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Frequently Asked Questions Raised by Non-U.S. Issuers Concerning SEC and Related Requirements

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The following set of questions and answers is intended to provide only a general overview of provisions of the U.S. securities laws applicable to foreign private issuers (other than those Canadian issuers that can avail themselves of the benefits of the U.S.-Canadian multi-jurisdictional disclosure system). The following material is not intended to provide or constitute legal advice, and no legal or business decision should be based on its contents.

Any questions concerning the following material should be addressed to members of the Paul Weiss Securities Group (see below). In addition, memoranda on related topics may be accessed under Publications on our web site (http://www.paulweiss.com).

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Coverage of the Sarbanes-Oxley Act

When people refer to the Sarbanes-Oxley Act what exactly are they referring to?

The Sarbanes-Oxley Act of 2002 (the "Act") amended significantly the U.S. securities laws governing companies that have offered securities in the U.S or are simply listed in the United States. Since the July 2002 effective date of the Act, the SEC, in accordance with its mandate under the Act, has adopted a number of rules to implement provisions of the Act. One set of rules was directed at the US stock exchanges, as a result of which certain corporate governance rules apply via the stock exchange listing standards as opposed to SEC rules.

Some provisions of the Act apply to all "issuers" -- that is, all companies that have securities listed in the United States or that have conducted a registered public offering in the United States, as well as companies that are in the process of conducting a registered public offering in the United States. Others only apply to issuers that are "reporting companies" (that is, they file reports with the SEC, such as a Form 20-F) or only to companies that have publicly traded equity securities in the United States but not companies with only public debt securities. Although non-U.S. issuers will continue to obtain waivers from stock exchange rules, as described below, none of the provisions of the Act contemplates waivers or exemptions that can be granted by the SEC staff.

If our company has only issued securities in the United States under Rule 144A, does the Act apply to us?

No. None of the provisions of the Act apply to your company unless your company's offering under Rule 144A was followed by a registered exchange offer and your company is still required to file reports with the SEC.

If our company has only obtained a Rule 12g3-2(b) exemption in connection with a Level I ADS program or otherwise, does the Act apply to us?

No. None of the provisions of the Act apply to your company. The purpose of the Rule 12g3-2(b) exemption is to permit nominal activities in the U.S. capital markets without triggering the registration requirements of the Securities Exchange Act of 1934 (the "Exchange Act"), which governs the obligations of reporting companies in the United States. Your company is not a reporting company. Even if you decide to voluntarily, and selectively, adopt "Sarbanes-Oxley" governance policies and procedures, you will not be subject to SEC oversight.

If our company has a Level I ADS program and upgrades to a Level II program, does the Act apply to us?

Yes, in connection with the listing as part of the Level II upgrade, your company will become a reporting company and will be subject to most of the provisions of the Act. This will be true whether or not you upgrade to a Level III program, and raise capital.

If our company has securities listed on a U.S. stock exchange, does the Act apply?

Yes, most of the provisions of the Act will apply to your company if your company is listed in the United States, whether or not your company also raised capital in a public offering.

If our company is about to go public in the United States through a public offering and has publicly filed a registration statement, does the Act apply to us?

Yes, some of the provisions apply immediately (the ban on personal loans to executives and liability of CEOs and CFOs for reimbursement due to accounting restatements) by reason of the filing which triggers "issuer" status, others would apply today if you had completed your offering and now had a reporting obligation, and will apply when you go public and become a reporting company.

If our company is planning just to list in the United States and we have filed a registration statement on Form 20-FR, does the Act apply to us?

The Act will not apply until the listing (and the 20-F) is effective, at which point your company becomes a reporting company.

If our company is about to go public in the United States and has submitted a registration statement to the SEC on a confidential basis, does the Act apply to us?

No, as the registration statement will not yet be deemed "filed."

What is a foreign private issuer?

A foreign private issuer is defined under the securities laws as an issuer organized outside the United States (other than a foreign government) so long as it does not fail to meet both prongs of a two-part test. If it fails to meet both prongs of the test, it ceases to be a "foreign private issuer." Part one of the test is that more than 50% of the company's voting securities are held, directly or indirectly, of record by U.S. residents. If more than 50% of the voting securities are so held, the company must evaluate the second prong, and will cease to be a foreign private issuer if (a) a majority of its executive offices or directors are U.S. residents or U.S. citizens, (b) a majority of its assets are located in the United States or (c) the company's business is principally administered from the United States.

When do we need to measure whether we are a foreign private issuer?

A company seeking to list or otherwise conduct a public offering in the United States must assess its status to determine whether it falls within the foreign private issuer regime. Once the company is an SEC registrant, it should monitor its status on a quarterly basis. It should also measure its status at the time of any purchase or sale by it of its equity securities (other than in connection with an employee benefit plan or compensation arrangement, a conversion of outstanding convertible securities, or an exercise of outstanding options, warrants or rights); any purchase or sale of assets by it other than in the ordinary course of business; and any purchase of equity securities in a public tender or exchange offer by a person unaffiliated with the issuer. Finally, if it is accessing the public markets by filing a registration statement for a follow-on offering, it again should consider its status. If a registrant is close to the limit (for example, a majority of its directors are U.S. residents and it believes it is close to the 50% U.S. resident threshold), it should not wait until the end of its fiscal year to see if it is still eligible to file a Form 20-F.

If we are a non-U.S. company but cease to qualify as a foreign private issuer, can we still take advantage of any of the accommodations for non-U.S. issuers?

No. At this point your company becomes subject to all of the rules applicable to a U.S. reporting company. Thus, the accommodation for audit committees (discussed below) would cease to apply. Many of the other significant implications of losing foreign private issuer status arise under traditional requirements, and include:

- losing ability to present local GAAP in SEC filings;
- filing quarterly and filing on the U.S. domestic timetable (which time periods are vary depending on the company's status as an accelerated filer, large accelerated filer or non-accelerated filer – tied to market capitalization), which means additional filings and certifications;
- filing current reports on Form 8-K, triggered by a variety of events or developments;
- providing shareholders with an annual report and annual proxy statement for the AGM;
- providing proxy statements for EGMs; and
- subjecting your officers and directors to the short-swing profits reporting and liability regime.

In addition, your company will lose exclusions from the Nasdaq/NYSE corporate governance rules that your company probably benefits from now and will be subject to the full range of corporate governance rules applicable under the Nasdaq or NYSE listing standards. Today, your company is only required to comply with audit committee independence requirements, disclose how the company's governance practices differ from a domestic registrant's practices and provide an annual affirmation.

If we are a foreign private issuer and voluntarily file 10-Ks and 10-Qs, will we be able to take advantage of any of the accommodations for non-U.S. issuers?

Your company is subject to all of the SEC rules applicable to U.S. reporting companies, including the accelerated time periods for filing of annual and quarterly reports. The stock exchange waiver provisions rules applicable to foreign private issuers would continue to be available to you.

If we are considering a U.S. listing, how do we deal with the fact that we may not be ready to comply with the internal control requirements?

The SEC currently has a proposal pending (expected to be approved in December 2006) to give newly public companies (that is, public in the United States) a one-year grace period in respect of compliance with the internal control reporting rules.

If we issue a high yield bond with registration rights, when does the Act apply?

At the time the bond is issued, your company will not be subject to the Act. When the exchange offer registration statement is publicly filed with the SEC your company becomes an "issuer" and certain of the provisions of the Act will apply at that time. When the registration statement is declared effective (and your company begins the exchange offer for the bonds) your company will be a reporting company and will be subject to the balance of the provisions of the Act applicable to an SEC registrant, other than those that apply by reason of the stock exchange listing rules (such as the provisions relating to independent audit committees).

If we are no longer a reporting company but are required to submit reports to the SEC as a result of covenants in a high yield indenture, are we subject to the Act?

Although voluntary filers of SEC reports are not "issuers" for purposes of the Act, they will be subject to certain requirements. Generally, any of the provisions tied to disclosure will apply. Your management is subject to the SEC certification requirement and the requirements with respect to disclosure controls and procedures and internal control over financial reporting. Your company is also subject to disclosure obligations in respect of audit committee financial experts and codes of ethics. You should consider yourself to be subject to the auditor independence rules, though you will not be required to comply with the audit committee independence rules, and pre-approval of audit and non-audit services could be handled by the board.

Applying the Provisions of the Sarbanes-Oxley Act

In this section, we assume your company is subject to the provisions of the Act.

Auditor Independence

Is our company subject to the auditor independence provisions of the Act?

Yes, your company is affected by, or subject to:

- prohibitions on the ability of your outside auditor to provide a range of non-audit services;
- requirements that your audit committee pre-approve all permissible non-audit services provided by the outside auditor and all audit, review and attestation services;
- rules on audit partner rotation;
- requirements on auditor communication with audit committees, which require your outside auditor to report to your audit committee on your critical accounting policies; alternative treatments of financial information within GAAP discussed with management, including the ramifications of such alternative treatments and the treatment preferred by the outside auditors; and other material written communications between management and the outside auditor); and
- restrictions on employment of auditor personnel.

In addition, these rules require disclosure in the Form 20-F regarding fees paid for audit services, audit-related services, tax services and other services, as well as disclosure of the pre-approval policies and procedures (described below) and the percentage of services approved under the *de minimis* exception (described below).

Do we need to call a meeting of our audit committee each time a service is provided by our auditor?

No, the audit committee can adopt policies and procedures for pre-approval, provided they are detailed as to the particular services. Non-audit services need not be subject to pre-approval if the aggregate fees paid for such services do not exceed 5% of the revenues paid to the auditor for that fiscal year and such services are promptly brought to the attention of the audit committee and are approved prior to the completion of the audit. This *de minimis* exception only applies to services that were not recognized as non-audit services at the time of engagement, and is accordingly not of great practical use to issuers.

Audit Committee Membership and Responsibilities

Must we have an independent audit committee?

Section 301 of the Act directed the SEC to adopt rules obligating the stock exchanges to prohibit the listing of any security of an issuer that is not in compliance with certain requirements. These requirements (which would apply to any SEC registrant with securities listed in the United States) relate to:

- the independence of audit committee members;
- the audit committee's responsibility to select and oversee the issuer's independent accountant;
- procedures for handling complaints regarding the issuer's accounting practices;
- the authority of the audit committee to engage advisors; and
- funding for the independent auditors and any outside advisors engaged by the audit committee.

What is the test for independence for audit committee members generally?

Under the listing standards, a two-part test applies (both prongs of which must be observed).

- Generally, audit committee members cannot receive, directly or indirectly, any consulting, advisory or other compensatory fee from the issuer or an affiliate other than in his/her capacity as a board or committee member. The indirect fee prohibition means that partners, managing directors or executive officers (or persons holding similar positions) in a law firm, investment bank, accounting firm or consulting firm that provides services to the issuer cannot serve on the audit committee.

- An audit committee member may not be an affiliate of the issuer (or an executive director, executive officer, general partner or managing member of an affiliate). Share ownership is not itself an automatic bar to independence, and there is a safe harbor for persons that hold less than 10% of the stock of the issuer. The test for share ownership is whether a person by virtue of that ownership or otherwise controls the issuer.

Is our board required to have a U.S.-style audit committee?

Several accommodations have been included that seek to address the special circumstances of particular non-U.S. jurisdictions. These provisions, subject to conditions specified in the rules:

- allow one non-management employee to serve as an audit committee member, consistent with the issuer's governing law or documents, "co-determination" or similar arrangements or other home country legal or listing requirements;
- allow alternative structures such as boards of auditors or statutory auditors to perform auditor oversight functions where such structures are provided for under local law (see next question);
- allow one member of the audit committee to be a representative of a controlling shareholder;
- allow any member of the audit committee to be a representative of a foreign government shareholder; and
- exempt foreign government issuers (i.e., those eligible to use Schedule B) from the independence rules.

Non-U.S. issuers taking advantage of one of these exemptions must disclose in, or incorporate by reference into, their annual report on Form 20-F filed with the SEC:

- their reliance on the exemption; and
- their assessment of whether, and if so, how, such reliance would materially adversely affect the ability of their audit committee to act independently and to satisfy the other requirements of the rules.

The other provisions covered by Section 301 (that is other than the independence requirement) apply to you, whether or not you can take advantage of one of the exemptions described above, unless you are a foreign government issuer.

In the past, U.S. stock exchanges have granted waivers from certain corporate governance related listing standards to foreign private issuers. The stock exchanges are not able to exempt or waive foreign private issuers from the independent audit committee requirements.

Can we rely on a board of auditors or statutory auditor, and if so, how do we comply with rules relating to audit committees?

It depends on whether your local law provides for such a function and your auditor meets the terms of the exemption. If so, your board of auditors or statutory auditor will need to comply with the other provisions of the rule, such as establishing procedures to receive complaints and for anonymous submissions. You can rely on the exemption, which means you do not need a separate, independent audit committee, if:

- your company has a board of auditors (or similar body), or has statutory auditors (collectively, a "Board of Auditors") established and selected pursuant to home country legal or listing provisions expressly requiring or permitting such a board or similar body;
- the Board of Auditors is separate from the board of directors, or composed of one or more members of the board of directors and one or more members that are not also members of the board of directors;
- the Board of Auditors is not elected by management and no executive officer of the issuer is a member of the Board of Auditors;
- home country legal or listing provisions set forth or provide for standards for the independence of the Board of Auditors from the issuer and management; and
- the Board of Auditors, in accordance with any applicable home country legal or listing requirements or your governing documents, is responsible, to the extent permitted by law, for the appointment, retention and oversight of the work of any registered public accounting firm engaged (including, to the extent permitted by law, the resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for you.

If we have a two-tier board, how do the audit committee rules impact us?

Your supervisory board (upper-tier) will be deemed the board of directors for purposes of the rules. That board can either form an audit committee that complies with the independence requirements (and any applicable exemption, such as the exemption for a member of the workers' council) or if the entire board is independent within the meaning and the exceptions of the rule, the entire board can be designated as the audit committee.

Can our audit committee serve as the audit committee for our wholly-owned subsidiaries that are also issuers and that don't have their own audit committee?

Yes. It is appropriate for the audit committee of a parent company to, in effect, serve as the audit committee of the parent company and its wholly-owned subsidiaries. In this situation, your subsidiary's disclosure should include the pre-approval policies and procedures of the subsidiary and, also should include your pre-approval policies and procedures of the parent company.

How do these rules relate to the audit service pre-approval rules?

The audit committee independence rules and the pre-approval requirements are separate. The pre-approval rules do not require that you establish a separate audit committee for pre-approval purposes. If you are not required to have a separate audit committee or do not form one (e.g., because you have a two-tiered board structure and your upper tier is independent), your board will be responsible for pre-approval. If you have a Board of Auditors, that body will be responsible for pre-approval. Whichever body handles pre-approval will also be the body to which the auditors are required to address communications under other parts of the auditor independence rules.

Some of our foreign subsidiaries have statutory audits performed by statutory auditors not affiliated with our "principal" auditors. Do our pre-approval requirements run to the statutory auditors for the foreign subsidiaries or should our pre-approval requirements run just to the principal audit firm?

The SEC's rules relating to listed company audit committees require audit committees to approve all audit services provided to the company, whether provided by the principal auditor or other firms. Therefore, your pre-approval requirements also run to the statutory auditors for your foreign subsidiaries. However, failure of your audit committee to pre-approve audit services to be provided by another firm would not affect the independence of the principal auditor.

How does the "financial expert" concept impact us?

You are required to disclose in your annual report on Form 20-F the number of persons that your board has determined qualify as "audit committee financial experts," the names of your financial experts and whether such experts are independent directors. If your board has not made the determination or none of your directors qualify, you must disclose such facts and the reasons why.

If your company has a Board of Auditors, that body will be deemed the audit committee for purposes of this disclosure and will be deemed the board of directors for purposes of making the determination.

If your company has a two-tier board, the supervisory board will make the determination.

If your company is required to have an independent audit committee, then the financial expert provision will require disclosure of the member of the audit committee who meets the test and must state whether that person is independent based on the applicable definition of the stock exchange on which your securities in the US are listed. If your company is not required to have an independent audit committee (for example, if you are not a listed company in the US), your disclosure can address whether the audit committee that you do have has such an expert, or if there is no separate audit committee, your disclosure would address whether any board member meets the test. If you are not listed, you can choose a definition of independence from among any of the stock exchange definitions, but you must disclose which definition you are using.

Are we subject to the audit committee rules even though we only have non-voting securities listed in the U.S.?

Yes. The rules apply if any securities, including debt securities, are listed. Note that in contrast to Europe, where it is common to list debt securities, in the United States it is rare to list debt securities.

What are the consequences of ineffective oversight by our audit committee?

The audit committee is expected to play a central and critical role as a gatekeeper of the company's financial and other reporting. One specific consequence of inadequate oversight by the audit committee is that a finding by the auditors in the context of the audit of internal control over financial reporting (see below) that the audit committee is not fulfilling its role constitutes a significant deficiency and is a strong indicator of a material weakness in internal control. If there is a material weakness, management will not be able to certify that the internal control is effective.

Impact on CEOs and CFOs - Generally

Do the provisions affecting senior officers apply to our company?

The requirement of CEOs and CFOs to certify periodic reports contained in the penalty provisions of the Act are operative and apply to non-U.S. issuers for Form 20-F annual reports. In addition, any filing of an annual report on Form 20-F must include a second set of certifications by the CEO and CFO.

The ban on personal loans to directors and executive officers was another immediately operative provision of the Act that applies to non-U.S. issuers. The provisions of the Act regarding reimbursement by CEOs and CFOs of bonuses, other incentive-based compensation and stock sale profits following an accounting restatement due to misconduct also were immediately operative and apply to non-U.S. issuers, although it is unclear how they may be enforced in practice.

You are required to report on Form 20-F whether your company has adopted a written code of ethics that applies to your CEO, CFO, chief accounting officer and controller (or persons performing similar functions), and if not, the reasons why not.

Certain of your executive officers and your directors will be subject to blackout periods on insider trades under new Regulation BTR (see below).

If we do not have persons with the title of CEO or CFO, who is subject to the rules?

Those persons performing the function of the principal executive officer and the principal financial officer.

CEO and CFO Certifications

You say our CEO and CFO are subject to certification requirements. What do you mean?

Under Section 906 of the Act, each periodic report containing financial statements that your company files must be accompanied by a written statement signed by both your CEO and CFO (we refer to these certifications as the “SOA Certifications”). The SOA Certifications require the CEO and CFO to certify that the covered periodic report fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act and that information contained in such periodic report fairly presents, in all material respects, the financial condition and results of operations of your company. This requirement does not apply to non-U.S. issuers submitting quarterly or semi-annual financial statements to the SEC under a Form 6-K, as Form 6-Ks are “made” and are not deemed “filed” for liability purposes of Section 18 of the Exchange Act.

In addition, each Form 20-F must also contain a certification (the language of which may not be altered) by each of the CEO and CFO (which we refer to as the “SEC Certifications”) that:

- he or she has reviewed the covered report (Certification 1);
- based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report (Certification 2);
- based on his or her knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results

of operations and cash flows of the issuer as of, and for, the periods presented in the report (Certification 3);

- he or she and the other certifying officers are responsible for establishing and maintaining "disclosure controls and procedures" and "internal control over financial reporting" and have (Certification 4):

  - designed such disclosure controls and procedures, or caused them to be designed under their supervision, to ensure that material information is made known to them, particularly during the period in which the periodic report is being prepared;
  - designed such internal control over financial reporting, or caused it to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP;
  - evaluated the effectiveness of the issuer's disclosure controls and procedures as of the end of the period covered by the report and have presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on the required evaluation; and
  - disclosed in the report any change in the issuer's internal control over financial reporting that occurred during the period covered by the report that has materially affected, or is reasonably likely to material affect, the issuer's internal control over financial reporting; and

- he or she and the other certifying officers have disclosed, based on the most recent evaluation of internal control over financial reporting, to the issuer's auditors and to the audit committee of the board of directors (or persons fulfilling the equivalent function) (Certification 5):

  - all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the issuer's ability to record, process, summarize and report financial information; and
  - any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal control over financial reporting.

The SEC Certification was modified to reflect the adoption of rules under Section 404 of the Act relating to internal control over financial reporting. To account for the differences between the compliance date of the rules relating to internal control over financial reporting and the effective date of changes to the language of the SEC Certification, an issuer's certifying officers may temporarily modify the content of Certification 4 of their SEC Certification to eliminate certain references to internal control over financial reporting until the compliance dates discussed below. Please refer to Annex A to our 404 Memorandum for details of the permitted modifications.

Please refer to Annex I to this document for a discussion of procedures we believe your CEO and CFO should consider in making the currently effective certifications, and to our 302 Memorandum and 404 Memorandum for more detail on the certifications.

Why are there two sets of certifications?

The Act imposed one set (the SOA Certifications) and at the same time directed the SEC to adopt rules with respect to a second set (the SEC Certifications), which it did. There was a general belief that Congress erred in imposing the SOA Certifications, but it would take an act of Congress to amend the

Act, and that has not occurred and is not likely to. The SEC takes the view that the SOA Certifications are the responsibility of the U.S. Department of Justice and not the SEC and has declined to address the impact of parallel certifications.

How do we file the certifications?

Both sets of certifications must be filed as exhibits to the relevant report.

Internal Procedures Generally

Certifications 4 and 5 of the SEC Certifications refer to internal procedures. What are they?

There are two sets of internal procedures: disclosure controls and procedures and internal control over financial reporting, which we discuss below.

What are disclosure controls and procedures?

"Disclosure controls and procedures" are defined as controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports (including current reports on Form 8-K and 6-K and proxy materials) filed or submitted by it under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. "Disclosure controls and procedures" include controls and procedures designed to ensure that information required to be disclosed by an issuer in its Exchange Act reports is accumulated and communicated to the issuer's management, including its principal executive and financial officers, as appropriate to allow timely decisions regarding required disclosure.

The procedures are to ensure timely collection and evaluation of information potentially subject to disclosure under Forms 20-F, and should capture information that is relevant to an assessment of the need to disclose developments and risks that pertain to the issuer's business. For example, for some businesses such as financial services firms, an assessment and evaluation of operational and regulatory risks may be necessary. The procedures should also cover information that must be evaluated in the context of Rule 12b-20, which requires the addition to required disclosure of items of such further material information as may be necessary to make any required statements, in the light of the circumstances under which they are made, not misleading.

What is internal control over financial reporting?

The rules implementing Section 404 of the Act define "internal control over financial reporting" as:

A process designed by, or under the supervision of, the registrant's principal executive and principal financial officers, or persons performing similar functions, and effected by the registrant's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the registrant;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the registrant are being made only in accordance with authorizations of management and directors of the registrant; and

- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the registrant's assets that could have a material effect on the financial statements.

As stated by the SEC, the scope of internal control encompasses policies, plans, procedures, processes, systems, activities, functions, projects and initiatives and endeavors of all types at all levels of a reporting company.

Since we are a reporting company, must we have these disclosure controls and procedures and internal control over financial reporting?

Yes. Your company is required to maintain both "disclosure controls and procedures" and "internal control over financial reporting."

When are we required to be in compliance with the requirements as to disclosure controls and procedures and internal controls over financial reporting?

The requirements regarding disclosure controls and procedures are effective.

Issuers and foreign private issuers that are classified as large-accelerated filers are required to be in full compliance with the internal controls over financial reporting and all related annual report requirements for their first fiscal year ending on or after July 15, 2006. Issuers and foreign private issuers who are accelerated filers will not be required to include an auditor's attestation report on internal control over financial reporting until their annual reports for the first fiscal year ending on or after July 15, 2007, though such issuers will need to include a management's report on the effectiveness of internal control over financial reporting in their annual reports for the first fiscal year ending on or after July 15, 2006. Foreign issuers who are non-accelerated filers are required to be in full compliance for their first fiscal year ending on or after July 15, 2007.

The SEC has proposed that domestic issuers and foreign private issuers that are non-accelerated filers not be required to provide (i) a management's report on the effectiveness of internal control over financial reporting until the annual report for the first fiscal year ending on or after December 15, 2007 (instead of July 15, 2007), or (i) an auditor's attestation report on internal control over financial reporting until the annual report for the first fiscal year ending on or after December 15, 2008 (instead of July 15, 2007). Additionally, under the proposed rule the management's report would be deemed "furnished" rather than "filed" for that first year for both accelerated and non-accelerated filers.

The SEC Certifications also refer to disclosure in the covered report concerning our procedures. What does this entail today?

The 20-F that you file must disclose:

- the conclusions of the principal executive and financial officers about the effectiveness of the disclosure controls and procedures based on their evaluation of these controls and procedures (Certification 4).
- whether or not there were any changes in internal control over financial reporting that occurred during the period covered by the report that materially affected, or are reasonably likely to materially affect, internal control over financial reporting. (Certification 4).

Evaluation of Disclosure Controls and Procedures

The SEC Certifications refer to an evaluation of disclosure controls and procedures. What is this?

Your company is required, under the supervision of the principal executive and financial officers, to conduct an evaluation of the effectiveness of the design and operation of your company's disclosure controls and procedures, as of the end of the period covered by the report.

Are there specific procedures we should be adopting to evaluate our disclosure controls and procedures?

The SEC has not mandated any particular procedures for conducting the required reviews and evaluations. Instead, each issuer is expected to develop a process that is consistent with its business and internal management and supervisory practices. However, the SEC has recommended that for purposes of the disclosure controls and procedures, an issuer create a committee with responsibility for considering the materiality of information and determining disclosure obligations on a timely basis, which would report to senior management, including the principal executive and financial officers, who bear express responsibility for designing, establishing, maintaining, reviewing and evaluating the issuer's disclosure controls and procedures. The committee could consist of the principal accounting officer (or controller), the general counsel or other senior legal officer responsible for disclosure matters, the principal risk management officer, the chief investor relations officer and such other employees in the business units (e.g., heads of business segments or chief operating officers of operating subsidiaries) as are appropriate.

Please refer to Annex II to this document for a list of items that your disclosure committee might wish to consider as part of its procedures, and to our Procedures Memorandum for more detail on the role of the disclosure committee.

Do we need to describe our disclosure committee in our annual report?

Although an increasing number of companies (principally domestic registrants) do describe their disclosure committees in their annual proxy statements or annual reports, there is no requirement to do so.

Internal Control Report and Auditor Attestation

The rules in this subsection are subject to phase-in, and assume that you are currently subject to these requirements – see "When are we required to be in compliance with the requirements as to disclosure controls and procedures and internal controls over financial reporting" above.

Is our company required to include in its annual report an internal control report?

Yes. Form 20-F requires a company's annual report to include an internal control report of management that contains:

- a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting;
- a statement identifying the framework used by management to conduct the required evaluation of the effectiveness of internal control over financial reporting;
- management's assessment of the effectiveness of internal control over financial reporting as of the end of your company's most recent fiscal year, including a statement as to whether or not the company's internal control over financial reporting is effective. The assessment

must include disclosure of any "material weaknesses" in the company's internal control over financial reporting identified by management; and

- a statement that the registered public accounting firm that audited the financial statements included in the annual report has issued an attestation report on management's assessment of the registrant's internal control over financial reporting.

The attestation report of the company's independent auditor must also be filed as part of the company's annual report.

You say that the annual internal control report is required to include our management's assessment of the effectiveness of our company's internal control over financial reporting as of the end of our company's most recent fiscal year. How does our management evaluate our internal control over financial reporting?

Your management is required to base its evaluation of the effectiveness of your company's internal control over financial reporting on a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment. The internal control report must identify the evaluation framework used by management to assess the effectiveness of the company's internal control over financial reporting.

A suitable framework must:

- be free from bias;
- permit reasonably consistent qualitative and quantitative measurements of a company's internal control;
- be sufficiently complete so that those relevant factors that would alter a conclusion about the effectiveness of a company's internal controls are not omitted; and
- be relevant to an evaluation of internal control over financial reporting.

The SEC indicated that the framework established by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") satisfies these criteria. However, because the final rules do not mandate the use of a particular framework, issuers may use other frameworks so long as they also satisfy the above criteria. The *Guidance on Assessing Control* published by the Canadian Institute of Chartered Accountants and the *Turnbull Report* published by the Institute of Chartered Accountants in England and Wales are also suitable frameworks. If your company uses a home country framework, you will be required to state affirmatively whether the controls are, or are not, effective, even though the home country framework may not require such a statement.

What is the standard that management should apply to its assessment of the company's internal controls?

The SEC has stated that the level of assurance given by management is not an absolute standard, rather management should apply a reasonable standard to its assessment of the company's internal controls over its financial reporting.

Is our company required to evaluate any changes in our internal control over financial reporting on a quarterly basis?

No. The final rules adopted under Section 404 of the Act require management to evaluate any changes in the company's internal control over financial reporting that occurred during a fiscal quarter that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting. However, because foreign private issuers are not required to file quarterly reports, the final rules clarify that management of a foreign private issuer need only disclose in the issuer's annual report any change to its internal control over financial reporting that occurred in the period covered by the annual report that materially affected, or is reasonably likely to materially affect, internal control over financial reporting.

If a material weakness is identified during the year, management should consider including appropriate disclosure in interim reports and in offering documents in order to render the disclosure not misleading. Such disclosure may relate to changes made to internal controls in response to the material weaknesses (such disclosure is required by Item 308 if the change has a material effect on internal controls) and, if a material risk exists, an appropriate risk factor.

What is the auditor attestation?

The internal control rules require that your outside auditor provide an attestation with respect to management's assessment of the effectiveness of the internal controls. An attestation is an expert's communication of a conclusion about the reliability of another person's assertion. The attestation involves evaluating management's assessment process and gathering evidence regarding the design and operating effectiveness of the internal control, determining whether the evidence supports or refutes management's assessment and opining as to whether management's assessment is fair. The PCAOB (the new oversight board for auditors) has adopted a detailed standard (Auditing Standard No. 2) for the auditor attestation, which introduces the concept of an integrated audit of the financial statements and internal control, but produces two opinions. Although the auditor can conduct an audit of the financial statements without also conducting an audit of internal control, the converse is not true: the auditor that provides the internal control audit must also audit the financial statements.

Can we get a clean audit opinion but an adverse opinion on internal control?

Yes, an auditor may be able to issue a clean opinion on the financial statements even though material weaknesses are identified, resulting in an adverse opinion on internal control. What this means is that there are one or more control deficiencies that rise to the level of "significant deficiencies" that result in more than a remote likelihood that a material misstatement in the financial statements will not be prevented or detected. It does not mean that there is such a misstatement. In such cases, the auditor cannot rely on the control or controls that had a material weakness. Instead, the auditor needs to perform additional substantive procedures to determine whether there was a material misstatement in the account related to the affected controls. If the auditor determines that there was not a material misstatement in the account, a clean opinion may be issued on the financial statements. The auditor's adverse opinion on internal control over financial reporting will disclose whether a material weakness affected the auditor's opinion on the financial statements.

What is the impact of a material weakness on our CEO/CFO certifications?

The existence of one or more material weaknesses should not preclude the CEO and the CFO from signing their certifications. In its FAQ (Question 4), the staff of the SEC clarified that notwithstanding the existence of one or more material weaknesses a company will remain timely and current with its periodic filing requirements as long as it satisfies its reporting obligations timely. The CEO/CFO certifications must be filed with the periodic reports in order for a company to remain timely and current with its SEC reporting obligations.

Should our internal control report outline remedial steps to address weaknesses?

Disclosures about remedial steps are not required but should be disclosed in management's report or elsewhere in the document. The staff of the SEC expects public disclosure of material weaknesses to extend to a discussion of remedial steps management is proposing to implement to address material weaknesses. The audit opinion on internal control will not cover this disclosure. If the disclosure is included in management's report, the auditor will specifically disclaim an opinion on those statements. If the disclosure is included elsewhere in the document, there will be no such disclaimer.

Who signs an internal control report?

The rules do not specify that management's report should be signed. Accordingly, we do not believe that the report should be signed by any individual member of management. Some companies may conclude that signatures are appropriate (e.g., of the CEO and CFO, or of others as well such as the controller or a COO), while others may reach the opposite conclusion.

What must our internal control report state if we have material weaknesses?

As management will be precluded from concluding that the company's internal control over financial reporting is effective if there are one or more material weaknesses, the report must state that the company's internal control over financial reporting was ineffective. In addition, the report will have to disclose any material weakness that management identified. The report should also (but is not required to) disclose the impact of such material weakness on the financial reporting and control environment and corrective actions taken or proposed to be taken by the company or, if applicable, management's conclusion that the cost of correcting a material weakness would exceed the benefits to be derived from implementing new controls. In the event the company has several material weaknesses, management is strongly encouraged to distinguish material weakness that affect the company's financial reporting and control environment from those material weaknesses that do not.

What are the implications of a qualified report, an adverse report and no report?

A company will not be timely and current with its periodic filing requirements if management's report and/or the auditor's opinion on internal controls are not included in the company's annual report on Form 20-F. The company will remain timely and current if management's report and/or the auditor's opinion is adverse (i.e. due to one or more material weaknesses the reports conclude that the company's internal control over financial reporting is not effective) as long as the reports are filed with the annual report and the company otherwise satisfies its reporting obligations timely. A qualified report is not acceptable and will have the same consequences as management not issuing a report at all.

PCAOB Auditing Standard No. 2 clarifies that a qualified report is not acceptable. The Standard states that management is required to state a direct conclusion about whether the company's internal control over financial reporting is effective. Management's conclusion may take many forms; however, management may not qualify its conclusion. For example, management may not state that the company's controls and procedures are effective except to the extent that certain problems have been identified or express similar qualified conclusions. Rather, management must take those problems into account when concluding whether the company's internal control over financial reporting is effective. In addition, it is not acceptable for management to make a negative assurance type statement indicating that, "nothing has come to management's attention to suggest that the company's internal control over financial reporting is not effective."

Note that management's report can contain certain permitted scope limitations, including in respect of variable interest entities consolidated under FIN 46 or proportionally consolidated under EITF 00-1 (see

FAQ Question 1) and acquired businesses (FAQ Question 3). These scope limitations trigger additional disclosure, which may, but need not, be in the report.

If there were material weaknesses during the year, can management conclude that the internal control over financial reporting was effective as of the end of the year? Would those material weaknesses have to be disclosed?

Yes, management can conclude that the company's internal control over financial reporting was effective if material weaknesses identified during the year have been rectified prior to the end of the fiscal year.

If we report a material weakness in our internal controls must we wait until we file our annual report to report its remediation?

No. Under the PCAOB's Auditing Standard No. 4 management may engage its auditors at any time to evaluate and issue a report on whether its company has successfully eliminated a material weakness. In addition to the auditor's report on the remediation of the material weakness, management will also be required to issue a report which shall include an identification of the material weakness, the specified control criteria used to identify such weakness and a statement that the specified controls were effective in remedying the identified material weakness.

What is the impact on the auditor's opinion on internal control over financial reporting of an adverse report by management?

If management's report is negative (for example, it identifies a material weakness), depending on the circumstances, the auditor may express both an unqualified opinion and an other-than-unqualified opinion within the same report. The auditor may express an unqualified opinion on management's assessment ("…management's assessment that internal control over financial reporting is not effective is fairly stated in all material respects…") while expressing an adverse opinion about the effectiveness of the company's internal control over financial reporting ("In our opinion, because of the effect of the material weakness described…, the company's internal control over financial reporting is not effective").

Other Rules Impacting Executive Officers and Directors

Do our directors, officers and other insiders have any reporting obligations in the United States when they buy or sell our shares? Who is required to disclose ownership of our shares?

All shareholders who beneficially own 5% or more of voting shares of an SEC reporting company (domestic or foreign) are required to file ownership reports with the SEC. Disclosure of these holdings will also appear in registration statements and 20-F annual reports. While directors, officers and 10% shareholders of domestic reporting companies are subject to reporting profit disgorgement rules, directors, officers and 10% shareholders of foreign private issuers are not subject to these rules.

What are the pension "blackout" rules?

Under the rules known as the Regulation on Blackout Trading Restrictions ("BTR"), your management directors and your CEO, CFO and chief accounting officer will be prohibited from trading in equity securities of the company during any so-called blackout period, which securities were acquired in connection with service or employment as a director or executive officer. A blackout period will be any three-day period in which the ability of not fewer than 50% of the U.S. participants or beneficiaries under all individual account plans maintained by the company to trade in company equity securities is suspended, provided the total number of U.S. employees subject to suspension exceeds 15% of the company's worldwide workforce or more than 50,000 of the U.S. employees are subject to such suspension. Relevant directors and executive officers must be timely notified of the blackout, and a copy of the notice must be filed as an exhibit to the Form 20-F.

Stock Exchange Rules

Are there any other issues triggered by our U.S. listing?

Yes, you should be aware of corporate governance standards issued by the NYSE and Nasdaq. As you know, non-U.S. companies typically have requested, and have been granted, waivers from a number of the corporate governance standards. Both sets of listing standards include a provision that requires non-U.S. issuers to disclose any significant ways in which their corporate governance practices differ from those followed by U.S. companies under the domestic listing standards. As a matter of best practice, you may wish to consider the rules applicable to U.S. companies to determine which would be appropriate to include in your corporate governance policies and procedures.

Nasdaq requires companies to have a code of conduct, which must apply to all officers, directors and employees, not just the officers covered by the code of conduct. Waivers must be disclosed in a Form 6-K or in the next Form 20-F.

Are there certifications required under the listing standards?

Yes, both the NYSE and Nasdaq require foreign private issuers to provide affirmations of compliance with the applicable listing standards on an annual basis.

What disclosure obligations are triggered under the listing standards?

Form 20-F, Item 6.C. Board Practices (Instructions), contains an instruction relating to disclosure if the board serves as audit committee or there is a board of auditors.

Form 20-F, Item 16.D. Exemptions from listing standards for audit committees, provides that if the registrant relies on any of the limited exemptions available relating to audit committee independence requirements, it should include disclosure regarding any exemption from the listing standards for audit committees.

Additional NYSE and Nasdaq disclosure rules relating to corporate governance.

- *NYSE Rules*. A foreign private issuer must disclose in its annual report distributed to shareholders and/or on its website any significant ways in which its corporate governance practices differ from the NYSE corporate governance standards. The registrant is required to compare NYSE domestic corporate governance requirements against the specific practices followed by such registrant. If the disclosure is made available only on the website, the annual report would be required to state this and provide the web address at which the information may be obtained.

- *Nasdaq Rules*. Foreign private issuers are exempt from corporate governance standards that would require them to do anything contrary to the laws, rules, regulations or generally accepted business practices of their home country. The authority to grant exemptions, however, does not apply to the extent that such exemption would be contrary to the federal securities laws. Registrants are required to disclose in their annual reports each requirement from which they are exempted as well as any alternative practices in lieu of the waived Nasdaq corporate governance requirements.

Issues Relating to Financial Statements

If the company makes a material acquisition would the company need to publish target financial statements?

No, unless the company is filing a registration statement. Generally, domestic SEC reporting companies that have recently closed a significant acquisition are required to present audited financial information and interim financial information (and related pro forma data) for an acquired business that meets certain significance levels. In contrast, foreign private issuers would only be required to present target financial statements (and pro forma data) if they are filing a registration statement (for example, because they are accessing the U.S. public capital markets).

To determine how many years of financial statements for an acquired business would be required, the issuer must analyze and determine the significance of the acquisition based on the following comparisons:

1. amount of issuer’s investment in the acquired business compared to the issuer’s total assets;
2. total assets of acquired business compared to the issuer’s total assets; and
3. pre-tax income of the acquired business compared to issuers pre-tax income.

If any of the above significance factors exceed (i) 20%, then the issuer may be required to include one year of audited financial information and interim financial information, (ii) 40%, then the issuer may be required to include two years of audited financial information and interim financial information, or (iii) 50% or above, then the issuer may be required to include three years of audited financial statements and interim financial information. If the acquisition has occurred and the financial statements of the target have not been included for a full year, then the 20%, 40% and 50% thresholds are relevant. If the acquisition has not occurred at the time of the registration, but the acquisition is probable, then only the 50% threshold is relevant. If none of the significance factors exceeds 20% then the company is not required to include separate audited financials for the acquired business.

In addition to the audited financial statements and interim financial information, the company is also required to present one year of pro forma financial information and interim pro forma financial information (if necessary) to reflect a significant acquisition. Pro forma data of more than one year are considered misleading and are not permitted..

The issuer is not required to present financial information or interim financial information for an acquisition that has already occurred, if the operating results of the acquired business have already been reflected in the issuer’s consolidated financial statements for a year (full audit cycle).

Foreign private issuers must present all financial statements and pro forma data for significant acquisitions in (or reconciled to) U.S. GAAP. Note that in contrast to the requirements under the EU Prospectus Directive, pro forma information in a U.S. filing is not reported on by the accountants.

Issues Relating to Stock Options

If the company wants to offer U.S.-based employee stock options do we need to comply with U.S. securities laws?

Yes. All offerings of securities for value or an offer or solicitation of an offer to buy securities for value must be registered with the SEC, unless an exemption is available. Therefore, a stock option plan that consists of an underlying sale or offer of securities will trigger SEC registration requirements. A cash-settled stock appreciation right do not trigger registration; however, where employees have a choice, registration would be triggered absent an available exemption.

If the company is already a reporting company with the SEC, then the company may register its stock options on Form S-8 (short form registration statement). If the company is not a reporting company, then the company would be required to file an F-1 in order to register its stock options, although in practice this is never done.

However, the 1933 Act also provides for the following exemptions, to the registration requirements, that would be available for stock options.

The first exemption, under Rule 701, applies to written benefit plans that are compensatory in nature and not for capital-raising transactions. Under Rule 701 the company may sell, in any 12-month period, a maximum number of stock options (measured at the date of grant) equal to the greatest of, (i) 15% of company's assets, (ii) 15% of the company's outstanding securities of that class or (iii) $1 million. In the event the sales of such stock options exceed $5 million, the company would also be required to provide grantees, in addition to a copy of the plan and risk factors, with U.S. GAAP or reconciled U.S. GAAP financial statements. This latter requirement will often force non-reporting companies to limit their Rule 701 issuances to $5 million per 12-month period. The second exemption, under Section 4(2), as a practical matter, applies to stock options granted to executive personnel only.

The third exemption, under Regulation D, applies to a company's offer or sale of stock options that meet the requirements of either (i) Rule 504, which provides an exemption for securities with an aggregate offering price that does not exceed $1 million within a 12-month period, (ii) Rule 505, which provides an exemption for securities with an aggregate offering price that does not exceed $5 million within a 12-month period and is generally limited to no more than 35 purchasers, or (iii) Rule 506, which, unlike Rules 504 and 505, does not have a dollar-amount limit, but limits the number of non-accredited investor purchasers to 35. To avoid disclosure obligations triggered by offers and sales to non-accredited investors, stock option grants typically would be limited to US employees that qualify as accredited investors, plus a number of non-accredited investors that can qualify under the Rule 701 limits.

Are there other rules the company needs to be aware of in granting stock options?

The adoption of Internal Revenue Code Section 409A (a law relating to the taxation of nonqualified deferred compensation) has significantly impacted executive compensation practices in the United States, including some equity-related compensation arrangements. The new law was passed in 2004 and is being phased in over 2005 and 2006. At this time, the IRS has issued only temporary guidance that leaves unanswered many important questions affecting common executive compensation arrangements. Arrangements that do not comply with the new law may subject participating employees to a 20% penalty tax in addition to regular income tax, and can result in all taxes becoming due earlier than the parties expect.

The new law is primarily aimed at supplemental executive retirement plans, voluntary deferral arrangements and "phantom stock" awards. Generally, stock options, stock appreciation rights and stock grants are not subject to Section 409A. However, stock options and stock appreciation rights with exercise prices less than the grant date fair market value of the underlying arrangements are subject to the new law. Amending a stock option to extend the date on which it can be exercised following termination of employment may also make the option subject to Section 409A. Finally, many severance arrangements are also caught by the new law.

The temporary guidance is very complex (for example, it even prescribes the type of stock upon which exempt stock options or stock appreciation rights may be granted), and the rules remain in a state of flux. Currently, all plans and agreements subject to Section 409A must be amended for compliance by December 31, 2006, but this deadline may be pushed back. "Good faith" compliance based on the existing guidance is required now in order to avoid adverse tax consequences to employees.

Issues Relating to Disclosure Obligations

Can we file any registration statement with the SEC on a confidential basis?

Only registration statements used in connection with an initial registration with the SEC may be submitted to the SEC staff initially on a confidential basis. If you are already a reporting company, subsequent registration statements must be filed publicly.

What happens if we will be late in filing our Form 20-F?

If you know that your company will be late in filing its Form 20-F, you should prepare to file with the SEC a notification of late filing on Form 12b-25. It will be due not later than one business day after the due date of the Form 20-F. If your company will be ready to file the Form 20-F by the fifteenth calendar day following the due date, you will check the box in Part II. If the Form 20-F will not be ready within fifteen days, you will not check the box and your company may be subject to a number of consequences, described below.

In Part III of the form, you must describe the reason why the company is not ready to make the filing within the prescribed due date. If the SEC perceives that any accounting issues are the cause of the delay in filing, it may commence an investigation of such issues. As a result of the late filing, the stock exchanges could seek to delist the company's securities. Additionally, companies late in making filings with the SEC may trigger covenant compliance and other similar issues. Note that in a few (albeit egregious) cases, the SEC has brought enforcement actions against registrants for misleading disclosures in their Form 12b-15 notifications.

Generally the company will file a press release in connection with a filing on Form 12b-25 announcing that the form has been filed with the SEC, whether or not the company anticipates that the filing will be made within the fifteen-day grace period, and describing the issue that caused the filing to be delayed.

What does it mean if we get a letter from the SEC providing us with comments on our Form 20-F?

The SEC is required to review periodic reports filed with it by each reporting company (domestic or foreign) no less often that once every three years. The SEC typically will issue a "comment letter" that will provide your company with comments. The comment letter often will state that a response is required within 10 business days. Some of the SEC's comments may require revising and resubmitting past filings; in other cases, it may be possible to address the SEC's comments in future reports. These specifics, and what the staff expects, will come out through the comment process. This process, although private when occurring, will, at its conclusion, become public; that is, the SEC's comment letters and your company's response letters will be available via EDGAR. Contacting the SEC staff, generally through counsel, should occur as soon as a comment letter is received to give the staff assurance that the company is focusing on the process and to request more time. (Responding to comments can be a time-intensive process if the comments are lengthy or raise significant accounting issues, which often can be the case. Note in other cases, the comments may focus on only a few, or a single matter, though in the latter case, the staff often will reserve the right to raise other issues. One recent example of the latter would be comments raised by the Office of Global Security Risk on business activities in countries such as Iran and Sudan.

How do the proxy rules apply to foreign private issuers?

The proxy rules do not apply to foreign private issuers. That means that you will not need to prepare a proxy statement for your shareholders meetings that complies with SEC requirements. Promptly after distribution to shareholders of circular or other proxy materials provided under local law, these materials should be furnished to the SEC on Form 6-K.

I have read about the concern over executive compensation and the adequacy of disclosure about compensation and benefits paid to officers and directors. Do the rules regarding disclosure of executive compensation apply to us?

No, the extensive rules on executive compensation disclosure only apply to U.S. reporting companies. The disclosure rules that historically applied to foreign private issuers (which are set forth in Form 20-F and which tend to call for aggregated disclosure unless local rules provide otherwise or the information is otherwise made public) are unchanged.

What is the difference between an 8-K and a 6-K and when does a 6-K have to be submitted?

Both forms are used for current reporting, but compliance with the rules associated with Form 8-K are much more stringent than those for Form 6-K.

Form 8-K is the reporting form for disclosing material events used by filers who file 10-Ks and 10-Qs. It must be filed with the SEC upon the occurrence of certain events enumerated in detailed regulations. The filing is required to be made, in most instances, within four business days of the occurrence of the event.

Form 6-K is the reporting form used by non-U.S. issuers (that are not voluntary 10-K and 10-Q filers) for periodic financial reports and to disclose information that is (a) required to be made public by the issuer in its home country, (b) filed with and made public by any non-U.S. securities exchange, or (c) otherwise distributed to securityholders. Not all such reports or documents need to be filed with the SEC. Form 6–K only requires the filing with the SEC of reports or documents of the issuer concerning, among other things:

- changes in management or control;
- acquisitions or dispositions of a significant amount of assets;
- bankruptcy or receivership;
- changes in the issuer's certifying accountants;
- resignation of the issuer's directors because of disagreements;
- changes in the issuer's fiscal year;
- amendments to the issuer's code of ethics or waiver of a provision of the code of ethics;
- temporary suspension of trading under the issuer's employee benefits plans;
- public announcement or release of material non-public information regarding the issuer's results of operations or financial condition for a completed quarterly or annual fiscal period; and
- "any other information which the registrant deems of importance to securityholders."

Upon occurrence of any such material events, a non-U.S. issuer should disseminate a press release advising the public of such an event and should promptly furnish the press release to the SEC under cover of Form 6-K. There is no strict time period in which a Form 6-K must be filed. Instead, a non-U.S. issuer is required to furnish a report on Form 6-K, "promptly after the material contained in the report is made public." Unlike Form 8-K, there is no Section 18 liability imposed on Form 6-K filings. However, like Form 8-K, Section 10(b) and Rule 10b–5 will apply to reports made on Form 6-K.

May we obtain confidential treatment from the SEC of material contracts that are required to be filed?

The securities laws set forth procedures for obtaining confidential treatment of information contained in a documents filed with the SEC. Confidential treatment is accorded based on parameters that exempt data from disclosure under the Freedom of Information Act ("FOIA"). The rules incorporate the criteria for non-disclosure set forth in FOIA and in the SEC's FOIA rules. FOIA requires all federal agencies to make specified information available to the public, including the information required to be filed publicly by SEC rules. However, FOIA contains certain exemptions and most companies rely on the exemption that covers "trade secrets and commercial or financial information obtained from a person and privileged or confidential" information. A confidential treatment request will require a legal analysis of the exemption and will need to meet other substantive requirements set forth by the SEC.

How do the rules on the use of non-GAAP measures impact us?

The rules on presentation of "non-GAAP financial measures" apply whenever a company publicly discloses material information that includes non-GAAP financial measures (whether in a press release, orally, or in a written report) and generally would apply to non-U.S. issuers. The new rules (known as Regulation G) have a limited exception for non-U.S. issuers where:

- the issuer has securities listed outside the United States;
- the non-GAAP measure is not derived from or based on a U.S. GAAP measure; and
- the disclosure is made in (or contained in a communication released in) the United States as well as outside the United States, so long as the disclosure or communication is released in the United States at the same time or after its release outside the United States and is not otherwise targeted at U.S. residents.

Under these rules, you will need to accompany the non-GAAP measure with a presentation of the most directly comparable GAAP measure and a quantitative reconciliation of the non-GAAP measure to the comparable GAAP measure.

In addition, Form 20-F imposes additional disclosure obligations, over and above Regulation G, in respect of non-GAAP financial measures included in a Form 20-F report.

If our company reports in U.S. GAAP, does Regulation G mean that our press releases must comply with the reconciliation requirements of the rule?

Yes, if the limited exemption is unavailable, all of your public statements that include non-GAAP financial measures must comply with Regulation G.

Does Regulation G also mean that our public statements are subject to the rules on selective disclosure?

No, although they may well be subject to local rules, foreign private issuers are not subject to Regulation FD.

Do we need a code of ethics for officers and directors?

The SEC rules regarding codes of ethics are disclosure rules, not affirmative obligations to have such a code; however, Nasdaq has an affirmative requirement that listed companies have a code of conduct for all employees, officers and the directors. If your company has a general code, you may disclose that you have a code provided your general code has provisions that comply with the requirements for a code of ethics. The term "code of ethics" has been defined to mean written standards that are reasonably designed to deter wrongdoing and to promote:

- honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- full, fair, accurate, timely and understandable disclosure in reports and documents that an issuer files with, or submits to, the SEC and in other public communications made by the issuer;
- compliance with applicable governmental laws, rules and regulations;
- the prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and
- accountability for adherence to the code:

What disclosures do we need to make regarding codes of ethics?

You are required to disclose in your annual report on Form 20-F whether your company has adopted a written code of ethics that applies to your CEO, CFO, chief accounting officer and controller (or persons performing similar functions), and if not, the reasons why not. If your company has adopted such a code, you will either need to file a copy of it with your Form 20-F, post the text of the code on your website or undertake to provide a copy of your code of ethics to any person without charge upon request. Changes to, or waivers from, the code would be disclosed in the annual report for the year during which the change or waiver took place. Alternatively, you may elect instead to disclose such changes or waivers on your website within five business days of the change or waiver if you have disclosed in your annual report your website address and your intention to provide disclosure in this manner. This information must remain available on your website for at least a 12-month period. You are encouraged, though not required, by the SEC to report changes and waivers in a Form 6-K report.

Note too that Nasdaq requires disclosure of waivers of codes of conduct for officers and directors.

What other disclosure may we post on our website?

In addition to any code of ethics disclosure that you elect to post on your website, you may also choose to satisfy any Regulation G disclosure obligations you may have relating to the publication of a non-GAAP financial measure (if such information is made public orally, telephonically, by webcast, by broadcast, or by similar means) by providing the required information on your website at the time the non-GAAP financial measure is made public. The location of the website must be made public in the same presentation in which the non-GAAP financial measure is made public. Information that you post on the website to comply with Regulation G should remain on the website for at least 12 months. You should locate information that you post on the website to comply with Regulation G on the website page that you normally use for investor relations functions.

If we buy back our ordinary shares in a private transaction, will we need to disclose the repurchase?

If the ordinary shares, or ADSs representing ordinary shares, are listed in the United States, then you will need to include in the Form 20-F a table showing for each month in the fiscal year then ended the number of ordinary shares repurchased, whether pursuant to a publicly announced plan or otherwise, together with other information concerning the repurchases. Repurchases of debt would be covered only if the debt is convertible into listed ordinary shares. Disclosure covers open market repurchases, as well as privately negotiated transactions (whether with insiders or others), issuer tender offers, exercise of put options and the like.

Can we deregister our securities and cease our reporting obligations?

Yes. Under the current rule, a foreign private issuer may deregister its securities and terminate its reporting obligations if such securities are held by fewer than 300 record holders who are U.S. residents or by fewer than 500 record holders who are U.S. residents and the company's total assets do not exceed $10 million.

Recently, the SEC proposed new rules for foreign private issuers who wish to deregister their securities and cease their reporting obligations. Under the proposed new rules, a foreign private issuer may deregister its equity securities and terminate its reporting obligations upon satisfying the following conditions:

1. the company has been a reporting company for the past two years, has filed or furnished all required reports and has filed at least two annual reports;

2. the company has not directly or indirectly sold its securities in the U.S. during the preceding 12-months; and

3. the company has maintained a listing of the securities on an exchange in its home country, which constitutes the primary trading market for the securities, for the past two years.

In addition to the above, the company must also satisfy the following benchmarks:

1. if the company is a well-known seasoned issuer either (i) the securities U.S. average daily trading volume is no greater than 5% of the average daily trading volume in its primary trading market and U.S. residents held no more than 10% of the company's public float; or (ii) U.S. residents held no more than 5% of the company's worldwide public float; or

2. if the company is not a well-known seasoned issuer then no more than 5% of the company's worldwide public float was held by U.S. residents.

In the event the company meets the conditions above, but not the required benchmarks, it may still deregister its equity securities and terminate its reporting requirements if fewer than 300 persons on a worldwide basis or 300 persons resident in the U.S. hold such equity securities.

Under the proposed new rules, the company may also deregister its debt securities and terminate its reporting requirements if (i) it has filed or furnished all reports under Section 15(d), including one annual report, and (ii) fewer than 300 persons on a worldwide basis or 300 persons resident in the U.S. hold such debt securities.

The proposed new rules for deregistration and reporting are expected to be finalized by the end of 2006.

Conducting Rights Offerings

What are the U.S. securities law implications that need to be considered in connection with a rights offering?

Historically, non-U.S. issuers conducting rights offerings typically excluded U.S. shareholders on the theory that, absent an exemption, the rights offering would require registration of the offer and sale under the Securities Act. In January 2000, the SEC adopted Rule 801 to encourage non-U.S. issuers to permit their U.S. shareholders to participate in rights offerings made solely in accordance with local rules. This exemption has a variety of conditions, including that not more than 10% of the shareholders be U.S. residents. Thus, if your U.S. shareholders represent less than 10% of the shares outstanding (calculated in accordance with the rule), you could rely on Rule 801 to include such U.S. shareholders in the rights offering. For purposes of the 10% calculation, we note the following:

- the calculation would be made 30 days before the record date for the rights offering;
- the 10% limitation focuses on U.S. *residents*, which would include non-U.S. nationals residing in the United States as well as U.S. subsidiaries of non-U.S. companies;
- one would count as shares held by U.S. residents, shares underlying your ADSs;
- one must exclude from both the numerator and the denominator shares held by any 10% holders (wherever located); and
- inquiry must be made of brokers, dealers, banks and other nominees in the U.S. and your home jurisdiction, and if after reasonable inquiry, one cannot ascertain who is behind the nominee accounts, one can assume that the customers are residents of the jurisdiction in which the nominee has its principal place of business.

If you cannot meet the 10% test, you would be able to conduct the rights offering without registration either by excluding all U.S. shareholders or by relying on the traditional exclusion and limiting participation in the United States to qualified institutional buyers or accredited investors. (There is no requirement under the U.S. securities laws that a rights offering by a non-U.S. issuer be extended to U.S. shareholders, although if you intend to exclude U.S. shareholders, you should make sure that local laws also permit the exclusion.) Note that none of these exemptions impacts anti-fraud liability; allowing U.S. shareholders to participate in a rights offering, either under Rule 801 or otherwise, would subject the offering materials to U.S. anti-fraud rules.

Professional Conduct

Are our non-U.S. lawyers subject to the SEC's standards of professional conduct for attorneys?

Most non-U.S. lawyers who are neither admitted to practice law in the United States nor hold themselves out as practicing, nor give legal advice regarding, U.S. federal or state laws will be considered "non-appearing foreign attorneys" and will not be subject to the SEC's new professional standards of conduct. Nevertheless, non-U.S. attorneys who do not hold themselves out as practicing U.S. law, but who engage in activities that would constitute "appearing and practicing" before the SEC (broadly defined to include, among other things, providing advice with respect to U.S. securities laws regarding any document the attorney has notice will be filed with or submitted to the SEC), are subject to the new rules unless they appear and practice only incidentally to their foreign law practice or in consultation with U.S. counsel.

Anti-Bribery Provisions

What is the Foreign Corrupt Practices Act?

The United States Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), broadly prohibits making corrupt payments to foreign officials and imposes important requirements with regard to record-keeping and internal accounting controls on issuers. With respect to making payments to foreign officials, the FCPA makes it unlawful for any entity falling under its jurisdiction, including any U.S. company and any director, employee or agent of a U.S. company, to offer, give, promise to give, or authorize the giving of money or anything of value, whether directly of through another person or entity, to a foreign official, political party, party official or candidate for political office (collectively referred to as "covered officials") in order to influence any act or decision of such official or to induce such official to use his or her influence with a government or instrumentality thereof for the purpose of obtaining or retaining business for or with, or directing business to, any person or entity. The FCPA is enforced by the SEC and the Department of Justice through injunctive action and the imposition of criminal and civil penalties.

Does the FCPA apply to us?

Yes. The FCPA has a wide application and not only applies to U.S. entities and individuals. It also applies to any corporation or other entity (including a non-U.S. issuer) that has a class of securities registered with the SEC pursuant to Section 12 of the Exchange Act or is required to file reports under Section 15(d) of the Exchange Act. In addition, the FCPA applies to any officer, director, employee, agent or stockholder of an entity described above acting on behalf of the entity, whether or not such person (if an individual) is a citizen, national or resident of the United States or (if not an individual) has its principal place of business in the United States or is organized under the laws of any state, territory, possession or commonwealth of the United States.

What are the record-keeping and internal accounting controls required by the FCPA?

The FCPA requires issuers (i) to make and keep books and records in "reasonable detail" to "accurately and fairly reflect" transactions and disbursements of the issuers' assets, and (ii) to devise and maintain a system of internal accounting controls that, among other things, "provide reasonable assurances that transactions are executed in accordance with the management's authorization." In short, the controls must be adequate to protect against off-book accounts and disbursements and other unauthorized payments. The FCPA requires "reasonable" rather than absolute assurance that accounting controls are adequate.

Are the record-keeping and internal accounting controls under the FCPA duplicative of the internal control requirements under Section 404 of the Act?

No. The FCPA internal control requirements are separate from the internal control requirements of Section 404 of the Act.

Annex I

PROCEDURES FOR CEO/CFO CERTIFICATIONS

As part of the Sarbanes-Oxley Act of 2002 that was signed by the President, each periodic report containing financial statements filed by a reporting company (U.S. or non-U.S.) must be accompanied by a written statement by the company's CEO and CFO. In addition, SEC rules now mandate certifications as well.

We are providing guidance to CEOs and CFOs on how to prepare to comply with the certification requirements as they relate to the contents of the covered report.

Set the Stage for an Effective Reporting Process

Although the company's most senior officers may not necessarily be directly involved in the actual drafting of a reporting company's periodic reports, it is important for them in light of the new certification requirements to:

- Establish the appropriate "tone at the top."
- Send a clear message to the entire organization that the company places a high priority on the best disclosure practices.
- Remind all employees of their responsibility to protect the integrity of the company's systems and procedures regarding the collection, analysis and disclosure of information relevant to investors.
- Provide a clear mandate and authority from the top of the organization to those responsible for gathering information and for preparing the company's financial statements and other disclosure.
- Maintain an "open door" policy for any individual who wants to raise issues or ask questions about the company's reporting obligations and disclosure.
- Remain actively involved in the disclosure process.

CEO/CFO Review of Periodic Reports and Certification

Given that many reporting companies have only a short time before the first filing of a report subject to the new provisions of the Act, CEOs and CFOs need to take steps now to make sure that reports in preparation are adequately prepared and reviewed. While the amount of "due diligence" that the CEO and CFO should undertake prior to making the certification will depend on their degree of familiarity with the details of the company's financial results, its public filings and its approach to accounting issues, the following steps should be considered as part of the process of preparing to make the certifications:

- Carefully review the company's financial results and how they were prepared. Speak to the company's senior accounting officers, with particular attention given to any material discretionary issues and accounting policies followed in respect of your primary financial statements if they are prepared under U.S. GAAP or in respect of your U.S. GAAP reconciliations.

- Carefully review the non-financial statement information in the remainder of the report, especially the Management's Discussion and Analysis of Financial Condition and Results of Operations (the "MD&A"). Discuss the report with the principal authors of the MD&A and the descriptions of the company's businesses. Focus on the information included in the report and review any matters excluded from the report, with attention to any material discretionary judgments. Also address the critical accounting estimates and the underlying assumptions.

- In reviewing financial disclosure, remember that compliance with GAAP may not be sufficient. In certifying that the financial disclosure fairly presents financial condition, results of operations and cash flows, the CEO and CFO will also be certifying as to:

    - selection of appropriate accounting policies;
    - proper application of appropriate accounting policies;
    - disclosure of financial information that is informative and reasonably reflects the underlying transactions and events; and
    - the inclusion of any additional disclosures necessary to provide investors with a materially accurate and complete picture of financial condition, results of operations and cash flows.

- Discuss the report with the company's disclosure counsel. Ask counsel to confirm that the report meets the form requirements of the Securities Exchange Act referred to in the certification.

- Review with the appropriate officers responsible for internal controls the procedures that were followed in preparing the report. Review a list of the persons from whom information was gathered and to whom the draft report was circulated. Consider whether information was gathered from the persons best able to provide it and whether the report was circulated to the persons best able to assure its accuracy and completeness. Assess the adequacy of the time and resources devoted to the preparation of the report.

- Review the company's internal controls with officers responsible for maintaining such controls, including any changes to the nature and scope of procedures relating to internal controls. Review issues raised by the company's auditors regarding the company's controls. Consider how such issues, or any others raised concerning weaknesses in the financial and reporting systems or internal controls, have been addressed. Inquire about any impact that company growth or internal reorganization may be having on the effectiveness of the company's controls.

- Identify issues that are worth further consideration. Consider issues raised in past SEC comment letters, issues identified by the company's auditors, issues raised internally involving the disclosure process or judgments or discretion, and issues raised by analysts or others outside the company. Think about where mistakes would be most likely to occur and where others in the company's industry have had problems.

- Meet with the Company's outside auditors so that the auditors can share any additional views or thoughts that they may have. Ask them about adjustments to the company's financial statements that they have recommended. Ask if there are any alternative treatments that the company should be considering in preparing its financial statements. Review with them the SEC's "hot-button" accounting (e.g., earnings management, off-balance sheet transactions, related party transactions) and disclosure issues (e.g., pro forma figures, critical accounting estimates), and any other accounting or disclosure issues receiving attention in the company's industry.

- Meet with the audit committee, and with the full board if necessary, to understand any questions or concerns that they may have identified concerning the company's financial and reporting systems, internal controls, risk assessment and risk management policies, auditor independence and effectiveness, financial statements and other public disclosure (whether in SEC reports, home country reports or press releases), or any related matters.

- Review the representation letters delivered by officers of the company to the outside auditors.

- Consider the advantages and disadvantages of obtaining back-up certification from the principal internal officers who participated in the preparation of the report. At a minimum ask the personnel involved in the preparation of the report if they are comfortable with its contents (would they sign the certification if they were you?). Ask them what they have done to ensure the accuracy of the report. Tailor the certification as appropriate based on the level/area of responsibility of the persons providing sub-certifications, and do not merely copy of the CEO/CFO certification and ask others in the reporting chain to sign it.

Keep minutes of the CEO and CFO review. Schedules or checklists indicating the process used to prepare the report, a list of the participants involved in the preparation of the report and a list of the persons to whom drafts of the report were circulated should be reviewed with the CEO and CFO and retained.

Annex II

DISCLOSURE CONTROLS AND PROCEDURES

Checklist of Items to be Addressed -- for Non-U.S. Registrants

Have you read our last annual report on Form 20-F and all of the intervening reports on Form 6-Ks, including any current draft under review (our “Disclosure”)?

Are you familiar with the SEC’s requirements for the information to be included in the Disclosure?

To your knowledge:

- Does the Disclosure present a full and accurate view of the business, financial condition, results of operations and prospects?
- Are there matters not disclosed in the Disclosure that you believe to be material?
- Are there risks that should be highlighted in the Disclosure that are not or that should be stated more forcefully?
- Do any previously made forward-looking statements, in retrospect, appear inaccurate or in need of clarification?
- Does the MD&A overview properly reflect all of the trends, events and uncertainties in our business?
- Have there been material adverse changes in our business since the last audit?
- Do you have any basis for believing the prior financial statements can no longer be relied upon?

Are you aware of any of the following (which are not addressed in the Disclosure or if addressed should be updated):

Non-ordinary course events

- Any acquisitions, dispositions or other material transactions
- Material amendments of material agreement not made in the ordinary course of business
- Termination of any material agreement not made in the ordinary course of business
- Plans to discontinue any operations
- Plans to restructure any operations

Customers and Suppliers

- Termination or reduction of a business relationship with a material customer or supplier, or any changes in the relative contribution of our major customers, or any potential withdrawal of a customer or supplier from the market (due to liquidity issues or otherwise)

- Where company maintains business relationships with a controlling shareholder, changes in the business relationship with our controlling shareholder

- Other changes that will increase our relative dependence on customers or suppliers

Operational

- Any trends, events or uncertainties (whether general economic, industry-specific or company-specific) that could have a material impact on our reported financial information or our prospects

- Risks posed by implementation of our reported growth strategy

- Risks posed by foreign currency or interest rate fluctuations

- Risks posed by regulatory developments or the impact of existing regulatory environment

- Risks posed by integration of acquired operations

- Any reasons why capital expenditures may exceed budget or amounts previously publicly disclosed

- Material changes in our mix of business

- Changes in competitive pressures

- Changes in insurance coverage or premiums

- Changes in where we are doing business or have operations, and any changes in business environments that affect our operations or results

- Changes in our business segments or in the reporting lines of operational units which will impact our SFAS 131 segment reporting

Financial

- Creation of a direct or indirect material financial obligation (e.g., an issuance of debt securities, a bank loan, a credit facility, a guarantee, a keepwell arrangement)

- Any trigger event for a direct or contingent material financial obligation

- Any options written on non-financial assets

- Any transactions, arrangements or other relationships with unconsolidated entities or other persons that are reasonably likely to affect our liquidity or the availability of, or requirements for, capital resources
- Any commercial commitments and contractual obligations that are not covered in the Disclosure
- Risks posed by any derivative positions or any other hedging transactions

Liquidity and Capital Resources

- Any material changes in debt levels or working capital needs
- Any increases in accounts receivable as a result of customer payment delays
- Any trends, changes in circumstances or uncertainties regarding our liquidity or capital resources, including any circumstances or material risks that could impact our short-term funding. Is there any risk under any financial commitments, debt or lease agreements or other arrangements of early payment, need for additional collateral, acceleration or creation of additional financial obligations
- Possible downgrades in our credit ratings or credit watch
- Any reason why we may fail to meet financial ratios or other debt covenants
- Any circumstances that could impair our ability to engage in transactions integral to our operations or are essential to our results of operations

Accounting

- Any reason why accounting policies that we have selected are inappropriate or are improperly applied
- Were any alternative accounting policies, assumptions or treatment recommended by the auditors or a director
- Any action (including a plan to terminate or exit an activity) that will incur a material write-off or restructuring charge
- Any event that will require a material impairment charge
- Disagreement by the auditors or a director regarding financial reporting policies or procedures
- Any related party transactions, including transactions with persons that fall outside the technical definition of related party whose relationship to us enables them to negotiate terms of material transactions that may not be available from clearly independent third parties on an arm's length basis
- Adverse impact/contribution of investee companies on our results or financial condition
- Material impact of new accounting pronouncements under local GAAP or U.S. GAAP

- Are there disclosures of financial information, which while consistent with local GAAP or U.S. GAAP, nonetheless may be misleading or incomplete

Other Disclosure Issues

- Threatened litigation or governmental investigation
- Tax assessments or re-assessments
- Infringements of our intellectual property or potential claims that our use of intellectual property infringes the rights of others
- Any issues that have been raised internally by employees or externally by the auditors (in management letters or otherwise) or by others that question our accounting practices, our financial reporting procedures or our Disclosure that have not been adequately addressed
- Any issues that are affecting our competitors that could reasonably affect us
- Material changes in headcount or material impact as a result of such changes

Procedural Issues

- Are persons that have information relevant to the preparation of our SEC reports in the proper reporting line?
- Are all office locations and sources of information adequately covered by our reporting procedures?
- Are there changes that needed to address receipt of information from investee companies?
- Is information reported on a timely basis and are drafts of the Disclosure prepared with sufficient time for review?
- Are the persons who reviewed the Disclosure in the best position to conduct such a review?