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U.S. Securities and Exchange Commission
To the att. of Ms. Nancy M. Morris
Secretary 100 F Street, NE
Washington, D.C. 20549-9303
USA

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OFFICE OF THE SECRETARY

Brussels, 8 May 2008

**Re: Comments on Proposed Amendments to Rules Relating to Foreign Private Issuer Reporting under the Securities Exchange Act of 1934
File No. S7-05-08**

Dear Ms. Morris,

We are submitting this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments on the Commission's proposal to amend the rules and forms that govern reporting by foreign private issuers under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The proposal is discussed in Release No. 33-8900; 34-57409; International Series Release No. 1308; File No. S7-05-08 (the "Release").

Europeanissuers¹ has for several years supported the efforts of the Commission to review the application of the U.S. securities laws and regulations to non-U.S. issuers. These efforts have resulted in substantial improvements to the U.S. regulatory regime in the past few years, including the modernization of the rules governing deregistration and the elimination of U.S. GAAP reconciliation for companies that publish IFRS financial statements.

Unfortunately, we cannot support the Commission's proposal to require large non-U.S. issuers to file their annual reports on Form 20-F within 90 days of the end of their fiscal years. We regard this proposal as a step in the opposite direction compared to the

¹ Europeanissuers is a pan European organisation that represents the vast majority of publicly quoted companies in Europe. Europeanissuers was formed when EALIC, the European Association of Listed Companies, and UNIQUE, the Union of Issuers Quoted in Europe, combined their organisations in early 2008. Its members are national associations and companies from the following countries: Austria, Belgium, Bulgaria, Cyprus, Finland, France, Germany, Greece, Italy, the Netherlands, Poland, Portugal, Spain, Switzerland and the United Kingdom. These markets count some 9,200 listed companies with a combined market value of some € 8,500 billion. Europeanissuers is an International Non Profit Association under Belgian law with registered seat and permanent secretariat in Brussels.

Commission's other recent initiatives, and we hope that the Commission will decide to reconsider its position.

The Commission's proposal would, if adopted, significantly increase the burdens on foreign issuers without providing material benefits to U.S. investors. It would also be contrary to the spirit of dialogue and mutual cooperation that has developed over the last few years between the Commission and its non-U.S. counterparts, including CESR and the European Commission.

There are a number of reasons why we believe the Commission should modify its proposal:

- It would place significant strain on the limited resources of non-U.S. companies, which are required to meet ever more stringent home country reporting requirements in addition to their U.S. reporting requirements. For most companies, the same people work on both home country reporting and U.S. reporting.
- It would effectively impose an equivalent deadline on companies in their home jurisdictions, as most companies are prohibited under home country rules from publishing information in the United States without simultaneously publishing the same information in their home countries. The Commission would in substance be adopting an amendment to the home country reporting deadlines of non-U.S. companies.
- It would not recognize the significant additional work that goes into the preparation of a Form 20-F after a company's home country report is published. This includes internal control evaluation, disclosure committee review and the preparation of disclosure that is not required in the same form, or sometimes at all, under home country rules (for example, critical accounting policy disclosure, market risk information, statistical information for banks and oil and gas reserves disclosure). For many companies, the preparation of the Form 20-F requires translation, which is a long and difficult exercise for documents that must meet the highest quality standards. It also includes U.S. GAAP reconciliation for some companies, although this is less of a concern for most of the European companies that our organization represents, as they publish financial statements in accordance with IFRS.
- It would provide minimal benefits for U.S. investors, as most companies publish the material information contained in a Form 20-F on a continuous basis over the course of the year (continuous disclosure is mandatory for European companies under the European Market Abuse Directive). Most significantly, large companies systematically publish annual results announcements well before the 90-day deadline, providing the market with the most important information contained in the Form 20-F.

We believe that today's global markets require a cooperative approach among regulators to adopt coordinated rules that serve the interests of investors worldwide (including in the United States) without placing unnecessary burdens on companies. The Commission's proposal unfortunately seems to be contrary to this spirit, as it represents a unilateral rule

proposal that does not take into account the deadlines applied by non-U.S. regulators for the publication of analogous documents. Based on the Commission's strong past record of international dialogue and cooperation, we are confident that the Commission will give all consideration to adopting a different approach.

In this spirit, we believe that it would be appropriate for the Commission to link the Form 20-F deadline with a company's home country reporting calendar. Specifically, we propose that the Form 20-F deadline be one month after a company's home country deadline (four months after year-end for European companies under the Transparency Directive). The one-month period would give the company time to prepare translations and to complete other procedures that are specific to the Form 20-F.² The final rule could also provide that the one-month period would start on the date of actual publication of the home country annual report, if that takes place earlier than the date of the deadline.

In addition to the 90-day filing deadline, we have comments on some of the other proposals made by the Commission in the Release:

- We support the proposal that a company determine its status as a "foreign private issuer" once a year, rather than on a continuous basis, and that it be given a transition period to begin reporting as a U.S. issuer if it does not meet the definition of "foreign private issuer."
- We also support the proposal for a transition period before a shortened Form 20-F filing deadline would apply (regardless of whether the Commission accepts our recommendation for the filing deadline).
- We understand the Commission's proposal to require financial disclosure when a company makes an acquisition that is significant at the 50% level, but we believe that requiring companies to provide pro forma and target financial statements prepared under SEC rules in a Form 20-F is not the right approach. In many cases, non-U.S. companies will not have access to the information necessary to prepare pro forma or separate financial statements (particularly if they must be prepared under the IASB version of IFRS and audited under PCAOB standards). In some cases, the acquisition target or seller may be unwilling or unable to furnish the required information, meaning that an SEC-registered company subject to these disclosure requirements might have to abandon a major transaction that otherwise would be in the interests of shareholders (or deregister in order to complete the transaction). We believe that the final rule should rely on general principles of materiality, with companies providing at a minimum the information they publish in their home countries, as well as any other information necessary to make the Form 20-F complete and not misleading, without requiring the information to be presented under any specific format.

² Additional time might be appropriate for companies that are required to reconcile their financial statements to U.S. GAAP.

If the Commission nonetheless decides to adopt a rule requiring financial statements, we believe it should provide flexibility for companies to include financial information based on home country jurisdictional variants of IFRS and local auditing standards, and to omit financial information when it cannot be produced without unreasonable burden or expense. We also believe that the rule should determine significance only by reference to the investment and assets tests, and not the net income test, which does not always provide an accurate indication of the importance of an acquisition to a consolidated group. Finally, the Commission should provide a transition period of three years so companies can plan for the required financial reporting when they negotiate future acquisitions.

- We are not opposed to the proposal that companies disclose fees charged by ADR depositary banks, but they should be protected from liability for this disclosure if they rely on information provided by the depositary banks.

As a general matter, we also believe that it is important for the Commission to continue to adhere to IOSCO principles as a basis for Form 20-F disclosure. The application of these principles on a global basis benefits investors by providing them with information on companies from multiple jurisdictions based on a familiar disclosure regime.

In this spirit, the Commission's proposal to require disclosure regarding changes in auditors, while not especially burdensome, is an example of a deviation from IOSCO standards that seems unnecessary to us, particularly in Europe, where companies cannot change auditors at will. We believe this and other changes should be considered by the Commission in light of the substantial benefits that result from adherence to IOSCO principles.

* * * * *

As a conclusion, we would once again like to emphasize the importance of regulatory coordination in today's global securities market. We think that the interests of investors would be best served by eliminating differences between reporting requirements for companies listed in multiple jurisdictions, because this would make the information easier for investors to understand, and reduce the *obstacles to multiple listings* that exist in the current market.

The best way to achieve this goal would be to adopt a system of mutual recognition of prospectuses and periodic reports among jurisdictions with high quality standards, including the European Union and the United States. While we understand that a number of complicated issues would have to be addressed in order to make such mutual recognition a reality, we believe the effort is worthwhile, and that it is important to start this process as soon as possible.

We appreciate the opportunity to provide our thoughts to the Commission on these issues.

Very truly yours,



Dorien FRANSENS
Secretary General

cc: The Honorable Christopher Cox, *Chairman*
The Honorable Paul S. Atkins, *Commissioner*
The Honorable Kathleen L. Casey, *Commissioner*

John W. White, *Director, Division of Corporation Finance*
Paul M. Dudek, *Chief of the Office of International Corporate Finance*
Ethiopsis Tafara, *Director, Office of International Affairs*

Commissioner Charlie McCreevy, *European Commission*
David Wright, *Deputy Director General, Financial Markets, DG Internal Market*
Eddy Wymeersch, *Chairman, Committee of European Securities Regulators*

Andrew A. Bernstein, *Cleary Gottlieb Steen & Hamilton LLP*

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PORTUGAL

SONAE

SPAIN

TELEFONICA

2. NATIONAL ASSOCIATIONS OF LISTED COMPANIES

AUSTRIA

Aktienforum - Austrian Federation of Equity-Issuers and -Investors

BELGIUM

Association Belge des Sociétés Cotées (ASBL) – Belgische Vereniging van Beursgenoteerde Vennootschappen (VZW) – (ABSC – BVBV)

BULGARIA

Bulgarian Industrial Capital Association

CYPRUS

Cyprus Association of Public Listed Companies – (SYDEK)

FINLAND

Finnish Foundation for Share Promotion

FRANCE

- Association Française des Entreprises Privées – (AFEP)
- Association Nationale des Sociétés par Actions – (ANSA)
- MiddleNext

GERMANY

Deutsches Aktieninstitut e.V. – (DAI)

GREECE

The Union of Listed Companies

ITALY

Associazione fra le società italiane per azioni (ASSONIME)

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Vereniging Effecten Uitgevende Ondernemingen (VEUO)

POLAND

Stowarzyszenie Emitentów Giełdowych (SEG)

SWITZERLAND

SwissHoldings

UNITED KINGDOM

The Quoted Companies Alliance (QCA)