Financial Reporting Committee

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

12 May 2008

Dear Ms Morris

Ref: File Number S7-05-08

FOREIGN ISSUER REPORTING ENHANCEMENTS

Who we are

The Hundred Group of Finance Directors represents the views of the finance directors of the UK's largest companies drawn largely, but not entirely, from the constituents of the FTSE100 Index. Our members are the finance directors of companies whose market capitalisation collectively represents over 80% of companies listed on the London Stock Exchange. A number of our members are also listed in the United States. Views expressed in this letter are those of The Hundred Group of Finance Directors but are not necessarily those of our individual members or their respective employers.

Our comments

We thank the Commission for the opportunity to comment on these proposals. We have not responded specifically to each of the questions on which the Commission solicited comments but have offered our comments on each of the principal proposals.

Proposed Changes

Annual Test for Foreign Private Issuer Status (Questions 1-8)

We welcome the Commission's initiative to simplify the assessment of foreign private issuer status by moving away from continuous assessment and acknowledge that it proposes an assessment on the last business day of the second fiscal quarter (the same date used to determine accelerated filer status under Exchange Act Rule 12b-2 and smaller reporting company status in Item 10(f)(2)(i) of Regulation S-K).

We welcome the Commission's proposal that if a foreign issuer no longer qualifies as a foreign private issuer it would be required to comply with the reporting requirements for domestic companies beginning on the first day of the fiscal year following the determination date (such that the issuer would have six months' advance notice that it will need to transition

to the domestic reporting requirements). We similarly welcome the proposal that a domestic issuer becoming a foreign private issuer may immediately avail itself of the accommodations available to foreign private issuers.

We understand the Commission's concern that companies may attempt to manipulate their compliance with the conditions. We believe that such manipulation is unlikely to occur in practice but suggest that it could be avoided if the Commission were to adopt a form of rolling assessment of foreign private issuer status. We suggest, for example, that an issuer be required to assess its status on the last business day of each fiscal quarter and that its status should change only if it fails to meet the conditions to be a foreign private issuer on, say, four consecutive assessment dates. In this way, the issuer's ability to manipulate the assessment would be reduced and the issuer's status would change only if there was consistency over a reasonable period in its compliance or non-compliance with the conditions for foreign private issuer status. We believe that this would avoid confusion among investors where under the current rules there is the potential for frequent changes in the status of companies that are "borderline" foreign private issuers.

Accelerating the Reporting Deadline for Form 20-F Annual Reports (Questions 9-14)

We acknowledge the Commission's proposal that the filing deadline for foreign private issuers should be reduced from within six months after the end of the issuer's fiscal year to within 90 days after the end of the issuer's fiscal year for large accelerated and accelerated filers and to within 120 days after the end of the issuer's fiscal year for all other issuers.

We understand that the Commission's rationale for this change is that "it should enable investors in the US markets to get annual reports on the more current basis in which they are provided in other jurisdictions". Consistent with this rationale, we suggest that the filing deadline for foreign private issuers should be no more onerous that the filing deadline that applies in their home countries. We also suggest that the Commission acknowledges the additional reporting burden for those companies who do not report in their home country in English by allowing them an additional 30 days to file their Form 20-F.

Compare, for example, a UK company and a French company both of which are publicly listed and in accordance with the EU's Transparency Obligations Directive must file their financial statements in their home country within four months of the end of their fiscal year. Under our proposal, the UK company would be required to file its Form 20-F within four months of the end of its fiscal year (as it reports in its home country in English) whereas the French company would be required to file its Form 20-F within five months of the end of its fiscal year end (as it reports in its home country in French).

We wish to draw the Commission's attention to the interaction of the proposed tighter filing deadlines and Rule 3-09 of Regulation S-X which requires an issuer to include in Form 20-F the audited financial statements of significant unconsolidated majority-owned subsidiaries and 50 per cent or less owned investments accounted for by the equity method. By definition, such an investee is not controlled by the issuer and the issuer is therefore unlikely to be able to direct the preparation of its financial statements. Such an investee is likely to be unlisted and will therefore typically have longer to prepare its financial statements (for example, in the UK, while a listed company must file its financial statements within four months after the end of its fiscal year, an equivalent unlisted company has *nine* months after the end of its fiscal year in which to file its financial statements) and may not prepare its home country financial statements in accordance with IFRS or US GAAP. We are therefore concerned that it may not be possible to obtain the audited financial statements of such investees within 90 days after the end of the issuer's fiscal year and request that the Commission considers how it might accommodate foreign private issuers that are required to file audited financial statements in accordance with Rule 3-09 of Regulation S-X.

We welcome the Commission's proposal that any change in the Form 20-F filing deadline should be subject to a two-year transition period such that, for example, if the proposal is adopted in 2008, the filing deadline would change for fiscal years ending on or after December 15, 2010.

Segment Data Disclosure (Questions 15 & 16)

We agree with the Commission that the concession allowing foreign private issuers that present financial statements otherwise fully in compliance with US GAAP to omit segment data from their financial statements is inconsistent with recent developments in financial reporting. We do not believe that any of our members are among the registrants that currently use this concession.

Exchange Act Rule 13e-3 (Questions 17-20)

We welcome the Commission's proposals to amend Exchange Act Rule 13e-3 so as to make it consistent with the new termination of reporting and de-registration provisions. We believe that it may be necessary to provide exceptions such that the rule is not inadvertently triggered by securities transactions in the ordinary course of business (such as share buy-backs or repurchases).

Other Matters Under Consideration

Requiring Item 18 Reconciliation in Annual Reports and Registration Statements Filed on Form 20-F (Questions 21-26)

We acknowledge the Commission's proposal to eliminate the distinction between the disclosure provided to the primary and secondary markets by requiring Item 18 information for foreign private issuers that are only listing a class of securities on an exchange, or only registering a class of securities under Exchange Act Section 12(g), without conducting a public offering and to require Item 18 information to be provided by foreign private issuers that file annual reports on Form 20-F.

We understand that the majority of foreign private issuers who do not prepare financial statements in accordance with US GAAP elect to provide financial information pursuant to Item 18, rather than Item 17 of Form 20-F. Indeed, we believe that most (if not all) of our members who are foreign private issuers will henceforth file financial statements prepared in accordance with IFRS as issued by the IASB and the distinction between Item 17 and Item 18 will no longer be relevant to them. However, we believe that there is still a place for a lower level of disclosure for those registrants who wish to list existing securities without conducting a public offering and would therefore encourage the Commission to reconsider the proposed replacement of Item 17 by Item 18.

If the proposals are introduced as drafted we suggest that there should be a two-year transition period (rather than the one-year transition period which is proposed) so as to be consistent with the transition period proposed in relation to the revised deadlines for filing Form 20-F. So, for example, if the proposal is adopted in 2008, Item 18 information would be required for fiscal years ending on or after December 15, 2010.

Disclosure About Changes in a Registrant's Certifying Accountant (Questions 27-30)

We recognise that the Commission is proposing amendments that would require substantially the same types of disclosures to be given by foreign private issuers about changes in and disagreements with their certifying accountant as are required to be given by domestic issuers and we acknowledge that the Commission has eliminated or modified some of the due dates

prescribed in Item 304(a)(3) of Regulation S-K because the disclosure will be made on an annual basis rather than a current basis.

While we do not disagree with the proposals in principle, we are concerned that foreign private issuers may be required to disclose more information concerning outgoing auditors in their annual reports on Form 20-F than is required to be disclosed in their home countries. We suggest that, if it has not already done so, the Commission discusses with other regulators how the proposed disclosures would interact with the requirements in their own jurisdictions.

Annual Disclosure About ADR Fees and Payments (Questions 31-34)

We understand that the Commission proposes to amend Form 20-F by revising Item 12.D.3 and the Instructions to Item 12 to solicit disclosure of fees paid by ADR holders to the depositary on an annual basis, including the annual fee for general depositary services, and of payments made by the depository to the foreign private issuer whose securities underlie the ADRs.

We do not believe that the Commission has adequately demonstrated the relevance of this information to investors and, therefore, why there is a need for it to be disclosed in the annual report of foreign private issuers. We do not understand why, for example, it is any more relevant to disclose amounts paid by investors to the depository than it is to disclose fees paid by investors to brokers to buy and sell the company's securities.

We would add that it may be difficult for the issuer to verify amounts paid by investors to the depository because from its perspective these amounts result from a contract between third parties.

Disclosure About Differences in Corporate Governance Practices (Questions 35-36)

We acknowledge that US securities exchanges exempt listed foreign private issuers from many of their corporate governance requirements but require those issuers to disclose, in their annual reports and/or on their websites, the significant ways in which their corporate governance practices differ from those followed by domestic companies under the relevant exchange's listing standards (this is, to our knowledge, true of the NYSE, NASDAQ and AMEX).

We support the Commission's proposal to require disclosure of such differences by foreign private issuers in their annual reports on Form 20-F as we believe that consolidation of the relevant corporate governance disclosure would be of assistance to investors.

Financial Information for Significant Completed Acquisitions (Questions 38-42)

We understand that the Commission proposes that financial statements for three fiscal years should be provided in respect of a single business acquisition that exceeds the 50% level in the significance tests prescribed by Exchange Act Rule 1-02(w).

We acknowledge that the disclosure requirement would be triggered at a higher level of significance than is the case for business acquisitions completed by domestic issuers and that the information would need to be provided only on an annual basis, not a current basis. While this would be helpful to foreign private issuers, we are concerned that the proposals represent the "thin end of the wedge" and that, in due course, the Commission will propose alignment with domestic issuers.

We believe that, in most jurisidictions, a business acquisition of this significance would be subject to prior shareholder approval and that historical financial information on the acquired business would be required to be provided to shareholders to enable them to take an informed

decision as to the merits of the acquisition. We therefore suggest that the Commission consults with investors as to whether they believe that it is necessary to repeat such historical information in the annual report on Form 20-F. We suggest that, if the required information has been previously published, it should be permissible to incorporate it in Form 20-F by reference to the document in which it is contained (perhaps with a requirement to file the document as an exhibit to Form 20-F).

Comments on Related Matters

EU Endorsement of IFRS

The Commission asked for comments on any other matters that might have an impact on the proposed amendments.

Foreign registrants whose primary listing is on a regulated market within the EU are required under EU law to prepare their financial statements in accordance with IFRS endorsed for use within the EU. EU endorsed IFRS may differ from IFRS as issued by the IASB.

We applaud the Commission for allowing foreign private issuers to file financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation to US GAAP. We recognise that the Commission has made it very clear that IFRS that has been subject to "carve-out" or amendment is not acceptable for filing purposes. We understand the reasons for this but are concerned that the interaction of the Commission's requirements and those of EU law could result in EU-based registrants having to prepare two sets of financial statements: one prepared in accordance with IFRS endorsed for use in the EU to satisfy EU law and one prepared in accordance with IFRS as issued by the IASB to satisfy the Commission's requirements (or, alternatively, reverting to a reconciliation to US GAAP or filing financial statements prepared in accordance with US GAAP).

We therefore request that, when deliberating the Form 20-F filing deadline, the Commission considers how it might accommodate EU-based registrants in the event that there is future divergence between IFRS endorsed for use in the EU and IFRS as issued by the IASB.

Yours sincerely

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