

28 February 2006

ICAEW response: 12/06



Mr Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street
NE, Washington
DC 20549-9303

Dear Sir

File No. S7-12-05

TERMINATION OF A FOREIGN PRIVATE ISSUER'S REGISTRATION OF A CLASS OF SECURITIES UNDER SECTION 12 (G) AND DUTY TO FILE REPORTS UNDER SECTION 15 (D) OF THE SECURITIES AND EXCHANGE ACT 1934

The Institute of Chartered Accountants in England & Wales (ICAEW) is pleased to submit this letter of comment in response to the SEC's proposals (the proposals) to permit foreign private issuers (FPIs) to terminate certain registration and reporting responsibilities.

The ICAEW is the largest individual body of professionally qualified accountants in Europe with over 127,000 members who work in many sectors in business and the public sector, as well as practising as accountants and auditors. Institute members represent 63% of accountancy qualified CFOs and 46% accountancy qualified CEOs in the FTSE 100 – the top 100 UK listed companies. We operate under a Royal Charter that requires us to act in the public interest.

Overall comments

We welcome the proposals which demonstrate the SEC's responsiveness to many of the concerns of FPIs about their ability, under the existing rules, to exit US markets and SEC regulation.

We suggest below some constructive modifications to the SEC's proposals which we consider would help better reflect the practicalities of today's markets. We hope these suggestions are helpful.

We believe that the effect of the proposals taken with our suggestions may well be that potential FPIs are more likely to consider a US listing if there are more flexible mechanisms that permit them to exit US markets and SEC regulation if, for example, their strategy, operations or other circumstances change.

The proposals rightly recognise the safeguards to investors provided by non-US domestic reporting requirements. We consider this to be particularly relevant in the context of the proven standards of corporate governance, reporting and regulatory regimes applying to companies listed in the UK.



Suggested modifications

Large US institutional investors

Capital markets are far more global today than they were even a decade ago. Large US institutional investors (or ‘qualified institutional buyers’ - QIBs) are just as likely to invest in FPIs through non-US markets as they are through US markets. Such institutional investors, with their substantial resources and expertise dedicated to engaging with issuers, and it is smaller private US investors rather than QIBs who should be the focus of the SEC’s regulatory concerns.

The influence wielded by large institutional investors over the boards and management of FPIs should generally provide adequate mechanisms for interaction between FPIs and their institutional investors. If large institutional investors are not happy with FPIs’ deregistration proposals, they will surely make their views known.

A few large institutional investors may hold or trade a material amount of the stock of an FPI. These activities mean that such investors may have a disproportionate impact on the US shareholder base and trading volume calculations in the proposed rule.

We therefore suggest that FPIs should be permitted to exclude large US institutional investors from their shareholder base and trading volume calculations assuming that the FPI has the agreement of the relevant institutions.

The ‘300 US residents’ benchmark

We note that Section 1B of the proposed rule (pages 8 and 9) states that *it has been almost four decades since the Commission adopted the “300 US resident shareholder” standard as the benchmark for determining both when a foreign private issuer must register a class of equity securities under section 12(g) and when it may terminate that registration.* The proposed rule (page 9) then goes on to reflect upon many of the changes in the markets over the past four decades.

Statistics on the NYSE website show substantial growth in the US market over the last few decades. For example, the number of direct and indirect shareholders rose from 20 million in 1965 to 84 million in 2002, representing an estimated rise from 17% to 42% as a percentage of adult US citizens in the same period.

Despite these changes, the SEC’s ‘300 US residents’ benchmark has not developed. We suggest that this would be an opportune time for an increase in the benchmark figure.

If you require further information, please contact Jonathan Hunt (jonathan.hunt@icaew.co.uk), Katherine Bagshaw (katherine.bagshaw@icaew.co.uk) or myself at the Institute.

Yours faithfully



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