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February 12, 2007

Via email: rule-comments@sec.gov

Ms. Nancy Morris,
Secretary,
Securities and Exchange Commission,
100 F Street, NE,
Washington, DC 20549-9303.

Re: Re-Proposed Rule Permitting Foreign Private Issuers to Deregister and Terminate Their Reporting Obligations under the Securities Exchange Act of 1934 (File No. S7-12-05)

Dear Ms. Morris:

We are pleased to respond to Release No. 34-53020, International Series Release No. 1295 (the "Release"), in which the Securities and Exchange Commission (the "Commission") has solicited comments on its re-proposal (the "Proposal") of an amendment to the rules that govern termination of a foreign private issuer's registration of a class of securities under Section 12(g) and the duty to file reports under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act").

We strongly support the Proposal and believe that it represents a sensible and timely improvement on the existing rules. We believe that the Proposal is based on an appropriate measure of relative U.S. market interest that will remove unnecessary obstacles to deregistration, while still providing for meaningful protection of U.S. investors. We applaud this outcome, the process of international dialogue that has led to it, and the Commission's stated intent of rationalizing the deregistration rules as part of a broader program for removing disincentives to foreign private issuers accessing the U.S. capital markets.

We endorse the Commission's decision to modify the threshold for deregistration and termination of a foreign private issuer's reporting obligations with respect to its equity securities from a pure numerical test (300 beneficial holders resident in the United States) to a test primarily based on a quantitative benchmark which does not

depend on a headcount of the issuer's U.S. security holders. We agree with the Commission's objective to create a simple and easy-to-use test for foreign private issuer deregistration, and we endorse the Commission's adoption of a benchmark based on the comparison of the average daily trading volume of a foreign private issuer's equity securities in the United States with that in its primary trading market.

As was suggested more than three years ago by our partner David Morrison in one of the leading articles on this topic, we believe that the adoption of a deregistration test based primarily on the percentage of the registrant's trading occurring in the U.S. market is the right response to the increased internationalization of the securities markets and the emergence of book-entry clearance and settlement. We do offer below in this letter suggestions with regard to the methodology for measuring trading volumes under the Proposal.

With respect to the other conditions to deregistration, we have suggestions for clarifying and improving certain aspects of the Proposal.

We also endorse the re-proposed amendments to Rule 12g3-2. We agree with the Commission that, subsequent to deregistration, foreign private issuers should be able to avail themselves of the exemption under Rule 12g3-2(b) immediately, and with the Commission's policy objective to encourage continued maintenance of American Depositary Receipt facilities after deregistration.

We have set forth below our comments on a few specific aspects of the Proposal that we believe can be improved or clarified in a manner consistent with the goals articulated by the Commission.

I. Comments on the primary quantitative benchmark

1. Trading volumes test calculation

Under re-proposed Rule 12h-6, a foreign private issuer would have the option of deregistering a class of equity securities if the average daily trading volume ("ADTV") of the subject class in the United States has been five per cent or less of the ADTV of that class of securities in the issuer's primary trading market (the "Primary Trading Market"). The re-proposed rules define Primary Trading Market to mean that at least 55 per cent of the trading in the foreign private issuer's subject class of securities took place in, on or through the facilities of a securities market or markets in no more than two foreign jurisdictions during a recent 12-month period.

We agree with the Commission's suggestion set forth in the Release that, for purposes of comparing the ADTV of a foreign private issuer in the United States with the ADTV in the issuer's Primary Trading Market, it is not necessary or appropriate to make distinctions based on the type of market in which a security is traded. We also believe that the Commission should not mandate or specify acceptable information sources for determining the ADTV of a foreign private issuer in its Primary Trading

Market, but should allow the issuer to rely on the volume data as they are reported in the foreign jurisdictions.

We note that, for the purposes of the calculation, the trading volume in the Primary Trading Market, *i.e.*, the "denominator" of the trading volume benchmark, is intended to include trading in, on or "through the facilities of" the Primary Trading Market, and appears to exclude off-market trading. The concept of "trading through the facilities" of a market is not clearly defined in the re-proposed rules or in the Release and does not, to our knowledge, have a uniformly understood meaning in international market practice. This may give rise to uncertainty in identifying which measure of trading volume to use. We suggest that the Commission indicate clearly in the final rules or in the adopting release that a registrant may use the most inclusive measure of trading volume reported by or through all regulated trading markets recognized by the appropriate securities regulatory authority or authorities in the Primary Trading Market. This could include, in addition to floor trading, trades executed through block-trade facilities and electronic trading networks, as well as over-the-counter trades reported through a transaction reporting system administered by a regulated trading market.

We also believe that in certain circumstances, the proposed measurement of relative U.S. market interest in a foreign private issuer's equity securities should take into account off-market trading in the Primary Trading Markets, even if that off-market trading is not reported by or through a regulated trading market. In our experience, certain foreign jurisdictions, such as Australia, are characterized by significant off-market trading. As a result, we expect that for certain foreign private issuers the volume based measurement that relies solely on trading reported by or through a regulated trading market may underestimate the level of trading in the Primary Trading Market. We recommend that the final rules or the adopting release clarify that foreign private issuers are permitted to include off-market trading in the calculation of the issuer's ADTV in the Primary Trading Market whenever credible support (such as by reference to share registry records or regulatory reports by broker dealers, intermediaries or other market participants) is available to verify the quantum of such trading.

2. One-year ineligibility period after termination of ADR facility

We endorse the Commission's policy objective of encouraging foreign private issuers to maintain their American Depositary Receipt facilities, even when they delist from a U.S. exchange or automated inter-dealer quotation system and terminate their Exchange Act reporting obligations. For this reason, we agree that issuers planning to exit the Exchange Act's reporting system should be discouraged from seeking to terminate their sponsored ADR facilities for the purpose of limiting the ability of U.S. investors to hold or purchase their securities and, consequently, reducing the issuer's U.S. ADTV.

However, there is no similar justification for applying the one-year ineligibility period to foreign private issuers that meet the trading volume benchmark of proposed Rule 12h-6 at the date of termination of the sponsored ADR program.

Accordingly, we believe that the Commission should revise the one year ineligibility condition in the final rules to make it applicable only to a foreign private issuer that terminates its sponsored ADR facility at a time when the ADTV of such issuer's U.S. trading exceeds 5% of the ADTV in its Primary Trading Market over a recent 12-month period.

We share the Commission's hope that the new ability to perfect a 12g3-2(b) exemption and the eased conditions for maintaining it (particularly if the suggestions we make below are implemented), combined with the desirability of preserving over-the-counter trading in the United States and a wish to foster good shareholder relations will be sufficient reason for most issuers to decide to maintain their ADR programs even if they wish to exit the reporting system.

II. Comments on other conditions

1. Exemption from the dormancy and prior reporting requirement for certain business combinations

We welcome the proposed amendments to the dormancy requirement set forth in Rule 12h-6(a)(2). We believe, however, that the scope of the exemption from the one-year dormancy requirement for registered offerings should be expanded to encompass certain business combinations between foreign private issuers subject to shareholders' approval for which U.S. registration is required. A foreign issuer that engages with another foreign issuer in a business combination of the type contemplated by Rule 145 under the Securities Act of 1933 (the "Securities Act") is required to file a registration statement under the Securities Act even if U.S. interest in the target company is limited unless an exemption, such as the one provided by Rule 802, is available. In such circumstances, the nexus of the transaction with the United States may be marginal and the acquiring foreign issuer typically files a registration statement only reluctantly and solely to comply with a legal obligation. In our view, such an issuer can hardly be deemed to have voluntarily accessed the U.S. market. A registration in the context of a business combination between two foreign private issuers is clearly distinguishable from a capital raising, which is the type of transaction that the Commission appears to have specifically contemplated when designing the dormancy requirements. We suggest that delaying the availability of Rule 12h-6 for one year in such cases is not justified and we believe that the dormancy requirement should be revised to exclude such transactions.

We also do not believe that the prior reporting requirement set forth in proposed Rule 12h-6(a)(1) should apply to an issuer that first registers with the Commission solely in connection with a business combination in the circumstances described above, if the issuer clearly states in the registration statement its intention to terminate its reporting obligations after the transaction. The Commission has indicated that the prior reporting condition serves the purpose of providing U.S. investors with a minimum period of time to make an investment decision based on Exchange Act reports. The registration statement should provide sufficient information regarding the issuer and

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We appreciate the opportunity to comment on the proposed rules, and we would be pleased to discuss any questions the Commission or its staff may have about this letter. Any questions about this letter may be directed to George H. White or Oderisio de Vito-Piscicelli (+44 20 7959 8900) in our London office.

Very truly yours,

Sullivan & Cromwell LLP

SULLIVAN & CROMWELL LLP

cc: Brian Cartwright (General Counsel)
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