EALIC

European Association for Listed Companies

DEUTSCHES AKTIENINSTITUT

AF AKTIENFORUM ein partner der iv

BDI Bundesverband der Deutschen Industrie

ANSA*

AFEP*

ABSC-BVBV*

ΣΕΙΣΕΤ ΣΥΝΔΕΣΜΟΣ ΕΙΣΗΓΜΕΝΩΝ ΕΤΑΙΡΕΙΩΝ Χ.Α. ATHEX LISTED COMPANIES ASSOCIATION

SVENSKT NÄRINGSLIV CONFEDERATION OF SWEDISH ENTERPRISE

CBI THE VOICE OF BUSINESS

Confederation of Finnish Industry and Employers

** Members of EALIC*

February 9, 2004

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:

We are writing to bring to your attention an important issue relating to the rules that govern when European companies are required to file periodic reports with the Securities and Exchange Commission. We have been informed that, unlike the analogous rules in most European countries, the U.S. rules make it difficult, and in some cases impossible, for a European company to terminate its reporting obligations. While most of the companies that we represent intend to remain reporting companies for the long-term, they believe that a company should have the right to withdraw its U.S. registration if it makes adequate provisions for the protection of U.S. investors. As a result, we respectfully request that the Securities and Exchange Commission consider modifying its rules.

Our organizations represent more than 100,000 European companies, including more than 100 with securities listed in the United States. They include most of the largest companies that have primary listings on the major European markets. Substantially all of the trading in the securities of our member companies takes place in Europe, whether or not those securities are also listed in the United States.

Our member companies prepare annual and interim financial statements and disclosure documents in accordance with European directives. Beginning with fiscal year 2005, they will all publish financial statements in accordance with international financial reporting standards (IFRS). In addition, as you are aware, the European Union has recently adopted a prospectus directive that will require European companies to prepare disclosure documents in accordance with the recommendations of the International Organization of Securities Commissioners (IOSCO), a process that has already been anticipated to a large extent by our member companies in order to respond to home country regulations and market demand.

Most of our member companies that have securities listed in the United States entered the U.S. market to achieve specific objectives, such as developing a liquid trading market for their securities in the United States, using their securities as acquisition currency in the United States, raising capital in the U.S. market on a rapid basis, or enhancing their reputation in the United States and internationally. Many of these companies have been quite satisfied with their experience in the U.S. market and feel that they have realized substantial benefits from their U.S. listings.

Some of our member companies, however, have not realized the benefits they sought to achieve, or have changed their business strategy since their U.S. listing. To some extent, this is due to substantial changes that have occurred in the international securities markets in the last several years, including the development of highly liquid European markets and a U.S. institutional investor base that invests in European securities directly, rather than through ADRs. As a result of these changes, many of our member companies with U.S. listed securities find that they have no greater access to the U.S. market than other companies whose securities are listed only in Europe.

In this context, a number of our member companies have re-evaluated the benefits of a U.S. listing compared to the substantial costs involved. Some companies have explored whether they can avoid these costs by terminating their U.S. listings. They have been advised that, while they can withdraw their securities from U.S. exchanges, they must continue to file reports with the Commission so long as there remains even de minimis U.S. investor interest in their securities.

We do not find it surprising for a company to be subject to U.S. disclosure obligations for a period of time following a U.S. listing or public offering, or for those obligations to continue so long as there is significant U.S. interest in the company's securities. On the other hand, we believe that the Commission's rules that implement these principles suffer from two significant problems:

- To terminate or suspend a reporting obligation, a company must have fewer than 300 U.S. resident security holders. We believe this is not the best way of determining U.S. interest in the securities of a European company. Given the ease with which U.S. investors can access European securities markets, trading in a company's home market can cause it to exceed the 300 U.S. holder level, even if the company does not take any action to solicit U.S. interest.

- If a company has ever made a public offering in the United States or engaged in certain business combinations, its U.S. reporting obligation can never be terminated. At best, the company can eliminate its reporting obligation one year at a time, always remaining subject to renewed reporting if, without any action on its part, its U.S. shareholder base increases.

We believe that a foreign company should not be subject to U.S. reporting forever unless it generates genuine and continuing interest in the U.S. public securities markets. That interest should be measured by trading volume, which we believe is a much better indicator of interest than the number of U.S. security holders. In addition, if a company with limited U.S. interest in its securities withdraws from the U.S. market, it should not be subject to renewed reporting simply because U.S. investors acquire its shares in its home market.

We urge the Commission to modify its rules to correct this situation. We recognize that the Commission has historically shown flexibility in the no-action letter process, and we encourage the Commission to continue this flexibility. However, we also believe it would be appropriate to amend the rules. We propose two modifications:

- A company that publishes reports in accordance with IOSCO standards and financial statements in accordance with IFRS should have the right, two years after a U.S. public offering or listing, to terminate its reporting obligation and to submit English versions of its home country reports to the Commission pursuant to Rule 12g3-2(b), so long as its trading volume in the United States is less than 5% of its worldwide trading volume during its most recent fiscal year.

- A company should never be made permanently ineligible to use Rule 12g3-2(b). If it is not eligible to terminate its reporting obligation on the basis of the above criteria, it should have the right to make a termination under the existing 300 U.S. security holder standard permanent and to use Rule 12g3-2(b) immediately, so long as two years have elapsed since its most recent U.S. public offering or listing, and it submits its home country reports to the Commission.

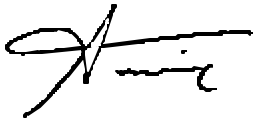
These changes would represent a substantial modernization of the Commission's rules, and would also be more consistent with the treatment of U.S. companies that list their securities on European markets. A U.S. company with a secondary listing on one of the major European markets can typically terminate its listing and reporting obligations by submitting a notice to the relevant authorities and observing a waiting period or certain limited undertakings. As far as we are aware, the United States is the only market in the world that imposes its reporting obligations forever as a result of a secondary listing.

When our member companies that are listed in the United States first entered the U.S. market, they did not analyze the conditions under which they might withdraw, as this was not their principal concern at the time. Today, however, the inflexibility of the regulatory regime is attracting significant attention and is one of the reasons why our member companies that are not listed in the United States are reluctant to list in the United States at the present time. If the Commission were to make Rule 12g3-2(b) more flexible, this would be a significant step in restoring the favorable perception of the U.S. public market on the part of European companies.

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

Alain JOLY
Président
EALIC



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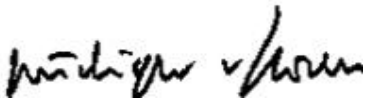

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