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July 22, 2004

Via E-mail: rule-comments@sec.gov

Mr. Jonathan G. Katz,
Secretary,
Securities and Exchange Commission,
450 Fifth Street, NW,
Washington, DC 20549-0609.

Re: Proposed Rule: Removing from Listing and Registration Pursuant to Section 12(d) of the Securities Exchange Act of 1934 (File Number S7-25-04)

Dear Mr. Katz:

We are pleased to submit this letter in response to the request of the Securities and Exchange Commission (the "*Commission*") for comments regarding its proposal to streamline the procedures for removing from listing, and/or withdrawing from registration, securities under Section 12(b) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "*Exchange Act*"). The Commission's proposal is set forth in Release No. 34-49858 (the "*Proposing Release*").¹

The Proposing Release includes several amendments to Exchange Act Rule 12d2-2² and Form 25³ under the Exchange Act. Pursuant to these amendments, a Form 25 filed by an issuer to delist and deregister securities under Section 12(b) of the Exchange Act would become effective for purposes of delisting on the tenth day after it is filed (subject to potential extension by the Commission), but the issuer's registration pursuant to Section 12 of the Exchange Act would continue for 90 days after filing the Form 25 (or such shorter period as the Commission may determine) when the Form 25 would become

¹ Securities Exchange Act Release No. 34049858 (June 15, 2004).

² 17 C.F.R. 240.12d-2.

³ 17 C.F.R. 249.25.

effective for purposes of deregistration.⁴ We are writing regarding the impact these amendments would have on a company with equity securities registered under Section 12(b) of the Exchange Act that has been acquired in a merger or similar business combination (an “*Acquired Company*”). We believe that a company’s registration under Section 12 of the Exchange Act should cease where an Acquired Company no longer has any public shareholders. We respectfully request that the Commission consider revising the proposed Exchange Act Rule 12d2-2 in respect of such an Acquired Company to provide that at the time a Form 25 becomes effective for delisting purposes the Form 25 also becomes effective for deregistration purposes. For the same reasons, we respectfully request that similar treatment be afforded with respect to a Form 15 filed by an Acquired Company under Exchange Act Rule 12g-4.

Currently, a Form 25 is filed by a national securities exchange for delisting and deregistration under Section 12(b) of the Exchange Act after that exchange becomes reliably informed that the instruments representing the securities comprising the entire class of Acquired Company securities listed on the exchange have come to evidence, by operation of law or otherwise, the right to other securities and no other right, except, as applicable, the right to an immediate cash payment.⁵ The filing becomes effective on the date specified in the Form 25, which may not be less than 10 days following the date on which the filing is made with the Commission.⁶ Upon effectiveness of the Form 25, the security is delisted, registration of the Acquired Company’s equity securities under Section 12(b) of the Exchange Act is terminated and the Acquired Company is relieved from the reporting obligations under Sections 12 and 13 of the Exchange Act arising from such registration.⁷

⁴ Proposing Release, at Section III.A.2. Upon the effectiveness of the Form 25 for delisting purposes, the issuer’s duty to file reports under Section 13(a) of the Exchange Act would be suspended. Id.

⁵ 17 C.F.R. 240.12d2-2(a)(3); Form 25 Notification of Removal from Listing and Registration of Matured, Redeemed or Retired Securities, available at: <http://www.sec.gov/about/forms/form25.pdf>.

⁶ Id.

⁷ However, an Acquired Company may still be subject to reporting obligations if its equity securities remain registered pursuant to Section 12(g) of the Exchange Act or if it has reporting obligations under Section 15(d) of the Exchange Act. The changes proposed under the Proposing Release would not eliminate the need for any such company to deregister its securities under Section 12(g) and/or 15(d), to the extent applicable. Proposing Release, at Section III.A.2. For purposes of this letter we have assumed that (1) the issuer will not be deemed registered under Section 12(g) of the Exchange Act upon becoming deregistered pursuant to Section 12(d) of the Exchange Act and (2) the issuer has filed a Form 15 following consummation of the merger or other business combination pursuant to

In the Proposing Release, the Commission proposes that a Form 25 becomes effective on the tenth day after it is filed (subject to potential extension by the Commission) for purposes of delisting and that upon such effectiveness the issuer's duty to file reports under Section 13(a) of the Exchange Act is suspended, but the issuer's registration under Section 12(b) of the Exchange Act would continue for 90 days after filing the Form 25 (or such shorter period as the Commission may determine) and the Form 25 becomes effective for deregistration purposes at that time.⁸ This proposal would make the process for deregistering equity securities under Sections 12(g) and 12(b) of the Exchange Act substantially similar.⁹

Because an issuer would retain its status as a Section 12(b) company during the 90 day period after filing a Form 25, the issuer could be required to make filings and other persons may have an obligation to make filings in respect of the issuer. For example, following the acquisition of an Acquired Company:

- the Acquired Company would be required under Exchange Act Rule 14c-2(a)¹⁰ to file an information statement if a corporate action was to be taken by written authorization or consent of its security holders (the acquiror). The information statement would be required to be sent out (to the sole shareholder, the acquiror) at least 20 calendar days prior to taking the corporate action;
- the acquiror would be required under Section 13(d) of the Exchange Act to file a Schedule 13D (or amend a previously filed Schedule 13D) disclosing its 100% ownership of that Acquired Company's Section 12(b) securities; and
- the acquiror would be required to file a Form 3 in respect of an Acquired Company (if the acquiror did not have Section 16 reporting obligations with respect to the Acquired Company's Section 12(b) securities prior to the merger or business combination) or a Form 4 if the acquiror had previously filed a Form 3 in respect of the Acquired Company's Section 12(b) securities.

Exchange Act Rule 12h-3, which has resulted in the suspension of the issuer's reporting obligations under Section 15(d). 17 C.F.R. 240.12h-3.

⁸ Proposing Release, at Section III.A.2.

⁹ Exchange Act Rule 12g-4(a) provides that the termination of a company's registration under Section 12(g) of the Exchange Act shall take effect in 90 days, or such shorter period as the Commission may determine, after the company files a Form 15 with the necessary certifications. Exchange Act Rule 12g-4(b) provides that a company's duty to file reports under Section 13(a) of the Exchange Act pursuant to Section 12(g) of the Exchange Act is immediately suspended upon the filing of a Form 15.

¹⁰ 17 C.F.R. 240.14c-2.

These disclosures do not benefit any former stockholder of the Acquired Company. To the extent the business combination involved the payment to the Acquired Company's stockholders of acquiror stock registered under Section 12 of the Exchange, such stockholders will continue to receive the protections afforded by owning stock in a Section 12 registered company.¹¹ To the extent cash was the sole consideration in the business combination, the Acquired Company's stockholders will have no need for protection under the Exchange Act with respect to the Acquired Company.

The Commission has recognized a situation in the context of a business combination when imposing the 90 day requirement would serve the interests of the investors in an Acquired Company.¹² The Manual of Publicly Available Telephone Interpretations discussed a situation where, following a tender offer, a target company had sufficiently few shareholders to be able to file a Form 15 pursuant to Exchange Act Rules 12g-4 and 12h-3. The acquiring company intended to promptly effect a short-form merger to acquire the remaining outstanding shares of the target company. The guidance from the Commission staff was that the staff ordinarily will not accelerate termination of Section 12(g) registration where an Exchange Act event is anticipated and shares of the target company continued to be held by members of the public. Accordingly, in such a situation, the target company will be required to file a Schedule 14A proxy statement or a Schedule 14C information statement relating to the back-end merger if it is intended to occur during the 90 day period between the filing of the Form 15 and termination of registration pursuant to Exchange Act Rule 12g-4.

However, the situation described in the telephone interpretation is clearly distinguishable from that of the Acquired Company. The Acquired Company has no public stockholders after the consummation of the business combination. We believe that Exchange Act Rule 12d2-2 and Form 25 under the Proposed Rules need to take into account this distinction.

We recognize that the issues raised in this letter exist currently with respect to the deregistration of a Section 12(g) security and that in the Proposing Release the Commission has proposed reserving the authority to shorten the 90 day period in a particular instance. We note that the Commission has reserved this same authority in connection with Exchange Act Rule 12g-4 and have located a few instances of the

¹¹ To the extent the Acquired Company's stockholders receive non-Section 12 registered stock in the business combination, we do not believe that imposing the 90 day requirement is warranted given that such stockholders have assumed the risk of owning stock in a non-Section 12 registered company by not selling their Acquired Company stock prior to the closing of the business combination.

¹² See Item 27, Section M, Exchange Act Rules, Manual of Publicly Available Telephone Interpretations (July 1997).

Commission accelerating the 90 day period pursuant to Exchange Act Rule 12g-4,¹³ but none more recent than 1984.

In light of the foregoing, we respectfully request that the Commission consider revising the proposed Rule 12d2-2 to provide that if at the time a Form 25 is filed, an issuer has only one holder of record of equity securities registered pursuant to Section 12(b) of the Exchange Act then the 90 day period for the continued registration under Exchange Act Section 12 will be automatically accelerated to the tenth day after the Form 25 is filed. In addition, although the Proposing Release did not request comments with respect to Exchange Act Rule 12g-4, we respectfully request that similar changes be made to Exchange Act Rule 12g-4 in respect of a Form 15 filed by an Acquired Company.

* * *

We appreciate the opportunity to comment on the proposed rules, and we would be pleased to discuss any questions the SEC or its staff may have about this letter. Any questions about this letter may be directed to Eric M. Krautheimer (212-558-4899) in our New York office.

Very truly yours,

SULLIVAN & CROMWELL LLP

¹³ E.g., J.C. Nichols Co., 1984 SEC No-Act. LEXIS 2035 (Apr. 13, 1984); Ryan Insurance Group, Inc., 1982 SEC No-Act. LEXIS 3216 (Dec. 23, 1982).