

SEC Publishes Roadmap For Potential Use of Financial Statements Prepared In Accordance with IFRS by U.S. Issuers

On November 14, 2008, the SEC published for comment its “Roadmap for the Potential Use of Financial Statements Prepared in Accordance with International Financial Reporting Standards by U.S. Issuers” (the “Roadmap”).¹

The Roadmap provides that the SEC will decide in 2011 whether to mandate use of International Financial Reporting Standards (“IFRS”) by all U.S. issuers beginning in 2014. As expected, the Roadmap lists several milestones to be achieved before such a decision can be made, and expands upon each milestone. The milestones pertain to:

- improvements in accounting standards
- the accountability and funding of the International Accounting Standards Committee Foundation
- improvement in the ability to use interactive data for IFRS reporting
- education and training of investors, accountants, auditors and others in the U.S. regarding IFRS
- enhanced awareness of IFRS through early use by certain U.S. issuers
- the anticipated timing of the SEC’s future rulemaking
- the implementation of the mandatory use of IFRS, including considerations regarding whether to stage or sequence the implementation among companies, based on their size, from 2014 to 2016

The Roadmap elaborates on the plan to allow certain U.S. issuers to use IFRS starting with fiscal years ending on or after December 15, 2009, and provides detailed criteria for determining which issuers are eligible for such early IFRS use.

Additionally, the Roadmap proposes a number of changes to the existing regulatory framework in order to facilitate limited early use of IFRS, many of which will be effected through the addition of Article 13 to Regulation S-X. Article 13 will provide guidance for IFRS issuers, with proposed Rule 13-02 describing how the other articles of Regulation S-X would apply to IFRS financial statements. Several other Regulations and Forms would also be modified to provide guidance to IFRS issuers where current reference is to Financial Accounting Standards Board pronouncements or U.S. GAAP.

Notably, under the proposal analysis based on forward-looking information included in IFRS financial statements as required by IFRS 7 (similar to disclosure required by Reg. S-K Item 305) would continue to be excluded from the safe harbors provided by Section 27A of the Securities Act and Section 21E of the Securities Exchange Act.

The SEC is seeking public comment on the proposal, to be received no later than February 19, 2009.

¹ The full text of the proposal of November 14, 2008 is available at: <http://www.sec.gov/rules/proposed/2008/33-8982.pdf>. This Memorandum updates our Memorandum of September 4, 2008 entitled SEC Proposes Roadmap For Potential Transition From U.S. GAAP To IFRS As a Basis for U.S. Issuers’ Financial Reporting.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon 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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