ORGANIZATION FOR INTERNATIONAL INVESTMENT
INTERNATIONAL BUSINESS INVESTING IN AMERICA

May 5, 2008

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

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FOREIGN ISSUER REPORTING ENHANCEMENTS

Ladies and Gentlemen:

This letter is submitted on behalf of the Organization for International Investment ("*OFII*") and comments on a proposal by the Securities and Exchange Commission (the "*Commission*") to make a number of changes to the Commission's reporting rules for foreign private issuers. Although OFII endorses the Commission's proposal to permit companies to test their "foreign private issuer" status once per year, it does not support the proposed acceleration of the deadline for annual reports filed by foreign private issuers. For many foreign private issuers, the proposed 90-day deadline (for accelerated filers and large accelerated filers) will be a significantly shorter deadline than the deadline imposed in their home country. Shortening the deadline will, therefore, create new burdens on foreign private issuers that could well serve as an impediment to attracting new foreign private issuers to the U.S. capital markets.

About OFII

OFII is an association representing the interests of over 150 U.S. subsidiaries of companies based abroad. Most of our members' parent companies are publicly traded companies, some of which are foreign private issuers under Commission rules. These foreign private issuer parent companies file annual reports on Form 20-F, as well as other reports with, and make submissions to, the Commission. A list of the members of OFII is attached as Annex A to this letter.

OFII Strongly Supports Allowing Foreign Private Issuers to Test Their Status Once Per Year

OFII strongly endorses the Commission's proposal that would permit foreign companies to determine their eligibility to use the special forms and rules available to foreign private issuers once per year, on the last business day of the second quarter, instead of continuously as under

current rules. OFII also strongly endorses the proposed effective transition period of six months for switching to the domestic issuer forms from the foreign private issuer forms after losing foreign private issuer status. We believe these changes will greatly enhance the attractiveness of the U.S. reporting regime to foreign companies.

In our view, the change to once-per-year testing of foreign private issuer status will provide foreign companies increased certainty and predictability with regard to their reporting status and obligations. This increased certainty should, in turn, remove a disincentive for foreign companies registering with the Commission, thereby enhancing the attractiveness of the U.S. capital markets and improving the competitiveness of such markets vis-à-vis other capital markets. This should promote more foreign access to the U.S. capital markets.

In the proposing release, the Commission noted its concern that, if tested only once per year, companies might have an incentive to try to manipulate the measurement of their record shareholders or other eligibility criteria in order to maintain foreign private issuer status. The Commission asked in the proposing release, therefore, whether the test of foreign private issuer status should be performed more frequently (e.g., twice per year). OFII's view is that a once-per-year test of foreign private issuer status is sufficient and does not carry an undue risk that companies will seek to "game" the criteria to ensure that they meet the test each year. OFII believes it is appropriate to analogize the foreign private issuer status test to the annual test for determining "large accelerated filer" and "accelerated filer" status under Rule 12b-2 under the Securities Exchange Act of 1934, where the Commission has deemed a once-per-year test appropriate and sufficient. We also believe that there are sufficient safeguards in place, such as general anti-fraud and anti-manipulation rules, to mitigate the concern about companies gaming the rules to maintain their foreign private issuer status. In any event, irrespective of how often the test is to be performed, OFII strongly supports a rule that is based on non-continuous testing.

OFII Objects to the Proposed Acceleration of Annual Report Deadlines

OFII, on the other hand, strongly opposes the proposal to shorten the deadline for filing annual reports on Form 20-F unless such a change were appropriately linked to the deadline for publishing annual financial statements applicable to the company in its home jurisdiction.

As explained by the Commission in the proposing release, the Commission originally adopted a six-month deadline for annual reports on Form 20-F in 1979 as an accommodation for foreign private issuers in light of the fact that many foreign jurisdictions permitted annual reports to be issued later than the Commission's then-applicable 90-day deadline.[1] When adopting the six-month deadline, the Commission was cognizant of not imposing burdens that might serve as a disincentive for foreign private issuers to come to the U.S. capital markets. While it is true that technology has evolved and markets have developed such that many foreign private issuers are capable of producing annual reports on a timetable faster than six months, the core concern articulated by the Commission in 1979 of accommodating home country practice remains applicable today.

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[1] Proposing Release at 21.

For many foreign private issuers, the Commission's proposed 90-day deadline will be significantly shorter than the deadline in their home country. For example, the majority of European Union member states, including the United Kingdom, France, and Germany, have adopted the EU's Transparency Directive, which mandates publication of an annual report within *four months* of year-end.[2] Indeed, the only country cited by the Commission that currently has a reporting deadline shorter than four months is Israel, which has a deadline of 90 days. OFII believe it is inappropriate for the Commission to supplant the role played by foreign regulatory authorities in determining appropriate reporting obligations for foreign private issuers in their home countries.

By shortening the 20-F deadline, the Commission will be requiring many foreign private issuers to complete their annual financial statements and related disclosures sooner than they would otherwise be required under home country rules. This unilateral deadline imposed by the regulator of the non-primary market for foreign private issuers will have real consequences for, and impose new burdens on, many foreign private issuers. These burdens and costs imposed on many foreign private issuers could well serve as an impediment to attracting new foreign private issuers to the U.S. capital markets.

The shortened annual report deadline will create numerous potential complications and burdens for many foreign private issuers, in that the existing reporting infrastructure (including interaction with external service providers such as auditors) in many countries is designed to ensure compliance with an annual report deadline that is later than 90 days after year-end. The complications and burdens arising from the shorter deadline will include, among other things:

- the need to significantly alter year-end review, data compilation, internal audit, information technology, and similar reporting processes that currently are structured to ensure compliance with a later deadline,

- the need to significantly alter, in a manner that might not be feasible or cost-effective, the foreign private issuer's arrangements with outside auditors and other external service providers, where existing arrangements and processes are structured to be consistent with a later deadline, and

- the need to prepare U.S. GAAP reconciliations (for those companies that do not report using International Financial Reporting Standards, or IFRS, as adopted by the International Accounting Standards Board, or IASB).

The proposed shortening of the 20-F filing deadline would also conflict to some degree with deadlines that pertain to many prominent foreign trading markets. By way of example:

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[2] In the United Kingdom, the Companies Act 2006, as amended recently, separately requires UK-incorporated public companies to deliver a copy of their annual report to the Registrar of Companies within *six months* of the end of the financial year.

- The Financial Services Authority's Listing Rules that apply to companies listing on the *London Stock Exchange* (main market) require a company to publish its annual financial report within *four months* of the end of the financial year to which they relate.

- The rules of the *Alternative Investment Market* (AIM) require companies to publish annual accounts and send these to shareholders without delay, and, in any event, no later than *six months* after the end of the financial year to which they relate.

- *Euronext Paris* does not contain specific deadlines for the publication of annual accounts, so the deadline will depend on the laws of the country where the company is registered. For companies registered in France, the rules require annual accounts to be published within *four months* from the end of the financial year to which they relate.

- The *Deutsche Borse* requires all listed companies to publish their annual accounts within *four months* from the end of the financial year to which they relate.

- *Euronext Amsterdam* does not contain specific deadlines for the publication of annual accounts, so the deadline will depend on the laws of the country where the company is registered. Because the Netherlands has not yet adopted those provisions of the EU Transparency Directive regarding publication of annual reports, currently the laws of the Netherlands require annual accounts to be published within *five months* from the end of the financial year to which they relate.

As an alternative to the Commission's proposal, and in recognition of the reality that many companies can, in fairness, produce an annual report on a timetable faster than six months, OFII would be prepared to support an "organic" deadline for the Form 20-F which would be linked to the annual report deadline in the company's home country. As one example of how such a deadline could work, the 20-F deadline could be defined as the date that is 30 days after the company's annual report is required to be published in its home country (but in no event later than six months after the company's year-end). OFII believes this approach would strike a better balance between providing investors with improved access to information about foreign private issuers, on the one hand, and accommodating the special circumstances of foreign private issuers, on the other hand.

OFII's Other Comments on the Proposal

Our comments on two other proposals are set forth below.

A. <u>Elimination of Ability to Use Item 17 of Form 20-F in Most Cases.</u> The Commission has asked for comment on whether Form 20-F should be amended to eliminate, in most circumstances, the ability to prepare financial statements (including U.S. GAAP reconciliations where required) in accordance with Item 17 of Form 20-F, and to require instead that such financial statements be prepared in accordance with Item 18 of Form 20-F. The Commission has suggested that if this proposal is adopted, a compliance date would be established to provide foreign private issuers with sufficient time to transition to the Item 18

requirements. The Commission has suggested further that, if the proposal is adopted in 2008, a foreign private issuer that currently prepares its financial statements in accordance with Item 17 of Form 20-F would not be required to prepare financial statements in accordance with Item 18 of Form 20-F until its annual report for its first fiscal year ending on or after December 15, 2009.

As noted by the Commission in its proposing release, Item 17 of Form 20-F allows the use, in certain circumstances, of a more limited U.S. GAAP reconciliation, and is therefore substantially less burdensome to prepare than the full U.S. GAAP reconciliation called for by Item 18 of Form 20-F. Among other things, Item 17 permits the omission of detailed footnote disclosure required by the full U.S. GAAP reconciliation under Item 18.

OFII is opposed to the proposed changes to Item 17 because it does not believe there is any compelling reason to make such changes to Item 17 at this time. Further, such a change to Item 17 would impose burdens on those foreign private issuers that rely on the ability to present their U.S. GAAP reconciliation in accordance with Item 17, without offering meaningful additional benefits to investors.

OFII does not believe there is a compelling reason to make changes to Item 17 now. As the proposing release notes, more countries are expected in the next few years to adopt IFRS as their basis of accounting, or to permit companies to use IFRS as issued by the IASB as their basis of accounting. With this trend in mind, fewer and fewer foreign private issuers in the coming years will be required to provide any U.S. GAAP reconciliation, making the differences between the Item 18 presentation and the Item 17 presentation less and less relevant. At the same time, changing practice now would bring significant burdens to those foreign private issuers that have relied on the ability to prepare the more limited U.S. GAAP reconciliation under Item 17. This would be the case particularly for smaller foreign private issuers and foreign private issuers that do not access the U.S. capital markets through registered offerings. For such companies, the requirement to prepare full U.S. GAAP reconciliations and accompanying note disclosures would likely create significant cost burdens. When viewed against the backdrop of a declining number of companies that will be subject to any U.S. GAAP reconciliation requirement, we do not believe the benefits of the proposed change to Item 17 are compelling enough to warrant such change.

However, if the Commission does decide to pursue such change, OFII strongly encourages the Commission to make accommodations to reduce the burden of compliance where appropriate. OFII believes it would be appropriate to "grandfather" those companies currently relying on Item 17, so that those companies would be permitted to continue to prepare their U.S. GAAP reconciliations in accordance with Item 17 as long as they continue to satisfy the eligibility criteria under the current rules. In addition to such a "grandfather" exception, OFII believes it would be appropriate to include an ongoing exception from the requirements of Item 18 for smaller foreign private issuers and/or foreign private issuers that have not made securities offerings in the United States. Finally, at a minimum, if the foregoing suggestions are not pursued, OFII suggests extending the transition period and/or making it a phased transition period such that smaller foreign private issuers would be given more time to transition to the new requirements.

B. Additional Disclosures About Corporate Governance in Form 20-F. The Commission has also solicited for comment a proposal to amend Form 20-F to require several additional disclosures in the Form 20-F. Among other topics suggested, the Commission has suggested requiring disclosure regarding the significant ways in which a foreign private issuer's corporate governance practices differ from the corporate governance practices of domestic companies listed on the same exchange.

OFII generally supports the inclusion of the additional topics suggested for inclusion in the Form 20-F in the proposing release. However, regarding the topic of corporate governance practices, we believe it is not appropriate to impose an open-ended disclosure requirement that requires each foreign private issuer to make judgments about which of its, and which of a U.S. issuer's, corporate governance practices are "significant." Instead, we believe it would be more appropriate, and will facilitate more consistent disclosure, if the standard is specific and enumerates the particular corporate governance topics that should be addressed. For example, the rule might be written as an obligation to discuss differences between specified corporate governance topics taken from the New York Stock Exchange corporate governance listing standards.

In addition, if this suggestion is pursued by the Commission, OFII suggests that this disclosure item should include several instructions to help issuers comply with it. First, an instruction should be included to address the situation where the foreign private issuer is not listed on any U.S. securities exchange. Second, an instruction should state that, where an issuer is listed on a U.S. securities exchange, the issuer may compare its corporate governance practices to the minimum requirements articulated by the listing standards of that exchange. And third, an instruction should clarify that no disclosure need be included if there are no significant differences between the issuer's practices with respect to a particular subject and those of the U.S. exchange.

Conclusion

We support many of the proposed changes to the foreign private issuer reporting rules, as we believe they will enhance the attractiveness of the U.S reporting regime as compared with the current regime. In particular, we strongly support the proposal to permit foreign issuers to determine their eligibility to use the special forms and rules available to foreign private issuers once per year, instead of on a continuous basis. This change will provide greater certainty to foreign issuers and thereby promote greater access to the U.S. capital markets by foreign private issuers. However, OFII does not support certain other proposals, including the proposal to significantly shorten the deadline for foreign private issuers to file their annual reports on Form 20-F. Shortening the deadline will create new burdens on foreign private issuers that could well serve as an impediment to attracting new foreign private issuers to the U.S. capital markets.

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We would be pleased to answer any questions you might have regarding our comments.

Respectfully submitted,

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cc: Securities and Exchange Commission
Hon. Christopher Cox, Chairman
Hon. Paul S. Atkins, Commissioner
Hon. Kathleen L. Casey, Commissioner

Securities and Exchange Commission – Division of Corporation Finance
Mr. John W. White

ORGANIZATION FOR INTERNATIONAL INVESTMENT
INTERNATIONAL BUSINESS INVESTING IN AMERICA

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