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**NYSE**  
New York Stock Exchange, Inc.

Via email to [www.rule-comments@sec.gov](mailto:www.rule-comments@sec.gov)

August 27, 2002

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

**Re: Certification of Disclosure in Companies' Quarterly and Annual Reports (August 2, 2002); Release No. 34-46300; File No. S7-21-02**

Dear Mr. Katz:

The New York Stock Exchange, Inc. ("NYSE") is pleased to take this opportunity to comment on the proposals made by the Commission in the above-referenced August 2 release regarding certification requirements for principal executive and financial officers.

As noted in the August 2 release, on June 14, 2002, the SEC proposed rules that require the principal executive officer and principal financial officer of U.S. companies to certify the financial statements contained in the company's quarterly and annual reports filed with the SEC. The June 14 release did not extend the proposed certification requirements to foreign private issuers. On July 30, 2002, and prior to adoption of the rules proposed in the SEC's June 14 release, President Bush signed the Sarbanes-Oxley Act of 2002. Section 302 of the Sarbanes-Oxley Act requires the SEC to adopt rules requiring the principal executive officer and principal financial officer, or persons performing similar duties, of every reporting company to provide a specified certification in connection with such company's periodic reports filed or submitted under either Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934. Section 302 does not explicitly except foreign private issuers. In its subsequent August 2 release, the SEC indicates its intention to adopt final rules that would apply the certification requirements proposed in the June 14 release to foreign private issuers as well as domestic issuers.

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The NYSE proudly lists 470 of the world's finest non-U.S. companies from 51 countries with a combined global market capitalization of approximately US\$5 trillion. It has historically shared with 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 U.S. market risk have the opportunity to do so within the U.S. capital markets -- and the quality and protections they afford.

Foreign private issuers must comply with home country and home market practices, which often differ from analogous U.S. requirements. Accordingly, the NYSE Listed Company Manual specifies that compliance with home country governance will suffice. Similarly, the new corporate governance standards that the NYSE recently filed with the SEC to implement the recommendations of its Corporate Accountability and Listing Standards Committee generally do not apply to non-U.S. listed companies. However, these proposed standards do require non-U.S. listed companies to disclose any significant differences between the corporate governance standards mandated by their home country regulator and/or market and those mandated by the NYSE for U.S. companies.

The SEC likewise has long recognized the need to accommodate home country disclosure practices. The SEC, for example, accepts home country interim reporting practices in place of the mandated quarterly and 8-K reports required of U.S. companies under the Exchange Act. In addition, as noted above, the SEC's June 14 release excluded foreign private issuers from the proposed certification requirements. 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.

As the Commission develops rules to apply provisions of the Sarbanes-Oxley Act to foreign private issuers, it may wish to consider the extent to which these provisions may create conflicts with home country disclosure policies and practices. For instance, the separation of Chairman and CEO functions in the United Kingdom, the dual board structure and inclusion of management and labor directors in Germany, the board structure and inclusion of management directors in Japan, and the routine extension of loans by foreign private issuers in the financial services industry to employees on privileged terms as part of compensation arrangements are all practices that differ from those of the United States.

With respect to the SEC's August 2 release, some of our non-U.S. listed companies have argued that Section 302 should be construed and interpreted not to apply to foreign private issuers. Others have expressed a need for clarification as to the specific types of periodic reports filed by foreign private issuers that are subject to certification. They also note that a number of countries have a different concept of principal executive officer and financial officer than in the United States. They would find it helpful to have clarification of whether the same types of officers who are able to sign registration

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statements in the absence of a traditional U.S.-style CEO or CFO may also sign the proposed certification. In addition, although we understand that Congress has not required the SEC to adopt rules with respect to the certification requirement under Section 906 of the Sarbanes-Oxley Act, our non-U.S. listed companies have expressed confusion as a result of inconsistencies in the wording regarding the types of reports covered by Sections 302 and 906, particularly in light of the criminal sanctions imposed by Section 906.

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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Corporate Secretary