

February 14, 2008

SEC Update: SEC Proposes Amendments to Foreign Issuer Reporting Requirements

On February 13, 2008, the SEC proposed amendments to the filing requirements applicable to foreign private issuers under the U.S. Securities Exchange Act of 1934 (the “Exchange Act”). The proposed rule changes are part of the SEC’s recent initiatives to modernize the reporting requirements under the Exchange Act in the wake of the ongoing globalization of securities markets, and aim to enhance disclosure provided by foreign private issuers in response to changes in filing requirements for U.S. domestic companies, changes in investor expectations and market practices, improvement of technologies, developments in foreign filing requirements, and changes in other areas of SEC regulation.

Some of the major proposed changes include:

- permitting reporting foreign issuers to assess their status as foreign private issuers (and thus their eligibility to use the special forms and rules available to foreign private issuers) once a year on the last business day of their second fiscal quarter (rather than on a continuous basis, as is currently required);
- after a two-year transition period, accelerating the filing deadline for annual reports on Form 20-F by foreign private issuers to 90 days after an issuer’s fiscal year-end in the case of large accelerated filers and accelerated filers, and to 120 days after an issuer’s fiscal year-end for all other issuers (from the current filing deadline of six months after the fiscal year-end); and
- eliminating an instruction to Item 17 of Form 20-F that permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements.

Another proposal would amend Exchange Act Rule 13e-3, which relates to going-private transactions by reporting issuers or their affiliates, to reference the recently adopted deregistration and termination of reporting rules applicable to foreign private issuers.

In addition, the SEC is seeking comments on other possible amendments that would affect foreign private issuers, including:

- after a transition period, eliminating the availability of the limited U.S. GAAP reconciliation option that is contained in Item 17 of Form 20-F;

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- amending the Form 20-F to require certain new disclosure items about:
 - any changes in and disagreements with the issuer's certifying accountant;
 - fees, payments and other charges relating to American depositary receipts; and
 - significant differences in the foreign issuer's corporate governance practices compared to U.S. domestic issuers; and
- requiring foreign private issuers to provide financial information in their annual reports for acquired businesses that are significant at the 50% or greater level, measured according to Rule 1-02(w) of Regulation S-X.

Impact of Proposed Amendments

The proposals have both positive and less positive aspects to them. The proposal to allow issuers assess their status as foreign private issuers once a year will provide greater certainty and manageability as to their foreign private issuer status, particularly to certain issuers whose status is subject to change from time to time.

On the other hand, foreign private issuers currently have the flexibility to defer filing their Form 20-F annual reports for up to six months after the fiscal year-end. As reporting obligations outside the United States have become more stringent and have required a greater level of disclosure, for those issuers that prepare their annual U.S. disclosure in parallel with their home country disclosure, the shorter filing deadline will somewhat increase the burden, but at a manageable level. However, for the many issuers that prepare their U.S. disclosure separately from their home country disclosure, accelerating the timetable could increase the burden significantly. In addition, the proposed filing deadline for some large accelerated filers and accelerated filers may be earlier than the annual report filing deadlines under their home country laws and regulations, and thus increase the burden in preparing annual reports.

Another proposed change that will require additional work for foreign private issuers relates to the reporting of financial statements of acquired businesses following significant acquisitions. To date, foreign private issuers have not been subject to the requirements applicable to U.S. domestic issuers that trigger disclosure of stand-alone financial statements (or the related pro forma financial information) of acquired businesses that are significant at the 20% or greater level unless the issuer is conducting a registered public offering. The SEC could have proposed applying the same 20% threshold as U.S. domestic issuers, but have proposed such disclosure only at the 50% threshold. At the 50% level, the issuer will in effect be accelerating disclosure that otherwise only gets reflected in consolidated historical financial reporting once the acquired business's results are reflected in the issuer's consolidated financial statements.

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Please note that this memorandum outlines the rule changes that have been proposed by the SEC in summary form only. We will post a detailed analysis of the proposed rule changes once the SEC publishes the full text of the proposing release. The SEC is currently soliciting comments to the proposed rules. Comments on the proposed rule changes should be submitted to the SEC within 60 days of publication of the proposing release in the *Federal Register*. After comments are received, the SEC staff will prepare a final set of new rules (which may be modified from the proposed set of rules) for approval by the SEC Commissioners. Once approved, the effective date could be immediate or subject to a transition period.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. If you have any questions regarding the foregoing, please contact any of the following:

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