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April 25, 2008

Via email: rule-comments@sec.gov

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

Re: Exemption from Registration Under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers - File No. S7-04-08

Dear Ms. Morris:

This letter is in response to Release No. 34-57350; International Series Release No. 1307 (the "Proposing Release"), in which the Commission solicits comments on its proposal to amend Rule 12g3-2(b), which provides an exemption from the obligation to register a class of equity securities under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") to foreign private issuers who meet certain requirements.

We support the Commission's proposal to eliminate paper submission requirements, and, with several important modifications, we support the Commission's proposal to modify the Rule so that initial eligibility for the Rule 12g3-2(b) exemption is based on a comparison of the U.S. average daily trading volume of the subject class of a foreign private issuer's securities with worldwide average daily trading volume.

Specifically, we do not believe that a foreign private issuer that has qualified for the Rule 12g3-2(b) exemption should lose that exemption if it no longer meets the relative U.S. trading volume test or if it no longer maintains a listing in its primary trading market. These aspects of the proposal reflect a significant departure from the current Rule 12g3-2(b) exemption, which bases continued eligibility for the exemption on (A) the issuer furnishing non-U.S. disclosure documents to U.S. investors

and (B) the issuer not making an offering of its securities in the United States required to be registered under the Securities Act of 1933 (the "Securities Act") or registering its securities for trading on a U.S. exchange. Importantly, these are factors within the issuer's control. We believe that, if the proposals are adopted in the form proposed, they will discourage foreign issuers from accessing, or providing information to, the U.S. capital markets through the various types of exempt transactions and other activities that are facilitated by the ability to rely on the Rule 12g3-2(b) exemption, including Rule 144A equity offerings, rights offerings under Securities Act Rule 801 and exchange offers or business combinations under Securities Act Rule 802, or by establishing sponsored American Depositary Receipt ("ADR") programs.

We believe that these types of exempt transactions have long proven beneficial to U.S. investors, U.S. capital markets generally and foreign private issuers. We do not believe that the reduced volume of exempt transactions that we anticipate will be offset by an increase in the volume of registered transactions and, accordingly, we believe there will be a significant net loss to U.S. investors and other market participants.

We have set forth below our more detailed comments on these and other aspects of the proposed amendments to Rule 12g3-2(b).

1. Proposed Non-Reporting Condition

We support the Commission's proposal to continue to condition the exemption under Rule 12g3-2(b) on the issuer having no reporting obligation under Sections 13(a) or 15(d) of the Exchange Act and to eliminate the requirement to claim the exemption within the statutory 120-day period for filing a Section 12(g) registration statement. We also agree with the proposal that would allow an issuer that has suspended its Exchange Act reporting obligations pursuant to Rule 12g-4 or 12h-3 to claim the exemption without having to look back over the previous eighteen months to determine whether it had an Exchange Act reporting requirement, consistent with the basis for granting an exemption following deregistration pursuant to Rule 12h-6.

2. Proposed Foreign Listing Condition

We agree that in establishing initial eligibility for the Rule 12g3-2(b) exemption, a foreign private issuer should be subject to a statutory or regulatory regime for reporting in order to satisfy the exemption's objective, as stated in the Proposing Release, of making available a set of non-U.S. securities disclosure documents to which a U.S. investor may turn for material information. However we do not agree that the Rule 12g3-2(b) exemption should be conditioned upon the issuer's subject securities being listed on a securities exchange.

We believe that an issuer should be able to choose whether, and if so where, it wishes to list its securities, provided that, if it wishes to claim a Rule 12g3-2(b) exemption, it is subject to satisfactory public disclosure requirements. We believe that many unlisted foreign private issuers provide a level of public disclosure under their home country statutory requirements that is at least similar to if not more comprehensive than that required by some listing authorities and that such companies should be able to claim an exemption under Rule 12g3-2(b) as they currently are able to do under the existing provisions of the Rule.

Furthermore, if the Commission determines to adopt the listing condition, we do not agree that the listing venue should be tied to the issuer's primary trading market for the subject securities, as defined in the proposed rule. Following wide ranging regulatory reforms in various jurisdictions, many alternative trading platforms have been and are being established to compete with the trading businesses of the incumbent national securities exchanges. As a result, significant volumes of trading in a given class of securities have moved, and we expect will continue to move, rapidly from one stock exchange or trading platform to another. As new exchanges and trading platforms continue to emerge and compete, trading volumes will likely continue to fluctuate among exchanges and trading platforms and across jurisdictions. Accordingly, it may not be possible or practical to identify with certainty a jurisdiction that constitutes the "primary trading market" of a particular class of securities. If the Commission determines to adopt the listing condition, we recommend that the Commission adopt a definition of "recognized offshore securities market" for purposes of Rule 12g3-2(b) similar to the definition of "designated offshore securities market" in Regulation S and also consider providing for the exemption to be available in cases where the combination of a listing and statutory disclosure requirements will provide satisfactory disclosure standards.

3. Proposed Relative U.S. Trading Volume Standard for Initial Eligibility

We support the public policy considerations underlying the Commission's proposal to base initial availability of the Rule 12g3-2(b) exemption on the level of trading in the United States not exceeding a certain threshold in comparison to worldwide trading. We recognize the benefits of having a bright-line and measurable standard of U.S. market interest such as relative trading volume. However, we believe that trading among Qualified Institutional Buyers ("QIBs") should be excluded from the calculation of U.S. trading volume and included in the calculation of worldwide trading volume. Trading among QIBs does not give rise to the public policy concerns that underlie the proposal to condition the availability of the exemption on relative trading volume. We recognize that QIB-to-QIB trading may be difficult to measure in certain circumstances, but at the very least, such trading should not be included in the U.S. trading volume when

it can be reliably measured, such as in a QIB-only trading system. The proposed "Portal Alliance" is an example of such a system.

We also believe that the rule should be flexible as to the permissible sources of trading volume information for on-and off-exchange transactions that may be relied upon by the issuer. Such sources could include publicly available sources, market data vendors or other commercial information service providers and any other source which reliably monitors and publishes such trading data. We believe it would be helpful if the Commission were to provide guidance in the adopting release as to some of the sources that could be relied upon by issuers.

4. Proposed Relative U.S. Trading and Continued Listing Conditions for Continuing Eligibility

We strongly disagree with the Commission's proposal that an issuer would lose its Rule 12g3-2(b) exemption if the average daily trading volume of the subject class of securities in the United States exceeded a specified threshold of average daily trading volume in its primary trading market or worldwide, or if the issuer no longer maintained a listing for the subject class of securities on one or more exchanges in its primary trading market or otherwise. We believe that compliance with the rule's requirement to publish for U.S. investors non-U.S. disclosure documents and not to undertake an offering requiring Securities Act registration or listing on a U.S. exchange should suffice as a basis for continuing the exemption, just as it does under the existing provisions of Rule 12g3-2(b).

We believe that the issuer's lack of control over the level of trading activity in its securities in different markets, and the resulting concern that at some uncertain future date the volume of trading in the United States could exceed the applicable threshold, will discourage a significant number of foreign private issuers from accessing the U.S. capital markets through the types of exempt transactions that would lead them to rely on Rule 12g3-2(b). As a consequence, it is more likely that some issuers would choose to exclude U.S. shareholders from their rights offerings or exchange offers which would otherwise be exempt under Rules 801 and 802 of the Securities Act. Some issuers would also be discouraged from offering their equity securities in the United States to QIBs under Rule 144A or establishing sponsored ADR programs in respect of their ordinary (common) shares.

We also believe that a foreign private issuer should have discretion in deciding whether to maintain or terminate a foreign listing, a decision that is normally connected with important strategic and governance objectives, without having to weigh the considerable cost of triggering an Exchange Act reporting obligation if it were to delist or move its listing to a market which is not its primary trading market.

However, if the Commission does adopt the relative trading volume condition for continuing eligibility as proposed, we would strongly urge that trading volume be measured as we described under section 3 above – *i.e.*, eliminating QIB-to-QIB trading from the calculation of U.S. trading volume at least in circumstances where it can be reliably measured and making the relevant comparison U.S. average daily trading volume to worldwide average daily trading volume.

We also believe the proposed threshold for continuing eligibility is too low. We believe a threshold of 40% of worldwide trading volume for continued eligibility would reflect a better balance between the interests of protecting U.S. retail investors when a substantial U.S. retail investor base for the securities of a foreign private issuer has emerged and the interests of not deterring exempt foreign private issuers from continuing to engage in exempt offerings in the United States and continuing to provide existing U.S. investors with non-U.S. disclosure documents.

We also urge that the period of time for measuring the trading volume be three years instead of one year in order to establish a long term, as well as significant, U.S. interest in the issuer's securities. Furthermore if an issuer loses its exemption based on relative trading volume or termination of its listing, it should be allowed a period of at least one year before it is required to file an Exchange Act registration statement.

5. Proposed Electronic Publishing of Non-U.S. Disclosure Documents

A. Proposed Electronic Publishing

We support the Commission's proposal to require an issuer to have published on its internet website or through an electronic information delivery system generally available to the public certain non-U.S. disclosure documents. If information is available through an electronic information system that is generally available to the public, we do not believe it is necessary to require the issuer to publish its non-U.S. documents on its website, if it discloses on its website that documents supplied to maintain the Rule 12g3-2(b) exemption are available on an electronic delivery system.

We also do not believe an issuer should be required to publish electronically a non-U.S. document required to be filed with its non-U.S. regulator or exchange, but which is not made public by that non-U.S. regulator or exchange, unless the issuer has otherwise made it public whether in its home market or elsewhere.

We further believe that the website publication requirement should contain an exception for situations in which the posting of materials on an issuer's website is prohibited by the laws of the issuer's home jurisdiction. For example, there have been circumstances in which home country securities laws would prohibit or restrict the

publication of certain materials in connection with a securities offering. Similarly, consistent with General Instruction D of Form 6-K, we believe that the translation requirement should not apply to offering circulars and prospectuses relating to securities offerings conducted outside the United States. This exception would enable a foreign private issuer to, for example, conduct a rights offering in its home country that excludes U.S. persons without having to translate the offering documents into English.

B. Proposed English Translation Requirement

We strongly believe that the Commission should retain the "brief description in English" option that is currently available under Rule 12g3-2(b)(4). Certain foreign languages, especially those outside Europe, are substantially different from English in terms of grammar and styles of expression. Preparation of English translations of oftentimes voluminous non-U.S. disclosure documents written in such foreign languages that fall under the types of information that require electronic publishing in order to obtain and maintain the Rule 12g3-2(b) exemption would require substantial efforts both in terms of time and allocation of human and financial resources. Under the current Rule 12g3-2(b) regime, with the flexibility provided by the "brief description in English" option, non-U.S. issuers in countries with such foreign languages have been able to furnish to the Commission the required non-U.S. disclosure documents promptly as required by the Rule.

Imposing an English translation requirement without regard to the substantial linguistic differences between English and certain foreign languages would result in those non-U.S. issuers publishing the required non-U.S. disclosure documents less promptly or, in some cases, with substantial delays.

We also believe that the "English versions or adequate summaries" option that is currently available under Rule 12g3-2(b)(4) should be retained, for the same reason as set forth above. In this regard, with respect to those non-U.S. disclosure documents for which the "brief description in English" option is not available, we believe that the Commission should provide specific guidance regarding when an issuer may provide an English summary (or version) instead of a line-by-line English translation of a required non-U.S. disclosure document. We believe that such guidance should be analogous to the one provided in General Instruction D of Form 6-K and by Rule 12b-12(d) under the Exchange Act.

We also believe that the Commission should clarify the meaning of the terms "annual report" and "interim report" as used in clause (4)(iii) of the proposed Rule 12g3-2(b). Under the proposed rule, as is the case under Note 1 to paragraph (e) of the current rule, non-U.S. disclosure documents that constitute an "annual report" or "interim report" would be required to be fully translated into English. In some non-U.S.

jurisdictions, there are several disclosure documents with annual or interim financial statements that might be deemed to fall under the category of "annual reports" or "interim reports". For example, a home country's company law may require companies to distribute to their shareholders annual and interim reports with financial statements, while that country's securities law may separately require the filing with governmental authorities of annual and interim reports with financial statements, and that country's stock exchanges (on which those companies' shares are listed) may also separately require the publication of reports on financial results for annual and interim periods, again with financial statements. We believe that it would be unreasonable in such cases to require full English translation of each of these documents, as that would be largely duplicative with respect to material information, especially financial information, which is important to investors. In such cases, we would request that, whether through explicit provisions of the revised Rule 12g3-2(b) or guidance in the related adopting release, the Commission allow one such document which falls under the category of "annual report" or "interim report", as the case may be, to be translated fully into English (with the option to summarize non-financial parts, as is permitted under the current practice) and electronically published, while other documents that fall under such category may be dealt with by way of electronic publication of their brief descriptions in English.

6. Proposed Elimination of the Written Application Requirement

We support the Commission's proposal to eliminate the requirement to submit written materials in order to claim the Rule 12g3-2(b) exemption; this is consistent with the automatic grant of the Rule 12g3-2(b) exemption following deregistration under Rule 12h-6. We understand that the Commission does not intend to continue publishing a list of issuers claiming the exemption. However, there are a number of market participants who, under current rules, need to rely on the issuer's exemption under Rule 12g3-2(b), such as ADR depositaries to use Form F-6 to register American depositary shares, QIBs to meet information requirements under Rule 144A and broker-dealers publishing quotations in foreign securities to satisfy their requirement under Rule 15c2-11. Therefore, we recommend that the Commission encourage each issuer claiming the Rule 12g3-2(b) exemption to voluntarily give notice of that fact on its website and to state where its non-US disclosure documents are published. We also recommend that the Commission adopt a safe harbor provision as part of these amendments that would protect anyone who relies upon any notice given by such issuers that they are exempt under Rule 12g3-2(b).

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We appreciate this opportunity to comment on the Proposing Release. You may direct any questions with respect to this letter to Kathryn A. Campbell (+44 20 7959 8580), George H. White (+44 20 7959 8570) or Oderisio de Vito Piscicelli (+44 20 7959 8589) in our London office or Jay Clayton (212 558 3445) in our New York office.

Very truly yours,

Sullivan & Cromwell LLP

cc: Brian Cartwright (General Counsel)
John W. White (Director, Division of Corporation Finance)
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