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Business Law Section
Committee on Securities Regulation

February 12, 2007

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

E-mail address: rule-comments@sec.gov

Attention: Nancy M. Morris, Secretary

Re: File No. S7-12-05
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;
Release No. 34-55005; International Series Release 1300.

Ladies and Gentlemen:

The Committee on Securities Regulation (the "Committee") of the Business Law Section of the New York State Bar Association appreciates the invitation in Release No. 34-55005; International Release 1300 (the "Release") to comment on the re-proposed amendments to the rules allowing a foreign private issuer to terminate the registration of a class of equity securities under section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") and to cease its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Exchange Act.

The Committee is composed of members of the New York Bar, a principal part of whose practice is in securities regulation. The Committee includes lawyers in private practice and in corporation law departments. A draft of this letter was reviewed by certain members of the Committee, and the views expressed in this letter are generally consistent with those of the majority of members who reviewed and commented on the letter in draft form. The views set

forth in this letter, however, are those of the Committee and do not necessarily reflect the views of the organizations with which its members are associated, the New York State Bar Association, or its Business Law Section.

Summary

As we stated in our comment letter of March 3, 2006 in response to Release No. 34-53020, International Release Series No. 1295, we strongly support the Commission's initiative to amend the rules governing a foreign private issuer's ability to terminate its Exchange Act reporting obligations. While we expressed significant concerns in response to the original proposal, the Release has addressed the most significant issues that we raised and, accordingly, we strongly endorse and support the rule amendments as re-proposed. We commend the Commission for being receptive to our comments as well as those of other commenters who responded to the original proposal. We believe the Release represents a significant improvement to the original proposal and is indicative of an open-minded and responsive rule-making process. We further believe that the Release will be viewed as a significant step towards making the U.S. capital markets more attractive to foreign private issuers.

In our comments below with respect to Rule 12h-6, we suggest that the Commission consider increasing the quantitative threshold for deregistration above 5% of the trading volume in the primary market, clarify the computation of average daily trading volume, eliminate the proposed 12 month ineligibility period for issuers who meet the deregistration criteria at the time of delisting or termination of an ADR program, treat all registered offerings by selling security holders as they relate to the one-year ineligibility criteria uniformly, clarify the meaning of "standby underwritten offering" as it relates to the exceptions to the one-year dormancy condition, permit an issuer that has suspended or deregistered under existing rules to file a Form 15F irrespective of any existing reporting obligation, and limit the review of publicly filed ownership reports by an issuer only to reports that are required to be provided to the issuer.

Discussion

Proposed Rule 12h-6

The following comments are relatively minor suggestions for improvement with respect to Proposed Rule 12h-6, and should not be construed as detracting from our strong support of the proposed rule.

First, we suggest that the Commission consider increasing the quantitative threshold for deregistration above 5% of the trading volume in the primary market. Under this threshold, a company could be ineligible to deregister even if only 3% of its world-wide trading volume takes place in the United States. We suggest that the Commission consider a threshold that allows an issuer to deregister if the U.S. trading market represents less than either 10% of the worldwide trading volume or 10% of the trading in the primary trading market.

Second, in connection with the calculation of average daily trading volume, we suggest that the Commission clarify in the rule or a note to the rule that ADRs should be treated as securities of the same class as the securities underlying the ADRs, and that the trading volume should be computed with respect to the number of shares underlying the ADRs to ensure comparability between the U.S. markets and the primary trading market for the securities.

Third, if an issuer otherwise meets the deregistration criteria at the time of the termination of its ADR program, we see no reason why the termination of the program should result in a 12 month ineligibility period. We see no purpose to this ineligibility period and believe that, contrary to what may be in the best interests of US security holders, the rule may dissuade foreign issuers from sponsoring ADR programs, and may cause other foreign issuers with existing ADR programs to discontinue such programs.

Fourth, with respect to the one-year dormancy condition, we are unclear as to why a registered underwritten offering of securities by a selling security holder during the 12 months prior to the filing of a Form 15 should be treated differently than a best-efforts offering by a selling security holder. We believe that both types of offerings should be treated uniformly for this purpose. We would also ask that the Commission clarify that the note to paragraph (a)(2) of the Rule would not prohibit an issuer from conducting a registered offering in which a underwriter has agreed to a standby purchase commitment, provided that the underwriter resells the securities purchased in the offering only outside the United States.

Fifth, we believe that an issuer that has previously terminated or suspended its reporting obligations under existing rules, should not be required to evaluate whether it currently has a reporting obligation in order to become eligible to file a Form 15F. Such a requirement would require the issuer to reevaluate the existing number of U.S. resident security holders prior to filing a Form 15F, and if the number is above 300 to continue reporting for another 12 months at which point it will become eligible to deregister under the new criteria.

Lastly, in our view, issuers should only be required to examine publicly filed reports of beneficial ownership under Section 12h-6(d)(3) if a copy of the report is required to be provided directly to the issuer. Otherwise, an issuer may have an open-ended obligation to search all publicly filed reports of beneficial ownership, including reports filed by third parties of which the issuer is not necessarily aware, and can not reasonably discover.

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We hope the Commission finds these comments helpful. We would be happy to discuss these comments further with the Staff.

Respectfully submitted,

COMMITTEE ON SECURITIES REGULATION

By: Jeffrey W. Rubin
JEFFREY W. RUBIN
CHAIR OF THE COMMITTEE

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