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July 11, 2008

Ms. Florence Harmon
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Comments on proposed revisions to cross-border tender offer, exchange offer and business combination rules, and beneficial ownership rules for certain foreign institutions
File No. S7-10-08

Dear Ms. Harmon:

The International Bar Association is pleased to comment on the proposal by the Commission to amend the rules regarding cross-border tender offers, exchange offers and business combinations as set forth in Release No. 33-8917; Release No. 34-57781; File No. S7-10-08 (the "Release").

The International Bar Association, the global voice of the legal profession, includes 30,000 individual lawyers and 195 bar associations and law societies worldwide. We are submitting our comments on behalf of the Securities Law Committee, which has over 900 members from 85 different countries.

We would like to express our continued support for the Commission's recent efforts to improve the accessibility of the US public capital markets to foreign private issuers while striving to enhance the information available to, and protection of, US investors. The recent rule changes relating to foreign private issuer deregistration and the acceptance of financial statements prepared in accordance with IFRS, as well as the proposed changes to rules relating to foreign private issuer eligibility standards, are all positive steps that facilitate cross-border capital flows and eliminate inadvertent barriers to the US public capital markets. We are pleased to see that your work in this area has begun to bear fruit as we have recently witnessed the first business combinations to take advantage of the rules regarding acceptance of IFRS in US registered offerings without reconciliation to US GAAP.

As noted in some of our earlier comment letters, these types of thoughtful initiatives to remove regulatory roadblocks and foster mutual recognition without compromising investor protection are the hallmarks of the kind of regulation that is needed in both buoyant markets and turbulent times. It is against that backdrop that

we write to support the changes proposed by the Commission in the Release but also to suggest that the Commission consider more fundamental revisions to certain of the cross-border rules. In particular, while we welcome the Commission's efforts to refine the eligibility tests for the Tier 1, Rule 801 and 802 exemptions, we believe that the Commission should revisit the eligibility standards in a more fundamental way.

In this regard, we believe that any eligibility standard should meet the following five criteria:

1. It should be straightforward and easy to test across differing regulatory regimes.

2. It should strike the appropriate balance between investor protection and deference to home country rules.

3. It should be designed to minimize subjective determinations.

4. If possible, it should apply equally to both negotiated and non-negotiated transactions.

5. Above all, it should underpin the Commission's stated goal of encouraging offerors and issuers in cross-border transactions to permit US residents to participate in these transactions on the same basis as other holders.

Measured against these benchmarks, the existing eligibility standards have not worked as well as they might have. As noted by many commentators and as the Commission itself acknowledges in the Release, the percentage interest test embedded in the Tier 1, Rule 801 and 802 exemptions is difficult and, in some cases, expensive to administer. The feasibility of assessing a target's shareholder base varies widely depending on the home country of the target and, as the Commission has recognized, may not be possible in the context of a non-negotiated transaction. However, the most fundamental issue with the ten percent test for the Tier 1, Rule 801 and Rule 802 exemptions is that it is so restrictive that the exemptions are not available in many transactions involving target companies listed in mature, well-regulated markets. As a result, these exemptions have not been widely utilized in cross-border transactions, causing issuers to pursue exclusionary transactions and other means of avoiding the application of the US securities laws. For example, in the rights offering context, almost all of the largest European offerings in recent years (many of which involved companies listed in the US) have excluded US investors save for qualified institutional buyers under Rule 144A.

In stark contrast, a standard based on average daily trading volume ("ADTV") scores highly against the five-part test outlined above. It is simple to administer because trading volumes are readily available to anyone via Bloomberg and other quotation systems. In addition, the availability and reliability of trading volume information is vastly more consistent across markets and jurisdictions than shareholding information.

Furthermore, even a relatively restrictive ADTV-based test (e.g., the five percent of US to worldwide ADTV employed by the Commission in the foreign

issuer deregistration rules or the ten percent test used for purposes of the Tier 1 exemption in non-negotiated transactions) would expand the universe of companies able to utilize the exemption without compromising US investor protection beyond the point where the Commission has, in other contexts, determined it is comfortable. While we acknowledge that business combinations pose unique opportunities and risks for investors, we don't share the Commission's stated view that they are sufficiently different from those presented in the context of deregistration to militate for more restrictive eligibility standards. The simple decision to hold a security rather than sell it can have equally momentous consequences as the decision to tender into an exchange offer. The fact that the Commission has accepted an alternative ADTV test in the context of non-negotiated offers (arguably the business combination context where disclosure and procedural protections are most important) suggests at least some recognition on the part of the Commission that US to worldwide trading volumes on the order of ten percent are not sufficiently large to require compliance with US tender offer rules and the Securities Act.

In conclusion, while we welcome the Commission's continued efforts to refine the cross-border rules, we are concerned that maintenance of the existing eligibility standards will cause foreign issuers to continue to exclude US investors from cross-border transactions, particularly when juxtaposed against the guidance contained in the Release regarding vendor placements and the ability of bidders to exclude US target security holders. The Release suggests that vendor placements will be countenanced in only limited circumstances but exclusionary transactions will be feasible provided that issuers take special precautions to ensure that their offer is not made into the United States. That guidance coupled with the limited availability of the Tier 1 exemption and Rule 802 leaves issuers contemplating share-based acquisitions with little choice but to register under the Securities Act or exclude US holders yielding sometimes paradoxical results. In this regard, many of our non-US colleagues found it somewhat confounding that one of the first transactions to take advantage of the new rules regarding acceptance of IFRS financials in a US registration statement (the acquisition of Suez by Gaz de France) involved two foreign private issuers neither of which are listed in the US and one of which had recently delisted and deregistered. In our view, the choice is obvious, offerors and issuers will continue to choose exclusionary transactions over registration absent exigent circumstances.

Accordingly, we would urge the Commission to consider an ADTV-based eligibility standard set at the same level as is now the case for non-negotiated transactions (i.e., ten percent US to worldwide trading volume). In our view, this will best serve the Commission's aim of facilitating participation by US investors in cross-border transactions without compromising its mission of investor protection. However, should the Commission determine that an ADTV-based test is not appropriate, we would support increasing the universe of issuers eligible to use the exemptions by any other means including by extending the eligibility thresholds for Tier 1 and Rules 801 and 802 from ten percent to fifteen percent or twenty percent or, as some commentators have suggested, by adopting standards based on "substantial U.S. market interest" as defined in Regulation S under the Securities Act.

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We thank you for the opportunity to comment on this proposal and look forward to further dialogue on these issues.

Sincerely yours,

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