

July 22, 2008

## SEC Proposes Amendments Requiring Companies to use eXtensible Business Reporting Language, or XBRL

On May 30, 2008, the SEC published for public comment proposed amendments under the U.S. Securities Act of 1933 and the U.S. Securities Act of 1934 that would require companies to provide to the Securities and Exchange Commission financial statements in an interactive data format containing eXtensible Business Reporting Language (“XBRL”). Comments on the proposed rules are due on August 1, 2008.

Currently, SEC filers are required to file registration statements and periodic reports in ASCII or HTML format, which typically cannot be processed directly by computer applications but rather must be cut and pasted or re-keyed in order to be analyzed and compared with other documents of other companies. The proposed XBRL amendments are intended to increase the usefulness of financial information, since the new format can be recognized and processed by a variety of computer applications, allowing investors to easily analyze and process financial information. The proposed amendments do not alter the information that is required to be reported within a periodic report or registration statement but mandate the filing of an additional exhibit as “interactive data,” tagged in XBRL format.

The proposed phase-in period for XBRL adoption is as follows:

<b><u>Registrant Type</u></b>	<b><u>Earliest Mandatory Filing using XBRL</u></b>
Domestic and foreign large accelerated filers with worldwide public common equity float above \$5 billion as of their most recently completed second fiscal quarter	<ul style="list-style-type: none"><li>• Any registration statement actually containing (not incorporating by reference) financial statements for a period ending on or after December 15, 2008; or</li><li>• Any quarterly or annual report for a fiscal period ending on or after December 15, 2008.</li></ul>
All other large accelerated filers using U.S. GAAP	<ul style="list-style-type: none"><li>• Any registration statement actually containing (not incorporating by reference) financial statements for a period ending on or after December 15, 2009; or</li><li>• Any quarterly or annual report for a fiscal period ending on or after December 15, 2009.</li></ul>

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All other U.S. GAAP filers	<ul style="list-style-type: none"> <li>• Any registration statement actually containing (not incorporating by reference) financial statements for a period ending on or after December 15, 2010; or</li> <li>• Any quarterly or annual report for a fiscal period ending on or after December 15, 2010.</li> </ul>
Foreign private issuers filing IFRS financial statements	<ul style="list-style-type: none"> <li>• Any registration statement actually containing (not incorporating by reference) financial statements for a period ending on or after December 15, 2010; or</li> <li>• Any annual report for a fiscal period ending on or after December 15, 2010.</li> </ul>

The proposed rules provide that the first XBRL-format exhibit of each filer may be filed as an amendment to the report or registration statement within 30 days after such report or amendment is due.

As discussed in more detail below, the proposed XBRL rules also specify the extent to which registrants will be liable for the information they provide pursuant to the proposed rules. In general, interactive data provided under the XBRL rules are not incorporated by reference into Securities Act registration statements and prospectuses and should therefore not result in any incremental liability for registrants under Section 11 or Section 12 of the Securities Act. Nevertheless, interactive data, although not incorporated by reference into Securities Act registration statements and prospectuses, are subject to the other anti-fraud provisions of the securities laws, such as Rule 10b-5.

### **Background-eXtensible Business Reporting Language**

XBRL is a computer language that, once adopted by SEC filers, will enable the financial and other data contained in reports filed with the SEC and delivered over the Internet to be processed directly by software applications of the users of the data, such as securities analysts and investors. As discussed, a document using a current Internet language, such as HTML, typically cannot be processed directly by applications. XBRL provides an identifying tag for each individual item of data. Each tag can be read by software applications and enable the applications to automatically recognize the items of data in a SEC filing and understand the relationships among the items in a standardized manner, thus facilitating the analysis and processing of such data. Information in a XBRL document can be selected, analyzed, stored, exchanged and presented automatically in a variety of ways for various users.

Various “taxonomies” have been developed for use in the United States, based on different industry classifications (insurance, investment management, commercial/ industrial and banking/savings institutions). An XBRL “taxonomy” is a list of elements that can be used as tags for various items of information in a filing. Each element (e.g., goodwill, total assets, etc.) within a taxonomy has various characteristics associated with it, such as a standard description, a data type and relationships to other elements and information (such as method of calculation). For example, if a company tags a certain number as “cost of goods sold,” because it has been tagged as such, that number would be automatically associated with the description, “Costs incurred to produce goods for sale. May include direct materials, direct labor, overhead, depreciation and

other” and could automatically be compared with a figure given the same label by a different company. Therefore, tagging an item associates an item with the information that is contained in the element and allows the item to be recognized as such by user software applications.

In 2005, the SEC established rules for a voluntary XBRL program, encouraging companies to submit XBRL-format exhibits with certain reports filed under the Exchange Act. More than 75 companies participated in the program, allowing the SEC to better assess the costs and benefits of interactive data filings and to create a more extensive list of data tags.

### **Content of the XBRL-format Exhibit**

Under the SEC’s proposed rule amendments, each company will be required to include with its financial statements, accompanying footnotes and schedules an exhibit, which will contain that same financial information in interactive, XBRL tagged format. Proposed Item 601(b) (Exhibit 101) of Regulation S-K and Item 101 of the Instructions to the exhibits to Form 20-F, specify when a registrant is required to submit a XBRL-format exhibit.

The requirement to provide financial statements in an XBRL-tagged exhibit applies to the filing of:

- annual reports on Form 10-K and Form 20-F;
- quarterly reports on Form 10-Q; and
- registration statements which include financial statements for fiscal periods included in an annual or quarterly report, such as registration statements on Forms S-1 and F-1 (other registration statements such as Forms S-3 and F-3, which incorporate financial statements by reference, would therefore not be subject to the XBRL rules).

The proposed XBRL amendments do not apply to:

- a company’s Management’s Discussion and Analysis, executive compensation or other financial, statistical or narrative disclosure included in a periodic report or registration statement;
- filings by Canadian issuers using the multi-jurisdictional disclosure system such as filings made on Form 40-F (although the SEC is soliciting comment on this issue);
- filings on Form 8-K or Form 6-K, regardless of whether or not such filings contain financial statements (although the SEC is soliciting comment on this issue); and
- financial statements included in registration statements or reports for (i) a filer’s acquired businesses or businesses to be acquired (Rule 3-05 of Regulation S-X), (ii) a filer’s guarantors (Rule 3-10 of Regulation S-X); or (ii) a filer’s unconsolidated subsidiaries and 50 percent or less owned persons (Rule 3-09 of Regulation S-X) (although the SEC is soliciting comment on this issue).

Proposed Sections 405 and 406 of Regulation S-T include the content, format, submission and web posting requirements (discussed below) for the XBRL-format exhibit.

The proposed rules would require interactive data tagging of the filer's complete financial statements (including the notes) and any required financial statement schedules. The proposed rules require that the financial line item descriptions and amounts presented on the face of the financial statements in the traditional filing be the same as those in the interactive data format document. Registrants are not permitted to present only parts of the face of the financial statements in interactive data format (*e.g.*, by excluding comparative financial information for prior periods).

The SEC has proposed a one-year phase-in period for tagging the notes to financial statements. In a registrant's initial interactive data filing and each of its interactive data filings for the year after the initial filing, the registrant would only be required to tag each of its financial statement footnotes as a single block of text. For filings made after one year after the initial filing, the registrant would be required to include the following additional levels of detail in its tagging of the information contained in its financial statement footnotes:

- each significant accounting policy within the significant accounting policies footnote must be tagged as a single block of text;
- each table within each footnote must be tagged as a separate block of text; and
- within each footnote, each amount (for example, each monetary value) must be separately tagged, and each narrative disclosure required to be disclosed pursuant to U.S. GAAP, IFRS (as defined below) or SEC regulations must also be separately tagged.

The initial report requiring the additional levels of detail would be permitted to be filed up to 30 days beyond the due date or filing date of the relevant report or registration statement. Subsequent reports requiring interactive data with detailed footnote tagging would not have the benefit of the 30-day grace period.

Among the various issues with respect to which the SEC has requested comment are whether the footnote tagging requirements would be so onerous as to cause registrants to change the substance of their footnote disclosures (particularly with respect to discretionary content) to reduce the associated administrative burden and whether the tagging of footnotes would aid in comparability among filers.

Similarly, with respect to financial statement schedules required by Article 12 of Regulation S-X, for a registrant's initial filing and each of its interactive data filings for the year after the initial filing, the registrant would be permitted to tag each complete financial statement schedule as a single block of text. For filings made after one year after the initial filing, the registrant would be required to tag separately each amount (for example, each monetary value) and each narrative disclosure required to be disclosed pursuant to U.S. GAAP, IFRS (as defined below) or SEC regulations.

### **Liability for Interactive Data**

Under the proposed rules, the financial statements and other disclosures in the traditional format part of the related official filing with which the interactive data appear as an exhibit would

continue to be subject to the usual liability provisions of the federal securities laws. The proposed XBRL rules would therefore not affect any liability rules for traditional format filings.

Under the current voluntary program, registrants are permitted to include a cautionary disclaimer in XBRL documents, to the effect that interactive data should not be relied upon in making investment decisions. Under the proposed rules, the SEC will not permit registrants to include such a disclaimer in their mandatory XBRL filings. Under the proposed rules, the usual liability provisions of the federal securities laws also would apply to human-readable interactive data that is identical in all material respects to the corresponding data in the traditional format filing as displayed by a viewer that the SEC provides. For example, the income statement contained in an interactive data file filed as an exhibit to a quarterly report on Form 10-Q (and viewable through the SEC-provided viewer) should be identical to the income statement contained in the Form 10-Q. As a result, the income statement in the XBRL exhibit would be subject to the same liability regime as the income statement in the Form 10-Q and would be incorporated by reference into a Securities Act registration statement (and be subject to liability under Section 11 and Section 12 of the Securities Act). Nevertheless, as a practical matter, such incorporation by reference should not result in any incremental liability for the registrant, since by definition, the income statement in the XBRL exhibit should be identical in all material respects to that contained in the traditional format Form 10-Q. In contrast, the tags and other similar data, for which there are no corresponding portions in the traditional Form 10-Q, would not be subject to such liability. Presumably, registrants incorporating their SEC filings by reference in private offering memoranda or other similar documents would explicitly exclude XBRL documents from incorporation by reference.

Although interactive data (other than information that is identical to that found in the corresponding traditional filings) are not incorporated by reference into Securities Act registration statements and prospectuses, they are subject to the general anti-fraud provisions of the federal securities laws, including Rule 10b-5 under the Exchange Act.

In addition, interactive data:

- are not deemed filed for purposes of Section 18 of the Exchange Act and Section 34(b) of the Investment Company Act;
- would benefit from the protections against liability for electronic data transmission errors under Rule 103 under Regulation S-T;
- would be subject to certain protections from liability for good-faith, unintentional failures to comply with Rule 405 under Regulation S-T (the rules governing XBRL format and presentation); and
- are excluded from the officer certification requirements under Rules 13a-14 and 15d-14 under the Exchange Act.

### **Data Tags**

Under the proposed rules, companies who use U.S. GAAP and are preparing the XBRL-format exhibit would be required to use the most recent data tags issued by XBRL US Inc., a non-profit consortium contracted by the SEC to build XBRL. Similarly, filers using IFRS as issued by the IASB would be required to tag their financial information using the most recent list of tags for

international financial reporting, as released by the IASCF and specified in the EDGAR Filer Manual.

The SEC recognizes that one of the principal benefits of interactive data is its extensibility—that is, the ability to add to the standard list of tags in order to accommodate unique circumstances in a filer’s particular disclosures. Nevertheless, the SEC also points out that the use of customized tags may also serve to reduce the ability of users to compare similar information across companies. In order to promote comparability across companies, the proposed rules would limit the use of extensions to circumstances where the appropriate financial statement element does not exist in the standard list of tags and would require that companies change only the label for a financial statement element that exists in the standard list of tags rather than creating a new customized tag.

The IASCF and XBRL U.S. have been collaborating and aligning practices with respect to the development of the list of IFRS tags so that foreign private issuers can more readily comply with the proposed phase-in schedule of XBRL reporting.

A filer would have the opportunity to submit an interactive data exhibit as part of a test submission just as a filer can make test submissions today. The validation system would process a test submission with an interactive data exhibit similar to the way it processes test submissions today. If it found an error, it would advise the filer of the nature of the error and as to whether the error was major or minor. A major error in an interactive data exhibit that was part of a live filing would cause the exhibit to be held in suspense in the electronic filing system while the rest of the filing would be accepted and disseminated if there were no major errors outside of the interactive data exhibit. The filer would then need to revise the interactive data exhibit to eliminate the major error and submit the exhibit as an amendment to the filing to which it is intended to appear as an exhibit. A minor error in an interactive data exhibit that was part of a live filing would not prevent the interactive data exhibit from being accepted and disseminated together with the rest of the filing if there were no major errors in the rest of the filing.

### **Web Posting Requirements**

On the same day that a registrant submits a XBRL exhibit to the SEC, it must also post such exhibit on its corporate website (if it has one) and may not, for example, use a hyperlink on its website to direct viewers to the XBRL exhibit filed on the SEC’s website. If a registrant avails itself of a 30-day grace period, the registrant is not required to post its XBRL-format exhibit on its website until it has submitted such exhibit to the SEC.

### **Consequences of non-compliance with XBRL rules**

Under the proposed rules, companies who fail to provide the interactive data submission required by the XBRL rules would not be deemed current in their Exchange Act reporting requirements and would therefore fail to meet the short-form registration requirements on Forms S-3, F-3 or S-8 and could not elect to incorporate information by reference on Forms S-4 or F-4. Such companies would also fail to meet the current public information requirement for resales under Rule 144 of the Securities Act. The disqualification would last for so long as the interactive data are not provided. Once a filer complies with the interactive data submission and posting requirements—provided it previously filed its financial statement information in traditional format on a timely basis—it will be deemed to have timely filed all of its periodic reports.

**Hardship exemption**

The SEC has also proposed amendments to Rule 201 of Regulation S-T to allow for a temporary hardship exemption for the submission of XBRL-format data. If a registrant “experiences unanticipated technical difficulties that prevent the timely preparation and submission of interactive data,” and was therefore unable to file the required interactive data, the registrant will nevertheless remain “current” in its status with respect to reporting requirements under the Exchange Act and resale requirements under Rule 144 for six business days following the date the XBRL-format exhibit was required to be filed. On and after the seventh business day, the registrant will no longer be current until the submission of the required interactive data.

Proposed amendments to Rule 202 of Regulation S-T provide that registrants may apply to the SEC for a continuing hardship exemption if the XBRL submission is not possible without undue burden or expense. During the period of the continuing hardship exemption, the registrant will be deemed “current” with respect to its Exchange Act reporting requirements and resale information requirements under Rule 144. An analogous continuing hardship exemption for website posting has also been included in proposed Rule 202 of Regulation S-T.

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This Memorandum is not intended to provide legal or accounting advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this Memorandum should be directed to any member of the Paul, Weiss Securities Group, including:

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