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SECURITIES LAW ALERT

SEC Adopts Rules Requiring Public Companies to Provide Financial Statement Information In An Interactive Electronic Format

The Securities and Exchange Commission ("SEC") has adopted new rules requiring public companies to provide financial statement information in an interactive electronic format that is intended to improve its usefulness to investors. The new rules are effective as of April 13, 2009, with a three-year phase-in period depending on the size of the issuer, as discussed below.

Companies will be required to provide their financial statements to the SEC and on their corporate Web sites in an interactive data format using the eXtensible Business Reporting Language ("XBRL"). In this format, financial statement information can be downloaded directly into spreadsheets, analyzed in a variety of ways using commercial off-the-shelf software, and used within investment models in other software formats.

The new rules will apply to public companies and foreign private issuers that prepare their financial statements in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"), and foreign private issuers that prepare their financial statements using International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"). The interactive data will be provided as an exhibit to periodic and current reports and registration statements, as well as to transition reports for a change in fiscal year.

Summary of New Rules

The principal elements of the new rules are as follows:

- Domestic and foreign large accelerated filers¹ that use U.S. GAAP and have a worldwide public common equity float above \$5 billion as of the end of the second fiscal quarter of their most recently completed fiscal year will provide to the Commission a new exhibit.² The exhibit will be required with such filers' Securities Act registration statements, quarterly, if applicable, and annual reports, and transition reports, as well as reports on Form 8-K or Form 6-K that contain revised or updated financial statements³. The exhibit will contain the financial statements and any applicable financial statement schedules in interactive data format. The requirement will apply beginning with a periodic report on Form 10-Q, Form 20-F or Form 40-F containing financial statements for a fiscal period ending on or after June 15, 2009.
- All other domestic and foreign large accelerated filers using U.S. GAAP will be subject to the same interactive data reporting requirements the following year, beginning with a periodic report on Form 10-Q, Form 20-F or Form 40-F containing financial statements for a fiscal period ending on or after June 15, 2010.
- All remaining filers using U.S. GAAP, including smaller reporting companies, and all foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB, will be subject to the same interactive data reporting requirements beginning with a periodic report on Form 10-Q, Form 20-F or Form 40-F containing financial statements for a fiscal period ending on or after June 15, 2011.
- Filers that first become subject to the requirement to submit interactive data after year three (i.e., companies that become subject to the SEC's reporting requirements after the phase-in is complete), will first be required to submit an interactive data file for their first periodic report on Form 10-Q or first annual report on Form 20-F or Form 40-F, as applicable.

Companies will be required to provide their financial statements to the SEC and on their corporate Web sites in an interactive data format using the eXtensible Business Reporting Language.

- The amendments will not alter the requirements to provide financial statements and any required financial statement schedules with the traditional format filings.
- Financial statement footnotes and financial statement schedules initially will be tagged individually as a block of text. After a year of such tagging, a filer also will be required to tag the detailed quantitative disclosures within the footnotes and schedules and will be permitted, but not required, to the extent they choose, to tag each narrative disclosure.
- Interactive data exhibits will be required at the same time as the rest of the related report or Securities Act registration statement, except for the following two circumstances. The initial interactive data exhibit of a filer will be required within 30 days after the earlier of the due date or filing date of the related report or registration statement, as applicable. In year two, a filer will have a similar 30-day grace period for its first interactive data exhibit that includes detailed tagging of its footnotes and schedules.
- A filer required to provide financial statements in interactive data format to the SEC also will be required to post those financial statements in interactive data format on its corporate Web site not later than the end of the calendar day it filed or was required to file the related registration statement or report with the Commission, whichever is earlier.
- Filers that do not provide or post required interactive data on the date required will be deemed not current with their Exchange Act reports and, as a result, will not be eligible to use the short Form S-3, F-3, or S-8, or elect under Form S-4 or F-4 to provide information at a level prescribed by Form S-3 or F-3. Similarly, such filers will not be deemed to have available adequate current public information for purposes of the resale exemption safe harbor provided by Rule 144. A filer that is deemed not current solely as a result of not providing or posting an interactive data exhibit when required will be deemed current upon providing or posting the interactive data. Therefore it will regain current status for purposes of short form registration statement eligibility, and determining adequate current public information under Rule 144. As such, it will not lose its status as having "timely" filed its Exchange Act reports solely as a result of the delay in providing interactive data.
- Companies that are not required to provide interactive data until a later time will have the option to do so earlier and may provide interactive data at their discretion until required by the amendments. Such a company may also tag footnotes individually as a block of text until required to tag the detailed quantitative disclosures within the footnotes and schedules, but otherwise must follow the same requirements as those mandated and can only use a grace period for its initial submission and the initial detail-tagged-footnote submission, whether submitted voluntarily or as required by the amendments.
- Companies may cease voluntary submissions at any time and need not tag their financial data at a pace other than at which the rules otherwise would require.
- An interactive data file generally will be subject to the federal securities laws in a modified manner if the filer submits the interactive data file within 24 months of the time the filer first is required to submit interactive data files, but no later than October 31, 2014. During the time a filer's interactive data files are treated in this modified manner, they will be
 - deemed not filed for purposes of specified liability provisions; and
 - protected from liability for failure to comply with the tagging requirements if the interactive data file failed to meet those requirements, but the failure occurred despite the filer's good faith effort and the filer corrected the failure promptly after becoming aware of it.
- Interactive data files will be excluded from the officer certification requirements under Rules 13a-14 and 15d-14 of the Exchange Act.

¹ Securities Exchange Act of 1934, as amended ("Exchange Act"), Rule 12b-2 generally defines "large accelerated filer" as an issuer that has common equity held by unaffiliated persons with a value of at least \$700 million, has been subject to the Exchange Act's periodic reporting requirements for at least 12 months, has filed at least one annual report, and is not eligible to use the disclosure requirements available to smaller reporting companies for its periodic reports.

- 2 Interactive data will be required as an exhibit to a Securities Act of 1933, as amended ("Securities Act"), registration statement that contains financial statements, such as a Form S-1, but not required in connection with an initial public offering. Interactive data will not be required as an exhibit to a Securities Act registration statement that does not contain financial statements, such as a Form S-3 or other form filed by an issuer that is eligible to and does incorporate by reference all required financial statements from its periodic reports. Also, interactive data will not be required as an exhibit to an Exchange Act registration statement.
- 3 In connection with registration statements where historical financial statements are incorporated by reference, issuers often file under cover of Form 8-K or 6-K their revised audited annual financial statements when their previously filed annual financial statements are required to be revised, pursuant to applicable accounting standards, to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments, or a change in accounting principle. Also, foreign private issuers occasionally may file current interim financial statements pursuant to the nine-month updating requirement of Item 8.A.5 of Form 20-F under cover of Form 6-K which are incorporated by reference into a registration statement. In these circumstances, the interactive data exhibit will be required to be included in the Form 8-K or 6-K to accompany the traditional format financial statements to which they relate. Interactive data exhibits related to financial statements that have been restated to correct an accounting error will be required to be included in any amended registration statement or periodic report or transition report that contains the restated traditional format financial statements. The requirement to submit restated financial statements in interactive data format in such an instance would depend on whether the original filing contained financial statements for fiscal periods regarding which the filer was subject to the interactive data requirements. For instance, for those filers in the first phase-in period, the financial statements being restated would only have to be submitted in interactive data format if they were originally for fiscal periods ending on or after June 15, 2009.

We are available to provide counsel and guidance concerning similar Securities Law issues, as well as others not discussed in this Alert. Please contact us or visit our Securities Practice description on our Website.

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