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**By E-Mail to: rule-comments@sec.gov**

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

Re: **File Number S7-12-05**

Dear Ms. Morris:

We appreciate the opportunity to comment on the repropoed rules (the “Repropoed Rules”) set forth in Release No. 34-55005 (the “Release”) regarding the termination of foreign private issuers’ reporting obligations under the Securities Exchange Act of 1934 (the “Exchange Act”). Our comments are based on our experience representing foreign companies, although the comments are solely our own and are not intended to express the views of our clients.

We are supportive of the Commission’s continued efforts to liberalize the requirements for foreign private issuers to exit the Exchange Act registration and reporting regime. In particular, we applaud the Commission’s decision to propose an exit test based solely on trading volume.

As we indicated in our prior comment letter, the rules contemplated by the prior release only dealt with one of what we believe are two issues relating to the ability of companies to deregister from their reporting obligations. Similarly, the Repropoed Rules only address a company that already has entered the U.S. markets and that has a very low level of interest in its stocks in the U.S. markets. The proposed change will

therefore permit companies to exit the U.S. only when its experiment with the U.S. markets could be labeled a failure. Unfortunately these changes to the rules will likely not affect the decision by a company on whether to list in the U.S. This decision is a strategic decision by a non-U.S. company and they have choices of markets to consider. In all other major markets of the world if a company wants to delist and exit a market, it is able to do so. Therefore, if the company's strategic aims change, it can decide to change where it is listed and regulated. In the U.S., even under the Reproposed Rules, once you decide to list and enter the U.S. markets, you can only leave if the listing has been a 'failure'. As a result, companies will continue we believe to shy away from listing in the U.S. We urge the SEC to review this competitive issue once these rules have been adopted.

We also have comments on selected areas where we suggest modifications to the Commission's proposal.

### Trading Volume Threshold

We believe the trading volume threshold should be increased. The 5% threshold is low and, by using as a reference the company's home market or markets, represents less than 5% of the global market for a company's share trading. We would suggest a threshold of at least 10% since that number still represents for any company a low percentage of its trading and the benefit of a continued U.S. trading market is likely to be minimal for both the company and its U.S. shareholders.

### One Year Post-Delisting Ineligibility Period

According to the Reproposed Rules, an issuer that does not satisfy the trading volume condition at the time it delists its shares from its U.S. stock exchange would not be eligible to deregister such shares until one year after the date of such delisting (assuming that it meets that trading volume condition at that time). It is not clear whether this ineligibility period is meant to apply to an issuer that involuntarily delists its shares because it no longer meets the listing requirements of its stock exchange. Since the rationale for adopting the ineligibility period appears to have been to provide a disincentive for issuers to manipulate their U.S. trading volumes by delisting, we believe that the ineligibility period should not apply in cases where issuers have been forced to delist.

### The "300 shareholder" Standard

According to the Release, "the principal purpose for retaining the 300 holder provision 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."<sup>1</sup> We believe that the Reproposed Rules are at odds with this goal in respect of certain foreign private issuers that do not maintain a home-country listing and have decided to raise capital in the U.S. markets. There are several companies that fall into this category. Such companies would no longer have the benefit of the "300 U.S. resident shareholder" standard, which is proposed to be eliminated from Rules 12g-4 and 12h-3, and could only deregister if there were fewer than 300 holders of record of the relevant security on a worldwide basis. This would put at a distinct disadvantage companies that have numerous shareholders in their local market due to widespread family or employee ownership. Therefore, we would propose to reinstate the "300 U.S. resident shareholder" standard in Rules 12g-4 and 12h-3.

### Rule 12g3-2(b) Exemption

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<sup>1</sup> See page 39 of the Release.

We fully support the Commission’s proposal to abolish the 18 month “waiting period” for the 12g3-2(b) exemption. We also agree with the proposal that the 12g3-2(b) exemption not be automatically available for issuers that are filing a Form 15F for a class of debt securities. We would revise Rule 12g3-2(e)(1) as follows to clearly reflect this approach in the rules and also revise Rule 12g3-2(e)(3) to remove the implication that the 12g3-2(b) exemption for a class of equity securities is lost if the issuer incurs reporting obligations for another class of securities. Clearly, an issuer can have a 12g3-2(b) exemption for a class of equity securities while, for example, it has section 12(b) or 15(d) obligations for a class of debt securities.

“(…)

(e)(1) A foreign private issuer that has filed a Form 15F (§249.324 of this chapter) for a class of equity securities pursuant to §240.12h-6 shall receive the exemption provided by paragraph (b) of this section for ~~that~~ class of equity securities immediately upon the effectiveness of the termination of registration of that class of securities under section 12(g) of the Act (15 U.S.C. 781(g)) or the termination of the duty to file reports regarding that class of securities under section 15(d) of the Act (15 U.S.C. 78o(d)), or both.

(…)

(3) The §240.12g3-2(b) exemption for a class of equity securities received under this paragraph will remain in effect for as long as the foreign private issuer satisfies the electronic publication condition of paragraph (e)(2) of this section or until the issuer registers ~~a that~~ class of equity securities under section 12 of the Act or incurs reporting obligations for that class of equity securities under section 15(d) of the Act.”

#### The Prior Exchange Act Reporting Condition for Debt Securities

We believe that the prior Exchange Act reporting condition should be limited to one year for debt securities as well. Currently that is not reflected in the wording of the proposed Rule 12h-6(b), and so we would propose to revise it as follows to be consistent with the treatment of equity securities:

“(b) A foreign private issuer may terminate its duty to file or furnish reports pursuant to section 13(a) or section 15(d) of the Act with respect to a class of debt securities after certifying to the Commission on Form 15F that:

(i) The foreign private issuer has had reporting obligations under section 13(a) or section 15(d) of the Act for at least the 12 months preceding the filing of the Form 15F, has filed or furnished all reports

