

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-9303

February 12, 2007

RE: File Number: S7-12-05

Dear Ms. Morris,

We appreciate the opportunity to provide our perspectives on *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* (the "Reproposal"). We believe the Reproposal will allow most foreign private issuers the opportunity to deregister - albeit they may need to wait up to a year. We support the increased flexibility that will allow more foreign private issuers to deregister, and accordingly, we recommend that the Commission take action as soon as possible to adopt final rules.

While we support adoption of the rule, we do have some specific comments on the Reproposal and, for the reasons noted below, we recommend that the Commission change the "entrance" requirements for becoming a registrant. Changing those requirements will, in our view, facilitate changing and simplifying the "exit" requirements for deregistering. This will result in a simpler process because there will be symmetry between registering and deregistering and allow for the elimination of Commission rules that are not enforceable and not necessary for investor protection.

However, as we indicated in our letter on the original proposal dated March 3, 2006 ("March 3, 2006 letter") we do not believe that changing the rules to allow more foreign private issuers to deregister will result in a significant increase in the number of foreign private issuers that will become registrants. We believe there needs to be more done to encourage foreign private issuers to become registrants.

Our letter consists of three parts:

1. A simpler alternative for registration and deregistration;
2. Specific comments on the Reproposal; and
3. Encourage more foreign private issuers to enter the system - i.e., become SEC reporting companies.

Since we agree with the overall direction of the Reproposal, we recommend that the Commission move forward with adopting the rules as proposed, taking into consideration our specific comments, as expeditiously as possible. Once adopted, we recommend the Commission consider our simpler alternative that addresses both the existing problems with section 12(g) and rule 12g3-2 of the Exchange Act for foreign private issuers and the lack of symmetry between registering and deregistering that will be created by the Reproposal.

A SIMPLER ALTERNATIVE

Background

While there are a number of conditions to deregistration established by the Reproposal, practically speaking, most simply delay a company's ability to deregister by up to one year. There are just two conditions that can prevent a company from deregistering: (i) if the average daily trading volume in the U.S. is more than 5% of the trading volume in a company's primary trading market; or (ii) if a company is unable to demonstrate that it has a primary trading market - as defined by the Reproposal.

If a company wants to deregister, it will take action to delist from an exchange and/or terminate its ADR facility to influence a reduction in the U.S. trading volume of its securities. Based on the limited trading volume that currently takes place in the U.S. for the securities of the vast majority of foreign private issuers that are listed and/or who have ADR facilities, we believe that once such listings/facilities are terminated there will only be a very small number of companies that will not meet the criteria for deregistering. Foreign private issuers that will be unable to meet the criteria for deregistration will mainly comprise those few companies that do not have a primary trading market, as defined, including those foreign private issuers whose securities are only traded in the U.S. We believe it is unlikely that such foreign private issuers will want to deregister.

To us, the delaying, trading volume, and primary trading market conditions appear to have very little practical consequence and, accordingly, we do not believe they are necessary for investor protection. We do not believe it is in the public interest to require companies to report for up to one additional year once they have determined that they want to deregister and they will be able to meet the criteria for deregistration. The practical effect of the Reproposal is that, with limited exceptions, only companies registered under section 12(b) of the

Exchange Act will not be able to terminate their registrations. Accordingly, we believe the rules should be further modified to reflect the practical consequences of the Reproposal.

The fundamental principle of our simpler alternative is that a past decision by a foreign private issuer to become a registrant should not override that company's current desire to deregister. That is, unlike a domestic issuer, the decision by a foreign private issuer to become a registrant and subject itself to the Exchange Act reporting requirements at any point should be a voluntary decision. We believe that if a company determines that it no longer wants to be a registrant, the reporting requirements should not be more onerous than if it had never elected to be a registrant¹.

Proposal

We believe that to simplify the criteria for deregistration, the rules should be modified to create symmetry between the requirements for registration and deregistration. Therefore, we propose that the Commission adopt rules that exempt foreign private issuers from being required to register under section 12(g) of the Exchange Act². Consequently, a foreign private issuer would generally be required to become a registrant under the Exchange Act only if it is listed on a U.S. national exchange pursuant to the provisions of section 12(b) of the Exchange Act.

Under this alternative, the reporting obligations under the Exchange Act would generally be voluntary³ for a foreign private issuer that is not listed on a U.S. national exchange. If a company chooses to be listed on a U.S. national exchange, it would be subject to Exchange Act reporting requirements. Similarly, companies that elect to delist from a U.S. national exchange would no longer be subject to Exchange Act reporting obligations. A company's future reporting obligation would thus not be dependent upon whether that company had previously claimed exemption under rule 12g3-2(b) or is currently a registrant.

¹ Section 12(g) of the Exchange Act requires any company with over U.S. \$10 million of assets, shares held by 500 holders of record, of which 300 are persons resident in the U.S. to register with the Commission. A company can avoid registration by claiming exemption under rule 12g3-2(b) of the Exchange Act and thereby simply agreeing to submit to the SEC that information which is made public in their home country, in English.

² Companies would not be precluded from voluntarily registering under section 12(g) of the Exchange Act.

³ We are not proposing to change the requirements under section 15(d) of the Exchange Act which requires companies to file at least one annual report before deregistering.

Benefits

We believe our proposal would achieve the following benefits:

- *It would create symmetry between entering and exiting the Exchange Act reporting system.*

We believe there should be symmetry in the rules governing a company's registration and deregistration under the Exchange Act⁴. We acknowledge, as indicated in the Reproposal, that the Commission is planning to address the registration rules with respect to all issuers, domestic and foreign, at some time in the future. However, as discussed above, we believe there are substantive differences between a domestic issuer and a foreign private issuer and, accordingly, we recommend that the Commission address the rules applicable to each separately. Under the reproposed rules, a company could be required to register under the Exchange Act only to be eligible to deregister after one year. A company that is forced to register will likely immediately terminate its registration after completing the one year requirement. We believe that requiring such a company that otherwise has no interest in being a registrant to register and report for one year is not in the public interest.

- *It would eliminate unnecessary conditions for deregistering.*

Pursuant to the rules as reproposed, substantially all foreign private issuers, with limited exceptions, will be able to deregister if desired. Most of the proposed conditions only serve to delay deregistration - not preclude it⁵. We believe the criteria that delay a company's ability to terminate its registration do not serve a substantive public interest.

- *It would eliminate a rule that is not enforceable.*

We believe that rule 12g3-2(b) of the Exchange Act, which requires a company to claim exemption from registration with the SEC before it exceeds 300 U.S. shareholders or become a registrant when it exceeds 300 U.S. shareholders is not enforceable. This rule is not well known outside of the U.S. and many companies cannot appreciate the fact that they could become subject to SEC rules with no action on their part. Accordingly, we believe compliance with this rule is low. To illustrate, there are more than 7,000 public companies in Europe. About 270 of these companies are registrants and approximately 215 have claimed exemption under rule 12g3-2(b). While we cannot provide empirical evidence, given the globalization of

⁴ Currently, the registration and deregistration rules are fairly symmetrical - under both, the existence of 300 shareholders resident in the U.S. is the primary criteria that would cause a foreign private issuer to register or to prevent it from deregistering.

⁵ For the vast majority of companies that want to deregister, we believe that terminating their listings and/or their ADR facilities will result in less than 5% of average daily trading volume being conducted in the U.S.

the capital markets, it appears to us that from the absence of some of the names of the largest companies in the world from the list of registrants and the list of companies claiming exemption, it is reasonable to assume that a number of the remaining 6,500 companies are likely to have more than 300 U.S. shareholders. We would also not be surprised if there are a number of companies in other markets that have more than 300 U.S. shareholders that have neither claimed exemption nor registered with the SEC. We do not believe it is in the public interest to have a rule that the SEC staff cannot equally and equitably enforce on a global basis.

- *It would eliminate a rule that is not necessary to ensure U.S. investors are receiving financial information.*

Under rule 12g3-2(b) of the Exchange Act, one of the conditions for claiming exemption is for companies to provide in English to its U.S. investors the same financial information they provide in their home country market. Under the Reproposal, this can be accomplished by the company publishing the information on its website. We agree that this information should be available to U.S. investors and that the most efficient way of delivering it is to publish it on a company's website. However, we do not believe that it is necessary to require companies to claim exemption under rule 12g3-2(b) to achieve this objective. We believe a large number of companies that have claimed exemption, plus other large companies that have not claimed exemption already provide financial information, in English, on their website, to address the information needs of investors from countries outside of their own country⁶.

If the Commission would like to establish symmetry between the requirements to become a registrant and to deregister but retain the criteria for deregistration in the Reproposal, a variation of the above mentioned concepts would be to revise rule 12g3-2(b) to remove the 300 U.S. shareholder condition and replace it with the 5% trading volume condition. Accordingly, only companies with average daily trading volumes in the U.S. in excess of 5% of their total trading volumes in their primary trading market would be required to be registered under section 12(g), absent claiming exemption. We also recommend that

⁶ As an illustration, we systematically selected every twentieth company from the Commission's list of companies claiming exemption and determined that of the 32 companies that still exist today; all but one provided the applicable financial information on their website in English. To determine the information that is provided by companies that have not claimed exemption, we reviewed companies that were on the Fortune Global 500 List. From this list, we first subtracted companies incorporated in the United States (170). We then subtracted the non-U.S. companies that are registered with the SEC (114) and the non-U.S. companies that claimed exemption under rule 12g3-2(b) of the Exchange Act (61). From the 155 remaining non-U.S. companies listed in alphabetical order, we selected every fifth company and reviewed its website. We determined that of the 32 companies selected, 29 provided information consistent with what would have been required if they claimed exemption and submitted the information that is currently required by rule 12g3-2(b).

companies automatically be granted an exemption by making the information required by rule 12g3-2(b)(1)(iii) available - i.e., there is no need for them to claim exemption⁷.

Notwithstanding these views, our comments on each of the areas addressed in the Reproposal appear below.

COMMENTS ON THE REPROPOSAL

Non-Record Holder Benchmark (“Trading Volume”) – We do not believe trading volume in the U.S. is an appropriate proxy for the level of interest in a security by U.S. investors. In fact, in our March 3, 2006 letter we indicated our belief that it is unnecessary to establish a condition for termination of registration based on trading volume because such a condition would have limited applicability in practice.

Nevertheless, the Reproposal will essentially allow any foreign private issuer that wants to deregister to do so, with limited exceptions. We agree with this objective, which is consistent with our simpler alternative presented above; accordingly, we accept the reproposed Trading Volume benchmark for the interim period until the overall process is reevaluated.

One Year Ineligibility Period After Delisting –It is unnecessary to require a company whose trading volume exceeded the 5% Trading Volume benchmark prior to delisting to wait a year after it delists to terminate its registration. This requirement is not likely to cause a company to maintain its registration – it will simply operate as an unnecessary delaying mechanism. If a company wants to deregister, complying with the Commission’s rules for one additional year would not, in our view, provide any ongoing investor protection. See comments below regarding public notice requirement.

One Year Ineligibility Period After Termination of ADR Facility –It is unnecessary to have a one year delay after the termination of an ADR facility before a foreign private issuer can deregister for the same reasons as described above – it will simply be a delay that produces no ongoing investor protection. While we agree that termination of an ADR facility can have a detrimental impact on U.S. holders, that potential will continue to exist after the one-year waiting period is over, making the one-year period ineffective in providing any ongoing investor protection. Furthermore, not all foreign private issuers have an ADR facility. The prior existence of an ADR facility should not delay a company’s ability to deregister. See comments below regarding public notice requirement.

We agree with the Commission that it is in the public interest for foreign private issuers to maintain an ADR facility for U.S. investors. If the Commission were to adopt rules consistent with our simpler alternative presented above, it would eliminate the incentive for foreign private issuers to terminate their ADR facilities to cause a decrease in trading volume in the U.S.

⁷ As mentioned above, many companies around the world are not even aware that, through no action of their own, they can become subject to the SEC's reporting requirements.

Alternative 300 Holder Condition – Under the existing rules a company can deregister if it has fewer than 300 holders in the U.S. We believe that the format of the text of the re-proposed rule amendments creates requirements for using the Alternative 300 Holder Condition that are more onerous than the current exit rules. For example, the exit rules under the existing 300 holder condition do not require a company to have a primary trading market, a minimum listing period or a dormancy period. Accordingly, we recommend that the format of the text of the new rules be changed so that an issuer is not inadvertently subject to more onerous rules under the re-proposed Rule 12h-6 than under the current exit rules. The criteria listed under the Prior Exchange Act Reporting Condition, the One Year Dormancy Condition and Foreign Listing Condition in the Reproposal should only be applicable for companies using the Non-Record Holder Benchmark.

Prior Exchange Act Reporting Condition – We support the changes made in the Reproposal related to successor issuer requirements.

One-Year Dormancy Condition – We support the changes made from the original proposal to eliminate non-registered transactions from this condition.

Foreign Listing Condition – We acknowledge and support the increased flexibility that was introduced in the Foreign Listing Condition as opposed to the originally proposed Home Country Listing Condition. However, we believe that the reporting requirements for a listing and the consequent flow of information to an investor is generally determined by the *existence* of the listing and the laws and regulations to which it is subject, and not by the relative significance of that listing on that exchange or by the level of trading volumes. Accordingly, we do not believe that the rule needs to require that the market (either singularly or together with one other market) in which a company's securities are traded represents the primary trading market; rather, the rule should simply ensure that a market exists and that it requires the provision of periodic financial information to investors.

Notwithstanding the comments above, as outlined in our alternative, we believe it is not necessary to have a foreign listing condition as it would be highly unlikely that a company would delist and deregister in the U.S. if its securities were not traded in another market.

Debt Securities Provision – We support the rule enabling a foreign private issuer to terminate its Exchange Act reporting obligations regarding a class of debt securities as re-proposed.

Revised Counting Method – We support the method for counting shareholders as re-proposed.

Expanded Scope of Rule 12h-6 – We support expanding the scope of Rule 12h-6 to successor issuers and prior Form 15 filers as re-proposed.

Public Notice Requirement – We believe that the re-proposed public notice requirement, which does not require any advanced notice to the public (i.e., the notice can be issued on the

same day Form 15F is filed), does not ensure that shareholders will be provided with sufficient time to react to a company's intention to terminate its registration. As we stated in our March 3, 2006 letter, we believe that the public notice period should be at least 30 days and preferably up to 60 days to provide shareholders with ample time to react to the notice. While a number of the conditions that the Commission has proposed to implement would provide the shareholders with information for a period of time prior to deregistration, they are conditional on certain situations - e.g., terminating a listing if trading volume is over 5%, terminating an ADR program, etc. We believe that if a company is a registrant, there should be a minimum public notice period regardless of such criteria being met before a company deregisters and, likewise, a company should not be required to report for longer periods simply because of the conditions established in the Reproposal.

We recommend the Commission establish guidance in the form of public notice of a non-U.S. company's intention to deregister, such as an announcement in a company's annual report or the delivery of a notice to the U.S. shareholders.

Form 15F – We support the requirements of Form 15F as repropoed.

Amended Rules 12g-4 and 12h-3 – We support the revised counting method introduced in the Reproposal over the counting method in the existing rules. We are also in favor of complete termination of a company's registration, as introduced in the Reproposal, as opposed to only a suspension of a company's reporting obligations. However, as stated above, we believe the format of the Reproposal creates additional requirements for using the Alternative 300 Holder Condition that do not exist in the current rules. Accordingly, we recommend that the format of the text of the new rules be changed so that the new rules are not more onerous than the existing rules.

Amendment Regarding Rule 12g3-2(b) Exemption – We support the repropoed rules that would allow companies that terminate their registration to immediately claim exemption under Exchange Act rule 12g3-2(b). As stated above, we do not believe it is necessary to require companies to submit information to the SEC to claim exemption from registration. However, if this information is required, we agree that all companies should be able to satisfy this requirement by including the information on their websites.

Timing for Adoption – Large accelerated filers with a calendar year end will be required to file a Form 20-F that will include a report on internal controls over financial reporting by June 30, 2007. We believe a number of companies will want to deregister prior this date. We strongly encourage the Commission to adopt a final rule that will be effective before June 30, 2007 to allow those calendar-year companies that intend to deregister to do so before they are required to report for the year ended December 31, 2006.

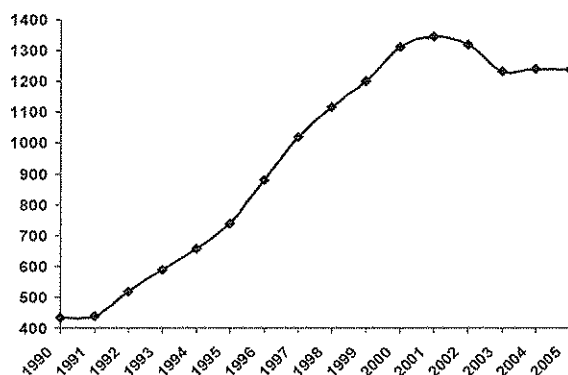
ENCOURAGE FOREIGN PRIVATE ISSUERS TO ENTER THE SYSTEM

The History

The Commission has long understood that having the securities of foreign private issuers listed and trading in the U.S. provides U.S. investors with additional investment opportunities.

The chart below was developed from information published by the Division of Corporation Finance and shows the number of foreign private issuers over the period 1990 - 2005.

Number of Foreign Issuers: 1990 - 2005

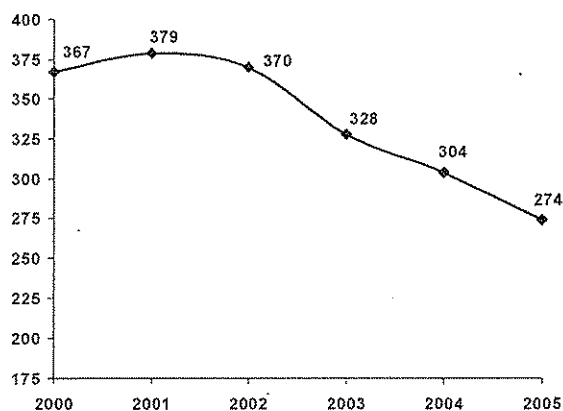


During the 1990s, the Commission made a strong effort to encourage foreign private issuers to register with the SEC. This was done in a number of different forums and included the adoption of a number of rules and policies to reduce the reporting burden on foreign private issuers. There was clear recognition that the Commission needed to have a substantial distinction in the registration and reporting requirements for non-U.S. companies compared to domestic companies to attract non-U.S. companies to become registrants. This chart demonstrates the favorable results – when the rules were designed to encourage registration, the result was a substantial increase in the number of registrants.

After a decade of significant growth, the trend changed in 2002 and there was actually a decline in the number of foreign private issuers.

The chart above only tells part of the story. There has actually been an increase in the number of registrants from Canada, primarily attributable to the current high price of commodities. To a lesser extent, there has also been an increase in the number of registrants from China, including a number of start-up companies. This contrasts to a substantial decline in the number of registrants from Europe as illustrated in the chart below, which was developed from information published by the Division of Corporation Finance.

Number of European Registrants 2000 - 2005



While the information has not been published for 2006, our experience continues to show more companies leaving the system than entering it. Based on our discussions with our clients and others, assuming the Reproposal is adopted, we expect that by the end of 2008 the number of European registrants will be less than half of the number that existed at the end of 2001.

Cost-Benefit

The decision to enter the U.S. market and register with the SEC or to deregister from the SEC has and will continue to primarily be a cost-benefit matter.

Some of our clients have indicated that the costs they are primarily concerned with are the intangible costs - the costs that cannot be predicted or budgeted. Such costs include, but are not limited to:

- litigation;
- personal liability of the officers and directors;
- investigations and the implications on the issuance of financial communications; and
- increased possibility of a restatement of the financial statements - in part attributable to different views on materiality.

In addition, the enactment of the Sarbanes-Oxley Act and the related Commission rules, which were generally applicable to both foreign private issuers and domestic issuers, is also a factor.

While the costs have increased, as a result of technology changes and the internationalization of the securities markets, the marginal benefit of having securities registered with the SEC has declined. Companies can more easily raise money through exempt transactions and as a result

of technology changes it is much easier for a U.S. resident to trade on non-U.S. exchanges. These factors have created some of the liquidity/benefit of having U.S. investors without incurring the cost to register with the SEC. That is, companies can get most of the benefit of accessing the U.S. market without incurring the cost of being an SEC registrant.

Many of our clients have indicated that they no longer believe that registering with the SEC is cost beneficial as illustrated by the following:

- There has been a substantial increase in the number of our non-U.S. clients that are accessing the U.S. debt and equity markets with exempt transactions. While there is generally a direct cost of not registering the offering, such as higher interest costs, etc., companies are concluding that the incremental cost of becoming a registrant exceeds the incremental benefit of becoming a registrant. That is, the pricing differential between an exempt transaction vs. a registered transaction is not perceived to be sufficient to justify the cost of becoming a registrant.
- There are over 7,000 public companies in Europe, of which about 270 are registered with the SEC. Accordingly, more than 96% of the public companies in Europe are not registered with the SEC despite the fact that U.S. investors may own shares in a large percentage of these companies and the holdings can be substantial⁸. As indicated in the chart above, even prior to the adoption of a rule making it easier for companies to deregister, there has been, and continues to be, a dramatic reduction in the number of European companies that are SEC registrants.

While we believe that registration with the SEC should be voluntary, we also believe that it is in the public interest to encourage foreign private issuers to become SEC registrants.

Accordingly, we believe the Commission needs to take further action to encourage non-U.S. companies to come to the U.S. market.

⁸ For example, Nestlé discloses on its website that as of December 31, 2005, it has more than 115,000 registered shareholders and estimates a total of 250,000 individual shareholders. Approximately 1/3 of the shares are held by U.S. citizens. Nestlé's market capitalization at December 31, 2005 was approximately U.S. \$116 billion. This equates to U.S. citizens owning shares worth approximately U.S. \$38 billion. Nestlé has claimed exemption from registration under rule 12g3-2(b).



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We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that the staff may have regarding our response. Please do not hesitate to contact Wayne Carnall (973-236-7233), Martin Thiselton-Dyer (973-236-5101) or David Totaro (973-236-4109) regarding our submission.

Sincerely,

PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP