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February 27, 2006

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

Re: Release No. 34-53020 – File No. S7-12-05

Dear Ms. Morris:

We are submitting this letter in response to the request of the Securities and Exchange Commission (the "SEC") for comments on Release No. 34-53020 (the "Proposing Release"), regarding permanent termination of a foreign private issuer's (an "FPI") 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, as amended (the "Exchange Act").[1]

As a general matter, we support the proposals set forth in the Proposing Release. However, we submit this letter primarily in relation to one aspect of proposed Rule 12h-6 (and the other related proposed rule changes under the Proposing Release) (collectively, the "Proposed Rules"), namely the applicability of the Proposed Rules to an FPI that previously has filed a Form 15 to suspend its reporting obligations under Section 15(d) with respect to a class of equity securities (or, in other words, the applicability of the Proposed Rules to an FPI that currently does not have an "active", but does have a "suspended", Section 15(d)/13(a) reporting obligation with respect to a class of equity securities) (a "Prior Suspended FPI").[2] We also offer

1. References herein to "Sections" are to sections of the Exchange Act unless otherwise noted.

2. The same issue also exists under the Proposed Rules in relation to an FPI that previously has filed a Form 15 to terminate a Section 12(g) registration with respect to a class of equity securities (and its related Section 12(g)-based Section 13(a) reporting obligation), since such an FPI is required to re-register under Section 12(g) if its number of U.S. resident shareholders once again exceeds 300 on the last day of any fiscal year. Although such an FPI can gain a "permanent" exemption from such re-registration obligations – by establishing the exemption

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some general comments in Part III of this letter below on the numerical criteria set forth in paragraphs (a)(4)-(6) of proposed Rule 12h-6.

I. Prior Suspended FPIs Should be Able to Qualify for Permanent Relief From Exchange Act Reporting/Registration Obligations.

The Proposed Rules generally make available to FPIs, on an immediate basis, permanent relief from Exchange Act reporting/registration obligations by a combination of two rules. Proposed Rule 12h-6 would permit an FPI to terminate, rather than merely suspend, a Section 15(d)/13(a) reporting obligation and/or to terminate a Section 12(g) registration (and a related Section 13(a) reporting obligation) by filing a new Form 15F. Proposed Rule 12g3-2(e) would make available to an FPI, immediately upon filing of a Form 15F, "permanent" relief from being required to register under Section 12(g) provided that the FPI thereafter complies with certain ongoing requirements concerning the continued electronic availability of specified information in English.[3]

However, proposed Rule 12h-6(a)(1) would require that an FPI seeking to file a Form 15F "has had reporting obligations under Section 13(a) or 15(d) of the Act for the two years preceding the filing of the Form 15F". A Prior Suspended FPI by definition will not have an active reporting obligation "preceding the filing" of a new Form 15F.

We understand from a telephone conversation with the SEC Staff that the SEC and the Staff had not considered Prior Suspended FPIs in drafting the Proposed Rules, and thus did not intentionally exclude them from their scope. We respectfully submit that the Proposed Rules should be modified to make the immediate and permanent relief from Exchange Act reporting/registration obligations offered thereby available to Prior Suspended FPIs.

Simply put, we see no reason why an FPI that was able to meet the criteria for suspension of its Section 15(d) reporting obligations under the current rules, and accordingly filed a Form 15, should be denied any possibility of gaining permanent relief from Exchange Act reporting/registration obligations (without first again becoming an Exchange Act reporting company for two years) while an FPI that has not previously been able to meet such criteria

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offered by Rule 12g3-2(b) - this relief is not available until 18 months after termination of the prior Section 12(g) registration (and is not available at all if the FPI also has a suspended Section 15(d) reporting obligation).

For convenience, our letter focuses on FPIs with suspended Section 15(d) reporting obligations rather than FPIs with recently terminated Section 12(g) registrations or FPIs with both suspended Section 15(d) reporting obligations and terminated Section 12(g) registrations, although we believe that all such categories of FPIs should be treated similarly with respect to the immediate availability of "permanent" relief from Exchange Act registration/reporting obligations.

3. Rule 12g3-2 currently is not available to a Prior/Suspended FPI for this purpose since the Rule expressly precludes its use by an FPI with an active or suspended Exchange Act reporting obligation.

would be permitted immediately, and permanently, to exit the Exchange Act registration/reporting system.

Further, we note that making the proposed permanent relief from Exchange Act reporting/registration obligations available to Prior Suspended FPIs could only improve the availability of information (in English) to U.S. residents who continue to be stockholders of Prior Suspended FPIs. This is because Prior Suspended FPIs currently have no U.S. regulatory incentive to make Rule 12g3-2(b) information available to U.S. stockholders in English. In fact, they have a disincentive to providing such information, since it would increase the possibility of re-triggering an active Exchange Act reporting obligation. Making the permanent relief available to Prior Suspended FPIs subject to continued availability of information on the issuer's website would give Prior Suspended FPIs an incentive to comply with the information delivery requirements of proposed Rule 12g3-2(e) – namely, to obtain the permanent registration exemption – while at the same time removing the current disincentive to providing such information.

II. Criteria for Prior Suspended FPIs to Qualify For Permanent Relief.

A. Suggested Criteria.

Perhaps the simplest, and fairest, approach to making the Proposed Rules applicable to Prior Suspended FPIs would be to afford the same status under the Proposed Rules to Prior Suspended FPIs as would be given to FPIs that file Form 15Fs in the future.

By definition, at the time it filed its Form 15, a Prior Suspended FPI met the most rigorous of the three alternative criteria for termination set forth in proposed Rule 12h-6(a)(4)-(6) – the less than 300 U.S. resident holders of record condition – and the continuation of its suspension has been conditioned on the relevant suspension criteria being met on the first day of each subsequent fiscal year.

In any event, the proposed termination of Section 15(d)/13(a) reporting obligations under proposed Rule 12h-6, and the proposed Rule 12g3-2(e) permanent exemption from Section 12(g) registration requirements, should be made available to Prior Suspended FPIs without regard to the conditions set forth in paragraphs (a)(1) and (2) of proposed Rule 12h-6. The policy reasons for those conditions, as stated in the Proposing Release, are neither meaningful nor relevant in the case of Prior Suspended FPIs, which, by definition, already have ceased reporting under the Exchange Act. In addition, retroactively requiring compliance with paragraph (a)(1) or (2) at the time of filing of a prior Form 15 (or, in the case of paragraph (a)(1), requiring compliance at the time of filing of a new Form 15F) would be unfair in that it could leave a Prior Suspended FPI permanently ineligible to gain permanent relief from Exchange Act reporting/registration obligations, on the basis of a condition that did not exist at the time when the prior Form 15 was filed.

B. Related Technical Points.

1. Other References to "Reporting Obligations".

The concept of "reporting obligations" comes up in at least two places in proposed Rule 12h-6 other than Rule 12h-6(a)(1).

The first reference is in proposed Rule 12h-6(a)(5), which establishes the alternate basis of terminating Exchange Act reporting obligations on the basis of U.S. residents holding no more than 5% of the class of equity securities subject to an Exchange Act reporting obligation.

The second reference is indirect, through the definition of the term "well-known seasoned issuer" in proposed Rule 12h-6(d)(8).[4] "Well-known seasoned issuer" is defined in relevant part in proposed Rule 12h-6 as meaning a well-known seasoned issuer as defined in Rule 405 under the Securities Act of 1933, "provided, however, that the determination date of well-known seasoned issuer status shall be a date within 120 days of filing the Form 15F." Rule 405 in turn defines a well-known seasoned issuer in relevant part as an issuer that as of the date specified in the proviso just cited "meets all the requirements of General Instruction I. A. of Form S-3 or Form F-3." When one turns to Form F-3, however, one again runs into requirements in relation to the relevant company being registered, or having a duty to file reports, under the Exchange Act.

To the extent that proposed Rule 12h-6(a)(4)-(6) is retained in some fashion in relation to Prior Suspended FPIs, all direct or indirect references to being registered, or having reporting obligations, under the Exchange Act, or having filed reports under the Exchange Act, should be disregarded in that context, for the reasons discussed in Part II. A. of this letter.

2. Status of Prior Suspended FPIs Not Eligible to File Form 15F.

The Proposed Rules, in their current form, technically leave Prior Suspended FPIs in somewhat of a no-man's land. This is because the proposed modifications to Rule 12h-3 would eliminate any trace of the specific exemption that Prior Suspended FPIs relied on to gain suspensions of Section 15(d) reporting obligations, including the Rule 12h-3(d) specification of the length of time an FPI's 12h-3 suspension would remain in effect. We appreciate that these changes to Rule 12h-3 were proposed to be made because, going forward, FPIs will be required to rely on proposed Rule 12h-6. However, this leaves the situation technically unclear for Prior Suspended FPIs.

This point would be mooted if the SEC were to make the Rule 12h-6 permanent termination of Section 15(d) reporting obligations automatically applicable to Prior Suspended

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4. The term is used in Rule 12h-6(a)(4), which establishes the alternate basis of terminating Exchange Act reporting obligations on the basis of U.S. residents holding no more than 10% of the class of equity securities of a well-known seasoned issuer subject to an Exchange Act reporting obligation.

FPIs. However, if the SEC were to in some fashion retain the applicability of the conditions specified in proposed Rule 12h-6 in relation to Prior Suspended FPIs, some provision would need to be made (if only in the form of guidance in the adopting release for the final version of the Proposed Rules) for Prior Suspended FPIs, if any, that are not able to meet those conditions.[5]

III. Comments as to Rule 12h-6(a)(4)-(6) Criteria.

We also wanted to take this opportunity to support the comments that you have received from several others to the effect that the alternative criteria specified in proposed Rule 12h-6(a)(4)-(6) should be further refined and/or loosened. In particular, we are of the view that there should be some recognition by the SEC of the facts that a relatively small number of U.S. resident stockholders each holding a significant number of shares of stock quite easily can cause an FPI to exceed the 5% and even the 10% U.S resident stockholder thresholds set forth in proposed Rule 12h-6(a)(4)-(5) and that these large stockholders tend to be sophisticated investors who typically do not need the same degree of protection from the SEC as do smaller stockholders. In addition, we concur with the observations of others that the "300" U.S. resident shareholders condition set forth in proposed Rule 12h-6(a)(6) needs to be substantially increased in view of the vastly increased globalization of securities markets since the 300 figure was established in 1964/1965.

We also would note for the SEC's consideration, in the context of both the 5%/10%, and 300, U.S. stockholder criteria, the potential impact of holdings of FPI stock by multiple "separate accounts" managed by the same investment manager. Such investments can aggregate to a significant number of shares, and count as a significant number of shareholders in relation to the "300" U.S. resident holders limit, notwithstanding that the relevant investment decisions are being made by only one firm or even by the same person or team of persons. This clearly could lead to a failure to meet the proposed Rule 12h-6(a)(4)-(6) conditions under circumstances where in reality the "relative interest of U.S. investors in the foreign private issuer's securities [is] low".[6]

Finally, we would like to further suggest that proposed Rule 12h-6 be modified to provide that in determining ownership of an FPI's securities by "U.S. residents" under any of the criteria of proposed Rule 12h-6(a)(4)-(6), the issuer be permitted to disregard securities held by its employees and former employees. As the SEC has acknowledged in numerous contexts, sales of securities to employees are made for purposes other than capital raising. An FPI that had

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5. Although not related to Prior Suspended FPIs in particular, we also note that the reference to "issuer's" employees in paragraphs (a)(2)(i)(A) and (a)(2)(ii)(A) of Rule 12h-6 should be modified to cover employees of subsidiaries or parents of the relevant FPI (mirroring the approach under Form S-8). Most FPIs that conduct business (and therefore have employees that reside) in the United States do so through U.S. subsidiaries. Similarly, it should be made clear in some fashion that the term "employees" has the same meaning as is specified in Form S-8 – i.e., "any employee, director, general partner, trustee (where the registrant is a business trust), officer, or consultant or advisor".

6. Proposing Release, at p. 38.

qualified for the exemption under Rule 12g3-2(b) thereafter would be able to make securities offerings to its U.S. employees under Rule 701 without triggering Exchange Act registration. It is only fair that an FPI that otherwise satisfies the criteria for deregistration should not lose the ability to deregister solely because of its prior employee offerings (which could have been made without the need for Exchange Act registration). A contrary rule could work to the disadvantage of U.S. employees, since FPIs contemplating deregistration would have an incentive to exclude them from participation in stock option plans and other equity compensation programs.[7]

At the very least, the final rules should clarify that the term "U.S. residents" does not include the issuer's employees who are on temporary assignment in the United States. Such treatment would be consistent with the treatment of such employees under Rule 903(c)(1)(iv) under the Securities Act of 1933, the employee benefit plan exemption of Regulation S. Regulation S provides an exemption from Securities Act registration for offers and sales of securities outside the United States. An employee benefit plan offering may qualify for this exemption (i.e., is treated as being made outside the U.S.) if, among other factors, "the issuer takes reasonable steps to preclude the offer and sale of interests in the plan or securities under the plan to U.S. residents, other than employees on temporary assignment in the United States." Implicit in this provision is a determination that employees on temporary assignment in the U.S. are more appropriately treated as non-U.S. residents even though their employment causes them to be temporarily living in the U.S. for some period of time. A similar approach would be warranted for purposes of determining U.S. ownership for purposes of proposed Rule 12h-6(a)(4)-(6). Purchases of an FPI's securities by an employee who is normally employed outside the United States should not be counted as evidence of U.S. investor interest in the issuer merely because the employee has been temporarily transferred to the United States.

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We would of course be pleased to discuss further the comments made in this letter with members of the SEC Staff. Please do not hesitate to contact Stephen Luger by telephone at (212)-837-6811, by fax at (212)-299-6811 or by email at luger@hugheshubbard.com in this regard.

Very truly yours,

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[7] We note that in the case of domestic issuers, employees are included in the number of securityholders for purposes of triggering Exchange Act registration under Section 12(g). However, we believe that FPIs eligible to use Rule 12g3-2(e) are in a significantly different position from such domestic issuers in that the FPIs would be publicly traded in their home country and required to provide publicly available information as a condition to continued availability of the exemption from Exchange Act reporting.