the global voice of the legal profession

February 12, 2007

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 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 Section 15(d) of the Securities Exchange Act of 1934

File No. S7-12-05

Dear Ms. Morris:

The International Bar Association is pleased to comment on the SEC's proposal to simplify the termination for foreign private issuers of the reporting and registration requirements of the U.S. securities laws through Reproposed Exchange Act Rule 12h-6 and other related rule changes (the "Proposed Rules"). The International Bar Association, the global voice of the legal profession, includes 30,000 individual lawyers and 195 bar associations and law societies worldwide. We are submitting our comments on behalf of the Securities Law Committee which has over 900 members from 85 different countries and the Capital Markets Forum which brings together nearly 900 business lawyers, market professionals and regulators from 89 countries.

We welcome and strongly support the SEC's efforts to simplify and liberalize the deregistration process for foreign private issuers. We have reviewed and participated in the commenting process for the letter prepared by the European trade associations and strongly support the comments made in that letter.

While the IBA applauds the SEC's efforts to facilitate deregistration for foreign private issuers, we would also like to take this occasion to urge the Commissioners and the SEC staff to put a broader move to reform high on their strategic agenda. Such reform would focus on the way in which the securities regulatory regime in the United States interacts with that of the rest of the world, which has become increasingly harmonized and sophisticated. In contrast, the U.S. system, one of the oldest and most respected systems of securities regulation in the world, now appears, from an international perspective, old fashioned, overly complicated and difficult to understand.

We would therefore respectfully suggest that the Commission form a high-level task force to proactively streamline and modernize the U.S. system. Some of the changes this would require, as noted by the Scott Committee on Capital Markets Regulation report and the Bloomberg/Schumer report, involve the delicate balancing of priorities among U.S. investor protection, job creation and the attractiveness of the U.S. capital markets. We acknowledge that the task is not an easy one, and that many of the changes necessary for reform, including those suggested in such reports, will require time and study to implement. Nevertheless, we view reform as essential in an increasingly global and competitive regulatory environment.

Pending a more sweeping review, we also believe that there are many other relatively non-controversial changes in the regulatory system that can and should be implemented quickly. These changes would have a significant impact not only on foreign registrants, but on the international perception of the U.S. securities regulatory system as well.

The major themes that we believe should guide both revisions to the Proposed Rules and further reform are set forth below.

- Simplifying and modernizing the U.S. regulatory context

  The IBA members believe that in order to address foreign private issuers' perceptions that the SEC imposes on them unduly complicated reporting or other obligations, the SEC must adopt rules which are simple, consistent, easy to understand and, most importantly, easy to implement. With respect to the Proposed Rules, we have the following specific points to suggest:

  - **Worldwide trading volume.** We support the SEC's move towards the use of a straightforward, quantitative threshold of average daily trading volume ("ADTV"). However, we also believe that the SEC should take further steps, such as revising the Proposed Rules to refer to worldwide trading volume instead of the "primary trading market" volume as a proper basis for measuring relative U.S. interest. This change would signal recognition by the SEC that, in a modern, global market, many issuers now trade on multiple non-US markets.

  - **300-holder thresholds.** As further steps toward modernizing its rules, we believe that the SEC can and should increase the alternative record holder threshold of the Proposed Rules and the threshold for debt securities holders from 300 to a number that is more in line with modern market conditions. We do not think that the SEC's desire to review the rule in respect of domestic registrants should delay reform for foreign private issuers, given that the SEC has, correctly in our view, maintained other safeguards with respect to foreign listings to ensure that information continues to be available to investors. By recognizing these trends, we believe the SEC can win the confidence of market participants and demonstrate that it is willing not only to react to criticism but to lead reform.

- Meeting the needs of foreign private issuers

In a climate of increasing regulatory competition, the SEC should continue to review the challenges that foreign private issuers face in complying with U.S. securities laws and look to innovative solutions that accommodate issuers while continuing to protect investors. Further change is necessary to address specific needs of foreign companies, both those currently active and those looking to be active in the United States. For instance:

- **Move from paper to electronic submissions.** Our members would like to see the SEC continue to take steps proactively to move from paper-based, physical mailing to an Internet and web-delivery format, as many of the SEC's international peers have already done. The proposed change in Rule 12g(3)(2)(b) reporting to move to electronic access is a positive step but we note that the requirement that Form F-4s be physically mailed to shareholders also appears increasingly quaint. We encourage the SEC, as part of the work that might be undertaken by a special task force, to identify those areas of U.S. securities regulations that continue to rely on obsolete concepts of information delivery, reporting and data sharing and take immediate and timely action to reform and modernize such procedures. As Chairman Cox underlined in his January 24, 2007 speech before the 34th Annual Securities Regulation Institute, technology advances have eliminated physical barriers to market access, including access to information. We would like to see the SEC take the lead in removing remaining barriers to information by promoting the use of information technology generally, including the use of interactive data, which will open new areas of opportunity for the investment community.

- **Reform the rules relating to employee share plans**. Many foreign private issuers are large multinational companies who have significant numbers of U.S.-based employees to whom they may offer shares or stock options. The desire to initiate or maintain such plans can be in conflict with the objective of avoiding U.S. registration or being able to deregister. To respond to this conflict, the relevant exemptions (including in Rule 701) for employee share plans and stock options should be modernized. We support, in this regard, the specific recommendations for change to Rule 701 made by other commentators, including that the U.S. GAAP reconciliation requirement should be eliminated and that the $5 million threshold should be substantially increased or changed to a more future-proof percentage test. These changes are examples of the quick reforms that will improve international perception of the U.S. regulatory system. Market participants will be disappointed to see the deregistration rules modernized while related provisions for share plans and options are left in their current out-dated state.

- **Fix the exemption for rights offerings.** As is widely acknowledged, the rules designed to provide a clear and simple mechanism by which foreign issuers can offer rights to U.S. shareholders have failed largely due to technical issues. In particular, the timing of the announcement of rights offerings in multiple jurisdictions and the 30-day look-back provisions of the U.S. rules, as well as the difficulty of measuring U.S. investor free float, make the exemption extremely difficult to implement. As a result, U.S. investors, and in particular U.S. retail investors, are excluded from rights offerings. We urge the Commission to consider using the trading volume test for the rights offering exemption, about which there is no policy disagreement, or modernize it otherwise, so that it can function as intended.

- **Correct the problems in the cross-border M&A rules.** As has been widely acknowledged, the SEC's cross-border M&A rules also need updating. These rules pose practical problems for foreign companies acquiring companies with U.S. securities holders. As a result, U.S. securities holders are typically excluded from such takeover transactions or are treated differently than the target's other securities holders.

  We believe this disparate treatment is not, and should not, be the SEC's intended result. Specifically, we urge the SEC to modify the 30-day look-back requirement and the requirement for broker searches currently embedded in the cross-border rules. The SEC may choose to move to a trading volume test in this area as well. We refer the SEC to the proposals of other commentators for alternatives to such existing requirements. We believe changes to these requirements are an essential part of modernizing the U.S. regulatory regime and will simplify compliance for foreign companies, making it more practical to include U.S. holders in takeover transactions, without sacrificing investor protection.

- <u>Next steps: protecting investors within the context of a rapidly evolving regulatory climate and worldwide market for securities</u>

  The IBA believes that the SEC should be leading regulatory reform in coordination with the other main securities regulators, so that the regulatory landscape becomes over time more coherent, with a simple set of rules serving capital formation and protecting investors' interests worldwide. By leading the way, the SEC can better protect U.S. investors and the U.S. capital markets. One way to make this happen is for the high-level task force we suggest above to study and formulate suggestions to achieve mutual recognition, substituted compliance and regulatory convergence (including recognition of IFRS by 2009, as planned) so that market participants can concentrate their resources on best practices of compliance under a uniform set of rules rather than disperse their resources in an attempt to comply with multiple regulatory regimes. IBA members do not discount the need for foreign private issuers to take responsibility for making accurate information available to investors but believe that the SEC can implement the best protective measures by shaping innovative regulatory solutions rather than responding to market pressures.

Pending more sweeping reforms, we hope that the Staff and the Commission will act as quickly as possible to finalize the Proposed Rules, and ensure that they are modern and forward-looking when adopted. That alone will represent a long-awaited step forward.

Sincerely yours,

/s/ René Bösch
René Bösch
Co-Chair, Securities Law Committee
Zurich

/s/ Margaret E. Tahyar
Margaret E. Tahyar
Co-Chair, Securities Law Committee
Paris

/s/ Philip Boeckman
Philip Boeckman
Senior Vice-Chair, Securities Law Committee
London

/s/ Pere Kirchner
Pere Kirchner
Senior Vice-Chair, Securities Law Committee
Madrid

/s/ Cecilia Carrara
Cecilia Carrara
Vice-Chair, Securities Law Committee
Rome

/s/ Uwe Eyles
Uwe Eyles
Vice-Chair, Securities Law Committee
Frankfurt

/s/ Derk Lemstra
Derk Lemstra
Vice-Chair, Securities Law Committee
London

/s/ Christian Cascante
Christian Cascante
Seminar Coordinator, Securities Law Committee
Stuttgart

/s/ Linda Hesse
Linda Hesse
Chair, Subcommittee for Regulatory Affairs, Securities Law Committee
Paris

/s/ Niels Walther-Rasmussen
Niels Walther-Rasmussen
Chair, Subcommittee for Underwriting and Distribution
Securities Law Committee
Copenhagen

/s/ Vince Pisano
Vince Pisano
Vice-Chair, Subcommittee for Underwriting and Distribution
Securities Law Committee
New York

/s/ Florian Khol
Florian Khol
Chair, Subcommittee for Mergers & Acquisitions
Securities Law Committee
Vienna

/s/ Alberto Saravalle
Alberto Saravalle
Vice-Chair, Subcommittee for Mergers & Acquisitions
Securities Law Committee
Milan

/s/ Greg Astrachan
Greg Astrachan
Chair, Subcommittee for Public Company Practice and Regulation
Securities Law Committee
London

/s/ Florian Gibitz
Florian Gibitz
Vice-Chair, Subcommittee for Public Company Practice
Securities Law Committee
Vienna

/s/ Dorothee Fischer-Appelt
Dorothee Fischer-Appelt
Vice-Chair, Subcommittee for Public Company Practice
Securities Law Committee
London

/s/ Claudio Visco
Claudio Visco
Co-Chair, Capital Markets Forum
Rome

/s/ G. Blair Cowper-Smith
G. Blair Cowper-Smith
Co-Chair, Capital Markets Forum
Toronto

/s/ George H. White, III
George H. White, III
Vice-Chair, Capital Markets Forum
London