the global voice of
the legal profession

May 9, 2008

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

Re: Comments on the Commission's Release entitled "Foreign Issuer Reporting Enhancements"
File No. S7-05-08

Dear Ms. Morris:

The International Bar Association is pleased to comment on the Commission's companion release to Release No. 34-57350 to amend several rules relating to foreign private issuers as set forth in Release No. 33-8900; International Series Release No. 1308; File No. S7-05-08 (the "Release").

The International Bar Association (the "IBA"), the global voice of the legal profession, includes 30,000 individual lawyers and 195 bar associations and law societies worldwide. We are submitting our comments on behalf of the Securities Committee which has over 900 members from 85 different countries. The IBA and the Securities Law Committee are currently very active in the arena of cross-border reform of securities regulation as part of the IBA Task Force on Extraterritorial Jurisdiction and to this end have compiled a report, the final version of which will be presented at our next annual meeting from October 12 to October 17 in Buenos Aires. The IBA has published a draft report making recommendations in the areas of convergence and mutual recognition. This report can be found on the Social Science Research Network website at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1109061 .

We would like to express our continued support of the Commission's recent efforts to improve the accessibility of the US public capital markets to foreign private issuers all the while striving to enhance the information available to and protect US investors. We welcome the Commission's initiative to reevaluate the obligations of foreign private issuers in light of the movement towards greater international agreement and mutual recognition of disclosure requirements. The recent rules on foreign private issuer deregistration and the acceptance of financial statements prepared in accordance with IFRS without reconciliation to US GAAP as well as the proposed changes to rules relating to foreign private issuers are all positive steps

that support the Commission's goals of facilitating cross-border capital flows and eliminating inadvertent barriers to US capital markets.

Certain initiatives, such as the proposed annual test for foreign private issuer status, demonstrate the Commission's commitment to simplifying the rules applicable to foreign private issuers without compromising investor protection. Contrary to the proposed amendments to Rule 12g3-2(b) (see Release No. 34-57350, and the Securities Law Committee's comment letter), this proposal will provide greater certainty to foreign private issuers as to their status and will allow them to better react to and prepare for a change in status should it take place.

However, we believe that the Commission should first consider whether additional rulemaking in this area is productive at this time, or whether such initiatives, on the heels of significant regulatory change in the United States and abroad may not present the risk of regulatory fatigue. We believe that constantly changing requirements discourages issuers who take their obligations seriously and who strive to comply fully (for example, by adding the requirement for segment reporting and eliminating Item 17). We also think that, perhaps most importantly, the additional rulemaking distracts from the more fundamental goal of achieving mutual recognition and convergence.

Furthermore, we believe that the Commission should continue to consider the differences in national laws and regulations applicable to foreign private issuers when determining US disclosure requirements for these issuers. In order to keep the US capital markets competitive, the Commission must constantly seek a reasoned balance between its dual objectives of investor protection through enhanced disclosure and accessibility and attractiveness of US capital markets without imposing undue burden on foreign private issuers for many of whom the United States is a secondary market.

Despite the efforts of securities regulators around the world to work towards mutual recognition, differences still remain and the Commission must take them into account when reevaluating disclosure requirements for foreign private issuers. In this regard, it is important to keep in mind that the current Form 20-F requirements were adopted to bring the reporting for foreign private issuers in the United States in line with the annual report requirements proposed by the International Organization of Securities Commissions, which has been a significant advantage for issuers reporting in the United States.

While we generally support the changes proposed by the Commission in this Release, we believe that some of the changes may, in their current state, have the effect of placing a higher burden on foreign issuers than the original Form 20-F requirements. To this end, we make the following suggestions:

- *Accelerating the Reporting Deadline for Form 20-F Annual Reports*

The Commission has proposed to shorten the reporting deadline for foreign private issuers on Form 20-F from six months to within 90 days after the foreign private issuer's fiscal year-end for large accelerated and accelerated filers and to within 120 days for all other issuers. The Commission cites technological advances in the 30 years since the Form 20-F was adopted as one of the main reasons to shorten the reporting deadline, in addition to the fact that, in their home countries, many issuers are expected to file their annual reports on a faster timetable than the Form 20-F. While we believe that the December 2007 amendments allowing foreign private issuers to file financial statements prepared in accordance with IFRS have alleviated some of the burdens that foreign private issuers face when preparing their annual reports, there are still other time-consuming and organizational obstacles that they

face when preparing their US disclosure documents. In addition, the acceptance of financial statements prepared under IFRS expedites the preparation of the annual report only for some issuers. Foreign private issuers who still use home country GAAP will continue to need extra time to prepare their US GAAP reconciliation with their auditors. Furthermore, foreign private issuers must, in many cases, spend considerable amounts of time translating their home country annual report as well as updating and providing additional or different disclosure than required by their home country regulator in order to meet the SEC's requirements.

Finally, if the Commission were to require a foreign private issuer to publish its Form 20-F at substantially the same time as the foreign private issuer's annual report in its home country, many issuers may face considerable logistical hardships. In our experience, the in-house teams that prepare an issuer's annual report in its home country are also significantly involved in the preparation of, if not the same people who prepare, the Form 20-F. If these reports were due at the same time, issuers, particularly smaller companies, may face considerable organizational hardships and shortage of manpower which could impact the quality of disclosure in both jurisdictions.

While we are not opposed to the Commission's proposal to shorten the reporting deadline for filing the Form 20-F, we believe that reducing the deadline to 90 days for all accelerated filers imposes a substantial burden upon many foreign private issuers. A survey of our members representing jurisdictions from around the globe revealed that the majority of jurisdictions required publication of an issuer's annual report within four months of the fiscal year-end.[1] For the reasons stated above, we believe that a reporting deadline that is shorter than a foreign private issuer's home country reporting deadline would be unduly burdensome. At the very least, the Commission should adopt a deadline of four months from the fiscal year-end which is on par with the majority of foreign jurisdictions.

- *Item 18 Reconciliation in Annual Reports and Registration Statements Filed on Form 20-F*

The Commission's proposal would require Item 18 information for all US GAAP reconciliations subject to a few limited exceptions. While we recognize the benefit of requiring the same level of financial information from all foreign private issuers, we believe that it would be justified to retain a limited exception to this rule for annual report filings on Form 20-F. Foreign private issuers that file on the basis of local GAAP and who currently use Item 17 would have to spend significant additional time complying with Item 18 where local GAAP does not otherwise require the extensive footnote disclosures required by U.S. GAAP and Regulation S-X. We note that Item 17 disclosures remain available to Canadian MJDS filers which, for the reasons noted above, we support as a very reasonable approach, and believe that the same option should continue to be available to all foreign private issuers.

- *Disclosure About Changes in a Registrant's Certifying Accountant*

The Commission's proposal would require the same type of disclosure currently provided by domestic issuers. We believe that this proposed change, while requiring additional disclosure by the foreign private issuer, would not pose undue burdens upon foreign private issuers, given that issuers listed on the NYSE or Nasdaq are required to notify a change in

[1] A list of the members of the Securities Law Committee who responded to the survey is provided in Annex A.

their auditors under the cover of a Form 6-K in any event, particularly when weighed against the importance for investors to ensure solid auditor-issuer relationships.

- *Annual Disclosure About ADR fees and Payments*

We agree that disclosure of ADR fees and payments is important information to the US investor; however, we do not believe that the Commission has provided a convincing argument as to why it is necessary to include such disclosure in the Form 20-F when such information is readily available in Form F-6. In the alternative, the Commission could propose more significant disclosures in that Form. In the Release, the Commission states that although ADR fees are disclosed in the ADR itself, ADR holders frequently purchase their ADRs in book-entry form and do not see the disclosures provided in the physical certificate; however, the investors can readily seek out that information, in particular given the ease of access afforded by EDGAR. For these reasons, we believe that it is not necessary to further amend Form 20-F to require foreign private issuers to disclose this information in that Form.

- *Disclosure About Differences in Corporate Governance Practices*

We agree with the Commission that consolidation of disclosure of differences in corporate governance practices in the Form 20-F annual report would be more user-friendly for investors. However, that change does require issuers to assume greater liability with respect to the information. Perhaps a better first step would be to evaluate whether investors use the information that is already available to them on this issue and whether they consider it important in making an investment decision.

- *Financial Information for Significant Completed Acquisitions*

While we understand and consider laudable the Commission's goal of seeking additional disclosure regarding completed acquisitions, the proposal represents a noticeable shift in the Commission's requirements for foreign private issuers. To date, issuers have been able to rely on the fact that historical and pro forma financial information for acquired companies is only required in connection with securities offerings registered under the Securities Act. Issuers may feel the Commission is "moving the goalposts". Moreover, companies acquired overseas often will not have the capability to prepare the financial statements required by Articles 3 and 11 of Regulation S-X. Preparing pro formas will likewise be difficult, if not impossible. The Commission should consider a more reasonable requirement that foreign private issuers include in Form 20-F materially the same financial information about significant acquisitions included in home country filings.

* * * *

In conclusion, we would like to emphasize our support for the Commission's continued efforts to facilitate cross-border capital flows and eliminate inadvertent barriers to the US capital markets.

We thank you for the opportunity to comment on this proposal and look forward to a dialogue on these issues.

Sincerely yours,

/s/ René Bösch
René Bösch
Co-Chair, Securities Law Committee
Zurich

/s/ Philip Boeckman
Philip Boeckman
Co-Chair, Securities Law Committee
London

/s/ Jonathan Ross
Jonathan Ross
Senior Vice-Chair, Securities Law Committee
Auckland

/s/ Pere Kirchner
Pere Kirchner
Senior Vice-Chair, Securities Law Committee
Madrid

/s/ Nigel Wilson
Nigel Wilson
Vice-Chair, Securities Law Committee
London

/s/ Florian Gibitz
Florian Gibitz
Vice-Chair, Securities Law Committee
Vienna

/s/ Derk Lemstra
Derk Lemstra
Vice-Chair, Securities Law Committee
London

/s/ Uwe Eyles
Uwe Eyles
Vice-Chair, Securities Law Committee
Frankfurt

/s/ Cecilia Carrara
Cecilia Carrara
Secretary, Securities Law Committee
Rome

/s/ Linda Hesse
Linda Hesse
Chair, Subcommittee for Regulatory Affairs
Securities Law Committee
Paris

/s/ Florian Khol
Florian Khol
Chair, Subcommittee for Mergers & Acquisitions
Securities Law Committee
Vienna

/s/ Charles Martin
Charles Martin
Vice-Chair, Subcommittee for Mergers & Acquisitions
Securities Law Committee
London

/s/ Nick Eastwell
Nick Eastwell
Vice-Chair, Subcommittee for Underwriting and Distribution
Securities Law Committee
London

/s/ Vince Pisano
Vince Pisano
Vice-Chair, Subcommittee for Underwriting and Distribution
Securities Law Committee
New York

/s/ Alberto Saravalle
Alberto Saravalle
Vice-Chair, Subcommittee for Public Company Practice and Regulation
Securities Law Committee
Milan

/s/ Niels Walther-Rasmussen
Niels Walther-Rasmussen
Chair, Subcommittee for Public Company Practice and Regulation
Securities Law Committee
Copenhagen

/s/ Gregory Astrachan
Gregory Astrachan
Chair, Subcommittee for Regulation of Market Participants, Brokers, Banks and Exchanges
Securities Law Committee
London and New York

/s/ Dorothee Fischer Appelt
Dorothee Fischer Appelt
Vice-Chair, Subcommittee for Public Company Practice and Regulation
Securities Law Committee
London

/s/ Philip Moore
Philip Moore
Regional Representative North America
Securities Law Committee
Toronto, Ontario

/s/ Pit Reckinger
Pit Reckinger
Website Officer
Securities Law Committee
Luxembourg

/s/ Cecilia Mairal
Cecilia Mairal
Regional Representative Latin America
Securities Law Committee
Buenos Aires

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Kathleen L. Casey
John W. White, Director, Division of Corporation Finance
Brian Breheny, Deputy Director (Legal and Regulatory), Division of Corporation Finance
Mauri Osheroff, Associate Director (Regulatory Policy), Division of Corporation Finance
Paul Dudek, Chief, Office of International Corporate Finance
Wayne Carnall, Chief Accountant, Office of the Chief Accountant
Katrina A. Kimpel, Professional Accounting Fellow, Office of the Chief Accountant

Annex A

List of Securities Law Committee members who participated in the survey

Non-US Jurisdiction:	**Law Firm:**	**Lawyer:**
Argentina	Brons & Salas	José Luis GALIMBERTI
Australia	Owen Dixon Chambers	Peter WILLIS
Belgium	Freshfields Bruckhaus Deringer	Chris SUNT
Brazil	Pinheiro Neto	Carlos ALEXANDRE LOBO
Brazil	Walter Stuber Consultoria Jurídica	Walter STUBER
Canada	Stikeman Elliot LLP	Simon ROMANO
Canada	Borden Ladner Gervais LLP	Alfred PAGE
Denmark	Jonas Bruun	Gitte DEHN LANSNER
Denmark	Lett Advokatfirma	Dan MOALEM
Denmark	Kromann Reumert	Marianne PHILIP
Egypt	Sarwat A. Shahid Law Firm	Girgis ABD EL-SHAHID
Finland	Waselius & Wist	Tarja WIST
Hungary	Szecskay Attorneys at Law	Judit BUDAI
Ireland	Mc Keever Rowan	Andrew CLARKE, Paul FOLEY

Non-US Jurisdiction:	Law Firm:	Lawyer:
Italy	Bonelli Erede Pappalardo	Alberto SARAVALLE
Luxembourg	Linklaters LLP	Janine BIVER / Nicki KAYSER
Netherlands	Stibbe N.V.	Derk LEMSTRA
Netherlands	De Brauw Blackstone Westbroek N.V.	Bernardina ZUIDEVELD
Netherlands Antilles	Spigthoff Attorneys at Law & Tax Advisers	Maike BERGERVOET
Portugal	Abreu Advogados	Miguel CASTRO PEREIRA / Mónica CAYOLLA DA VEIGA
Slovenia	Dolzan, Vidmar & Zemljaric	Mitja VIDMAR
Switzerland	Homburger AG	Dieter GERICKE