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

Re: Proposed Rule: 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
SEC Release No. 34-53020; File No. S7-12-05

Dear Ms. Morris:

On behalf of our client, JPMorgan Chase Bank, N.A., we are pleased to have the opportunity to submit this letter regarding the proposed rule referenced above in response to the Commission's request for comment as set forth in Release No. 34-53020, dated December 23, 2005 (the "Proposing Release").

Our firm works extensively with JPMorgan Chase Bank, N.A. ("JPMC") in connection with its American Depositary Receipt business. Through its ADR Group, JPMC serves as depositary bank for a large number of American Depositary Receipt programs, both for foreign private issuers that are subject to the reporting requirements of the Securities Exchange Act of 1934 (the "Exchange Act") and those that are exempt from such requirements under Rule 12g3-2(b). JPMC communicates on a regular basis with foreign private issuers regarding the U.S. securities law and regulation, and has received extensive feedback from a broad range of issuers regarding the registration process and reporting regime under the Exchange Act. Through the combined experience of JPMC and our firm in the depositary receipt ("ADR") industry, we have gained an understanding of many of the objectives and concerns of foreign private issuers and market participants in establishing and maintaining ADR programs and investing in ADRs.

We strongly support the Commission's efforts to facilitate the de-registration process for foreign private issuers. We concur with the Commission's view that the current process is considered unduly restrictive by many foreign issuers, and therefore acts as a deterrent to companies that might otherwise be prepared to enter the U.S. securities markets. We strongly believe that an exit process that is perceived to be fair and flexible will attract more foreign issuers to the U.S. public markets, help to further expand and strengthen such markets, and

create significant benefits for foreign private issuers and investors alike.

We generally favor the proposed rule changes insofar as the proposed changes liberalize the existing de-registration procedures. We believe, however, that certain aspects of the proposed rule changes should be modified to ensure a more equitable de-registration process and to better promote the valid interests of foreign private issuers without undermining the protection of U.S. investors. Our suggestions in this regard are summarized below. We also point out below certain areas in which we believe clarifications to the proposed rules would be appropriate.

One-Year Dormancy Requirement; Restriction on Private Placements

Proposed Rule 12h-6 would provide that, as one of the conditions to terminating the registration of a foreign private issuer's securities under the Exchange Act, the issuer must not have directly or indirectly sold any securities in the U.S. in either a registered or unregistered offering during the preceding 12 months. In our view the prohibition against unregistered offerings is unduly restrictive and can be eliminated without adverse impact on investors. A private offering is a common and legitimate means by which companies obtain funding from accredited investors and qualified institutional buyers. Issuers contemplating de-registration should not be precluded from engaging in this type of financing, as this would create undue economic hardship and put such issuers at a significant competitive disadvantage relative to private companies that are not so restricted (including those that have already de-registered or are exempt from Exchange Act reporting by virtue of Rule 12g3-2(b) or otherwise). We believe such an onerous restriction on a foreign private issuer's ability to raise capital should be imposed only if there is clear and compelling evidence that this is necessary to protect the U.S. public markets and investors.

In our view investor protection would not be compromised by permitting foreign private issuers to engage in private placements prior to de-registration. To the extent the dormancy requirement is intended to protect potential private placement investors, such protection is not required as appropriate protections already exist under the general securities laws. By its terms, a private offering can only be conducted with qualified investors able to bear the full economic risk of such investments. It is therefore unnecessary to give these investors further protection by completely prohibiting issuers from conducting private offerings prior to de-registration. Furthermore, the dormancy requirement would not appear to provide any protection to an issuer's existing investors, as the information required to be submitted to the Commission (on Form 6-K) if a private placement occurs prior to de-registration is substantially similar to the information required to be submitted (under Rule 12g3-2(b)) after de-registration. Furthermore, we believe that public investors would primarily be concerned with the impact of de-registration on their investment, and this concern is adequately addressed under the current proposal through the inclusion of conditions designed to ensure the existence of an active and regulated offshore trading market. To the extent a restriction on private placements has any effect on existing investors such effect is likely a negative one, since the company in which they are stakeholders could be restricted from obtaining capital that may otherwise be needed for business purposes.

In addition, the offering of securities on a private basis, unlike a registered offering, is entirely consistent with an intent to exit the U.S. public markets. In this regard, there is nothing

in the Commission's proposal that would prevent foreign private issuers from engaging in unregistered offerings after terminating their Exchange Act registration. We believe there is no appreciable difference, in terms of impact on either the U.S. markets or U.S. investors, if a private offering occurs prior to or following the date on which an issuer de-registers. For the foregoing reasons we urge the Commission to exempt private offerings from the dormancy requirement, as it would be unnecessary from an investor protection standpoint and inequitable to deny foreign private issuers the ability to access qualified U.S. investors as a pre-condition to exiting the Exchange Act's registration and reporting regime.

Whether or not the restriction relating to unregistered offerings remains as proposed, we believe the dormancy requirement should not apply to offers or sales made in accordance with Rule 144A under the Securities Act of 1933 (the "Securities Act"). The Proposing Release indicates that offers and sales under Rule 144A would violate the dormancy requirement under proposed Rule 12h-6. This appears to be inconsistent with the Commission's proposal to exempt other transactions, such as issuances of shares to employees and non-underwritten offerings by selling shareholders, deemed not to be for capital formation purposes or not primarily for the benefit of the issuer. Rule 144A is a resale exemption and, as such, transactions thereunder should be exempt from the dormancy condition on the same basis as sales by selling security holders in non-underwritten offerings. A Rule 144A exempt transaction is neither undertaken primarily for the benefit of, nor to raise capital for, the issuer. We recognize that a Rule 144A resale is often preceded by a private placement which does benefit the issuer, and subsequently the securities issued in the placement are re-sold to qualified institutional buyers. Nevertheless, the initial private placement is a distinct transaction that should be treated separately under the proposed Rule, and the resale itself should be exempt even if the dormancy requirement remains applicable to private placements. For example, if a private placement was completed prior to the 12-month restricted period contemplated in proposed Rule 12h-6, there should be no reason to prohibit purchasers in the private placement from subsequently making Rule 144A resales during such 12-month period.

Home Country Listing Requirement

Proposed Rule 12h-6 would require that, during the two years preceding de-registration, a foreign private issuer must have maintained a listing in its home country, which must constitute the primary trading market for the issuer's securities. At least 55% of trading in an issuer's securities must take place in the home country in order for it to be deemed the primary trading market. Home country is defined as the jurisdiction in which the issuer is organized and, if different, the jurisdiction where it has a principal listing. Based on this definition, it appears that where an issuer is listed both in its jurisdiction of organization and in another market in which the majority of trading occurs, both markets collectively would constitute the "home country" for purposes of Rule 12h-6. We would suggest that the Rule include clarification to confirm this point. In addition, we believe the home country listing requirement can be further expanded without jeopardizing any of the protections afforded under the proposed Rule. Instead of requiring that a single home-country securities market constitute an issuer's primary trading market, we would propose that an issuer should be eligible for de-registration if (i) at least 55% of trading in the issuer's securities took place, in the aggregate, on any one or more regulated

securities markets outside the U.S. (such as a "Designated Offshore Securities Market" as defined in Regulation S under the Securities Act) during a recent 12-month period and (ii) the combined trading volume on such markets exceeded the issuer's U.S. trading volume during such period. Such a modification would continue to satisfy the Commission's concerns that the issuer must remain subject to regulation outside the U.S. and that there must be a viable trading market for an issuer's securities outside the U.S. In our view no evident investor protection or policy consideration is furthered by requiring that the home country market must constitute the single largest trading market for an issuer's securities. From the standpoint of an investor in a company that terminates its Exchange Act registration, the principal concern is the existence of at least one market outside the U.S. which regulates the issuer and where transactions can be effected in the absence of a U.S. trading market. To the extent the issuer's securities trade on more than one offshore market, this should only increase the level of protection for the investor.

In addition, we believe our proposal to expand the home country listing requirement would reflect the fact that increased internationalization of securities markets is occurring not only in the U.S. (as the Proposing Release acknowledges) but on a global basis as well. As a case in point, many issuers with headquarters or operations based in the People's Republic of China are incorporated in an offshore jurisdiction such as the Cayman Islands or Bermuda, and their securities are often listed in Hong Kong and/or other markets outside of mainland China. In such circumstances the concept of a "home country" market becomes obsolete. We believe the Commission should recognize this development, and modify its proposed rules accordingly, by adopting a listing requirement which abandons the notion of a single trading market and instead focuses on global trading activity.

We would also propose that the home country listing requirement be revised by reducing from two years to twelve months the period during which an issuer's securities must be listed in a non-U.S. market. As indicated in the Proposing Release, the purpose of the home country listing requirement is to ensure that a market exists outside the U.S. to regulate trading of an issuer's securities and enforce disclosure obligations. In our view these are forward-looking concerns intended to protect investors after an issuer has terminated its Exchange Act registration. As such, there appears to be no rationale for requiring a pre-termination listing period of greater than one year. As proposed, Rule 12h-6 would provide that 55% or more of an issuer's trading volume must occur on an overseas trading market over a recent 12-month period. If an issuer meets this condition, we believe that no incremental benefit would be achieved by requiring the issuer to have maintained a listing on such market for an additional year beyond the relevant 12-month period during which trading activity is measured.

Numerical Thresholds for De-Registration

Under proposed Rule 12h-6, any foreign private issuer would be able to de-register if U.S. residents hold 5% or less of the issuer's worldwide public float. In addition, well-known seasoned issuers ("WKSIs") would be able to de-register under an alternate standard if their average daily trading volume in the U.S. is not more than 5% of the average daily trading volume on its principal trading market and U.S. residents hold 10% or less of its worldwide public float. We believe it would be appropriate to include a similar alternate standard for non-

WKSIs which would also be based on a combination of U.S. ownership and trading volume, but would impose a more stringent trading threshold than the standard for WKSIs. We would propose that any issuer which is not a WKSI be permitted to de-register if the percentage of U.S. holders is less than 10% of the issuer's worldwide public float and U.S. trading volume is less than 2.5% of the trading volume in the issuer's principal market. The Commission's reasons for giving greater flexibility to WKSIs include the assumption that WKSIs have a greater percentage of their shares held by U.S. residents than smaller companies. However we believe that, in the absence of empirical evidence on this point, the conclusion that WKSIs have greater U.S. ownership is an overly broad generalization which fails to take account of the many smaller issuers whose securities are also widely held in the U.S. The Proposing Release also states that trading volume is not considered a "dispositive factor" for smaller issuers. In our view this too is an over-generalization, as there are many smaller issuers for which trading volume is an accurate indicator of U.S. investor interest. We believe the flexibility afforded by an alternative standard should be available to all issuers, not just the largest companies. Instead of limiting the options available to smaller companies, a more equitable approach would be to adopt an alternate standard for smaller issuers as well as WKSIs, while accounting for distinctions between WKSIs and other issuers by adjusting the applicable trading threshold (as we propose above).

We would also suggest that the Commission clarify the methodology for determining U.S. record ownership and U.S. trading volume with respect to securities held in the form of American Depositary Shares ("ADSs"). Proposed Rule 12h-6 should indicate whether the 5% and 10% U.S. record holder thresholds for de-registration are based on the number of ADSs held by U.S. residents or the aggregate number of underlying securities represented by such ADSs. Similarly, the proposed Rule should specify whether the percentage of an issuer's U.S. trading volume is calculated based on trading of ADSs or the underlying securities represented by such traded ADSs (which may be a fraction or multiple of the trading of the ADSs, depending upon the ratio of underlying securities per ADS).

As a further clarification, proposed Rule 12h-6 should specify that shares held by affiliates of the issuer are excluded from the calculation of U.S. ownership, as this is consistent with the exclusion of affiliates from the calculation of worldwide public float.

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Rule 12g3-2(b)

The proposed amendments to Rule 12g3-2(b) under the Exchange Act appear to create an inconsistency with existing provisions of such Rule. Currently, in the case of a foreign private issuer that has never registered its securities under the Exchange Act, the Rule 12g3-2(b) exemption must be perfected before the issuer is required to register, i.e., before it has 300 U.S. holders. However under proposed Rule 12g3-2(e), issuers that have de-registered would qualify for the exemption at a 5% level of U.S. ownership, which in most cases will exceed the 300 holder threshold otherwise applicable to issuers seeking the Rule 12g3-2(b) exemption. This discrepancy does not appear to serve any investor protection or other policy purpose. In our view the same standards should apply to similarly situated issuers, irrespective of whether they have previously been subject to the U.S. registration and reporting system or have not yet voluntarily entered it. Given that 5% is a sufficiently low level of U.S. investor interest to permit de-

registration, all issuers who fall below that threshold should be permitted to obtain an exemption and remain non-reporting. Therefore we would propose that Rule 12g3-2(a) be modified to create a conforming exemption under which foreign private issuers would not be required to register their securities under the Exchange Act if they have either (i) less than 5% of their public float held by U.S. residents, provided such issuers meet the "home country listing" requirement of Rule 12h-6 (in modified form as we propose above) or (ii) fewer than 300 holders resident in the U.S. Compliance with the home country listing requirement would ensure that issuers relying on the Rule 12g3-2(a) exemption meet the same conditions (to the extent applicable) as issuers relying on amended Rule 12g3-2(b). For issuers that do not meet the home country listing requirement, the 300 U.S. holder exemption could remain available under Rule 12g3-2(a).

Incorporating a 5% threshold into Rule 12g3-2(a) would also address a further ambiguity under proposed Rule 12g3-2(e). There appears to be uncertainty in the proposed Rule regarding the status of an issuer that terminates its registered status on the basis of having less than 5% US holders, but elects not to utilize the Rule 12g3-2(b) exemption. If such an issuer should have more than 300 U.S. holders at any time after terminating its registration, it appears that the issuer would not qualify for an exemption under Rule 12g3-2(a) or otherwise. Therefore, such an issuer could arguably become subject to re-registration immediately after de-registering (even if it continues to have less than 5% U.S. ownership). As a result, under the current proposal maintaining a 12g3-2(b) exemption is a *de facto* requirement for preserving de-registered status. This does not appear to be an intended result. The Proposing Release states that, with respect to the termination of an issuer's reporting status under 15(d) of the Exchange Act, the intent is for such termination to be permanent irrespective of whether a 12g3-2(b) exemption is maintained. However if the 12g3-2(b) exemption is not maintained, under the current proposal most issuers may be forced to again become reporting companies because neither Rule 12g3-2(a) nor any other exemption from registration is likely to be available. In our view it would be inconsistent for a 5% threshold to apply at the time of de-registration while reverting to a 300 holder threshold after de-registration is effected. We believe this discrepancy can be reconciled by adopting our proposal to expand Rule 12g3-2(a) by also exempting foreign private issuers having less than 5% of their worldwide public float held by U.S. residents.

We also believe there is an ambiguity under the proposed rules with respect to the timing of an issuer's election to utilize Rule 12g3-2(b) after terminating the registration of its securities. Proposed Rule 12g3-2(e) provides that issuers will immediately receive an exemption under Rule 12g3-2(b) upon de-registering, subject to meeting the publication requirement. It appears to be unclear whether immediacy is a mandatory condition of the Rule, i.e., whether an issuer could obtain an exemption under Rule 12g3-2(e) if instead of beginning to publish the required information immediately after de-registration, it elected to do so at a later time. If the 12g3-2(b) exemption is only available immediately upon de-registration, any issuer that later seeks the exemption would presumably be required to satisfy the existing 300 U.S. holder threshold as a condition to obtaining the exemption (unless Rule 12g3-2(a) is revised per our discussion above). In addition the issuer would presumably be subject to the 18-month waiting period before becoming eligible for a Rule 12g3-2(b) exemption. In our view this would be an inequitable result. If an issuer does not intend to establish a Level I ADR program upon de-registration, it should be free not to maintain a Rule 12g3-2(b) exemption at such time without

losing the ability to establish the exemption at a later date. If such an issuer should later decide to establish a Level I program, there appears to be no basis for penalizing the company by imposing a waiting period or applying the 300 U.S. holder threshold (rather than the 5% threshold) as a condition to obtaining the Rule 12g3-2(b) exemption. Therefore we would propose that issuers should remain eligible for the Rule 12g3-2(b) exemption at any time after terminating the registration of their securities, without being subject to a waiting period, so long as at the time exemption is sought they electronically publish the requisite information under proposed Rule 12g3-2(e) and continue to meet the quantitative conditions for de-registration (i.e., they meet the 5% U.S. holder threshold or any alternate thresholds the Commission may adopt). We believe this modification is consistent with, and provides further support to, our above-stated view that the 5% threshold should apply to all issuers seeking the 12g3-2(b) exemption, whether in a de-registration context or otherwise.

We also believe that the proposed amendments to Rule 12g3-2(b) create an ambiguity concerning companies that enter into merger and acquisition transactions. Under the proposed rules, an issuer that terminates the registration of its securities under the Exchange Act will immediately receive an exemption under Rule 12g3-2(b). However Rule 12g3-2(d)(2) currently provides that the exemption under Rule 12g3-2(b) is not available where a company has issued securities in connection with the acquisition of an Exchange Act reporting company. This raises the question of whether a company that otherwise meets the conditions for de-registration under the proposed rules would be disqualified if it previously acquired a reporting company. In our view, if an issuer meets the conditions for de-registration under proposed Rule 12h-6 it should have the same access to the Rule 12g3-2(b) exemption as any other company terminating the registration of its securities. Clearly the proposed rules would permit issuers that were once reporting companies to obtain the Rule 12g3-2(b) exemption upon de-registration. We believe it would be anomalous to grant the Rule 12g3-2(b) exemption as a general matter to former reporting companies, but to exclude those issuers whose reporting status resulted from having acquired a reporting company. Therefore we would propose that Rule 12g3-2(e) include clarification to the effect that that where an issuer seeks the Rule 12g3-2(b) exemption upon the de-registration of its securities under the Exchange Act, the prohibition in Rule 12g3-2(d)(2) does not apply.

With respect to the electronic publication requirement under proposed Rule 12g3-2(e), we believe a mechanism is needed pursuant to which the Commission can confirm compliance with the requirement and determine which de-registered issuers should be included in the list of foreign private issuers that provide information in accordance with Rule 12g3-2(b). Currently the Commission maintains a list of 12g3-2(b) issuers based on its receipt of paper copies of the required documents, and market participants are able to rely upon this list is to determine which issuers are maintaining the Rule 12g3-2(b) exemption. However if electronic publication is implemented for issuers who have de-registered their securities, it appears that the Commission will have no practicable means of monitoring which issuers are providing the requisite information. Therefore we would suggest that, as a condition to continued reliance on Rule 12g3-2(b), and to provide a basis on which the Commission can continue to publish its list of complying issuers, electronic publishers under Rule 12g3-2(e) should be required to certify to the Commission, on at least an annual basis, whether they have complied with the informational

requirements of the Rule.

Finally, we would recommend a grandfathering provision whereby companies that have de-registered prior to the adoption of the new rules would qualify immediately for the Rule 12g3-2(b) exemption. At present foreign private issuers that have de-registered are subject to an 18 month waiting period before they can qualify for an exemption under Rule 12g3-2(b). If the proposed rules are adopted in their current form, issuers that de-register after the effectiveness of the new rules would obtain the exemption immediately, while those issuers that de-registered prior to effectiveness may continue to be barred until the 18-month waiting period expires. We believe it would be inequitable to penalize in this manner issuers who validly effected a de-registration under the current rules, particularly since they will have met the much more stringent 300 U.S. holder standard in order to do so. Therefore the waiting period should not apply to any issuer that terminated the registration of its securities prior to the effective date of the new rules (which would effectively eliminate the need to have a waiting period at all under Rule 12g3-2(b)). Moreover, such issuers should not be required to have fewer than 300 U.S. holders in order to obtain the Rule 12g3-2(b) exemption, but should only be required to meet the 5% threshold of proposed Rule 12h-6 (or any alternate thresholds the Commission may adopt thereunder). Similarly, a grandfathering provision should be adopted with respect to Section 15(d) of the Exchange Act in order to avoid inequitable treatment of issuers that have de-registered prior to the effectiveness of the new rules. Such issuers should be granted permanent termination (rather than a temporary suspension) of their reporting obligations under Section 15(d).

In conclusion, we commend the Commission for undertaking to modify the de-registration procedures under the Exchange Act and, as a general matter, we favor the implementation of the proposed rules. However we believe the modifications proposed above, if adopted by the Commission, would help to achieve more equitably and effectively the objectives set out in the Commission's proposals.

Thank you for considering our comments. Please feel free to contact Scott A. Ziegler or George Boychuk of this firm at (212) 319-7600 with any questions you may have or for additional information.

Very truly yours,

Ziegler, Ziegler & Associates LLP

cc: Paul M. Dudek, Esq., Chief, Office of International Corporate Finance