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March 17, 2006

By E-mail to: rule-comments@sec.gov

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

Re: **File No. S7-12-05**
Release No. 34-5020, International Series Release No. 1295
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 Exchange Act of 1934

Dear Ms. Morris:

This letter is submitted on behalf of the Section of International Law (the "Section") of the American Bar Association in response to the request for comments by the Securities and Exchange Commission (the "Commission") on its December 23, 2005 release referenced above (the "Release").

These comments were formulated by the Section's International Securities and Capital Markets Committee (the "Committee"). The Committee focuses on national and international laws and regulations dealing with the issuance of securities and capital markets activities. A substantial proportion of the Committee's members and leadership is based outside of the United States, focusing on securities law, either as US lawyers or as non-US lawyers. Our Committee believes it has a rich experience in the interplay of US and foreign securities laws.

The comments expressed in this letter represent the views of the Section only and have not been approved by the American Bar Association's House of Delegates or Board of Governors and therefore do not represent the official position of the ABA. In addition, this letter does not represent the official position of the ABA Section of International Law, nor does it necessarily reflect the views of all members of the Committee. This letter also does not represent the views of any other ABA Section.

The Section commends the Commission and its Staff for its ongoing consideration of the rules relating to the exit process for foreign private issuers from the registration and reporting regime of the Securities Exchange Act of 1934 (the "Exchange Act"). The Section welcomes and strongly supports the proposals in the Release relating to the simplification and liberalization of the deregistration process for foreign private issuers and the termination of Exchange Act reporting requirements once deregistration is achieved.

We have reviewed and participated in the comment process for letters prepared by (i) the European Organizations, (ii) the International Bar Association and (iii) the Committee on Federal Regulation of Securities of the American Bar Association's Business Law Section. We broadly support both the recommendations and the technical comments made in those letters.

In addition, we wish to stress two points:

- *Prompt Adoption.* We urge the Commission to promptly adopt proposed Rule 12h-6 under the Exchange Act in order to allow foreign private issuers the flexibility for de-registration that many of them have long awaited. If prompt adoption is not possible, a further delay in the application of Section 404 of Sarbanes-Oxley is essential. No useful purpose will be served in forcing a foreign registrant to comply with Section 404, only for the foreign registrant to exit SEC registration soon thereafter.
- *Threshold.* The Section strongly believes that in order for the final rule to be successful, it must address the high concentration of US institutional investors that very typically own equity in non-US issuers, both SEC registrants and non-SEC registrants. We respectfully recommend that large US institutional shareholders be excluded from the calculation of US shareholder interest. A few large US institutional investors typically hold substantial amounts of shares in a foreign issuer through the local market. This reflects the sophistication and knowledge of overseas markets of US institutional investors. Such investors directly participate in those markets, presumably relying on local securities regulation and disclosure rather than an entity's status as an SEC reporting company. We note that the Commission has recognized in other contexts that such institutional investors do not need the protection of the registration and mandated disclosure requirements of US securities laws. An alternate way of permitting foreign private issuers with US shareholder interest to be able to use the final rule would be for the threshold for de-registration to be set substantially higher than 10 per cent of the issuer's worldwide public float, say at 25 per cent or higher.

Finally, without delaying adoption of proposed Rule 12h-6, our Section urges that the Commission consider undertaking a study on the continued internationalization of the securities markets to facilitate consideration of other rule changes. The issue of significant equity ownership by a limited number of US institutional investors, for example, is highly relevant to the application of the rules for Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings. There are many challenges ahead for the US markets. A study would be instrumental in the inevitable discussions about the appropriate reach of US law in a highly international context, where markets outside the US, particularly in Europe, have grown dramatically in size, depth and liquidity during the last twenty years. As the SEC might have predicted, the growth of markets outside the US has only been possible because, in the last twenty years, there has been an equally dramatic increase in the level and sophistication of securities regulation of those markets.

Almost twenty years ago, the Staff of the Securities and Exchange Commission submitted a report (the "Report") to Congress on the "Internationalization of the Securities Markets."¹ The Report stated that "As a result of a number of factors, including technological advances and the removal of restrictions on foreign participation by many of the world's securities markets, internationalization is more than a developing trend, it is a present day reality. Moreover, it is a phenomenon that has a profound impact on the US securities markets." The Report also indicated that US investors increasingly sought to invest in non-US companies for greater diversification and to benefit from an environment in which the dollar was falling.

The Report was viewed as an important study that provided the basis for the SEC, the US investor community, financial institutions, issuers and legal and accounting practitioners to consider the appropriate balance between accommodation for non-US companies and US investor protection. The Report, arguably, was one of the principal sources for a fresh US approach to globalization of the

¹ Report of the Staff of the U.S. Securities and Exchange Commission to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce (1987).

markets, and the accommodation in SEC rulemaking (such as Regulation S and Rule 144A) to adapt to the global environment.

Much has happened during the last twenty years, and we urge the Commission to join with industry and investor groups in undertaking a study to inform future rule making and rule making revisions.

The Section appreciates the opportunity to comment on the Release and respectfully requests that the Commission consider the recommendations set forth above. Members of the Committee are available to discuss these comments. If you believe that such discussions would be helpful, please contact Daniel Bushner (tel: +44 20 7859 2880, e-mail: daniel.bushner@ashurst.com).

Respectfully submitted,



Michael H. Byowitz
Chair

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cc: The Honorable Christopher Cox, *Chairman*
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The Honorable Roel C. Campos, *Commissioner*
The Honorable Cynthia A. Glassman, *Commissioner*
The Honorable Annette L. Nazareth, *Commissioner*

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Jeffrey W. Rubin, *Federal Regulations Committee of the American Bar Association*