UNICE
THE VOICE OF BUSINESS IN EUROPE

The Honorable Christopher Cox
Chairman
Securities and Exchange Committee
100 F. Street N.A.
Washington D.C. 20549
United States of America

27 November 2006

THE SECRETARY GENERAL

Dear Chairman Cox,

I am writing to you concerning the SEC's meeting that will be held on 13 December envisaging the new SEC guidance on Section 404 of the Sarbanes-Oxley Act of 2002 and deregistration of foreign private issuers listed in the US. As you are aware these two subjects are key priorities to European business.

I would like to stress that compliance with the US Sarbanes-Oxley Act, in particular section 404 on internal control, as you know, has proved extremely burdensome to European companies. We welcome the SEC's initiative providing that it relieves listed companies from the disproportionate financial and administrative requirements imposed by this legislation.

Regarding deregistration, the SEC's proposal to modernise the 300-holder standard was welcomed by European business since it aims at simplifying counting rules and making deregistration permanent once it is achieved. We have argued that companies should not remain subject to US reporting requirements unless there is a genuine and continuing interest in the US public securities markets.

European business has had many opportunities to illustrate to the SEC the difficulties faced by EU companies wishing to deregister from US exchanges (please find at annex our 3 February letter; we also refer to our meeting with Commissioner Atkins on 16 May and with yourself on 15 June).

AV. DE CORTENBERGH 168
B-1000 BRUSSELS
VAT BE 863 418 279

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: MAIN@UNICE.BE
WWW.UNICE.ORG

In order to achieve a more business-friendly regime for companies it was suggested that the SEC envisage excluding institutional investors when determining the percentage of US shareholders in the companies' public float. Without this exclusion the effectiveness of the rule for EU companies could be jeopardised and the goal of modernising the 300-holder standard will not be accomplished.

We thank you in advance for taking into consideration UNICE's views.

We remain at your disposal should you wish to discuss this further.

Yours sincerely,

Best regards,

Philippe de Buck

Encl.1

UNICE
THE VOICE OF BUSINESS IN EUROPE

The Honorable Christopher Cox
Chairman
Securities and Exchange Committee
450 Fifth Street N.W.
Washington D.C. 02549-0609

United States of America

3 February 2006

THE SECRETARY GENERAL

Dear Chairman Cox,

I am writing to you concerning the SEC's proposal published on 23 December 2005 to modernise the rule regarding deregistration of foreign private issuers listed in the US.

As you are aware, European business has indicated to the SEC the difficulties faced by EU companies wishing to deregister from US exchanges. According to current rule, whilst non-US issuers listed in the US can withdraw their securities from US exchanges, they remain nevertheless subject to filing requirements unless there are less than 300 US resident security holders.

European business argued that companies should not remain subject to US reporting requirements unless there is a genuine and continuing interest in the US public securities markets. UNICE initially indicated that measuring interest by trading volume is a more appropriate and reasonable indicator.

UNICE fully appreciates that the SEC has issued this proposal to modernise the 300-holder standard which demonstrates that trans-Atlantic dialogue works. The aforementioned proposal proposes significant improvements on the 300-holder system in that it, for example, simplifies counting rules and makes deregistration permanent once it is achieved.

In line with this constructive approach, I would like to draw your attention to a fundamental issue which could jeopardise the effectiveness of the rule for EU companies: inclusion of Institutional Investors in determining US percentage of public float.

When determining whether US shareholders hold more than 10% or 5% of a company's public float, all unaffiliated shareholders are counted: retail and institutional investors alike: this would make almost all large EU companies ineligible to deregister.

Many large US Institutional Investors hold important positions in large European companies – frequently attained directly on the home market exchanges of those companies.

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If the rule is not modified, it will not accomplish the goal of modernising the 300-holder standard and a de facto status quo would be the result. Furthermore, it will effectively be requiring companies to remain registered in the US for the benefit of a handful of the largest, most sophisticated institutions.

We would like to suggest that the SEC envisage excluding institutional investors when determining the percentage of US shareholders in the companies' public float. Indeed, the SEC has stated in other contexts that institutional investors ('qualified institutional investors' or QIBS, i.e. institutions that manage at least $100 million in securities) do not need the protection of the registration requirements of the U.S. securities laws as they are sophisticated enough to decide whether a company's public information is sufficient for them to invest.

I take this opportunity to refer to a visit by a high-level UNICE delegation to Washington on 14-16 June 2006. he delegation will be led by UNICE's President, Mr Ernest-Antione Seillière and composed of high-level business representatives.

We would greatly appreciate the opportunity to meet with you on this occasion to exchange views on the latest developments in accounting issues, reporting obligations and the afore-mentioned SEC proposal on deregistration.

For practical arrangements and additional information, your services can contact Mr Jérôme P. Chauvin, UNICE Director for Legal Affairs (tel.: +32 2.237.65.50, j.chauvin@nuice.be).

We look very much forward to receiving a positive response from you at your earliest convenience and continuing the constructive discussions with the SEC.

Yours sincerely,

Philippe de Buck