

March 20, 2007

The Honorable Henry M. Paulson
Secretary
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC

Dear Secretary Paulson:

In the spirit of the excellent Conference on U.S. Capital Markets Competitiveness you hosted last week, I wanted to bring your attention to an issue that I believe adds to the cumulative impression that the U.S. regulatory regime is hostile to foreign private issuers. After reviewing this matter, I ask that you intervene to make the policy consistent with national treatment, which I believe will also improve compliance.

For the last two years, the Organization for International Investment (OFII) has attempted to seek parity for foreign companies listed on U.S. exchanges and subject to U.S. securities law in regard to a corporate safe harbor the IRS has proposed for the filing of a Report of Foreign Bank and Financial Accounts (FBAR). On June 5, 2006 OFII sent a detailed letter (attached) to the appropriate IRS officials pointing out the discriminatory treatment in the proposed revised filing instructions: U.S.-based publicly traded firms could file a single FBAR form on behalf of all employees that had signature authority on certain foreign bank accounts, whereas foreign-based firms traded on U.S. exchanges and therefore subject to U.S. securities law could not. Beyond our June 5th letter, OFII has attempted to engage the appropriate IRS officials in dialogue about this discriminatory policy. We have been repeatedly rebuffed in our requests for meetings with the IRS or Financial Crimes Enforcement Network to discuss how the FBAR rules work in practice, how multinational firms set up financial accounts in various jurisdictions and to find a way to address our concerns while also improving compliance with the law.

Instead, we received a letter from Ms. Eileen Mayer, Director, Fraud/Bank Secrecy Act division of the IRS on February 21, 2007 denying our request (copy attached). While conceding the merit of our arguments, the letter rejects the request for parity based on remote instances that could have been easily dealt with if the IRS officials had engaged us in a constructive dialogue. For instance, Ms. Mayer's letter indicates that the exception was denied because there are situations where a domestic subsidiary of a foreign company may have no obligation to file an

FBAR for a foreign account. This apparently envisions a situation in which a U.S. citizen employed by a U.S. subsidiary is a signatory to a foreign bank account owned by the foreign parent or a foreign sister company. The U.S. citizen has a FBAR disclosure obligation, but the U.S. subsidiary does not because it has no interest in the account. While a narrow circumstance it is not without prospect. But the remedy is simple: only permit the exception if the U.S. subsidiary voluntarily files an FBAR on behalf of its employees for the bank accounts over which its employees have signatory authority and so informs its employees. Although there is no requirement for the U.S. subsidiary to file an FBAR for accounts that are owned by such a foreign affiliate, we propose that the U.S. subsidiary be allowed to file an FBAR for those accounts so that it may relieve its employees of the filing obligation. If the U.S. subsidiary does not exercise the option to file the FBAR on behalf of its employees, the employees would remain obligated to file. Reporting of the foreign bank accounts is still preserved (either by the employee or the U.S. employer). In fact, by allowing the U.S. subsidiary to file the FBAR for its employees, we believe that this proposal would enhance compliance.

This issue is not a material issue in relation to all the other issues foreign private issuers face. However, given your strong statements regarding the benefits the U.S. derives from foreign investment, the Commerce Department's new initiative to attract foreign direct investment and long standing U.S. policy, I thought it was worth bringing this issue to your attention as an example of how certain regulations can have the unintended consequence of sending a hostile signal to international investors in the U.S.

OFII and its members appreciate the attention you give this matter.

Sincerely,

Todd M. Malan
President & CEO

cc: Hon. Robert M. Kimmitt, Deputy Secretary
Hon. Stuart Levey, Undersecretary for Terrorism and Financial Intelligence
Hon. Timothy D. Adams, Undersecretary for International Affairs