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February 7, 2007

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

Dear Ms. Morris:

Re: File Number 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 13(a) or 15(d) of the Securities Exchange Act of 1934

We support the revised proposal to amend the rules that govern when a foreign private issuer may terminate the registration of a class of equity securities under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") and the corresponding duty to file reports required under Section 13(a) of the Exchange Act, and when a foreign private issuer may cease its reporting obligations regarding a class of equity or debt securities under Section 15(d) of the Exchange Act. We believe, however, that proposed Rule 12h-6(c) should be amended to strike a better balance between the needs of U.S. investors and foreign companies in the context of mergers and acquisitions. Pursuant to Article 3(1)(a) of the EU Takeover Directive, all holders of a class of a target's securities "must be afforded equivalent treatment" by the acquirer, which often leads to situations in stock-for-stock transactions in which the acquirer will offer its securities to investors resident in the United States. This can result in a foreign company with no prior U.S. trading market and no intention of becoming a reporting company in the U.S. succeeding to the U.S. reporting requirements of a target with securities registered under the Exchange Act. While proposed Rule 12h-6(c) goes further than the original proposal to allow such acquirers to terminate the foreign successor issuer's registration and reporting obligations under the Exchange Act, we respectfully submit that additional revision is necessary. If acquirers are trapped or perceived that they will be trapped by an acquisition in the U.S., stock-for-stock acquisitions may not occur or may be replaced by cash transactions at a lower price per share.

In our experience, the expenses and obligations associated with becoming a registrant, particularly those associated with compliance with Section 404 of the Sarbanes Oxley Act of 2002 ("SOX"), are often considerations that foreign private issuers take into account when pursuing and structuring their mergers and acquisitions. We believe that the requirement to become a registrant under the Exchange Act acts as a significant deterrent for a foreign private issuer that does not have securities registered under the Exchange Act to complete the acquisition of, or merger with, a company with securities so registered.[1] Providing more flexibility to foreign acquirers should result in promoting capital formation, enhance comity between U.S. and European regulations and afford protection to U.S. investors, while enabling them to benefit from acquisitions by foreign entities.

The Role of the Predecessor in the Determination of Whether a Foreign Successor Issuer May Terminate Registration Pursuant to Rule 12h-6(c)

We believe that it is appropriate to allow a foreign successor issuer to take into account the predecessor company's reporting history when determining whether it may deregister pursuant to Rule 12h-6. Rule 12h-6(c) does not, however, specify whether a foreign successor issuer seeking to deregister a class of equity securities must look to whether the predecessor would meet the conditions under paragraphs (a)(3) and (a)(4) of the proposed rule when determining whether it may terminate registration pursuant to Rule 12h-6(c). Our interpretation of this omission is that a foreign successor issuer is not required to take into account either the predecessor's history as a listed company in its home country for purposes of satisfying Rule 12h-6(a)(3) or the predecessor's average daily trading volume in the United States and its home country for purposes of satisfying Rule 12h-6(a)(4). To avoid any possible doubt, however, we recommend that the final rule explicitly state that a foreign successor issuer is not required to take into account any factor relating to its predecessor when determining whether the foreign successor issuer satisfies the conditions set forth in Rule 12h-6(a)(3) and Rule 12h-6(a)(4).

A requirement that the predecessor have been listed on a stock exchange in its home jurisdiction is not necessary in our view. The stated purpose of the listing condition is "to help assure that there is a non-U.S. jurisdiction that principally regulates and oversees the issuance and trading of the issuer's securities and the issuer's disclosure obligations to investors."[2] If the foreign successor issuer has been listed in its home country jurisdiction for a period of at least twelve months, there would appear to be no need to insert an additional requirement for its predecessor to have also been listed for twelve months in its home jurisdiction.

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[1] *See* President George W. Bush, Address at Federal Hall to present the State of the Economy Report (Jan. 31, 2007) ("Yet complying with certain aspects of [SOX], such as Section 404, has been costly for businesses and may be discouraging companies from listing on our stock exchanges."); "Sustaining New York's and the US' Global Financial Services Leadership," commissioned by Michael R. Bloomberg and Charles E. Schumer (Jan. 2007); "Interim Report of the Committee on Capital Markets Regulation" (Nov. 30, 2006).

[2] Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty to File Reports Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Release No. 34-55005 (Dec. 22, 2006) (the "Proposing Release").

On the other hand, a requirement to take into account the average daily trading volume of the predecessor would, we believe, run contrary to the Security and Exchange Commission's long-standing goal of fostering cross-border mergers and acquisitions involving foreign private issuers having U.S. investors.[3] If a large, unregistered foreign private issuer whose shares are rarely traded in the United States were to make an acquisition of a smaller registrant with an active trading market in the United States, the acquirer would likely be unable to terminate registration prior to at least one year following the date of succession if the predecessor were required to meet the average daily trading volume test as of a date prior to the succession. This result could discourage stock-for-stock acquisitions of companies with U.S. investors and would be contrary to the goal of facilitating cross-border mergers and acquisitions.

There are additional practical reasons why a foreign successor issuer should not have to measure the compliance of its predecessor with the condition set forth in Rule 12h-6(a)(4). There may be acquisitions involving a target whose securities have an average daily trading volume in the United States that is greater than 20% of the average daily trading volume of those securities in the target's primary trading market, but whose relative size in the combined entity is expected to be such that the securities of the combined entity are expected to have an average daily trading volume in the United States post-acquisition that is less than 5% of the average daily trading volume of such securities in the combined entity's primary trading market. It would be difficult, however, to develop a test that would measure compliance with Rule 12h-6(a)(4) on a basis that would accurately reflect the post-acquisition shareholder base of the combined entity. In particular, it would be difficult to establish how much the average daily trading volume of each company should factor into a determination of whether the combined entity would have satisfied the average daily trading volume test for the year preceding the date of succession. The Commission would have to establish the relative significance of each company's average daily trading volume on the basis of the total number of shares of each entity, the volume of trading, the value of the shares traded or another measure. In our view, none of these measures constitutes a gauge that would accurately measure the true importance of each entity in the combined group.

While the Proposing Release appears to support our concern,[4] proposed Rule 12h-6 should explicitly provide that the prior average daily trading volume of the registered securities of the predecessor (both in the United States and in the predecessor's primary trading market) are not to be taken into account in the foreign successor issuer's determination of compliance with Rule 12h-6(a)(4).

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[3] *See, e.g.*, Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings, Release No. 34-42034 (Oct. 26, 1999).

[4] The Proposing Release states that "[t]he successor issuer provision would enable a non-Exchange Act Reporting foreign private issuer that acquires a reporting foreign private issuer in a transaction exempt under the Securities Act ... to qualify immediately for termination of its Exchange Act reporting obligations under Rule 12h-6, without having to file an Exchange Act annual report, as long as the successor issuer meets the rule's listing and quantitative benchmark conditions, and the acquired company's reporting history fulfills Rule 12h-6's prior reporting condition."

Effect of Termination of the Predecessor's ADR Program

The notes to paragraph (a)(4) of proposed Rule 12h-6 indicate that an issuer cannot terminate a sponsored American Depositary Receipt program during the twelve months prior to filing a Form 15F if such issuer wishes to satisfy the average daily trading volume test. In an acquisition of a foreign private issuer with a sponsored ADR program in place, the ADR program of such target will likely be terminated. Again, to avoid any possible doubt, we recommend that this note be revised to state that it does not apply to a foreign successor issuer that terminates a predecessor's sponsored ADR program and is seeking to terminate registration pursuant to Rule 12h-6(c).

The Interplay Between Rule 12h-6(f) and Rule 12g-3(g)

We recommend the final rule provide that the suspension and termination pursuant to Rule 12h-6(f) of the duty of a foreign successor issuer to file reports under Section 13(a) or Section 15(d) of the Exchange Act include the suspension and termination of any existing obligation to file an annual report on behalf of such foreign successor issuer's predecessor in accordance with Rule 12g-3(g), provided that the Form 15F is filed on or prior to the date on which such annual report is required to be filed pursuant to Rule 12g-3(g). This change is necessary because, as of the date that the foreign successor issuer files its Form 15F, its obligation to file reports under Section 13(a) and Section 15(d) of the Securities Exchange Act will have been suspended, and, assuming that the predecessor has also filed a Form 15F or Form 15, as the case may be, the obligation of its predecessor to file such reports will also be suspended and/or terminated. Under such circumstances, we respectfully submit that the foreign successor issuer should not have to file an annual report on behalf of its predecessor and that Rule 12h-6 should include a provision to this effect.

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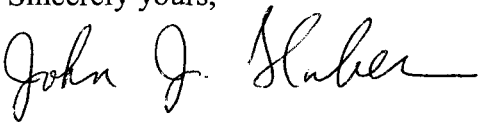
We appreciate the opportunity to present our comments regarding the proposal to the Commission. If you have any questions regarding the foregoing, please contact the undersigned at (202) 637-2242.

Sincerely yours,



John J. Huber
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Paul S. Atkins, Commissioner, Securities and Exchange Commission
Roel C. Campos, Commissioner, Securities and Exchange Commission
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