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VIA E-MAIL at: rule-comments@sec.gov

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

**Re: Proposed Rule—First-Time Application of International Financial Reporting Standards
File No. S7-15-04; Release Nos. 33-8397, 34-49403; International Series Release No. 1274;**

Dear Sirs:

We appreciate the opportunity to comment upon the Commission's rule proposal relating to the first-time application of International Financial Reporting Standards by foreign private issuers. We appreciate and acknowledge the Commission's willingness to provide an accommodation for first-time financial reporting under IFRS by foreign private issuers, and agree with the general concept that the content of the primary financial statements contained in a foreign issuer's annual report on Form 20-F should not be more extensive than what is required by their home country. However, we have concerns with certain aspects of the proposal that we believe affect European foreign private issuers. These concerns relate primarily to the presentation of IFRS financial statements and corresponding reconciliations to U.S. GAAP to be included in annual reports on Form 20-F and reports on Form 6-K, and registration statements that incorporate those reports by reference.

(1) Full Year Financial Reporting

In Item II.A of the proposing release, the Commission solicits comment on, among other things, whether a foreign issuer that initially publishes three years of IFRS financial statements in its home country annual report should be required to file the third year back (e.g., 2003 for most EU issuers) in its annual report on Form 20-F. We are concerned that inclusion of the third-year back IFRS financial statements (e.g. 2003) in an annual report on Form 20-F might be viewed as requiring a reconciliation from IFRS to U.S. GAAP. As explained below, we believe that such reconciliation could not be prepared without undue effort and expense, and we further believe that the presentation of such a reconciliation would not meaningfully contribute to the total mix of information available to investors.

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Particularly over the next two years, foreign private issuers will be concentrating their limited resources on implementing the new IFRS standards. The challenges presented by the transition to IFRS is magnified by the fact that the IASB (International Accounting Standards Board) has not yet finalized all proposed rules and standards relating to IFRS, and national legislatures have not yet completed implementing EU directives relevant to IFRS presentations into local law. We have already experienced and foresee continued changes in standards and applications of standards that may require foreign issuers to revise already completed work multiple times. Additionally, like other foreign issuers, we are a large organization (with over 400 subsidiaries). Therefore, we have the added burden of coordinating many different home company GAAPs to reconcile with both German GAAP (through the 2004 financial year) and IFRS (commencing with the 2003 financial year) and then further reconciling IFRS to U.S. GAAP for 2004 and 2005. It would be an enormous relief to us from a financial and personnel resources and planning perspective if the IFRS 2003 financial year would not be required to be reconciled to U.S. GAAP if included in a 20-F filing, irrespective of the reason for inclusion. Proper application of IFRS standards is the primary focus for the 2003 financial year. The 2003 IFRS financial statements will likely not be completed prior to the end of 2004, with multiple revisions and the reapplication of standards as a result of changes in standards and interpretations of standards. The challenges of applying new standards in preparing the IFRS 2003 financial statements would be compounded if we also had to prepare a U.S. GAAP reconciliation, which would create further stress on limited resources.

Further, we do not believe that this approach would disadvantage investors. Assuming that the 2003 IFRS financial statements were included in an issuer's 2005 annual report on Form 20-F, there would be available to investors the 2003 and 2004 annual reports on Form 20-F, which would include a reconciliation from German GAAP to U.S. GAAP for the three previous financial years, and the 2005 annual report on Form 20-F, which would include a reconciliation to IFRS from German GAAP for the three previous financial years and from IFRS to U.S. GAAP for the 2005 and 2004 financial years. Accordingly, there would be omitted from these three-year presentations only the reconciliation of IFRS to U.S. GAAP for the 2003 financial year. Although a three-year comparison may be preferable, we do not believe that the expense and burden of preparing such a presentation will add significantly to the mix of information that will be available to investors at that time. Since there will be an overlap period where investors will have available both a "German GAAP to U.S. GAAP reconciliation" and an "IFRS to U.S. GAAP reconciliation," we believe that this period of overlap for the 2004 financial year will be sufficient to permit investors to assess the information presented and any significant U.S. GAAP trend information on a year-on-year comparative basis, including for the 2003 financial year.

(2) Three Years of Condensed U.S. GAAP Financial Information

In Item II.B of the proposing release, the Commission inquires whether the presentation of three years of condensed U.S. GAAP information in a level of detail consistent with interim financial statements prepared under Article 10 of Regulation S-X would create a significant burden to first-time adopters of IFRS.

We think that the Commission has correctly distinguished between foreign private issuers that prepare their primary financial statements under U.S. GAAP and those that do not use U.S.

GAAP to prepare their primary financial statements and instead present a reconciliation to U.S. GAAP. In this regard, we believe that the requirement to publish a condensed U.S. GAAP income statement in accordance with Article 10 of Regulations S-X would far exceed the information currently required by Items 17 and 18 of the Form 20-F. We believe that the cost and difficulty of preparing such information would outweigh any perceived benefits that investors might receive. A foreign issuer that does present a reconciliation to U.S. GAAP is not automatically in the position to prepare condensed consolidated financial statements as a result of such a U.S. GAAP reconciliation without significant expenditure of additional resources, not to mention additional costs incurred in connection with the associated audit of such consolidated condensed financial statements. Therefore, the proposal to prepare three years of condensed financial statements as an alternative to omission of the third year back (e.g. 2003) reconciliation of IFRS to U.S. GAAP would not, in our opinion, be deemed a relief for foreign issuers that do not prepare their primary financial statements under U.S. GAAP.

Further, we do not believe that it is equitable to require first-time adopters of IFRS to provide this condensed U.S. GAAP information, when compared with the required financial information of other first-time registrants that are not required to present condensed U.S. GAAP financial statements in their initial filings. We believe the proposing release is intended to ease the burden on foreign private issuers while at the same time balancing the protection of investors. In most cases, investors will have the benefit of previous (local) GAAP financial information for the 2003 and 2004 financial years and IFRS for the 2004 and 2005 financial years, each with a reconciliation to U.S. GAAP. Accordingly, we believe that for these reasons and those set forth under Section (1) above, investors will have adequate information, certainly with respect to U.S. GAAP, for each of the 2003 and 2004 financial years.

As the Commission recognized in its proposing release, IFRS 1 will require companies to provide significant information regarding the reconciliation of previous GAAP to IFRS financial statements. We believe that this information, combined with appropriate discussion and analysis in a company's Operating and Financial Review and Prospects and the information concerning transition called for under the recommendations of the Committee of European Securities Regulators (CESR), should be sufficient to provide investors with a meaningful analysis of any material trend information.

(3) Interim Financial Reporting.

In Item II.F of the proposing release, the Commission correctly identifies interim reporting during the Transition Year as an area of concern for foreign private issuers that have active U.S. shelf registration statements or that otherwise plan to access the U.S. capital markets in that year through a registered offering.

In keeping with European Union requirements, we currently plan to publish in March 2006 our annual financial statements for the financial year ending December 31, 2005 prepared on the basis of IFRS. In March 2005, we will publish our annual financial statements for the financial year ending December 31, 2004 on the basis of German GAAP, just as we have published in each prior year.

Since we have certain registration statements currently effective or in the future may file additional registration statements, we are obligated to incorporate by reference into such registration statements certain material information and to keep our financial information current in accordance with our Regulation S-K undertakings. Accordingly, we historically have and intend to continue to incorporate by reference (as appropriate) into these registration statements our quarterly financial information filed in reports on Form 6-K. We plan to start reporting interim information in accordance with IFRS beginning with our interim report for the first quarter of 2005. This interim report would present first quarter 2005 financial information and comparative first quarter 2004 information, all prepared in accordance with IFRS. As in the past, we would describe any material variations from U.S. GAAP policies as set forth in our previously filed annual report on Form 20-F and quantify variations not present in the most recent financial year as reported in our annual report on Form 20-F. We would not provide a full reconciliation to U.S. GAAP in either the first or the third quarters as such reconciliations are not currently required to keep the financial statements in our registration statements from becoming stale (assuming no significant changes in financial reporting policies that would materially affect a U.S. GAAP presentation). We plan, in keeping with our past practice, to prepare and publish half-year financial statements for 2005 (with half-year 2004 information for comparative purposes) based on IFRS that would include a reconciliation to U.S. GAAP of net income and shareholders' equity. We expect to be able to present these half-year financial statements on the basis of IFRS (and not with a parallel German GAAP presentation).

In Item II.F of the proposing release, the Commission correctly states that issuers may be required to maintain financial statements prepared in accordance with both previous GAAP and IFRS for interim periods of the Transition Year (in our case the 2005 financial year). We believe that the Commission also is correct in stating that requiring foreign private issuers to prepare and publish two separate sets of interim period financial statements during the Transition Year may place burdens on foreign private issuers and create uncertainty among investors. As previously stated, within our group, we have a number of companies operating under a variety of local GAAPs. The additional burden of reporting consolidated German GAAP interim information in 2005 with 2004 comparative information, at a time when we will have largely abandoned German GAAP as our primary financial reporting regimen, would be considerable, and would not display the results and trends within the business as then conducted or as seen through the eyes of management.

We believe, as the Commission suggests, that it would be entirely appropriate to provide issuers with a choice between providing interim financial statements prepared under previous GAAP or under IFRS during the Transition Year. The option of continuing to publish interim financial reports in previous GAAP during the Transition Year makes sense for companies that will still be finalizing the changeover and therefore will not be able to prepare IFRS interim information in that year. For us, the opposite effect will be the case.

In the proposing release, with respect to Transition Years in 2004 and 2005, the Commission asks whether it would be appropriate to require three years of audited financial statements prepared in accordance with previous GAAP and unaudited financial statements prepared in accordance with IFRS for interim periods in two years with the same level of disclosure as in annual financial statements. We question whether this approach would be as helpful as

intended because, in our view, it would place additional significant burdens on companies with respect to the time and resources to be expended preparing annual financial statement-level information for interim periods that would likely only be used one time for the Transition Year. Instead, we would suggest that, in line with CESR recommendations, the IFRS unaudited interim information that is presented be accompanied by footnotes and other explanations of the significant differences in accounting principles between IFRS and previous GAAP. We do not believe that it would be desirable to require that those interim financial statements be audited, as that would certainly entail considerable effort and expense that would not otherwise be incurred and that is not now required for interim financial information. Additionally, under some European country recommendations, interim financial information is to be published within 45 days of the end of the quarterly period. A requirement that this interim financial information be audited within such a short time frame would pose a further significant burden on many foreign private issuers, including our Company.

Since the requirements relating to the transition to IFRS in the European Union are in many respects still themselves taking shape, we would respectfully encourage the Commission to avoid foreclosing alternative approaches prematurely and to discuss the proposed accommodations with the IASB. In this regard, if the Commission is concerned about having unaudited IFRS interim financial statements without the presentation of audited IFRS financial statements to which the investor can make reference, we would suggest that the Commission formulate the final rule so that a foreign private issuer would have, in addition to other alternatives, the option to provide IFRS interim financial statements in its Transition Year (e.g. no previous GAAP interim information) where the first U.S. GAAP-reconciled set of interim financial statements is accompanied or preceded by a set of audited annual IFRS financial statements in respect of the year before the Transition Year. Applying this alternative to our situation, we would have the option to file, at or before the time of the filing of our unaudited 2005 half-year IFRS financial statements, a set of audited 2004 financial statements (without a comparative 2003 annual financial statement) prepared on the basis of IFRS. This set of IFRS financial statements would be supplemental to the German GAAP financial statements for 2004 and prior years that we would include with requisite U.S. GAAP reconciliations in our 2004 Form 20-F report filed in the early part of 2005.

As the Commission notes in its questions, this approach would not be in strict technical compliance with IFRS 1, which requires a year-on-year comparison to be presented the first time IFRS financial statements are published. Accordingly, audit reports issued on the single-year IFRS financial statements presumably would be qualified with respect to the comparative year requirement. While we are uncertain what form the qualified audit opinion might take, we believe it would be useful to obtain the IASB's view before the Commission finalize its reporting standards for first-time application of IFRS. We recognize that the voluntary early filing of IFRS financial statements in the U.S. may pose some as yet unsettled questions under home country rules (particularly with regard to the implementation of the European prospectus directive), and so we would respectfully urge the Commission to permit foreign issuers to present IFRS interim reporting in their Transition Year simply as suggested in the CESR Recommendation (CESR/03-323e §30 through §37). We believe that this would allow issuers to focus their full energies on preparing reliable, high quality interim information with reconciliations and footnotes that provide useful explanatory information, and so serve the

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best interests of investors. However, if additional requirements are to be imposed, we would respectfully suggest that the Commission take an approach that is flexible and provides issuers with some options.

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In offering these comments, we would like to thank the Commission for the consideration and sensitivity it has shown toward the needs and interests of both foreign private issuers and investors in making the new rule proposal. We would be willing to discuss this letter or other aspects of the proposed release with the Staff.

Sincerely yours,

Jürgen Johnen