The Hundred Group of Finance Directors

General Counsel 100 Group

February 28, 2006

VIA E-MAIL: rule-comments@sec.gov

Ms. Nancy Morris,
Secretary,
Securities and Exchange Commission,
450 Fifth Street, N.W.,
Washington, D.C. 20549-0609.

Re: Proposed Rule Permitting Foreign Private Issuers to Deregister and Terminate Their Reporting Obligations under the Securities Exchange Act of 1934 (File No. S7-12-05) (the "Deregistration Proposal")

Dear Ms. Morris:

We are writing on behalf of The Hundred Group of Finance Directors and the General Counsel (GC) 100 Group to applaud the Commission for issuing the Deregistration Proposal, provide a few suggestions that we believe would improve the effectiveness of the final rules and stress the need for prompt action on other important proposals affecting foreign private issuers.

Introduction

The Hundred Group and the GC 100 are interest groups whose members are drawn largely but not exclusively from the chief financial officers and chief legal officers, respectively, of the 100 largest publicly-traded companies in the United Kingdom. Approximately 40 companies represented by The Hundred Group and the GC 100 have securities registered under the Securities Exchange Act of 1934.[1]

The Hundred Group and the GC 100 agree with the Commission that the current rules governing the conditions under which a foreign private issuer may exit the Exchange Act reporting regime are outdated and should be revised. Under the current rules, non-U.S. companies that register securities with the Commission effectively subject themselves to

[1] While this letter expresses the views of the The Hundred Group and the GC 100 as a whole, such views are not necessarily those of individual members or their respective employers.

Exchange Act reporting indefinitely. This result is unfair to foreign private issuers that have minimal U.S. investor interest in their securities and have not made a public offering of securities in the United States in the recent past. By establishing a clear and workable deregistration mechanism, the Commission would provide relief for such issuers while eliminating a significant disincentive for potential registrants considering a U.S. public offering or listing in the future.

Before turning to our comments on the Deregistration Proposal, we wish to emphasize that, in the view of The Hundred Group and the GC 100, deregistration is only one area where the Commission's rules for foreign private issuers need to be revisited. The U.S. securities markets currently face greater competition than ever before in attracting world-class companies, many of which are turning to robust markets in Europe and Asia to raise capital and list their securities. We believe that, in order to maintain the attractiveness of the U.S. markets, the Commission and its staff should be working more quickly to ease the burden of duplicative regulation on foreign private issuers that remain – or wish to become – Exchange Act reporting companies. We are confident that the Commission can do much in this regard without compromising its basic mission of protecting U.S. investors.

The single most important issue of this type is mutual recognition of IFRS and U.S. GAAP. Many of the companies represented by The Hundred Group and the GC 100 incur significant expense and devote substantial management resources every year to reconcile their financial results to U.S. GAAP as required by Form 20-F. This U.S. GAAP information is typically made available weeks or months after the company's IFRS results have been released to the market. In the great majority of cases, the release of U.S. GAAP information by companies that have already published results in accordance with high-quality accounting standards such as IFRS is of limited benefit to investors.

With the implementation of IFRS across the European Union in 2005, we believe that the Commission should not further delay the elimination of the U.S. GAAP reconciliation requirement for foreign private issuers that report in IFRS. Hundreds of EU companies for which IFRS is the primary or sole accounting standard are currently trading on European stock exchanges among retail and institutional investors alike. We believe that the market has clearly demonstrated its confidence in the quality of IFRS reporting.

We strongly urge the Commission to accelerate its timetable for IFRS recognition and propose rules to eliminate the U.S. GAAP reconciliation requirement for EU companies within the next year. This step would substantially reduce the incremental burden of Exchange Act reporting for the great majority of EU companies and remove the single largest deterrent for EU companies considering a public offering or listing in the United States.

Comments on the Deregistration Proposal

1. Percentage Thresholds

The Hundred Group and the GC 100 believe that the eligibility criteria reflected in the Deregistration Proposal are unlikely to provide relief to a significant number of foreign private issuers currently subject to Exchange Act reporting. While we have not conducted a formal survey of our membership, based on informal discussions among several of our members we believe that very few if any (and certainly far less than 26%) of the companies represented in The Hundred Group and the GC 100 would be eligible for deregistration under the Commission's proposed tests.

We believe that the easiest way to address this concern within the framework set forth in the Deregistration Proposal would be to raise the threshold for the Commission's proposed public float test from 5 percent to 10 percent. In today's global securities markets, a U.S. ownership level of 10 percent or less of an issuer's equity securities implies a very low level of U.S. investor interest. This is true both in absolute terms as well as relative to what we believe to be a typical issuer's expectation as to the level of U.S. investor interest that would justify the cost of complying with an additional set of reporting obligations outside its home country. We note that 10 percent is also the U.S. ownership level at which the Commission has determined that rights offerings and tender offers involving foreign private issuers should be exempt from most aspects of the U.S. federal securities laws, and we believe there is no reason why the same threshold should not be used to define the perimeter of U.S. regulatory interest in the context of deregistration.

We also recommend that the Commission raise the public float threshold from 10 percent to 15 percent for the proposed combined test based on public float and trading volume. In our opinion, where U.S. trading volume represents 5 percent or less of the company's home market trading volume, a U.S. ownership threshold of 15 percent is an appropriate benchmark of *de minimis* U.S. investor interest.

2. Treatment of Qualified Institutional Buyers

The Hundred Group and the GC 100 believe that, in considering a foreign private issuer's U.S. shareholder base for purposes of deregistration, it is appropriate for the Commission to recognize that large institutional investors typically do not need the kinds of protections provided by the registration and reporting regime provided under the Exchange Act. In our experience, U.S. institutional investors rely primarily on the financial and other information published by U.K. companies in accordance with U.K. requirements; they do not wait until an issuer's annual report on Form 20-F is filed weeks or months later.

Indeed, we note that U.S. institutional investors routinely invest in securities of U.K. companies that have no Exchange Act reporting obligations, demonstrating their comfort in relying on the U.K. reporting regime.

In light of the foregoing, The Hundred Group and the GC 100 recommend that the Commission modify the rules used to calculate the percentage an issuer's outstanding free float that is held by U.S. residents to exclude shares held by qualified institutional buyers from the numerator (but not the denominator).

We recognize that the Commission way be reluctant in the first instance both to increase the percentage thresholds as we have suggested and to exclude qualified institutional buyers from the calculation. In such event, we would endorse an alternative set of criteria that retained the lower thresholds initially proposed by the Commission but permitted the exclusion of qualified institutional buyers.

3. Determination of Public Float

The Hundred Group and the GC 100 recommend that the Commission adopt a bright-line standard for determining whether a particular shareholder must be excluded from the calculation of a foreign private issuer's free float. Under the proposed rules, an issuer is required to determine which of its shareholders are "affiliates" in order to calculate its free float. However, the fact-specific and subjective nature of affiliate determinations under the U.S. federal securities laws is likely to generate substantial costs and uncertainty for issuers seeking to determine their free float for purposes of deregistration. We believe that the final rules should avoid imposing unnecessary cost and uncertainty by employing an objective test in order to arrive at an issuer's free float, excluding shareholders of a specified size – not "affiliates" – from the calculation. This approach would be similar to that reflected in the Commission's exemptions for rights offerings and tender offers involving foreign private issuers. We believe an appropriate threshold for excluding significant shareholders from the calculation of an issuer's free float is 20 percent, a level which in most cases is not indicative of control over the issuer.[2]

[2] We recognize that our proposed threshold is higher than the 10 percent threshold used in the Commission's exemptions for cross-border rights offerings and tender offers. We believe that a 10 percent threshold is too low, resulting in the exclusion of many shareholders that do not exercise control over the issuer and should be counted in its free float. Our concern is substantiated by the relatively limited use of the cross-border exemptions since their adoption in 1999.

4. Dormancy Requirement

The Hundred Group and the GC 100 agree with the principle behind the dormancy requirement included in the Deregistration Proposal. Issuers that have actively solicited U.S. investors in a public offering of securities should not be permitted to exit the Exchange Act reporting regime until after an appropriate "cooling off" period has passed, and we believe that 12 months is a reasonable length of time for such a period. We also agree in large part with the exceptions from the dormancy requirement reflected in the Deregistration Proposal. However, these exceptions should be expanded or supplemented in certain respects that we believe are consistent with the principle behind the requirement. In particular, The Hundred Group and the GC 100 recommend that the final rules exclude the following types of offerings from the dormancy requirement:

- *Unregistered offerings of non-convertible debt securities in reliance on Rule 144A.* By definition, these offerings are targeted at large, sophisticated institutional investors in the United States that, as noted above, do not need – and in practice do not rely upon – the Exchange Act reporting regime for protection. We note that many large EU companies have active Euro Medium-Term Notes (EMTN) programs that are used primarily to access the European debt market but often permit sales to QIBs in the United States pursuant to Rule 144A. If such sales are deemed to violate the dormancy requirement, foreign private issuers are less likely to extend their unregistered debt offerings into the United States – to the detriment of U.S. institutional investors.

- *Long-dated commercial paper with a maturity of 18 months or less.* Long-dated commercial paper is commonly issued by European companies and sold to U.S. investors in reliance on Section 4(2) of the U.S. Securities Act of 1933. There is no policy reason to treat these issuances differently than commercial paper with a shorter maturity, which would be exempt from the dormancy requirement as proposed.

- *Securities issued pursuant to the exercise of pre-existing options, warrants or exchange rights.* The policy considerations behind the dormancy requirement do not apply where a foreign private issuer delivers equity securities pursuant to the exercise by securityholders of options, warrants or exchange rights that were previously issued. In such cases, the relevant point in time for determining whether the issuer is seeking to create or take advantage of U.S. investor interest in its securities is the time at which such options, warrants or exchange rights were issued.

- *Securities issued to persons covered by Form S-8.* We recommend that the exception from the dormancy requirement for securities sold to employees of the issuer include the same definition of "employee" used in Form S-8. This definition covers "any employee, director, general partner, trustee (where the registrant is a business trust), officer, or consultant or advisor." Our proposal is consistent with the purpose of the exception, which, like Form S-8, acknowledges that sales to such persons are undertaken primarily for purposes other than capital formation.[3]

- *Securities issued in exempt rights offerings and exchange offers.* As proposed, the dormancy requirement would be violated by a sale of securities in the United States in reliance on the Commission's exemptions for cross-border rights offerings and exchange offers. We note that these exemptions were adopted to encourage issuers and bidders to include U.S. investors in transactions where there is a high likelihood that, absent relief, the issuer would simply exclude the U.S. market. As a policy matter, we believe that the Commission should avoid creating further disincentives for issuers to take advantage of these exemptions.

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[3] We also believe that the Commission should provide transition relief in situations where a foreign private issuer has offered securities to employees pursuant to a registration statement on Form S-8 and subsequently deregisters pursuant to proposed Rule 12h-6. For example, the Commission could expand Rule 701 under the Securities Act to exempt (i) continuous offerings of securities pursuant to options, warrants or subscription rights issued prior to deregistration and (ii) sales of securities offered to employees prior to deregistration. The exemption should be available in such circumstances without restriction as to amount, even if the foreign private issuer ceases to provide US GAAP-reconciled financials.

We appreciate the opportunity to comment on the Deregistration Proposal, and would be pleased to discuss any questions the Commission may have with respect to this letter. Any questions may be directed to Philip Broadley of Prudential PLC at +44 20 7220 7588 or Mark Harding of Barclays PLC at +44 20 7116 1000. Alternatively, you may contact any of Richard Morrissey, Bill Plapinger, Angel Saad or George White of Sullivan & Cromwell LLP in London on +44 20 7959 8900.

Very truly yours,

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