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February 12, 2007

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

Re: Comments on Proposed Rules Relating to 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
File No. S7-12-05

Dear Ms. Morris:

We are submitting this letter in support of the comments of several European organizations on the Securities and Exchange Commission's (the "Commission") reproposed rules relating to the termination of a foreign private issuer's registration under Section 12(g), and duty to file reports under Section 13(a) or 15(d), of the Securities Exchange Act of 1934 (the "Exchange Act"). The proposed amendments are discussed in Release No. 34-55005; International Series Release No. 1300; File No. S7-12-05 (the "Release").

Like the European organizations, we strongly support the revised rule proposal, which we believe is preferable to the Commission's December 2005 proposal. We believe that the Commission's proposed standard will make the deregistration rules usable in practice while maintaining appropriate U.S. investor protection.

As the Commission is aware, we have worked with the European organizations on the deregistration issue since they originally proposed a trading volume test in February 2004. We have believed throughout the process, and continue to believe, that trading volume is the best test to use to determine when a foreign issuer may deregister because:

- It protects U.S. investors by requiring registration of securities that investors choose to trade in the United States, while providing flexibility to companies when investors choose to trade those securities outside the United States.

- It ensures that deregistration will not have a significant impact on the price-setting mechanism for a company's securities or on liquidity, and as a result, that U.S. investors may easily sell their securities in a liquid market after deregistration.

- It allows a company to determine in a simple and clear manner whether or not it exceeds the threshold, using publicly available information that is easy to obtain.

We also believe that the Commission's revised proposal has appropriately addressed the concerns expressed in comment letters (including our own) in other areas, as the modified proposal retains key U.S. investor protection features without unnecessarily imposing burdens on companies. As a result, we believe that the proposed rule now appropriately addresses both investor protection concerns and the legitimate needs of foreign private issuers in a number of key areas other than the trading volume threshold:

- We support the Commission's decision to make deregistration permanent by making a deregistering company immediately eligible for Rule 12g3-2(b). We also believe allowing companies to publish information electronically, rather than in paper form, is in the interest of both companies and investors (and we support the Commission's proposal to extend electronic publication to companies using Rule 12g3-2(b) outside the deregistration context).

- We believe the requirement that at least 55% of a company's trading take place in its primary market (or markets) is appropriate to ensure that U.S. investors have a liquid market for their securities following deregistration. A company using the new rule would not "go dark" after it deregisters. We support the Commission's decision to allow companies to count trading in two markets rather than just one.

- We view the revised one-year dormancy requirement as an appropriately tailored condition to deregistration, as it ensures that companies will not deregister immediately after using their U.S. registration to conduct a public offering, while at the same time removing incentives for companies to exclude U.S. institutional investors from international capital raising transactions.

- We agree that "successor issuers" should be able to use the reporting history of their predecessors, so that companies making acquisitions that are exempt from the U.S. tender offer and securities offering rules do not find themselves inappropriately trapped by a subsequent registration requirement.

- We believe the Commission has corrected an important technical difficulty with the prior proposal by allowing companies that deregistered under the old rules to make deregistration permanent.

The revised proposal corrects a significant flaw in the original proposal by substantially expanding the number of companies that will be able to use the new deregistration rules. The Commission has successfully corrected this flaw without sacrificing U.S. investor protection. As we noted in our prior comment letter, any rule that does not accomplish this objective cannot be viewed as successful. The increased flexibility of the new proposal represents not only an important success, but also a significant vote of confidence in the strength of the U.S. capital markets. In our view, the adoption of the new rules will have a major impact on the perception that foreign companies have of the U.S. capital markets, making the U.S. market much more attractive and competitive on an international scale.

In the remainder of this letter, we provide a number of comments that we believe could improve the revised proposal even further. Our comments on the revised proposal are fairly technical, reflecting our overall favorable view of the proposal.

Most importantly, we urge the Commission to adopt the revised rules quickly, in particular so that eligible calendar-year companies that wish to deregister may avoid the costs of preparing an annual report on Form 20-F for the year 2006.

1. Trading Volume Threshold and Calculations.

The most important feature of the revised proposal is the trading volume test. We believe the Commission has proposed the right test, and that in the vast majority of cases the existing proposal will accurately measure the extent of U.S. trading in a company's shares in a manner that is easy to determine. We believe, however, that a few modifications and clarifications should be made in order to ensure that this objective is fully met.

A. Worldwide Trading Volume as the Denominator. Proposed Rule 12h-6(a)(4)(i) provides that the 5% trading volume threshold should be calculated by dividing a company's U.S. trading volume by its "primary" market trading volume. We believe it would be more appropriate to use the ratio of U.S. trading volume to worldwide trading volume. As the goal of the rule is to determine the relative importance of the U.S. trading market for the determination of a company's share price, it would seem most reasonable to make this determination in comparison to all trading in the company's shares, and not just to a portion of such trading.

The shares of most companies trade primarily on one or two markets outside the United States. The fact that a "primary trading market" standard covers the majority of companies, however, does not mean that it is the appropriate standard for all companies. Where a company's shares trade on three or more markets, we see no reason to exclude any of those markets.

We believe it is important to distinguish between the use of the term "primary trading market" for this purpose, and the use of the term "primary trading market" for purposes of ensuring that at least 55% of a company's trading takes place on one or two markets. The 55% test is appropriately designed to ensure that there will be a liquid market for a company's shares following deregistration. The same reasoning does not apply to the determination of the 5% trading volume threshold. Limiting the 5% calculation to primary market trading does not ensure that there is a liquid market (as the 55% ensures that this is the case), nor does it seem to us to serve any other investor protection purpose.

To take an example, if a company has 50% of its trading in one market, 15% in each of three other non-U.S. markets, and 5% in the United States, then investors would be protected following deregistration by the liquidity provided by the largest market. Under the Commission's proposal, however, the company could not deregister even though the United States represents only 5% of its trading volume, because two of the non-U.S. markets would be excluded from the calculation.

We understand that it might be difficult for companies to obtain information on trading in markets other than their primary trading markets. We believe this should not be a concern for the Commission. If a company is unable to obtain the information, then the denominator of the calculation will be decreased, and the relative proportion of U.S. trading volume will be higher (making deregistration more difficult). If a company is able to obtain the information, then we see no reason to preclude the company from using it.

We note also that, for a company to determine whether 55% of its trading volume takes place in its "primary" market (or markets), it must determine its trading volume in all jurisdictions in which it has listed the subject class of securities (as this is the denominator of the calculation). If a company is required to obtain this information for the 55% test, it should be able to use the same information for the 5% test.

Finally, we note that the Commission's proposal would include U.S. trading volume only in the numerator, and not in the denominator. Even if the Commission decides not to expand the 5% calculation to include worldwide trading volume (as we have recommended), we believe it would be appropriate at a minimum to include U.S. trading volume in both the numerator and the denominator.

B. Off-Market Trading. In the Release, the Commission has stated that a company must include off-market U.S. trading volume in determining whether it meets the 5% threshold.[1] We have no objection in principle to the inclusion of off-market trading in the threshold determination. However, we believe the Commission should make clear that issuers may include off-market trading outside the United States, and not only in the United States.

The proposed rule is not clear in this regard. Proposed Rule 12h-6(a)(4)(i) provides that a company should compare the average daily trading volume "in the United States" with the average daily trading volume "in the issuer's primary trading market." However, it is not clear whether the term "primary trading market" refers to the jurisdiction(s) or the market(s). The Release does not clearly address this question, although some of the Commission's requests for comments seem to imply that the Commission believes that off-market trading is to be included only if it takes place in the United States.[2]

We believe the Commission should make clear that off-market trading may be included in the determination of non-U.S. trading volume, as it is for U.S. trading volume. If investors trade a company's shares over-the-counter outside the United States, the existence of such trading reduces the relative importance of U.S. trading in the company's shares.

As the Commission stated in the Release, information on off-market trading in the United States should generally be available through a transaction reporting plan established by the self-regulatory organization pursuant to Regulation NMS under the Exchange Act. Many foreign markets have similar reporting programs. For example, members of the Euronext markets are required to report off-market transactions to those markets, and the reported information is included in the trading volume information published by Euronext. This will become generally true in Europe with the effectiveness, scheduled for November 2007, of the Market in Financial Instruments Directive (MiFID).[3]

Even in markets where such information is not reported through an exchange, we see no reason to preclude companies from counting over-the-counter trading. If a company is unable to obtain the information, then the result will be to increase the relative volume of U.S. trading, and it

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[1] In the Release, the Commission states that under Proposed Rule 12h-6(a)(4)(i), in calculating its U.S. trading volume, "an issuer would have to take into account all U.S. trading of its subject securities, whether occurring on a registered national securities exchange or elsewhere, as reported through the U.S. transaction reporting plan." Release at 27.

[2] See Release at 35, "Should the U.S. ADTV component of the proposed trading volume benchmark include all U.S. trading in the subject class of securities, whether listed or over-the-counter, as proposed?"

[3] Directive 2004/39/EC.

will be more difficult for the company to deregister. The fact that some companies might find it difficult to obtain information should not prevent other companies from using the information they are able to obtain.

While not stated explicitly in the Release, we can imagine that the Commission might be concerned that the inclusion of over-the-counter trading outside the United States might increase the risk of manipulation. We believe this should not be a concern, for a number of reasons. First, the fact that trading volume is calculated over a 12-month period should make manipulation impractical, unless the manipulation is so blatant as to be obvious to both the Commission staff and a company's home country regulator. Second, many jurisdictions have strong anti-manipulation rules (for example, manipulation by a European company would violate the European Market Abuse Directive). Third, the Commission could address the risk of manipulation by providing in the final rule (or an introductory note) that an issuer that manipulates its trading volume would be ineligible for deregistration under the rule. The Commission could also require companies to list their information sources for off-market trading in their Form 15F.

At a minimum, the final rule should allow companies to include non-U.S. over-the-counter trading when the information is clearly reliable. For example, information reported through exchanges or by information sources that regularly publish trading volume information should be counted in the calculation. The Commission could also allow the inclusion of information published pursuant to a regulatory structure adopted in a company's market (for example, MiFID).

C. Information Sources. As a more general matter, we believe the Commission should include in the final release a "principles-based" statement regarding the sources of information that companies may use for purposes of obtaining trading volume data (for purposes of both the 5% test and the 55% test). The Commission should state that, in determining trading volume, a company should use (and may rely upon) information that can be obtained from public sources without unreasonable burden or expense. Such a statement would serve to ensure that all reasonably obtainable data is included in the calculation, while at the same time making clear that companies are only required to make a good faith effort to obtain information, serving the objective of making the new rule easy to use. We would not recommend that the Commission adopt any prescriptive rules regarding the information sources that a company must use.

D. Different Methods of Calculating Trading Volume. In the Release, the Commission requested comment as to whether the Rule should take into account differences in calculating trading volume between different types of markets. For example, dealer markets such as Nasdaq report both a purchase and a sale transaction when two customers effect a transaction using a dealer as intermediary, effectively doubling reported transaction volume.

We believe the Commission should not attempt to craft a rule that takes into account differences in published trading volume among markets. Given the potential complexity of this issue and the rapid pace of technological change, we believe it would be extremely difficult to take into account all potential variables. Instead, the Commission should encourage companies to adopt a "common sense" approach, and to consult with the Commission staff in case of doubt. We note that any bias is likely to result in U.S. trading volume being overstated and not understated, at least for companies listed on Nasdaq.

E. Threshold Level. In the Release, the Commission asked whether the proposed trading volume threshold is set at the appropriate level (5%) or whether it should be set at a lower or higher level. Release at 34. As the Commission is aware, the European organizations proposed a 5% threshold in their initial letter in 2004, a proposal that our firm supported. We continue to believe the 5% level is sufficient to ensure that deregistration will not disrupt the price determination mechanism

for a company's shares, and we strongly recommend that it be maintained at this or a higher level. We believe that a lower threshold would be inappropriate, as a 5% threshold already reflects a low level of interest in U.S. trading on the part of investors. Reducing the threshold would unnecessarily limit the number of companies that would be eligible for deregistration but provide no additional protection for U.S. investors.

2. Other Issues.

As is the case with the calculation of trading volume, our other comments on the revised proposal are generally technical in nature.

A. Application to Debt Securities. The Commission has proposed maintaining a 300-holder standard for termination of a foreign private issuer's Exchange Act reporting obligations regarding a class of debt securities. In the section of the Release pertaining to the record holder threshold for equity securities, the Commission indicates that the principal purpose for retaining the record holder standard is "to preclude disadvantaging those companies that could terminate their Exchange Act reporting obligations under the current exit rules but not under the proposed trading volume condition." Release at 39. While we agree that the adoption of the trading volume condition would generally obviate the need to increase the 300-holder standard for equity securities, the proposed rules would not significantly modernize the rules governing when a foreign private issuer can terminate its Exchange Act reporting obligations regarding debt securities.

Because the deregistration rules for debt security issuers also merit modernization, and as stated in our 2005 letter, we recommend that the 300-holder standard be increased to at least 1,000 holders with respect to debt securities. We believe such a modification would be consistent with the significant growth of the international capital markets since the 300-holder standard was first adopted in the 1960s.

We also believe increasing the threshold for debt securities is appropriate, because purchasers of debt securities can protect themselves against deregistration if they choose to do so. Many bond indentures contain covenants that an issuer will remain registered under the Exchange Act, even if it is not otherwise required to do so. When investors purchase bonds that do not contain such covenants, there is no reason for the Commission's rules to preclude deregistration.

Moreover, based on our conversations with a number of companies that have issued bonds in the United States, we believe only the very largest bond issuances, with large, well-known companies as issuers, have any likelihood of being held by more than 300 U.S. residents. Most modest-sized bond issues (particularly high-yield bonds issued by small or mid-sized issuers) are typically held by a limited number of investors (those issues are the most likely to contain registration covenants).

We understand that the Commission might be concerned about raising the threshold for debt securities of foreign issuers without doing the same for debt securities of U.S. issuers (which might raise more complex issues and require a separate rulemaking process). We believe it would be appropriate to raise the threshold for foreign issuers as part of the current rulemaking process, for several reasons.

- First, non-U.S. companies that issue debt securities in the United States typically have listed equity securities in their home countries. As a result, information would likely continue to be available to U.S. bond investors following deregistration (which would not be the case for bonds issued by U.S. companies). To ensure this is the case, the

Commission could raise the threshold only for non-U.S. companies that have equity securities listed in a "primary trading market."

- Second, non-U.S. companies that issue debt securities in the United States usually have registered equity securities. The Commission is proposing changes to the deregistration standards for equity securities of non-U.S. issuers, but not of U.S. issuers. It would be appropriate to modernize the standard for debt securities of non-U.S. issuers at the same time, to ensure that those issuers will not be precluded from using the new equity standards by a debt security that was issued long before the non-U.S. issuer could have known about the new equity standards.

- Third, foreign issuers that are registered under the Exchange Act have a heavier burden to meet than U.S. issuers. Foreign issuers must reconcile their financial statements to U.S. accounting principles, while U.S. issuers report under only one set of accounting principles. Foreign issuers must comply with home country governance and reporting rules (in addition to U.S. rules), while registered U.S. issuers must comply with only a single set of rules.

If the Commission decides not to raise the threshold for debt securities of foreign issuers, then we urge the Commission to adopt an alternative standard for those securities. For example, a company could be allowed to deregister a bond issue if 25% or less of the issue is held by U.S. residents. We believe, however, that this would be a second best solution compared to raising the threshold, which we hope the Commission will do in the final rule.

B. Companies that Deregistered Under Old Rules. We support the Commission's decision to allow companies that have already terminated or suspended their Exchange Act reporting obligations under the current exit rules to make such termination or suspension permanent under the new rules. However, we find the requirement that a company not currently be required to register a class of securities under Section 12(g) or file reports under Section 15(d) of the Exchange Act overly burdensome. See Proposed Rule 12h-6(h)(2)(i) and the disclosure required under Part I, Item 8.B. of Form 15F.

In order to comply with this requirement, a company must verify that its reporting obligations have remained terminated or suspended at the time it files its Form 15F. To do so, the company must conduct a search of its shareholder base under the old 300-holder test (without the benefit of the modified counting rules), before it can make termination or suspension of its reporting obligations permanent. We do not believe it is appropriate to require a company that already met the stringent 300-holder test in the past to conduct a full shareholder search, when no such search is required for a company that waits to deregister until after the final rule is adopted. Accordingly, we suggest that the Commission remove this requirement from both the text of the final rule and Form 15F. Instead, the Commission should require such a company simply to file a Form 15F that provides its internet address, so that investors will know where to look for materials that satisfy the requirements of amended Rule 12g3-2(b).[4]

We note also that the Commission's proposal has created a technical difficulty for companies that have suspended Section 15(d) reporting obligations. The Commission has proposed deleting paragraph (b)(2) of Rule 12h-3, on the grounds that this paragraph will become unnecessary.

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[4] At most, the Commission should require such a company to confirm that its U.S. trading volume is 5% or less than its non-U.S. trading volume. We would recommend, however, that the Commission not impose this requirement, as we do not believe that investors holding shares in a company that deregistered under the old rules have any expectation that the company might re-register in the future.

As a result, on the effective date of the new rule, a company could find that its reporting obligations are no longer suspended. We believe the Commission should provide that the deletion of paragraph (b)(2) will become effective some period of time (for example, six months) after the effectiveness of Rule 12h-6, so that companies have time to manage the transition by filing Form 15F (as revised to reflect our comments above).

C. Definition of Equity Security. Proposed Rule 12h-6(e)(3) defines an "equity security" as having the meaning set forth in Exchange Act Rule 3a11-1. This definition includes not only shares, but also equity-linked securities such as convertible bonds, exchangeable bonds, options and warrants. This means that, in determining whether the 5% trading volume test is met, a company must include trading in equity-linked securities, and not only trading in shares. This seems to us to be inappropriate, because equity-linked markets are significantly different from share markets, and because information on trading of equity-linked securities is often difficult to obtain.

In our comment letter relating to the initial proposal, we asked the Commission to modify the definition to exclude equity-linked securities, suggesting that the Commission use the definition of "equity security" contained in Securities Act Rule 800(b). We hope that the Commission's decision not to do so was a technical oversight, as it was not discussed in the Release. In any event, we continue to believe this modification would be appropriate.

D. Counting Rules. Proposed Rule 12h-6(d)(2) provides that if, after reasonable inquiry, a company using the 300-holder standard is unable to obtain information without unreasonable effort, the company should assume that the customers of the relevant nominee are in the same jurisdiction as the nominee. This principle does not work for purposes of determining whether a company has 300 U.S. resident shareholders, because there is no assumption regarding the number of accounts for which a nominee is holding securities. While we understand that the Commission has considered this issue, we respectfully disagree with the Commission's statement that the change is not necessary. We also believe the Commission's experience with the "foreign private issuer" definition should not be dispositive, as that definition is based on the percentage of a company's shares held in the United States, a test that does not require knowing how many accounts are represented by a nominee. As a result, we reiterate our suggestion that a company be entitled to count the nominee as a single shareholder located in the jurisdiction of its principal place of business when it is unable to obtain information about the number of customer accounts of the relevant nominee without unreasonable effort.

E. Multiple Classes of Securities. The Commission has maintained the requirement that a deregistering company state in its Form 15F that it does not have Exchange Act reporting obligations in respect of any other classes of securities. We stated in our initial comment letter that we believed this to be inappropriate, and we continue to believe this. A company that meets the threshold in relation to its equity securities and that has a bond issue that is close to maturity should not have to incur the expense and burden of counting the number of its bondholders, nor should it have to take the risk of failing to meet the equity threshold after the bonds mature.

F. Form 15F, Part III, Item 11. This item contains an undertaking that an issuer withdraw its Form 15F if it has knowledge that, at the time of filing of the Form 15F, its U.S. trading volume exceeded the 5% threshold during "a recent 12 month period." We believe this should be modified so it only applies if the issuer learns that its trading volume exceeded the 5% threshold during the same "recent 12 month period" that the issuer used to determine its eligibility.

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Once again, we enthusiastically support the modified deregistration proposal, and we hope the Commission will adopt the new rule quickly. We appreciate the opportunity to participate in this process, and we look forward to its successful conclusion.

Very truly yours,

Andrew A. Bernstein

cc: The Honorable Christopher Cox, *Chairman*
The Honorable Paul S. Atkins, *Commissioner*
The Honorable Roel C. Campos, *Commissioner*
The Honorable Annette L. Nazareth, *Commissioner*
The Honorable Kathleen L. Casey, *Commissioner*

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