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February 12, 2007

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303
VIA EMAIL: rule-comments@sec.gov

RE: Release No. 34-55005; ISR 1300; File No. S7-12-05

Dear Ms. Morris:

We are pleased to submit this comment letter to the Securities and Exchange Commission (the "SEC" or the "Commission") in response to the SEC's solicitation of comments on its reproposed amendments to the rules (the "Reproposed Rules") regarding Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty to File Reports Under Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), Release No. 34-55005; ISR 1300; File No. S7-12-05 (the "Reproposing Release").

Our comments reflect discussions we have had with certain of our clients that are foreign private issuers ("FPIs") regarding the scope and effect of the Reproposed Rules. We identify below specific provisions of the Reproposed Rules that we believe should be modified in the rules as finally adopted by the Commission (the "Final Rules") to decrease potential uncertainties and increase the usefulness of the Final Rules for FPIs wishing to terminate the registration of a class of their securities under Section 12(g) of the Exchange Act and their duty to file reports under Section 15(d) of the Exchange Act, while adhering to the SEC's public policy goal of protecting U.S. investors.

We support the efforts by the Commission to ease the deregistration process for FPIs and remove much of the uncertainty associated with the existing rules. We also generally support the changes reflected in the Reproposing Release. However, we

continue to have a number of areas of concern with respect to the application of the Reproposed Rules to FPIs who wish to deregister.

Conditions for Equity Securities Issuers — Quantitative Benchmarks — Non-Record Holder Benchmark (Section II.A.1.a. of the Reproposing Release)

We believe that a trading volume benchmark as contemplated by the Reproposing Release is preferable to the originally proposed quantitative benchmarks based on U.S. public float criteria or alternatively, in the case of well-known seasoned issuers, on a combination of trading volume and U.S. public float criteria. In our view, a trading volume benchmark is also more appropriate than an alternative benchmark based on U.S. public float criteria set at a higher level than the originally proposed public float standards. We agree that trading volume data is easier (and significantly less costly) to obtain[1] than is the data required for the calculation of an issuer's U.S. public float or record holdings by U.S. residents.[2] Accordingly, a trading volume benchmark will advance the Commission's objective, as set forth in the Proposing Release, of lowering the costs associated with deregistration and termination of reporting obligations. We are not aware of any undesirable incentives that might result from adoption of a trading volume benchmark.

A trading volume benchmark would, in our view, provide adequate U.S. investor protection, including of retail investors. As detailed below, however, we do not believe that the adoption of a U.S. average daily trading volume ratio of 5% of trading in an issuer's primary trading market is necessary for the protection of U.S. investors. Rather, we feel that U.S. investor protection would be adequately served by a 10% trading volume benchmark measuring U.S. average daily trading volume as a percentage of an issuer's worldwide average daily trading volume.

In response to the Commission's request for comment, we do not consider an absolute trading volume measure requiring an issuer's U.S. trading volume not to have exceeded a specified amount for a 12-month period to be an appropriate standard. In our view, such a measure would artificially disadvantage issuers (i) with greater numbers of issued and outstanding shares and/or (ii) whose ordinary shares, on account of intrinsic attributes[3], have a greater global trading volume than shares of other issuers, as compared

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[1] In our experience, issuers are not likely to experience difficulties in determining their trading volume in either U.S. or non-U.S. listed securities markets. As discussed on page 4 below, however, it may be difficult or impossible for an issuer to determine trading volume in over-the-counter markets for which trading volume data are not published.

[2] We have been advised that a third-party information services provider may charge US$20,000 or more for each survey of record holdings by U.S. residents that it performs in connection with an issuer's assessment of its compliance with a U.S. public float benchmark or the alternative 300 holder condition. In contrast, trading volume data for international listed securities markets is readily available at limited or no cost from commercial suppliers of information (*e.g.*, Bloomberg) and/or on the Internet from market operators' Web sites.

[3] Global trading volume in a particular security may be higher on average than global trading volume in other securities as a result of factors such as (i) volatility in, or market focus on, the issuer or the issuer's

to a trading volume ratio approach. Accordingly, we do not believe that an absolute trading volume measure would provide a meaningful measurement of U.S. investor interest in an FPI's securities. In contrast, a trading volume benchmark measuring the ratio of U.S. average daily trading volume to worldwide average daily trading neutralizes the biases of an absolute trading volume standard.

The Trading Volume Threshold Should be Increased for All Issuers

In our view, the trading volume threshold should be set at 10% for all issuers. We believe that where 90% or more of the trading volume of an issuer's securities originates from non-U.S. jurisdictions and where, as reproposed, 55% of the trading in the issuer's securities takes place in, or through the facilities of, securities markets in the one or two non-U.S. jurisdictions comprising the issuer's primary trading market (and the issuer, accordingly, has a significant market following in its primary trading market), the issuer's deregistration and termination of Exchange Act reporting is not likely to have a material impact on the information flow regarding, or the market for, such securities. Based on that standard, a 10% trading volume threshold for deregistration would appropriately and meaningfully protect the interests of U.S. investors.

We agree that a single benchmark applicable to all FPIs of equity securities, irrespective of the size of the issuer's public float, simplifies the Exchange Act deregistration regime and ensures that smaller companies, for whom the costs of Exchange Act reporting are disproportionately greater than for larger issuers, benefit from the full range of deregistration options available to well-known seasoned issuers and other large issuers.

The Denominator of the Trading Volume Calculation Should Reflect the Issuer's Worldwide Average Daily Trading Volume

We believe that the trading volume benchmark should measure the ratio of U.S. average daily trading volume to worldwide average daily trading. In our view, a trading volume benchmark calculating U.S. trading volume as a ratio of trading volume solely in the issuer's primary market does not better serve U.S. investor protection than does a benchmark measuring U.S. trading volume as a ratio of worldwide trading volume, particularly if, as proposed, at least 55% of the trading in the issuer's securities takes place in, or through the facilities of, the issuer's primary trading market (and the issuer, accordingly, has a significant market following in its primary trading market). We do not anticipate that issuers would face difficulties in determining their worldwide average daily trading volume based on trading in listed securities markets.

There does not appear to be a clear policy rationale for disregarding trading on non-U.S. markets other than an issuer's primary market in the calculation of the trading

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industry; or (ii) the inclusion of the security in an index (exposing the security to heavy trading during periods in which index tracker funds are rebalancing their holdings).

volume ratio. On the contrary, we are concerned that the adoption of a trading volume benchmark calculating U.S. trading volume as a percentage of primary market trading volume may be perceived by FPIs as artificially over-emphasizing the proportion of trading in the issuer's securities occurring in the U.S. In particular, as reproposed an FPI could exceed the U.S. trading volume threshold where as little as 2.75% of its average daily trading volume occurred in the United States (*i.e.*, 5% of 55%). In our view this is unreasonably low and could act as a significant disincentive to an issuer evaluating whether to enter the U.S. market.

We recommend that the trading volume calculation be revised to measure U.S. trading volume in comparison to worldwide trading in the subject class of the issuer's securities, and not just to a portion of such trading. We believe that a 10% trading volume benchmark measuring U.S. average daily trading volume as a percentage of an issuer's worldwide average daily trading volume would both protect U.S. investor interests and ensure that all relevant trading activity in the subject class of the issuer's securities is reflected in the trading volume calculation.

Unpublished Over-the-Counter Trading Should be Excluded as a Component of Average Daily Trading Volume

In our experience, it often is difficult or impossible for issuers to determine the volume of over-the-counter trading that occurs in their securities, as this figure frequently includes proprietary and inter-client trading at broker-dealers that is not made public or reported on any accessible database. Given these difficulties, we believe it may be more appropriate for both the numerator and denominator of the trading volume benchmark calculation and the primary trading market calculation to measure the trading volume in listed markets only, or to exclude trading in over-the-counter markets for which data is not publicly available. To ensure consistent treatment, this unpublished over-the-counter trading should be excluded from both the numerator and the denominator of the calculation of the trading volume benchmark. Similarly, unpublished over-the-counter trading should be excluded from both the numerator and denominator of the primary trading market calculation.

The Trading Volume Ratio Should be Measured Over a 12-Month Period

We believe that the measurement of the average daily trading volume ratio over a recent 12-month period, as reproposed, is appropriate. In our view, measurement of the average daily trading volume ratio over a 12-month period mitigates the potential for distorting effects of most short-term factors affecting an issuer specifically or a market generally.

As a technical drafting point, we respectfully recommend that the references in Reproposed Rule 12h-6(a)(4)(i) and throughout the commentary in the Reproposing Release to average daily trading volume "*during*" a recent 12-month period" be replaced with the phrase "*for*" a recent 12-month period" to clarify that the required calculation is of

average daily trading volume over the 12-month period, rather than as of any specific date, or for any particular period, within the 12-month period (see, *e.g.*, Section I.F. and Section II.A.1.a. of the Reproposing Release).

As detailed below in our comments on reproposed Form 15F, we believe that the Final Rules should correspondingly revise the reference to "during a recent 12-month period" in the first undertaking in Item 11 of that Form.

American Depositary Shares Representing Two or More of an Issuer's Ordinary Shares Should be Measured in the Trading Volume Calculation in their Ordinary Share Equivalent

The Reproposed Rules contain a potential ambiguity relating to the determination of U.S. trading volume in American Depositary Shares ("ADSs") representing an issuer's ordinary shares. We understand that the Reproposed Rules intend, in the case of ADSs, for the U.S. average daily trading volume to be calculated based on the number of ordinary shares represented by each ADS. In order to reflect that intent, we believe that the Final Rules should state that the U.S. average daily trading volume in ADSs should be expressed in the ordinary share equivalent when calculating the trading volume ratio.

Issuers Should be Permitted to Obtain Trading Volume Data from Any Reliable Sources

We do not feel that it is appropriate for the Final Rules to specify the sources from which an issuer must obtain trading volume data as we believe that the undertakings in Item 11 of Reproposed Form 15F provide meaningful U.S. investor protection with respect to this data. In Item 11 of Form 15F, an issuer undertakes to withdraw its Form 15F if, at any time before the effectiveness of its termination of reporting under Rule 12h-6, the issuer has actual knowledge of information that causes it reasonably to believe that, at the time of filing the Form 15F, the U.S. average daily trading volume of the subject class of securities exceeded the applicable trading volume threshold during the applicable recent 12-month period. We believe that an issuer would only be able to make this undertaking where the issuer has derived its trading volume data from sources it has determined to be reliable. In our view, it is not necessary for the Commission to specify particular sources an issuer must use in making its trading volume calculation, although we would support the designation by the Commission of non-exclusive safe harbors for the use of particular sources.

Similarly, we believe that potential discrepancies in the calculation of trading volume between different types of markets could be addressed through the insertion of an instruction to Item 4 of Form 15F, requiring that issuers disclose any market-based differences in calculating trading volume, together with their disclosure of comparative trading volume data, under that Item. In our view, the Reproposed Rule should not prescribe standards for accounting for market differences in trading volume calculations.

Conditions for Equity Securities Issuers — Quantitative Benchmarks — Non-Record Holder Benchmark — One-Year Ineligibility Period After Delisting (Section II.A.1.a.i. of the Reproposing Release)

We believe it is appropriate that the trading volume benchmark be structured so as not to create an incentive for an FPI to delist its securities from a U.S. exchange for the purpose of decreasing its U.S. trading volume. However, we feel that issuers that have delisted a class of equity securities from a national securities exchange or U.S. inter-dealer quotation system (and whose U.S. average daily trading volume percentage in the subject class of securities exceeded the applicable trading volume threshold for the 12-month period preceding delisting) should not be subject to a 12-month waiting period from the date of delisting before being able to seek deregistration of the subject class of securities. We consider that the interests of U.S. investors in a delisting issuer would be adequately protected by a required waiting period for deregistration significantly shorter than 12 months. A waiting period of three months would ensure that U.S. investors continue to have the benefit of the delisting issuer's Exchange Act reporting for a sufficient time to evaluate whether to retain or sell the issuer's securities. Moreover, the requirement that, at the time of filing its Form 15F, an issuer's U.S. average daily trading volume percentage in the subject class of securities for a recent (*i.e.*, within 60 days of the filing) 12-month period not exceed the applicable trading volume threshold provides an additional safeguard, precluding an issuer whose U.S. trading volume percentage substantially exceeded the trading volume benchmark at the time of delisting from satisfying the trading volume standard until sufficient time has elapsed for the 12-month average to fall below the applicable threshold.

Conditions for Equity Securities Issuers — Quantitative Benchmarks — Non-Record Holder Benchmark — One-Year Ineligibility Period After Termination of an American Depositary Receipt Facility (Section II.A.1.a.ii. of the Reproposing Release)

While we agree that FPIs should be encouraged to maintain their American Depositary Receipt ("ADR") facilities even following delisting from a national securities exchange or U.S. inter-dealer quotation system and termination of their Exchange Act reporting obligations, we not believe it is appropriate for an issuer terminating a sponsored ADR program to be subject to a 12-month waiting period before being able to seek deregistration of the subject class of securities.

As reproposed, a 12-month ineligibility period would apply to all issuers terminating an ADR facility, whether or not the U.S. average daily trading volume percentage in the subject securities exceeded the applicable trading volume threshold for the 12-month period preceding such termination. In contrast, the Reproposed Rules would only impose a 12-month waiting period on issuers delisting their securities where the issuer's U.S. trading volume ratio exceeded the trading volume threshold for the 12 months preceding delisting. The policy rationale for this differing treatment is not clear. We recommend that any ineligibility period adopted under the Final Rules only apply to

issuers whose U.S. trading volume ratio for the 12 months preceding the issuer's termination of a sponsored ADR facility exceeded the applicable benchmark.

As discussed above, we consider that the interests of U.S. investors in an issuer that terminates a sponsored ADR program for which trading exceeded the applicable benchmark generally would be adequately protected by a three-month waiting period for deregistration, coupled with the additional safeguard effected by the condition that, in order to file its Form 15F, an issuer satisfies the trading volume benchmark over a recent 12-month period. In all other instances, we believe there should not be a waiting period following termination of a sponsored ADR facility.

In response to the Commission's request for comment, we do not feel it is appropriate for the Commission to require an issuer to maintain a sponsored ADR facility following its provision of appropriate notice to investors, satisfaction of applicable quantitative benchmarks, the prior reporting condition, the dormancy condition and the foreign listing condition and effective deregistration under Reproposed Rule 12h-6. Such a requirement would inappropriately impose additional costs on an issuer in a situation where there is very limited or no U.S. market interest in its ADRs.

Conditions for Equity Securities Issuers — The One-Year Dormancy Condition (Section II.A.3. of the Reproposing Release)

The one-year dormancy requirement as revised under Reproposed Rule 12h-6(a)(2) and the types of offerings excluded from the dormancy condition are, in our view, appropriate for the most part. We generally support the Commission's attempt to preclude, through the dormancy condition, FPIs from deregistering within 12 months of availing themselves of the U.S. public securities market. Moreover, we endorse the expanded scope of offerings excluded from the dormancy requirement under the Reproposed Rules, in particular, the exclusion of all exempted unregistered offerings.

However, we have continuing concerns regarding the scope of the dormancy condition exclusion for the conversion and exercise of outstanding securities and the method for determining the date of sale for purposes of the dormancy condition that do not appear to have been addressed in the Reproposing Release.

Rule 12h-6's General Unavailability for Issuers Who Have Outstanding Options, Exchange Rights, Subscription Rights or Similar Securities that have been Exercised in the Previous 12 Months

Under the Reproposed Rules, provided the other applicable requirements were satisfied, the deregistration provisions of Reproposed Rule 12h-6 would be available to an FPI whose outstanding convertible securities held by U.S. investors have been converted and/or whose outstanding transferable warrants held by U.S. investors have been exercised during the preceding 12-month period. However, the Reproposed Rules would bar an FPI from deregistering when it has outstanding options, exchange rights, subscription rights or

similar securities held by U.S. investors that have been exercised during the previous 12 months, regardless of whether the options, exchange rights, subscription rights or similar securities, or the securities issued upon their exercise, were issued under an SEC registration statement. As described in our comment letter of February 28, 2006, we believe it would be unfairly burdensome to impose the dormancy requirement on issuers that acted under the current rules and, notwithstanding the exercise of the options, exchange rights or subscription rights, would have been eligible to deregister under current Rules 12g-4 and 12h-3.

We believe there is no basis in policy for differentiating the conversion of outstanding convertible securities or the exercise of transferable warrants issued by the issuer from the exercise of outstanding options, exchange rights, subscription rights or similar securities issued by the issuer. We accordingly recommend that the Commission expand the existing exclusion from the dormancy condition to also cover the exercise of outstanding options, exchange rights, subscription rights or similar securities issued by the issuer and held by U.S. investors. As for the dormancy period exclusion for the conversion of outstanding convertible securities and the exercise of transferable warrants, we believe that an exclusion from the dormancy period should be available whether or not the outstanding options, exchange rights, subscription rights or similar securities were issued under an SEC registration statement, as the exercise of such outstanding securities by investors occurs independently of any effort by the issuer to be active in U.S. public securities markets.

Determination of Date of Sale in Certain Transactions

The dormancy requirement of Reproposed Rule 12h-6(a)(2) would be imposed during a twelve-month period from the last date of sale of a security in the U.S. The Reproposed Rules, however, provide no guidance on when a sale of securities has occurred for purpose of compliance with the Reproposed Rules. As noted in its recent Securities Offering Reform release,[4] the Commission has interpreted Securities Act Section 2(a)(3) to permit a sale of a security to be deemed to have occurred at several points in the sale process, for example when a purchaser enters into a contract of sale or at the time of completion of the sale. While this ability to look to several potential dates of sale arguably is appropriate in assessing liability under the Securities Act, we believe it has the potential to create uncertainty, without any countervailing public policy benefit, for an FPI seeking to deregister close to the end of the proposed dormancy period, particularly where the securities "sale" in question is one where a significant delay occurs between the investor decision and the completion of such sale. This may be the case, for example, in certain merger or reorganization transactions where a binding vote of target company investors occurs but completion is delayed pending receipt of regulatory or judicial approvals. In these circumstances, we believe it would be consistent with the Commission's intent articulated in the Reproposing Release and with broader principles of

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[4] Securities Offering Reform, Release Nos. 33-8591; 34-52056; IC-26993; FR-75; ISR 1294; File No. S7-38-04, footnote 394 and accompanying text.

investor protection to designate, solely for purposes of interpreting Reproposed Rule 12h-6(a)(2), a specific date as the date of sale of a security. We suggest that, where the sale in question occurs pursuant to a shareholder vote, the date of sale should be the date of such vote, as this is the date on which an investment decision can be considered to have occurred and is also the date after which issuer activity that would create interest in U.S. securities markets would significantly diminish.

Conditions for Equity Securities Issuers — Foreign Listing Condition (Section II.A.4 of the Reproposing Release)

We support the reproposed requirement that, for the 12 months preceding the filing of its Form 15F, an issuer have maintained a listing in the subject class of securities on an exchange in a non-U.S. jurisdiction that, either singly or with one other non-U.S. jurisdiction, constitutes the primary trading market for the subject class of securities.

We believe that the definition of primary trading market appropriately requires that at least 55% of an issuer's worldwide[5] trading volume over the applicable recent 12-month period has occurred in the primary trading market. We agree that the requirement that an issuer has maintained a listing in the primary trading market serves the Commission's objective of ensuring that, before terminating its Exchange Act reporting obligations under Reproposed Rule 12h-6, an issuer is subject to an ongoing disclosure and financial reporting regime and has a significant market following in one or more sizeable non-U.S. markets.

We do not anticipate that FPIs will experience difficulties in obtaining data regarding trading volume in listed securities markets or making the calculations necessary to determine their primary trading market. As noted above, however, given the difficulties of determining the volume of trading in over-the-counter markets for which data is not publicly available, we believe unpublished over-the-counter trading should be excluded from both the numerator and denominator of each of the primary trading market calculation and the trading volume benchmark calculation.[6]

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5 We believe that the denominator of the primary trading market calculation should reflect worldwide trading volume in the subject class of the issuer's securities, and not be limited to trading volume in the issuer's primary trading market and U.S. trading volume. In our view, a denominator reflecting only U.S. and primary trading market trading volume would not produce an accurate measure of the significance of the market following of the subject class of securities in the issuer's primary trading market.

6 Should the Commission determine to include trading occurring on U.S. over-the-counter markets in the U.S. trading volume component of the trading volume benchmark, we recommend that, to ensure consistent treatment, (i) trading occurring on over-the-counter markets in the issuer's primary trading market be included in the numerator of the primary trading market calculation and (ii) trading taking place on both U.S. and non-U.S. over-the-counter markets be reflected in the worldwide trading volume component in the denominator of the primary trading market calculation.

As a technical drafting point, while the Reproposing Release identifies the foreign listing condition and the trading volume benchmark as advancing the Commission's objective that before terminating Exchange Act reporting obligations under Reproposed Rule 12h-6, an FPI "must be subject to an ongoing disclosure and financial reporting regime, and have a significant market following, in its *home* market", both the foreign listing condition and the trading volume benchmark refer to an issuer's *primary trading* market (emphasis added). To avoid possible confusion, we believe the reference to "home market" in the commentary in the Reproposing Release should be changed to "primary trading market" in the release in respect of the Final Rules.

Revised Counting Method (Section II.C. of the Reproposing Release)

As reproposed, Rule 12h-6(d)(1) would permit an issuer seeking to determine the number of its U.S. resident holders to limit its inquiry to brokers, banks and other nominees located in the United States, the issuer's jurisdiction of formation and, if different, its primary trading market. While we generally support this approach, we believe this formulation may lead to unintended obstacles in situations where the securities in question are held, in whole or in part, through a clearing system that provides limited or no position listings identifying brokers, banks and nominees that hold beneficial interests. We therefore believe the Final Rules should include instructions that make clear that, in making an inquiry under Rule 12h-6(d)(1) with respect to a particular class of securities, it is sufficient for an issuer to make the inquiry by notice (i) to each broker, bank or other nominee listed in the issuer's security register as having an address in the relevant jurisdictions, and (ii) through each clearing system that holds, directly or through a nominee, a position in the relevant securities, in accordance with the customary procedures of that clearing system for such notices.

Expanded Scope of Rule 12h-6 – Application of Rule 12h-6 to Prior Form 15 Filers (Section II.D. of the Reproposing Release)

We believe that Reproposed Rule 12h-6 appropriately extends termination of Exchange Act reporting to an FPI whose Exchange Act reporting obligations were suspended (prior to the effectiveness of the Final Rules) following the issuer's filing of a Form 15.

Public Notice Requirement (Section II.E. of the Reproposing Release)

We support the requirement that, as a condition to termination of reporting under Reproposed Rule 12h-6, an issuer (other than a prior Form 15 filer) publish a notice disclosing its intention to terminate its Exchange Act reporting obligations.

We respectfully submit, however, that the Commission should identify in the Final Rules non-exclusive methods of notice publication recognized as "means reasonably designed to provide broad dissemination of the information to the public in the United States." The Commission has stated that the primary purpose for the notice provision is to

alert U.S. investors who have purchased the issuer's securities about the issuer's intended exit from the Exchange Act registration and reporting system. The Reproposing Release cites as examples of dissemination of the notice in the United States publication of a press release (see Section II.E. of the Reproposing Release) and publication in a newspaper (see Item 7.B. of Reproposed Form 15F). Given that Reproposed Rule 12h-6(g) also requires that the notice disclosing the issuer's intent to terminate reporting be submitted via EDGAR under cover of a Form 6-K or as an exhibit to the issuer's Form 15F, we believe that the delivery of a press release to the international wire services, including the services of substantial U.S. and international financial publications, constitutes a means reasonably designed to provide broad dissemination of the information to the public in the United States. Where the notice of an issuer's intention to terminate reporting is disseminated via a press release, the Commission may consider requiring the issuer to post the press release on the issuer's Internet Web site, as is required with respect to an issuer's notice of its intention to withdraw its securities from listing on a national securities exchange under Rule 12d2-2(c)(2)(iii). Dissemination of the notice to the public in the United States via the delivery of a press release to the international wire services and the posting of the press release on the issuer's Web site is consistent with the "access equals delivery" model adopted by the Commission under the recent Securities Offering Reform.[7] We recommend that the Commission clarify in the Final Rules that publication of the notice in a newspaper is not required where the issuer satisfies the "broad dissemination" standard by delivering a press release to the international wire services and posting the press release on its Web site.

Similarly, we consider that it would be inappropriate to require an issuer to mail a copy of the notice to each of its U.S. investors in addition to, or in lieu of, publishing the notice through a publicly disseminated means. Delivery of a notice to each U.S. investor is likely to be impracticable for many issuers, particularly where an FPI's securities are held through clearing facilities in multiple jurisdictions or through nominees. Even if practicable, delivery of a notice to each U.S. investor would be costly for a significant proportion of FPIs. Moreover, given that investors are presumed to have access to the Internet under the Commission's "access equals delivery" model, it is not clear what, if any, incremental benefit would be derived from an issuer's mailing of personal notices to investors as compared to the issuer's delivery of a press release to the international wire services and posting of the press release on the issuer's Web site (which would be accessible by the public generally).

Form 15F (Section II.F. of the Reproposing Release)

We believe that the disclosure requirements under Reproposed Form 15F are generally appropriate and tailored to provide investors with information regarding an issuer's decision to terminate its Exchange Act reporting obligations. However, as noted above, we recommend that an instruction be inserted into Item 4 of Form 15F, requiring

[7] Securities Offering Reform, Release Nos. 33-8591; 34-52056; IC-26993; FR-75; ISR 1294; File No. S7-38-04.

that issuers disclose any market-based differences in calculating trading volume, together with their disclosure of comparative trading volume data, under that Item.

Moreover, as a technical matter, we recommend that the reference to "during a recent 12-month period" in the first undertaking in Item 11 of Reproposed Form 15F be amended to clarify that an issuer (i) is permitted to select a single "recent 12-month period" (in accordance with the instructions to Item 4 of Reproposed Form 15F) over which to measure its average daily trading volume ratio, and is not required to examine various 12-month periods ending in the 60 days preceding filing of the Form 15F, over which the trading volume ratio may differ, and (ii) would not be required to withdraw a Form 15F as a result of changes in its trading volume occurring after the date of filing. We propose that the revised undertaking require that an issuer undertake to withdraw the Form 15F if, at any time before the effectiveness of its termination of reporting under Rule 12h-6, the issuer has actual knowledge of information that causes it reasonably to believe that, "at the time of filing the Form 15F . . . the average daily trading volume of its subject class of securities in the United States *during the 12-month period identified in Item 4.A* exceeded 5 percent of the average daily trading volume of that class of securities in the issuer's primary trading market during the same period . . ." (added text underscored).

The Commission's Reproposed Delegated Authority to Accelerate the Effectiveness of an Issuer's Termination of Registration under Section 12(g) of the Exchange Act and Reporting under Section 13(a) or Section 15(d) of the Exchange Act Should Extend to Delegated Authority to Accelerate the Effectiveness of an Issuer's Withdrawal from Registration under Section 12(b) of the Exchange Act

We support the provision in the Reproposed Rules that Staff of the Division of Corporation Finance be permitted under the Commission's delegated authority to accelerate, at an issuer's written request, the effectiveness of the issuer's termination of registration under section 12(g) of the Exchange Act and reporting under section 13(a) or section 15(d) of the Exchange Act before the 90th day following the filing of a Form 15F. However, we note that the Reproposed Rules do not provide the Staff with delegated authority to accelerate the effectiveness of an issuer's withdrawal from registration under section 12(b) of the Exchange Act before the 90th day following the filing of a Form 25. We submit that in the absence of delegated authority to accelerate the effectiveness of an issuer's withdrawal from registration under section 12(b), the reproposed delegated authority will be ineffective to provide any relief in the case of most FPIs electing to delist and withdraw a subject class of securities from registration under section 12(b) in connection with the deregistration and termination of registration under section 12(g) and reporting under section 13(a) or section 15(d) with respect to such securities. We respectfully propose that the Commission expand its delegation of authority in the Final Rules to extend to acceleration of the withdrawal from registration under section 12(b) of the Exchange Act.

Amended Rules 12g-4 and 12h-3 (Section II.G. of the Reproposing Release)

The Commission's stated purpose in proposing the alternative 300 holder threshold in Proposed Rule 12h-6(a) was to ensure that the new deregistration rules are no more rigorous than the current rules. (See Section II.B.2.e. of the Proposing Release). We believe that the alternative 300 holder threshold, as reproposed in Reproposed Rule 12h-6(a)(4)(ii), fails to meet this purpose.

Reproposed Rule 12h-6(a) adds additional requirements (*e.g.*, a 12-month reporting history, a one-year dormancy period and a foreign listing) to the 300 holder thresholds that currently exist in Rules 12g-4 and 12h-3. These additional requirements make the Reproposed Rule significantly more rigorous than current rules, which runs contrary to the purpose stated by the Commission in the Proposing Release. We believe that, where an FPI can satisfy either of the 300 holder tests under Rules 12g-4 and 12h-3 (using the counting methodology prescribed under Rule 12g3-2(a)), it should be able to deregister without being subject to these additional burdens. Moreover, because it is difficult to assess in advance the practical impact of Reproposed Rule 12h-6(a), we believe that the provisions of the existing rules that would enable an FPI to terminate registration or suspend reporting obligations should be maintained for an extended transition period of two years or more, at the end of which a more realistic assessment could be made of these matters.

Amendment Regarding the Rule 12g3-2(b) Exemption — Extension of the Rule 12g3-2(b) Exemption Under Reproposed Rule 12g3-2(e) (Section II.H.1. of the Reproposing Release)

We support the Commission's proposal under Reproposed Rule 12g3-2(e) to extend the Rule 12g3-2(b) exemption to FPIs immediately upon the effectiveness of termination of Exchange Act reporting under Reproposed Rule 12h-6(a), to successor issuers immediately upon the effectiveness of termination of Exchange Act reporting under Reproposed Rule 12h-6(c), and to FPIs that have previously suspended their Exchange Act reporting obligations through the filing of a Form 15 immediately upon the effectiveness of termination of Exchange Act reporting under Reproposed Rule 12h-6(h). We agree that the requirement under Rule 12g3-2(d) that FPIs that have registered a class of securities under Section 12 of the Exchange Act wait at least 18 months following their termination of reporting before claiming the Rule 12g3-2(b) exemption should not apply to issuers terminating reporting obligations pursuant to Reproposed Rule 12h-6, including successor issuers and prior Form 15 filers.

Amendment Regarding the Rule 12g3-2(b) Exemption — Electronic Publishing of Home Country Documents (Section II.H.2. of the Reproposing Release)

We believe there is no basis in policy for differentiating issuers obtaining the reporting exemption of Rule 12g3-2(b) automatically upon terminating their Exchange Act reporting obligations pursuant to Rule 12h-6 from those FPIs claiming the Rule 12g3-2(b)

exemption through a letter application and that currently make paper submissions under Rule 12g3-2(b)(1)(iii). In the electronic era, where investors are accustomed to obtaining information through accessing issuers' Web sites, we believe that paper filings are burdensome and provide no meaningful benefit to U.S. investors. Moreover, we believe that any costs associated with the electronic publication of home country documents required under Rule 12g3-2(b)(1)(iii) are nominal.

Accordingly, we support the provision under Reproposed Rule 12g3-2(f)(1) permitting FPIs already claiming the Rule 12g3-2(b) exemption to publish in English required home country documents on the issuer's Web site or through an electronic information delivery system generally available to the public in the issuer's primary trading market, in lieu of making paper submissions to SEC. Similarly, we support the requirement under Reproposed Rule 12g3-2(e)(2) that FPIs automatically receiving the Rule 12g3-2(b) exemption upon terminating their Exchange Act reporting obligations pursuant to Rule 12h-6 electronically publish their home country documents.

Other Comments — Withdrawal of an Issuer's Securities from Listing Not Required to be Effective Prior to Filing of the Form 15F

The Reproposing Release contains some ambiguities in relation to the interplay between timing of delisting and deregistration. The Reproposing Release states that "a foreign private issuer that has a class of securities registered under section 12(b) will have to comply with Rule 12d2-2 [under the Exchange Act] before it can effect termination of registration under section 12(g) or termination of its reporting obligations under section 13(a) or section 15(d)." (See footnote 28 of the Reproposing Release). Elsewhere, however, the Reproposing Release provides that a listed FPI that meets the trading volume condition would be able to concurrently delist and terminate its registration and reporting obligations under the Exchange Act. (See Section II.A.1.a.i of the Reproposing Release). We believe the Commission should clarify in the Final Rules that a listed FPI would not be required to wait for 90 days following the filing of a Form 25 until the withdrawal from registration under section 12(b) of the Exchange Act is effective before filing a Form 15F and that a Form 25 and a Form 15F may be filed concurrently.

Other Comments — Rule 701

The Reproposed Rules appear to leave open questions under Rule 701 that we believe should be addressed in the Final Rules.

Specifically, we believe the Reproposed Rules should address whether an issuer deregistering under Rule 12h-6 is immediately eligible to issue securities under the Rule 701 exemption (specifically, whether such an issuer falls under the category described in Rule 701(b)(1) immediately upon such deregistration becoming effective). While we note that the express language of Rule 701 would appear to provide for such immediate eligibility, addressing this issue in the Final Rules would eliminate any ambiguity regarding the ability of deregistered companies to rely freely on the Rule 701 exemption.

In addition, we believe that it would be helpful for the SEC to clarify how an FPI deregistering under the Reproposed Rules that issues shares to satisfy options and other equity compensation awards issued under an equity compensation plan previously registered on Form S-8 can use the Rule 701 exemption. We also suggest that Rule 701 be amended to relax the U.S. GAAP reconciliation requirements for offerings in excess of $5 million. As currently written, in some circumstances Rule 701 imposes greater reconciliation burdens on an FPI than would be required of an FPI conducting a registered public offering. We do not understand the policy rationale for this differing treatment.

Conclusion

We appreciate the opportunity to comment on the Reproposed Rules. We view them as a laudable attempt by the SEC to alleviate many of the burdens currently felt by FPIs, while at the same time adhering to the public policy goal of protecting U.S. investor interests. Overall, the transparent quantitative and categorical standards for deregistration contemplated by the Reproposed Rules are likely to have a positive impact on the willingness of FPIs to access the U.S. public capital markets. Nevertheless, some changes to the Reproposed Rules are necessary in order to ensure that the Final Rules address the practical obstacles to exiting U.S. public securities markets currently perceived by FPIs.

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Please contact Christopher J. Kell in our Sydney office at 011-61-2-9253-6055 or Richard A. Ely in our London office at 011-44-20-7519-7171 with any questions relating to this comment letter.

Very truly yours,

Skadden, Arps, Slate, Meagher & Flom

Skadden, Arps, Slate, Meagher & Flom

cc: Paul M. Dudek
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