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Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
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Re: Comments on Proposed Rules Relating to 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
File No. S7-12-05

Dear Ms. Morris:

We are submitting this letter in support of the comments of several European organizations on the Securities and Exchange Commission's proposed rules relating to the termination of a foreign private issuer's registration under Section 12(g), and duty to file reports under Section 15(d), of the Securities Exchange Act of 1934. The proposed amendments are discussed in Release No. 34-53020; International Series Release No. 1295; File No. S7-12-06 (the "Release").

Like the European organizations, we view the rule proposal as a positive initiative. It addresses many of the problems identified in our prior letters, and considerably simplifies the deregistration process. We also believe that the general framework chosen by the Commission is appropriate and workable in practice, and we fully agree with its principal purpose of liberalizing the deregistration regime while providing adequate protection to U.S. investors.

At the same time, we think it is vital that the final rule be usable in practice by a reasonable number of European companies. Otherwise, the hoped-for liberalization would be illusory, the potential benefits of this initiative for trans-Atlantic cooperation would not be realized and European issuers would continue to avoid the U.S. public market.

We recognize that the first concern of the Commission is to ensure the protection of U.S. investors. We strongly believe that making the deregistration rule more accessible to European companies can easily be achieved without sacrificing U.S. investor protection, and without changing the general framework proposed by the Commission.

Achieving this objective depends on the answer to a single question: should a company be required to remain registered simply because a very small number of the most sophisticated U.S. institutions hold the company's shares? We believe the answer is "no," and we strongly recommend that the Commission take steps to reduce the impact of high U.S. institutional shareholder concentration on the deregistration criteria.

We hope that the Commission will agree with our views and will, as a result, modify the rule to make it the success that it has the potential to become.

1. Use of the Proposed Rule by European Companies

It is inherently difficult to measure the U.S. investor base of companies with shares that trade in the international securities markets. In the proposed rule, the Commission has recognized that individual companies need to use estimates and approximations, as they typically do not know who holds a large portion of their shares. Obtaining meaningful information with respect to numerous companies on a collective basis is even more of a challenge.

Despite these difficulties, the information that is available makes it very clear that the overwhelming majority of European companies cannot use the rule as proposed. In each of the largest European jurisdictions, at most one or two well-known seasoned issuers would be able to take advantage of the rule in its current form.

Our conclusion is based in the first instance on a study conducted by our firm in January and February 2006 on the basis of SEC filings in respect of 64 well-known seasoned issuers in the United Kingdom, France, Germany and Italy.[1] 34 of these companies reported information on holdings of both ordinary shares and ADRs in their Form 20-F's, or were the subject of beneficial ownership reports that provided additional information on U.S. shareholdings. Of these 34 companies, only five would appear to be eligible to use the proposed rule on the basis of the data reported, although the data is ambiguous for four of the five companies.

Unfortunately, the remaining companies did not report information on ordinary shares and ADRs and did not have beneficial ownership reports sufficient to allow conclusions to be drawn. Most of these issuers reported information only in respect of their ADR programs, or information relating to registered shareholdings, stating that many registered shareholders are banks, brokers or nominees and that they may have significant numbers of additional U.S. shareholders. A few issuers did not report any information.

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[1] The sample includes the 25 largest companies from the United Kingdom that are registered with the Commission, and all companies from France, Germany and Italy with a market capitalization of at least $1 billion that are registered with the Commission (excluding one UK company and one French company that report as U.S. issuers, and one UK company with multiple classes of preferred stock that make the calculation impracticable on the basis of public information). While our review was thus limited to the largest well-known seasoned issuers, our experience leads us to believe that the results would not be materially different if a complete survey could practicably be done. In particular, we believe that the U.S. shareholder base of almost all European reporting companies that are not well-known seasoned issuers would be above the 5% of public float threshold. This is certainly the case for all such companies that are clients of our firm in the United Kingdom, France, Germany and Italy.

To provide further data, the European organizations requested that Citigroup update the study that it performed in support of the letter submitted to the Commission by the organizations on March 18, 2005. Citigroup studied the U.S. share ownership levels of 27 companies that did not provide sufficient information about their U.S. shareholders in their Form 20-F's and did not have beneficial ownership reports (the study did not include three companies with U.S. shareholdings above 10% of the public float based on their ADR programs alone). Citigroup also analyzed the four companies in respect of which the data from our firm's survey was ambiguous. To perform this study, Citigroup analyzed shareholder information in the Shareworld database that is compiled by the independent service provider Thomson Financial. Its study was conducted in February 2006.

Citigroup determined that the U.S. shareholder base of 23 of the 27 companies in the main part of its survey exceeded the 10% threshold on the basis of the available data. It also found that three of the four companies with "ambiguous" data were above the 10% level.[2]

Combined with the data gathered by our firm, the result is that only 6 of 64 European companies studied (or less than 10%) would be able to use the rule as currently proposed (using the Citigroup data for the four companies in respect of which we found the data to be ambiguous). The following table summarizes the composite results of our study and the Citigroup study.

U.S. ownership level	**UK**	**France**	**Germany**	**Italy**	**Total**
Above 10%	21	19	13	5	58
10% or below	2	2	0	2	6

Further information regarding our firm's study and the Citigroup study is set forth in Annex A to this letter.

2. The Impact of High U.S. Shareholder Concentration

We believe that the principal reason why so few European companies would be able to use the proposed rule is that a small number of sophisticated U.S. institutional investors hold large interests in those companies. Apart from a handful of major institutional shareholders, U.S. market interest in the shares of these companies is typically quite low. When this is the case, we believe it would be appropriate to allow the relevant companies to terminate their registration and reporting obligations.

U.S. ownership of shares of European companies is highly concentrated

The evidence of high U.S. share ownership concentration is principally anecdotal, as most companies do not publish information with respect to specific shareholdings, other than those that are disclosed on public beneficial ownership reports.

- In the case of a few of the companies that we surveyed, beneficial ownership reports and other available information show that one, two or three major U.S. institutions hold between 3% and 15% of a company's share capital.

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[2] A portion of the shareholder base of the companies in the study could not be identified. Nonetheless, we believe that the information compiled by Citigroup is the best information available from public sources. We note that it is based on a database maintained by an "independent service provider," and thus it is likely to be similar to the information that would be obtained by a company that uses an "independent service provider" to determine its eligibility for the proposed rule. See Annex A for further details.

- When we have assisted companies to determine eligibility for the cross-border tender offer and rights offering rules (the Tier 1 and 2 tender offer exemptions, and Securities Act Rules 801 and 802), the companies or their independent service providers have invariably found that a few large U.S. shareholders own a significant portion of their shares, with ownership becoming widely dispersed below the level of the top few shareholders (often between four and ten shareholders).

- In connection with the preparation of the comment letter on the proposed deregistration rule from the European organizations and this letter, numerous European companies have confirmed that they believe that their U.S. shareholder bases exhibit high concentration consistent with the description above.

We do not believe that large shareholdings by a small number of major U.S. institutions is evidence of significant U.S. interest in a company's shares. Rather, it is evidence that large U.S. institutions seek investment opportunities globally, investing regularly in the most liquid markets, typically without regard to whether the companies file Exchange Act reports. Apart from a handful of large institutions, the level of U.S. interest in the shares of most European companies is quite low.

The Rule should be modified to eliminate the distorting effect of high U.S. shareholder concentration

The low U.S. interest in the shares of most European companies presents a stark contrast with the high number of European companies that are unable to use the rule as proposed. We believe this situation should be corrected, and that doing so would be consistent with the protection of U.S. investors. We believe that any of the three methods proposed in the comment letter of the European organizations would be an appropriate way to accomplish this goal:

- Allowing companies to exclude QIBs from the calculation of their U.S. shareholder base.

- Allowing companies to eliminate a fixed number of shareholders from their U.S. shareholder base (for example, up to ten shareholders).

- Allowing companies to eliminate shareholders that hold a minimum amount of a company's share capital from their U.S. shareholder base (for example, shares with a value of at least $10 million).[3]

These modifications would address the problem of high shareholder concentration in a targeted manner. They would affect the public float threshold calculation only in cases of high shareholder concentration, and would have a minimal effect where high concentration is not present. They would eliminate only sophisticated investors that have the ability to express their views to management and to change investments easily if they feel that the continued registration of a subject company is important.

If the Commission decides to implement one of these options (or more than one in combination), we believe it should take into account two important technical issues.

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[3] We have considered whether it would be appropriate to allow companies to exclude U.S. shareholders with a minimum percentage of a company's public float. We believe this would not be appropriate, as it would make the dollar threshold extremely high in the largest companies. For example, a threshold of 1% applied to a company with $10 billion of market capitalization would only allow the exclusion of U.S. investors with $100 million invested in the company. We believe that a $10 million investment is large enough to be evidence of shareholder concentration and investor sophistication. If the Commission nonetheless decides to adopt a test that includes percentage ownership, we recommend that it be capped (for example, allowing the exclusion of companies holding the lesser of 1% of a company's public float or $10 million).

- First, the exclusion of a given investor should be optional, and not mandatory. A company that is below the relevant public float threshold without any exclusion should not have to go to the time and expense of determining which shareholders to eliminate.

- Second, companies should only exclude U.S. investors, and should not be required to exclude foreign investors. The purpose of the exclusion is to test the relative U.S. interest in a company's shares after adjusting for shareholder concentration. The nature of a company's foreign shareholdings is irrelevant. As a result, this exclusion would be different from the "affiliate" exclusion already contemplated in the proposed rule.

Certain Questions Relating to the European Proposal

While we firmly believe that the suggested modifications should be made, we understand that some members of the Commission staff might have questions about them. To assist the Commission's analysis, we address below three issues that we understand might give rise to questions, explaining why we believe that they should not be obstacles to adopting these modifications.

U.S. institutional investors do not significantly rely on Exchange Act reports. In the Release, the Commission stated that that large U.S. institutions "may look to the information contained in a foreign private issuer's Exchange Act reports when investing in the foreign private issuer's home market" (Release at 36). We believe that the available evidence shows that this is not the case, at least with respect to European companies that publish high quality reports and financial statements in their home countries.[4]

To demonstrate this point, we have analyzed the holdings of the ten U.S. mutual funds with the largest Western European exposures. As of December 31, 2005, these funds held on average 49.4% of their Western European investments (by number of investee companies) in shares of companies that are not Exchange Act reporting companies (based on value, the figure is 41.7%). A description of our analysis is in Annex B to this letter. We believe that this is clear evidence that these investors do not view Exchange Act reporting as an essential factor in deciding how to invest their assets in Europe.

These investors overwhelmingly purchase shares directly in the European markets, rather than in the United States. The Shareworld data analyzed by Citigroup clearly show that the largest U.S. institutions hold primarily ordinary shares of European companies, with only minor holdings of ADRs.

This evidence is directly corroborated by our firm's experience with European issuers. We have worked on numerous Rule 144A initial public offerings and equity offerings over the last several years, and we have been informed that in many of these transactions significant numbers of orders have been received from U.S. institutional investors. In some cases, where Exchange Act reporting companies have conducted private offerings to U.S. institutional investors, they have done so after publishing home country annual reports but before filing their Form 20-F's, and they and their investment banks have not reported adverse reactions from U.S. institutional investors.

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[4] As the Commission is aware, all European companies are now required to publish audited financial statements in accordance with International Financial Reporting Standards. In addition, prospectuses of European companies are now required to comply with the European Prospectus Directive, which complies with IOSCO standards. As a result, most European listed companies have adapted their annual reports to comply with these standards. They will be required to apply these standards to their annual reports once the European Transparency Directive takes effect in 2007.

Even when issuers have chosen to conduct their initial public offerings outside the United States pursuant to Regulation S, they have invariably found that U.S. institutions have made significant secondary market purchases. In many cases, companies that have never conducted an offering in the United States (even a Rule 144A offering) have asked us for advice on the legal considerations they should take into account when conducting U.S. roadshows following the publication of earnings releases.

It is appropriate to distinguish large institutional investors from other investors under the Exchange Act, and not just under the Securities Act. We understand that the staff may question whether distinctions between large institutional investors and other investors that have traditionally been made in the context of the Securities Act should be applied in the context of the Exchange Act. There might be a concern that excluding large institutions in determining whether a company must continue filing Exchange Act reports would be "breaking new ground" in a manner that is contrary to the staff's traditional views of the Exchange Act. We have a number of observations with respect to this issue:

- There is today an exemption from Exchange Act reporting that is in practice used by companies with large U.S. QIB shareholder bases. Companies that have never registered with the Commission regularly sell their shares to QIBs in Rule 144A transactions. In many cases, they sell to well over 300 QIBs, a figure that is often increased by QIB purchases of shares in the secondary market. Such companies use the exemption from Exchange Act registration provided by Rule 12g3-2(b), which has effectively become a QIB exemption from Exchange Act registration requirements (even though it is available to companies that have both QIBs and other investors as shareholders).

- The Exchange Act and the related rules recognize the difference between large institutions and other investors in a number of important contexts. The trading and stabilization rules of Regulation M do not apply to Rule 144A offerings. Rule 15a-6 allows foreign broker dealers to contact major institutional U.S. investors without registration, but does not allow them to contact other investors.

- Even if a modification of the type suggested would be "breaking new ground" (which we believe is not the case), we see no reason why this should be an obstacle to the modification if it is appropriate as a substantive matter (which we believe is the case).

The ability to identify QIB shareholders is not an obstacle to the proposed modification. We understand that there is some concern that companies might be unable to tell whether their shareholders are QIBs or even who their shareholders might be. We believe this should not be a concern for several reasons. First, most companies have investor relations professionals that are in regular contact with their largest shareholders, who are often present at "roadshows" following significant announcements, such as annual and interim earnings announcements. There are public databases that would allow companies to determine whether their identified shareholders are QIBs. Similarly, companies could ask investors whether they hold more than $10 million of a company's shares (if that is the criterion ultimately adopted by the Commission). Second, so long as the exclusion of shareholders is optional (which we believe is essential, as discussed above), if a company fails to identify one or two shareholders, it will simply have a more difficult burden to meet in determining whether its U.S. shareholder base is below the relevant public float threshold. Third, under the second and third options above, a company would be able to exclude any shareholder (or any shareholder above the relevant investment threshold), and would not have to determine if the shareholder is a QIB.

Increasing the threshold: a second-best alternative

As the European organizations have mentioned, if the Commission decides not to adopt one of the suggested modifications, the only realistic way to address the problem of high U.S. shareholder concentration would be to raise the U.S. public float threshold significantly. We believe it would need to be raised to at least 25% to have a significant impact on the number of European companies that could use the rule. Unfortunately, while the data that we and Citigroup have gathered permits us to be highly confident as to the number of companies that are above the 10% threshold, it does not allow us to perform a finer analysis of the exact level of U.S. ownership with the same degree of confidence. While it appears fairly certain that a 15% threshold would be too low, we do not know whether a 25% threshold would in fact help a large number of companies, or whether the threshold would need to be even higher.

The advantage of the modifications proposed by the European organizations and our firm is that they eliminate this uncertainty, because they squarely address the problem that has been identified. As a result, we believe that it would be highly preferable for the Commission to adopt the suggested modifications, rather than simply increasing the threshold. If the Commission chooses not to do so, then we believe it should adopt a significant increase in the threshold.

3. Other Issues Raised by the European Comment Letter

As the European organizations have noted, the proposed rule raises a number of substantive issues in addition to the fundamental issue of high U.S. shareholder concentration. Our analysis of those issues is set forth below. We also have a number of technical comments on the proposed rule. When the technical comments relate to topics that are similar to the substantive issues raised by the European organizations, we have included them in this section to treat all comments relating to a given topic together. The remainder of our technical comments are in the next section.

- One Year Dormancy. As a general matter, we believe the "one-year dormancy" requirement is appropriate. A company that does a registered public offering of its securities is clearly taking advantage of its status as a reporting company, and investors in the offering can reasonably expect the company to retain that status for a period of time after the offering. Nonetheless, we believe that the one-year dormancy requirement as proposed should be modified in a number of respects:

    - *Unregistered Offerings*. The one-year dormancy requirement should not apply when a company sells its securities in a transaction that is exempt from the registration requirements of the Securities Act. We do not believe that companies making such offerings can be said to be taking advantage of their status as reporting companies. We also think that including unregistered offerings (at least of European companies) in the one-year dormancy rule is in many cases contrary to the interests of U.S. investors.

        - *Rights Offerings*. For European listed companies, rights offerings are the dominant mechanism used to raise new equity capital. In many cases, companies are effectively required by their home country laws to use rights offerings when they issue new shares. Typically, the new shares are offered at a significant discount to the trading price of the company's existing shares to ensure the success of the offering.

          If unregistered rights offerings were to trigger the one-year dormancy period, European companies would systematically exclude U.S. investors from those offerings. Even companies with no plans to deregister would consider excluding U.S. investors from their rights offerings, to ensure that they would not be blocked if they were subsequently to decide to deregister.

Creating such a situation runs squarely against the policy announced by the Commission when it adopted Rule 801 under the Securities Act. The purpose of that rule is to encourage foreign companies to include U.S. investors in rights offerings. We see no reason for creating exactly the opposite incentive in the deregistration rules. (We note also that the same is true for offerings in connection with business combination transactions that are exempt under Securities Act Rule 802.)

We note that to fully address the issue of rights offerings, the Commission should not limit the exclusion from the one-year dormancy trigger to rights offerings that are conducted under Rule 801. Because of the difficulty of counting investors, most companies do not use Rule 801, instead choosing to open rights offerings to U.S. institutional investors on a private placement basis.

- *Private Offerings*. European reporting companies often open their equity offerings (both rights offerings and other offerings) to U.S. institutional investors in private placements. While offerings by companies with U.S. listings are not eligible for Rule 144A (because the shares offered are fungible with listed shares), the private securities bar in Europe has established resale restrictions for institutional offerings that are considered reasonable enough for law firms to conclude that they qualify as private offerings.

  When companies include U.S. institutional investors in these equity offerings, they are not taking advantage of their status as reporting companies as they are in connection with a registered offering. Our experience leads us to conclude that U.S. institutional investors do not rely significantly on Exchange Act reports in connection with these transactions. As noted above, in a number of cases these offerings have taken place after the companies have released home country annual reports, but before they have filed their corresponding Form 20-F's. For offerings taking place late in the year, reporting companies proceed on a private placement basis in part because that permits them to avoid the cost and expense of reconciling their half-year financial statements to U.S. GAAP. We are not aware of institutions objecting to the fact that these offerings are conducted without U.S. GAAP interim financial information.

  As with rights offerings, including private offerings in the one-year dormancy requirement will result in issuers excluding U.S. institutions from their equity transactions. We believe that creating such incentives would not protect U.S. investors, but instead would have precisely the opposite effect by limiting the access of U.S. institutional investors to new shares of European companies.[5]

- *Debt Private Placements*. At the December 14, 2005 open meeting, Alan Beller stated that one reason for including private placements in the one-year dormancy requirement is that private debt offerings are the functional equivalent of registered debt offerings in today's market. We assume that Mr. Beller was referring to the common practice of companies issuing high yield debt securities in Rule 144A offerings, and subsequently exchanging new, registered debt securities for the restricted Rule 144A debt securities.

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[5] We note that including rights offerings and private offerings in the one-year dormancy rule would also harm the competitiveness of U.S. investment banks compared to their foreign counterparts. When companies include U.S. investors in their offerings, they typically give a lead role in the underwriting syndicate to one or more U.S. investment banks, which typically have deeper relationships with potential U.S. investors than foreign investment banks. If companies were to exclude U.S. investors from these transactions, U.S. investment banks would lose this advantage, and lead roles would more frequently be given to foreign banks.

If this is the case, then there is no need to include private debt offerings in the one-year dormancy rule. If companies conduct registered offerings shortly after their Rule 144A transactions, they will be subject to the one-year dormancy requirement even if private offerings are excluded from the rule. Moreover, the institutions that purchase the Rule 144A debt securities often require indenture covenants requiring the issuers to remain reporting companies. If sophisticated investors do not impose such a requirement on a given company, we believe there is no reason for the Commission to do so.

- *Schemes of Arrangement*. Proposed Rule 12h-6(a)(2)(ii)(B) provides that offerings of securities exempt from registration pursuant to Section 3 of the Securities Act do not trigger the one-year dormancy requirement. There is one exception to this exclusion, for offerings exempt from registration pursuant to Section 3(a)(10) of the Securities Act.

  This exemption has been used by many companies in the United Kingdom and other jurisdictions to implement reorganization transactions under court supervision, without SEC registration. In some recent cases, companies in the United Kingdom have used this exemption to give them the ability acquire shares held by U.S. investors (typically small lots of shares) in order to reduce their U.S. shareholder base in connection with the termination of their registration. The fairness of the consideration given to U.S. investors was approved by the court in these transactions.

  We believe that there is no reason for this type of transaction to trigger the one-year dormancy requirement. There is no evidence that schemes of arrangement of the type described above have been used for purposes of avoiding the registration requirements of the Securities Act in connection with transactions that are principally securities offerings (instead, the fact that the transactions include securities offerings is typically incidental to their main purpose). If the Commission has evidence that Section 3(a)(10) offerings have been used in other jurisdictions for purposes of conducting unregistered securities offerings, then it should limit the application of the one-year dormancy requirement to the specific cases giving rise to the concern. If not, then the Commission should exclude Section 3(a)(10) offerings from the one-year dormancy requirement.

- *Employee offerings*. Proposed rule 12h-6(a)(2)(i) and (ii) exclude from the one-year dormancy requirement sales of securities to employees of the issuer. We believe this exclusion should apply to sales of securities to employees <u>and former</u> employees of the issuer <u>and the issuer's subsidiaries and parents</u>, as well as their <u>family members</u> who acquire options through a gift or domestic relations order. In many cases, multinational groups operate in the United States through subsidiaries, and they offer their shares to employees of those subsidiaries. We note that offerings to all of these parties (and related resales) may be registered on Form S-8, and that the Commission could use the defined terms in Form S-8 in revising the proposed rule.

- *Underwritten Secondary Offerings*. Proposed rule 12h-6(a)(2)(i)(A) excludes from the one-year dormancy requirement registered sales of securities by selling security holders, but only in non-underwritten offerings. We believe this exclusion should apply to all sales by selling security holders, including underwritten sales. Typically, when investors enter into registration rights agreements with issuers, the investors choose whether a registered offering will or will not be underwritten (except in the case of a so-called "piggyback" registration, which would also involve sales of securities by the issuer that would already trigger the one-year dormancy period). The fact that an offering by a selling security holder is underwritten is not, in our

view, an indication that the issuer is "taking advantage" of its status as a reporting company.[6]

- Business Combinations. The Commission has proposed to make deregistration effectively permanent by modifying Rule 12g3-2(d)(1) so that a company could use Rule 12g3-2(b) if it were eligible for Rule 12g3-2(e). While we strongly support this proposal, we believe that the Commission should consider three corrections to the proposed rules relating to business combination transactions:

  - First, the Commission has not made the same modification to Rule 12g3-2(d)(2) that it made to Rule 12g3-2(d)(1). This means that a company that has engaged in a business combination transaction with a reporting issuer is still permanently ineligible for Rule 12g3-2(b). We see no reason to make deregistration permanent for companies that have effected public offerings or listed their shares on a U.S. exchange, but not for companies that have engaged in business combination transactions. We hope this was simply a drafting oversight, but it is an important one, and we recommend that it be corrected.

  - Second, a combination of the "successor registrant" rules and the two-year period required for eligibility for proposed Rule 12h-6 creates an odd situation in which a non-reporting company can become subject to registration for two years by engaging in a business combination transaction that is exempt from Securities Act registration, even if the company would satisfy the criteria for termination of registration after the transaction.

    To take a concrete example, suppose Company A, a French company listed only in France, acquires Company B, a German company listed in Germany and the United States, in a public exchange offer that is exempt from Securities Act registration under Securities Act Rule 802. Company A would be a "successor registrant" under Exchange Act Rule 12g-3. Suppose that, immediately following the acquisition, Company A met all of the requirements of Rule 12h-6, other than the requirement that it have a reporting obligation for at least two years. Company A would be required to register and file Exchange Act reports for two years following the transaction, before it could deregister.

    We believe it would be appropriate for the Commission to add a new exception to Rule 12g-3, pursuant to which a foreign private issuer would not be a "successor registrant" if the relevant acquisition were exempt from Securities Act registration, and if the company would be eligible for Rule 12h-6 after the transaction (except for the two-year reporting requirement). Alternatively, the Commission could allow the company to use Rule 12h-6 immediately if it met the conditions other than the two-year reporting history, or it could allow the company to "tack on" the target company's reporting history.

  - Third, foreign companies that acquire foreign reporting issuers through public exchange offers may find themselves unable to demonstrate the eligibility of the target for deregistration, even though the public float of the target following the acquisition is small. They also may find themselves unable to effect "squeeze-out" transactions under local law, as the thresholds in many countries are often tighter than those typically applied in the United States, and in some countries "squeeze-out" procedures do not exist. In such cases, the target is required to continue filing Exchange Reports that benefit a minimal public float of unidentifiable shareholders. We believe it would be appropriate to allow a company to deregister whenever at least 90% of its shares are held by a single holder (or group of holders acting in concert). More generally, we believe the

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[6] The only situation where this might not be true would be underwritten sales of control securities held by affiliates. The Commission could consider modifying the exclusion so that it applies only to control securities.

Commission should delegate to the staff the authority to permit deregistration in cases not specifically covered by Rule 12h-6, as it is impossible to imagine all of the possible cases where unusual facts warrant allowing a company to deregister.

- Withdrawal of Form 15F. We believe that a company should not be required to withdraw its Form 15F based on new information that comes to its attention after the form is filed. The process of obtaining shareholder information is expensive and time consuming, and companies should not be exposed to the risk of seeing the effort and expense wasted by changes in circumstances that are beyond the issuer's control. In the Release, the Commission has implied that this requirement is based on a concern that a company might become eligible to deregister based on a temporary movement in its share ownership. We believe this risk is highly theoretical, and that its impact would be marginal even if it were to materialize (a company might temporarily move from 10.1% to 9.9% U.S. public float ownership, but would be unlikely to move from 15% to 9.9% temporarily). If the Commission is concerned about manipulation, then we submit that this concern is misplaced with respect to European companies, as any manipulation that might have a significant impact would be a violation of European laws and regulations. If anything, manipulation is likely to work against a deregistering company, as a significant non-U.S. shareholder could threaten to move its holdings to a U.S. affiliate following a Form 15F filing.[7]

- Determination of Public Float. The proposed rule excludes shares held by "affiliates" of the issuer from the public float for purposes of the threshold calculations. We note that the Commission has chosen a qualitative definition of "affiliate" (a person that controls, is controlled by or is under common control with the issuer). We also note that the Commission has chosen a clear 10% threshold in the cross border tender offer and rights offering context. While we would not propose incorporating the same threshold, we would recommend establishing a non-exclusive safe harbor (similar to that of Exchange Act Rule 10A-3), so that any shareholder that is not an officer or director of the issuer, and that does not beneficially own more than 20% of a company's shares, would not be considered an "affiliate" for purposes of this rule. We also recommend that the Commission state in the final rule release that a passive institutional investor (such as a mutual fund) would be presumed not to be an "affiliate."

- Small Companies. We are troubled by the fact that smaller companies are subject to a standard that is more difficult to meet than larger companies. Based on anecdotal evidence, we believe that many smaller companies will be unable to demonstrate that 5% or less of their public float is held in the United States, particularly given that a number of these companies have significant shareholders that would be excluded from the public float as "affiliates."

  Many smaller companies are technology companies that listed in the United States at a time when the prospects for their sector were different from those that exist today. A number of them have seen dramatic drops in their share price, sometimes coupled with financial difficulty as they struggle to refinance debt. For these companies, the costs associated with Exchange Act reporting can represent a significant portion of their operating income, and this portion is likely to increase as they implement Section 404 of the Sarbanes-Oxley Act.

  We believe that smaller companies should be able to benefit from the full range of options available to well-known seasoned issuers under the proposed rule (as modified by our other

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[7] In any event, the risk of manipulation could be addressed by the inclusion of an introductory statement in the final rule to the effect that a scheme that is in technical compliance with the rule but that is designed to avoid Exchange Act reporting obligations improperly would not be eligible for Rule 12h-6. While we are wary of the inclusion of this type of statement in Commission rules, we note that it has been used many times by the Commission in other contexts, and we believe it would be substantially better than a requirement to withdraw Form 15F based on new information beyond an issuer's control.

comments). At a minimum, we recommend that the Commission make the criteria available to smaller companies located in well-regulated markets (such as those in Europe), with shares that trade on highly liquid exchanges.

- 300-Holder Test. We support the Commission's decision to maintain the 300-holder tests to ensure that the rule modification in fact results in a liberalization of the regime. However, we believe that 300 holders is too low a figure given the exponential expansion of the securities markets over the past 40 years. As we noted in our letter of February 9, 2004, share trading volumes on major European exchanges have increased substantially since 1983 (when the deregistration rules were last significantly amended) – for example, they have increased by 16 times in Paris and 67 times in London. U.S. investors have access to technology that allows them to trade on European exchanges on an unprecedented basis. As a result, we recommend that the 300-holder threshold be raised to 3,000 holders for shares, and to 1,000 holders for bonds (in each case based on either U.S. holders or worldwide holders, as the Commission has proposed).

  We understand that increasing the threshold as we suggest would make the threshold for non-U.S. companies different from that for U.S. companies. We do no think this should be an obstacle to making the change. Non-U.S. companies with home country listings are in a fundamentally different position from U.S. companies, for which a U.S. listing is typically the only listing. Raising the threshold for companies that would not "go dark" after deregistration is, in our view, entirely appropriate.

- Grandfathering. We agree with the European organizations that Rule 12g3-2(b) should be made immediately available to companies that deregister under the old rules, as well as to companies that deregister under new Rule 12h-6. Otherwise, companies that have been able to demonstrate low U.S. shareholder interest under the existing 300-holder test would find themselves required to recount their shareholders every year, while companies deregistering under the new, more liberal rules would not be required to do so. We also believe that companies with suspended reporting obligations under Section 15(d) should be deemed to have those reporting obligations terminated immediately upon the adoption of the final rule.

4. Technical Corrections

The issues discussed above are the most significant substantive points that we believe should be addressed in connection with the proposed rules. We have also identified a number of technical corrections that we believe the Commission should consider making.

- Calculation of trading volume: Proposed Rule 12h-6(a)(4)(i)(A) provides that the 5% trading volume threshold should be calculated by comparing United States trading volume to primary market trading volume. We believe it would be more appropriate to use the ratio of United States trading volume to worldwide trading volume. While the bulk of trading in shares of most companies takes place on a single non-U.S. market, there are a number of companies that have significant trading on multiple markets. Since the goal of the rule is to determine the relative importance of the U.S. trading market for the determination of a company's share price, it would seem most reasonable to make this determination in comparison to all trading in the company's shares, and not just to a portion of such trading.[8]

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[8] We note that the Commission has expressed concern that trading volume is a parameter that is subject to manipulation. See Release at 37. We believe that, for European companies, exactly the opposite is true. Given the liquidity and transparency of European markets and the strict anti-manipulation rules in Europe, we believe it would be extremely difficult to manipulate a European company's trading volume calculated over a 12-month period. As a result, if the Commission believes it is appropriate to limit the use of trading volume due to perceived manipulation issues in non-European markets, we believe it would be appropriate for those limits

- Counting rules

    - Proposed Rules 12h-6(a)(4)(i)(B), (4)(ii) and (5) provide that the determination of the U.S. percentage of a company's public float is to be made "at a date" within a 60-day or 120-day period (depending on which test is used). If retained in the final rule, this requirement would present companies with technical difficulties, as they will inevitably receive information about shareholder positions as of multiple dates. Our experience in connection with cross-border business combination transactions shows that banks and brokers provide positions as of dates that are convenient for them based on their information systems, and sometimes are unable to provide information as of a requested date. We have found that the capabilities of information systems are not uniform – one bank might be able to provide daily positions, while another might provide end of month positions, and a third beginning of month positions. In addition, if some banks or brokers hold for other banks or brokers, it might be necessary to make a "second layer" (or even third or fourth layer) inquiry, which will necessarily take place at a date that is different from the date of the initial inquiry.

      We recognize that the Commission staff has shown flexibility in interpreting the cross-border business combination rules in light of these difficulties. We believe it would be appropriate for the Commission to modify the proposed rule so that companies will more frequently be able to follow the letter of the rule, rather than requesting flexible interpretation.

      There are many possible ways to address this technical difficulty. We believe the simplest would be to require the determination to be made "as of" the end of the calendar month immediately preceding the date of filing of the Form 15F, and to accompany the final rule with an instruction providing how to calculate positions "as of" such month end. The instruction would provide that the denominator would be the total number of shares outstanding as of such month end date. It would provide that the numerator would be the number of shares held in the United States based on information received at any time during the 120-day period prior to such month end date.[9]

    - Proposed Rule 12h-6(a)(4)(i)(B) provides that the determination period for the U.S. percentage of the public float is 60 days after the "recent 12-month period" in which trading volume is calculated, which itself must end 60 days before the filing of the Form 15F. In contrast, Proposed rules 12h-6(4)(ii) and (5) allow the U.S. percentage to be calculated any time within the 120-day period preceding the filing of the Form 15F. We believe it would be best to use the 120-day period in all cases. The "60/60" structure does not seem to us to serve any investor protection purpose, and it introduces unnecessary complexity into the process.

    - Proposed Rule 12h-6(e)(2) provides that if, after reasonable inquiry, a company is unable to obtain information without unreasonable effort, the company should assume that the customers of the relevant nominee are in the same jurisdiction as the nominee. We agree

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not to apply to European companies whose securities trade on liquid markets (for example, markets with at least $1 billion of average daily trading volume, the threshold suggested in our March 18, 2005 letter to the Commission).

[9] The instruction could (but would not need to) provide more specific instructions, for example by stating that in case information is received on two or more dates from the same intermediary, and that information is in whole or in part inconsistent, the information received at the latest date will be given precedence. However, we think it would be best for the instruction to include only a general statement, as it is impossible to predict all of the technical issues that might arise as the rule is put into practice.

with this proposal for purposes of calculating the U.S. percentage of the public float. However, it does not work for purposes of determining whether a company has 300 U.S. resident shareholders (or whatever number the Commission ultimately includes in the final rule), because there is no assumption regarding the number of accounts for which a nominee is holding securities. As we proposed in our March 2005 letter, we suggest that in these circumstances a company be entitled to count the nominee as a single shareholder located in the jurisdiction of its principal place of business.

- Proposed rule 12h-6(d)(3) defines "equity security" as having the meaning set forth in Exchange Act Rule 3a11-1. This means that convertible securities, exchangeable securities, options, warrants and similar instruments would have to be taken into account in determining the public float percentages. We believe the Commission should modify this definition. Holdings of convertible securities and options are not analogous to holdings of shares. These instruments are typically traded only over-the-counter by institutions, and companies typically are not aware of the holders of these securities. In addition, in some cases these types of securities are issued by banks or third parties, outside the control of the issuer of the underlying shares (often with cash settlement options). Moreover, "out of the money" options cannot be considered the functional equivalent of shares. Finally, the shares of some companies are the subject of index options that clearly have nothing to do with the determination of U.S. investor interest in the shares of those companies.

  We propose that the Commission use the definition of "equity security" contained in Securities Act Rule 800(b), which excludes these types of instruments.

- We believe that shares held by U.S. employees and former employees of the issuer and its affiliates (and their family members) should not be counted as being part of the shares held by U.S. residents for purposes of the percentage of public float tests, or for purposes of determining whether a company has more than 300 U.S. resident shareholders. As the Commission has noted in the Release, sales of securities to employees "are undertaken primarily for purposes other than capital formation." Release at 26. Moreover, a company that has never registered with the Commission may offer and sell its securities to employees under Securities Act Rule 701. The fact that a company has a significant employee shareholder base should not preclude the company from deregistering.

➢ <u>Exclusion of Form 6-K from requirement to have made all required submissions</u>. Proposed rule 12h-6(a)(1) requires foreign private issuers to have filed "or furnished" to the Commission all reports required during the two years proceeding deregistration. As a result, the requirement applies to Form 6-K filings. We believe the rule should be changed to delete the words "or furnished." Form 6-K filings are required only for "material" information. Determining what information is "material" is inherently subjective. Companies should not be blocked from deregistration simply because they make a good faith judgment that a given document is not sufficiently material to warrant filing.

➢ <u>Definition of Well-Known Seasoned Issuer</u>. Proposed Rule 12h-6(d)(8) defines a "well-known seasoned issuer" by reference to paragraph (1)(i)(A) of that definition in Securities Act Rule 405. To the extent that the Commission decides to retain the distinction between well-known seasoned issuers and other issuers for purposes of the deregistration rule (which we believe the Commission should not do, as discussed above), this definition would seem generally appropriate, although we believe that two modifications should be made:

- First, we believe that by analogy to paragraph (1)(ii) of that definition, a majority-owned subsidiary of such an issuer should be treated in the same manner. We would not require that the majority-owned subsidiary's securities be guaranteed by the parent, because the context is not the same as the offering registration rules that are the main focus of the

well-known seasoned issuer definition.

- Second, we believe that an "ineligible issuer" should not be excluded for purposes of the deregistration rules. This exclusion would appear unnecessary, as the issues are not the same as they are in the securities offering context.

- Definition of home country. Proposed Rule 12h-6(a)(3) provides that a deregistering company must be listed in its "home country," which is defined by reference to the definition in Form 20-F, and states that the home country must constitute the company's primary trading market. The Form 20-F definition, however, provides that the "home country" is the jurisdiction in which the company is legally organized and, if different, the jurisdiction where it has its principal listing. Unfortunately, this definition could refer to two countries, one of which might not be the company's primary trading market. We suggest that Rule 12h-6(a)(3) simply provide that the company must have a listing in a jurisdiction outside the United States, which is the primary trading market of the company. This would ensure that there is at least one market that represents at least 55% of the trading in the company's shares.

- Rule 12g3-2(b): Internet publication. We strongly support having companies provide Rule 12g3-2(b) information by electronic publication, rather than in paper form, as is contemplated by proposed Rule 12g3-2(e). We have a few technical suggestions with respect to the Commission's proposal:

  - As currently drafted, deregistering companies would have to meet requirements that are different from those of other companies exempt under Rule 12g3-2(b). We believe this is appropriate for some period of time after deregistration, but after a reasonable period (for example, five years) there should be no distinction between a company that never registered and a company that deregistered long in the past.

  - We believe the best way to eliminate this distinction is to give all companies exempt under Rule 12g3-2(b) the option to publish information on the internet, rather than submitting paper copies to the Commission. If the Commission wishes to be able to monitor compliance with this requirement, we believe it should establish an email address to which companies may submit materials electronically, rather than in paper form. Companies should be allowed to use common electronic document formats (pdf, word, power point, etc.) and should not be required to submit through EDGAR, which requires special software and can result in substantial document conversion expense.

  - The final rule (or an instruction) should make clear that publication of the required materials anywhere on a company's web site would be sufficient, and that companies do not need to designate a special "Rule 12g3-2(b) page" on which the materials are posted. If the Commission wishes to be able to monitor compliance, allowing email submission as suggested above would be the most efficient way to do so.

  - The Commission should make clear that web site publication of materials pursuant to Rule 12g3-2(b) would not be considered "directed selling efforts" or a "general solicitation" in connection with a Regulation S or private offering of a company's securities. This is particularly important with respect to press releases, as companies often publish press releases in their home countries with respect to securities offerings pursuant to Securities Act Rule 135e, and they often limit English language web site publication of such press releases to avoid any risk of being considered to have used directed selling efforts or to have made a general solicitation.

- Form 15F. We believe that the information requested in proposed Form 15F is generally appropriate. Of course, to the extent the substance of Rule 12h-6 changes, conforming

changes will be necessary to Form 15F. In addition, we suggest making a few modifications:

- Proposed Form 15F requires companies to furnish information to provide evidence that a company is eligible for deregistration under Rule 12h-6. We believe this is appropriate. However, some of the line items are only applicable to companies deregistering under particular options within Rule 12h-6. While certain line items state that they are only to be completed by companies for which they are relevant, others do not do so. We believe there should be a general instruction to the effect that companies are only required to furnish information relevant to the deregistration option that they are seeking to use, and that they may answer "not applicable" for all other line items.

- A company filing proposed Form 15F is required to certify that it is terminating its registration or reporting requirements with respect to all classes of securities. While it is likely that companies will wish to do this as a matter of course, we see no reason to impose this as a requirement. For example, a company might determine that it is eligible to deregister its shares at a time when it has outstanding bonds that are subject to a Section 15(d) reporting requirement. If the bonds are close to maturity, the company might reasonably conclude that the effort and expense of determining the number of bondholders would not be worthwhile. We see no reason to require the company to wait until the bonds mature to deregister its shares.

- We support the proposal that Form 15F become automatically effective absent an objection by the Commission within 90 days, as we believe companies should not face an obstacle resulting solely from inertia. We also support the proposal that the Commission have the power to accelerate effectiveness of the Form 15F. We believe it would be useful for the Commission to indicate in the release relating to the final rule what criteria it might use in determining whether to grant an acceleration request (and in particular that the Commission would expect to consider acceleration requests filed when regulatory deadlines are approaching, to avoid unnecessary compliance expenses for companies that are eligible to deregister).

- We see no purpose in requiring companies to publicly announce their intention to file Form 15F prior to filing. Shareholders who do not wish to retain securities following deregistration could sell after filing of the Form 15F just as easily as they could after the publication of a notice. The only impact of the prior notice requirement is to lengthen the timetable for deregistration, which is in nobody's interest. On the other hand, we would support a requirement that companies issue press releases upon filing of the Form 15F.

- Outstanding registered employee stock options: A deregistering company might have significant numbers of employee stock options outstanding at the time it files its Form 15F. Those stock options are continuous offerings that would require registration absent an exemption. Under the rule as proposed, companies would typically impose modifications on option holders, such as converting the options to share appreciation rights. We believe it would be appropriate for the Commission to provide in the proposed rule that options held by employees or former employees of the issuer, its parent or subsidiaries, or their family members, could be exercised without registration. The Commission could provide that the shares resulting from such exercise would be considered "restricted securities" under Securities Act Rule 144.

- Coordination with Rule 12g3-2(a). While proposed Rule 12h-6 would change the criteria for terminating registration, it would leave in place the criteria set forth in Rule 12g3-2(a), which effectively determines when a foreign private issuer is required to register in the first place (this is its practical effect, even though the rule is worded as a registration exemption). We believe that Rule 12g3-2(a) should be revised to conform to the final version of Rule 12h-6, by increasing the 300-holder threshold, modifying the counting rules and exempting

companies with less than 5% of the public float held by U.S. residents.

- Coordination with Trust Indenture Act. Section 314(a)(1) of the Trust Indenture Act requires a company that issues debt securities under a qualified indenture, and that is not subject to an Exchange Act reporting requirement, to file with the trustee and the Commission such reports as the Commission may specify by rules that have never been adopted. We believe it would be appropriate for the Commission to clarify that a company deregistering under Rule 12h-6, and that has outstanding debt securities under a qualified indenture, is not required to file reports under Section 314(a)(1).

5. Responses to Commission Questions

In addition to our comments set forth above, we would like to respond to a number of questions asked by the Commission in the Release. The questions are described below, with a reference to their respective locations in the Release.

- Q: Should SEC require an issuer using Rule 12h-6 to offer to repurchase securities held in the United States (Release at 22)?

  A: No, for five reasons. First, it would be illegal in many European jurisdictions unless all shareholders received the same offer. Second, it could be prohibitively expensive. A company with a market capitalization of $1 billion and 5% U.S. share ownership could be forced to spend up to $50 million to repurchase all U.S. shares. Third, it could encourage arbitrage that might result in a significant increase in U.S. share ownership following filing of a Form 15F. Fourth, it would require an inquiry as to the nationality of shareholders that is much more detailed than what is required for deregistration, in order to verify that tendering shareholders are in fact U.S. residents. Fifth, so long as a deregistering company's shares are listed in its home market, U.S. shareholders can sell the shares in the market (typically an ADR depositary will automatically "cash out" ADRs for holders that do not choose to convert to ordinary shares at the time the ADR program terminates).

  A repurchase requirement would only be reasonable if it were limited to ADRs, and if it were an alternative method of permitting deregistration – in other words, a company that did not meet the public float or shareholder number tests could deregister by making a tender offer to purchase all outstanding ADRs. We would support such an alternative test for companies that are legally able to restrict a tender offer to ADRs, but we would not support adding a repurchase requirement as a supplement to the other tests, or a repurchase requirement that covered ordinary shares.

- Q: Should a deregistering issuer be required to establish a share-sale facility for U.S. shareholders (Release at 22)?

  A: We proposed in our March 18, 2005 letter that deregistering issuers be required to establish share-sale facilities for ADR holders where permitted. We think this feature would be acceptable, although we do not believe it is necessary. If the Commission chooses to incorporate this feature in the final rule, it is essential that companies be exempt from the requirement if it would be illegal under home country law to limit the facility to U.S. holders. In addition, it should be limited to ADR holders, as shareholders who purchase ordinary shares in the issuer's home market should not benefit from a special sales facility (also, it should not be available to qualified institutional buyers, who are sophisticated enough to sell without the issuer's assistance). Finally, the share sale facility should be required to be in place for only a limited time period (we suggested six months in our March 18, 2005 letter).

- Q: How likely is it that U.S. percentage of a company's public float might increase after deregistration (Release at 22)?

A: It is impossible to know the answer to this question. However, we believe that any new U.S. shareholders will be overwhelmingly large institutions. As a result, we believe that the Commission should not incorporate features in the final rule designed to address this issue (most significantly, this issue should not affect the provisions that would effectively make deregistration permanent under the proposed rule).

- Q: Should the Commission require a deregistering issuer to represent that it is in compliance with its home country rules (Release at 31)?

  A: No. Compliance with home country rules is irrelevant to deregistration, except in extreme cases where a company's shares might be delisted in the home country (which would already make the company ineligible for deregistration under the rule as proposed). The home country regulator is the proper party to address questions of home country compliance (and we question whether the Commission is well-equipped to do so in connection with the examination of a Form 15F filing).

- Q: Should the Commission require a maximum U.S. public float in U.S. dollar terms, rather than as a percentage of total public float (Release at 40)?

  A: No. It would be impossible to have standard that works for both large and small companies. For example, providing a maximum U.S. public float of $350 million would allow smaller well-known seasoned issuers to deregister with 50% of their public float in the United States, but would not permit the deregistration of a company with a market capitalization of $7.1 billion, even if its U.S. public float were only 5% of its worldwide total. Any attempt to apply a progressive scale would amount to essentially the same thing as a percentage test.

- Q: Should issuers "look-through" nominees in countries other than the United States and their home countries (Release at 55)?

  A: No. The Commission has recognized in other contexts (for example, the Tier 1 and 2 cross border tender offer exemptions, and Securities Act Rules 801 and 802) that the United States, the home country and the principal trading market are the appropriate locations for companies to make inquiries. We see no reason to impose a different requirement here. We note as well that companies are likely to have better access to data sources in their home countries, and might find it difficult to conduct shareholder searches in countries with which they otherwise have minimal connections.

- Q: Should issuers be required to use means available to them under home country law to "look-through" nominees (Release at 56)?

  A: No. Home country laws differ from country to country. In some cases, issuers may be unable as a practical matter to use research tools that purport to be available under home country law. For example, a country's law might provide that intermediaries worldwide are required to reveal beneficial ownership positions, but that requirement might be impracticable to enforce outside that country's borders. Instead, we believe the Commission should state in the release accompanying the final rule that the reasonable use of tools available under home country law would be a factor in determining whether a company's overall inquiry were reasonable.

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We hope that the Commission will agree with our view that proposed Rule 12h-6 should be modified so that it achieves its goal of liberalizing the deregistration regime. In considering the issues raised by this letter, the Commission should keep in mind that a U.S. company that has a secondary listing on a European exchange can generally terminate that listing and all or most corresponding reporting requirements by complying with relatively simple formalities. We believe there are strong arguments in favor of the Commission adopting a similar, simple approach to that seen in Europe. At a minimum, even if the U.S. rules are to remain more complex than those in Europe, they should be modified so as to provide appropriate relief to European companies with minimal U.S. shareholder interest apart from a handful of highly sophisticated institutions.

We recognize that the issues involved are complex, both in relation to fundamental points and technical points. While we hope that these issues can be resolved quickly, we recognize that the complexity involved might make it necessary for the Commission to take some time. As a result, we fully support the suggestion of the European organizations that the Commission extend the deadline for compliance by foreign private issuers with Section 404 of the Sarbanes-Oxley Act of 2002, until the final rules on deregistration are adopted and available to companies.

We appreciate the opportunity to participate in this process, and we look forward to its successful conclusion.

Very truly yours,

Andrew A. Bernstein

cc: The Honorable Christopher Cox, *Chairman*
The Honorable Paul S. Atkins, *Commissioner*
The Honorable Roel C. Campos, *Commissioner*
The Honorable Cynthia A. Glassman, *Commissioner*
The Honorable Annette L. Nazareth, *Commissioner*

Martin P. Dunn, *Acting Director, Division of Corporation Finance*
Brian Cartwright, *General Counsel*
Paul M. Dudek, *Chief of the Office of International Corporate Finance*
Ethiopis Tafara, Director, *Office of International Affairs*

Commissioner Charlie McCreevy, *European Commission*
David Wright, *Director, Financial Markets, DG Internal Market*
Arthur Docters van Leeuwen, *Chairman, Committee of European Securities Regulators*

Edward F. Greene and Timothy Harvey-Samuel, *Citigroup*

Annex A
Share Ownership Studies – Description of Methodology

As noted in the body of this letter, two studies were used to analyze U.S. share ownership of European companies, one by our firm and one by Citigroup. The methodologies used are described below.

Cleary Gottlieb Study of SEC Filings. We have reviewed the latest annual reports on Form 20-F of 64 well-known seasoned issuers from the United Kingdom, France, Germany and Italy, as well as beneficial ownership reports filed in respect of these companies. Unfortunately, a number of companies only report limited information on their U.S. share ownership, so the results are not conclusive. Nonetheless, the results provide strong evidence that very few large European companies can use the rule as proposed.

Our research indicated that the information provided by reporting companies falls into five categories:

- 12 companies report the proportion of their shares represented by American Depositary Receipts, but do not report holdings of ordinary shares by U.S. residents. In most cases, the ADR programs represented 2% or less of a company's share capital.

- 9 companies, mainly in the United Kingdom, report the number of shares represented by American Depositary Shares as well as registered shareholders in the United States, but report that many of their registered shareholders are banks, brokers or nominees that may hold for additional U.S. residents (they do not look through those banks, brokers or nominees).

- 3 companies report only ADR holdings or holdings of both ADRs and registered shares, but those holdings by themselves are above the 10% public float threshold.

- With respect to 34 companies, the information reported purports to include ordinary shares, or other information (such as holdings of shareholders named in beneficial ownership table in the Form 20-F or beneficial ownership reports) permits a conclusion to be drawn with respect to U.S. ownership of ordinary shares and ADRs. The U.S. shareholder base of 29 of these companies exceeded 10% of the public float, while the U.S. shareholder base of five companies appeared to be at or below 10% of the public float. Of these five companies, the reporting of four did not indicate whether any "look-through" research was done in relation to nominee holdings. The data gathered by Citigroup (discussed below) indicates that the U.S. shareholder base appears to exceed 10% of the public float in three of these four cases. The following table summarizes the results of this research:

U.S. ownership level	UK	France	Germany	Italy	Total
Above 10%	9	10	9	1	29
10% or below	0	4[(1)]	1[(1)]	0	5

(1) Includes four companies (three in France, one in Germany) in respect of which our firm's study showed "ambiguous" information, of which three were found in the Citigroup study to have U.S. ownership levels above 10%.

- An additional 6 companies provided no information regarding U.S. share ownership.

Citigroup Study. Because of the limited results available from SEC filings, the European organizations asked Citigroup to update and expand research that it performed in

connection with their letter of March 18, 2005 to the Commission. The Citigroup research covered the 27 companies in respect of which no usable data was available (those that reported ADR holdings or ADR plus registered shareholdings, other than those that already exceeded the 10% threshold). Citigroup also researched the shareholder base of the four companies that did not indicate whether they in fact researched the ultimate owners of the shares.

Citigroup used the Shareworld database, which is compiled by the independent service provider Thomson Financial. In constituting the database, Thomson Financial states that it compiles data from publicly available sources, including U.S. and home country beneficial ownership reports, data published by companies, regulatory filings in connection with transaction such as mergers and takeovers, mutual fund holdings reports and public filings of institutional investment managers, insurance companies and pension funds, where available.

Citigroup analyzed the data by calculating the ratio of shares identified as being held by U.S. shareholders, to all shares in respect of which the holders were identified. Citigroup eliminated holders of more than 10%[10] of any company's share capital, with the exception of institutional investors such as mutual funds (as we advised Citigroup that we believe an institutional investor making a passive investment should not be considered an "affiliate" even if its holdings in a given company are significant). It also eliminated ADR depositaries to avoid double counting the depositaries and the owners of ADRs. The results of the Citigroup study are summarized in the following table.

U.S. ownership level	**UK**	**France(1)**	**Germany(1)**	**Italy**	**Total**
Above 10%	11	8	4	3	26
10% or below	2	1	0	2	5

(1) Includes four companies (three in France, one in Germany) in respect of which our firm's study showed "ambiguous" information, of which three were found in the Citigroup study to have U.S. ownership levels above 10%

Citigroup was only able to identify a portion of the shareholder base of the surveyed companies on the basis of Shareworld data. Typically between 60% and 90% of the total could be identified, although in some cases the identified portion was significantly lower. Nonetheless, we believe that the Citigroup study provides a good approximation of the proportion of companies that could use the rule in its proposed form, for the following reasons:

- The data is compiled by an "independent service provider," Thomson Financial, and thus is likely to be representative of the extent to which companies themselves would be able to identify their shareholders on the basis of the counting methodology contemplated in the proposed rule.

- We reviewed analyses performed by Citigroup of the shareholder base of several companies for which Form 20-F or other data was available, and found that the U.S. ownership ratio determined by Citigroup was generally consistent with that reported by companies in their Form 20-F's.

- Even if one were to assume that all of the unidentified shares were held outside the United States (an assumption that we believe to be clearly too conservative), the data

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[10] The decision to use the 10% threshold was made before we had completed our analysis of the "affiliate" definition in proposed Rule 12h-6, and should not be taken as an indication of anything less than complete support for the use of a 20% threshold in a safe harbor. We believe the results would not have been materially different if Citigroup had used a 20% threshold.

analyzed by Citigroup would show that 15 of the 27 companies in the main part of the survey would have been ineligible to use the rule.

The following table shows the composite results of our firm's study and the Citigroup study (using the Citigroup data for the four companies in respect of which our firm found the data to be ambiguous, and including the three companies in respect of which ADR programs alone represent more than 10% of the public float).

U.S. ownership level	**UK**	**France**	**Germany**	**Italy**	**Total**
Above 10%	21	19	13	5	58
10% or below	2	2	0	2	6

Annex B
U.S. Mutual Fund Holdings in European Companies

In connection with this submission, we reviewed the holdings of the ten U.S. mutual funds with the largest Western European exposures (based on Morningstar data), as indicated on their most recent public securities position lists. We compared the holdings of these funds of Western European companies to the list of reporting companies maintained on the Corporation Finance page of the Commission's web site. Our findings are summarized in the following table.

10 Funds with Greatest W. European Exposure	Total Assets of fund as of 1/31/06 (millions)	Percentage exposure to W. Europe	Total Assets w/ exposure to W. Europe	# of W. Europe Co's in the fund	# of U.S.-registered W. Europe Co's included in the fund	%age of W. European Companies registered in the US	%age of W. European assets held in U.S. registered W Europe Co's
American Funds EuroPacific Gr A	70,751	44.50	31,484.20	114	55	48.25%	63.41%
American Funds Capital World G/I A	54,119	41.60	22,513.50	113	60	53.10%	48.19%
Fidelity Diversified International	33,094	61.10	20,220.43	185	60	32.43%	47.90%
American Funds New Perspective A	44,346	41.30	18,314.90	76	44	57.89%	52.08%
Vanguard European Stock Index	15,256	100	15,256.00	592	141	23.82%	60.68%
Templeton Growth A	28,642	47.10	13,490.38	46	29	63.04%	60.61%
Templeton Foreign A	20,116	50.90	10,239.04	56	29	51.79%	64.39%
Dodge & Cox International Stock	13,357	47.40	6,331.22	36	26	72.22%	82.42%
Oakmark International I	6,619	71.8	4,752.44	40	18	45.00%	46.30%
Templeton Instl Foreign Equity	6,763	64.40	4,355.37	72	41	56.94%	57.09%
					Average	**50.45%**	**58.31%**