Trust & Security Services
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Jonathan G. Katz, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

RE: Deregistration and Termination of Periodic Reporting by Foreign Private Issuers (File No. S7-12-05)

Dear Mr. Katz:

Deutsche Bank Trust Company Americas ("***Deutsche Bank***") submits this letter in response to Release No. 34-53020 (the "***Release***") of the U.S. Securities Exchange Commission (the "***Commission***") requesting comments on the proposed amendments to the deregistration of securities and the duty to file reports for foreign private issuers under the U.S. Securities Exchange Act of 1934 (the "***Exchange Act***").

Overall, we view the proposals as a significant step forward from current law and believe they appropriately address the concerns and difficulties of foreign private issuers while protecting investors and the integrity of the U.S. securities markets.

This letter is intended to provide suggestions to further the Commission's objectives as well as to strengthen the underlying goals of the proposals.

Deutsche Bank is a depositary bank, acting on behalf of foreign private issuers who have established or are seeking to establish depositary receipts programs in respect of their equity shares, either in the United States through the issuance of American Depositary Receipts or elsewhere through the issuance of Global Depositary Receipts, which are generally listed on either the London Stock Exchange or the Luxembourg Stock Exchange.

I. SECTION 12(G)

We strongly support the Commission's proposals to broaden a foreign private issuer's ability to deregister a class of equity securities under Section 12 of the Exchange Act. We share the concerns expressed by commentators (summarized in Section I.C of the Release) about the current test, which is based on the ownership of the class of securities.

The proposals do not, however, affect the requirement to *register* under Section 12(g), which continues to look to record ownership. In particular, under Rule 12g3-2(a), if a foreign private issuer has assets in excess of $10 million[1] and a class of equity securities held by at least 500 record shareholders (of whom at least 300 are resident in the United States) it must register those securities under Section 12(g).

We believe that proposed Rule 12h-6's numerical tests for deregistration (which are based on the percentage of U.S. share ownership, or, in the case of well known seasoned issuers only, the percentage of share ownership coupled with average daily trading volume) should logically be incorporated in Rule 12g3-2(a).

If the two Rules do not match, proposed Rule 12h-6 raises the anomalous possibility that a foreign private issuer would be subject to Section 12(g) registration (because it had more than 500 shareholders, of whom more than 300 were U.S. shareholders), even though it would qualify for deregistration under the percentage tests of Rule 12h-6. Such an issuer would have to remain registered for a period of at least two years (and file two Annual Reports on Form 20-F) before it would be able to take advantage of proposed Rule 12h-6, because of the Rule's "seasoning" requirements. (It would also have to refrain from offering securities in both registered and unregistered transactions in the United States, with certain exceptions.)

Admittedly, the exemption from Section 12(g) registration provided by Rule 12g3-2(b) would be available for a foreign private issuer that exceeded the 500 total/300 U.S. shareholder limit. But if this issuer failed to claim the benefit of the Rule 12g3-2(b) exemption within the time period specified by Rule 12g3-2(b)(2) – namely, 120 days after the end of the fiscal year in which the issuer first became subject to Section 12(g) registration – it would be required to prepare and file an Exchange Act registration statement and two Annual Reports on Form 20-F. This would be the case even though it would be eligible to deregister under Rule 12h-6 once it made these two filings (assuming, of course, that the other requirements of proposed Rule 12h-6 were met). This is a particular concern given the difficulties some foreign private issuers have historically experienced in establishing the precise number of their U.S. shareholders, as well as the time necessary to do so and the fact that 300 U.S. shareholders is a relatively low limit in today's international capital markets.

We would accordingly suggest that the Commission consider proposing a modification to the test of Rule 12g3-2(a) to import the percentage tests of proposed Rule 12h-6 in addition to the current 500 total/300 U.S. shareholder limit.[2]

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[1] In the case of a foreign private issuer whose securities are quoted on Nasdaq, this threshold is $1 million, not $10 million. *See* Exchange Act Rule 12g-1.

[2] In this connection, we would suggest that the Commission consider adopting an "amnesty" for issuers that meet the percentage tests of proposed Rule 12h-6 but that fail the 500 total/300 U.S. shareholder limit and have not previously claimed the benefit of the Rule 12g3-2(b) exemption in a timely fashion. That amnesty could last for a period of time after the revisions to Rule 12g3-2(a) became effective, for example by requiring an application for exemption within 120 days after the effective date of the amendments.

II. TREATMENT OF QUALIFIED INSTITUTIONAL BUYERS UNDER RULE 12H-6

Under proposed Rule 12h-6 (as under the current rules), all record holders that are U.S. residents are essentially counted in the same way. We believe that it would be appropriate to allow foreign private issuers to treat certain institutional investors differently for counting purposes. We accordingly suggest that proposed Rule 12h-6 be modified to exclude qualified institutional buyers ("***QIBs***") as defined in Rule 144A under the Securities Act of 1933, as amended, from all calculations of U.S. shareholders.

Excluding QIBs would be consistent with the policy underlying Rule 144A, which takes into account the size and sophistication of QIBs in allowing them to resell securities on an unregistered basis. U.S.-based QIBs increasingly purchase securities directly in international capital markets, and have the ability to obtain and judge foreign private issuer's local disclosures in its home market.

III. FILING RULE 12G3-2(B) REPORTS ELECTRONICALLY

We strongly support the Commission's proposed Rule 12g3-2(e), providing that foreign private issuers that have deregistered securities would immediately be able to claim the Rule 12g3-2(b) exemption from registration, subject to publishing in English information required by Rule 12g3-2(b)(1)(iii) ("***Rule 12g3-2(b) Information***") on their Internet web sites.

We believe that Rule 12g3-2(b) should similarly be amended to replace the current system of paper submission of Rule 12g3-2(b) Information with one of electronic publication on a foreign private issuer's Internet website. Requiring Rule 12g3-2(b) Information to be posted on an issuer's Internet web site makes that information immediately accessible, and would be consistent with the Commission's elimination of paper filings by foreign private issuers more generally. It seems to us that that investors should have the same ease of access to Rule 12g3-2(b) Information, regardless of whether the foreign private issuer provides that information pursuant to Rule 12g3-2(b) or Rule 12g3-2(e). In addition, we believe that foreign private issuers will likely find electronic publication less burdensome than on-going paper submissions.

IV. DEFINITION OF "HOME COUNTRY"

One of the conditions of proposed Rule 12h-6 is that a foreign private issuer must have maintained a listing of the class of securities it is seeking to delist for the preceding two years on an exchange in its home country, and that exchange must be the primary trading market for its securities. The definition of "home country" for purposes of Rule 12h-6 is the same as under Form 20-F, and looks to both the jurisdiction in which the issuer is legally organized *and*, if different, the jurisdiction where it has its principal listing.

For reasons such as tax, local regulation or investor familiarity, certain foreign private issuers are organized in a jurisdiction in which they do not maintain a listing, such as Bermuda or the Cayman Islands. We assume that an issuer in this situation would be able to take advantage of proposed Rule 12h-6, because it will have maintained a listing of the subject class of securities in one of its home jurisdictions (*i.e.*, its jurisdiction of principal listing).

We accordingly believe it would be helpful for the Commission to make clear in the adopting release for Rule 12h-6 that an issuer with more than one home country may still meet the requirements of Rule 12h-6(a)(3) if its securities have been listed for the preceding two years on an exchange in one of its home countries, and that exchange is the primary trading market for its securities.

V. ADDITIONAL ISSUES

In response to specific questions raised in the Release for which comments were solicited, we write in support of several of the amendments as proposed:

- We strongly support the termination of a foreign private issuer's reporting obligations under Section 15(d) of the Exchange Act as contemplated in proposed Rule 12h-6. Factors such as the number or percentages of U.S. resident shareholders should not trigger any future reporting obligations once a foreign private issuer has deregistered. Permanent termination of reporting obligations provides greater certainty for foreign private issuers upon deregistration.

- We do not think it is advisable to require the issuer to self-tender for securities held by U.S. residents. A mandatory tender could raise various local corporate law issues that could prevent foreign private issuers from deregistering even though they meet the requirements of proposed Rule 12h-6, which we know to be the case in several jurisdictions. For example, such a requirement could result in uncertainties as to whether the foreign private issuer would have to tender to all of its shareholders and not just those in the United States. As proposed, U.S. investors are adequately protected by having Rule 12g3-2(b) Information being made available.

- We also support that foreign private issuers may rely in good faith on third-party information service providers to assist in determining the level of U.S. ownership as provided under proposed Rule 12h-6(e)(4). Currently, many foreign private issuers experience difficulties in identifying the number of record U.S. holders and proposed Rule 12h-6(e)(4) helps address this concern.

- Finally, we support that the calculation of U.S. public float in proposed Rules 12h-6(a)(4)(ii) and 12h-6(a)(5) should be based on the percentage of the foreign private issuer's worldwide public float of securities, rather than a specified U.S. public float expressed in U.S. dollars. Using a dollar amount rather than a percentage would introduce complexity to a clear standard and would fail consistently to provide a relevant indication of general U.S. market interest in the foreign private issuer's class of securities.

VI. CONCLUSION AND CONTACTS

Deutsche Bank appreciates the opportunity to comment on the proposals contained in the Release. We are available to discuss with the Commission or its Staff any of

our questions or further clarification on our suggestions contained in this letter. Please direct all enquiries to Tom Murphy at 011 44 20 7547 0416.

Respectfully submitted,

Deutsche Bank Trust Company Americas

Cc: Hon. Christopher Cox, Chairman
Hon. Cynthia A. Glassman, Commissioner
Hon. Paul S. Atkins, Commissioner
Hon. Roel C. Campos, Commissioner
Hon. Annette L. Nazereth, Commissioner

Brian G. Cartwright, General Counsel
John W. White, Director, Division of Corporation Finance
Paul M. Dudek, Chief, Office of International Corporate Finance