

March 31, 2009

SEC Adopts Final Rules Requiring XBRL

The SEC recently adopted final rules requiring public companies to submit financial statement information in an interactive data format based on eXtensible Business Reporting Language ("XBRL"). XBRL involves the electronic "tagging" of financial statement line items and other information in a format that will allow investors and analysts to access and manipulate the data more easily through computer software applications.

Currently, SEC filers are required to file registration statements and periodic reports electronically in ASCII or HTML format. These filings 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 XBRL amendments are intended to increase the usefulness of financial information because the new format can be recognized and processed by a variety of computer applications, allowing investors to easily analyze and process financial information. The final rules do not alter the information that is required to be reported within a periodic report or registration statement. Instead, they mandate the filing of an additional exhibit containing "interactive data," tagged in XBRL format.

The final rules provide for XBRL to be phased in as follows:

| Registrant | Earliest Mandated Filing to Include XBRL Data |
|---|--|
| Domestic and foreign large accelerated filers using U.S. GAAP with worldwide public float above \$5 billion | <ul style="list-style-type: none"> Quarterly report on Form 10-Q for a fiscal period ending on or after June 15, 2009 Annual report on Form 20-F or Form 40-F containing financial statements for a fiscal period ending on or after June 15, 2009 |
| All other large accelerated filers using U.S. GAAP | <ul style="list-style-type: none"> Quarterly report on Form 10-Q for a fiscal period ending on or after June 15, 2010 Annual report on Form 20-F or Form 40-F containing financial statements for a fiscal period ending on or after June 15, 2010 |

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| Registrant | Earliest Mandated Filing to Include XBRL Data |
|--|--|
| All remaining filers using U.S. GAAP | <ul style="list-style-type: none"> • Quarterly report on Form 10-Q for a fiscal period ending on or after June 15, 2011 • Annual report on Form 20-F or Form 40-F containing financial statements for a fiscal period ending on or after June 15, 2011 |
| Foreign Private issuers with financial statements prepared in accordance with International Financial Reporting Standards (“IFRS”) as issued by the IASB | <ul style="list-style-type: none"> • Annual reports on Form 20-F or Form 40-F for fiscal periods ending on or after June 15, 2011 |

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. 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 an 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 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 XBRL Exhibits

Under the SEC's final rules, public companies will now be required to include in most filings that contain financial statements, accompanying footnotes and schedules, an exhibit that includes that same financial information in interactive, XBRL-tagged format.

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

- annual reports on Form 10-K, Form 20-F and Form 40-F;
- quarterly reports on Form 10-Q;
- reports on Form 8-K and 6-K that include updated or revised financial statements; and
- registration statements of certain reporting issuers that include financial statements (other than financial statements incorporated by reference).

Under the final rules, if a registrant restates its financial statements by filing an amendment to a registration statement or periodic report, or revises its financial statements to reflect certain subsequent events (e.g., a change in reportable segments) by filing a Form 8-K, 6-K or an amendment to a pre-effective registrant statement, an interactive data exhibit must be filed with such report or amendment. There is no requirement to disclose changes made in data tags for such restated or revised reports or registration statements, assuming the previous tags were appropriately used at the time the interactive data file for the original financial statements was filed. Additionally, a foreign private issuer who files interim financial statements in accordance with the nine-month updating requirement of Item 8.A.5 of Form 20-F would be required to submit an interactive data file with that filing.

A registrant is required to submit its first XBRL-format exhibit for a registration statement only after it has filed its first quarterly or annual report that is required to include interactive data. Further, an interactive data exhibit is only required for registration statements after a price or price range has been determined, and any time after when the financial statements included in such registration statement have changed.

The XBRL rules 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;
- financial statements included in registration statements or reports for (i) acquired businesses or businesses to be acquired (Rule 3-05 of Regulation S-X), (ii) unconsolidated subsidiaries and 50 percent or less owned persons (Rule 3-09 of Regulation S-X); (iii) applicable real estate operations to be acquired (Rule 3-14 of Regulation S-X); (iv) affiliates whose securities constitute a substantial portion of the collateral for a class of securities being registered (Rule 3-16 of Regulation S-X); or (v) pro forma financial statements (Article 11 of Regulation S-X);
- financial statements of the target in a business combination transaction;

- investment companies registered under the Investment Company Act, business development companies or other companies that prepare their financial statements in accordance with Article 6 of Regulation S-X;
- Form 10, Form 20-F and Form 40-F when used as Exchange Act registration statements (although filers may voluntarily submit an XBRL-format exhibit with such registration statements);
- registration statements for an initial public offering; or
- foreign private issuers that file their financial statements using accounting standards other than U.S. GAAP or IFRS as issued by the IASB, even though their financial statements generally must be reconciled to U.S. GAAP.

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 final rules require interactive data tagging of the filer's complete financial statements (including the notes) and any required financial statement schedules. Additionally, the financial line item descriptions and amounts presented on the face of the financial statements in the traditional filing must 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 final rules provide that the first XBRL-format exhibit of each filer (regardless of filing type) may be filed as an amendment to the report or registration statement within 30 days after such report or amendment is due. Such amendment would not be subject to the certification requirements of Rule 12b-15 under the Exchange Act.

The SEC has adopted 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 complete 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 (i.e., each monetary value) must be separately tagged (the final rules permit, but do not require the tagging of narrative disclosure within each footnote required to be disclosed pursuant to U.S. GAAP, IFRS or SEC regulations).

In year two, the initial filing 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.

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 must tag each amount (i.e., each monetary value) within a footnote or schedule separately, but would not be required to tag each narrative disclosure required to be disclosed pursuant to U.S. GAAP, IFRS or SEC regulations.

Liability for Interactive Data

Under the amendments, 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 XBRL rules would therefore not affect any liability rules for traditional format filings.

The final rules do however, distinguish between federal security law liability for errors made during and after the first two years a registrant is required to submit an XBRL-format exhibit. If a registrant submits an interactive data file within 24 months (but in no event later than October 31, 2014) of the first time it is required to make interactive data submissions, the registrant would be subject to the federal securities laws in a modified manner under Rule 406T, similar to the voluntary program liability regime. After such two year period, the interactive data will be subject to the same liability regime as the traditional format filing.

During this two-year "modified liability time frame," a registrant's interactive data submissions will be:

- subject to liability under Rule 10b-5 of the Exchange Act, Section 17(a)(1) of the Securities Act and Section 206(1) of the Investment Advisors Act of 1940, except where a registrant fails to comply with the tagging requirements despite a good faith attempt to comply and after the registrant becomes aware of the failure, the registrant promptly corrects the error;
- deemed not filed or part of a registration statement or prospectus for purposes of Section 11 or 12 of the Securities Act and not otherwise subject to liability under those sections;
- deemed not filed for purposes of Section 18 of the Exchange Act and Section 34(b) of the Investment Company Act;
- subject to SEC enforcement actions (for example, under Section 13(a) of the Exchange Act) based on violations of the rules where Rule 406T would not apply;
- excluded from the officer certification requirements under Exchange Act Rules 13a-14 and 15d-14 (as discussed below, the certifications are also excluded beyond the modified liability period); and
- deemed filed for purposes of Rule 103 of Regulation S-T (as result, a registrant would benefit from the protections against liability for electronic data transmission errors beyond its control if the registrant files an amendment correcting the problem "promptly" after the registrant becomes aware of the error).

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 final rules, the SEC will not permit registrants to include such a disclaimer in their mandatory XBRL filings.

Although the final rules exclude interactive data from the officer certification requirements under Exchange Act Rules 13a-14 and 15d-14 beyond the two-year limited liability period, they do not exclude interactive data from the definition of “disclosure controls and procedures.” A registrant would therefore be required to evaluate its interactive data procedures in the context of disclosure controls and procedures. However, the actual evaluation of the interactive data procedures is considered to be separate from the preparation and submission of the interactive data file, and the outcome of the evaluation would not require management to assess or an auditor to separately report on the registrant’s XBRL format exhibit.

Auditor Liability

The amendments do not impose or create an additional basis for auditor liability for interactive data files, and no audit or formal auditor review is necessary in connection with the filing of interactive data.

Data Tags

Under the final 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, and as specified in the EDGAR Filer Manual. Similarly, filers using IFRS 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 final rules 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 phase-in schedule of XBRL reporting.

Additionally, 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.

Web Posting Requirements

By the end of the calendar day that a registrant submits an 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. The amendments clarify that the interactive data exhibit must be posted on a registrant's website for 12 months.

Consequences of Non-compliance with XBRL rules

Under the final 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 Form 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 included 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. A paper version of the interactive data need not be filed, and the hardship exemption does not require any staff or SEC action or approval. On and after the seventh business day, the registrant will no longer be current until the submission of the required interactive data. An analogous hardship exemption for website posting has been included in Rule 201 of Regulation S-T.

Amendments to Rule 202 of Regulation S-T provide that registrants may apply to the SEC in writing for a continuing hardship exception if the XBRL submission is not possible without undue burden or expense. An analogous continuing hardship exemption for website posting has also been included in Rule 202 of Regulation S-T. 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. Like Rule 201 of Regulation S-T, no paper submission is required during the exemption period. Additionally, in special circumstances and on a case-by case basis, the Staff may consider requests made under Rule 202 of Regulation S-T to defer the XBRL the phase-in, especially in the context of a company moving its accounting principles to IFRS.

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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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