March 18, 2005

The Honorable William H. Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: U.S. Reporting Obligations of Foreign Issuers

Dear Chairman Donaldson:

One year ago, a group of European organizations wrote to you to ask that the Securities and Exchange Commission consider modifying the rules that govern the deregistration of foreign private issuers. Those rules currently make it essentially impossible for foreign companies to deregister, even when their strategies or circumstances change or the expected benefits of a United States listing fail to materialize.

Since the original letter was sent, there has been an extremely positive dialogue among interested parties. The Commission staff has made substantial efforts to listen to the various viewpoints expressed and to consider constructive steps to improve the situation. Your recent speech in London was an important and encouraging step in this process.

We believe it is now time to move to a more concrete phase of the dialogue. In this respect, we would like to offer some thoughts on how a workable rule proposal might be constructed, taking into account the viewpoints expressed over the past year.

So far, the debate (or at least the public debate) has focused on whether U.S. investor interest in the securities of a foreign private issuer should be measured by reference to trading volume or the number of U.S. investors holding the securities. The Commission staff has expressed its unease with respect to a trading volume test, because it could allow a company with many U.S. shareholders to deregister. European companies and their representatives have pointed out that they are unable to count the number of U.S. shareholders accurately, so a test based on shareholder numbers could be impractical.

While these questions are certainly important, we believe they should not be the principal focus of the Commission's deliberations. The level of U.S. investor interest in a company is only one of several relevant questions, and it addresses only the situation of a company prior to deregistration. We believe it is more important to consider what would happen after a company deregisters, and how well-protected U.S. investors would be after deregistration.

In particular, we believe the Commission should consider whether a company would be required to publish high quality disclosure and financial information after deregistration, and whether U.S. investors would be able to trade the company's securities easily on a liquid, transparent market that is protected by effective regulatory oversight. Where this is the case, it would be appropriate for the rules to be more flexible in determining the level of U.S. investor interest prior to deregistration.

We recognize that an approach that takes into account the characteristics of a company's home market would result in different criteria being applied to companies from different jurisdictions. We believe this is appropriate – the rules should be more flexible for a company whose trading price is determined principally in a high quality market outside the United States, and less flexible where deregistration would effectively deprive shareholders of the only high quality trading market for a company's securities.

U.S. investors would be better protected after the deregistration of a blue chip European listed company than they would be after the deregistration of a U.S. company, whose only trading market is in the United States, or a foreign company whose principal trading market is in the United States. In addition to continuing to receive quality disclosure, shareholders of the European company could easily sell their securities at any time with full confidence in the quality of the trading market.

We also believe that companies themselves can take steps to protect U.S. investors following deregistration. The rules should provide greater flexibility for companies that provide U.S. retail investors with a cost-free opportunity to sell their securities after deregistration when that is possible under local law. Those investors who choose not to sell would effectively be deciding to retain their investments despite the fact that the company would no longer be registered.

In addition, we believe that the adoption of transition requirements for companies seeking to deregister would enhance U.S. investor protection following deregistration. For a period of time following deregistration, such companies could be required to furnish certain information of potential interest to U.S. investors in areas such as accounting standards, corporate governance and taxation. This would permit U.S. investors to understand how these issues affect them and to determine whether they wish to retain their investments following deregistration. Companies deregistering could also be required to provide in the United States a minimum amount of English language information, including audited financial statements.

On the basis of this analytical framework, we believe that the Commission should permit foreign private issuers to deregister two years after their most recent listing or registration of securities, and to file home country reports with the Commission under Exchange Act Rule 12g3-2(b), in either of the following cases:

- Companies that are required to report under IOSCO principles and IFRS accounting standards, and that have highly liquid and transparent regulated home markets, would be permitted to deregister if they have limited share-trading volume in the United States (less than 5%). Such companies would be required to provide U.S. retail investors with a cost-free mechanism to sell their securities where allowed under local law, either through a tender offer or through a brokerage facility providing for sales on the home market during a six-month period following deregistration. In addition, they would be required to submit to the Commission annually, for two years following deregistration, a document discussing the principal differences between their home country corporate governance regimes and key provisions of the Sarbanes-Oxley Act of 2002, a narrative discussion of the principal differences between their home country accounting standards and United States generally accepted accounting principles, and a description of the tax consequences of an investment in their securities by U.S. investors.

- All foreign private issuers could deregister if 10% or less of the relevant class of securities is held in the United States, if 10% or less of the holders of the relevant class are U.S. residents, or if the relevant class is held by fewer than 3,000 U.S. residents (in each case excluding securities held by qualified institutional buyers, employees and directors), as determined under counting rules that can be implemented practically by issuers.

This proposal is a modified version of the one made in the February 2004 letter. The modifications are in our view important, because they significantly reinforce the protection that would be afforded to U.S. investors following a company's deregistration. Compared to the February 2004 proposal, the current proposal requires that a company's shares be traded on a market with minimum liquidity and regulatory standards, that companies give retail investors an opportunity to sell their securities cost-free where possible and that companies provide transition reports with information of interest to U.S. investors. The revised proposal also includes a detailed set of workable criteria that could be used by foreign private issuers worldwide, including multiple alternatives that ensure that the rules can work for companies from jurisdictions with varying securities registration and ownership reporting systems.

We believe that the substantial degree of post-deregistration protection under the first alternative of the modified proposal justifies a flexible test of U.S. interest prior to deregistration. We recommend using trading volume because it measures U.S. interest by reference to whether a company's trading price is determined principally in the United States or abroad, and whether the price determination mechanism would be disrupted by deregistration. A trading volume test also has the tremendous benefit of being simple to implement and difficult to manipulate. While practicality is not by itself a reason to adopt a particular standard, it nonetheless should be recognized as an advantage, particularly when coupled with strong post-deregistration protections.

We understand the Commission staff's reluctance to embrace a standard that might allow a company with many U.S. shareholders to deregister, particularly given the historical structure of the deregistration rules, which is based on shareholder numbers. Decades ago, it probably was not appropriate to consider whether another country's rules could provide substantial protection to U.S. investors following deregistration. In the modern world, the question is essential. To consider the issue in a different light, is it better to allow a company to deregister when it offers substantial post-deregistration protection to a potentially large number of U.S. investors, or when it offers no post-deregistration protection at all to a small number of U.S. investors? We believe that U.S. investors are better protected in the first case.

We also understand that the Commission might be concerned that the 5% trading volume test could allow a large number of European companies to deregister. As we indicated in our February 2004 letter, we believe that many European companies do not intend to deregister, but instead support the modification of the rules because they believe that the rules should not make deregistration practically impossible. In addition, at our request Citigroup has analyzed trading in the shares of many of the largest European companies, and has found that a substantial number of those companies would not be eligible to deregister under the trading volume test (in fact the average U.S. trading volume in 2004 for the largest German and U.K. companies is above 5%). The Citigroup study also confirms that the level of U.S. interest in the securities of European companies does not depend on the presence of a U.S. listing, as many companies without U.S. listings report that a substantial portion of their share capital is held in the United States.

We believe that adopting new rules along the lines recommended in this letter would make the United States markets substantially more attractive to foreign companies considering new listings. It would also send a strong signal to companies that are already listed in the United States, reinforcing the views held by a majority of them that a U.S. listing carries substantial value in today's global capital markets.

We have enclosed with this letter a technical analysis in support of our position from the law firm Cleary Gottlieb Steen & Hamilton LLP, which sets forth in detail our specific recommendations, as well as the Citigroup study.

We hope that you will give full consideration to these issues. We would be happy to discuss these issues further with you and to work together to find an appropriate solution.

Very truly yours,

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