempt from Exchange Act registration unless they voluntarily create a U.S. public trading market for their shares</u>.

The Commission's proposal takes a major step towards rectifying many of the problems described above by making the Rule 12g3-2(b) exemption automatic, and by allowing companies to publish documents electronically rather than submitting them in paper form to the Commission. If these modifications are adopted, then vast numbers of companies will become exempt from Exchange Act registration, without having to take any steps other than pursuing their normal financial communications process. We believe that the proposal is appropriate and strongly support it.

At the same time, we are concerned that some companies might inadvertently fail to meet the Commission's substantive conditions, in many cases without even knowing that those conditions apply. For example, an Italian company listed only in Italy might choose to prepare a shortened English version of its annual report, or perhaps not to prepare an English language annual report at all. If the Italian company never has any interaction with the U.S. public trading market, there is no reason why the Commission's regulations should impose an English language reporting obligation on the company, regardless of whether 300 U.S. investors decide to purchase the company's shares in Italy. Similarly, the Commission has no reason to subject such a company to Exchange Act registration.

We believe that the Commission should automatically and unconditionally exempt non-U.S. companies from Exchange Act registration unless they voluntarily create a U.S. public trading market for their shares, generally by establishing sponsored, unrestricted ADR programs. In the absence of such voluntary steps, a company should not be subject to U.S. registration regardless of how many U.S. investors decide to purchase the company's shares in its home market.

3. <u>The Commission should eliminate or modify the 20% trading volume test for non-U.S. companies with sponsored ADR programs</u>.

We recognize that it is appropriate for the Commission to impose conditions on companies that create sponsored, unrestricted ADR programs in order for those companies to benefit from a registration exemption. We believe, however, that these conditions should focus on ensuring that U.S. investors have access to information (as has traditionally been the case

under Rule 12g3-2(b)), and that the Commission should be cautious in considering a more substantive condition such as the 20% trading volume test.

Exchange Act reporting has traditionally been required only for non-U.S. companies that publicly offer or list their securities in the United States. All other companies have been eligible for the Rule 12g3-2(b) exemption, subject only to a requirement to submit home country information documents to the Commission.

As a result, U.S. investors are well aware that they have access to U.S. periodic reports of non-U.S. companies only when they invest in securities that have been publicly offered or listed in the United States, and that they must rely on home country information when they invest in ADRs of other non-U.S. companies. When U.S. investors purchase over-the-counter ADRs, they have no legitimate expectation that the issuer might one day produce Exchange Act periodic reports.

The imposition of a substantive condition will not change this expectation. When a U.S. investor purchases an over-the-counter ADR, the investor has no way of knowing whether the issuer's trading volume will exceed the 20% threshold at some future date. The investor does not expect the issuer to begin producing Exchange Act reports.

If the Commission were to maintain a substantive condition such as the 20% trading volume threshold, it is unlikely that any company would ever register under the Exchange Act as a result. Instead, companies that approach the 20% trading volume threshold would typically terminate their ADR programs. The imposition of this condition, therefore, would not benefit U.S. investors by providing them with Exchange Act reports about these companies, but would instead harm U.S. investors by making the companies withdraw their shares from the U.S. trading market. The trading volume condition might also make some companies decide not to establish ADR programs in the first place.

Accordingly, we recommend that the Commission eliminate the 20% trading volume condition when it adopts the final rule. Alternatively, if the Commission decides not to follow our recommendation, we urge the Commission to raise the threshold significantly, subjecting companies to registration only when trading in their sponsored, unrestricted ADRs represent over 50% of worldwide trading volume (a level at which companies might be less inclined to terminate their ADR programs).

4. The Commission should carefully consider the implications of the rule amendments for unsponsored ADR programs.

We understand that one consequence of the new rule, if it were adopted in its current form, would be to make the shares of thousands of non-U.S. companies eligible for unsponsored ADR programs. We recognize that this might provide benefits to U.S. investors, who might more easily be able to trade shares of non-U.S. companies. For this reason, we cautiously support this development.

At the same time, we think there are a number of issues that the Commission should carefully consider in relation to unsponsored ADR programs:

- A bank should be required to notify a company before establishing an unsponsored ADR program relating to the company's shares.

- If the unsponsored program is created without the consent of the company, then the bank should be required to terminate the program at no cost to the company or to ADR holders, if the company decides to create a sponsored program (and ADR holders should incur no cost in switching to the sponsored program).

- A bank should be required to provide the company with information regarding the identity of ADR holders at the request of the company.

- If the Commission decides to retain a trading volume test under Rule 12g3-2(b), then ADRs issued under unsponsored programs should not be counted as part of U.S. trading volume.

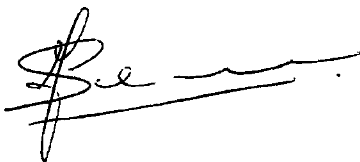
* * * * *

We believe that the Commission's proposed rule amendments, as modified by our proposals, would essentially eliminate the inadvertent application of Section 12(g) to companies that should not properly be subject to Exchange Act registration, while at the same time expanding the opportunities for U.S. investors to trade in shares of non-U.S. companies in an effective manner. We support the Commission's initiative to achieve this objective.

As we have done in the past, we have requested that Cleary Gottlieb Steen & Hamilton LLP provide a detailed analysis in support of our position.

We appreciate the opportunity to participate in this process and to co-operate actively with the Commission, and we look forward to its successful conclusion.

Very truly yours,



Jacques SCHRAVEN
Chairman

Dorien FRANSENS
Secretary General

cc: The Honorable Christopher Cox, *Chairman*

The Honorable Paul S. Atkins, *Commissioner*
The Honorable Kathleen L. Casey, *Commissioner*

John W. White, *Director, Division of Corporation Finance*
Paul M. Dudek, *Chief of the Office of International Corporate Finance*
Ethiopis Tafara, *Director, Office of International Affairs*

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Situation March 2008

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SONAE

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2. NATIONAL ASSOCIATIONS OF LISTED COMPANIES

AUSTRIA
Aktienforum - Austrian Federation of Equity-Issuers and -Investors

BELGIUM
Association Belge des Sociétés Cotées (ASBL) – Belgische Vereniging van Beursgenoteerde Vennootschappen (VZW) – (ABSC – BVBV)

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Bulgarian Industrial Capital Association

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Cyprus Association of Public Listed Companies – (SYDEK)

FINLAND
Finnish Foundation for Share Promotion

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- Association Française des Entreprises Privées – (AFEP)
- Association Nationale des Sociétés par Actions – (ANSA)
- MiddleNext

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GREECE
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Associazione fra le società italiane per azioni (ASSONIME)

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