SULLIVAN & CROMWELL LLP
A LIMITED LIABILITY PARTNERSHIP

TELEPHONE: +44 (0)20-7959-8900
FACSIMILE: +44 (0)20-7959-8950
WWW.SULLCROM.COM

One New Fetter Lane
London EC4A 1AN, England

FRANKFURT • PARIS
LOS ANGELES • NEW YORK • PALO ALTO • WASHINGTON, D.C.
BEIJING • HONG KONG • TOKYO
MELBOURNE • SYDNEY

May 12, 2008

Via email: rule-comments@sec.gov

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

Re: Foreign Issuer Reporting Enhancements – File No. S7-05-08

Dear Ms. Morris:

This letter is in response to Release No. 33-8900; 34-57409; International Series Release No. 1308 (the "Proposing Release"), in which the Commission solicits comments on its proposal to amend a number of rules relating to reporting by foreign private issuers.

We commend the Commission's intention to address changes that have resulted from market developments, new technologies and other matters in a manner that promotes investor protection, cross-border capital flows and the elimination of unnecessary barriers to the U.S. capital markets. However, we believe that the proposed accelerated deadlines for filing annual reports on Form 20-F may create an unreasonable burden for certain foreign private issuers. We have set forth our comments on this and other aspects of the proposals below.

1. Proposed Acceleration of the Reporting Deadline for Form 20-F Annual Reports

We believe that it is appropriate for the Commission to consider accelerating the filing deadline for Form 20-F for foreign private issuers following the elimination of the requirement to prepare a reconciliation to generally accepted accounting principles in the United States ("U.S. GAAP") for foreign private issuers that

prepare their financial statements in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"). We believe, however, that accelerating the Form 20-F filing deadline to 90 days after the foreign private issuer's fiscal year-end, in the case of large accelerated and accelerated filers, and to 120 days after the issuer's fiscal year-end for all other issuers would impose significant burdens on a substantial number of foreign private issuers. It is likely that such deadlines, if adopted, would require a number of foreign issuers to maintain a dual-track annual report process, placing additional strain on an issuer's resources at the beginning of each financial year and potentially delaying publication of the issuer's annual report in its home country thus depriving markets of the benefit of early publication of home country annual reports. For example, issuers often need additional time to address certain requirements of Form 20-F that may not be relevant for purposes of their home country annual report, including some of the requirements under the Sarbanes-Oxley Act ("SOX") such as completing and documenting management's assessment and the auditor's report on internal control over financial reporting in accordance with Section 404 of SOX as well as complying with internal procedures that many issuers have implemented in connection with the certifications by chief executive officers and chief financial officers pursuant to Sections 302 and 906 of SOX. Furthermore, requiring issuers to file their Form 20-Fs to comply with such accelerated timelines would place an even greater burden on issuers that prepare their home country annual reports in a language other than English. Certain foreign languages, especially those outside Europe, are substantially different from English with respect to grammar and styles of expression. Preparation of English translations of disclosure and exhibits to the Form 20-F that are originally prepared in such foreign languages requires substantial efforts both in terms of time and allocation of human and financial resources.

We note, moreover, that the current requirements of Form F-3 and Item 8 of Form 20-F already provide strong incentives to foreign private issuers that regularly issue securities in the United States using a shelf registration statement on Form F-3 to file their annual reports on Form 20-F within three months of their fiscal year end. Foreign private issuers that do not file their annual reports on Form 20-F within such three-month period are either infrequent issuers in the United States or have accepted a "blackout" period during which they are not eligible to use their shelf registration statements on Form F-3 until their Form 20-F is filed with the SEC. We believe the Commission's proposed accelerated deadlines would not affect those issuers that already file their annual reports on Form 20-F within three months of their fiscal year end for Form F-3 purposes but may, in particular, impose unreasonable burdens on other foreign private issuers.

While we acknowledge the Commission's objective in proposing to accelerate the filing of foreign private issuer information, we believe that this objective

should not be implemented in a manner that would impose unreasonable burdens on foreign private issuers. In particular, a deadline that requires a foreign private issuer to file its annual report on Form 20-F with the Commission before, or essentially at the same time as, it is required to file its home country report would impose unreasonable burdens on such issuer for the reasons described above. The proposed deadline of 90 days after the issuer's fiscal year-end for large accelerated and accelerated filers would be even shorter than the deadline that many European issuers are subject to in their home jurisdictions pursuant to the European Union ("EU") Transparency Directive, which, as the Commission cites in the Proposing Release, requires issuers that are listed on an EU regulated market to file their annual financial reports four months after the end of each financial year at the latest. Moreover, we believe that a "one-size-fits-all" approach for all foreign private issuers would not be appropriate as some issuers are required to prepare reconciliations to U.S. GAAP while others are not required to do so. For example, a filing deadline of five months after an issuer's fiscal year-end may not be problematic for issuers reporting under IFRS as issued by the IASB, but may be extremely difficult to achieve for an issuer reporting under accounting principles that require it to present a U.S. GAAP reconciliation.

Consistent with the Commission's objectives and in light of the considerations above, we favor a filing deadline that would (1) require issuers to file their annual report on Form 20-F within a specified period of time following the date by which they are required to publish their annual financial statements or file their annual financial statements with their respective home country regulators and (2) distinguish between those issuers whose annual financial statements are accepted by the Commission without a reconciliation (*i.e.*, financial statements prepared in accordance with U.S. GAAP or with IFRS as issued by the IASB) and those issuers that are required to prepare a reconciliation to U.S. GAAP for inclusion in their Form 20-Fs. Specifically, we propose that foreign private issuers, which prepare their annual financial statements in accordance with U.S. GAAP or with IFRS as issued by the IASB, be required to file their Form 20-F with the Commission within 30 calendar days following the date by which they are required to publish their annual financial statements or file their annual financial statements with their respective home country regulators. Foreign private issuers that are required to prepare a reconciliation to U.S. GAAP would be required to file their Form 20-F with the Commission within 60 calendar days following the date by which they are required to publish their annual financial statements or file their annual financial statements with their respective home country regulators. In both cases, we suggest that the Commission retain the current deadline of six months after the end of the issuer's fiscal year as a "backstop" to ensure that the above proposal does not unintentionally extend the filing deadline beyond the current six month period. In addition, we agree with the Commission's proposal that any change to the Form 20-F filing deadline should be implemented during a two-year transition period.

We believe the above proposal offers a reasonable and flexible compromise that balances the Commission's objectives of promoting investor protection, cross-border capital flows and the elimination of unnecessary barriers to the U.S. capital markets, on the one hand, with the diversity and demands of the reporting obligations that foreign private issuers are required to comply with in their respective home countries and in the United States, on the other.

2. Proposed Annual Test for "Foreign Private Issuer" Status

We support the Commission's proposal that SEC-reporting foreign private issuers be permitted to assess their status as a foreign private issuer once per year, on the last business day of the issuer's second fiscal quarter. We agree with the Commission that this amendment would facilitate a smoother transition when foreign private issuers change status in the middle of a fiscal year and would benefit investors by eliminating confusion in the markets as to an issuer's status.

3. Proposed Disclosure About Changes in a Registrant's Certifying Accountant

We do not agree with the Commission's proposal that would require substantially the same types of disclosures for foreign private issuers as are currently provided by U.S. issuers regarding changes in and disagreements with their certifying accountants in response to the requirements of Item 304(a) and (b) of Regulation S-K. In many foreign jurisdictions, the relationship between a company and its external auditors is governed by home country statute and regulations and, in many cases, a change or renewal of appointment of a company's external auditors is subject to approval by the Company's shareholders. The detailed disclosure requirements of Item 304(a) and (b) of Regulation S-K were not designed to take into account these foreign statutes and regulations governing the issuer/external auditor relationship, in particular the more active role of shareholders in these matters in many non-US jurisdictions.

We respectfully submit that the existing Form 6-K requirements provide an appropriate balance of disclosure and consideration for foreign laws and regulations. The existing rules require foreign private issuers to furnish to the Commission any material information that it: (a) makes, or is required by law to make, public pursuant to the laws of their home country; (b) files, or is required to file, with any stock exchange on which their securities are listed if the information is made public by such stock exchange; and (c) distributes, or is required to distribute, to its securityholders. As the Commission notes in the Proposing Release, a change in the identity of an issuer's external auditor is specifically mentioned in Form 6-K as an example of the type of information that would be need to be furnished to the Commission promptly after it is disseminated in a manner described in (a), (b) or (c) above. The requirement of Form 6-K to furnish information

promptly to the Commission is also more comparable to the filing deadlines of Form 8-K than that of the proposed new Item 16F of Form 20-F, which could be filed with the Commission potentially long after the change in external auditors has occurred, particularly when shareholders of an issuer vote on resolutions relating to the external auditor's mandate in an annual general shareholders' meeting, which may often occur after an issuer has filed its annual report on Form 20-F for the previous fiscal year.

If the Commission decides to adopt a new Item 16F of Form 20-F, we urge the Commission to consider not imposing the full scope of Item 304(a) and (b) of Regulation S-K on foreign private issuers. Given the role of foreign laws and regulations governing the relationship between a company and its external auditors, it may instead be more appropriate to require issuers to disclose in their Form 20-F whether they have changed their external auditors in a given reporting period and the process by which external auditors were changed under applicable home country laws and regulations and any related disclosures mandated by home country laws.

4. Proposed Amendments to Item 17 of Form 20-F

We do not agree with the Commission's proposals to amend Instruction 3 of Item 17 of Form 20-F and to eliminate the availability of Item 17 for non-MJDS filers. However, if the Commission decides to eliminate Item 17 it should provide a "grandfather" provision to permit foreign private issuers that currently prepare financial statements pursuant to Item 17 to continue to do so.

Although according to the Commission's estimate, fewer than ten foreign private issuers currently avail themselves of the Item 17 accommodation, we do not believe that such issuers should be "penalized" for being part of a small number of issuers that have, in good faith, complied with the Commission's rules, in some cases, for many years and have established their internal financial reporting structures accordingly. The proposed amendments to Item 17, if adopted, could involve a substantial additional cost to such foreign private issuers to implement a system to gather and organize accounting data for U.S. GAAP-based segment reporting or, if Item 17 is eliminated in its entirety, in accordance with Item 18 of Form 20-F. We believe that if the Commission decides to adopt these amendments, a "grandfather" provision would be an appropriate accommodation to those issuers that currently elect to follow Item 17.

5. Proposed Disclosure of Financial Information for Significant, Completed Acquisitions

We do not agree with the Commission's proposal to require foreign private issuers to provide in their annual reports on Form 20-F the financial information required by Rule 3-05 and Article 11 of Regulation S-X for completed acquisitions which

are significant at the 50% or greater level. This proposal would substantially increase the compliance costs for foreign private issuers, particularly if the filing deadline for annual reports on Form 20-F is accelerated from its current deadline.

We strongly recommend the Commission to continue to follow the approach taken when it decided in 1996 that foreign private issuers would not be subject to a comparable requirement applicable to U.S. issuers to file on Form 8-K financial statements pursuant to Rule 3-05 and pro forma financial information pursuant to Article 11 of Regulation S-X within 75 days after the consummation of a significant acquisition. At the time, the Commission concluded that "...a requirement [for foreign private issuers] to furnish those financial statements would modify significantly the foreign private issuer's interim and current events reporting requirements, which rely generally on home country standards and already contemplate that investors in securities of foreign private issuers will not necessarily receive the information customarily provided by domestic issuers regarding significant business acquisitions."[1]

If the Commission's proposal is adopted, the related compliance costs would, in our view, be more than incremental for foreign private issuers, for example, in converting the financial statements of the acquired entity to the acquirer's accounting principles in order to prepare pro forma financial statements in accordance with Article 11 of Regulation S-X or in obtaining an audit of the acquiree's historical financial statements under U.S. generally accepted auditing standards when such financial statements have not been audited historically, within the time period required for filing the Form 20-F.

We note, moreover, that generally non-U.S. jurisdictions do not require financial information regarding a potential acquiree or pro forma financial information reflecting the proposed acquisition to be included in annual or interim reports but that, in some cases, such information may be needed to satisfy prospectus disclosure requirements. For example, it is worth noting that, in 2007, the EU took the considered view, when adopting the Transparency Directive, that financial statements of acquirees are not required in annual reports. The existing requirements for foreign private issuers to include Rule 3-05 financial statements and Article 11 pro formas in registration statements/prospectuses used in connection with certain registered offerings is therefore more consistent with home country requirements for many foreign private issuers.

---

[1] See Release No. 33-7355; 34-37802 (October 10, 1996).

* * *

We appreciate this opportunity to comment on the Proposing Release. You may direct any questions with respect to this letter to Kathryn A. Campbell (+44 20 7959 8580), George H. White (+44 20 7959 8570) or Lucas H. Carsley (+44 20 7959 8452) in our London office.

Very truly yours,

Sullivan & Cromwell LLP

cc: Brian Cartwright (General Counsel)
John W. White (Director, Division of Corporation Finance)
Paul M. Dudek (Chief, Office of International Corporate Finance, Division of Corporation Finance)
Ethiopis Tafara (Director, Office of International Affairs)