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SEC Proposes to Accept Financial Statements of Foreign Private Issuers Using International Financial Reporting Standards Without Reconciliation to U.S. GAAP

On July 2, 2007, the Securities and Exchange Commission ("SEC") issued a proposal to accept financial statements of foreign private issuers prepared in accordance with the English language version of International Financial Reporting Standards ("IFRS") as published by the International Accounting Standards Board ("IASB") without reconciliation to United States generally accepted accounting principles ("U.S. GAAP").[1] The SEC hopes that its proposal will advance its long-term objective of achieving a single set of high-quality, globally accepted accounting standards. The proposal does not extend to foreign private issuers whose financial statements are prepared under a basis of accounting other than IFRS. Such issuers would continue to be required to reconcile their financial statements to U.S. GAAP. The SEC is seeking comments on its proposal by September 24, 2007.

I. Current Requirements for Foreign Private Issuers

The current reconciliation requirements were adopted in 1982 in an attempt to strike a balance between investors' need for complete and understandable financial information and the burden that full reconciliation would place on foreign issuers, which could discourage these issuers from offering securities in U.S. public markets. Under the current requirements, all foreign private issuers whose financial statements are not prepared using U.S. GAAP are required to reconcile to U.S. GAAP the financial statements that they file with the SEC. This process consists of identifying the material differences between the relevant foreign standards and U.S. GAAP, as well as quantitatively reconciling specific line items.[2]

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1 *Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP*, SEC Release No. 33-8818; File No. S7-13-07 (July 2, 2007) available at http://www.sec.gov/rules/proposed/2007/33-8818.pdf

2 The two formats in which the reconciliation may need to be presented are outlined in Item 17 and Item 18 of Form 20-F.

II. Proposed Revisions

The SEC is proposing to abolish the U.S. GAAP reconciliation requirement with respect to foreign private issuers who have prepared their financial statements according to the English language version of IFRS as published by the IASB. The IASB is a stand alone, privately funded accounting standard-setting body, which has established IFRS, a set of internationally used and recognized standards for financial reporting. The IFRS are used widely throughout the world and represent a single, coherent set of accounting standards rather than a multitude of standards under the same name.[3]

If the proposal is adopted, foreign private issuers would have three options. They would be able to:

1. prepare financial statements in accordance with U.S. GAAP and make no reconciliation;
2. prepare financial statements in accordance with IFRS and make no reconciliation; or
3. prepare financial statements in accordance with another set of reporting standards and reconcile those statements to U.S. GAAP pursuant to Item 17 or Item 18 of Form 20-F.

In order to be eligible for the second option (which is not available to foreign private issuers under the current rules), the foreign issuer would be required to state explicitly, in a prominent footnote in its financial statements, that its statements are in full compliance with the English language version of IFRS as published by the IASB. Additionally, the independent auditor's report must include an opinion on whether the financial statements comply with the English language version of IFRS as published by the IASB. If the notes and the auditor's report do not contain that information, the issuer would be required to provide U.S. GAAP reconciliation as per the current rules.

The SEC believes that its proposal will facilitate foreign companies' entry into U.S. markets by reducing burdens and costs for foreign issuers, while protecting investors' interests, promoting fair and efficient markets, and enhancing comparability across companies.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of the materials mentioned, please do not hesitate to call or e-mail Jonathan I. Mark at (212)701-3100 or jmark@cahill.com; John Schuster at (212)701-3323 or jschuster@cahill.com; or Yafit Cohn at (212)701-3089 or ycohn@cahill.com.

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[3] Almost 100 foreign jurisdictions now require or allow the use of IFRS, including the European Union.