Patterson Belknap Webb & Tyler LLP

1133 Avenue of the Americas New York, NY 10036-6710 212.336.2000 fax 212.336.2222 www.pbwt.com

April 25, 2008

Herman H. Raspe
(212) 336-2301
Direct Fax (212) 336-2346
hhraspe@pbwt.com

VIA E-MAIL

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Proposed amendments to Rule 12g3-2(b) under the U.S. Securities Exchange Act of 1934, as amended -- File No. S7-04-08

Dear Ms. Morris:

We are submitting this letter in response to the U.S. Securities and Exchange Commission's (the "Commission") request for comments to the Commission's proposal set forth in Release No. 34-57350 [International Series Release No. 1307] to amend Rule 12g3-2(b) under the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act").

We generally support the proposal to amend Rule 12g3-2(b) and in particular the proposal to (i) enable an issuer to claim a Rule 12g3-2(b) exemption without having to submit an application to the Commission, (ii) apply an eligibility standard for the Rule 12g3-2(b) exemption that is based on trading volume (as opposed to the number of U.S. holders of equity securities), (iii) eliminate the requirement to submit paper copies of materials to the Commission, and (iv) enable issuers to maintain the Rule 12g3-2(b) exemption by publishing information on a website or through a publicly available electronic information delivery system. These proposals address a number of concerns that non-U.S. issuers, U.S. intermediaries and their advisors have had for some time about the availability of the Rule 12g3-2(b) exemption, the process for obtaining the exemption, the restrictive nature of its eligibility standards and the process for submitting information to the Commission.

In response to the Commission's request for comments to the proposed amendments to Rule 12g3-2(b) we respectfully note the following:

- *We question the need for on-going monitoring of the U.S. trading volume after the Rule 12g3-2(b) exemption has been "established."*

  Under the current standards, non-U.S. issuers are not required to monitor the level of U.S. ownership of equity securities once the Rule 12g-2(b)

exemption has been obtained and the Rule 12g3-2(b) exemption continues to be available to non-U.S. issuers who comply with the documentation delivery/publication requirements and do not list the securities on a U.S. exchange or register the offer and sale of their securities under the U.S. Securities Act of 1933, as amended (the "'33 Act"). We note that the on-going monitoring creates a level of uncertainty for issuers and intermediaries (i.e. depositary banks) that may create a disincentive to the creation of facilities (such as Level I ADR and Rule 144A/Reg S GDR facilities) within the U.S. for investors to own and trade non-US equity securities in the U.S. The introduction of this trading volume monitoring requirement would in fact argue for issuers to object to the creation ADRs and GDRs that trade and settle in the U.S. and to opt for trading and settlement facilities open without restrictions to U.S. investors outside the U.S. We firmly believe that non-U.S. issuers and intermediaries should, consistent with current standards, be able to rely on the continued availability of the Rule 12g3-2(b) exemption without regard to the level of ownership or trading of the subject securities in the U.S.

We further note that the uncertainty introduced by this monitoring requirement may lead U.S. investors to trade and hold the securities outside the U.S. rather than in ADR/GDR form given that the ADR/GDR activity may jeopardize an issuer's 12g3-2(b) exemption and cast a shadow over the ability to hold the securities in ADR/GDR form if the 12g3-2(b) exemption is no longer available. The ADR/GDR mechanism provides U.S. investors with a number of services that frequently are not available when holding and trading securities outside the U.S. (or, if available, at significant cost). Among these, the ability to receive proxy materials in English, to provide voting instructions in English and within the traditional U.S infrastructure, to sell securities and settle the sales in U.S. dollars (and through institutions and a clearing system that are subject to U.S regulatory supervision), and to receive distributions of dividends in U.S dollars via traditional U.S. banking channels. The uncertainty created by the trading volume monitoring requirement will in our view impact the investment execution decisions made by U.S. investors and create an incentive to trade and hold securities outside the U.S. without the benefits afforded by the ADR/GDR mechanism and the protections of the U.S regulatory environment applicable to trading and settlement of equity securities in the U.S.

- *We question the need to impose the requirement that the issuer maintain a listing of the subject securities in a "primary trading market."*

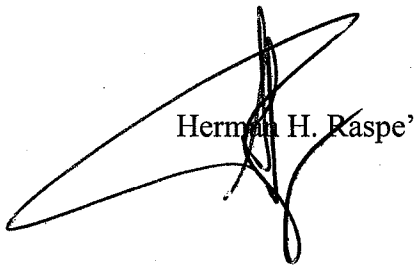
We note that currently Rule 12g3-2(b) does not impose such requirement.

The non-U.S. listing requirement has significant merit in the context of the recent ' 34 Act de-registration amendments by providing U.S investors a viable market to dispose of securities that were previously listed on a U.S. exchange. In our view, the same concerns are not present in circumstances where the securities were not previously listed on a U.S. exchange. We understand that the stated purpose of this non-U.S listing requirement is to help assure that the non-U.S. issuer is subject to the regulation and oversight of a non-U.S. securities regulator. We respectfully suggest that the non-U.S. listing condition be eliminated and that any concerns about the regulation and oversight of a non-U.S. issuer be addressed by reference to oversight by a recognized regulatory authority in the jurisdiction of incorporation of the non-U.S issuer or in a jurisdiction where the non-U.S. issuer's securities are publicly traded.

In addition, we note that in the context of spin-off transactions, reorganizations and restructurings, a newly created entity (i.e. the spin-off company) may not be able to establish the existence of a "primary trading market" at the time of the spin-off, reorganization or restructuring (given that the entity has not previously been a publicly traded entity). For entities that are new to the capital markets the "primary trading market" listing condition should not, in our view, be a condition to establishing the Rule 12g3-2(b) exemption.

Finally, we take this opportunity to thank the Commission and its Staff for their significant efforts in addressing the concerns of non-U.S. issuers and U.S intermediaries in the context of Section 12(g) of the '34 Act and Rule 12g3-2(b) thereunder, and in proposing creative solutions within the existing regulatory and statutory frameworks of the '34 Act.

Respectfully submitted on behalf of Patterson Belknap Webb & Tyler, LLP.



Cc Paul M Dudek, Esq.