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February 28, 2006

By E-Mail to: rule-comments@sec.gov

Jonathan G. Katz
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: **File Number S7-12-05**

Dear Mr. Katz:

We appreciate the opportunity to comment on the proposed rules (the "Proposed Rules") set forth in Release No. 34-53020 (the "Release") regarding the termination of foreign private issuers' reporting obligations under the Securities Exchange Act of 1934 (the "Exchange Act"). Our comments are based on our experience representing foreign companies, although the comments are solely our own and are not intended to express the views of our clients.

We are supportive of the Commission's efforts to liberalize the requirements for foreign private issuers to exit the Exchange Act registration and reporting regime. While we appreciate the Commission's proposal, we have concerns that the exit thresholds for equity securities in the Proposed Rules do not remove sufficiently the disincentives for foreign companies to list their securities in the U.S. Thus, we have proposed an additional means of deregistration for equity securities. In addition, we have made other suggestions that would modify the Proposed Rules.

Proposed Alternative Deregistration Test for Equity Securities

The enhanced corporate governance and disclosure standards that have been instituted over the last few years have had a chilling impact on the willingness of foreign companies to list their securities in the U.S. In the last two years, many foreign companies have opted to access capital outside the U.S. by listing their securities on exchanges outside the U.S. We find the trend troublesome, as we believe it is important for the U.S. capital markets to remain a receptive place for companies to raise capital. We do not believe that the correct means to respond to this trend is necessarily to lower the standard of disclosure or corporate governance required of companies to list in the U.S. We do, however, believe that it is important for foreign companies to believe that their listing in the U.S. is not effectively irrevocable and the SEC should adopt reforms that permit a foreign company to exit the U.S. markets after a number of years if a U.S. listing no longer meets its strategic objectives.

We believe that the proposed reforms focus solely on whether the companies that are now reporting companies would be able to deregister, and the thresholds that have been set in the Proposed Rules will mean that only those companies for which a U.S. listing provides almost no benefit will be able to exit. We think a key factor should be to provide reforms that focus on enticing new companies to list. The Release cites a list of companies that could deregister under the Proposed Rules. But what it does not analyze is whether the companies that decided in the last few years to list on exchanges outside the U.S. would have listed in the U.S. under the Proposed Rules. We unfortunately think the answer is no.

As a result, we would propose that the SEC adopt a rule that permits a foreign private issuer to deregister its equity securities if:

- The company has been a reporting company under the Exchange Act for at least four years (companies that are already reporting companies would have to wait four years from the adoption of the new rules to utilize this particular rule);

- The company notified its shareholders that it was proposing to terminate its U.S. reporting obligations one year before such termination;

- The company had 60% of its trading volume on non-U.S. markets;

- The company maintained a listing of the subject class of securities for the preceding two years on another exchange, which constitutes the primary trading market for the securities;

- The company committed for five years after the deregistration to provide on its website English translations of all reports provided to its shareholders or applicable stock exchanges; and

- The company included a risk factor in its Form 20-F, Form 8-A or prospectus at the time that it originally listed in the U.S. that there was a risk of subsequent deregistration (reporting companies would also include this risk factor in their Form 20-F each year.).

We believe this alternative deregistration test should be the applicable benchmark for any company, not just for well-known seasoned issuers ("WKSIs"). In addition, this alternative test would not necessarily have to replace the proposals in the Proposed Rules, which rules would allow foreign companies to deregister without providing one year's notice, and without meeting the four-year reporting requirement, where U.S. investor interest only reaches a lower level.

We believe this proposal balances the interests of the issuers as well as the U.S. shareholders. An issuer would be able to reverse its decision to list in the U.S. if the U.S. listing later does not meet its strategic objectives. The four-year period represents a commitment to maintain the listing for a number of years. We also think that the one-year notice period provides a means for an orderly exit from the U.S. market so that U.S. shareholders do not find out about the deregistration plans at the time the ADR program is being terminated or when the Form 15 is filed. Shareholders will be able to sell their holdings over a lengthy time frame. The rules could also require issuers to provide disclosure on the required steps for selling holdings or converting ADRs, if any, to ordinary shares, including whether the issuer would bear the costs of such steps or conversion.

The Proposed Rules

Trading Volume as Sole Exit Threshold

We believe that companies should be able to exit the Exchange Act reporting regime based solely on a trading volume test (*i.e.*, without a conjunctive U.S. investor interest test). According to the Release, the Commission opposes a test based solely on trading volume because it could result in an inaccurate gauge of U.S. investor interest because some U.S. investors, particularly large institutional investors, are more likely to trade in shares of foreign companies through foreign markets rather than U.S. markets. We believe, however, that most, if not all, such U.S. institutional investors utilize foreign markets because they offer competitive advantages and greater liquidity vis-à-vis U.S. markets, and such investors' holdings should therefore not be taken into account when determining the level of U.S. investor interest for purposes of the Proposed Rules. Moreover, we concur with arguments presented in earlier comment letters to the

Commission that the trading volume test should be regarded as an important way to offer U.S. investors post-deregistration protection, and not just as a proxy for measuring U.S. interest in a company's securities.[1] Indeed, if a significant portion of the trading volume of a company's securities originates from a non-U.S. jurisdiction, a U.S. deregistration is likely to have only a negligible impact on the market for such securities.

According to the Release, the Commission did not propose a test based on trading volume for non-WKSIs because it does not appear that U.S. trading volume as a percentage of worldwide trading volume is a dispositive factor that would *currently* permit a significant number of non-WKSIs to terminate their reporting obligations under the Proposed Rules. Given the objective of the Proposed Rules to remove disincentives for foreign companies – whether small or large – to access the U.S. capital markets, we believe the trading volume threshold should be available to all foreign private issuers, not just WKSIs. We also note that Canadian issuers filing annual reports on Form 40-F are not eligible for WKSI status.

Counting Method

We support the Commission's proposal to make the "look through" method for calculating the number of record holders more flexible and practicable. We note, however, that the proposed standard for determining U.S. investors' interest under new proposed Rule 12h-6 will now be different from the standard in the Rule 12g3-2(a) exemption in that the safe harbor in proposed Rule 12h-6(e) would not apply for purposes of determining the number of U.S. resident holders of record under Rule 12g3-2(a). We believe that there are no policy reasons for having different standards for determining the level of U.S. investors' interest pursuant to these rules, and therefore propose that Rule 12g3-2(a) should be amended to reflect the safe harbor in Rule 12h-6.

The "300 shareholder" Standard

A stated goal of the Proposed Rules is to guarantee that the new exit rules are no more rigorous for foreign private issuers than the current ones. We believe that the Proposed Rules are at odds with this goal in respect of certain foreign private issuers that do not maintain a home-country listing. There are numerous companies that fall into this category who will be harmed by the proposal. Such companies would no longer have the benefit of the "300 U.S. resident shareholder" standard, which is proposed to be eliminated from Rules 12g-4 and 12h-3, and could only deregister if there were fewer than 300 holders of record of the relevant security on a worldwide basis. This would affect companies that have numerous shareholders in their local market due to

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[1] See Letter from Andrew A. Bernstein of Cleary Gottlieb Steen & Hamilton LLP, dated March 18, 2005, at 7.

widespread family or employee ownership. Therefore, we would propose to reinstate the "300 U.S. resident shareholder" standard in Rules 12g-4 and 12h-3.

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We appreciate your consideration of our comments. If you have any questions regarding this letter, please contact Timothy E. Peterson at 011 44 20 7972 9676.

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON (LONDON) LLP

By: /s/Timothy E. Peterson
Timothy E. Peterson