

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release Nos. 33-8397; 34-49403; International Series Release No. 1274; File No. S7-15-04]

RIN 3235-A192

First-Time Application of International Financial Reporting Standards

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendment to form.

SUMMARY: The Commission is proposing to amend Form 20-F to provide a one-time accommodation relating to financial statements prepared under International Financial Reporting Standards ("IFRS") for foreign private issuers registered with the SEC. This accommodation would apply to foreign private issuers that have not previously published financial statements under IFRS, formerly known as International Accounting Standards ("IAS"), and that publish IFRS financial statements for the first time for any financial year beginning no later than January 1, 2007.

The accommodation would permit eligible foreign private issuers for their first year of reporting under IFRS to file two years rather than three years of statements of income, changes in shareholders' equity and cash flows prepared in accordance with IFRS, with appropriate related disclosure. The accommodation would retain current requirements regarding the reconciliation of financial statement items to generally accepted accounting principles ("GAAP") as used in the United States ("U.S. GAAP"), but modify the form in which the reconciliations are presented in the first filing that includes IFRS financial statements.

In addition, we are proposing to amend Form 20-F to require certain disclosures of all foreign registrants that change their basis of accounting to IFRS.

DATES: Please submit your comments on or before April 19, 2004.

ADDRESSES: Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) electronic form on the SEC Web site (<http://www.sec.gov>) or (2) e-mail to rule-comments@sec.gov. Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549-0609. All submissions should refer to file number S7-13-04; this file number should be included on the subject line if e-mail is

used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov>).¹ Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT:

Questions about this release should be directed to Michael D. Coco, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942-2990, or to Susan Koski-Grafer, Office of the Chief Accountant, (202) 942-4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed amendments to Form 20-F² under the Securities Exchange Act of 1934 (the "Exchange Act").³ Form 20-F is the combined registration statement and annual report form for foreign private issuers⁴ under the Exchange Act. It also sets forth disclosure requirements for registration statements filed by foreign private issuers under the Securities Act of 1933 (the "Securities Act").⁵

I. Background

A. Overview of the Proposal

Foreign private issuers that register securities with the SEC, and that report on a periodic basis thereafter under section 13(a) or 15(d) of the Exchange Act,⁶ are currently required to present

¹ We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

² 17 CFR 249.220f.

³ 15 U.S.C. 78a *et seq.*

⁴ The term "foreign private issuer" is defined in Exchange Act Rule 3b-4(c) [17 CFR 240.3b-4(c)]. A foreign private issuer is a non-government foreign issuer, except for a company that (1) has more than 50% of its outstanding voting securities owned by U.S. investors and (2) has either a majority of its officers and directors residing in or being citizens of the United States, a majority of its assets located in the United States, or its business principally administered in the United States.

⁵ 15 U.S.C. 77a *et seq.*

⁶ 15 U.S.C. 78m(a) or 78o(d). Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 781] to file with the Commission such annual reports and such other reports as the Commission may prescribe. Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act to file such supplementary and periodic information, documents and reports as may be required pursuant to Section 13 in respect of a security registered

audited statements of income, changes in shareholders' equity and cash flows for each of the past three financial years,⁷ prepared on a consistent basis of accounting.⁸ These issuers also are generally required to present selected financial data covering each of the past five financial years.⁹

The Commission is proposing for comment a new General Instruction G to Form 20-F that would allow a foreign private issuer that has not previously published financial statements under IFRS to omit for its first year of reporting under IFRS financial statements for the earliest of the three financial years for which it would otherwise be required to file financial statements under our current rules. This proposed accommodation would be available to issuers that adopt IFRS, either voluntarily or by mandate, for the first time for a financial year that begins no later than January 1, 2007.¹⁰ We are making this proposal as a one-time accommodation to eligible foreign private issuers who, under current SEC rules, would be required to provide audited financial statements prepared in accordance with IFRS for the latest three financial years when they change their basis of accounting to IFRS. These proposals are intended to facilitate the transition of foreign companies to IFRS and to improve the quality of their financial disclosure. For similar reasons, we are soliciting comment on various alternatives with respect to the presentation of interim financial statements prepared in accordance with IFRS by issuers during their transition.

pursuant to Section 12, unless the duty to file under Section 15(d) has been suspended for any financial year.

⁷ Consistent with Form 20-F, IFRS and general usage outside the United States, we use the term "financial year" to refer to a fiscal year. See Instruction 2 to Item 3 of Form 20-F.

⁸ See Item 8.A.2 of Form 20-F. Foreign private issuers are also required to present audited balance sheets as of the end of the past two financial years.

⁹ See Item 3.A.1 of Form 20-F.

¹⁰ As described below in Section I.C, in several countries the presentation of financial statements in accordance with IFRS becomes mandatory for financial years starting on or after January 1, 2005. For purposes of this release, we refer to that financial year as "year 2005," regardless of the actual beginning date of a company's financial year, and the three prior financial years as "year 2002," "year 2003," and "year 2004," respectively. Accordingly, the financial statements for those years are referred to as "year 2002 financial statements," "year 2003 financial statements," and "year 2004 financial statements." For issuers adopting IFRS for the first time during another financial year, we refer to the earliest of the three years for which financial statements are presently required under Form 20-F as the "third financial year," the second financial year as the "second financial year," and the financial year in which an issuer switches to IFRS as the "most recent financial year."

In addition, we are proposing certain disclosures from foreign private issuers that change their basis of accounting to IFRS during any year. This disclosure relates to certain mandatory and elective accounting treatments that an issuer may apply in adopting IFRS for the first time and the reconciliations from Previous GAAP¹¹ to IFRS required by IFRS. The proposed disclosures would provide investors with consistent and transparent information about the transition by a company from Previous GAAP to IFRS and the impact of that transition on the company's published financial results.

B. International Financial Reporting Standards

The International Accounting Standards Board ("IASB") was established under the International Accounting Standards Committee Foundation to develop global standards for financial reporting. The IASB is now empowered to develop and approve IFRS independently.¹² Effective April 1, 2001, the IASB assumed accounting standard setting responsibilities from its predecessor body, the International Accounting Standards Committee ("IASC").¹³

In February 2000, the Commission issued a Concept Release on International Accounting Standards, seeking public comment on the elements necessary to encourage convergence towards a high quality

¹¹ This release and the proposed amendments use the term "Previous GAAP" to refer to the basis of accounting that a first-time adopter uses immediately before adopting IFRS. This usage is consistent with IFRS. See International Financial Reporting Standard 1: "First-time Adoption of International Financial Reporting Standards," as issued in 2003 ("IFRS 1"), Appendix A.

¹² Standards that are newly developed by the IASB or are extensive revisions of earlier International Accounting Standards are entitled International Financial Reporting Standards. In general usage, and in this release, the term IFRS will be used to encompass both IAS and IFRS. The term IFRS is used to refer both to the body of IASB pronouncements generally and to individual standards applicable in specific circumstances. Standards applicable to first-time adopters are set forth in IFRS 1. For purposes of this release, financial statements "based on IFRS" and "prepared in accordance with IFRS" refer to financial statements that an issuer can unreservedly and explicitly state are in compliance with IFRS and that are not subject to any qualification relating to the application of IFRS.

¹³ This was the culmination of a reorganization in 2000 based on the recommendations of the report "Recommendations on Shaping the IASC for the Future." From 1973 until that restructuring, the entity for setting International Accounting Standards had been known as the IASC. The IASC issued 41 standards on major topical areas through December 2000, which are entitled International Accounting Standards. There was no actual "committee" of that name, although the predecessor standard-setting board was known as the IASC Board.

global financial reporting framework while upholding the quality of financial reporting domestically.¹⁴ The release also sought comments as to the conditions under which the Commission should accept financial statements of foreign private issuers that are prepared using IFRS, including the issue of reconciliation of financial statements prepared under IFRS to U.S. GAAP. The Commission has not proposed or adopted any rules as a result of the concept release, and continues to monitor international developments in the subject areas that are discussed in the release. The staff has encouraged the efforts of the Financial Accounting Standards Board ("FASB") and the IASB to work towards achieving greater convergence between U.S. GAAP and IFRS to achieve a common set of high-quality accounting standards.¹⁵ While convergence towards such a common set of standards, together with other developments promoting uniform interpretation and effective enforcement in respect of IFRS, would provide an opportunity for us to consider acceptance of financial statements prepared under IFRS without reconciliation to U.S. GAAP, we are not at this time proposing to eliminate the U.S. GAAP reconciliation.

C. Countries Adopting IFRS as National Accounting Standards

Several countries in the European Union ("EU") and elsewhere throughout the world currently allow their domestic issuers, or foreign issuers, or both, to prepare financial statements for securities regulatory purposes using IFRS.¹⁶ In June 2002, the EU adopted a regulation requiring companies incorporated under the laws of one of its Member States, and whose securities are publicly traded within the EU ("listed EU companies"), to prepare their consolidated financial statements for each financial year starting on or after January 1, 2005 on the basis of accounting standards issued by the IASB.¹⁷ This regulation applies to listed

¹⁴ Release No. 33-7801 (February 16, 2000).

¹⁵ See "Chief Accountant Welcomes Actions by FASB and IASB," Press Release 2003-178, December 19, 2003 (available at <http://www.sec.gov/news/press/2003-178.htm>) and "Actions by FASB, IASB Praised," Press Release 2002-154, October 29, 2002 (available at <http://www.sec.gov/news/press/2002-154.htm>).

¹⁶ See <http://www.iasplus.com/country/useias.htm> for a list of countries that require or allow the use of IFRS.

¹⁷ Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, Official Journal L. 243, 11/09/2002 P. 0001-0004 (the "EU Regulation"). EU regulations have the force of law within EU Member States

EU companies in all present and future EU Member States,¹⁸ and the EU Member States may extend the requirements to non-public companies. Other countries, including Australia, also have adopted similar requirements mandating the use of IFRS by public companies for all periods beginning after January 1, 2005.

In accordance with these requirements, listed EU companies in those countries not currently using IFRS must convert from the existing national accounting standards to IFRS no later than 2005.¹⁹ The companies also will have to provide financial statements and transitional disclosures as directed by IFRS and by national securities regulators and other authorities in those countries. It has been estimated that these requirements will affect approximately 7,000 companies in the EU.²⁰

IFRS are in a period of significant updating and improvement in preparation for the implementation of IFRS for such a large number of companies in 2005. The IASB has stated that following completion of standards setting revision and development work in early 2004, it will establish a "quiet period" during which any further new standards issued would not have required implementation dates until after year 2005.²¹

IFRS 1 requires only one year of comparative information for the year IFRS is adopted, but allows for the presentation of additional years either voluntarily or pursuant to regulation. With certain exceptions, IFRS 1 requires a company to apply retrospectively for all periods presented the IFRS standards in place at the end of the year in which the company adopts IFRS, rather than those IFRS standards that were in effect

without further implementing legislation at the national level.

¹⁸ The current EU Member States are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom. The ten countries approved for EU membership starting in May 2004 are: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia and the Slovak Republic. These IFRS requirements also apply in the three European Economic Area countries of Iceland, Liechtenstein, and Norway.

¹⁹ In the EU, a limited number of companies meeting certain criteria will be permitted an extension until 2007 to adopt IFRS. See Section II.A, below.

²⁰ Committee of European Securities Regulators ("CESR"), "European Regulation on the Application of IFRS in 2005: Recommendation for Additional Guidance Regarding the Transition to IFRS," (December 2003) ("CESR Recommendation").

²¹ See the September 2003 presentation on the IASB website at <http://www.iasb.org.uk/docs/bdpapers/2003/0309w02.pdf> for reference to the 2005 "stable platform."

during those periods. SEC rules usually would require companies that change their basis of accounting to another GAAP to present audited financial statements for the past three financial years in the new GAAP. However, at the beginning of year 2003, the IASB had not finalized some of the IFRS that many foreign private issuers will be required to apply retrospectively when they adopt IFRS for the first time for year 2005. We recognize that because some standards were not yet finalized during the reporting period to which they will have to be applied, the application of IFRS in the preparation of financial statements for year 2003 could be difficult and burdensome. In addition, we are aware that the nature of the national conversions to IFRS and the number of companies that are expected to convert, either by mandate or voluntarily, present particular concerns for companies and the accounting profession for the preparation of IFRS financial statements. These considerations will compound the difficulties ordinarily encountered in restating prior reporting periods under new accounting standards. As a result, we are proposing these changes to Form 20-F at this time to facilitate the transition of companies to IFRS. As discussed below, because IFRS may continue to be developed that may affect issuers that adopt IFRS in future years, we propose that the accommodation also extend to first-time adopters for financial years beginning no later than January 1, 2007.

II. Discussion of Proposed Accommodation To Permit Omission of IFRS Financial Statements for the Third Financial Year

The Commission's present requirement for foreign private issuers providing information in accordance with Form 20-F is for three years of audited statements of income, changes in shareholders' equity and cash flows, and two years of audited balance sheets, prepared on a consistent basis of accounting.²² For example, current rules would require that a calendar year company preparing its financial statements for filing with the Commission for the financial year ended December 31, 2005, include audited statements of income, changes in shareholders' equity and cash flows for each of the years ended December 31, 2003, 2004 and 2005, together with audited balance sheets as of December 31, 2004 and 2005, all prepared in

accordance with a single set of generally accepted accounting principles.

Issuers that adopt IFRS for the first time for year 2005 may encounter significant difficulties in presenting statements of income, equity, and cash flows for year 2003 due to the number and scope of IFRS improvement projects that were not finalized at the beginning of year 2003. The Commission is concerned that companies in this situation may have difficulty recasting results accurately under IFRS for year 2003, and may find that such efforts would involve undue cost and effort for an uncertain benefit. We also are concerned that efforts undertaken to "look back" on those results for the third financial year, particularly year 2003 results, and attempts to recast those results under IFRS as they exist at the end of year 2005 or later, may be unduly burdensome for some companies to execute at the time they first adopt IFRS.²³

A. Eligibility Requirements

The proposed accommodation would apply to a foreign private issuer that adopts IFRS for the first time for a financial year that begins no later than January 1, 2007. It would not be available to a company that previously had published audited financial statements prepared in accordance with IFRS, either voluntarily or by mandate. The proposed accommodation also would not be available to a company adopting a set of accounting standards that includes deviations from the standards promulgated by the IASB and the IASC. The accommodation would only be available to a company that is able to state unreservedly and explicitly that its general-purpose financial statements comply with IFRS, and whose audited financial statements are not subject to any qualification relating to the application of IFRS.

Under the EU Regulation mandating the use of IFRS, EU Member States may allow companies to defer their adoption of IFRS until year 2007 if (1) a company is listed both in the EU and on a non-

²³ These companies would be following the standards pronounced in IFRS 1, which requires retrospective application in most areas, and requires comparative financial statements for year 2004 for companies that present IFRS financial statements for the first time for year 2005. IFRS 1 does allow specific limited exemptions from its provisions to avoid costs that would be likely to exceed the benefits to users of financial statements. For example, a company may measure an item of property, plant and equipment at the date of transition to IFRS at its fair value rather than historical cost. IFRS 1 also prohibits retrospective application of IFRS if that would require management to make judgments about past conditions where the outcome of a transaction is already known.

EU exchange and currently uses internationally accepted standards as its primary accounting standards, or (2) a company has only publicly traded debt securities. Because IFRS may continue to evolve, issuers that initially adopt IFRS for years after 2005 also may face difficulties in preparing IFRS financial statements for the third financial year. We therefore believe it is appropriate to allow the accommodation to apply to companies that adopt IFRS for the first time for any financial year through year 2007, whether they do so voluntarily, under the extended compliance provisions of the EU Regulation, or under another mandate.

Eligible issuers would be able to apply the proposed accommodation to registration statements and annual reports. For an issuer to be eligible to exclude IFRS financial statements for the third financial year from a registration statement (1) the most recent audited financial statements required by Item 8.A.2 of Form 20-F must be for a financial year beginning no later than January 1, 2007, (2) the company must not have previously published audited financial statements prepared in accordance with IFRS for an earlier financial year, and (3) the audited financial statements for the company's most recent financial year must be prepared in accordance with IFRS.

To be eligible to apply the accommodation to an annual report relating to a company's financial year beginning no later than January 1, 2007, (1) the company must not have previously published audited financial statements prepared in accordance with IFRS for an earlier financial year and (2) the company must have prepared its audited financial statements for the year covered by the annual report in accordance with IFRS.

As proposed, the accommodation would extend to companies that switch their basis of accounting to IFRS for a financial year that begins no later than January 1, 2007. We are proposing this time frame, in part, because of the requirements outlined under the EU Regulation.²⁴ Below we ask for comments on whether this proposed time frame is appropriate.

Questions

- Will the conversion to IFRS for year 2005 make it difficult for issuers to recast year 2003 results accurately? What specific issues will be encountered and how difficult will they be to address? What additional information would first-time adopters

²² See Item 8.A.2 for Form 20-F.

²⁴ See footnote 17, above.

need to provide IFRS financial statements for the third-year back that they would not already have in connection with their reconciliation to U.S. GAAP? What other difficulties might the application of IFRS create for first-time adopters? Will first-time adopters in earlier or later years face similar issues? Are the proposed amendments appropriate to address those challenges? If not, what issues are not addressed by the proposed amendments? Should they be addressed, and, if so, how?

- Will any first-time adopters be required by their home country to publish financial statements prepared in accordance with IFRS for the third year back? If so, should we require their inclusion in SEC filings? Why or why not? If a company publishes IFRS financial statements for the third year back but is not required to do so, should we require inclusion of those financial statements in SEC filings?

- Is the proposed time frame, which provides the accommodation to companies that switch to IFRS for any financial year beginning no later than January 1, 2007, appropriate? Would this date create eligibility concerns for issuers that have a 52-week financial year? If so, how should we address those concerns?

- Should the proposed accommodation be extended to apply in any other circumstances, such as for issuers that, either voluntarily or pursuant to a home country or other requirement, adopt IFRS for the first time for years after year 2007? Should the accommodation apply for an indefinite period? Are there other circumstances in which the proposed exception to the requirement to present three years of financial statements on a consistent basis should be considered? What are they?

- Would extending the proposed accommodation to apply to issuers that adopt IFRS for the first time later than year 2007 encourage a broader use of IFRS? Why or why not?

- If first-time adopters of IFRS were not able to avail themselves of the proposed accommodation, would they be likely to continue to include in their SEC filings financial statements prepared in accordance with Previous GAAP rather than preparing financial statements prepared in accordance with IFRS for the third financial year? What are the advantages and disadvantages of each approach?

B. Primary Financial Statements

1. IFRS Financial Statements

With respect to the consolidated financial statements and other financial information required by Item 8.A of Form 20-F, the proposed amendment would allow eligible foreign private issuers for their first year of reporting under IFRS to present only two years of audited IFRS financial statements in their applicable filings instead of three years. Eligible companies would be permitted to omit audited financial statements for the earliest of the three years prepared in accordance with IFRS when providing the financial statements required by Item 8.A.2. For example, an eligible foreign private issuer that changes to IFRS in its Form 20-F annual report for its year ended December 31, 2005 would present, as its financial statements required by Item 8.A, audited balance sheets prepared in accordance with IFRS as of December 31, 2004 and 2005, and audited statements of income, shareholders' equity and cash flows prepared in accordance with IFRS for the years ended December 31, 2004 and 2005. All instructions to Item 8, including instructions requiring audits in accordance with U.S. generally accepted auditing standards, would continue to apply.

All first-time adopters are required under IFRS 1 to include in the notes to the financial statements a reconciliation to IFRS from Previous GAAP. The proposed form and content requirements for this reconciliation in SEC filings are discussed below in Section III.B.

2. U.S. GAAP Financial Information

In accordance with Items 17(c) or 18 of Form 20-F, as applicable, companies relying on the accommodation would continue to be required to provide a reconciliation to U.S. GAAP for the two financial years covered by the financial statements prepared in accordance with IFRS. That reconciliation is required to be audited and would be included as a note to the audited financial statements. We are not proposing any changes with respect to this reconciliation to U.S. GAAP.

While this proposal seeks to address the difficulties that would be imposed on companies in connection with the preparation of audited financial statements under IFRS for the third financial year, we believe that investors nonetheless find valuable three-year trend information that is prepared on a consistent basis of accounting. Although companies making use of the proposed accommodation will not have three-year

information based on IFRS, in almost all instances they will have available three-year information based on U.S. GAAP. However, U.S. GAAP information is generally presented in the form of a reconciliation from the GAAP used in the primary financial statements. Companies making use of the accommodation will not present financial statements based on IFRS for the third financial year. Further, as discussed below, the filing will not necessarily include financial statements based on Previous GAAP. In addition, any reconciliation to U.S. GAAP from IFRS would have different starting points and different reconciling items than the previously prepared reconciliation from Previous GAAP to U.S. GAAP, and investors would not have a consistent base on which to evaluate the adjustments made to produce U.S. GAAP information.

To ensure that filings will contain three years of information prepared on a consistent basis of accounting, we are proposing that companies that use the accommodation present, as part of the U.S. GAAP reconciliation footnote, condensed U.S. GAAP financial information for the three most recent financial years in a level of detail consistent with that for interim financial statements required by Article 10 of Regulation S-X.²⁵ This financial information will include condensed income statements and balance sheets prepared in accordance with U.S. GAAP, but neither notes to this information nor a statement of changes to shareholders' equity will be required.²⁶ The financial information would be required to be audited and generally would be included in the U.S. GAAP reconciliation note to a

²⁵ 17 CFR 210.10-01. This is consistent with existing staff practice of requiring Article 10-level U.S. GAAP information when the numerical reconciliation of net income and shareholder equity alone is not sufficient to produce an information content substantially similar to U.S. GAAP and Regulation S-X as specified by Items 17 and 18 of Form 20-F.

²⁶ We are not proposing to require that companies provide a balance sheet prepared in accordance with U.S. GAAP for the third year back. We also are not proposing to require condensed cash flow statements prepared in accordance with U.S. GAAP. Item 17(c)(2)(iii) of Form 20-F permits cash flow statements prepared in accordance with International Accounting Standard 7, as amended in October 1992, without a reconciliation to U.S. GAAP. Therefore, the cash flow statements for the past two financial years prepared in accordance with IFRS by a first-time adopter making use of the accommodation would not be required to be reconciled to U.S. GAAP. In light of the absence of U.S. GAAP information for those two financial years, requiring a condensed cash flow statement for the third financial year would appear not useful to investors as well as overly burdensome to companies.

company's audited financial statements based on IFRS.

In their initial registration statements filed with the SEC, foreign private issuers that do not use U.S. GAAP to prepare their primary financial statements are required to prepare a reconciliation to U.S. GAAP covering the two most recent financial years.²⁷ Foreign private issuers in this situation would not be required to present the additional condensed U.S. GAAP financial information.

3. Previous GAAP Financial Statements

As proposed, issuers that rely on the accommodation will not be required to include any financial statements, textual discussion or other financial information based on their Previous GAAP. The exclusion of Previous GAAP financial statements is intended to decrease the risk of investor confusion because filings will not contain two sets of audited financial statements based on different accounting principles that are not comparable. The proposal also is intended to relieve issuers of the burden of maintaining two sets of financial statements and obtaining auditor consents for financial statements prepared on a basis of accounting that issuers no longer use.

We do not propose to prohibit issuers from including, incorporating by reference or referring to Previous GAAP financial statements in their annual reports, registration statements and prospectuses filed with the SEC. Issuers may elect to include or incorporate by reference financial statements prepared in accordance with Previous GAAP for the two financial years preceding the most recent financial year and selected historical financial data based on Previous GAAP for the four years preceding the most recent financial year. Issuers that elect to include or incorporate by reference financial information prepared in accordance with Previous GAAP would similarly include or incorporate narrative disclosure of the company's operating and financial review and prospects under Item 5 of Form 20-F for the reporting periods covered by Previous GAAP financial information.²⁸

Issuers also may refer to Previous GAAP financial statements and financial information without including or incorporating these materials in a disclosure document. For example, a company may find it useful to refer investors to its prior year annual report which included Previous GAAP financial information. However, if an

issuer includes, incorporates by reference or refers to Previous GAAP selected financial data or financial information in a disclosure document, then the issuer would, under the proposed amendments to Form 20-F, ensure that there is appropriate cautionary language with respect to that data. Issuers electing to include or incorporate Previous GAAP financial information must disclose, at an appropriate prominent location, that the filing contains financial information based on the basis of accounting that the company previously used, which is not comparable to financial information based on IFRS. We are not proposing specific legends or language that should be used by issuers in this situation, since we believe that appropriate language may vary depending on the use made of Previous GAAP information.

Questions

- Is the proposed amendment to permit two years of IFRS financial statements for foreign private issuers adopting IFRS through year 2007, coupled with the permitted exclusion of financial statements prepared on the basis of Previous GAAP, consistent with the best interests of investors? Will investors receive adequate information on which to base investment decisions if two rather than three years of statements of income, changes in shareholders' equity and cash flows are presented on a consistent basis?
- Are there other alternatives that should be considered to address the challenges presented by the mandated use of IFRS? What are they?
- Would the presentation of three years of condensed U.S. GAAP financial information in a level of detail consistent with interim financial statements prepared under Article 10 of Regulation S-X create a significant burden to first-time adopters of IFRS? What would be the difficulties and costs of preparing that information? Would that level of information be useful to investors? What level of information would be useful to investors and not unduly burdensome to prepare?
- If a filing does not contain Previous GAAP financial statements or IFRS financial statements for the third year back, would the proposed requirement for three years of condensed U.S. GAAP information adequately address issues related to the different starting points and reconciling items used in the reconciliations from Previous GAAP to U.S. GAAP and from IFRS to U.S. GAAP?
- Do our proposals contain sufficient guidance on the form and content of the

condensed U.S. GAAP financial information to be provided? Should we require financial information beyond income statements and balance sheets from companies that would be required to provide condensed U.S. GAAP information? If so, what further information? Should we require that they include notes to the financial information in addition to the required reconciliation?

- Should foreign private issuers that do not use U.S. GAAP to prepare their primary financial statements in their initial registration statements filed with the SEC be required to present the additional condensed U.S. GAAP financial information in addition to the two-year reconciliation to U.S. GAAP? Why or why not? Would this be unduly burdensome?

- Should issuers be prohibited from including Previous GAAP financial statements, financial information and textual discussions based thereon in a registration statement, prospectus or annual report prepared in accordance with Form 20-F?

- If we were to prohibit issuers from including Previous GAAP financial statements and financial information in a document, should we require, permit or prohibit the issuer to make reference to other SEC filings or other documents that include such financial statements and information?

- Is it appropriate to permit issuers to include, incorporate or refer to Previous GAAP financial information and, if so, for what periods and to what extent? If issuers elect to include or incorporate Previous GAAP financial information, should we require operating and financial review and prospects disclosure pursuant to Item 5 of Form 20-F related to that information?

- Would Previous GAAP financial statements be useful to investors and should issuers be required to provide them? Should inclusion in previous annual reports filed with us on Form 20-F be sufficient in this regard? Would investors be likely to compare information based on IFRS with information based on Previous GAAP? If we require or permit financial statements and other information based on Previous GAAP, where should that information be located and how should it be formatted?

- Is inclusion of Previous GAAP financial information likely to cause investor confusion regarding the basis of accounting used in preparing financial information? How could any confusion or comparison be minimized? Should we provide more specific guidance on the location or substance of disclosure stating that a filing contains financial

²⁷ Item 17(c)(2)(i) of Form 20-F.

²⁸ See Section II.D, below.

information based on Previous GAAP that is not comparable to financial information based on IFRS?

- Should Previous GAAP financial information be presented in a “side-by-side” format with IFRS financial information?²⁹ What additional disclosure would be necessary, if any? Should it be accompanied by a legend stating that the information is not comparable to financial information based on IFRS? If so, where should the legend be located? Would a “side-by-side” format present difficulties relating to disclosure contained in audit reports relating to the different bases of GAAP used? Similarly, how would the notes to the financial statements be presented in a clear manner if different GAAPs were presented therein?

- If issuers include, incorporate or refer to Previous GAAP financial statements or financial information in a disclosure document, should we require specific legends or other language? Should any Previous GAAP information included be presented in a separate section of the disclosure document?

C. Selected Financial Data

Under Item 3.A of Form 20-F, issuers must provide five years of selected financial data. The company may omit data for the earliest two years if it represents that the information cannot be provided without unreasonable effort or expense and states the reasons in the filing.³⁰ As part of the accommodation for foreign private issuers switching to IFRS, we are proposing to include in new General Instruction G to Form 20-F an instruction that would address how first-time adopters should present their selected financial data.

The proposed amendment requires that eligible issuers, in providing the key financial information about their financial condition pursuant to Item 3.A of Form 20-F, provide selected historical financial data based on IFRS for the two most recent financial years. Selected historical financial data prepared in accordance with U.S. GAAP shall continue to be required for the five most recent financial years, unless the company is permitted to omit U.S. GAAP information for any of the earliest of the five years under Instruction 2 to Item 3.A.

²⁹ CESR has recommended a similar approach to the presentation of comparative information prepared on different bases of accounting. See CESR Recommendation.

³⁰ This accommodation is generally used by foreign private issuers that are registering with the SEC for the first time and in their filings shortly after initial SEC registration, until the registrants develop a five-year history of financial information on a consistent basis.

As with Previous GAAP financial statements, we do not propose to require or prohibit issuers from including, incorporating by reference or referring to Previous GAAP selected financial data in their annual reports, registration statements and prospectuses filed with the SEC.³¹ If an issuer includes, incorporates by reference or refers to Previous GAAP selected financial data or financial information in a disclosure document, then the issuer should take care to assure that there is appropriate cautionary language with respect to that data. However, we do not believe that selected financial data based on Previous GAAP should be presented in a “side-by-side” format with selected financial data based on IFRS, as this could lead to comparison between periods for which financial data is presented on a different basis.

Questions

- Should five years of selected financial data based on U.S. GAAP be required in a separate section of the document, rather than with the IFRS selected data?

- Should we require selected financial data based on Previous GAAP? If so, where should it be located? Should we expressly prohibit a “side-by-side” disclosure format for selected financial data based on Previous GAAP and IFRS? Conversely, should we permit or require such a disclosure format? Would inclusion of Previous GAAP selected financial data, whether presented in a “side-by-side” format or otherwise, be likely to cause investor confusion regarding the basis of accounting used? If so, how could any confusion or the likelihood of comparison be minimized?

D. Operating and Financial Review and Prospects

Registration statements and annual reports must contain a narrative discussion of the financial condition of the issuer that enables investors to see the company through the eyes of management and provides the context within which the financial statements should be analyzed. This information should describe, in a clear and straightforward manner, the quality and potential variability of the company's earnings and cash flow so that investors can ascertain the likelihood that past performance is indicative of future

³¹ Information may be incorporated by reference only when the relevant form so allows, and existing rules regarding incorporation by reference shall apply. See Securities Act Rule 411 [17 CFR 230.411] and Exchange Act Rule 12b-23 [17 CFR 240.12b-23].

performance.³² We are proposing to include in new General Instruction G to Form 20-F an instruction that would clarify how issuers should present this disclosure relating to operating and financial review and prospects.

In providing disclosure under Item 5 of Form 20-F, management should focus on the financial statements from the past two financial years prepared in accordance with IFRS, as well as the reconciliation to U.S. GAAP for the same two financial years. The discussion also should explain any differences between IFRS and U.S. GAAP that are not otherwise discussed in the reconciliation and that the company believes are necessary for an understanding of the financial statements as a whole.³³ Management should not include in this section any discussion relating to financial statements prepared in accordance with Previous GAAP, unless the issuer has elected to include or incorporate by reference such Previous GAAP financial information.

Questions

- Is there additional information that would be useful to investors that should be included in the disclosure of operating and financial review and prospects? If so, what is it?

- Should we require that disclosure of operating and financial review and prospects based on Previous GAAP financial information, if included, refer to the reconciliation to U.S. GAAP? If so, why? How is that information likely to benefit investors? Would requiring that information create undue burdens for issuers?

E. Other Disclosures

1. Business and Derivatives Disclosure

Under Item 4 of Form 20-F, an issuer must provide information about its business operations, the products it makes and the services it provides, and the factors that affect its business. The financial information that is included in response to this requirement is generally based on the primary financial statements of the company.³⁴ We are proposing to include in new General Instruction G to Form 20-F an instruction that would clarify that for

³² See, e.g., Release 33-8350 (December 19, 2003) for recent Commission guidance regarding management's discussion and analysis of financial condition and results of operation.

³³ Form 20-F, Instruction 2 to Item 5.

³⁴ Instruction 1 to Item 4.B notes that information should be provided with reference to the accounting principles used in preparing the primary financial statements, not to U.S. GAAP (assuming the primary financial statements are not in U.S. GAAP).

companies preparing their financial statements under IFRS, the reference to accounting principles in Item 4 would refer to IFRS and to neither Previous GAAP nor U.S. GAAP.

Under Item 11 of Form 20-F, an issuer must provide information about its use of derivatives, providing extensive quantitative and qualitative disclosures about market risk. We are proposing to include in new General Instruction G to Form 20-F an instruction that would clarify that for companies preparing their financial statements under IFRS, information provided in response to this requirement would be based on IFRS.

We request comment on whether the proposed requirement, which clarifies that companies preparing their financial statements under IFRS should also base their Item 4 company information and Item 11 derivatives disclosure on IFRS, is sufficient. If the proposal is not sufficient, we request comment on what additional information related to business operations and the use of derivatives should be required.

2. Disclosure Pursuant to Industry Guides

Companies that are engaged in certain lines of business are subject to various industry guides.³⁵ In particular, bank holding companies are subject to the special disclosure provisions of Industry Guide 3—Statistical Disclosure by Bank Holding Companies.³⁶ Industry Guide 3 requires affected companies to provide additional information with respect to the distribution of assets and liabilities, interest rates applicable to assets and liabilities, the investment portfolio, the loan portfolio, and loan loss experience, usually over a three-year or five-year period. In addition, companies with property-casualty insurance reserves are subject to the special disclosure provisions of Industry Guide 6—Disclosures Concerning Unpaid Claims and Claim Adjustment Expenses of Property-Casualty Insurance Underwriters.³⁷ Industry Guide 6 requires affected companies to disclose additional information that provides a reconciliation of claims reserves over a

three-year period and a table showing loss reserve development over a ten-year period.

Foreign banks will frequently have difficulty obtaining certain information to comply with the statistical disclosure requirements of Industry Guide 3, inasmuch as the categories and classifications specified by the guide are heavily influenced by U.S. banking regulation and some categories and classifications may not be sufficient by themselves to permit a complete understanding of a foreign bank's operations. Likewise, foreign insurance companies will often have difficulty obtaining sufficient data regarding property-casualty claim reserves to prepare the loss reserve development table required by Industry Guide 6. In both instances, and especially in the case of initial foreign registrants, the SEC staff has accepted alternative treatments or granted limited accommodations, so long as essential and material information is presented to investors.

The staff is not proposing any specific amendments with respect to information required to be disclosed pursuant to Industry Guides 3 and 6 by a foreign private issuer that changes its basis of accounting to IFRS. We are not aware of any general accommodation that foreign registrants that adopt IFRS and that are subject to these Industry Guides will need under the Guides. The information required by Industry Guide 3 represents specific statistical information that is not defined by GAAP, and therefore the change from Previous GAAP to IFRS for foreign registrants that are subject to Industry Guide 3 should not affect the availability of information required by the Guide or impose significant burdens or expenses on those registrants to provide that information. With respect to Guide 6, although IFRS constitutes a comprehensive basis of accounting, at present there is no standard under IFRS that relates to insurance contracts. Some issuers use home country standards, or, if there are none, they use U.S. GAAP and provide Guide 6 information on that basis.³⁸ In the staff's experience, some foreign registrants that are subject to Industry Guide 6 already apply U.S. GAAP with respect to their accounting for insurance contracts. First-time

adopters similarly may choose to apply U.S. GAAP accounting for insurance contracts in preparing their IFRS financial statements and therefore would be able to continue (if an existing registrant) or begin (if a new registrant) to provide Guide 6 information.

On behalf of the staff, we request comment on whether amendments would be appropriate to address the information required under Industry Guide 3 or Industry Guide 6 in the context of first-time adopters changing their basis of accounting to IFRS. In addition, as it has traditionally done, the SEC staff will consider appropriate accommodations in respect of specific registrants or a class of registrants.

F. Financial Statements and Information for Interim Periods for the Transition Year

Questions relating to the appropriate presentation of financial statements during the financial year in which an issuer first changes its basis of accounting from Previous GAAP to IFRS³⁹ raise unique issues. During the Transition Year, a foreign issuer will be finalizing the changeover of its internal accounting systems in order to be able to publish financial statements in accordance with IFRS. However, the issuer may not be in a position to publish financial statements that fully comply with IFRS covering interim periods in the Transition Year and comparable periods in the prior year.⁴⁰ Even if an issuer were in a position to publish interim period IFRS financial statements, these financial statements would not be comparable to the issuer's previously published annual financial statements prepared in accordance with Previous GAAP.⁴¹

³⁹This financial year is referred to as the "Transition Year." For foreign issuers with a calendar year-end that are subject to the EU Regulation, the Transition Year would be the financial year ended December 31, 2005.

⁴⁰Interim financial statements prepared in accordance with IFRS would comply with the requirements of IAS 34. Under that standard, a company must publish either full financial statements that are as complete as annual financial statements, or condensed financial statements that satisfy the conditions in paragraphs 9 and 10 of IAS 34. Those conditions provide that condensed interim financial statements should include, at a minimum, each of the headings and subtotals that were included in the most recent annual financial statements and the selected explanatory notes required by IAS 34. Any other line items or notes should be included if their omission would render the interim financial statements misleading.

⁴¹In addition, under IFRS 1, paragraph 36, an issuer's first IFRS financial statements must include at least one year of IFRS comparative information. We believe that it is unlikely that foreign issuers will have IFRS financial statements covering two financial years prior to the Transition Year (meaning financial years 2003 and 2004 for a calendar year end issuer as noted in footnote 39).

³⁵Industry Guides serve as expressions of the policies and practices of the Division of Corporation Finance. They are of assistance to issuers, their counsel and others preparing registration statements and reports, as well as to the Commission's staff.

³⁶17 CFR 229.801(c) and 802(c). Foreign banks that are registered with the SEC, whether or not they are organized as holding companies, are subject to Industry Guide 3.

³⁷17 CFR 229.801(f) and 802(f). Foreign companies that are registered with the SEC and that have property-casualty insurance reserves are subject to Industry Guide 6.

³⁸The IASB has issued an exposure draft that would allow companies to continue their existing accounting practices for insurance contracts, subject to certain limitations, until the IASB has adopted final standards for insurance contracts. See "Exposure Draft: ED 5 Insurance Contracts," "Draft Implementation Guidance: ED 5 Insurance Contracts," and "Basis for Conclusions on Exposure Draft: ED 5 Insurance Contracts."

In registration statements under the Securities Act and the Exchange Act and in prospectuses under the Securities Act, if the document is dated more than nine months after the end of the last audited financial year, foreign private issuers must provide consolidated interim financial statements covering at least the first six months of the financial year and the comparative period for the prior financial year.⁴² These unaudited interim period financial statements must be prepared using the same basis of accounting as the audited financial statements contained in the document and include or incorporate by reference a reconciliation to U.S. GAAP.⁴³

If the document is dated less than nine months after the last financial year, foreign private issuers are required to include in the registration statement or prospectus any published financial information that is more current than what is required.⁴⁴ When this type of information is presented, the issuer must describe any material variations from U.S. GAAP and quantify variations not present in the most recent financial year, but generally need not provide a full reconciliation to U.S. GAAP for interim period non-U.S. GAAP financial information.⁴⁵

Under these provisions, foreign private issuers that are switching to IFRS and are required to present financial statements for an interim period in the Transition Year will present three years of audited financial statements and two years of unaudited interim period financial statements in accordance with Previous GAAP.⁴⁶ For example, a foreign private issuer that has a financial year end of December 31 and that is required to switch to IFRS for year 2005 would include or incorporate by reference in a registration statement or prospectus filed during year 2005 audited financial statements for the years ended December 31, 2002, 2003 and 2004 and (when required) unaudited financial statements for the six months ended June 30, 2004 and 2005, all prepared in accordance with Previous GAAP and (when required)

containing a reconciliation to U.S. GAAP.⁴⁷

In the situation when a foreign private issuer is required to present interim period financial statements for the Transition Year, the issuer also may have published financial statements covering those current and prior year interim periods in accordance with IFRS. Under current requirements, issuers must include this information in their SEC documents.⁴⁸ The issuer also would provide appropriate and prominent disclosure in the documents that the IFRS financial statements are not comparable to Previous GAAP financial statements.

We understand that, under the approach outlined above (which is consistent with our current requirements), foreign private issuers that change to IFRS may be required to maintain their accounts in accordance with Previous GAAP and IFRS and to publish two separate sets of interim period financial statements during the Transition Year. This approach may result in additional burdens being placed on foreign issuers as well as uncertainty among investors with respect to which financial statements to use to assess an issuer's operating results. Below, we ask several questions relating to alternative proposals with respect to interim period financial statements published during the Transition Year.

Questions

- To comply with these requirements, issuers may be required to maintain financial statements prepared in accordance with both Previous GAAP and IFRS for interim periods of the Transition Year. Would it be unduly burdensome to maintain books and records in accordance with both Previous GAAP and IFRS during this time? What costs and other burdens will this impose on issuers? Are companies that are mandated to switch to IFRS prohibited from continuing to publish financial statements prepared in accordance with Previous GAAP during their Transition Year? If so, who or what prohibits it?

- Will foreign issuers be likely to avoid registering securities under the Securities Act and the Exchange Act during the latter months of a Transition Year and early months of the year after in order to avoid being required to include interim financial statements in a disclosure document, and therefore be

required to publish interim financial information in accordance with Previous GAAP? How can we reduce any impediment to foreign companies undertaking registered offerings during a Transition Year while ensuring that investors receive clear, sufficient, up-to-date information?

- Are investors likely to be confused with the presentation of interim financial statements using two bases of accounting covering the same periods? If so, what steps could be taken to minimize this confusion?

- As proposed, an issuer must include in its SEC filings both IFRS financial statements and Previous GAAP financial statements for current and prior year interim periods, when both are available. Should we provide issuers with a choice of whether to provide interim financial statements prepared under Previous GAAP or under IFRS, when both are available?

- When the Transition Year is year 2004 or 2005, in lieu of requiring both Previous GAAP and available IFRS interim financial statements for two years, would it be preferable to require audited financial statements prepared in accordance with IFRS for the last full financial year, with unaudited IFRS financial statements for interim periods in both years?⁴⁹ This approach would not be in technical compliance with IFRS 1, which requires that first-time adopters include one year of comparative information under IFRS.⁵⁰ Should we permit audit reports that are qualified as to this provision of IFRS 1? Should we make similar accommodations when an issuer's Transition Year is later than year 2005? Why or why not?

- When the Transition Year is year 2004 or 2005, would it be appropriate instead to require three years of audited financial statements prepared in accordance with Previous GAAP and unaudited financial statements prepared in accordance with IFRS for interim periods in two years with the same level of disclosure as in annual financial statements?⁵¹ Would issuers be likely to prepare full IFRS financial statements for interim periods? If not, why not? Should an issuer's first set of IFRS financial statements filed with the SEC

⁴² Form 20-F, Item 8.A.5. None of the discussion in this subsection applies to disclosure included in Reports on Form 6-K that are furnished to the Commission, except to the extent those reports are incorporated by reference into a registration statement or prospectus.

⁴³ Form 20-F, Item 17(c).

⁴⁴ Form 20-F, Item 8.A.5.

⁴⁵ Form 20-F, Instruction 3 to Item 8.A.5.

⁴⁶ In addition, the disclosure relating to Operating and Financial Review and Prospects in accordance with Item 5 of Form 20-F will relate to Previous GAAP financial statements.

⁴⁷ Foreign private issuers may also present financial statements for interim periods longer than six months, for example nine months.

⁴⁸ Form 20-F, Instruction 3 to Item 8.A.5.

⁴⁹ For example, for a calendar year company that adopts IFRS in year 2005 this would mean audited IFRS financial statements for year 2004 and unaudited IFRS financial statements for interim periods in years 2004 and 2005.

⁵⁰ See IFRS 1, paragraph 36.

⁵¹ For example, for a calendar year company that adopts IFRS in year 2005 this would mean audited Previous GAAP financial statements for years 2002, 2003 and 2004 with unaudited IFRS financial statements for interim periods in years 2004 and 2005.

be audited if they are for two years of interim periods? Why or why not? How would issuers assess and prepare disclosure of their operating and financial review and prospects? What other specific issues would companies face in presenting financial statements under both Previous GAAP and IFRS? How could those issues be addressed? Should we make similar accommodations when an issuer's Transition Year is later than year 2005?

III. Disclosures About First-Time Adoption of IFRS

As proposed, the amendments to Form 20-F include certain disclosure requirements that apply to all first-time adopters of IFRS regardless of the year in which they change their basis of accounting. These requirements relate to the issuer's reliance on any of the exceptions to the general restatement and measurement principles allowed under IFRS 1 and to the reconciliation of Previous GAAP financial statements to IFRS.

A. Disclosure About Exceptions to IFRS

IFRS 1 establishes both elective and mandatory exceptions to the principle that a first-time adopter must comply with each IFRS effective at the reporting date for its first IFRS financial statements.⁵² Paragraphs 13 through 25 of IFRS 1 set out the elective exceptions, and paragraphs 26 through 34 set out the mandatory exceptions. The elective exceptions, which a company may elect to use individually, relate to business combinations (paragraph 15); fair value or revaluation as deemed cost (paragraphs 16–19); employee benefits (paragraph 20); cumulative translation differences (paragraphs 21 and 22); compound financial instruments (paragraph 23); and assets and liabilities of subsidiaries, associates and joint ventures (paragraphs 24 and 25). IFRS 1 does not permit a first-time adopter to apply these elective exceptions to other items by analogy.

The mandatory exceptions prohibit retroactive application of IFRS to three important items: derecognition of financial instruments and financial liabilities (paragraph 27); hedge accounting (paragraphs 28–30); and information to be used in preparing IFRS estimates (paragraphs 31–34).

We are proposing to amend Item 5 of Form 20-F in order to add an instruction that would require an issuer to discuss its application of the exceptions under IFRS 1. Under the proposal, any issuer relying on any of the elective or mandatory exceptions

from IFRS must include in the discussion of its operating and financial review and prospects based on its IFRS financial statements provided in response to Item 5 of Form 20-F detailed discussion of each exception used and the circumstances that gave rise to its use. In this discussion, the issuer should:

- Identify the items or class of items to which the exception was applied (e.g., specific business combination, asset or category of asset, pension plan, financial instrument, etc.); and
- Describe what accounting principle was used and how it was applied (e.g., if a business combination was treated as a pooling based on Previous GAAP that would have been treated as a purchase under IAS 22).

The issuer would be required to provide an explanation of the significance of each exception to the company's financial condition and to the changes in its financial condition and results of operations. Where material, the company also would have to identify the line items in the financial statements that were affected by the exceptions from IFRS.

The discussion of each elective exception used would include, where material, qualitative disclosure of the impact on financial condition and changes in the company's financial condition and results of operation that the alternatives would have had. When relying on a mandatory exception, the issuer must describe the exception and state that it complied.

Under the proposal, a first-time adopter that relies on any of the elective or mandatory exceptions to the general restatement and measurement principles that IFRS allows also would be required to identify those exceptions in the notes to its audited financial statements.

Questions

- Should first-time adopters be required to provide the additional information proposed under Item 5 of Form 20-F? Will this information be useful for investors, and will it be unduly burdensome for issuers to provide? In either case, commenters should provide supporting information relating to the utility of the information (or lack thereof) and the costs and difficulties associated with disclosing this information.

- Should issuers be required to disclose more information with respect to the mandatory or elective exceptions? If so, what information would that be, what usefulness would this information have to investors, and what burdens

would be imposed on issuers to disclose this information?

- Have we given sufficient guidance with respect to the information to be disclosed under the proposed amendment to Item 5? Should there be greater specificity relating to the required information? Are the proposals regarding the information to be provided in Item 5 and in the notes to the primary financial statements about IFRS exceptions sufficiently clear so as to avoid duplicative disclosure? If not, what further clarification is necessary?

B. Reconciliation From Previous GAAP

All first-time adopters are required under IFRS 1 to include in the notes to audited financial statements a reconciliation from Previous GAAP to IFRS that gives "sufficient data to enable users to understand the material adjustments to the balance sheet and income statement," and if presented under Previous GAAP, the cash flow statement.⁵³ We are proposing to amend Item 8 of Form 20-F to add an instruction requiring a similar level of information in the reconciliation of Previous GAAP to IFRS that first-time adopters must include in their SEC filings. This reconciliation is to be included as a note to the audited financial statements with respect to the first financial year for which the issuer adopts IFRS.⁵⁴

In proposing that companies must provide in their reconciliation information sufficient to allow investors to understand the material adjustments to the balance sheet and income statement, and, if presented under Previous GAAP, to the cash flow statement, we are not proposing specific form or content requirements. A reconciliation following Example 11 provided in paragraph IG63 of the Implementation Guidance to IFRS 1 ("IG63"), which quantifies balance sheet and income statement captions at a level of detail comparable to that required by Article 10 of Regulation S-X, would meet the required level of information under the proposed amendment to Item 8. IG63 is not mandatory for all first-time adopters. We believe, however, that following the example reconciliation that it provides would assure that first-time adopters that are registered with the SEC provide a comparable level of information with respect to the reconciliation. Companies may also comply with the proposed

⁵³ IFRS 1, paragraph 40.

⁵⁴ For example, a first-time adopter with a financial year-end of December 31, 2005 would include the reconciliation as part of the financial statements contained in the annual report on Form 20-F for that year.

⁵² This principle is set forth in IFRS 1, IN2.

amendment to Item 8 in other ways, for example by providing a reconciliation that satisfies the requirements of Item 17 of Form 20-F. There may be other alternative formats that are developed as large numbers of companies begin to apply IFRS and IFRS 1.

Questions

- Should we specify the form and content of the reconciliation from Previous GAAP to IFRS? For example, should we require that the information included in the reconciliation be similar in form and content to that in the example provided in IG63? Should we require a level of content different from that set out in IG63? If so, what level of information would be appropriate?

- Would providing a reconciliation from Previous GAAP to IFRS that is substantially similar in form and content to the example set forth in IG63 as best practice be unduly burdensome to issuers? If so, what specific difficulties would issuers face in providing that level of information? How could they be addressed?

- Would investors find the reconciliation information as proposed more useful in comparing different registrants than information required under IFRS alone? If not, why not? What additional information should be required, if any?

IV. General Request for Comments

We request and encourage any interested persons to submit comments regarding:

- the proposed changes that are the subject of this release,
- additional or different changes, or
- other matters that may have an effect on the proposals contained in this release.

We are particularly interested in commenter views on whether all or part of these rules should “sunset” after a particular period of time. Specifically, will General Instruction G be useful or relevant three years after the year 2007 transition to IFRS is complete? If we were to automatically delete the provision, should the time period be longer or shorter?

We request comment from the point of view of registrants, investors, accountants, and other market participants. In addition to the changes proposed in this release, we also solicit comments related to whether and how industry guide disclosure requirements should be revised for first-time adopters to whom the proposed accommodation would apply. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by

supporting data and analysis of the issues addressed in those comments.

V. Paperwork Reduction Act

A. Background

The proposed amendments affect Form 20-F, which contains “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).⁵⁵ We are submitting the proposed amendments to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.⁵⁶ The titles for the collections of information are:

(1) “Form 20-F” (OMB Control No. 3235-0288);

(2) “Form F-1” (OMB Control No. 3235-0258);

(3) “Form F-2” (OMB Control No. 3235-0257);

(4) “Form F-3” (OMB Control No. 3235-0256); and

(5) “Form F-4” (OMB Control No. 3235-0325).

These forms were adopted pursuant to the Securities Act and Exchange Act and set forth the disclosure requirements for annual reports and registration statements filed by foreign private issuers to ensure that investors are informed. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The proposed amendment, if adopted, would add a new General Instruction G to Form 20-F to permit an eligible foreign private issuer to file two years rather than three years of statements of income, changes in shareholders’ equity and cash flows prepared in accordance with IFRS. The proposal also would affect the selected financial data, the operating and financial review and prospects disclosure, interim financial information, and other related disclosure that eligible issuers would provide. In particular, so as to provide three years of information prepared on a consistent basis of accounting, the proposed amendment requires companies to present condensed U.S. GAAP financial information in a level of detail consistent with that for interim financial statements required by Article 10 of Regulation S-X. These amendments would be collections of information for purposes of the

Paperwork Reduction Act. The amendments, if adopted, also would require all first-time adopters of IFRS to provide certain disclosure relating to exceptions from IFRS upon which they relied. They also would clarify the level of information required in the reconciliation to IFRS of financial statements prepared in accordance with Previous GAAP. For purposes of this Paperwork Reduction Analysis, these proposed amendments, if adopted, would result in an increase in the hour and cost burden calculations. As discussed in the cost-benefit analysis in Section VI, however, we believe this proposed amendment would eliminate potential burdens and costs for foreign issuers that adopt IFRS for the first time and would benefit investors by clarifying financial disclosure.⁵⁷ The disclosure will be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential.

For purposes of the Paperwork Reduction Act, we estimate that the one-time incremental increase in the paperwork burden for all first-time adopters of IFRS prior to 2007 would be approximately 11,370 hours of company time and approximately \$10,231,200 for the services of outside professionals.⁵⁸ We estimate that the one-time incremental increase in the paperwork burden for all first-time adopters of IFRS after that period would be approximately 5,685 hours of company time and approximately \$5,115,600 for the services of outside professionals. We estimated the average number of hours

⁵⁷ Because the current PRA estimates for Forms 20-F, F-1, F-2, F-3 and F-4 do not include an estimate of the burden of preparing three years of financial statements in accordance with IFRS during a company’s transition to IFRS, our estimate of the impact of our rule changes does not include any reduction for not having to prepare the third year of financial statements in accordance with IFRS.

⁵⁸ As discussed below in Sections V.B and V.C, we estimate that the proposed accommodation (as described in Section II, above) will lead to a one-time increase of 2 percent in the total number of burden hours per response, and that the proposed disclosures about the first-time adoption of IFRS (as described in Section III, above) will lead to a one-time increase of an additional 2 percent in the total number of burden hours per response. Accordingly, a total one-time increase of 4 percent in the number of burden hours per response will be borne by companies that switch to IFRS for a financial year beginning no later than January 1, 2007. For companies that adopt IFRS for the first time in a later financial year, only the 2 percent increase associated with the proposed disclosure requirements described in Section III of this release will apply. For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number, and the estimated PRA cost burdens have been rounded to the nearest \$10.

⁵⁵ 44 U.S.C. 3501 *et seq.*

⁵⁶ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

each entity spends completing the forms and the average hourly rate for outside professionals. That estimate includes the time and the cost of in-house preparers, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee.⁵⁹

B. Burden and Cost Estimates Related to the Proposed Accommodation

1. Form 20-F

We estimate that currently foreign private issuers file 1,194 Form 20-Fs each year. We also estimate that foreign private issuers incur 25% of the burden required to produce the Form 20-Fs resulting in 769,826 annual burden hours incurred by foreign private issuers out of a total of 3,079,304 annual burden hours. Thus, we estimate that 2,579 total burden hours per response are currently required to prepare the Form 20-F. We further estimate that outside professionals account for 75% of the burden to produce the Form 20-Fs at an average cost of \$300 per hour for a total cost of \$692,843,400.

We estimate that currently approximately 35% of the companies that file Form 20-F will be impacted by the proposal.⁶⁰ We expect that, if adopted, the proposed amendment would cause 417 foreign private issuers to have increased burden hours. We estimate that for each of the companies affected by the proposal, there would occur an increase of 2 percent (52 hours) in the number of burden hours required to prepare their Form 20-F, for a total increase of 21,684 hours. We expect that foreign private issuers would incur 25% of these increased burden hours (5,421 hours). We further expect that outside firms would incur 75% of the increased burden hours (16,263 hours) at an

⁵⁹In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of \$300 as the cost of outside professionals that assist companies in preparing these disclosures. For Securities Act registration statements, we also consider additional reviews of the disclosure by underwriter's counsel and underwriters.

⁶⁰This figure is based on our estimate of the ratio of the actual number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005, (2) are incorporated in countries that presently permit but do not require the use of IFRS, (3) have filed either an annual report and/or a registration statement on Form 20-F between January 1 and December 31, 2002; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2002, to the actual number of the applicable forms that were filed between January 1 and December 1, 2002. For purposes of this estimate we have excluded the number of foreign private issuers that we estimate currently include IFRS financial statements in their SEC filings (50).

average cost of \$300 per hour for a total of \$4,878,900 in increased costs.

Thus, we estimate that the proposed amendment to Form 20-F would increase the annual burden incurred by foreign private issuers in the preparation of Form 20-F to 775,247 burden hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form 20-F preparation to 3,100,988 burden hours, which would increase the average number of burden hours per response to 2,597. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form 20-F by outside firms to \$697,722,300.

2. Form F-1

We estimate that currently foreign private issuers file 43 registration statements on Form F-1 each year. We also estimate that foreign private issuers incur 25% of the burden required to produce a Form F-1 resulting in 22,860 annual burden hours incurred by foreign private issuers out of a total of 91,440 annual burden hours. Thus, we estimate that 2,127 total burden hours per response are currently required to prepare a registration statement on Form F-1. We further estimate that outside professionals account for 75% of the burden to produce a Form F-1 at an average cost of \$300 per hour for a total cost of \$20,574,000.

We estimate that currently approximately 30% of the companies that file registration statements on Form F-1 will be impacted by the proposal.⁶¹ We expect that, if adopted, the proposed amendment would cause 13 foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the proposal, there would occur an increase of 2 percent (43 hours) in the number of burden hours required to prepare their registration statements on Form F-1, for a total increase of 559 hours. We expect that foreign private issuers would bear 25% of these increased burden hours (140 hours). We further expect that outside firms would benefit from 75% of the reduced burden hours (420 hours)

⁶¹This figure is based on our estimate of the ratio of the number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005, (2) are incorporated in countries that presently permit but do not require the use of IFRS, (3) have filed a Form F-1 between January 1 and December 31, 2002; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of registration statements on Form F-1 that were filed between January 1 and December 1, 2002.

at an average cost of \$300 per hour for a total of \$126,000 in increased costs.

Thus, we estimate that the proposed amendment to Form 20-F would increase the annual burden incurred by foreign private issuers in the preparation of Form F-1 to 23,000 burden hours. We also estimate that the proposed amendment would increase the total annual burden associated with Form F-1 preparation to 92,000 burden hours, which would increase the average number of burden hours per response to 2,140. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form F-1 by outside firms to \$20,700,000.

3. Form F-2

We estimate that currently foreign private issuers file three registration statements on Form F-2 each year. We also estimate that foreign private issuers incur 25% of the burden required to produce a Form F-2 resulting in 699 annual burden hours incurred by foreign private issuers out of a total of 2,796 annual burden hours. Thus, we estimate that 932 total burden hours per response are currently required to prepare a registration statement on Form F-2. We further estimate that outside professionals account for 75% of the burden to produce a Form F-2 at an average cost of \$300 per hour for a total cost of \$629,100.

Based on a review of the three registration statements on Form F-2 that were filed between January 1 and December 31, 2002, we expect that, if adopted, the proposed amendments would affect one company. We estimate that there would occur an increase of 2 percent (19 hours) in the number of burden hours required to prepare a registration statement on Form F-2. We expect that the foreign private issuer would bear 25% of these increased burden hours (5 hours). We further expect that outside firms would bear 75% of the increased burden hours (15 hours) at an average cost of \$300 per hour, for a total of \$4,500 in increased costs.

Thus, we estimate that the proposed amendment to Form 20-F would increase the annual burden incurred by foreign private issuers in preparation of Form F-2 to 704 burden hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form F-2 preparation to 2,816 hours, which would increase the average number of burden hours per response to 939. We further estimate that the proposed amendment would increase the total annual costs attributed to the

preparation of Form F-2 by outside firms to \$633,600.

4. Form F-3

We estimate that currently foreign private issuers file 120 registration statements on Form F-3 each year. We also estimate that foreign private issuers incur 25% of the burden required to produce a Form F-3 resulting in 4,980 annual burden hours incurred by foreign private issuers out of a total of 19,920 annual burden hours. Thus, we estimate that 166 total burden hours per response are currently required to prepare a registration statement on Form F-3. We further estimate that outside professionals account for 75% of the burden to produce a Form F-3 at an average cost of \$300 per hour for a total cost of \$4,482,000.

We estimate that currently approximately 45% of the companies that file registration statements on Form F-3 will be impacted by the proposal.⁶² We expect that, if adopted, the proposed amendment would cause 54 foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the proposal, there would be an increase of 2 percent (3 hours) in the number of burden hours required to prepare their registration statements on Form F-3, for a total increase of 162 hours. We expect that foreign private issuers would bear 25% of this increased burden hours (41 hours). We further expect that outside firms would bear 75% of the increased burden hours (120 hours) at an average cost of \$300 per hour for a total of \$36,000 in increased costs.

Thus, we estimate that the proposed amendment to Form 20-F would increase the annual burden incurred by foreign private issuers in the preparation of Form F-3 to 5,021 burden hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form F-3 preparation to 20,084 burden hours, which would increase the average number of burden hours per response to 167. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form F-3 by outside firms to \$4,518,000.

⁶² This figure is based on our estimate of the ratio of the number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005, (2) are incorporated in countries that presently permit but do not require the use of IFRS, (3) have filed a Form F-3 between January 1 and December 31, 2002; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of registration statements on Form F-3 that were filed between January 1 and December 1, 2002.

5. Form F-4

We estimate that currently foreign private issuers file 61 registration statements on Form F-4 each year. We also estimate that foreign private issuers incur 25% of the burden required to produce a Form F-4 resulting in 20,267 annual burden hours incurred by foreign private issuers out of a total of 81,068 annual burden hours. Thus, we estimate that 1,323 total burden hours per response are currently required to prepare a registration statement on Form F-4. We further estimate that outside professionals account for 75% of the burden to produce a Form F-4 at an average cost of \$300 per hour for a total cost of \$18,240,300.

We estimate that currently approximately 20% of the companies that file registration statements on Form F-4 will be impacted by the proposal.⁶³ We expect that, if adopted, the proposed amendment would cause 12 foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the proposal, there would occur an increase of 2 percent (26 hours) in the number of burden hours required to prepare their registration statements on Form F-4, for a total increase of 312 hours. We expect that foreign private issuers would bear 25% of these increased burden hours (78 hours). We further expect that outside firms would bear 75% of the increased burden hours (234 hours) at an average cost of \$300 per hour for a total of \$70,200 in increased costs.

Thus, we estimate that the proposed amendment to Form 20-F would increase the annual burden incurred by foreign private issuers in the preparation of Form F-4 to 20,345 burden hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form F-4 preparation to 81,380 burden hours, which would increase the average number of burden hours per response to 1,334. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form F-4 by outside firms to \$18,310,500.

⁶³ This figure is based on our estimate of the ratio of the number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005, (2) are incorporated in countries that presently permit but do not require the use of IFRS, (3) have filed a Form F-4 between January 1 and December 31, 2002; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of registration statements on Form F-4 that were filed between January 1 and December 1, 2002.

C. Burden and Cost Estimates Related to the Disclosure About First-Time Adoption of IFRS

The proposed requirements that will apply to all first-time adopters of IFRS regardless of the year in which they change their basis of accounting relate to the issuer's reliance on any of the exceptions from IFRS and to the reconciliation of Previous GAAP financial statements to IFRS. We estimate that these requirements, if adopted, would cause a one-time increase of 2 percent in the number of burden hours required to prepare Forms 20-F, F-1, F-2, F-3 and F-4, respectively. We further estimate that the same number of companies would be affected by these amendments as by the proposed amendments related to the accommodation. Accordingly, the burden and cost estimates related to the proposed disclosure about first-time adoption of IFRS will be the same as the burden and cost estimates related to the proposed accommodation. We therefore refer to the calculations provided above in Section V.B. As with the burden increases related to the accommodation, they will be a one-time increase that a company will incur in the year in which it adopts IFRS as its basis for accounting.

D. New Burden Estimates

Based on the preceding analysis and assuming that the number of respondents for each of the affected forms remains unchanged, the 2 percent burden increase due to the proposed accommodation and the further 2 percent increase due to the proposed disclosure requirements for all first-time IFRS adopters will, together, increase the total burden estimates for companies from 769,826 hours to 780,668 for Form 20-F (an increase from 2,579 hours to 2,615 hours per form), from 22,860 hours to 23,140 hours for Form F-1 (an increase from 2,127 hours to 2,153 hours per form), from 699 hours to 709 hours for Form F-2 (an increase from 932 hours to 946 hours per form), from 4,980 hours to 5,062 for Form F-3 (an increase from 166 hours to 168 hours per form), and from 20,267 hours to 20,423 hours for Form F-4 (an increase from 1,323 hours to 1,345 hours per form). As discussed above in footnote 58, after year 2007 the 2 percent burden increase from the proposed accommodation will no longer apply and only the 2 percent increase due to the proposed disclosure requirements for all first-time IFRS adopters will remain.

E. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- evaluate the accuracy of our estimates of the burden of the proposed collections of information;
- determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- evaluate whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, with reference to File No. S7-13-04. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7-13-04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

VI. Cost-Benefit Analysis

A significant number of foreign private issuers that file registration statements or annual reports with the SEC will adopt IFRS as their basis for accounting, either voluntarily or pursuant to regulatory requirement. The amendments to Form 20-F proposed in

this release seek to facilitate the transition of those foreign companies to IFRS and to improve the clarity of their financial disclosure. Currently, Form 20-F requires that foreign private issuers provide three years of audited financial statements prepared using a consistent basis of accounting. Although we are not proposing to require the use of IFRS in SEC filings, as an accommodation to foreign companies that adopt IFRS for the first time during a financial year that begins no later than January 1, 2007, we are proposing to allow them to omit IFRS financial statements for the earliest of the three years that would otherwise be required under our rules, with appropriate related disclosure. Current requirements for a reconciliation to U.S. GAAP will remain in place.

We also are proposing additional requirements for all first-time IFRS adopters regarding disclosure of exceptions to IFRS and clarifications regarding reconciliation from Previous GAAP to IFRS. We are sensitive to the costs and benefits of our proposal, which we discuss below.

A. Expected Benefits

The proposed accommodation is intended to benefit eligible issuers by relieving them of the burden and difficulties related to restating financial statements for a prior financial year using IFRS standards that were not finalized during the period to which they would have to be applied. We are concerned that retroactive application of IFRS for the third year back would lead to uncertain results, and cause potential investor confusion. The number of companies that will be required to switch their basis of accounting to IFRS and the additional companies that switch to IFRS voluntarily also will compound the difficulties that both companies and the accounting profession ordinarily face when recasting prior reporting periods under new standards. The proposed accommodation is intended to benefit those parties by minimizing those difficulties. The proposed accommodation also is intended to benefit investors by improving the clarity and quality of financial disclosure required of companies that adopt IFRS for the first time.

The proposed amendments that, if adopted, would require from all first-time IFRS adopters detailed disclosure related to their reliance on voluntary and mandatory exceptions to IFRS are intended to benefit investors by providing clarification of the effect that use of those exceptions had on the company's financial condition. This

disclosure would appear in the company's required discussion of its operating and financial review and prospects.

We also are proposing amendments to Form 20-F that, if adopted, would clarify the level of information required in the reconciliation to IFRS of financial statements prepared in accordance with Previous GAAP. This clarification is intended to benefit investors by providing a comparable level of information in that reconciliation to enable readers to understand any material adjustments to the financials statements.

B. Expected Costs

The proposed amendments to Form 20-F are likely to result in some costs to companies that are first-time adopters of IFRS, although we anticipate that these costs are justified by the reduced burden. We believe that the principal cost to issuers relying on the proposed accommodation will relate to the proposed requirement that they include three years of condensed U.S. GAAP financial information. Based on our assumption that most companies will already have this information available, however, we believe that the additional cost of including it in their SEC filings will be minimal. The other proposed amendments relating to the accommodation for first-time IFRS adopters are intended to clarify how information required under existing rules should be presented when based on primary financial statements prepared in accordance with IFRS. Therefore, these elements of the proposed accommodation should add little extra burden to companies that rely on it.

We note that the proposed requirements relating to interim financials statements do not vary significantly from existing requirements. They may, however, create additional costs for companies that may be required to maintain financial statements prepared in accordance with both Previous GAAP and IFRS for interim periods during the year in which they switch to IFRS. We request comment on the nature and extent of these potential costs.

Other amendments proposed in this release will, if adopted, apply to all first-time IFRS adopters. These proposals relate to the reconciliation from Previous GAAP to IFRS and to the use of any exceptions to IFRS. Because reconciliation from Previous GAAP to IFRS is required under the transition rules in IFRS 1, we do not anticipate that our proposed standard clarifying the level of information that the

reconciliation should contain will result in an increased cost to companies. We do recognize that the proposals relating to the use of IFRS exceptions, if adopted, will require additional disclosure and, consequently, an increase in costs for companies that would be required to provide that disclosure. We request comment on the nature and extent of that cost increase.

The proposed accommodation may involve some costs to investors, who would not have available the third year of financial statements prepared under IFRS. We believe that this cost is minimal, however, based on our assumption that the results of retroactive application of IFRS for the third financial year back may be uncertain and confusing. The requirement that companies relying on the proposed accommodation include three years of condensed U.S. GAAP information is intended to reduce any cost to investors by ensuring that filings contain three years of information prepared on a consistent basis of accounting. The proposed accommodation also may create a competitive disadvantage to companies that are not eligible to rely on it, including domestic companies and foreign companies that would not be considered first-time adopters of IFRS under the amendment. Most of these costs are difficult to quantify. We request comment on these potential costs.

C. Comment Solicited

We request your views on the costs and benefits described above, particularly with regard to the questions raised after Sections II.A–F and Section III, as well as on any other costs and benefits that could result from adoption of the proposed amendment to Form 20–F. For example, are we correct in our assumptions relating to the potential costs and difficulties that companies may face when they adopt IFRS? What benefits may be created by encouraging more companies to adopt IFRS as their basis of accounting, and for whom? What is the likely economic impact of these or other costs or benefits? Can they be quantified in any meaningful way? If so, how and what conclusions should be drawn? The Commission also requests any supporting data to quantify the expected costs and the value of the anticipated benefits.

VII. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b), that the amendment to Form 20–F under the Exchange Act contained in this release,

if adopted, would not have a significant economic impact on a substantial number of small entities. The proposal would add a new General Instruction to Form 20–F that would permit eligible foreign private issuers to file two years rather than three years of statements of income, changes in shareholders' equity and cash flows prepared in accordance with IFRS, with appropriate related disclosure. The amendments, if adopted, also would require all first-time adopters to provide information relating to exceptions from IFRS on which they relied and to satisfy a required level of information in their reconciliation to IFRS from Previous GAAP. Based on an analysis of the language and legislative history of the Act, Congress does not appear to have intended the Regulatory Flexibility Act to apply to foreign issuers. For this reason, the proposed amendment should not have a significant economic impact on a substantial number of small entities.

We solicit written comments regarding this certification. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VIII. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),⁶⁴ a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- A significant adverse effect on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) of the Securities Act⁶⁵ and Section 3(f) of the Exchange Act⁶⁶ require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2)

of the Exchange Act⁶⁷ requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The purpose of this proposed amendment to Form 20–F is to provide an accommodation to companies that switch to IFRS during a financial year beginning no later than January 1, 2007, and have not published IFRS financial statements for an earlier financial year. This proposal is designed to increase efficiency, competition and capital formation by alleviating the burden and cost that eligible companies would face if required to recast under IFRS their results for the third financial year for inclusion in annual reports and registration statements filed with us. Because those companies may find it difficult to recast their financial results under IFRS for the third financial year, we believe that the proposed amendment is likely to promote market efficiency by eliminating financial disclosure that would be costly to produce and of questionable value. As a result of the more reliable disclosure under the proposed amendment, we believe that investors may be able to make more informed investment decisions and that capital may be allocated on a more efficient basis.

The proposed amendments also would require all foreign companies that change their basis of accounting to IFRS to provide information relating to exceptions to IFRS on which they relied and to satisfy a required level of information in their reconciliation to IFRS from Previous GAAP. We believe that this is likely to increase efficiency, competition and capital formation by enabling investors to base their investment decisions on a better understanding of the financial information of those companies, leading to a more efficient allocation of capital.

We solicit comment on these matters as they regard the proposed amendments. For example, would the proposals have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act? For example, would the proposals create an adverse competitive effect on U.S. issuers or on foreign issuers that could not rely on the accommodation? Would the proposed amendments, if adopted, promote efficiency, competition and capital formation? Commenters are

⁶⁴ Pub. L. No. 104–121, Title 2, 110 Stat. 857 (1996).

⁶⁵ 15 U.S.C. 77b(b).

⁶⁶ 15 U.S.C. 78c(f).

⁶⁷ 15 U.S.C. 78w(a)(2).

requested to provide empirical data and other factual support for their views, if possible.

IX. Statutory Basis

We propose the amendment to Exchange Act Form 20-F pursuant to Sections 6, 7, 10, and 19(a) of the Securities Act of 1933 as amended, and Sections 3, 12, 13, 15, 23 and 36 of the Securities Exchange Act of 1934.

Text of Proposed Amendments

List of Subjects in 17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend Form 20-F (referenced in § 249.220f) by adding General Instruction G, Instruction 4 to Item 5, and Instruction 3 to Item 8 to read as follows:

Note: The text of Form 20-F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20-F

Registration Statement pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

General Instructions

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G. Change to International Financial Reporting Standards

(a) *Omission of Certain Required Financial Statements.* If the company changes the body of accounting principles used in preparing its financial statements presented pursuant to Item 8.A.2 of Form 20-F (“Item 8.A.2”) to the International Financial Reporting Standards (“IFRS”) published by the International Accounting Standards Board, the company may omit the earliest of the three years of audited financial statements required by Item 8.A.2 if the company satisfies the conditions set forth in this instruction. For purposes of this instruction, the term “financial year” refers to the first financial year beginning on or after January 1 of the same calendar year.

(b) *Applicable Documents.* This instruction shall be available only for the following registration statements and annual reports:

(1) *Registration statements.* This instruction shall be available for registration statements if: (A) the company’s most recent audited financial statements required by Item 8.A.2 are for a financial year that begins no later than January 1, 2007; (B) prior to the company’s publication of audited financial statements for that financial year, the company had not published audited financial statements prepared in accordance with IFRS for an earlier financial year; and (C) the audited financial statements for the company’s most recent financial year for which audited financial statements are required by Item 8.A.2 are prepared in accordance with IFRS.

(2) *Annual reports.* This instruction shall be available for annual reports if: (A) the annual report relates to a financial year that begins no later than January 1, 2007; (B) prior to the company’s publication of audited financial statements for that financial year, the company had not published audited financial statements prepared in accordance with IFRS for any earlier financial year; and (C) the audited financial statements for the company’s financial year to which the annual report relates are prepared in accordance with IFRS.

(c) *Selected Financial Data.* The selected historical financial data required pursuant to Item 3.A of Form 20-F shall be based on financial statements prepared in accordance with IFRS and shall be presented for the two most recent financial years. The company shall present selected historical financial data in accordance with U.S. GAAP for the five most recent financial years, except as the company is otherwise permitted to omit U.S. GAAP information for any of the earliest of the five years pursuant to the Instruction to Item 3.A of Form 20-F.

(d) *Information on the Company.* The reference in Item 4.B of Form 20-F to “the body of accounting principles used in preparing the financial statements” means IFRS and not the basis of accounting that the company previously used (“Previous GAAP”) or accounting principles used only to prepare the U.S. GAAP reconciliation.

(e) *Operating and Financial Review and Prospects.* The company shall present the information required pursuant to Item 5. The discussion should focus on the financial statements for the two most recent financial years prepared in accordance with IFRS. The company should refer to the

reconciliation to U.S. GAAP for those years and discuss any aspects of the differences between IFRS and U.S. GAAP, not otherwise discussed in the reconciliation, that the company believes are necessary for an understanding of the financial statements as a whole. No part of the discussion should relate to financial statements prepared in accordance with Previous GAAP.

(f) *Financial Information.* With respect to the financial information required by Item 8.A, all instructions contained in Item 8, including the instruction requiring audits in accordance with U.S. generally accepted auditing standards, shall apply. A company that provides information that responds to Item 8.A.5 of Form 20-F for its 2005 financial year shall also include its published interim financial information prepared in accordance with IFRS.

(g) *Quantitative and Qualitative Disclosures About Market Risk.* Information in the document that responds to Item 11 of Form 20-F shall be presented on the basis of IFRS.

(h) *Financial Statements.* The document shall include financial statements that comply with Item 17 or 18 of Form 20-F as follows:

(1) *Financial Statements in accordance with IFRS.* The company may omit the earliest of the three years of financial statements required by Item 8.A.2.

(2) *U.S. GAAP Information.* (A) The U.S. GAAP reconciliation required by Item 17(c) or 18 shall relate to the same periods covered by the financial statements prepared in accordance with IFRS; (B) the audited financial statements included pursuant to Instruction G.h.1 above shall contain, in addition to the reconciliation to U.S. GAAP, condensed financial information prepared in accordance with U.S. GAAP for the three most recent financial years. The form and content of this financial information shall be in a level of detail substantially similar to that required by Article 10 of Regulation S-X.

Instructions: 1. Condensed financial information prepared in accordance with U.S. GAAP provided in response to Instruction G.h.2.B shall contain income statements and balance sheets. Condensed cash flow statements prepared in accordance with U.S. GAAP shall not be required under this instruction, nor does this instruction affect the number of years for which a company must provide a balance sheet prepared in accordance with U.S. GAAP under Item 8.A.2. Companies are not required to provide notes to this condensed financial information.

2. An eligible company relying on this General Instruction G may elect to include or incorporate by reference financial data prepared in accordance with Previous GAAP. A company electing to include or incorporate by reference Previous GAAP financial information shall prominently disclose, at an appropriate location in the document, that the document contains or incorporates by reference financial statements and other financial information based on both IFRS and Previous GAAP, and that the information based on Previous GAAP is not comparable to information prepared in accordance with IFRS.

3. Companies electing to include or refer to Previous GAAP financial information shall:

(a) Present or refer to selected historical financial data prepared in accordance with Previous GAAP for the four financial years prior to the most recent financial year.

(b) Present operating and financial review and prospects information pursuant to Item 5 that focuses on the financial statements for the two most recent financial years prior to the most recent financial year that were prepared in accordance with Previous GAAP. The discussion need not refer to the reconciliation to U.S. GAAP. No part of the discussion should relate to financial statements prepared in accordance with IFRS.

(c) Include or incorporate by reference comparative financial statements

prepared in accordance with Previous GAAP that cover the two financial years prior to the most recent financial year.

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Item 5. Operating and Financial Review and Prospects

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Instructions to Item 5.

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4. To the extent the primary financial statements reflect the use of exceptions permitted or required by IFRS 1, the company shall:

(A) Provide detailed information as to the exceptions used, including:

i. an indication of the items or class of items to which the exception was applied, and

ii. a description of what accounting principle was used and how it was applied.

(B) Include, where material, qualitative disclosure of the impact on financial condition, changes in financial condition and results of operations that alternatives would have had.

(C) Explain the significance of the exception used to the company's financial condition, changes in financial condition and results of operations and, where material, identify the line items in the financial statements affected by the exceptions from IFRS.

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Item 8. Financial Information

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Instructions to Item 8.

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3. If the primary financial statements included in the document represent the first filing by the company with the SEC of consolidated financial statements prepared in accordance with IFRS, the notes to the financial statements prepared in accordance with IFRS shall disclose the following:

(A) The reconciliation from Previous GAAP to IFRS required by IFRS 1 shall be presented in a form and level of information sufficient to explain all material adjustments to the balance sheet and income statement and, if presented under Previous GAAP, to the cash flow statement; and

(B) To the extent the primary financial statements reflect the use of exceptions permitted or required by IFRS 1, the company shall identify each exception used, including:

i. an indication of the items or class of items to which the exception was applied, and;

ii. a description of what accounting principle was used and how it was applied.

* * * * *

Dated: March 11, 2004.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

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