

SEC Approves XBRL Rules

On Dec. 17, 2008, the SEC approved the adoption of rule amendments to require domestic and foreign private issuers using US GAAP to provide their financial statements, notes to financial statements and schedules using interactive data formatted in XBRL (eXtensible Business Reporting Language).¹ The new rules hew closely to the proposed rule² but prescribe a longer phase-in period to ease the transition for affected companies and mutual funds. The phase-in periods are as follows:

- Large-accelerated domestic and foreign companies using US GAAP with a public float above \$5 billion would be required to comply for fiscal periods ending on or after June 15, 2009 (for calendar year filers this would apply to their 10-Q for the period ending June 30, 2009.)
- All other domestic and foreign large-accelerated filers would be required to comply for fiscal periods ending on or after June 15, 2010.
- All other filers including smaller reporting companies would be required to comply for fiscal periods ending on or after June 15, 2011.

The new rules apply to financial statements submitted on Forms 10-Q, 10-K, 20-F and 40-F, transition reports for change in fiscal year, registration statements and Forms 8-K and 6-K filed to report updated or revised financial statements in a previously submitted 10-Q, 10-K or Securities Act registration statement. Financial information submitted to the SEC in XBRL format must also be posted on the company website (if one is maintained) for at least 12 months.

Filers will only be required to do block tagging of the notes to financial statements for the first year, after which detailed tagging would be required. However, in a change from the proposed rule, detailed tagging of the narrative text in the notes to financial statements will not be required. Filers will be given a 30-day grace period for the initial XBRL filing, and another 30-day grace period one year later when detailed tagging of the notes is required.

If the XBRL exhibits are not submitted to the SEC or posted on the company website by the required date, the company will be deemed to be not current with their Exchange Act report submissions and not eligible for short form registration. The company will also not be eligible for the resale safe harbor exemption under Rule 144 until such filing or posting is made.

¹ For background on the new rules please see a previously circulated memorandum entitled "SEC Proposes Mandatory XBRL Use," dated May 19, 2008.

² Release Nos. 33-8924; 34-57896; 39-2455; IC-28293; File No. S7-11-08, *Interactive Data to Improve Financial Reporting* (May 30, 2008), available at: <http://www.sec.gov/rules/proposed/2008/33-8924.pdf>

CAHILL

As is the case under the current voluntary filer program, XBRL-tagged data would be considered “furnished” rather than “filed,”³ meaning that liability for these financial statements would be limited to some extent. However, the limitations would be phased out over a two-year period for each company, with a sunset provision that terminates in 2014. After 2014 any document filed in XBRL format will carry the same liability as other filed documents. The interactive data file would be excluded from certification requirements under Rule 302 of the Sarbanes-Oxley Act of 2002. No auditor assurance would be required for the XBRL exhibits.

Already more than 25 mutual funds and 120 companies currently submit their financial statements using XBRL through a voluntary filer program. Any company that will be subject to the new filing requirements has the option to begin using interactive data in their submissions to the SEC at an earlier date than which is mandated.⁴

*

*

*

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 Linda Sharkey at 212.701.3016 or lsharkey@cahill.com.

³ Regulations 401 and 402 of Regulation S-T set forth some of the rules which govern the submission of XBRL information and among other things, provide that such information is not deemed filed for purposes of Section 11 of the Securities Act, Section 18 of the Exchange Act or Section 34(b) of the Investment Company Act, or otherwise subject to the liability under these Sections and is not part of any registration statement to which it relates, nor is such information deemed incorporated by reference in filings under those statutes. See Rule 402(a)(1) and (2). However, Regulation 402(a)(3) states that such information is subject to all other liability and anti-fraud provisions of such Acts and is deemed filed for purposes of Item 103 of Regulation S-T.

⁴ The newly adopted rules are part of an ongoing effort by the SEC to overhaul the current EDGAR system through the use of new technologies. The use of interactive data will feature prominently in the new IDEA portal that the SEC launched in mid-December 2008. See <http://idea.sec.gov>.