

January 8, 2008

SEC Agrees to Accept IFRS Financial Statements of Foreign Private Issuers

In July 2007, the SEC published for public comment a proposal that would allow foreign private issuers to include in their SEC filings financial statements without reconciliation to U.S. generally accepted accounting principles (“U.S. GAAP”). On November 15, 2007, the SEC approved the rule changes and, on December 21, it posted the final promulgating release. Under the new rules, foreign private issuers will be permitted to include in their SEC filings financial statements without reconciliation to U.S. GAAP if such financial statements are prepared in accordance with International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”). The rules that require reconciliation of financial statements to U.S. GAAP will still apply to foreign private issuers that file financial statements using a basis of accounting other than IFRS as issued by the IASB.

The amendments take effect 60 days after publication in the *Federal Register* and apply to financial statements for financial years ended after November 15, 2007 and interim periods within those years contained in filings made after the effective date. Amendments to General Instruction G of Form 20-F relating to first-time adopters of IFRS apply to filings made after the effective date.

Background

The convergence of international accounting standards represents one of the most important measures taken to ease cross-border capital formation and promote the comparability of financial statements. In 2002, the EU adopted regulations that require companies incorporated in its member states and listed on EU regulated markets to use IFRS as adopted by the EU beginning with their 2005 financial year. The new SEC rules allowing omission of reconciliations to U.S. GAAP reflect the ongoing convergence efforts of the IASB and the Financial Accounting Standards Board (“FASB”) and the trend outside the United States towards presentation of financial statements prepared in accordance with IFRS.

Practical Effects

What are the principal differences between the old rules and the new rules?

Under the old rules, foreign private issuers that register a class of securities with the SEC and that are obligated to file periodic reports under Section 13(a) or 15(d) of the Exchange Act were required to reconcile their financial statements filed with the SEC to U.S. GAAP if such financial statements were prepared using any basis of accounting other than U.S. GAAP. Item 17(c)(2) of

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Form 20-F has now been revised to allow foreign private issuers that file financial statements that comply with IFRS as issued by the IASB to include their financial statements in annual filings and registration statements without reconciliation to U.S. GAAP. In addition, new Item 18(b) clarifies that the disclosures otherwise required by U.S. GAAP and Regulation S-X will not be required if a filer provides financial statements using IFRS as issued by the IASB.

Does the application of the new rules depend on any criteria relating to the issuer, such as market capitalization?

No, any foreign private issuer can take advantage of the new rules provided its financial statements comply with the conditions for the relief.

As an eligible issuer under the new rules, which requirements do I need to comply with to avoid reconciliation to U.S. GAAP?

You are required to state unreservedly and explicitly, and in an appropriate note to your financial statements, that such financial statements are in compliance with IFRS as issued by the IASB, and your independent auditor must render an opinion stating that your financial statements comply with IFRS as issued by the IASB. This opinion can be included in addition to any opinion concerning compliance with standards required by your home country. If you fail to comply with any of these requirements, you are required to provide a reconciliation to U.S. GAAP.

As an eligible issuer under the new rules, may I still reconcile my financial statements to U.S. GAAP?

Yes. In such case, you will have to rely on the current requirements of Form 20-F with respect to reconciliation of financial statements to U.S. GAAP. You will be required to provide a discussion of the reconciling differences including a description and quantification of each material variation and a prominent legend, or an indication in the audit report, of the accounting principles used in the preparation of your financial statements. In addition, under Item 18(b), you must provide the information specified in Item 17 as well as other disclosure required by Regulation S-X and U.S. GAAP.

I am a foreign private issuer and I am listed in the EU. I am required to prepare my statutory financial statements in accordance with IFRS as adopted by the EU. Am I required to reconcile to U.S. GAAP?

The new rules do not contemplate jurisdictional variations of IFRS. Any financial statements that include deviations from IFRS as issued by the IASB must be reconciled to U.S. GAAP. Comments received by the SEC during the rule-making process noted that the only substantial difference between IFRS as issued by the IASB and IFRS as adopted by the EU is IAS 39 (*Financial Instruments: Recognition and Measurement*), which relates to hedge accounting for certain financial instruments. Therefore, to the extent that you do not make use of the IAS 39 “carve out,” you should be able to satisfy the conditions of the new rules.

I am a foreign private issuer listed in the EU and I have taken advantage of the “IAS 39 carve out” in my financial statements previously filed with SEC. Am I required to reconcile my financial statements to U.S. GAAP?

In view of the ability of EU issuers to deviate from IFRS in respect of IAS 39, the SEC has provided a two-year grace period, which allows you, for the first two financial years that end *after* November 15, 2007, to file such financial statements with no reconciliation to U.S. GAAP,

provided such financial statements otherwise comply with IFRS as issued by the IASB and contain a reconciliation to IFRS as issued by the IASB. Thereafter, if you wish to continue to take advantage of the IAS 39 carve out, you will be required to reconcile your financial statements to U.S. GAAP. Financial statements for periods prior to the financial year that ends after November 15, 2007 must continue to be reconciled to U.S. GAAP.

Do the new rules affect the accommodation provided in General Instruction G of Form 20-F for first-time IFRS adopters?

No. If you are a first-time adopter of IFRS, the amendments do not affect the applicability of General Instruction G to Form 20-F. Therefore, you are permitted, for your first year of reporting under IFRS as issued by the IASB, to file two years rather than three years of income statements, changes in shareholders' equity and cash flows. The SEC extended the accommodation for first-time IFRS adopters indefinitely.

Is this accommodation available to foreign private issuers outside the EU?

Yes. This accommodation is available to all foreign private issuers.

Am I required to reconcile my interim period financial statement to U.S. GAAP?

As long as your audited annual financial statements included or incorporated by reference for all the financial periods comply with IFRS as issued by the IASB, you are not required to present a reconciliation to U.S. GAAP with respect to unaudited interim financial statements prepared (to the extent required) in accordance with IFRS as issued by the IASB.

My Form 20-F contains financial statements that are not prepared under IFRS as issued by the IASB (together with a reconciliation to U.S. GAAP) and is dated more than nine months after the end of my last audited financial year. I need to file a registration statement under the Securities Act. What are my options?

In the context of filing a registration statement under the Securities Act, you are required to file unaudited consolidated interim period financial statements (covering a minimum of six months of the financial year and the comparative period for the prior financial year) prepared under the same accounting basis as the audited annual financial statements. Considering your financial statements are not prepared under IFRS as issued by the IASB, you have two options: (i) reconcile the interim period financial statements to U.S. GAAP or (ii) file an amendment to your Form 20-F including financial statements prepared under IFRS as issued by the IASB and then file the interim period financials without reconciliation to U.S. GAAP.

If I present financial statements on the basis of IFRS as issued by the IASB, am I required to reconcile my 5 year-selected financial data?

No. The SEC has revised the instruction to Item 3.A of Form 20-F to clarify that selected financial data based on the U.S. GAAP reconciliation is required only if the issuer prepares its primary financial statements using a basis of accounting other than IFRS as issued by the IASB.

If I prepare my financial statements under IFRS as issued by the IASB, am I required to respond to non-financial items of Form 20-F that refer to U.S. GAAP pronouncements?

Yes. In providing this disclosure (such as disclosure of off-balance sheet arrangements under Item 5 ("Operating and Financial Review and Prospects") and Item 11 ("Qualitative and Quantitative

Disclosures about the Market Risk”)), you should apply the IFRS notion of the principles embodied in the relevant U.S. GAAP pronouncements.

If I prepare my financial statements under IFRS as issued by the IASB, am I required to provide FAS 69 disclosure (“Disclosures about Oil and Gas Producing Activities”)?

Yes. The SEC has amended Item 18 of Form 20-F to clarify that any filer that provides disclosure under FAS 69 is required to disclose the information called for under such statement even though the filer is preparing financial statements in accordance with IFRS as issued by the IASB.

Does Regulation S-X still apply to IFRS filers?

Yes. Regulation S-X, other than its form and content requirements, still applies to the filings of all foreign private issuers, regardless of whether such issuers report under IFRS as issued by the IASB or under some other set of principles. For example, requirements relating to historical financial statements of a foreign acquired business or investee under Rule 3-05 or 3-09 of Regulation S-X will continue to apply. Note, however, that, if the financial statements of the foreign entity are prepared under IFRS as issued by the IASB, a reconciliation to U.S. GAAP is not required. With respect to the financial statements requirements for issuers of guaranteed securities and guarantors (under Rule 3-10 of Regulation S-X), the SEC clarified that it will accept condensed consolidating financial information without U.S. GAAP reconciliation if the financial information is prepared under IFRS as issued by the IASB.

In the case of pro forma financial information, pro forma results must be presented using the same basis of accounting as the issuer since the requirements for pro forma financial information under Article 11 of Regulation S-X continue to be governed by the financial statements of the issuer. Accordingly, a foreign private issuer using IFRS as issued by the IASB will not need to reconcile its pro forma financial information to U.S. GAAP. If a foreign private issuer using IFRS as issued by the IASB acquires a U.S. domestic company using U.S. GAAP, a partial reconciliation to IFRS of the U.S. domestic company’s U.S. GAAP is required so that the IFRS-reporting foreign acquiror is able to present pro forma financial information using IFRS. Similarly, a partial reconciliation to U.S. GAAP of a foreign company’s IFRS financial information is required when a U.S. company using U.S. GAAP acquires a foreign target reporting under IFRS.

Are there are other conforming amendments?

Yes. The SEC also amended references to U.S. GAAP reconciliation set forth in Form F-4 , Form S-4 and Rule 701 under the Securities Act.

Do the new rules amend other forms such as Schedule TO?

The new rules effectively allow foreign private issuers to file financial statements prepared under IFRS as issued by the IASB in the context of Schedule TO (tender offer statements), Schedule 13E-3 filings (going private transaction statements under Section 13(e) of the Exchange Act), and filings under the Multijurisdictional Disclosure System by certain Canadian foreign private issuers.

Does the six-month deadline to file Form 20-F still apply?

Yes. This deadline has not been shortened.

What other changes were made to Form 20-F?

The cover has been revised to include a box that will alert investors as to the basis of accounting under which the financial statements are prepared. Issuers must also provide contact information for a person to whom the SEC can direct inquiries about the filing.

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This memorandum is not intended to provide legal 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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