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March 8, 2006

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-9303

Re: File No. S7-12-05
Release No. 34-53020; International Series Release 1295
Termination of a Foreign Private Issuer's Registration of a Class of Securities under Section 12(g) and Duty to File Reports under Section 15(d) of the Securities Exchange Act of 1934

Ladies and Gentlemen:

This letter is submitted on behalf of the Committee on Federal Regulation of Securities of the American Bar Association, Section of Business Law (the "Committee") in response to the request by the Securities and Exchange Commission (the "Commission") for comments on the release described above dated December 23, 2005 (the "Proposing Release").

The comments expressed in this letter represent the views of the Committee only and have not been approved by the American Bar Association's House of Delegates or Board of Governors and therefore do not represent the official position of the ABA. In addition, this letter does not represent the official position of the ABA Section of Business Law, nor does it necessarily reflect the views of all members of the Committee.

A. Overview

The Committee commends the Commission for addressing the concerns expressed by many foreign private issuers and their counsel that the current rules governing the means by which a foreign private issuer is able to terminate the registration of its securities under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") and its duty to file reports under Section 15(d) of the Exchange Act are unnecessarily restrictive.[1] We believe that the current rules should be revised to enable foreign private issuers now subject to reporting obligations or to an annual evaluation of their registration obligations[2] to more readily terminate such obligations[3]. In addition, although we acknowledge that a multitude of factors inform the decisions of foreign companies to enter the U.S. markets, we believe that if the final rules provide a reasonable means by which a foreign company can permanently obtain relief from the U.S. registration and reporting obligations, the Commission will have resolved one disincentive for foreign companies to list or offer their securities to the public in the U.S.

We believe the Commission should view deregistration as only one component of a much larger issue involving the willingness of foreign companies to enter the U.S. markets. In the past few years many foreign issuers, including many prominent foreign companies, have left or announced their intentions to leave the U.S. markets, and many other foreign issuers have bypassed the U.S. markets and listed elsewhere.[4] While it is beyond the

[1] In this letter, the term "deregistration" is used throughout to refer both to termination of registration pursuant to Section 12(g) of the Exchange Act and to termination of reporting obligations pursuant to Section 15(d) of such Act.

[2] Companies with securities registered under Section 12, and those subject to Section 15(d) reporting obligations, are required to file reports and other information with the Commission. Companies that have a suspended Section 15(d) obligation because the number of their security holders has fallen below the applicable threshold are required to perform an annual evaluation to determine whether they are obligated to register a class of securities pursuant to Section 12(g).

[3] The ability of a foreign private issuer to terminate its American Depositary Receipt ("ADR") program and its securities exchange or Nasdaq listing is not implicated by the Proposal. Although a termination of an issuer's ADR program and listings will likely decrease the number of its U.S. security holders, such issuers remain subject to reporting and other obligations under the Exchange Act until they meet the criteria for deregistration.

[4] The companies that have left or announced the intention to terminate their ADR programs and their U.S. listings include Vivendi Universal (press release dated January 17, 2006), Cable & Wireless plc (terminated January 2006), O2 plc (terminated September 2005), Enodis plc (terminated August 2005), The Rank Group plc (terminated August 2005), Alstom (terminated June 2005) and LVMH Moet Hennessy Louis Vuitton (terminated March 2004). In the case of certain companies organized in the U.K., the deregistration has been implemented by the adoption of amendments to the companies' articles of association permitting the companies to effect a compulsory disposition of company shares held by U.S. persons. The potential loss of value virtually compels existing U.S. holders to dispose of their shares, and effectively insures that U.S persons will not acquire any shares of these issuers. We believe that the departure of these companies is, in large part, the direct result of the onerous disclosure and reporting requirements under the Sarbanes-Oxley Act of 2002. According to media reports, 129 non-British companies listed on the London Stock Exchange during 2005, an 82% increase over 2004. These companies are not required to comply with the U.K. Combined Code of Corporate Governance. The 2005 International IPO Survey by the London Stock Exchange revealed that, of those international companies that considered a U.S. listing, 90% felt that the

scope of this comment letter to address the full range of issues implicated in these choices, we believe that the Commission should consider undertaking a comprehensive review of the effect of U.S. regulation on the willingness of foreign issuers to list or offer securities publicly in the U.S., and whether the interests of U.S. investors are adequately served if such issuers choose not to have a U.S. presence. [5]

Although we strongly support the revision of the existing deregistration rules, we also are sensitive to the possibility that, following the adoption of final rules, a number of issuers seeking to deregister will take immediate action to terminate their ADR programs and U.S. listings to reduce their U.S. shareholder base and accelerate their eligibility for deregistration. Because we do not see any net benefit to U.S. investors by the retention of a reporting obligation (even for a limited period of time) against the backdrop of the loss of a U.S trading market for an issuer's securities, we encourage the Commission to consider providing additional accommodations to foreign private issuers that will reduce the attractiveness of deregistration. These accommodations may include greater deference to home country reporting requirements, and recognition of home country internal control procedures as an alternative to those currently required under the Exchange Act.

The Proposing Release posed a wide range of questions, and the proposal (the "Proposal") set forth therein represents one set of choices within the spectrum of those questions. While we have not endeavored in this letter to respond to all of the questions raised by the Commission, we have identified in Part B the principal considerations we believe should be reflected in the final rules to be adopted by the Commission and, in Part C, a number of technical comments addressing specific provisions of the Proposal.

B. Principal Considerations

1. The final rules should provide a means to determine eligibility for deregistration that is administratively practical and relatively easy to implement.

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demands of Sarbanes-Oxley made the London market more attractive. In addition to the considerations described in this letter encouraging the Commission to proceed promptly with the adoption of rules easing the deregistration process, we are concerned that any failure to act promptly will result in more companies terminating their U.S. listings and leaving the U.S. markets, without any reasonable consideration for the consequences of such departures to U.S. security holders.

[5] The most recent study by the Commission regarding the internationalization of the securities markets was issued in 1987. "Internationalization of the Securities Markets," Report of the Staff of the U.S. Securities and Exchange Commission to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce (July 27, 1987). See also Securities Act Release No. 6568 (February 28, 1985), a concept release soliciting public comment on methods of harmonizing disclosure and distribution practices for multinational offerings by non-governmental issuers, and Securities Exchange Act Release No. 21958 (April 18, 1985), "Request for Comments on Issues Concerning Internationalization of the World Securities Market." In view of the significant changes that have occurred since 1987 to the U.S. and world securities markets, we believe a new study would be appropriate.

We believe that the requirements for deregistration in the Proposing Release are too complicated and too difficult to satisfy. The Proposing Release includes three alternative criteria to permit a company to deregister: (i) a test available to well-known seasoned issuers ("WKSIs") based on the percentage of securities held by U.S. residents and the percentage of the issuer's trading volume in the U.S., (ii) a test for those issuers other than WKSIs based on the percentage of securities held by U.S. residents (with a lower threshold than that proposed for WKSIs), and (iii) a test based on the number of holders in the U.S. or the number of holders worldwide. Although these alternative criteria expand the current criteria available to foreign issuers seeking to deregister, we are concerned that in practice they will prove difficult to satisfy.

Large sophisticated U.S. institutional investors should be eliminated from the calculation of eligibility thresholds.[6] We believe that, despite the Commission's estimate that approximately 26% of the current foreign registrants[7] will be able to deregister under the Proposal, the prevalence of large U.S. institutional investors holding foreign shares will prevent many companies from meeting the eligibility criteria. We believe that many large U.S. institutional investors acquire the securities of foreign issuers in primary trading markets outside the U.S. and that such investment decisions are not necessarily made in reliance on information or reports filed by the issuer under the Exchange Act. If the Commission fails to exclude large U.S. institutional investors in measuring the percentages of holders, we believe the practical result will be to deprive many issuers of the benefits of the proposed rule changes.

The look-through requirements[8] *are burdensome and impractical.* Although the Proposal permits the "look-through" to be limited to certain jurisdictions, as opposed to requirements set forth in the current rules, and offers accommodations permitting the issuer to make certain assumptions and to rely upon information furnished by independent information service providers, we believe that the practical difficulties issuers will encounter will nonetheless make compliance burdensome and, in many cases, difficult or impossible. We discuss our concerns relating to the look-through requirements in greater detail in Part C below.

[6] These eligibility thresholds are set forth in subsections (a)(4)(i)(B), (a)(4)(ii) and (a)(5) of proposed Rule 12h-6.

[7] This percentage is based on the Commission's database of 510 foreign private issuers for which sufficient data was available to make the necessary calculations.

[8] See subsection (e) of proposed Rule 12h-6.

The dormancy period should be applicable only to certain types of registered offerings. The tests[9] prevent companies that have engaged in certain private offerings in the U.S. or issued securities in Section 3(a)(10) proceedings from being able to deregister for a period of time after the completion of these transactions or proceedings. These requirements will further limit the ability of foreign issuers to deregister, and in some cases may serve to dissuade foreign issuers from conducting private offerings in the U.S. We see no need for the Proposal to include criteria that would purport to protect investors who typically do not rely upon an issuer's Exchange Act reports in making their investment decisions, such as sophisticated institutional investors (the most common investors in private offerings) or investors (foreign and domestic) receiving securities following a court determination of fairness.

The 300-holder test is outdated and should be revised. The tests[10] utilizing thresholds of record holders, whether calculated on a U.S. or worldwide basis, are unrealistically stringent in today's global marketplace where accessibility to issuer information is readily available from a number of sources. We consider this threshold unreasonably low and outdated and urge the Commission to adopt a threshold utilizing a minimum shareholder base of 1,000 owners of the applicable class of securities on a worldwide basis utilizing the same methodology as that applicable to U.S. domestic registrants.

2. <u>The final rules should more adequately address successor issuers</u>.

Two principal issues arise relating to successor issuers. The first is the lack of equal treatment accorded different foreign private issuers in their ability to terminate permanently their registration and reporting obligations. The second is uncertainty as to whether a successor issuer can rely on its predecessor's reporting history for purposes of satisfying the requirements of the Proposal.

Equal Treatment. The Commission proposes to amend Rule 12g3-2 to permit a deregistering foreign private issuer to avail itself immediately of the exemption from registration provided by Rule 12g3-2(b), rather than wait 18 months as required under the current rule. However, a deregistering successor registrant within the meaning of Rules 12g-3 and 15d-5 would be required to re-register under section 12(g) of the 1934 Act if it exceeded the specified thresholds due to the requirements of Rule 12g3-2(d)(2). We believe the Commission did not intend this result and that subsection (d)(2) should be modified so as to ensure equal treatment for all successor registrants.

[9] See subsection (a)(2) of proposed Rule 12h-6.

[10] See subsection (a)(6) of proposed Rule 12h-6.

Reliance on Prior Reporting History. The Proposing Release is silent as to whether a successor registrant may rely on its predecessor's Exchange Act reporting history. Consequently, there is uncertainty regarding a successor registrant's ability to satisfy the reporting requirements condition by relying on such history and thus to deregister within the two years following the succession transaction. Other rules and forms explicitly state that a successor registrant may rely on its predecessor's reporting history.[11] Under Rule 12g-3(g), a successor issuer is required to file an annual report for itself for each fiscal year beginning on or after the date the succession is effective. It is also required to file an annual report for its predecessor covering the last full fiscal year of the predecessor before the succession. The final rules should clarify that successor registrants may satisfy the historical reporting requirement in Rule 12h-6(a)(1) by complying with Rule 12g3-2.

3. <u>In view of the Proposal, the Commission should provide foreign private issuers further relief from requirements regarding internal control over financial reporting</u>

As the Commission is well aware, compliance with the requirements relating to internal control over financial reporting is burdensome and costly.[12] We believe this is a key reason for the reluctance of foreign issuers to enter, or remain in, the U.S. markets. Most issuers are required to commence the process of designing and implementing internal controls at least one year prior to the time the issuer becomes subject to the review and reporting obligations under the Exchange Act.[13] We believe that it would be unfair and unnecessarily burdensome to impose upon issuers who may seek to deregister under the final rules the obligation to design and implement a control system that such issuers may never be required to report upon. In view of the uncertainty as to whether, or when, the Commission will adopt final rules and the scope of any such rules, and in consideration of the difficulties currently being faced, or soon to be faced, by foreign private issuers in

[11] For example, General Instruction I.A.4 to Form F-3 allows a successor registrant to satisfy the filing history requirements of Form F-3 by looking at both its and its predecessor's filing history. In addition, the Staff of the Commission has frequently granted no-action relief to successor registrants to rely on a predecessor's filing history for other purposes, such as Rule 144 under the Securities Act. See, for example, <u>Shire Pharmaceuticals Group plc</u> (November 17, 2005).

[12] A 2005 U.S. survey by Financial Executives International found that average Sarbanes-Oxley compliance costs for companies with revenues below $1 billion amounted to $1.9 million per year and were disproportionately higher for companies with lower revenues.

[13] On March 2, 2005, the Commission announced an extension of the compliance dates for foreign private issuers pursuant to the rules adopted by the Commission pursuant to Section 404 of the Sarbanes-Oxley Act of 2002. Under the extension, a foreign private issuer filing its annual reports on Form 20-F or 40-F must begin to comply with the internal control over financial reporting requirements for its first fiscal year ending on or after July 15, 2006. On September 22, 2005, in Release Nos. 33-8618 and 34-52492, these dates were further extended and, accordingly, a foreign private issuer that is not an accelerated filer must begin to comply with these requirements for its first fiscal year ending on or after July 15, 2007.

connection with the implementation of internal control programs, we urge the Commission to extend further the compliance deadline until an issuer's first fiscal year beginning on a date at least 24 months after the Commission adopts final rules. Such extension would permit foreign issuers to avoid the costs and expenses associated with the design and implementation of internal control systems that may never be required.[14]

4. The final rules should not impose on deregistered companies any obligations greater than those imposed on companies claiming exemption pursuant to Rule 12g3-2(b).

Approximately 600 foreign issuers have claimed exemption pursuant to Rule 12g3-2(b), and furnish information to the Commission in accordance with that Rule. Regardless of the basis upon which a company deregisters, in our view companies that have deregistered should not, following a transition period, be subject to more burdensome obligations than companies that have never had securities registered under Section 12 or been subject to a Section 15(d) reporting obligation. To impose greater obligations would effectively penalize companies for having listed or registered in the U.S.

In addition, we submit that a foreign private issuer that (i) is not listed on a national securities exchange or quoted on Nasdaq and (ii) during the past two years has not engaged in a registered securities offering in the U.S. is indistinguishable from the many companies that have claimed exemption from Section 12(g) registration pursuant to Rule 12g3-2(b). We believe that such a registrant should be entitled to equivalent treatment and, therefore, should be entitled to deregister upon submission of Form 15F irrespective of its U.S. shareholder base.

C. Other Comments Regarding the Proposal

1. Rule 12h-6

Qualifying Criteria -- Rule 12h-6(a)

Furnishing of Reports on Form 6-K -- Rule 12h-6(a)(1). As proposed, the inadvertent failure by a foreign private issuer to furnish a report on Form 6-K would prevent an issuer from deregistering for a period of two years. We consider this result to be unnecessarily punitive, both because the requirement to furnish the report in a

[14] Our proposal to further extend the internal control compliance deadline for foreign private issuers is not inconsistent with other proposals to the Commission seeking relief from the application of Section 404 of the Sarbanes-Oxley Act of 2002. For example, the Exposure Draft of the Final Report of the Advisory Committee on Smaller Public Companies has proposed that the Commission consider granting exemptive relief, in the case of certain classes of issuers, from the requirements of Section 404 and from external auditor involvement in the Section 404 process. See Release Nos. 33-8666 and 34-53385 (February 28, 2006).

particular circumstance may be a matter of judgment by an issuer (with which the staff of the Commission may subsequently disagree)[15] and because the report is furnished rather than filed. Form 6-K enables U.S. investors to readily access information the issuer has furnished in its home country or home market. While we acknowledge the importance of Form 6-K, we believe it may have been more important prior to the development of electronic communications. In many cases, an issuer that has failed to furnish a Form 6-K may nonetheless have arranged for the broad dissemination of the information that would have been contained in the report, such as through website posting, press releases available on the Internet, or even direct delivery to security holders. We therefore believe that, as a condition to deregistration, an issuer should be required to have filed all reports required to have been filed for a two year period, but that the reference to reports required to be furnished should be deleted.

Clarification of Period -- Rule 12h-6(a)(1). We would encourage the Commission to clarify in the adopting release that the period to be included in "the two years preceding the filing of the Form 15F" is calculated on the basis of calendar years, and not an issuer's fiscal year or some other measure.

Exceptions for Registered Offerings -- Rule 12h-6(a)(2)(i). We recommend that the enumerated exceptions be clarified as follows:

a. The exception for securities sold to the issuer's employees should refer to, and rely upon, the definition of "employee" set forth in Form S-8.[16] Many foreign issuers register securities on Form S-8 in connection with employee benefit plans, and tailor their plans for U.S. persons to coincide, in whole or in part, with the availability of Form S-8. If interpreted strictly, this section would impose an unreasonably narrow definition of employee and, as a result, may disqualify an issuer that filed a Form S-8 with respect to an employee benefit plan not tailored to the limited definition set forth in the Proposal.

[15] The report is only required if the information to be furnished is material with respect to the issuer and its subsidiaries within certain enumerated categories, and if the information is made public (or required to be made public) as provided in Form 6-K.

[16] As set forth in Form S-8, General Instruction A.1.(3), the term would include, inter alia, any employee, director, general partner, trustee (where the registrant is a business trust, officer, or consultant or advisor (subject to certain conditions with respect to consultants). The term would also include insurance agents who are exclusive agents of the registrant, its subsidiaries or parents, or derive more than 50% of their annual income from those entities. In addition, it would include former employees as well as executors, administrators or beneficiaries of the estates of deceased employees, guardians or members of a committee for incompetent former employees, or similar persons duly authorized by law to administer the estate or assets of former employees (subject to the conditions in Form S-8), and a family member (as defined in Form S-8) of an employee who has received shares through a gift or domestic relations order.

b. We also believe that, consistent with Instruction 2 to Item 8 of Form 20-F[17], certain other registered offerings should not disqualify issuers from availing themselves of Rule 12h-6. Registered offers of the types of securities referred to in such Instruction either are effected without the purpose of capital raising or for the convenience of security holders (as in a dividend or interest reinvestment plan), or relate to offers to existing security holders. We believe the acknowledgement by the Commission in Form 20-F that less rigorous standards should apply to these transactions is equally applicable in the context of proposed Rule 12h-6 and should not constitute a disqualifying event.

Exception for Unregistered Offerings -- Rule 12h-6(a)(2)(ii). We believe that this limitation is too restrictive and that the issuance of securities in unregistered offerings, including reorganizations, during the preceding 12 months should not constitute a bar to deregistration. Investors in unregistered offerings typically rely upon home country disclosure documents or other materials made available to them, and not upon filings under the Exchange Act. We believe that most foreign private issuers that engage in unregistered offerings, apart from Rule 701 or Section 3(a)(10) of the Securities Act, limit the offerings in the U.S. to large institutional investors. Proposed subsection (a)(2)(ii) effectively grants security holders rights they did not necessarily bargain for or expect to receive. In most private offerings, the investors are able to negotiate whether they will require the issuer to maintain its Exchange Act registration or reporting obligations. The proposed rule also disqualifies issuers that may be engaged in unregistered offerings (i) on a continuing basis, such as through the obligation to issue securities pursuant to the exercise of outstanding warrants if, during the course of the prior year, any warrants were exercised and (ii) subject to Section 3(a)(10) where securities have been issued pursuant to a court proceeding or fairness opinion. In the case of schemes of arrangement or other reorganization transactions that would be exempt from registration pursuant to Section 3(a)(10) of the Securities Act, a court or other governmental body generally reviews the disclosure proposed to be delivered to security holders, affords security holders the right to be heard in a fairness hearing, and makes a determination regarding fairness. Neither the security holders involved in such proceedings, nor the courts or other governmental bodies reviewing fairness, rely upon Exchange Act reports of issuers in making the necessary determinations. We believe that the proposed distinction

[17] Instruction 2 to Item 8 of Form 20-F includes offerings of securities (i) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if the rights are granted pro rata to all existing security holders of the class of securities to which the rights attach, (ii) pursuant to a dividend or interest reinvestment plan, or (iii) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of that issuer.

between types of unregistered offerings is neither necessary nor appropriate in the context of deregistration.[18]

With respect to the limitation on "offerings to employees" in subsection (a)(2)(ii)(A), we recommend that the language be clarified so as to include securities issued in reliance upon the exemption afforded by Rule 701.

Primary Trading Market and Trading Volume Tests -- Rules 12h-6(a)(3)-(5). Tests based on a comparison of U.S. trading volume to volume on the primary trading market are unnecessarily restrictive. While we understand the desire of the Commission to assure that the market for a foreign private issuer's securities is liquid, we believe the 55% criterion is inappropriate in the context of today's markets. With the proliferation of securities trading markets outside the U.S., notably in Europe, the Far East and Latin America, many issuers maintain listings in two or more markets. We are not aware of any determination that trading on multiple markets results in a loss of liquidity. To the contrary, we believe that issuers elect to list securities on multiple markets to increase liquidity and to meet the needs of shareholders in various markets[19]. Initiatives adopted in the EU to harmonize disclosure and market practices have, in fact, encouraged multi-national listings. The imposition of the 55% requirement will serve to disqualify a number of companies that have made the choice to list their securities in multiple jurisdictions, with the result that the trading volume in no single foreign market is 55% or greater. Even if the trading volume exceeds 55%, the comparison between the U.S. trading volume, and the volume of trading in only that one other market, may significantly reduce the number of companies with multiple foreign markets that will be able to satisfy this criterion. We urge the Commission either to eliminate the volume limitation test, and permit deregistration when the issuer's securities are traded in at least one market outside the United States, or to revise the criteria to refer to the aggregate trading in (i) all non-U.S. markets or, alternatively, (ii) all major non-U.S. markets, such as all markets that would constitute a "Designated Offshore Securities Market" as used in Rule 902(b) of Regulation S.

[18] We also note that that the proposed dormancy periods relating to unregistered offerings or exchanges pursuant to Section 3(a)(10) would apply even if the number of U.S. purchasers or acquirees in such transactions were very small. Even if the Commission determines to retain a dormancy period for Section 3(a)(10) exchanges, we see no reason why transactions exempt from registration pursuant to Section 4(2) should, in view of the investment sophistication of the investors, give rise to a dormancy period.

[19] Many foreign private issuers have multiple non-U.S. listings. Examples include BP p.l.c. (London, Frankfurt, Euronext (Paris), Zurich, Tokyo, Toronto), DaimlerChrysler AG (Frankfurt, Berlin-Bremen, Düsseldorf, Hamburg, Hanover, Stuttgart, Munich, Euronext (Paris), Tokyo, Zurich), Honda Motor Co., Ltd. (Tokyo, Osaka, Nagoya Fukuoka, Sapporo, London, Swiss, Euronext (Paris)) and Siemens AG (Frankfurt, Stuttgart, Munich, Hannover, Düsseldorf, Berlin/Bremen, Hamburg, Xetra, London, Swiss).

In the Proposing Release, the Commission did not consider it appropriate to propose a standard for deregistration based solely on the relationship of the trading volume in U.S. markets to worldwide trading volume. We understand that this was due to a concern that, notwithstanding a very low trading volume in the U.S., a foreign private issuer may have a large number of U.S. security holders. While this may sometimes be the case, we believe that if trading in the U.S. markets is truly minimal, it is clear that investors are neither relying on, nor expecting the benefits of, the issuer's continued U.S. presence or U.S. disclosure documents. We therefore suggest that, in addition to the other criteria for deregistration set forth in Proposed Rule 12h-6, the Commission permit an issuer to deregister if its trading in the U.S. markets, over a twelve-month period prior to the date the determination is made, is not greater than 5% of the issuer's total worldwide trading volume. We believe this minimal level indicates that the issuer has no substantial U.S. market presence and provides a more objective means for assessing eligibility for the benefits of Rule 12h-6.

We further note that changes in foreign securities markets, including mergers and consolidations as well as cessations of operations, may result in a company, during the relevant testing period, transferring its listing from one market to another. If the Commission determines to retain a market volume test in the primary trading market definition, we request the Commission provide guidance in the adopting release as to how mergers and consolidations, and cessations, will be treated.

<u>Thresholds Relating to the Shareholder Base – Rules 12h-6(a)(4)–(5)</u>. Earlier we discussed our concerns regarding the failure of the Proposal to exclude, from the determination of U.S. holders, securities holdings by large U.S. institutional investors. In addition, we believe the distinction between WKSIs and non-WKSIs in the context of deregistration is inappropriate and should be eliminated and that the Proposal should retain for all issuers the thresholds proposed for WKSIs. While the distinction is appropriate in the context of securities offerings and, in particular, automatic shelf registrations, we do not believe it has any relevance in the context of foreign issuer deregistration. More importantly, we do not perceive any benefit to imposing a higher burden for deregistration on smaller companies.

We consider that a U.S. shareholder threshold of 5% would prevent many foreign private issuers from being able to deregister and, thus, would serve to disincentivize companies from entering the U.S. markets. No new entrant into the U.S. markets, regardless of its size, will satisfy the WKSI criteria because of a lack of U.S. reporting history. Accordingly, the standard such issuers will be required to comply with, at least initially and perhaps for a longer period, will be the proposed U.S. shareholder threshold of 5%, which we consider unreasonably low.

In the event the Commission does not believe it appropriate to exclude large U.S. institutional investors from the calculation of the shareholder base, we believe the

Commission should reconsider the applicable threshold percentage required to permit deregistration. We propose an alternative measure that would permit deregistration if U.S. residents hold no more than 25% of each class of outstanding voting and non-voting securities, regarding which there is a reporting obligation, or if the aggregate market value of all classes of such shares held by U.S. residents as of a specified date (using as a reference the principal U.S. market (if available) or the primary market (translated into U.S. dollars at the noon buying rate on such date)) is less than 25% of the aggregate market value of all such securities outstanding. We suggest that for the purpose of this computation, options and warrants to acquire equity securities, and securities convertible into or exchangeable for equity securities, be excluded from the computation. We believe that a holding by U.S residents at a level of 25% or less, combined with a test based on market volume, as discussed above, would provide a reasonable balance between a foreign private issuer's interest in deregistering and the protection of U.S. investors.

We also encourage the Commission to consider additional deregistration criteria. For example, the Commission may determine to permit any foreign private issuer to deregister if it provides a period of notice of at least one year of its intention to deregister, if it has not issued securities in a registered offering in the U.S. for a prescribed period of time, and meets additional criteria the Commission may determine to be appropriate.[20]

Holders of Record Alternative Test -- Rule 12h-6(a)(6). We support the alternative test based on the number of recordholders, but believe that the proper threshold is 1,000 and not 300. With respect to the difficulties in determining shareholders as of one specific date using the look-through rules, we recommend (if such rules are retained) that the Commission permit the date to be 120 days before the filing of Form 15F or as of another date or dates, not greater than 60 days prior to or after such date, as may be determined by the registrant.

Definition of "Home Country" -- Rule 12h-6(d)(5). The definition of "home country" in the Proposal refers to the definition in General Instruction F of Form 20-F[21]. We believe that the use of "home country" in Proposed Rule 12h-6(a)(3) (and therefore the definition in Proposed Rule 12h-6(d)(5)) is circular. If our suggestion above regarding primary trading market is adopted, the definition of "home country" would not be necessary. If the reference to "home country" is not eliminated, then we

[20] Such criteria may include, for example, whether the issuer meets the requirements of Rule 139(a)(1)(B) under the Securities Act, or has reason to believe that its U.S. shareholder base is less than a certain number of holders (which would be a significantly larger number than the numbers currently proposed).

[21] The Form 20-F definition refers to the jurisdiction in which the issuer is legally organized, incorporated or established and, if different, the jurisdiction where it has its principal listing.

recommend that the definition nonetheless be deleted and that Proposed Rule 12h-6(a)(3) be revised to state that "the foreign private issuer has maintained a listing of the subject securities for the preceding two years on its primary trading market".

Definition of "Well-Known Seasoned Issuer" -- Rule 12h-6(d). As indicated above, we recommend elimination of any distinction based on whether an issuer is a WKSI inasmuch as such distinction should not be relevant to a consideration of deregistration. If the Commission retains the distinction, we believe it would be appropriate for the Commission to confirm that loss of such status subsequent to the determination date would not affect the issuer's ability to deregister.

Counting Methods -- Rule 12h-6(e). We believe that the determination of holdings using the proposed look-through rules as of a specific date is not practicable. A number of no-action request letters to the Division of Corporation Finance have discussed the difficulties encountered in obtaining this information.[22] Even in cases where information is obtainable, it may not be possible to obtain information as of one specific date, in view of the various sources that may be required to be reviewed. We urge the Commission to abandon the look-through mechanism given its high degree of unreliability.

Subsection (e)(2). The reference in the subsection to the amount of securities represented by accounts of customers in the U.S. should be clarified as to whether it is also intended to apply to the percentage of holders located in the U.S. and the number of holders located in the U.S.

Subsection (e)(3).

i. We request the Commission to clarify what reports are intended to be within the scope of this subsection. Is the issuer deemed to be on notice of all publicly-filed reports in any jurisdiction? Does the subsection apply even if the information contained in the public reports regarding holdings of the issuer is difficult to extract, as may be the case, for example, with respect to reports on Form 13F filed by asset management companies? If the issuer is charged with knowledge of information in specific reports, the identity of such reports should be set forth in the rule. Further, the reports should be of the type where the issuer can readily obtain the information as to which it is charged with knowledge.

[22] Although these letters were submitted in connection with the application of the cross-border tender offer rules, the factors referred to in the letters with respect to the difficulty of identifying beneficial holders are applicable to the Proposal. See. for example, the inquiry letters in Saipem SpA (July 29, 2002); Alcan, Inc. (October 7, 2003) and Equant N.V./France Telecom S.A. (April 18, 2005)(the "Equant Letter").

ii. The relationship to subsection (e)(2) is not clear. An issuer is required to assume that the securities held by U.S. nominees are held in the U.S., and may assume that securities held by non-U.S. nominees are held outside the U.S. If the issuer then becomes aware of public reports indicating that specific shareholdings are held by U.S. residents, it unclear how the issuer is to reflect such information in its calculations. If the issuer adds these U.S. shareholdings to the securities assumed to be in the U.S. pursuant to subsection (e)(2), the issuer may be double-counting securities held by U.S. persons. For these reasons, we believe that information set forth in public reports regarding U.S. holdings should not be added to the holdings of U.S. nominees pursuant to subsection (e)(2). However, if the number of U.S. holdings available through the public reports is greater than the number assumed to be held in the U.S. pursuant to subsection (e)(2), the information in the public reports should be relied upon, and the assumption should not apply.

2. Rule 12g3-2(e) – Website/Electronic Disclosure Requirements

Proposed Rule 12g3-2(e) would require an issuer to publish information in English on its Internet web site or through an electronic information delivery system generally available to the public in its primary trading market. While we believe the continued and ready access to English-language information of an issuer that has deregistered will be beneficial to U.S. investors, we believe the proposal places an unjustified burden on foreign issuers to translate documents indefinitely. We would recommend that the proposal be revised to (i) require issuers to publish information in English on their website only if the English language is otherwise an option on such site and (ii) limit the posting period to three years. We are not aware of any comparable reporting or translation requirements in other jurisdictions for de-listed or deregistered foreign issuers. We also suggest that only documents meeting the materiality threshold set forth in the instructions for the use of Form 6-K be subject to this requirement. In the absence of such a materiality threshold, companies subject to this requirement would be subject to more burdensome requirements than foreign private issuers subject to the reporting obligations of the Exchange Act.

3. Reporting Requirements under the Trust Indenture Act

An issuer of debt pursuant to an indenture qualified under the Trust Indenture Act of 1940 (the “TIA”) should be afforded relief from the reporting requirements of Section

314(a)(1)[23] thereof in order to obtain the intended benefits of the Proposal. The Telephone Interpretations Manual of the Division of Corporation Finance[24] provides that "Sections 314(a)(1)-(a)(3) of the Trust Indenture Act do not require an Exchange Act non-reporting company to file information with the trustee, Commission or holders because the Rules described in such Sections have never been adopted." In view of the informal nature of the Telephone Interpretations, and the significance to deregistered issuers of any possible continuing reporting obligation imposed by the Trust Indenture Act, we urge the Commission to adopt a conforming exception to the rules under the TIA, or confirm in its adopting release that Section 314(a)(1) is not applicable to foreign private issuers who deregister in accordance with Rule 12h-6.

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[23] Section 314(a)(1) of the Trust Indenture Act of 1940 requires a company not subject to Section 13 or 15(d) of the Exchange Act to file with the indenture trustee and the Commission such of the supplementary and periodic information, documents and reports as may be required pursuant to Section 13 of the Exchange Act in respect of a security listed on a national securities exchange.

[24] Question 27 under the Trust Indenture Act topic.

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In view of the significance of the deregistration issue to many foreign private issuer and the period of time that has elapsed since concerns regarding the difficulty of deregistration have been communicated to the Commission and its staff, we encourage the Commission to act promptly to adopt revisions to the rules currently in place. We fear that delay could result in further companies determining to bypass the U.S. markets, or to terminate existing U.S. listings, to the detriment of U.S. investors.

The Committee appreciates the opportunity to comment on the proposal and respectfully requests that the Commission consider the recommendations set forth above. We are prepared to meet and discuss these matters with the Commission and the staff and to respond to any questions.

Respectfully submitted,

/s/ Dixie Johnson

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