CBI
THE VOICE OF BUSINESS

File Number S7-12-05

Ms. Nancy M. Morris
Secretary
The Securities and Exchange Commission
100 F St NE
Washington DC
20549
USA

28 February 2006

Dear Sirs

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 – additional issues relevant to UK companies

As the CBI has highlighted in a separate letter which we have co-signed in response to this consultation together with other European federations (supported by a technical letter from Cleary Gottlieb Steen & Hamilton LLP), we strongly support the Commission's decision to propose the rule changes above. We also share the concern of our fellow EU federations, based on discussions with CBI member companies interested in this area, that very few EU companies would be eligible to take advantage of the proposals as currently drafted. We therefore do not believe that the proposals as they currently stand will achieve the SEC's aim of facilitating deregistration for many companies and fully support the suggestions for amending the proposals put forward in the letters above.

The purpose of this letter is not to repeat the points made in those letters, but rather to draw your attention to some additional issues which particularly affect several British companies.

As you will be aware, a number of UK companies have recently delisted their shares from US markets and deregistered with the SEC under the existing rules. Although they have deregistered, under the existing rules several companies are in the position where they are forever at risk of their SEC reporting obligations recommencing if the number of their US shareholders increases to above 300. This means that the look-through process has to be repeated at every year-end, even though the number of US shareholders may be beyond the company's control (no longer being US listed) and these shareholders may be happy to "buy in" to EU reporting requirements instead.

Sir Digby Jones –Director-General
DL: +44 (0) 20 7395 8001 **DF:** +44 (0) 20 7836 0645 **E:** digby.jones@cbi.org.uk

CBI Centre Point 103 New Oxford Street London WC1A 1DU
T: +44 (0) 20 7379 7400 **F:** +44 (0) 20 7240 1578 **W:** www.cbi.org.uk

INVESTOR IN PEOPLE

If the SEC's current proposed rule changes take effect, companies that deregister under the new rules will benefit from permanent deregistration. We believe that companies which deregistered before these rules come into effect should also be able to take advantage of permanent deregistration without having to reregister to do so.

I attach further details which I hope will explain the issue further. Either Rhian Chilcott in Washington (001 202 530 0510 or rhian.chilcott@cbi.org.uk) and Susannah Haan in London (0044 207 395 8050 or susannah.haan@cbi.org.uk) would be happy to provide any further information which would assist staff at the SEC on this matter.

Yours faithfully

Sir Digby Jones
Director General

CBI comments on SEC deregistration proposals

Details of UK companies that have deregistered using changes to articles of association via schemes of arrangement or FSA approval for shareholder circulars

UK route to deregistration

A number of UK companies have used the following process to deregister from US reporting requirements:

- Closing their ADR programmes;
- Delisting their ADRs from the relevant US market;
- In accordance with the Deposit Agreements for the ADR programmes, giving ADR holders a period within which to surrender their ADRs in return for the underlying securities. ADR holders are informed that, if they do not wish to surrender their ADRs and receive the underlying securities they will be "cashed out" by the Depositary at the end of the relevant period;
- Applying to the UK Financial Services Authority (FSA) for approval to send out a circular to shareholders in order to hold shareholder meetings to amend their articles of association to give the company power to:

  (i) require shareholders to disclose the beneficiary on whose behalf they are holding shares and

  (ii) require US shareholders to sell their shares to non-US persons, with the company's board being given authority to make the sale on the shareholder's behalf in the event of non-compliance with the company's requirement to sell. This compulsory sale power is viewed as essential to enable the de-registering companies to ensure that they are able to move below the 300 US shareholder threshold for de-registration.

- Alternatively, applying to the UK court under section 425 of the UK Companies Act to propose a scheme of arrangement between the company and a class of its members to buy out US shareholders as above. Under this section, a majority of members may agree to any compromise or arrangement which, if sanctioned by the court, is then binding on all members and the company.

  Companies taking this route, however, still required FSA approval in order to send out a circular to shareholder asking shareholders for approval of the changes to the articles of association. Most companies, which deregistered after the initial applications had used schemes of arrangement, therefore chose to apply to the FSA direct for approval rather than to both the court and the FSA.

Schemes of arrangement

We note that the SEC has proposed excluding schemes of arrangement from the proposed rule changes in the sense that they are not permitted during the 1-year dormancy period on US offerings.

We do not believe that schemes of arrangement should be prohibited during the 1-year dormancy period, because they are corporate transactions between one or more companies and their existing securityholders in accordance with the requirements of company law, not ordinary capital raising transactions designed to circumvent the registration requirements of the Securities Act. The exemption for schemes (section 3(a)(10) of the Securities Act itself) recognises that in any event US investors are protected by the foreign court proceeding.

In fact, the purpose of such schemes of arrangement described above in the UK has been precisely the opposite of raising capital in the US – rather the purpose has been to change the company's articles of association in order to prevent future purchases by US shareholders and thus to stop the number of US shareholders from reaching more than 300 both now and in the future and thus retriggering US reporting requirements.

We would hope that UK companies which have used such schemes in order to ensure that they stay below 300 US shareholders would also be able to benefit from permanent deregistration rather than having to reregister in order to then deregister again under the new proposals.

US shareholders

Whichever route was taken, several companies have found that closing their ADR programmes and delisting has meant that their US shareholder base has fallen below the threshold for deregistration without the need for compulsory sales. Some others have had to use the compulsory sale power.

In principle, many of these companies would have preferred to offer their US institutional investors the choice of opting to keep their shares on the basis of informed consent but were advised that compulsory purchase was the only option available under current US rules.

We would suggest that, if the SEC is concerned about US institutional investors relying on US reporting requirements, such an approach would in fact allow US investors to vote with their feet as to whether they really do rely on such requirements and would wish companies to continue to file SEC reports or whether they would be happy to accept UK reporting requirements instead.

We understand that this does not appear to be an approach which is prevalent in the US, although we would point out that such an option would be entirely consistent with the UK approach to shareholder democracy.

UK experience of deregistration and shareholder reactions

We would emphasise that the common experience amongst these companies is that:

- Shareholder voting on the changes to the companies' articles has been overwhelmingly in favour[1];
- There have been few complaints from private individual US shareholders, although they have sometimes needed help in understanding the process being followed, which the companies have been happy to try to provide;

[1] e.g. Premier Farnell had 75% of its shares voted with 97% in favour, Enodis plc had 75% shares voted with 99% in favour, United Business Media had over 77% turnout with 84% in favour, while O2 had votes of 99.66% in favour.

- Their US institutional shareholders have either been supportive of their actions or ambivalent – there has been little or no negative reaction since the companies are also listed in London (and under FSA Rules, companies may not delist from the London Stock Exchange without seeking shareholder approval) and are subject to UK reporting requirements, with shareholders overall more likely to rely on the quality of UK reports[2], as well as to regard US reporting requirements as unduly burdensome in terms of lost opportunities from the amount of management time involved and also costly in terms of eating up profits which might otherwise have come to them in the form of dividends or buybacks;

- Delisting and deregistration has had no appreciable effect on the levels of US investment e.g. in Premier Farnell, 10% of shares were held by US investors prior to deregistration; 18% is now held by one US shareholder alone;

- The look-through process is extremely complicated and time-consuming, partly because a number of US investors believe that disclosing the names of beneficial holders underlying nominee accounts is a breach of US privacy laws and / or their agreements with their clients. One UK company which deregistered spent 4 months investigating the register to identify US-based shareholders until it was able to satisfy itself that it had less than 300 US shareholders, and so did not in fact have to use the powers under the Articles.

Permanent deregistration

If the SEC's current proposed rule changes take effect, companies that deregister under the new rules will benefit from permanent deregistration. We believe that companies which deregistered under the old rules should also able to take advantage of permanent deregistration.

We would therefore like to see some form of recognition which would assist these companies (but which would not involve costly and bureaucratic reregistration in order to achieve permanent deregistration). We understand that there may be other circumstances in which other companies have previously deregistered from SEC reporting requirements, and we would like to see such provisions covering all such cases rather than only the specific circumstances outlined here.

Sarbanes-Oxley Act

As a related issue, we would like to take the opportunity to welcome the recent announcement by the SEC of a roundtable on section 404 (management assessment of internal controls) of the Sarbanes-Oxley Act. The pressure on many UK companies still listed and registered in the US to deregister from US reporting requirements would be greatly reduced if section 404 could be made more workable. As we have previously indicated, many of the difficulties currently being experienced by companies in the US are similar to those experienced in the UK several years ago when the process was essentially given over to consultants and advisers rather than

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[2] As an illustration, one CBI member company printed 100 Form 20Fs and c.12,000 UK annual reports, while the figures below show a comparison of hits for own and US reports on two other CBI member company websites between November and February 2006:

	US 20f	**Own Annual Report & Accounts**
Company A	330	3260
Company B	350	5927

being run by the company itself. The UK system works far better now and is recognised to do so by both companies and investors.

While there have been benefits from the Sarbanes-Oxley Act, our understanding from discussion with our members is that these have come mainly from the management process involved in section 302 (corporate responsibility for financial reports), while the costs have come from section 404 and the huge documentation process with duplication of management tests by the auditors.

Costs relating to SOX compliance

We understand that in the US, the 2004 costs for businesses with annual sales >$1bn were around $14.3m (a 45% increase over their 2003 average costs).

One CBI member company which chose to deregister estimated annual savings of $5.25m in external fees alone as against one-off costs of deregistration at $1.05m. Two other CBI member companies concerned about the costs, who would thus consider deregistration should improvements to the current regime not be made, have estimated the following for 2005 and 2006:

(a) Total annual costs $2.3m
(b) Total annual costs $3.5m based on:
- External fees (including accountancy advice, audit-related, consultancies, etc.) and 'logistics' (e.g., filings, etc.) - c. $1.7m in 2005, rising to c. $2m in 2006.
- Management time (creation of committees, divisional finance directors and their teams, IT, etc.) - c. $1.3m in 2005 to $1.75m in 2006.