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Via email to rule-comments@sec.gov

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Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-9303

Re: Termination of a Foreign Private Issuer's Registration of a Class of Securities (December 23, 2005); Release No. 34-53020; File No. S7-12-05

Dear Ms. Morris:

The NYSE is pleased to take this opportunity to comment on the proposals made by the Securities and Exchange Commission (the "Commission" or the "SEC") in the above-referenced release (the "Proposing Release") regarding 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 (the "Exchange Act").

Currently, there are 453 foreign companies from 47 countries listed on the NYSE. As of December 31, 2005, these companies represented over 37% of the total market value of NYSE-listed companies and over $8 trillion in total global market capitalization. The NYSE and the Commission have historically shared the common purpose of ensuring that the U.S. capital markets remain attractive to companies around the world. As a result, U.S. investors seeking to invest in foreign companies and diversify their portfolios away from the United States have the opportunity to do so within the U.S. capital markets, and to enjoy the efficiency, transparency and investor protections available here.

In the Proposing Release, the Commission suggests that, although the number of registered foreign private issuers may initially decrease as a result of the proposed deregistration thresholds, the proposed thresholds will permit a foreign private issuer to exit the United States reporting regime only in situations where the impact of termination on the U.S. investor community is expected to be slight. The Commission, however, also solicits comment on whether institutional investors should be excluded from a foreign private issuer's calculation of U.S. holders. We see no basis for differentiating between retail and institutional shareholders, particularly since the Commission's proposed

approach is based on the concept of limited U.S. investor interest. Therefore, we support including all U.S. holders, including institutional investors, in the calculation.

We are also concerned that the proposed rules provide for permanent deregistration regardless of future number of U.S. holders. In addition, the NYSE notes that, while foreign private issuers would be precluded from issuing securities in registered or unregistered offerings for twelve months in order to deregister, such companies would not be restricted from issuing securities to U.S. holders in unregistered offerings during any period of time after deregistration. As a result, the Commission's proposed approach creates an inequality of treatment between companies that have never been registered and those that are permanently deregistered. For example, a foreign private issuer that has never been registered would technically be required to register if it exceeds the current Rule 12g3-2 thresholds, even if had never raised capital in the United States through unregistered offerings. A deregistered foreign private issuer would not be subject to the same requirement even if it had a significant number of U.S. holders as a result of selling securities in the United States through unregistered offerings. We suggest that the Commission consider amending the proposed rules to create a more level playing field, perhaps requiring that foreign private issuers be required to reregister in future if the total number of U.S. holders exceeds 10% of the company's total shareholder base if the company has sold securities into the United States through unregistered offerings, including under Rule 144A.

We also believe that the proposed method of calculating U.S. ownership should encompass not only U.S. holders resident in the United States, the country of incorporation and, if different, the country of the company's principal trading market, but also those resident in all jurisdictions where the company is listed and traded. In addition, we believe that U.S. trading volume should be calculated as a percentage of trading volume on all regulated exchanges where the company is listed, not just the primary market. Also, noting that the SEC is proposing to provide that, "if, after reasonable inquiry, an issuer is unable without unreasonable effort to obtain information about the amount of securities represented by accounts of customers resident in the United States, it may assume that the customers are the residents of the jurisdiction in which the nominee has its principal place of business," the NYSE requests that Commission provide a more specific definition of what would constitute "reasonable inquiry" and "unreasonable efforts." For example, the Commission should consider requiring that a company utilize an independent third party holder search firm before being entitled to make such an assumption.

In the Proposing Release, the Commission solicits comment on the number of prospective foreign companies that may be expected to join the Exchange Act reporting regime as a result of the proposed changes and on whether some foreign private issuers would choose to quickly terminate their Exchange Act reporting obligations under the proposed rules to avoid having to comply with the Sarbanes-Oxley Act. We believe that the proposed amendments are unlikely to significantly impact the decision of prospective foreign private issuers to enter the Exchange Act reporting regime and could result in a potentially significant number of currently registered foreign private issuers leaving the U.S. capital markets. In order to understand why this result is likely, we need to consider

the current global competitive challenges being faced by the U.S. markets and ask ourselves why only two of the 20 largest IPOs in the world in 2005 chose to list in the United States.[1]

Perhaps the most important factor has been the dramatic increase in the amount of capital raised in the United States by foreign private issuers pursuant to SEC Rule 144A over the past five years. In 2005, for example, $80.5 billion, or 93.8%, of the approximately $86 billion raised by foreign private issuers in deals that included the United States for the first time was raised in transactions that included a Rule 144A tranche. At the same time, competition for global listings has sharply increased, particularly amongst the NYSE, the London Stock Exchange ("LSE") and the Hong Kong Stock Exchange. Indeed, the LSE often cites the high cost of Sarbanes-Oxley compliance as a leading competitive factor in obtaining international listings and recently stated that 90% of foreign companies that considered listing on a U.S. exchange felt that the demands of the Sarbanes-Oxley Act made listing on the LSE more attractive.[2] This competition is intensifying, particularly as technology is creating new linkages among markets and customers, facilitating super-fast electronic trading[3] and transforming the capital raising process, allowing foreign companies to raise large amounts of capital, and enjoy deep and liquid trading markets, on their local stock exchanges. As issuers throughout the world can access capital more easily than ever before, including vast pools of private funding, and as global offerings increasingly include a significant Rule 144A tranche in the United States, companies no longer require a U.S. public offering and SEC registration to satisfy their capital needs.

As a result of these factors and particularly in light of increased regulatory burdens resulting form the adoption of the Sarbanes-Oxley Act, foreign private issuers are reconsidering the cost/benefit analysis of being a U.S. registered company, and we are concerned that a significant number may come to the conclusion that the regulatory costs and burdens outweigh the benefits. This is true for companies that are already registered in the United States, but it is especially true for companies that had previously expressed an intent to enter the U.S. capital markets. Indeed, since the adoption of the Sarbanes-Oxley Act, the number of foreign private issuers entering the U.S. markets has decreased while the number of foreign companies exiting the U.S. markets has increased.

While we anticipate that the vast majority of NYSE-listed foreign private issuers will remain listed and registered in the United States regardless of whether the SEC adopts the proposed alternate deregistration thresholds, as a result of this "perfect storm" of global factors, listed foreign private issuers are more likely to seriously consider whether delisting and deregistration may be in the best interest of shareholders. For example, Vivendi Universal S.A. recently announced that it would delist from the NYSE as a first

[1] According to Ernst & Young (December 12, 2005).

[2] On December 20, 2005, the LSE announced that international listings increased a record 82% in 2005.

[3] Europe, for example, is electronically linked via three principal exchanges – the Deutsche Borse, Euronext and the London Stock Exchange – all of which are well-capitalized, publicly held, for-profit entities that offer broad product mixes and are competing aggressively to expand globally, including into the United States.

step towards deregistration as a result of the regulatory cost of being a U.S. registered company, despite the fact that the company has a significant percentage of U.S. shareholders and significant U.S. trading volume.

In the Proposing Release, the Commission states that, "The rule proposal would offer foreign firms stronger incentives to enter into [the U.S.] Exchange Act reporting regime by lowering the cost of exiting from that regime." We respectfully disagree that the proposed rule changes will incentivize foreign companies to join the Exchange Act reporting regime. We need to acknowledge that the cost and administrative burden of complying with U.S. rules, despite the obvious benefits to investors and good corporate governance, represent a real barrier. We believe that foreign companies will continue to be deterred from registering in the United States due to the current significant regulatory cost of being a U.S. registered company. We strongly believe that most prospective foreign companies are unlikely to register in the United States until such time as the regulatory costs and burdens associated with the Sarbanes-Oxley Act are brought to a rational level, particularly with respect to the internal control requirements.

In addition, the lack of convergence of international accounting standards creates a barrier to entering the U.S. registered markets. The fractious and expensive litigation environment in the United States represents a real risk for companies choosing where to take their business. Taken together, these factors require that foreign companies consider viable alternatives in raising capital beyond our shores and present a serious challenge to the global leadership of U.S. financial markets.

Thank you for your consideration of these comments. We would be pleased to answer any questions or provide further information that you may find helpful.

Sincerely,

Mary Yeager
Assistant Secretary

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Cynthia A. Glassman
Commissioner Annette L. Nazareth
Martin Dunn, Acting Director, Division of Corporate Finance
Paul Dudek, Chief, Office of International Corporate Finance
Ethiopis Tafara, Chief, Office of International Affairs