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February 28, 2006

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

RE: Release No. 34-53020; ISR 1295; 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 proposed amendments to the rules (the "Proposed 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 Section 15(d) of the Securities Exchange Act of 1934, Release No. 34-53020; ISR 1295; File No. S7-12-05 (the "Proposing Release").

The purpose of providing these comments is to inform the Commission of our views on both general and specific aspects of the Proposed Rules. Among other things, these comments reflect discussions we have had with certain of our clients, including foreign private issuers ("FPIs") and U.S. institutional investors, regarding the scope and effect of the Proposed Rules. In addition, we respectfully wish to identify specific provisions of the Proposed Rules that we believe should be modified in the rules as finally adopted by the Commission (the "Final Rules"), in order that the Final Rules may be more useful to FPIs wishing to terminate the registration of a class of their securities under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") and their duty to file reports under Section 15(d) of the Exchange Act, while still adhering to the SEC's public policy goal of protecting U.S. investors.

Introduction

We support the efforts by the Commission, reflected in the Proposing Release, to ease the deregistration process for FPIs and remove much of the uncertainty in this area associated with the current regulatory regime. At the same time, we have a number of

areas of concern with application of the Proposed Rules to FPIs attempting to deregister. Two themes run through a number of our comments. First, we believe that the Final Rules should not impose burdens on FPIs seeking to terminate their reporting obligations that are significantly greater than those imposed by current Rules 12g-4 and 12h-3. This is consistent with the Commission's objective, as set forth in the Proposing Release, of lowering the costs associated with deregistration and termination of reporting obligations.

Second, we believe that for many U.S.-based investors that invest directly in non-U.S. securities markets, SEC filings by FPIs are not the primary, or even a significant, source of information about the FPIs in which they invest. We understand that these investors, generally institutions, have continued to invest in non-U.S. securities in recent years, notwithstanding a general decline in both the number of SEC registered securities offerings by FPIs and the number of FPIs that are registrants, indicating that these investors are willing to rely on either the continuous disclosure regimes of an FPI's home market, which in some cases impose specific requirements where the SEC's periodic reporting system does not,[1] or that, in the case of debt securities, they are willing to rely on the information provision covenants set forth in the terms of those debt securities. We infer from this that these investors are sufficiently sophisticated to determine for themselves the risks and rewards associated with investing in non-U.S. securities markets and are in less need of the protections provided by the U.S. periodic reporting regime. Indeed, the bulk of the information currently provided by an FPI to investors and furnished to the SEC under cover of Form 6-K consists of information made public in the FPI's home market. This information can easily be made available under the information furnishing provisions of Rule 12g3-2(b) or on the FPI's Web site without imposing the additional burdens associated with annual reporting on Form 20-F and related financial accounting and control requirements. Correspondingly, the holding by U.S. investors of an FPI's securities outside the U.S. should carry little or no weight in determining whether that FPI is permitted to terminate its periodic reporting obligations under the Exchange Act.

Conditions for Equity Security Registrants — The Two-Year Exchange Act Reporting Condition (II.B.2.A of the Proposing Release)

The Proposed Rules would require an FPI seeking deregistration of a class of equity securities under Rule 12h-6 to have been an Exchange Act filer for at least two years prior to filing its Form 15F and to have filed at least two annual reports. This two-year reporting requirement would impose a greater burden to achieve deregistration than is currently applied to certain FPIs by Rule 12h-3.[2] We believe that it would be consistent with the Commission's policy objectives set forth in the Proposing Release to permit those FPIs who have never conducted a securities offering in the U.S. to deregister regardless of

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[1] For example, the SEC's periodic reporting system generally defers to FPI home market requirements with respect to interim reporting.

[2] Specifically, those FPIs that have effected a "Level II" listing--a listing without a securities offering--on Nasdaq or the NYSE do not currently have to meet this requirement.

their Exchange Act reporting history, as long as they meet the other conditions set forth in the Final Rules.

Conditions for Equity Security Registrants — The One-Year Dormancy Condition (II.B.2.B of the Proposing Release)

Rule 12h-6's General Unavailability for Issuers Who Have Conducted Unregistered Offerings of Securities in the Previous 12 Months

The deregistration provisions of Proposed Rule 12h-6 would be unavailable to an FPI that has sold securities in the U.S. in the previous 12 months, subject to very limited exceptions. This prohibition would generally apply regardless of whether the offering was registered or unregistered, although most issuances of securities under a Section 3 exemption would not preclude deregistration (unless issued under the exemption provided by Section 3(a)(10)).

We agree that the dormancy requirement should extend to most registered offerings by the FPI itself. It is generally appropriate to preclude deregistration where the FPI has actively engaged in a U.S. public offering and sold securities thereby within the previous year. However, we believe that the dormancy requirement's prohibition on the FPI engaging, within the preceding 12 months, in **any** U.S. private placements, Section 3(a)(10) offerings or Rule 801 or 802 offerings is not necessary for the protection of U.S. investors. Some or all of these types of offerings should be exempted from the dormancy requirement because either they do not carry with them the characteristics of a U.S. public offering or because they involve a placement to investors who do not realistically need the protection of the U.S. securities laws and are able to assess and bargain for the information they need to make their investments. As a practical matter, under the 12-month dormancy requirement as proposed FPIs contemplating deregistration would systematically exclude U.S. investors from their private placements for at least a one-year period. We do not see any policy reasons why U.S. private placement purchasers should be categorically denied the opportunity to invest in FPI private placements during such a lengthy period. In addition, inclusion in the dormancy requirement of a blanket prohibition on these transactions during the previous 12 months would make the Final Rules substantially more costly and burdensome than currently is the case under Rules 12g-4 and 13h-3. This would be contrary to the Commission's objective of lowering the costs associated with deregistering and termination of reporting obligations.

We respectfully suggest that the dormancy requirement be modified so that the Final Rules permit an FPI to conduct a private placement, a Section 3(a)(10) offering or a Rule 801 or 802 offering during the dormancy period where the placement or offering would not be likely to give rise to U.S. public market interest in the FPI's securities. We believe that consideration should be given to the following non-exclusive alternatives for permitting unregistered securities transactions during the dormancy period:

- All private placements. Permitting any and all private placements during the dormancy period would be a simple approach that would have the benefit of leaving no ambiguity while still protecting U.S. investors who invest in FPIs through public offerings.

- Private placements of securities of a class other than those that gave rise to the FPI's reporting obligation. Permitting private placements of securities other than those that gave rise to the FPI's reporting obligations is unlikely to implicate the policy concerns raised by the Commission in the Proposing Release that militate against permitting FPIs to deregister. In this regard, it is instructive to note that, under current rules, an FPI registrant seeking to deregister and suspend its reporting obligations would not be precluded from engaging in such private placements. We do not believe the Final Rules should be more burdensome in this area.

- Placements of securities to Qualified Institutional Buyers or other accredited investors that agree to resell the securities only in non-U.S. markets. The Commission is understandably concerned that an FPI seeking to deregister not create interest in its securities in U.S. securities markets or seek to take advantage of any such interest that does exist. We believe that this risk can be substantially eliminated where sophisticated investors in privately placed securities agree that any resale by them of those securities will occur solely outside the U.S. This type of restriction would effectively limit the placement to sophisticated investors who are accustomed to dealing in offshore securities markets and do not need the protections of U.S. securities laws.

- Placements of securities to majority shareholders or affiliates of the issuer. Certain FPIs have majority or affiliated security holders located in the U.S. who may wish to invest further in securities of the FPI, including for purposes such as realizing tax advantages or maintaining a percentage ownership level as part of a pre-emptive rights offering. Such placements clearly are not attempts by the FPI to create U.S. market interest in its securities and are not undertaken for the purpose of capital formation via the U.S. capital markets. Moreover, any resale of such securities by an affiliated security holder would itself be subject to regulation under the Securities Act of 1933 (the "Securities Act") if effected within the U.S. In our view, such placements to affiliated security holders should not run afoul of the proposed one-year dormancy requirements.

- Rule 801 and 802 transactions. When the Commission adopted the exemptions from registration provided by Rule 801 (with respect to certain rights offerings) and Rule 802 (with respect to certain exchange offer and business combination transactions), it explicitly stated that the limited involvement of U.S. investors in these offerings made the cost and expense

of the registration process unduly burdensome. We do not now see a policy justification for permitting an offeror to forego registering a transaction and providing concomitant Securities Act disclosures while nonetheless requiring that offeror to effectively provide those disclosures (via a Form 20-F annual report) during the ensuing 12 months. In addition to being inconsistent with the rationale underlying Rules 801 and 802, this approach would effectively place reporting companies and their investors and successors in a worse position, in terms of their ability to effect rights offerings or become the subject of a business combination transaction, than would be the case for non-reporting companies.

- Issuances of securities under a Section 3(a)(10) exemption that are not for the purpose of raising capital. In our experience, the exemption from registration provided by Section 3(a)(10) of the Securities Act is from time to time relied upon by FPIs to effect transactions that do not give rise to concerns that the FPI is attempting to create or take advantage of U.S. interest in its securities to raise capital. For example, certain European issuers have effected holding company reorganizations, in reliance on Section 3(a)(10), for the purpose of moving their seat of incorporation or to take advantage of more efficient tax structuring opportunities. These transactions frequently are similar to the migration of a U.S. company from one state to another but, for reasons peculiar to the corporate statutes of the jurisdiction of organization of the FPI, may require the creation of a new company to issue securities in exchange for those of the FPI. In our view, such transactions should not prevent the FPI from taking advantage of deregistration where the assets and liabilities of the FPI and the new company are substantially identical. These transactions are not intended to introduce the issuer to new investors or raise capital in the U.S. market and thus the policy concerns underlying the dormancy condition should not be implicated. The Proposed Rules' exclusion of Section 3(a)(9) exchange offers from the dormancy condition suggests that the Commission agrees with this view in an analogous context. In addition, we note that the Commission's rules currently recognize other situations in which securities can be offered without registration where the purpose of the issuance is other than for capital raising.[3]

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

The Proposed Rules would eliminate the ability of an FPI to deregister when it has outstanding warrants or similar securities held by U.S. investors that have been exercised during the previous 12 months, regardless of whether the warrants or similar securities, or the securities issued upon their exercise, were issued under an SEC registration statement.

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3 See, *e.g.*, Securities Act Rule 701 and, in particular, Preliminary Note 5 thereto.

Although we generally support the SEC's attempt to limit, through a 12-month dormancy requirement, the ability of deregistering FPIs to be active in U.S. public securities markets, we believe it would be unfairly burdensome to impose this dormancy requirement on issuers that acted under the prior regulatory regime and, notwithstanding the warrant exercise, would be eligible to deregister under current rules.

This problem could be addressed by grandfathering currently outstanding warrants or similar securities, such that the dormancy requirement would not be violated upon the exercise of such securities in either of the following circumstances:

- the securities were issued prior to the effective date of the Proposed Rules; or
- the securities were issued prior to the commencement of the dormancy period and expire prior to the end of the dormancy period.

Implementing these exceptions would also further the Commission's stated objective of lowering the costs associated with deregistration and termination of reporting obligations.

Determination of Date of Sale in Certain Transactions

The dormancy requirement of Proposed 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 Proposed Rules, however, provide no guidance on when a sale of securities has occurred for purpose of compliance with the Proposed 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 needless uncertainty 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 Proposing Release and with broader principles of investor protection to designate, solely for purposes of interpreting Proposed 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 largely cease.

[4] Release No. 33-8591, *see* footnote 394 and accompanying text.

Application of Dormancy Requirement to Certain FPI Acquisitions

The dormancy requirement as set forth in the Proposed Rules may have unintended consequences in two acquisition situations. First, the dormancy requirement would appear not to have been met where a non-reporting FPI would become a successor registrant by acquiring an SEC registrant and the consideration for the acquisition involves securities issued in an exempt transaction (e.g., to a U.S. institutional investor). We believe that, if such an acquiror would otherwise meet the 300 holder alternative threshold of the Proposed Rules, it should not be prevented from terminating its reporting obligations with immediate effect, even in a situation where the target did not meet the reporting history requirements of the Proposed Rules. This result is consistent with the overall principles of investor protection set forth in the Proposing Release, and we believe the Commission should revise the Final Rules to make it clear that this is the case.

Second, the Proposed Rules could be interpreted to require a non-reporting FPI that has completed a U.S. private placement in the last 12 months, and that subsequently acquires a U.S. registrant in an all-cash deal, to become a successor registrant to such U.S. registrant, with corresponding reporting obligations notwithstanding the absence of any U.S. public security holders. The Proposed Rules should be revised to make clear this is not the intended effect.

Conditions for Equity Security Registrants — The Home Country Listing Condition (II.B.2.C of the Proposing Release)

The Proposed Home Country Listing Requirement is Inappropriate as Drafted

The two-year home country listing requirement set forth in the Proposed Rules represents a significantly more burdensome standard than exists under current rules, which impose no such requirement. The policy basis for this two-year historical listing requirement is unclear, and we believe that if an FPI currently satisfies the home country listing requirement, the investor protection concerns underlying the Proposed Rules should be met. In any event, if the Commission includes the two-year historical requirement in the Final Rule, we believe that the Final Rule should be modified to permit a deregistering FPI to take into account the home country listing history of any predecessor entity.

On a technical drafting point, the definition of "primary trading market" in Proposed Rule 12h-6(d)(6) appears to apply the 55% test to **all** of the issuer's securities (debt and equity) whether or not they are of the class that gave rise to the FPI's U.S. reporting obligations. However, the provision of Proposed Rule 12h-6(a)(3) that seeks to apply the home country listing requirement only speaks to the "subject class" of securities being required to be listed on the primary trading market. We respectfully recommend that the definition of primary trading market be amended to make clear that an FPI need only take into account the subject class of equity securities for which deregistration is sought, and not all of the issuer's securities.

Conditions for Equity Security Registrants — Public Float and Trading Volume Benchmarks (II.B.2.D of the Proposing Release)

F-3 Eligibility, rather than WKSI status, should be the Threshold

We believe that F-3 eligibility, rather than well known seasoned issuer ("WKSI") status, should be the standard for an FPI to meet in order that it qualify for the higher 10% ownership threshold contemplated by Proposed Rule 12h-6(a)(4). We note that since the presumption underlying the abbreviated disclosure requirements of F-3 is that there is already sufficient information about the issuer in the marketplace, such an application of the F-3 standards is in line with the concerns set forth in the Proposing Release regarding the adequacy of information concerning an FPI seeking to deregister.

Holdings by U.S. Investors in Foreign Markets Should be Excluded

We believe that holdings by U.S. investors of securities that trade only in an FPI's local market should not be included in the numerator of the calculation used to determine whether U.S. shareholder ownership exceeds the percentage thresholds specified in the Proposed Rules. Thus, for example, an ADR or New York Share (the latter issued principally by certain Netherlands issuers) held by a U.S. investor would count toward the threshold while a share traded only in non-U.S. markets would not. As discussed above, investors that participate directly in these non-U.S. markets likely are sophisticated and have made the decision to rely upon the disclosure regimes of those markets. Therefore, these holdings should not be counted toward the relevant threshold (and therefore should be excluded from the numerator in the percentage calculation) when calculating an FPI's U.S. shareholder base for purposes of deregistration. If the Commission desired, this exclusion could be limited to securities for which the primary trading market is one of several designated non-U.S. markets that the SEC views as having annual and interim disclosure requirements that are sufficiently robust to protect U.S. investors active in those markets.[5]

Holdings by QIBs Should be Excluded

We believe that holdings of securities by qualified institutional buyers should not be included in the numerator of the calculation used to determine whether U.S. shareholder ownership exceeds the 10% threshold. Rule 144A reflects the Commission's determination that QIBs do not require the protection of the U.S. periodic disclosure regime. Specifically, subparagraph (d)(4) of that Rule permits an issuer to satisfy the

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5 For example, the amendments to SEC Form 20-F adopted during the year 2000 were largely intended to bring that Form into line with IOSCO standards for annual reports. These standards also were reflected in the adoption of the European Union Prospectus Directive that came into effect in 2005. Issuers in jurisdictions that impose IOSCO or similar standards for annual reporting could be deemed to have met this sufficiently robust standard.

ongoing information delivery requirements of the Rule by providing home country information pursuant to Rule 12g3-2(b) under the Exchange Act. Correspondingly, holdings by QIBs should not trigger the investor protection concerns articulated by the Commission in the Proposing Release, and these QIBs should be treated in the same manner as an investor in the FPI's home market, *i.e.*, their holdings should be included in the denominator but not in the numerator of any percentage holding calculation.

The Affiliate Exception Should be Supplemented by an Alternative Bright Line Test

As proposed, the public float test excludes securities held by affiliates. Due to the ambiguities inherent in the general definition of affiliate, this exclusion may lead to uncertainty as to whether certain FPIs meets the public float test, which would run contrary to Commission's objective in the Proposing Release of providing a clearly defined process with appropriate benchmarks for deregistration. The SEC should consider permitting FPIs to utilize an alternative bright-line percentage test, such as a 10% shareholding position, without reference to whether the U.S. holder is an affiliate, in order to measure an FPI's U.S. shareholder base. This would eliminate the uncertainty associated with determining whether a particular shareholder is an affiliate and would allow FPIs to better assess their eligibility to deregister.

Conditions for Equity Security Registrants — Alternative Threshold Record Holder Condition (II.B.2.E of the Proposing Release)

Proposed Rule 12h-6(a)(6) would permit an FPI to deregister and terminate its reporting obligations where a class of equity securities was held of record by either less than 300 persons on a worldwide basis or less than 300 U.S. residents, assuming that the FPI meets the other conditions of Proposed Rule 12h-6(a). The Commission's stated purpose in proposing this alternative threshold is to ensure that the new deregistration rules are no more rigorous than the current rules. We believe that Proposed Rule 12h-6(a)(6) fails to meet this purpose and, in addition, we believe that the 300 record holder threshold should be modified.

Proposed Rule 12h-6(a) adds additional requirements (two-year reporting history, one year dormancy period and a home country listing) to the 300 holder thresholds that currently exist in Rules 12g-4 and 12h-4. These additional requirements make the Proposed Rule significantly more rigorous than the current rule, 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, 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 Proposed Rule 12h-6(a), we strongly disagree with the Commission's proposal to eliminate the provisions of the existing rules that would enable an FPI to terminate registration or suspend reporting obligations. Given the uncertain impact of the Proposed Rules, we believe it would be preferable to maintain the existing rules in place 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.

We also believe that the proposed alternative threshold 300 record holder condition (with respect to either U.S. persons or worldwide residents) does not reflect the realities of the operation of modern-day international capital markets. As discussed above, U.S.-based investors that invest directly in non-U.S. securities markets are sufficiently sophisticated to determine for themselves the risks and rewards associated with investing in those securities markets and are less in need of the protections provided by the U.S. periodic reporting regime. Correspondingly, we do not believe that U.S. investors holding an FPI's securities outside the U.S. should be considered in counting the number of record holders located in the U.S. Similarly, calculation of the 300 holder threshold should exclude either affiliates of an issuer (even if those affiliates are located in the U.S.) or, preferably, holders of a percentage threshold in excess of some bright-line percentage threshold, such as 10%. In either case, we believe the Commission could reasonably conclude that these investors are not in need of the protection of the U.S. periodic disclosure regime.

In addition, we believe that the 300 holder threshold should be increased to reflect the realities of modern-day capital markets. As noted by the Commission in the Proposing Release, it has been nearly 40 years since the Commission adopted the 300 holder threshold and, since that time, market globalization and more widespread participation by both institutional and individual investors worldwide has expanded the number of capital raising alternatives available to issuers. In light of these developments, we are concerned that the 300 holder threshold will be viewed by many FPIs as a significant disincentive to accessing the U.S. capital markets, resulting in decreased access for U.S. investors to non-U.S. investment opportunities. In light of the competing policy concerns of facilitating U.S. investor access to non-U.S. investment opportunities and maintaining adequate safeguards for protection of U.S. investors, we believe that the Commission should consider increasing the record holder threshold by a significant amount, but for a fixed period of time, with the understanding that the effects of any such increase would be assessed after sufficient experience has been gained with its operation. While we are not aware of any objective data that would support a particular threshold higher (or lower) than 300 U.S. holders, we would suggest increasing the threshold to 3,000 U.S. holders in order to clearly illustrate the impact of an increased threshold, but that an assessment of this impact be undertaken after an evaluation period of two years or more.

Conditions for Debt Security Registrants (II.B.3 of the Proposing Release)

In past years, many FPIs issued debt securities in Rule 144A transactions that included both an obligation by the issuer to register the securities in an "Exxon Capital" exchange offer and ongoing information provision covenants requiring the issuer to make periodic voluntary filings with the SEC. Such registration rights provisions and information provision covenants are no longer market practice with respect to FPIs. We believe that where an FPI has been filing periodic reports with the SEC pursuant to such voluntary information provision covenants, the FPI should be permitted to eliminate its obligation to make SEC filings without regard to the number of holders of its debt

securities where an appropriate proportion of such holders agree to amend the indenture governing the debt securities to eliminate the information provision covenants. For the most part, we believe that these securities continue to be held by large institutions that are capable of making their own determination as to whether or not they need the benefit of SEC disclosure. The SEC should not prevent deregistration by FPIs who have bargained with their debt security holders to no longer provide SEC reporting information.

Counting Method (II.B.4 of the Proposing Release)

We support the adoption of Proposed Rule 12h-6(e), which would permit an FPI to use a method of calculating record ownership that is similar to that adopted under the exemptive rules for cross-border rights offerings, exchange offers and business combinations. In response to the Commission's request for specific comment, we also believe that an FPI should be permitted to rely on information obtained through foreign statutory or code provisions when calculating the percentage of its worldwide public float held by U.S. residents or the number of its U.S. resident equity or debt holders. Examples of such statutory provisions include the company investigation procedure specified in §212 of the Companies Act 1985 of England and Wales and the *Titres au Porteur Identifiés* procedure available to French companies under Article L. 228-2 of the French Commercial Code. In our experience, these procedures provide established and reliable means for companies to ascertain information about their shareholders, which information could be used when calculating the participation of U.S. investors in their securities The ability to use such procedures could be limited to specific non-U.S. markets (e.g., E.U. regulated markets) that the SEC views as having sufficiently sophisticated corporate laws to ensure reasonably accurate tallies of U.S. investor participation in those markets' FPIs. Alternatively, authority could be delegated to the Staff of the Division of Corporation Finance to approve a category of designated home market counting mechanisms based on reliability criteria.

Form 15F (II.B.5 of the Proposing Release)

As proposed, the new Form 15F would become effective 90 days after it was filed. However, the Proposed Rules would require the Form 15F to be withdrawn if the FPI determines it is no longer eligible for deregistration during the period between filing and effectiveness. We are concerned that this interim period would present an opportunity for shareholders to manipulate an issuer's deregistration eligibility, especially since many of the thresholds for deregistration are out of the issuer's control. We would suggest that either the public float and trading volume benchmarks should fall away during the pendency period, or that the public float and trading volume benchmarks should be subject to an automatic upward adjustment of between 10% and 20% during the pendency period to provide a disincentive from engaging in any such manipulation.

Proposed Amendment Regarding Rule 12g3-2(b) (II.C of the Proposing Release)

In addition to the amendments contemplated by the Proposed Rules, we believe that Rule 12g3-2 should be further amended to eliminate the requirement that FPIs that already avail themselves of the reporting exemption of Rule 12g3-2(b) continue to make paper filings with SEC. The proposed revisions to Rule 12g3-2(b) would permit an FPI that has filed a Form 15F pursuant to Proposed Rule 12h-6 to publish materials on its Web site. We believe there is no basis in policy for differentiating such an issuer from those FPIs currently making paper filings under Rule 12g3-2(b). In the electronic era, where investors are accustomed to obtaining information through accessing issuers' Web sites, we also believe that these paper filings are burdensome and provide no meaningful benefit to U.S. investors. On that basis, we respectfully suggest that current Rule 12g3-2(b) be modified to provide existing exempt issuers the alternative option of satisfying the information content requirements of that rule electronically.

Other Comments — Rule 701

We believe that the Proposed Rules leave several open questions under Rule 701 that should be addressed in the Final Rules. Specifically, we believe the Proposed 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 address how an FPI deregistering under the Proposed Rules should convert an equity compensation plan previously registered on Form S-8 to one that is eligible to 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.

Other Comments—Transitional Provisions for Suspended Filers

The Proposed Rules make no provisions for dealing with FPIs that currently have suspended filing obligations under the Exchange Act. We believe that, where an FPI's filing obligations have been suspended without interruption for some reasonable period, such as 12 months, it should be permitted to file a Form 15F notwithstanding the fact that it may not be able to meet the other requirements of Rule 12h-6.

Conclusion

We appreciate the opportunity to comment on the Proposed 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 numerical and categorical standards for deregistration contemplated by the Proposed Rules are likely to have a positive impact on the willingness of FPIs to access the U.S. public capital markets. Nevertheless, some change to the Proposed Rules are necessary in order to ensure that the Final Rules are not more burdensome than the existing rules and that they address the practical obstacles to exiting U.S. public securities markets currently perceived by FPIs.

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Please contact Michael P. Rogan in our Washington office at 202-371-7550 (mrogan@skadden.com) or Richard A. Ely in our London office at 011-44-20-7519-7171 (rely@skadden.com) with any questions relating to this comment letter.

Very truly yours,

Skadden, Arps, Slate, Meagher & Flom LLP

Skadden, Arps, Slate, Meagher & Flom LLP

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

Elliot Staffin
(Special Counsel, Office of International Corporate Finance)