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CBI THE VOICE OF BUSINESS

BDI Bundesverband der Deutschen Industrie

February 28, 2006

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

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 response to the request of the Securities and Exchange Commission for comments on the 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").

We strongly support the Commission's decision to propose these rule changes. If adopted, they will eliminate a number of the most significant problems with the current rules that govern deregistration, by:

- creating an alternative to the 300-holder standard, which is over 40 years old and difficult to use in today's global securities markets,
- simplifying considerably the procedures for counting a company's U.S. investors, and
- making deregistration effectively permanent once it is achieved.

As the Commission is aware, our organizations have worked for more than two years towards the goal of liberalizing the deregistration rules. It is gratifying to see this effort produce concrete results. We believe that this rule proposal is a clear demonstration of the potential for success in the trans-Atlantic dialogue regarding securities market issues.

While the efforts that have been made so far are impressive, we believe that a complete success will only be achieved if a reasonable number of companies are able to use the final rule. Otherwise, companies will remain trapped in the U.S. market even when their business and strategy make the costs of remaining a reporting company disproportionate to the benefits. If companies are trapped in this manner, then the rules will continue to be a significant obstacle to new listings by foreign issuers in the United States.

We understand from the Release that the Commission has found that approximately 26% of all foreign private issuers would be able to use the rule as proposed. While we have no reason to doubt this figure, our research leads us to believe that very few European companies are represented among the 26% worldwide that can use the rule.

At our request, Cleary Gottlieb Steen & Hamilton LLP and Citigroup analyzed data for 64 European companies with a market capitalization over €1 billion, derived from the most recent SEC filings and a database maintained by the independent service provider Thomson Financial. They found that only 6 of the 64 European companies surveyed (or less than 10%) would be eligible to use the proposed rule based on the available data. Unfortunately, and despite the efforts and good intentions of the Commission staff, figures like these cannot be considered evidence of a successful regulatory framework.

We believe the reason that so few European companies can use the proposed rule is that U.S. ownership of many European companies is concentrated among a small number of highly sophisticated U.S. institutional investors. In many cases, five or ten shareholders hold substantial stakes in a company, pushing the company over the 10% U.S. ownership threshold, while ownership among remaining U.S. investors is widely dispersed. As a result, a very small number of sophisticated U.S. shareholders have a disproportionate impact on the threshold calculation.

It would be appropriate for the Commission to modify the rules to reduce the impact of U.S. shareholder concentration on the threshold calculations. There are several reasons for this:

- When a small number of U.S. shareholders hold relatively large stakes in a company's share capital, the U.S. ownership percentage of the public float is not a good indicator of the overall level of U.S. investor interest in a company's shares.

- The U.S. shareholders with large stakes in European companies are almost always "qualified institutional buyers" (QIBs). We understand that the Commission has considered in other contexts that QIBs do not need the protection of the registration requirements of the U.S. securities laws.

- Those shareholders trade shares of European companies primarily in the European markets, and not in the United States. We understand that the Commission has traditionally taken the view that investors that trade outside the United States are not entitled to assume that they are protected by the U.S. securities laws.

- Those shareholders also have access to multiple sources of information regarding companies that are listed in Europe, and have the sophistication to analyze home country annual reports and financial statements, company presentations, analyst research reports and other available materials.

- The U.S. shareholders that hold large stakes typically wield significant influence and are able to communicate their views regarding a company's business, strategy and other matters directly to management. If they are against deregistration, they have the ability to make their views known to management and to influence a company's decision.

In the Release, the Commission suggested 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." With all due respect, our member companies find no evidence that this is the case among large shareholders of European companies. We believe this is due to the high quality business and financial information that European companies are required to publish, and to the substantial liquidity and transparency of European securities markets.

While it is inherently difficult to prove a negative (i.e., that these investors do not significantly rely on Exchange Act reports), our member companies find that all evidence points in exactly the opposite direction of what is suggested in the Release:

- Substantially all large U.S. shareholders invest regularly in European companies that are not listed in the United States, as well as in those that are listed in the United States. Based on research conducted by Cleary Gottlieb Steen & Hamilton LLP, companies without U.S. listings represent on average 49.4% of the Western European investments of the 10 U.S. mutual funds with the largest Western European exposures as of December 31, 2005.

- Many recent European initial public share offerings have been open to U.S. institutional investors under Rule 144A. Several of the investment banks that our member companies use have informed us that they have seen no material difference in the proportion of orders received from the United States in these transactions compared to the SEC-registered initial public offerings that took place in the recent past.

- The number of requests received by our member companies for copies of Exchange Act reports is insignificant compared to the number of requests for home country annual reports. Similarly, the number of web page hits to Exchange Act reports is insignificant compared to the number of web page hits to home country documents.

- A number of our member companies that have deregistered under the existing rules, or that have decided to terminate their U.S. listings, report that they have received substantial support from their U.S. institutional shareholders, who have viewed the deregistration of these companies as a prudent cost reduction initiative.

There are a number of ways that the Commission could modify the proposed rule to reduce the undue impact of high U.S. shareholder concentration:

- The best mechanism would be to allow companies to exclude QIBs from the calculation of their U.S. shareholder base. QIBs do not need the protection of the U.S. registration requirements (under either the Securities Act or the Securities Exchange Act), and their presence as shareholders of a company should not by itself impose such requirements on companies.

- The rule could be modified to allow companies to eliminate a fixed number of shareholders (for example, up to ten shareholders) from their U.S. shareholder base. This would target relief to companies where high shareholder concentration would disproportionately influence the threshold calculation under the proposed rule.

- Alternatively, the rule could allow companies to eliminate shareholders that hold a minimum amount of a company's share capital from their U.S. shareholder base – for example, holders of shares with a value of at least $10 million. The effect would be similar to that of eliminating a fixed number of shareholders, except that it would be focused on shareholders with very large stakes that are more likely to be large institutions that are able to discuss their views on deregistration directly with a company's management.

Any of these options would appropriately and directly address the problem of U.S. shareholder concentration. If none of these options were adopted, then the only alternative would be to raise the 10% U.S. ownership threshold substantially. We believe that an increase to 25% would be necessary to allow a reasonable number of companies to use the rule. A more modest increase (for example, to 15%) would probably have a very limited impact. We would support a decision by the Commission to increase the threshold substantially, although we believe this is not the ideal mechanism, as it is not sufficiently tailored to the problem that we have identified.

We also note that the Commission has chosen not to adopt deregistration criteria that are specific to companies from countries with high quality financial reporting and disclosure requirements, and whose shares trade on highly liquid markets (as we suggested in our previous letters to the Commission). While we have no desire to see the Commission impose unnecessary requirements in the final rule, we believe that the Commission could consider adding flexibility for companies from jurisdictions with rules that provide substantial investor protection.

As an example, the Commission might find that large U.S. shareholders rely significantly on the Exchange Act reports of companies from certain jurisdictions, but not from others where home country disclosure requirements are more stringent (such as European countries). If that were the case, the Commission could adopt rules to limit the impact of high U.S. shareholder concentration only for companies from jurisdictions that provide the highest level of investor protection.

While the impact of high shareholder concentration is clearly the most important issue with respect to the rule proposal, we believe that the Commission should consider making a number of additional changes:

- One Year Dormancy. We believe that the one-year dormancy requirement should apply only to registered U.S. public offerings. If the Commission were to maintain its current proposal, European companies that are registered with the Commission (even those with no current plans to deregister) would inevitably exclude U.S. institutional investors from rights offerings, which are the predominant method of raising equity capital in Europe, as well as private offerings of securities. Moreover, we believe that "schemes of arrangement" such as those that take place under court supervision in the United Kingdom should not preclude a company from deregistering.

- Business Combinations. The proposed modification to Rule 12g3-2(b) would effectively make deregistration permanent for companies with reporting obligations that arise from U.S. public offerings or listings. The same is not true, however, for companies with reporting obligations that arise from business combinations with other companies that are themselves registered with the Commission. We believe that all of these companies should be treated in the same manner.

- 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. While we appreciate that a company has no duty to seek such information under the proposed rule, the process of counting a company's shareholder base is time consuming and costly, and the withdrawal requirement would expose companies to the risk of having their efforts wasted due to circumstances beyond their control. We believe there is no material risk of temporary manipulation of the U.S. shareholder base of a European company. If anything, the risk of manipulation goes in the other direction, as a significant non-U.S. shareholder could threaten to transfer its shareholdings to the United States and to inform the company of the move, forcing the company to withdraw its Form 15F.

- 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 believe that, as it has done in other contexts, the Commission should establish a non-exclusive safe harbor that would allow a company to be certain that a given shareholder is not an affiliate. We propose that the safe harbor apply to any shareholder that is not an officer or director of the issuer, and that holds 20% or less of the issuer's shares. Passive institutional investors should also be presumed to be "non-affiliates" without regard to the percentage of a company's shares that they hold.

- Small Companies. We are troubled by the fact that smaller companies are subject to a standard that is more difficult to meet than the standard applicable to large companies. The costs of compliance with the Commission's disclosure and governance requirements are often disproportionately high for smaller companies. We believe the Commission should make available to all companies the tests that are now available only to the largest companies (modified in the manner that we have proposed).

- 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. We recommend that this figure be raised to 3,000 holders for equity and 1,000 holders for debt (in each case, either U.S. holders or on a worldwide basis, as the Commission has proposed).

- Grandfathering. The Commission is proposing to make deregistration effectively permanent for companies that deregister under the new rule. We believe the Commission should also "grandfather" companies that have deregistered under the old rules, so that their deregistration can also be made effectively permanent.

* * * * *

By definition, a comment letter such as this focuses mainly on the problems with a rule proposal, and less on the proposal's positive aspects. As our conclusion, we would like to emphasize our support for the Commission's initiative, and to commend the Commission for proposing rule changes that correct many of the most significant problems with the current regime. We hope that the Commission will regard our comments as constructive, and look forward to the rapid adoption of a final rule that will set a precedent for the success of future trans-Atlantic discussions.

We recognize that the analysis of these issues is complex. While we very much hope that the final rule will be adopted quickly, we understand that the Commission and its staff will need to devote significant time and effort to determining the criteria to apply in the final rule. At the same time, European companies are on the verge of incurring substantial expense in connection with the application of Section 404 of the Sarbanes-Oxley Act of 2002 for the 2006 fiscal year. It would be a shame if companies that are able to use the final deregistration rule were required to incur the significant expense of first time application of Section 404, only to find out that they can deregister under the new rule. We believe it would be appropriate for the Commission to extend the compliance deadline for Section 404 until it completes its analysis of the deregistration issue and adopts the final rule.

Finally, we believe that the deregistration issue is only one of many that would benefit from trans-Atlantic cooperation. The globalization of the securities markets and the advent of new technologies warrant a comprehensive review of numerous topics, such as mutual recognition of disclosure and accounting standards and the cross-border application of securities laws and regulations to companies with investors around the world. We endorse the proposal of the International Bar Association and the American Bar Association's Committees on Federal Regulation of Securities (Section of Business Law) and International Securities & Capital Markets (Section of International Law), to establish a study group to review these issues once the deregistration rules are finalized. We would welcome the opportunity to participate in a continuing discussion of these important topics.

As we have done in the past, we have requested that Cleary Gottlieb Steen & Hamilton LLP provide a detailed analysis in support of our position. In addition, the accompanying letter from Cleary Gottlieb contains suggestions for a number of technical corrections that we believe should be made to the rule.

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

Very truly yours,

(1) Members of EALIC

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Alain JOLY
Président
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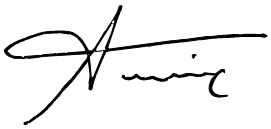

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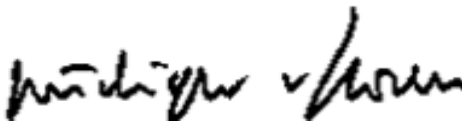

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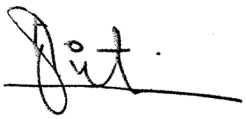

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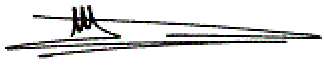

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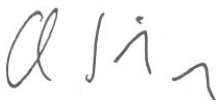

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