DAVIS POLK & WARDWELL

450 LEXINGTON AVENUE
NEW YORK, N.Y. 10017

1300 I STREET, N.W.
WASHINGTON, D.C. 20005

1600 EL CAMINO REAL
MENLO PARK, CA 94025

99 GRESHAM STREET
LONDON EC2V 7NG

15, AVENUE MATIGNON
75008 PARIS
TELEPHONE: 01 56 59 36 00
FAX: 01 56 59 36 90

WRITER'S DIRECT

01 56 59 36 00

MESSETURM
60308 FRANKFURT AM MAIN

MARQUÉS DE LA ENSENADA, 2
28004 MADRID

1-6-1 ROPPONGI
MINATO-KU, TOKYO 106-6033

3A CHATER ROAD
HONG KONG

February 12, 2007

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 15(d) of the Securities Exchange Act of 1934**
Release No. 34-55005; International Series Release No. 1300; File No. S7-12-05 (the "Release")

Ms. Nancy Morris
Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-9303

Dear Ms. Morris:

Davis Polk & Wardwell is an international law firm with a significant number of clients with an interest in this topic and, as a result, we have actively participated in the discussions and comment letters in connection with the original proposal and the current reproposal. In light of the increasing public debate about the U.S. system of securities regulation and its relationship and interaction with the rest of the world as well as its impact on U.S. competitiveness and job creation, we hope that the Securities and Exchange Commission (the "**SEC**") will be encouraged to view initiatives like the deregistration reproposal as one in a series of regulatory changes that will be needed to recalibrate how the U.S. system of securities regulation functions internationally. In that respect, we draw your attention to the comment letter submitted by the Securities Committee and the Capital Markets Forum of the International Bar Association.

The willingness of the SEC Commissioners and Staff to enter into discussions with foreign companies and their regulators has been a significant part of this process and we commend the SEC Staff for their openness in this respect. We note, in particular, the efforts that the SEC has made to respond to many of the comments on the original proposal and we support the decisions to: shorten the period that a foreign private issuer need file reports in the U.S. before deregistering, expand the exceptions to the dormancy period, give relief to successor registrants and move from paper-based reporting to an internet posting system.

We agree with the SEC that the 5% trading volume proposal is a fundamental improvement over the previous public float proposal because it is easier and less expensive to calculate. Given that the trading volume test was not previously the subject of in-depth comment, it is not surprising that there are some technical areas where the measurement metric could be improved. These and other minor comments are set forth in Annex A.

We encourage the SEC to keep strictly to its intentions, as noted by some Commissioners and Staff, to enact a final rule in the "early spring" so that it is final for those foreign private issuers with a calendar year end who intend to deregister before their Form 20-Fs are due on June 30, 2007.

We appreciate the opportunity to participate in this process, and we look forward to its successful conclusion.

Very truly yours,

VMG | MET

Margaret E. Tahyar
Patrick Kenadjian
Jeffrey M. Oakes
Siobhan Dalton

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*

John W. White, *Director, Division of Corporation Finance*
Martin Dunn, *Deputy Director, Division of Corporation Finance (Legal)*
Brian Cartwright, *General Counsel*
Paul M. Dudek, *Chief of the Office of International Corporate Finance*
Ethiopis Tafara, *Director, Office of International Affairs*

Charlie McCreevy, *Commissioner for the Internal Market and Services, European Commission*
David Wright, *Director, Financial Markets, DG Internal Market*
Eddy Wymeersch, *Chairman, Committee of European Securities Regulators*

Annex

1. **Calculation of Trading Volume and Primary Trading Market**. We believe that there are a number of technical issues with the calculation, under the reproposal, of the average daily trading volume ("**ADTV**") ratio, and with the proposed concept of a "primary trading market". We note the following issues for the SEC Staff to consider:

    - ***Worldwide Trading Volume as Denominator***. We believe, as many commentators will surely note, that the denominator of the trading volume ratio should be an issuer's worldwide trading volume, as described below. At the very least, we would suggest that the U.S. ADTV be added to the denominator so as not to distort the ratio.

    - ***Focus on a Company's Listing Market as opposed to its Primary Trading Market***. We are concerned that the definition of primary trading market may not currently work in several respects. Moreover, we believe there is a risk that as alternative trading systems develop and as the internet and electronic systems permit the further de-linking of trading and listing, that the definition will find itself under stress. It is also currently the case that in some countries the trading market and the listing market are different. In other countries, there remain multiple stock exchanges which may or may not be linked by a common trading platform and in some cases exchanges are linked across multiple countries.[1] For example:

        - The shares listed on and regulated by the Vienna Stock Exchange trade through the Xetra system, administered by a subsidiary of the Deutsche Boerse (separation of listing and trading).

        - The top 30 equities listed on and regulated by the SWX Swiss Exchange trade exclusively on virt-x (separation of listing and trading).

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[1] In the reproposal, the definition of primary trading market refers to trades that took place in, on or through the facilities of *a securities market* in a single foreign jurisdiction (emphasis added). This is in contrast to the wording of Regulation S which, in the definition of "Substantial U.S. Market Interest", refers to 55 percent of an issuer's trading taking place in, on or through the facilities of *securities markets* of a single foreign country. The difference in wording raises the concern that the deregistration rules limit the eligible trading to that on a single securities market in a foreign jurisdiction. This will clearly be an issue in a number of developing countries. We suggest that the Regulation S formulation is the better one.

- There is a common trading system for the five stock exchanges for securities listed on and regulated by Euronext (separation of listing and trading).

- In India, although the market regulator is the Securities Exchange Board of India, trading may take place, for example, on the National Stock Exchange of India, the Mumbai Stock Exchange, or via Inter-connected Stock Exchange of India, a system which links together one dozen other exchanges active in India (multiple securities markets in one country).

- The OMX Nordic Exchange provides a common trading system for more than 80 percent of the trading on certain of the Nordic and Baltic stock exchanges (namely the Copenhagen, Stockholm, Helsinki, Iceland, Tallinn, Riga and Vilnius stock exchanges) (separation of listing and trading with a common trading system over multiple countries).

- In Chile, securities of companies regulated by the *Superintedencia de Valores y Seguros de Chile*, the Chilean national securities regulator, are usually traded on the Santiago Stock Exchange, but a substantial amount of the trading in these securities can occur on the Electronic Exchange of Chile, and to a lesser extent, the Valparaiso Exchange (separation of listing and trading within one country with multiple exchanges).

Therefore, we believe that the 55% benchmark that looks at one or two jurisdictions is ill-suited to flexible growth as the trading world evolves in the next few years, or where trading markets may be increasingly decoupled from listing exchanges.

We suggest that both the concept of the two trading markets and the requirement that 55% of an issuer's ADTV be on such markets, be deleted from the final rule. Instead, we believe that the focus should be on the two main policy concerns: (1) that the preponderance of trading is not in the United States and (2) that the frequency and content of the issuer's disclosure to investors is subject to the standards, policies and procedures of a regulator or listing entity outside of the United States which views itself and its disclosure regime as primarily responsible for the quality of such disclosure. We submit that a 5% ADTV test which uses worldwide trading volume in the denominator adequately takes care of the first concern. As to the second concern, we suggest that

the existence of a primary regulator or listing agency should be sufficient.[2]

- ***Alternative Trading Systems.*** We also believe that issuers should be able to consider the volume of trading in their securities on alternative trading systems. For example, the European Union ("**EU**") Directive on Markets in Financial Instruments ("**MiFID**"), scheduled to come into effect in November 2007, is expected to further promote the development of such systems to compete with the regulated securities markets in Europe.

  Trading volumes generated through alternative trading systems should be included in the denominator of the ADTV ratio so long as the company-level disclosure concerning the issuers of the securities traded on such systems continues to be regulated by the exchange or other listing authority on or by which they are listed whether or not they are also traded there.

- ***Consistency of Numerator and Denominator in Trading Volume Ratio.*** Under the current wording, the numerator and the denominator of the trading volume ratio could be interpreted so that they are not based on the same type of trading information. In the numerator, all U.S. trading "reported through the U.S. transaction reporting plan" must be counted. For listed securities, in addition to the trades executed through an exchange, this would include over-the-counter trades, block trades, and any other trades that are reported to a national securities exchange or association. In the United States, due to exchange rules and NASD member rules, trades executed by any registered U.S. broker must be reported to the exchange where the security is traded or to the NASD, subject to specific rules and exemptions. In the denominator, however, only trading that occurs "in, on or through the facilities of a securities market" would be counted, and we would suggest that this should be clarified to include the same off-exchange trading as is counted in the U.S. ADTV and to be sure to

[2] Currently, 12g3-2(b)(1)(i)(A) and (B) require an issuer to file information that is made or required to be made public pursuant to the laws of the country of its domicile, incorporation or organization or is filed or required to be filed with a stock exchange on which its securities are traded. As there are exchanges which set disclosure requirements on which there occurs no trading in an issuer's securities, we would suggest that a similar change be made to Section 12g3-2(b)(1)(i), allowing issuers to qualify if they provide information required to be filed with a regulator or listing entity outside of the U.S. which views itself and its disclosure regime as primarily responsible for such disclosure.

include alternative trading systems that are developing and are likely to develop in the future as discussed above.[3]

- ***Trade Reporting Sources.*** We believe that the final rule needs to be flexible enough to allow an issuer to include, in its non-U.S. ADTV, all data derived from any reliable public information source. This flexible approach will help the ADTV test keep abreast of technological and regulatory developments.

  For example, MiFID is expected to enhance competition and transparency in the trading of financial instruments in the EU, in part by breaking the monopoly on the reporting of trading data in listed securities which some EU stock exchanges have maintained and permitting publication of trading data through a variety of channels, including regulated exchanges, alternative trading systems, third parties such as market data consolidators, and proprietary arrangements. A number of alternative trading reporting systems are currently under development in Europe. As a result, it is important the final rule be clear that it is not the intention to restrict ADTV in the EU to trades made on or reported to a stock exchange – such limitation, if not clarified, could lead to a severe undercounting of actual trading volume. Consequently, an issuer should be able to rely not only on trading data reported through an exchange, but should be allowed to take into account any data that is obtainable from reliable public sources or third party services providers without unreasonable burden.

- ***Calculation of U.S. ADTV for Unlisted Securities.*** The SEC has stated that an equity security's U.S. ADTV must include all U.S. trading "as reported through the U.S. transaction reporting plan". However, the U.S. transaction reporting plan is applicable only to securities listed on a U.S. national securities exchange (including the Nasdaq Stock Market). Therefore, we believe that the final rule should clarify how U.S. ADTV is to be computed for securities that are not listed, for example those that are quoted only

[3] For example, some exchanges, such as the FSA-regulated virt-x Exchange Limited ("**virt-x**"), report two sets of data – trading volumes that include only so-called "on order book" trades and trading volumes that include both "on order book" and "off order book" trades. As stated in virt-x rules, "off order book" transactions are entered into and reported under virt-x rules, but not through the security's order book (which is virt-x's electronic market for the input of orders and execution of trades in listed securities). Off order book transactions typically represent large trades which virt-x members want to execute outside of the order book in order not to cause pricing disruptions or because the member is able to match a buyer and a seller. They generally must be reported to virt-x within 3 minutes of the transaction and follow virt-x clearing and settlement procedures.

on the Pink Sheets Electronic Quotation Service or the OTC Bulletin Board (the "**OTCBB**") and, therefore, not part of the U.S. Transaction reporting plan. Brokers trading securities quoted on the Pink Sheets service and the OTCBB are generally required to report trading on such platforms to the NASD, and therefore that information should be readily available. The clarification will be particularly useful for issuers who will delist their securities in the United States while they have a more than 5% ADTV ratio, but continue their ADR program as a Level I ADR program quoted on the Pink Sheets; after the one-year waiting period, when such issuers proceed to calculate their ADTV ratio, the numerator will need to be in reported Pink Sheets volumes.

2. **300-Person Limit for Deregistration of Debt Securities**. The 300-person limit for deregistration of debt securities should be raised to at least 3,000. We would also suggest that the SEC clarify in the final rule that non-participating preferred stock is meant to be treated as debt under the definition of debt security, as was discussed by the SEC Staff on January 17, 2007 during the web cast presentation of the Practicing Law Institute, entitled "Deregistration of Foreign Private Issuers: The SEC's Reproposal". Finally, in Item 6 of Form 15F, it would be useful to clarify that the information to be provided is per class of debt securities. This would be consistent with Part II.B. of the Release which makes clear that the 300-person test applies to each class of debt securities for which deregistration is sought.

3. **Flexibility for Grandfathering Prior Deregistrants**. We suggest that the final rule add more flexibility for issuers that deregistered under the old rules to make their deregistration permanent without requiring them to prove that they meet the old test, which the SEC is replacing.

4. **Going Private Transactions.** The reproposal applies the foreign listing condition to issuers that have less than 300 holders, whether worldwide or in the U.S. This poses problems for deregistrations that happen as a result of a going private transaction. Therefore, we suggest that the post-deregistration foreign listing condition be removed (as it does not exist under current law) or that the SEC clarify that the condition is not applicable in going private transactions.

5. **12g3-2(b) Eligibility**. We further submit that the final rule should clarify several points related to 12g3-2(b) eligibility:

   - It seems to be the intent that a foreign private issuer become Rule 12g3-2(b) eligible immediately upon the filing of Form 15F and not only when the deregistration becomes effective, because effectiveness

does not occur until 90 days after the Form 15F filing. We believe that this is merely a matter of ambiguous terminology, but that it should be clarified nonetheless.

- It is currently unclear what the result would be if an issuer deregisters both a class of equity securities and a class of debt securities simultaneously. If 12g3-2(b) were only immediately available with respect to the equity securities, but the issuer was not eligible for 12g3-2(b) status with respect to the class of debt securities, then the issuer would not be permanently deregistered for 18 months, which does not seem consistent with the goals of the SEC to make deregistration permanent upon the filing of a Form 15F.

6. **Low Volume of Trading**. While we view the 5% trading volume test as a fundamental improvement over the previous test, we agree with the comment submitted by the European trade organizations that it may not work well in certain situations, such as for issuers that have previously engaged in an exchange or tender offer or are majority-owned subsidiaries. In those situations, the concentrated ownership may distort the trading volume, especially when the issuer comes from a developing market. We would urge the SEC to consider the alternative suggested by the European trade organizations or to delegate to the SEC Staff the ability to deal with unusual situations.

7. **Interaction with Trust Indenture Act.** We note that for some foreign private issuers with debt securities listed in the United States or which have been sold pursuant to a registration statement and are, therefore, subject to the U.S. Trust Indenture Act (the "**TIA**"), there is ambiguity as to whether they would have independent requirements under Section 314(a) of the TIA to continue providing an Annual Report on Form 20-F to their U.S. debt holders, even after they have successfully deregistered under the 12h-6 rules. We suggest that it be clarified in the final release that if an issuer meets the requirements of Rule 12g3-2(b) after it has deregistered, it will also have met its information requirements under Section 314(a) of the TIA.