ALLEN & OVERY LLP
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HERBERT SMITH LLP
LINKLATERS LLP
NORTON ROSE LLP

June 23, 2008

By Electronic Mail to *rule-comments@sec.gov*

Nancy M. Morris
Secretary
US Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
United States

File No. S7-10-08 – Release 33-8917 – Revisions to the Cross-Border Tender Offer, Exchange Offer, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions

Dear Ms. Morris:

This letter is submitted on behalf of the Permanent Committee (the "Committee") in response to the request by the Securities and Exchange Commission (the "Commission") for comments in respect of its May 6, 2008 release referenced above (the "Release").

Based in London, the Committee is an informal group comprising US partners of seven international law firms - signatories of this letter – headquartered in London that have established US securities and mergers and acquisitions practices. Every member firm has US-qualified partners and associates and five member firms have offices in the United States, although the majority of our attorneys are admitted to practice law in jurisdictions other than the United States and the majority of our offices are located outside of the United States. Clients of our firms include a large number of US institutional investors and foreign private issuers.

The Committee supports and commends the Commission's efforts to revise the current rules in order to address the areas of conflict or inconsistency with foreign regulations and practice to encourage the on-par participation of US holders of the securities of foreign private issuers in cross-border tender offer, exchange offer and business combination transactions. In particular, the Committee broadly welcomes and supports the proposals in the Release that are aimed to provide greater certainty with respect to the availability of the cross-border exemptions for both hostile and non-hostile cross-border transactions.

The Committee strongly believes that in order for the final rule to be successful, however, it must address the high concentration of US institutional investors that typically have substantial (though less than 10%) shareholdings in non-reporting foreign issuers through the local market.

As the Commission has recognized, US institutional investors are often attracted to the foreign capital markets. In deciding to participate directly in foreign capital markets with respect to non-reporting foreign issuers, such institutions elect to rely on the protections of local securities regulation and disclosure standards rather than those of the United States. Non US-registered foreign issuers are not subject to the periodic reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and these investors should not expect such issuers to be subject to the Exchange Act's tender offer rules or for the exchange of any security offered

to them as consideration to be registered under the Securities Act of 1933, as amended (the "Securities Act").

Extra-territorial investments by institutional investors (likely to be highly sophisticated and thus not requiring the full protections of US securities regulations) may nonetheless subject a foreign company that has not directly accessed the US public markets, listed on the US securities exchanges or established an ADR program to SEC regulation in the context of cross-border tender offer, exchange offer and business combination transactions. This often complicates transactions with no other US nexus and leads to the limitation or exclusion of the US security holders' ability to participate in the transaction.

We respectfully recommend that large US institutional security holders be excluded from the calculation of the level of US ownership of non US-registered foreign issuers for purposes of determining eligibility for the cross-border exemptions. In determining the type of institutional investor that should be excluded, it may useful to look to the definition of "qualified institutional buyer" under Rule 144A of the Securities Act. We believe that such an exclusion would not be a fundamental departure from the Commission's historic view of US institutional investors - insofar as the Commission has, in other contexts (such as Rule 144A under the Securities Act, and Rule 15a-6 under the Exchange Act), recognized that such institutional investors do not need the full procedural and other protections of the US securities regulations beyond the anti-fraud and anti-manipulation rules and civil liability provisions.

We further believe that such an exclusion would best serve the cross-border exemptions' purpose of encouraging bidders to include US investors in cross-border transactions from which they otherwise may be excluded. Under the current cross-border exemption, the holdings of US institutional security holders frequently cause transactions to be ineligible for the cross-border exemptions. Consequently, bidders continue to exclude US security holders from such cross-border tender offer, exchange offer and business combination transactions. Under these circumstances, we believe the "appropriate balance between the need to protect US investors . . . and facilitating and enabling transactions that may benefit all security holders, including those in the United States," is best viewed by reference to the level of ownership by those investors for whom the protections of the US securities regulations would be most appropriate - non-institutional investors. We do not believe that the rule revisions as currently proposed adequately reflect this balance. To the extent that the exclusion of large U institutional security holders from the determination of eligibility for the cross-border exemptions results in broader applicability, we believe this is a more accurate reflection of the types of transactions that should and should not be afforded the full protections of US securities regulations.

Twenty years ago, the Staff of the Commission submitted report (the "Report") to Congress on the "Internationalization of the Securities Markets." The Report stated that "[a]s a result of a number of factors, including technological advances and the removal of restrictions on foreign participation by many of the world's securities markets, internationalization is more than a developing trend, it is a present day reality. Moreover, it is a phenomenon that has a profound impact on the US securities markets". The Report also indicated that US investors increasingly sought to invest in non-US companies for greater diversification and to benefit from an environment in which the dollar was falling (both trends that are currently in evidence).

The Report was viewed as an important study that provided the basis for the SEC, the US investor community, financial institutions, issuers and legal and accounting practitioners to consider the appropriate balance between accommodation for non-US companies and US investor protection. The Report, arguably, was one of the principal sources for a fresh US approach to globalization of the markets, and the accommodation in SEC rulemaking (such as Regulation S and Rule 144A under the Securities Act) to adapt to the global environment. The implementation of the original cross-border tender offer, exchange offer and business combination rules in 2000 were an important step in this direction. We are encouraged that the Commission is taking the opportunity to review these rules with the benefit of eight years of practical experience.

Much has happened during the last twenty years; the "present day reality" of nearly twenty years ago has, as noted in the Release, given rise to "a revolution in investor participation in global capital markets." We urge the Commission to join with industry and investor groups in undertaking a study to inform future rule making and rule revisions.

The Committee appreciates the opportunity to comment on the Release, and thanks the Commission for considering its comments. We would be pleased to respond to any enquiries regarding our comments. Please contact:

Allen & Overy LLP: Christopher Bernard (T: +44 20 3088 2808)
Ashurst LLP: Daniel Bushner (T: +44 20 7859 2880)
Clifford Chance LLP: John Connolly (T: +44 20 7006 2096)
Freshfields Bruckhaus Deringer: Sarah Murphy (T: +44 20 7832 7429)
Herbert Smith LLP: Alex Bafi (T: +44 20 7466 2557)
Linklaters LLP: Tom Shropshire (T: +44 20 7456 2000)
Norton Rose LLP: Thomas Vita (T: +44 20 7444 3695)

Respectfully submitted,

Allen & Overy LLP
Ashurst LLP
Clifford Chance LLP
Freshfields Bruckhaus Deringer
Herbert Smith LLP
Linklaters LLP
Norton Rose LLP

cc: John W. White (Director, Division of Corporation Finance)
Paul M. Dudek (Chief, Office of International Corporate Finance, Division of Corporation Finance)
Ethiopis Tafara (Director, Office of International Affairs)