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Corporate Secretary

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Via email to www.rule-comments@sec.gov

January 13, 2003

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

Re: Strengthening the Commission's Requirements Regarding Auditor Independence; Release No. 33-8154; 34-46934; File No. S7-49-02

Dear Mr. Katz:

The New York Stock Exchange, Inc. ("NYSE" or the "Exchange") is pleased to comment on the proposals made by the Securities and Exchange Commission ("SEC") in the above-referenced release (the "Proposing Release") to amend the SEC's existing requirements regarding auditor independence.

The NYSE agrees that the corporate audit committee plays a critical role in the financial reporting process and in helping to assure auditor independence. We also agree it is appropriate to clarify and tighten the regulations related to non-audit services that can impair auditor independence, to regulate audit partner rotation, and to insure separation of the auditor from the company's management function.

We are concerned, however, about the impact that certain of the SEC proposals would have on foreign private issuers and their ability or willingness to list their securities in the United States. We consider it critical that the SEC make appropriate accommodations to recognize the legitimate differences between U.S. and non-U.S. accounting practices, especially in the areas of provision of ancillary services and with respect to required partner rotation.

The NYSE lists 474 non-U.S. companies from 51 countries with a combined global market capitalization of approximately US\$4.3 trillion. Historically, we have shared with

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the SEC the common purpose of ensuring that the U.S. capital markets remain attractive to companies around the world. As a result, U.S. investors seeking to invest in foreign private issuers and diversify their portfolios away from the United States have the opportunity to do so within the U.S. capital markets, and to enjoy the efficiency and investor protections available here.

Foreign private issuers must comply with their home country and home market practices, which can differ from analogous U.S. requirements. The SEC and the NYSE have long recognized the need to accommodate home country practices. For example, the SEC accepts U.S. GAAP-reconciled financial statements in lieu of a full restatement of accounts from home country into U.S. GAAP, and home country interim reporting practices in place of the quarterly and Form 8-K reports required of U.S. companies under the Exchange Act. These accommodations recognize that foreign private issuers entering the U.S. market are already subject to home country regulatory regimes and have home market expectations and practices that they must meet.

Since the adoption of the Sarbanes-Oxley Act on July 30, 2002, a number of non-U.S. listed companies have expressed their dismay at the extension of some of the provisions of the Sarbanes-Oxley Act to them, viewing these provisions as a significant departure from the existing reliance on home country regulation. The SEC has repeatedly expressed an openness and willingness to listen to the concerns of non-U.S. listed companies over the past months. The NYSE strongly supports the efforts made to date by the SEC to propose accommodations for non-US listed companies in rulemaking mandated by the Sarbanes-Oxley Act. The NYSE particularly notes the rulemaking efforts made by the SEC to acknowledge and address the concerns of non-U.S. listed companies, including most recently and most significantly the SEC's proposed rules on the audit committee requirements mandated by Section 301 of the Sarbanes-Oxley Act. Earlier accommodations included those proposed in connection with insider trades during pension fund blackout periods, and disclosure of non-U.S. GAAP financial information.

The NYSE also appreciates the SEC's willingness to provide formal opportunities for foreign regulators, advisors and companies to meet with the SEC to discuss home country regulatory and legal requirements that conflict with or provide similar levels of protections to the Sarbanes-Oxley Act, such as the Roundtable on Auditor Independence held in Washington on December 17, 2002, which NYSE representatives attended. Participants from Europe, South America and Asia discussed how their home country laws and practices either effected the purposes of, or conflicted with, the proposed requirements for auditor independence.

We believe that the SEC should give serious consideration to the suggestions made by the roundtable participants regarding the cross-border application of the proposed requirements for auditor independence and should propose accommodations to address those conflicts. For example, the U.K., Japanese and French panelists urged the SEC to recognize equivalent requirements in foreign jurisdictions, allowing differences between systems, in order to avoid duplicative and possibly conflicting regulations. The EU

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representative noted that in April 2002, the European Union adopted principles-based auditor independence standards that prohibit an auditor from carrying out an audit if the auditor also provided a company with non-audit services that would compromise their independence. Panelists also noted that the proposed rule prohibiting auditors from acting as client advocate by providing legal or tax services directly conflicted with legitimate practice in a number of jurisdictions, such as Germany and the United Kingdom. A number of panelists also noted that the proposed auditor rotation and transition requirements conflicted with required standards and best practices in many jurisdictions, including Canada, China and the European Union. Panelists focused specifically on the practical difficulties created by the fact that the SEC proposal goes well beyond the Sarbanes-Oxley Act mandate for rotation of the lead and reviewing audit partners.

With respect to the provisions of the Proposing Release that relate specifically to proposed responsibilities of the audit committee, we suggest that the SEC implement accommodations for non-U.S. listed companies along the same lines as those proposed in the SEC's more recent proposed release on audit committee requirements, published January 9, 2003, particularly the exceptions relating to allowing statutory auditors and non-management boards to act in lieu of an audit committee in certain circumstances. We understand that our non-U.S. listed companies view these exceptions as an indication that the SEC is listening to their concerns and reacting thoughtfully in an appropriate manner.

Thank you for your consideration of these comments. We would be pleased to answer any questions or provide further information that you may find helpful.

Sincerely,

/s/ Darla C. Stuckey

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