

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

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SEC ADOPTS RULES REQUIRING NON-US ISSUERS TO FILE ELECTRONICALLY

The SEC will now require all non-US issuers with SEC filing obligations to make their filings via the SEC's electronic filing system, the Electronic Data Gathering, Analysis and Retrieval (EDGAR) system. The SEC rule change is intended to facilitate more rapid dissemination of financial and other information that is filed with the SEC by non-US filers than under the prior system of paper filings.

US issuers have been required since the mid-1990s to make all of their filings in electronic format, while non-US issuers were given the choice of continuing to file in paper format or to file electronically. According to the SEC, of the approximately 1,310 non-US issuers that filed reports in 2000 with the SEC under the Securities Exchange Act of 1934 (the "Exchange Act") (i.e., non-US issuers that have securities listed in the United States and/or have conducted a public offering in the United States), approximately 18% voluntarily filed using EDGAR. One advantage for these filers is that investors can access the filings instantaneously via watch service notifications, or 24 hours later on the SEC web site (www.sec.gov).

The rules become effective November 4, 2002. A registrant that files in paper prior to such date may complete its filing in paper (and file prospectuses in paper under Rules 430A and 424) provided the registration statement is declared effective by December 31, 2002.

Filings Subject to the New Requirements

Generally, all documents filed with or, in the case of Form 6-K or Form CB, submitted to the SEC must be filed or submitted electronically. A hardship exemption would be available, but the SEC does not expect to grant such exemptions frequently.

In particular, the new rules apply to:

- registration statements on Forms F-1, F-2, F-3, F-4 and S-8;
- registration statements on Form 20-F (used for listings);
- registration statements on Form F-6 (for ADS programs, including so-called Level I programs (where the issuer is not an Exchange Act reporting company));

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- annual reports on Form 20-F;
- reports on Form 6-K, except as described under “Accommodations”;
- registration statements on Forms F-7, F-8, F-9, F-10 and F-80, registration statements and annual reports on Form 40-F and the tender offer forms filed by Canadian issuers under the Multijurisdictional Disclosure System (“MJDS”);
- statements of beneficial ownership on Schedules 13D and 13G, and Schedule TOs, pertaining to the securities of non-US issuers, whether filed by a US or non-US person;
- Form CBs (used in connection with exemptions applicable to cross-border rights offerings, exchange offers and business combinations), together with the accompanying home country documentation, where the filer is subject to Exchange Act reporting or where the subject company is subject to Exchange Act reporting (voluntary electronic filers of Form CB will be required to electronically file the attached home country documentation);
- registration statements on Schedule B and Form 18, and annual reports on Form 18-K, filed by foreign governments
- in certain instances, Form F-X and Form F-N; and
- most forms filed under the Trust Indenture Act.

Accommodations

Form 6-K

Foreign private issuers can, but are not required to, submit their “glossy” annual reports electronically. The annual report and the related Form 6-K can be filed in paper format so long as the sole purpose of the Form 6-K is to provide the annual report. If the Form 6-K covers other matters, both the Form 6-K and the annual report, together with any other exhibits, must be submitted electronically. If any portion of the annual report is to be incorporated into a document filed electronically, that portion of the annual report also must be filed electronically as an exhibit.

Foreign private issuers will also be entitled to submit under cover of a Form 6-K in paper form any report or other document so long as it:

- is not a press release;
- is not required to be and has not been distributed to security holders; and
- if discussing a material event, including disclosure of annual audited or interim consolidated financial results, has been the subject of another electronic SEC filing (for example, where a press release containing financial statements was already electronically submitted under a Form 6-K).

If an issuer expects to incorporate a paper Form 6-K filing by reference into a document filed electronically, it should instead file the Form 6-K electronically, otherwise it will be required to refile the document electronically as an exhibit to the document into which it is incorporated.

The cover page of the Form will be amended to include a box that must be checked for paper filings.

Draft submissions

The new rules will not impact the ability of first time registrants to file their first registration statement (and the amendments thereto) on a confidential basis. When the issuer is prepared to formally file the registration statement, the filing would be made via EDGAR. The Staff will require that, after the registration statement is filed electronically, all prior correspondence regarding the registration statement be submitted via EDGAR. This correspondence, like other correspondence filed by EDGAR, will be for SEC record-keeping purposes and not publicly disseminated.

Exhibits

Generally all exhibits to SEC filings have to be filed electronically. To the extent that a filing incorporates by reference an exhibit previously filed in paper format, that exhibit would not have to be filed electronically.

Foreign Language Documents

Generally, the EDGAR rules prohibit the filing on EDGAR of any foreign language document, whereas the paper rules permitted the filing of foreign language documents as an exhibit to or other part of a registration statement or report, so long as the document was accompanied by an English summary, version or translation. Under the new rules, the body of any registration statement, prospectus, schedule or report (including exhibits) filed with or submitted to the SEC must be in English, except as expressly permitted.

If a filing or submission requires inclusion of a document that is in a foreign language, a fair and accurate English translation must instead be included. If the foreign language is an exhibit or attachment to a filing or submission to the Division of Corporation Finance, a fair and accurate English summary (instead of a translation) of the document may be provided, unless it:

- is an original or restated constituent document (memorandum of association, etc.);
- is an instrument defining the rights of security holders;
- is a voting agreement;
- is a contract to which officers, directors, promoters, voting trustees or security holders named in a registration statement are parties;
- is a contract on which a filer's business is substantially dependent;
- consists of audited annual or interim consolidated financial information; or

- is or will be the subject of a confidential treatment request,

in which case, a full English translation must be provided.

Permitted English summaries must fairly and accurately summarize the terms of each material provision of the foreign language document, and fairly and accurately describe the terms that have been omitted or abridged. Filers will no longer be able to provide English “versions” of foreign language documents. Filers must indicate whether a summary or translation is being provided.

For Form 6-K filings (whether electronic or, where permitted, paper), issuers may provide English summaries of foreign language documents submitted under the Form, except in the case of the documents referred to above in this section and except:

- press releases; or
- communications distributed directly to security holders for each class of securities for which a reporting obligation exists in the United States, except offering circulars and prospectuses that relate entirely to a foreign offering (provided any material information in any such circular or prospectus has already been included in an electronic filing, otherwise the issuer would submit in electronic format under cover of a Form 6-K an English translation or summary of the portion of the circular or prospectus that discloses new material information),

in which case, a full English translation must be provided. In addition, an issuer may furnish under cover of a Form 6-K, whether in paper or electronically, an English summary of a report required to be furnished and made public under local law or stock exchange rules, so long as it:

- is not one of the documents referred to above in this section;
- is not a press release; and
- is not required to be, and has not been, distributed to security holders (such as unconsolidated financial information about a parent company).

Foreign private issuers may at their option submit a paper copy of the unabridged foreign language document under cover of Form SE when electronically filing or submitting an English summary or English translation of that document.

MJDS filers needing to file English and French texts in order to comply with Canadian rules may include the French text in a permitted paper filing and in an electronic filing provided it is formatted as an HTML document. In addition, for both paper and electronic filings, MJDS filers may include English translations or English summaries of foreign language documents as an exhibit or attachment as permitted by applicable Canadian rules.

12g3-2(b) Submissions

Submissions made pursuant to the “information-supplying exemption” (Rule 12g3-2(b)) from the registration requirements of the Exchange Act are to continue to be made in paper format. They may not be made electronically.

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Any questions concerning the foregoing should be addressed to members of the Paul Weiss Securities Group (including any of those listed below). This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its contents. In addition, memoranda on related topics may be accessed under Securities Group publications on our web site (www.paulweiss.com).

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