Legal ALERT
Keeping you informed of noteworthy changes in the law.

PHILLIPS NIZER LLP

October 2008

SECURITIES LAW ALERT
SEC ADOPTS SIGNIFICANT AMENDMENTS TO THE RULES GOVERNING FOREIGN COMPANIES THAT ARE PUBLICLY TRADED IN THE UNITED STATES

In September 2008, the Securities and Exchange Commission ("SEC") adopted significant amendments[1] to the disclosure and reporting rules that are applicable to foreign private issuers[2]. The following is a summary of the amended rules:

Annual Test for Foreign Private Issuer Status

Under the amended rules, effective as of December 6, 2008, foreign private issuers will be required to assess their eligibility to use the special reporting forms (e.g., Form 20-F and Form 6-K) and rules available to foreign private issuers once a year on the last business day of their second fiscal quarter, rather than on a continuous basis, as currently required.

The amended rules require a foreign private issuer that determines that it no longer qualifies as a foreign private issuer on the last business day of its second fiscal quarter to comply with the reporting requirements and use the forms prescribed for domestic companies beginning on the first day of the fiscal year following the determination date. For example, a foreign issuer that does not qualify as a foreign private issuer as of the end of its second fiscal quarter in 2009 would file a Form 10-K in 2010 for its 2009 fiscal year rather than a Form 20-F. The issuer would also begin complying with the proxy rules and the insider trading requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and become subject to reporting on Forms 8-K and 10-Q on the first day of its 2010 fiscal year.

The amended Rules change the timing for the determination of foreign private issuer status.

The amendments also permit a reporting company that qualifies as a foreign private issuer to avail itself of the foreign private issuer accommodations, including use of the foreign private issuer forms and reporting requirements, beginning on the determination date on which it establishes its eligibility as a foreign private issuer.

In addition, the amendments will require a Canadian issuer that files registration statements and reports under the Exchange Act using the multijurisdictional disclosure system ("MJDS") to test its status as a foreign private issuer only as of the last business day of its second fiscal quarter. Currently, a Canadian issuer that is eligible to file a Form 40-F annual report at the end of a fiscal year is presumed to be eligible to use Form 40-F, as well as Form 6-K, from the date of filing until the end of its next fiscal year. The amendments would require a Canadian issuer that plans to use the MJDS to test its foreign private issuer status earlier in the year. However, it would continue to have to test its eligibility to file annual reports on Form 40-F based on all of the other requirements of that Form, such as public float, at the end of the fiscal year. The amendments would not change the responsibility of the Canadian issuer to check its eligibility to use Forms 40-F and 6-K at the end of its fiscal year.

With respect to MJDS filings made pursuant to the Securities Act of 1933, as amended (the "Securities Act"), a Canadian issuer must test its ability to use the MJDS registration statement forms at the time of filing. As a result of the amendments, a Canadian MJDS filer that does not qualify as a foreign private issuer on the last day of its second fiscal quarter would immediately not be able use the MJDS forms (e.g., Form F-7, F-8, F-9, F-10 and F-80) for Securities Act offerings. However,

(Please see next page for more information.)

600 Old Country Road ▪ Garden City NY 11530
516.229.9400 ▪ 516.228.9612 Fax

25 Main Street - 6th Floor ▪ Hackensack NJ 07601
201.487.3700 ▪ 201.646.1764 Fax

666 Fifth Avenue ▪ New York NY 10103
212.977.9700 ▪ 212.262.5152 Fax

www.phillipsnizer.com

the issuer would still be able to use the other foreign private issuer registration statement forms, such as Form F-3, until the end of its fiscal year.

Accelerating the Reporting Deadline for Form 20-F Annual Reports
Under the amendments, all foreign private issuers will be required to file their annual reports on Form 20-F within four months after their fiscal year-end, regardless of their size, after a three-year transition period, effective for annual reports filed with respect to fiscal years ending on or after December 15, 2011.

Disclosure About Differences in Corporate Governance Practices
For foreign private issuers whose securities are listed on a U.S. stock exchange, new Item 16G of Form 20-F will require disclosure of the significant ways in which their corporate governance practice differ from the practices followed by domestic companies whose securities are listed on such exchange. This new Item will be effective for annual reports with respect to fiscal years ending on or after December 15, 2008.

Segment Data Disclosure
Under Item 17 of Form 20-F, foreign private issuers that present financial statements otherwise fully in compliance with U.S. GAAP may omit segment data from their financial statements, and also are permitted to have a qualified U.S. GAAP audit report as a result of this omission. Item 17 of Form 20-F has been amended to eliminate this option beginning with annual reports for fiscal years ending on or after December 15, 2009.

Requiring Item 18 Financial Statements in Annual Reports and Registration Statements
Effective for fiscal years ending on or after December 15, 2011, the amendments will eliminate the option of providing financial statements according to Item 17 of Form 20-F in annual reports and registration statements filed on that form. Under the amendments, Form 20-F and the registration statement forms available to foreign private issuers under the Securities Act (Forms F-1, F-3 and F-4) will require the disclosure of financial information according to Item 18 of Form 20-F for registration statements filed under both the Exchange Act and the Securities Act, as well as for annual reports.

The amendments will not eliminate the availability of Item 17 in MJDS registration statements. The amendments will also preserve the availability of Item 17 for financial statements of non-registrants that are required to be included in a foreign or domestic issuer's registration statement, annual report or other Exchange Act report. These include significant acquired businesses under Rule 3-05 of Regulation SX, significant equity method investees under Rule 3-09 of Regulation S-X, and exempt guarantors under Rule 3-10(i) of Regulation S-X.

Exchange Act Rule 13e-3
Exchange Act Rule 13e-3, which pertains to going private transactions by reporting issuers or their affiliates, has been amended to reflect the recently adopted rules pertaining to the ability of foreign private issuers to terminate their Exchange Act registration and reporting obligations. Currently, Rule 13e-3 is triggered when an issuer and/or any of its affiliates are engaged in a specified transaction or series of transactions[3] that have either a reasonable likelihood or a purpose of causing (i) any class of equity securities of the issuer that is subject to Section 12(g) or Section 15(d) of the Exchange Act to be held of record by less than 300 persons, or (ii) the securities to be neither listed on any national securities exchange nor authorized to be quoted on an inter-dealer quotation system of any registered national securities association.

Rule 13e-3 requires any issuer or affiliate that engages in a Rule 13e-3 transaction to file a Schedule 13E-3 disclosing its plan to take the company private, and to make prompt amendments to reflect certain information about the proposed transaction. Recently, the SEC adopted amendments to the deregistration provisions applicable to foreign private issuers that permits them to terminate their reporting obligations under the Exchange Act by meeting a quantitative benchmark designed to measure relative U.S. market interest for their equity securities that does not depend on a head count of the issuers' U.S. security holders.

Under the amended rules, Rule 13e-3 will be deemed to have been triggered if as a result of a Rule 13e-3 transaction: a domestic or foreign private issuer becomes eligible under Exchange Act Rule 12g-4 to deregister a class of securities; a foreign private issuer becomes eligible under Exchange Act Rule 12h-6 to deregister a class of securities or terminate a reporting obligation; or such issuers become eligible under Exchange Act Rule 12h-3 or Exchange Act Section 15(d) to have a reporting obligation suspended.

In a separate Release (Nos. 33-8957 and 34-58597), the SEC recently expanded the types of cross-border transactions that are exempt altogether from Rule 13e-3.

(Please see next page for more information.)

Disclosure About Changes in a Registrant's Certifying Accountant
Domestic companies currently report any changes in and disagreements with their certifying accountant in a current report on Form 8-K and in a registration statement on Form 10 under the Exchange Act, as well as in their registration statements filed on Forms S-1 and S-4 under the Securities Act. Foreign private issuers have not been required to provide this disclosure.

As adopted, new Item 16F of Form 20-F will elicit the same types of change of accountant disclosures obtained in Item 4.01 (Changes in Registrant's Certifying Accountant) of Form 8-K, including the disclosure requirements of Item 304(a) of Regulation S-K, which are referenced in Form 8-K, and Item 9 (Changes in and Disagreements with Accountants on Accounting and Financial Disclosure) of Form 10-K, which refers to the disclosure requirements of Item 304(b) of Regulation S-K. The new disclosure will be required in annual reports on Form 20-F, as well as in registration statements filed on Forms 20-F, F-1, F-3 and F-4.

Foreign private issuers will be required to comply with the amendments beginning with their first fiscal year ending on or after December 15, 2009.

Annual Disclosure About ADR Fees and Payments
The amendments will require foreign private issuers to disclose information about the fees and other charges paid in connection with ADR facilities in their annual reports on Form 20-F.

The amendments to Form 20-F revise Item 12.D.3. and the Instructions to Item 12 to solicit disclosure of the fees paid by ADR holders on an annual basis, including the annual fee for general depositary services. In addition, foreign private issuers will be required to disclose the payments that they have received from depositaries in connection with their ADR programs. The amendments to Item 12.D.3. and the Instructions to Item 12 of Form 20-F will require disclosure of these payments in the registration statement on Form 20-F that is filed for the deposited securities, as well as in the annual report, for sponsored ADR facilities.

The ADR fee amendments apply to annual reports for fiscal years ending on or after December 15, 2009.

---

1 SEC Release Nos. 33-8959 and 34-58620

2 "Foreign private issuer" is defined in Exchange Act Rule 3b-4(c). A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that (1) has more than 50% of its outstanding voting securities held of record by U.S. residents and (2) any of the following: (i) a majority of its officers and directors are citizens or residents of the United States, (ii) more than 50 percent of its assets are located in the United States, or (iii) its business is principally administered in the United States.

3 A "Rule 13e-3 transaction" is defined as (i) a purchase of any equity security by the issuer of such security or by an affiliate, (ii) a tender offer, (iii) a proxy solicitation or information statement distribution in connection with a merger or similar transaction, (iv) the sale of substantially all the assets of an issuer to its affiliate, or (v) a reverse stock split.

We are available to provide counsel and guidance concerning these issues, as well as other Securities Law concerns not discussed in this Legal Alert. For additional information on the issues discussed here and other issues arising under federal law, please contact us.

Contact:	R. Brian Brodrick	212.841.0700	bbrodrick@phillipsnizer.com
	Elliot H. Lutzker	212.841.0707	elutzker@phillipsnizer.com