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February 2010

## Checklist for Form 20-F Filers

As non-U.S. SEC registrants prepare their annual reports on Form 20-F for fiscal 2009, they should note two new disclosure items, new XBRL reporting requirements for certain issuers, recent SEC guidance and other considerations to ensure that their annual reports appropriately reflect these new requirements and expectations. This memorandum summarizes the new requirements and expectations and is intended to serve as a checklist for Form 20-F filers for fiscal 2009.

### Disclosure about Change in an Issuer's Certifying Accountant

Effective from the fiscal year ended on or ending after December 15, 2009, Form 20-F filers are required under Item 16F to disclose information relating to changes in, and disagreements with, its certifying accountant, including:

- whether an independent accountant that was previously engaged as the principal accountant to audit the issuer's financial statements, or a significant subsidiary on which the accountant expressed reliance in its report, has resigned, declined to stand for re-election, or was dismissed,
- any disagreements or reportable events that occurred within the issuer's latest two fiscal years and any interim period preceding the change of accountant, and
- whether, during the fiscal year in which the change of accountants took place or during the subsequent year, the issuer had similar material transactions to those that led to the disagreements with the former accountants, and whether such transactions were accounted for or disclosed in a manner different from that which the former accountants would have concluded was required. If this is the case, the issuer would be required to disclose the existence and nature of the disagreement or reportable event, and also disclose the effect on the financial statements if the method that would have been required by the former accountants had been followed.

In addition, a letter from the former accountant will need to be filed as an exhibit, stating whether the former accountant agrees with the statements made by the issuer and, if not, stating the respects in which it does not agree.

For a summary of the SEC release adopting this disclosure requirement, please see our memorandum entitled "[SEC Adopts Amendments to Foreign Issuer Reporting Requirements](#)" (September 30, 2008). For more details on this disclosure requirement, please see Item 16F in Form 20-F and instructions to Item 16F.

## XBRL-format Data for Large Accelerated Filers

A non-U.S. large accelerated filer reporting under U.S. GAAP with a worldwide market capitalization in excess of \$5 billion is required to file financial statement information in an interactive data format based on eXtensible Business Reporting Language ("XBRL") in its annual report on Form 20-F from the fiscal period ended on or ending after June 15, 2009. Accordingly, most Form 20-F filers that fall within this category will be subject to the XBRL reporting requirement for fiscal 2009.

Other non-U.S. large accelerated filers reporting under U.S. GAAP will become subject to the XBRL reporting requirement for the fiscal period ending on or after June 15, 2010. All remaining non-U.S. issuers reporting under U.S. GAAP or IFRS will become subject to the XBRL reporting requirement for the fiscal period ending on or after June 15, 2011.

Non-U.S. issuers that prepare financial statements in accordance with local GAAP are not subject to the XBRL reporting requirement.

For more information about the XBRL reporting requirement, see our memorandum entitled "[SEC Adopts Final Rules Requiring XBRL](#)" (March 31, 2009).

## Disclosure relating to Climate Change

Form 20-F filers should consider the SEC's recent interpretive guidance with respect to how the existing disclosure requirements apply to climate change matters. They should, if material, disclose in their risk factors, description of business, MD&A and description of legal proceedings, the actual and potential impacts and risks relating to:

- existing and proposed domestic legislation and regulations as well as international accords relating to climate change,
- business trends associated with climate change, and
- physical effects of climate change such as effects on the severity of weather, sea levels, the arability of farmland and water availability and quality.

For more information about the SEC's interpretive guidance on climate change related disclosures, see our memorandum entitled "[SEC Publishes Interpretive Guidance on Climate Change Disclosure](#)" (February 9, 2010).

## Current Disclosure Considerations

Form 20-F filers should be mindful that, although the worst of the financial crisis is hopefully behind us, shareholders, potential investors, rating agencies and regulators remain focused on corporate fundamentals. Where a year ago market participants sought to understand the impact of the implosion of the banking system and the following recession, attention has since shifted to focus on how companies are positioned to cope with new market realities and emerging trends. Form 20-F filers should be aware that MD&A disclosure will be closely scrutinized for trends and uncertainties that have the potential to impact the company's results, liquidity and financial condition, and prospects.

Financial institutions that are Form 20-F filers will find helpful the following guidance provided by the SEC:

- the presentation material entitled "[Areas of Frequent Staff Comment—Financial Institutions](#),"
- [Sample Letter Sent to Public Companies on MD&A Disclosure Regarding Provisions and Allowances for Loan Losses](#), and
- [Staff Accounting Bulletin No. 111](#).

For a further discussion of recommended disclosure practices in light of current market conditions, please see our memorandum entitled "[Disclosure Practices in Light of Current Market Conditions for 20-F Filers and other non-US Companies](#)" (November 2009).

### **Codification of FASB Accounting Standards**

In June 2009, the FASB announced the FASB Codification as the source of authoritative accounting principles for preparing financial statements under U.S. GAAP for non-governmental entities. The FASB Codification applies to all financial statements relating to interim and annual periods ended on or ending after September 15, 2009. The application of the new FASB Codification is expected to affect Form 20-F disclosure. For example, U.S. GAAP reporting entities are encouraged to use plain English in their financial disclosures and clearly describe accounting concepts while avoiding detailed specific Accounting Standards Codification references. For a further discussion of this topic, please see the [SEC's interpretive release](#) regarding the codification.

### **Disclosure about ADR Fees and Payments**

Effective from the fiscal year ended on or ending after December 15, 2009, a Form 20-F filer with a sponsored ADR facility is required under Items 12.D.3 and 12.D.4 to disclose:

- all fees that a holder of ADRs may have to pay directly or indirectly. For each fee, the Form 20-F filer must indicate the type of service, the amount of the fees and to whom the fees are paid. In particular, Form 20-F filers must provide information on any fees relating to the following:
  - depositing or substituting the underlying shares
  - receiving or distributing dividends
  - selling or exercising rights
  - withdrawing an underlying security
  - transferring, splitting or grouping receipts
  - general depository services, particularly those charged on an annual basis
- any right of a depository to collect fees by offsetting them against dividends received and deposited securities, and
- any direct or indirect payments made by a depository to the issuer of the deposited securities.

Form 20-F filers must make these disclosures on a per payment basis rather than on an aggregate basis.

For a summary of the SEC release adopting this disclosure requirement, please see our memorandum entitled [“SEC Adopts Amendments to Foreign Issuer Reporting Requirements”](#) (September 30, 2008). For more details on this disclosure requirement, please see Items 12.D.3 and 12.D.4 in Form 20-F and instructions to Item 12.

### Disclosure by Oil and Gas Companies

The SEC has adopted revisions to its oil and gas disclosure rules designed to modernize disclosures by oil and gas companies. The revised rules apply to annual reports on Form 20-F for fiscal periods ended on or ending after December 31, 2009. For a further discussion of this topic, please see the [SEC’s adopting release](#).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Any questions concerning the issues addressed in this alert may be directed to Mark S. Bergman (+44-20-7367-1601), Andrew J. Foley (+1-212-373-3078), Edwin S. Maynard (+1-212-373-3024), Tong Yu (+81-3-3597-6306) or Makoto Nishigai (+81-3-3597-6305).