

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 210, 230, 239 and 249

[Release Nos. 33-8818; 34-55998; International Series Release No. 1302; File No. S7-13-07]

RIN 3235-AJ90

### Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing to accept from foreign private issuers their financial statements prepared in accordance with International Financial Reporting Standards (“IFRS”) as published by the International Accounting Standards Board (“IASB”) without reconciliation to generally accepted accounting principles (“GAAP”) as used in the United States. To implement this, we propose amendments to Form 20-F and conforming changes to Regulation S-X to accept financial statements prepared in accordance with the English language version of IFRS as published by the IASB without reconciliation to U.S. GAAP when contained in the filings of foreign private issuers with the Commission.

We also are proposing conforming amendments to other regulations, forms and rules under the Securities Act and the Exchange Act. Current requirements regarding the reconciliation to U.S. GAAP will not change for a foreign private issuer that uses a basis of accounting other than the English language version of IFRS as published by the IASB.

**DATES:** Comments should be received on or before September 24, 2007.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s *Internet comment form* (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-13-07 on the subject line; or
- Use the Federal Rulemaking ePortal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-13-07. The 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/rules/proposed.shtml>). Comments also are available for public inspection and copying in the Commission’s Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

#### 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) 551-3450, or to Katrina A. Kimpel, Professional Accounting Fellow, Office of the Chief Accountant, at (202) 551-5300, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3628.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing for comment proposed amendments to Form 20-F<sup>1</sup> under the Securities Exchange Act of 1934 (the “Exchange Act”),<sup>2</sup> Rules 3-10 and 4-01 of Regulation S-X,<sup>3</sup> Forms F-

<sup>1</sup> 17 CFR 249.220f.

<sup>2</sup> 15 U.S.C. 78a *et seq.* Form 20-F is the combined registration statement and annual report form for foreign private issuers 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”). 15 U.S.C. 77a *et seq.*

The term “foreign private issuer” is defined in Exchange Act Rule 3b-4(c) [17 CFR 240.3b-4(c)]. A foreign private issuer means any foreign issuer other than a foreign government except an issuer that meets the following conditions: (1) More than 50 percent of the issuer’s outstanding voting securities are directly or indirectly held of record by residents of the United States; and (2) any of the following: (i) The majority of the executive officers or directors are United States citizens or residents; (ii) more than 50 percent of the assets of the issuer are located in the United States; or (iii) the business of the issuer is administered principally in the United States.

<sup>3</sup> 17 CFR 210.3-10 and 17 CFR 210.4-01. Regulation S-X sets forth the form and content of requirements for financial statements.

4 and S-4 under the Securities Act,<sup>4</sup> and Rule 701 under the Securities Act.<sup>5</sup>

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<sup>4</sup> 17 CFR 239.34 and 17 CFR 239.13.

<sup>5</sup> 17 CFR 230.701.

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## I. Overview and History

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,<sup>6</sup> are currently required to present audited statements of income, financial position, changes in shareholders'

<sup>6</sup> 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 pursuant to Section 12, unless the duty to file under Section 15(d) has been suspended for any financial year.

equity and cash flows for each of the past three financial years,<sup>7</sup> prepared on a consistent basis of accounting.<sup>8</sup> All foreign private issuers are currently required to reconcile to U.S. GAAP the financial statements that they file with the Commission if the financial statements are prepared using any basis of accounting other than U.S. GAAP.<sup>9</sup>

The Commission is proposing for comment revisions to Form 20-F and Regulation S-X under which it would accept financial statements of foreign private issuers that are prepared on the basis of the English language version of IFRS as published by the IASB without a reconciliation to U.S. GAAP.<sup>10</sup> The revisions would allow a foreign private issuer to file financial statements prepared in accordance with IFRS as published by the IASB without reconciliation to U.S. GAAP. We are not proposing to change existing reconciliation requirements for foreign private issuers that file their financial statements under other sets of accounting standards, or that are not in full compliance with IFRS as published by the IASB.

### A. History of the U.S. GAAP Reconciliation Requirement

In a reconciliation, a foreign private issuer that files its financial statements prepared in accordance with a basis of accounting other than U.S. GAAP must identify and quantify the material differences from the requirements of U.S. GAAP and Regulation S-X. The reconciliation to U.S. GAAP may be presented pursuant to either Item 17 or Item 18 of Form 20-F. Under Item 17, an issuer is required to provide a narrative description of differences and a quantitative reconciliation of specific financial statement line items from non-

<sup>7</sup> 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. Foreign private issuers that are first-time adopters of IFRS published by the IASB are permitted to provide financial statements for the most recent two financial years. See General Instruction G for Form 20-F.

<sup>8</sup> See Item 8.A.2 of Form 20-F. Instructions to this item permit a foreign private issuer to omit a balance sheet for the earliest of the three years if that balance sheet is not required by a foreign jurisdiction.

<sup>9</sup> See Items 17 and 18 of Form 20-F; see also Article 4 of Regulation S-X.

<sup>10</sup> All references in this release to IFRS as published by the IASB refer to the English language version of IFRS. The IASB approves the English language text of any IFRS standard, although the International Accounting Standards Committee Foundation ("IASC Foundation") may issue translations into other languages. See "International Financial Reporting Standards (IFRSs), including International Accounting Standards (IASs) and Interpretations as at 1 January 2005," International Accounting Standards Board Preface to IFRS, at 27.

U.S. GAAP to U.S. GAAP, but without all U.S. GAAP and Regulation S-X disclosures. An issuer may use Item 17 when filing its financial statements in an Exchange Act registration statement or annual report filed on Form 20-F, or as part of a Securities Act registration statement for investment grade, non-convertible securities or certain rights offerings. Under Item 18, an issuer is required to provide the reconciling information specified in Item 17 as well as all disclosures required by Regulation S-X and U.S. GAAP. An issuer must comply with Item 18 when filing financial statements in a Securities Act registration statement for offerings of equity, convertible and other securities.

The Commission first addressed discrepancies in financial information provided under a foreign basis of accounting and U.S. GAAP through amendments to Forms 20 and 20-K adopted in 1967.<sup>11</sup> Although a reconciliation to U.S. GAAP was not explicitly required, the amended instructions to Form 20 required that "every issuer registering securities on this form shall file as a part of its registration statement the financial statements, schedules and accountants' certificates which would be required to be filed if the registration statement were filed on Form 10."<sup>12</sup> Any material variation in accounting principles or practices from the form and content of financial statements prescribed in Regulation S-X shall be disclosed and, to the extent practicable, the effect of each such variation given.<sup>13</sup> The financial statement instructions for the annual report on Form 20-K contained a similar requirement.<sup>14</sup>

In 1979, the Commission adopted significant amendments to the disclosure requirements applicable to foreign private issuers.<sup>15</sup> These amendments were based on the Commission's belief that "providing more meaningful disclosure to investors

<sup>11</sup> See Securities Exchange Act Release Nos. 8067 and 8068 (April 28, 1967). Form 20 was the registration statement under Section 12 of the Securities Act and Form 20-K was the annual report form for foreign private issuers.

<sup>12</sup> Form 10 is the registration statement under Section 12 of the Exchange Act for domestic issuers.

<sup>13</sup> Although the Commission adopted Regulation S-X in 1940 as an instruction booklet to be followed in the preparation of financial statements to be included in filings, application of the Regulation did not extend to foreign private issuers.

<sup>14</sup> Prior to 1967, foreign private issuers were required only to present financial statements consisting of a balance sheet as of the close of the most recent fiscal year and a profit and loss statement for the fiscal year preceding the date of the balance sheet. The financial statements were not required to be certified.

<sup>15</sup> Securities Exchange Act Release No. 34-16371 (November 29, 1979).

in foreign securities not only would promote the protection of investors but may encourage the free flow of capital between nations and tend to reduce any competitive disadvantage with which United States issuers must contend vis-a-vis foreign issuers of securities.”<sup>16</sup>

The Commission adopted the current reconciliation requirements in 1982 when adopting new Securities Act registration statements for foreign private issuers as part of its comprehensive efforts to develop an integrated disclosure system.<sup>17</sup> Prior to 1982, offering documents of foreign private issuers contained a full reconciliation, while annual reports required only a narrative description of differences between a foreign basis of accounting and U.S. GAAP.<sup>18</sup>

The Commission’s approach has developed in the context of integrated disclosure. In designing the integrated disclosure regime for foreign private issuers, the Commission endeavored to “design a system that parallels the system for domestic issuers but also takes into account the different circumstances of foreign registrants.”<sup>19</sup>

Given the dual considerations of investor protection and even-handedness towards foreign private issuers, the Commission has framed its consideration of the reconciliation requirement as a balancing of two policy concerns: Investors’ need for the same type of basic information when making an investment decision regardless of whether the issuer is foreign or domestic, and the public interest served by an opportunity to invest in a variety of securities, including foreign securities.<sup>20</sup> Investors’ need for the same type of basic information implies that foreign and domestic registrants should be subject to the same disclosure requirements. However, the burden on foreign issuers of meeting the identical disclosure standards as domestic issuers might discourage them from offering their securities on the U.S. market. If foreign issuers chose not to offer their

securities in the United States, it would deprive U.S. investors of investment opportunities and potentially compel them to purchase foreign securities on foreign markets, where disclosure may be less than that required in filings with the Commission.<sup>21</sup>

#### *B. The International Accounting Standards Board and IFRS*

The IASB is a stand-alone, privately funded accounting standard-setting body established to develop global standards for financial reporting.<sup>22</sup> It is the successor to the International Accounting Standards Committee (“IASC”), which was created in 1973 to develop International Accounting Standards (“IAS”). Based in London, the IASB assumed accounting standard-setting responsibilities from the IASC in 2001.<sup>23</sup> Since that time, the standards that the IASB develops and approves have been known as IFRS.<sup>24</sup>

The IASB is overseen by the IASC Foundation, a stand-alone organization responsible for, among other things, the activities of the IASB.<sup>25</sup> The 22 trustees of the IASC Foundation appoint IASB members, oversee its activities, and raise necessary funding for the IASB,

<sup>21</sup>*Id.*

<sup>22</sup> For more information on the structure and operation of the IASB, see <http://www.iasb.org/Home.htm>.

<sup>23</sup> This was the culmination of a reorganization in 2000 based on the recommendations to the IASC Board contained in a 1999 report by the IASC’s Strategic Working Party entitled “Recommendations on Shaping the IASC for the Future.” (Full text available at <http://www.iasplus.com/restruct/1999swpfinal.pdf>). 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. The predecessor standard-setting board was known as the IASC Board.

<sup>24</sup> The IASB continues to recognize the IAS issued by the IASC, as modified or superseded by the IASB. Those IAS now form part of the body of IFRS. See IAS 1, paragraph 11. Standards that are newly developed by the IASB or are extensive revisions of earlier IAS 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 and interpretations applicable in specific circumstances. For purposes of this release, financial statements “prepared in accordance with IFRS” refer to financial statements that an issuer can unreservedly and explicitly state are in compliance with IFRS as published by the IASB and that are not subject to any qualification relating to the application of IFRS as published by the IASB.

<sup>25</sup> The IASC Foundation is comprised of twenty-two individuals each serving a term of three years subject to one re-appointment. Its staff works directly with the IASB and project resource groups, conducts research, participates in roundtable meetings, analyzes public comments, and prepares recommendations and drafts for consideration by the IASB.

the IASC Foundation, the International Financial Reporting Interpretations Committee (“IFRIC”), and the Standards Advisory Council (“SAC”).<sup>26</sup>

The IASC Foundation Trustees select members of the IASB to comprise “within that group, the best available combination of technical skills and background experience of relevant international business and market conditions in order to contribute to the development of high-quality, global accounting standards.”<sup>27</sup> The fourteen members of the IASB, twelve full-time and two part-time, serve a five-year term subject to one re-appointment. They are required to sever all employment relationships and positions that may give rise to economic incentives which might compromise a member’s independent judgment in setting accounting standards. The current IASB members come from nine countries and have a variety of backgrounds. In selecting IASB members, the IASC Foundation Trustees ensure that the IASB is not dominated by any particular constituency. Member selection is not based on geographic representation.

To date, the IASC Foundation has financed IASB operations largely through voluntary contributions from companies, accounting firms, international organizations and central banks. Original commitments were made for the period 2001–2005 and have been extended for an additional two years through 2007. In June 2006, the IASC Foundation Trustees agreed on four elements that should govern the establishment of a funding approach that would enable the IASC Foundation to remain a stand-alone, private sector organization with the necessary resources to conduct its work in a timely fashion.<sup>28</sup> The Trustees continue

<sup>26</sup> IFRIC interprets IFRS and reviews accounting issues that are likely to receive divergent or unacceptable treatment in the absence of authoritative guidance, with a view to reaching consensus on the appropriate accounting treatment. The IFRIC is comprised of twelve voting members, appointed by the IASC Foundation Trustees for renewable terms of three years. IFRIC Interpretations are ratified by the IASB prior to becoming effective.

The SAC supports the IASB and provides a forum where the IASB consults individuals and representatives of organizations affected by its work that are committed to the development of high-quality IFRS. The Commission is an observer of the SAC.

<sup>27</sup> IASC Foundation Constitution, Paragraph 20; see <http://www.iasb.org/About+Us/About+IASB/About+IASB.htm>.

<sup>28</sup> The Trustees determined that “characteristics of the new scheme for 2008 would be:

- Broad-based: Fewer than 200 companies and organizations participate in the current financing system. A sustainable long-term financing system must expand the base of support to include major participants in the world’s capital markets,

<sup>16</sup> Securities Exchange Act Release No. 34–14128 (November 2, 1977).

<sup>17</sup> Securities Act Release No. 33–6437 (November 19, 1982).

<sup>18</sup> Until 1980 the only guidance with respect to accounting principles and financial statements of foreign issuers were form-based requirements and the continued applicability of Accounting Series Release 4, which, since 1935, required only that the accounting principles used by foreign private issuers have authoritative support. In 1980, the Commission amended Regulation S–X adding language to Rule 4–01 to require foreign issuers’ financial statements prepared in accordance with a comprehensive basis of accounting other than U.S. GAAP to be reconciled to U.S. GAAP.

<sup>19</sup> Securities Act Release No. 33–6360 (November 20, 1981) (the “1981 Proposing Release”).

<sup>20</sup> *Id.*

to make progress in obtaining stable funding that satisfies those elements.

The IASB has stated that it is committed to “developing, in the public interest, a single set of high-quality, understandable and enforceable global accounting standards that require transparent and comparable information in general purpose financial statements.”<sup>29</sup> In addition, the IASC Foundation has committed to the continued development of IFRS to achieve high-quality solutions through the convergence of national accounting standards.

The use of IFRS is increasingly widespread throughout the world. Almost 100 countries now require or allow the use of IFRS, and many other countries are replacing their national standards with IFRS. The European Union (“EU”), for example, has, under a regulation adopted in 2002, required companies incorporated in one of its Member States and whose securities are listed on an EU regulated market to report their consolidated financial statements using endorsed IFRS beginning with the 2005 financial year.<sup>30</sup> It has been estimated that these requirements affect approximately 7,000 companies in the EU.<sup>31</sup> In addition to issuers in the 27 EU Member States, these IFRS requirements also apply in the three European Economic Area countries of Iceland, Lichtenstein and

including official institutions, in order to ensure diversification of sources.

- Compelling: Any system must carry with it enough pressure to make free riding very difficult. This could be accomplished through a variety of means, including official support from the relevant regulatory authorities and formal approval by the collecting organizations.

- Open-ended: The financial commitments should be open-ended and not contingent on any particular action that would infringe on the independence of the IASC Foundation and the International Accounting Standards Board.

- Country-specific: The funding burden should be shared by the major economies of the world on a proportionate basis, using Gross Domestic Product as the determining factor of measurement. Each country should meet its designated target in a manner consistent with the principles above.”

See <http://www.iasb.org/About+Us/About+the+Foundation/Future+Funding.htm>.

<sup>29</sup> See [www.iasb.org/About+Us/About+IASB/About+IASB.htm](http://www.iasb.org/About+Us/About+IASB/About+IASB.htm). See also the IASCF Foundation Constitution.

<sup>30</sup> 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 without further implementing legislation at the national level.

<sup>31</sup> 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).

Norway.<sup>32</sup> Other countries, including Australia and New Zealand, have adopted similar requirements mandating the use of IFRS by public companies.<sup>33</sup> More countries have plans to adopt IFRS as their national accounting standards in the future, including Canada<sup>34</sup> and Israel.<sup>35</sup>

### C. The Financial Accounting Standards Board

The FASB is the independent, private-sector body whose pronouncements establishing and amending accounting principles the Commission has, since 1973, recognized as “authoritative” and “generally accepted” for purposes of the federal securities laws, absent any contrary determination by the Commission.<sup>36</sup> The FASB is overseen by the Financial Accounting Foundation (“FAF”), which is responsible for funding the activities of the FASB and selecting the seven full-time FASB members.<sup>37</sup> The FAF is an independent, non-profit organization that is run by a sixteen-member Board of Trustees. The FASB has oversight of the Emerging Issues Task Force, which is the interpretative entity of U.S. GAAP. The FASB also is supported by the Financial Accounting Standards Advisory Council, which is responsible for consulting with the FASB as to

<sup>32</sup> The current EU Member States are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden, and the United Kingdom.

<sup>33</sup> Some countries, such as Australia, have adopted IFRS by incorporating them into their national standards.

<sup>34</sup> See “Implementation Plan for Incorporating International Financial Reporting Standards into Canadian GAAP,” available at [http://www.acsbcanada.org/client\\_asset/document/3/2/7/3/5/document\\_8B452E12-FAF5-7113-C4CB8F89B38BC6F8.pdf?sfghdata=4](http://www.acsbcanada.org/client_asset/document/3/2/7/3/5/document_8B452E12-FAF5-7113-C4CB8F89B38BC6F8.pdf?sfghdata=4).

<sup>35</sup> See Israel Accounting Standard No. 29 “Adoption of International Financial Reporting Standards,” stipulating that Israeli public companies that prepare their primary financial statements in accordance with Israeli GAAP are obliged to adopt IFRS unreservedly for years starting on January 1, 2008. See also <http://www.iasplus.com/country/israel.htm>.

<sup>36</sup> See “Statement of Policy on the Establishment and Improvement of Accounting Principles and Standards,” Accounting Series Release No. 150 (December 20, 1973) (expressing the Commission’s intent to continue to look to the private sector for leadership in establishing and improving accounting principles and standards through the FASB) and “Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter,” Release No. 33–8221 (April 25, 2003) (the “2003 Policy Statement”). More information about the FASB is available on their Web site at <http://www.fasb.org>.

<sup>37</sup> See [http://www.fasb.org/facts/bd\\_members.shtml](http://www.fasb.org/facts/bd_members.shtml).

technical issues on the FASB’s agenda and project priorities.

Consistent with the FASB’s objective to increase international comparability and the quality of standards used in the United States, the FASB participates in international accounting standard setter activities. This objective is consistent with the FASB’s obligation to its domestic constituents, who benefit from comparability of information across national borders. The FASB pursues this objective in cooperation with the IASB, as discussed in more detail below, and with national accounting standard setters.

The Commission oversees the activities of the FASB as part of its responsibilities under the securities laws. While the Commission consistently has looked to the private sector to set accounting standards, the securities laws provide the Commission with the authority to set accounting standards for public companies and other entities that file financial statements with the Commission.<sup>38</sup> As part of its oversight responsibilities, the Commission provides views regarding the selection of FASB members, and, in certain circumstances, refers issues relating to accounting standards to the FASB or one of its affiliated organizations. The Commission and its staff do not, however, prohibit the FASB from addressing topics of its choosing and do not dictate the outcome of specific FASB projects, so long as the FASB’s conclusions are in the interest of investor protection.<sup>39</sup>

### D. The Commission’s Past Consideration of a Single Set of Globally Accepted Accounting Standards and Facilitation of the Use of IFRS by Registrants

The Commission has long advocated reducing disparity between the accounting and disclosure practices of the United States and other countries as a means to facilitate cross-border capital formation while ensuring adequate disclosure for the protection of investors and the promotion of fair, orderly and efficient markets. The Commission also has encouraged the efforts of standard setters and other market participants to do the same. In a 1981 release proposing revisions to Form 20–F, the Commission expressed its support for the work of the IASC in formulating guidelines and

<sup>38</sup> This authority was reaffirmed in the Sarbanes-Oxley Act, Section 108(c) of which states, “Nothing in this Act, including this section \* \* \* shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.”

<sup>39</sup> See the 2003 Policy Statement.

international disclosure standards.<sup>40</sup> As part of a 1988 Policy Statement, the Commission explicitly supported the establishment of mutually acceptable international accounting standards as a critical goal to reduce regulatory impediments that result from disparate national accounting standards without compromising investor protection.<sup>41</sup> Accordingly, it urged “securities regulators and members of the accounting profession throughout the world [to] continue efforts to revise and adjust international accounting standards with the aim of increasing comparability and reducing cost” and reaffirmed its commitment to working with securities regulators around the world to achieve the goal of an efficient international securities market system.<sup>42</sup>

In encouraging the acceptance of mutually agreeable global accounting principles and reducing regulatory burdens while protecting investors, the Commission has recognized that information required by an international accounting standard may be adequate for investors even if that information is not the same as information required under U.S. GAAP. One example of this approach is the 1994 amendment to Form 20-F to accept without reconciliation to U.S. GAAP a cash flow statement prepared in accordance with IAS No. 7, “Cash Flow Statements,” which the IASC amended in 1992. In proposing that amendment, the Commission noted that “while there are differences between a cash flow statement prepared in accordance with IAS 7 and one prepared in accordance with U.S. GAAP. \* \* \* the Commission believes statements prepared in accordance with IAS 7 should provide an investor with adequate information regarding cash flows without the need for additional information or modification.”<sup>43</sup> In adopting this and other revisions to Item 17 of Form 20-F, the Commission expressed its belief that streamlined reconciliation requirements will facilitate foreign companies’ entry into the United States

public securities markets in a manner consistent with investor protection.<sup>44</sup>

The Commission more closely examined efforts to develop high-quality, comprehensive global accounting standards in its 1997 report undertaken at the direction of Congress.<sup>45</sup> In that study, the Commission noted that for issuers wishing to raise capital in more than one country, compliance with differing accounting requirements to be used in the preparation of financial statements increased compliance costs and created inefficiencies. As a step towards addressing these concerns and to increase the access of U.S. investors to foreign investments in the U.S. public capital market, the Commission encouraged the IASC’s efforts to develop a core set of accounting standards that could serve as a framework for financial reporting in cross-border offerings, and indicated an intent to remain active in the development of those standards. In that report, the Commission indicated that its evaluation of IASC core standards would involve an assessment of whether they constituted a comprehensive body of transparent, high-quality standards that could be rigorously interpreted and applied.<sup>46</sup>

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 global financial reporting framework while upholding the quality of financial reporting domestically.<sup>47</sup> In that release, the Commission described high-quality standards as consisting of a “comprehensive set of neutral principles that require consistent, comparable, relevant and reliable information that is useful for investors, lenders and creditors, and others who make capital allocation decisions.”<sup>48</sup> The Commission also expressed the view that high-quality accounting standards “must be supported by an infrastructure that ensures that the standards are rigorously interpreted and applied.”<sup>49</sup> The release sought comments as to the conditions under which the Commission should accept financial statements of foreign private

issuers that are prepared using IFRS, and considered the issue of the U.S. GAAP reconciliation of IFRS financial statements. The Commission has continued to monitor international developments in the subject areas that are discussed in the release.

In 2003, the Commission staff prepared a study on the adoption of a principles-based accounting system, as mandated by Congress in the Sarbanes-Oxley Act.<sup>50</sup> The conclusion of that study was that an optimal approach to accounting standard-setting would be based on a consistently applied conceptual framework and clearly stated objectives rather than solely on either rules or principles, one benefit of which would be the facilitation of greater convergence between U.S. GAAP and international standards. By taking an objectives-based approach to convergence, the study noted, standard setters would be able to arrive at an agreement on a principle more quickly than would be possible for a detailed rule. The staff’s report to Congress interpreted convergence as a “process of continuing discovery and opportunity to learn by both U.S. and international standard setters,” the benefits of which include greater comparability and improved capital formation globally.<sup>51</sup>

In February 2006, Chairman Cox reaffirmed his commitment to the “Roadmap” that was first described by a former Chief Accountant of the Commission in April 2005.<sup>52</sup> The Roadmap sets forth the goal of achieving one set of high-quality, globally accepted accounting standards and suggested several considerations that could affect the achievement of that goal.

The Commission also has taken steps to facilitate the use of IFRS by registrants. When the European Union adopted a regulation in 2002 to require the use of IFRS by all European issuers with publicly traded securities beginning with their 2005 financial year, the Commission adopted an accommodation to allow first-time adopters of IFRS to file two years rather than three years of financial statements in their Commission filings.<sup>53</sup> In so doing, the Commission sought to facilitate the transition to IFRS of the

<sup>40</sup> See the 1981 Proposing Release.

<sup>41</sup> See Release No. 33-6807 (November 14, 1988) (the “1988 Policy Statement”).

<sup>42</sup> *Id.*

<sup>43</sup> The Commission proposed these amendments in Release No. 33-7029 (November 3, 1993) and adopted them in Release No. 33-7053 (April 19, 1994) (the “1994 Adopting Release”). Other examples in which the Commission amended its requirements for financial statements of foreign issuers to permit the use of certain IASC standards without reconciliation to U.S. GAAP are described in the SEC Concept Release “International Accounting Standards,” Release No. 33-7801 (February 16, 2000) (the “2000 Concept Release”).

<sup>44</sup> See the 1994 Adopting Release.

<sup>45</sup> Pursuant to Section 509(5) of the National Securities Markets Improvement Act of 1996, “Report on Promoting Global Preeminence of American Securities Markets” (October 1997).

<sup>46</sup> *Id.*

<sup>47</sup> See Concept Release No. 34-42430 “International Accounting Standards” (February 16, 2000).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System (July 25, 2003).

<sup>51</sup> *Id.*

<sup>52</sup> SEC Press Release No. 2006-17, Accounting Standards: SEC Chairman Cox and EU Commissioner McCreevy Affirm Commitment to Elimination of the Need for Reconciliation Requirements (Feb. 8, 2006).

<sup>53</sup> Release No. 33-8567 (April 12, 2005).

foreign registrants that were using it for the first time. The Commission recognized that this accommodation would reduce costs to foreign issuers and encourage their continued participation in the U.S. public capital market, which would benefit investors by increasing investment possibilities and furthering the efficient allocation of capital. Acknowledging the significant efforts expended by many foreign private issuers in their transition to IFRS, the Commission also extended compliance dates for management's report on internal control over financial reporting.<sup>54</sup>

#### *E. FASB and IASB Efforts to Develop a Work Plan To Achieve High Quality, Compatible Accounting Standards*

In October 2002, the FASB and the IASB announced the issuance of a memorandum of understanding, called the Norwalk Agreement, which marked a significant step towards formalizing their commitment to the convergence of U.S. and international accounting standards. The two bodies acknowledged their joint commitment to the development, "as soon as practicable," of high quality, compatible accounting standards that could be used for both domestic and cross-border financial reporting. At that time, the FASB and the IASB pledged to use their best efforts to make their existing financial reporting standards fully compatible as soon as is practicable and to co-ordinate their future work programs to ensure that once achieved, compatibility is maintained. In a 2006 Memorandum of Understanding, the FASB and the IASB indicated that a common set of high quality global standards remains the long-term strategic priority of both the FASB and the IASB and set out a work plan covering the next two years for convergence with specific long- and short-term projects.<sup>55</sup>

## **II. Acceptance of IFRS Financial Statements From Foreign Private Issuers Without a U.S. GAAP Reconciliation as a Step Towards a Single Set of Globally Accepted Accounting Standards**

The Commission has encouraged movement towards a single set of high-quality globally accepted accounting standards as an important goal both for the protection of investors and the

efficiency of capital markets.<sup>56</sup> The work towards acceptance of financial statements from foreign private issuers prepared in accordance with IFRS as published by the IASB without reconciliation to U.S. GAAP seeks to foster the continued movement to a single set of high-quality, globally accepted accounting standards. As a long-term objective, the use of a common set of high-quality standards for the preparation of financial statements will help investors to understand investment opportunities more clearly and with greater comparability than if they had to gain familiarity with a multiplicity of national accounting standards.

#### *A. A Robust Process for Convergence*

Continued progress towards convergence between U.S. GAAP and IFRS as published by the IASB is one consideration in the elimination of the U.S. GAAP reconciliation. As noted in this release, both the IASB and the FASB have established processes for selecting board members and developing standards to support the development by each board of high-quality accounting standards. Additionally, the FASB and the IASB have established a work plan that seeks the convergence of U.S. GAAP and IFRS. In so doing, both bodies have pledged to use their best efforts to make existing standards fully compatible as soon as practicable, and to coordinate their future work programs to ensure that compatibility, once achieved, is maintained.<sup>57</sup> This work is expected to continue for many years, and both bodies have expressed a commitment to it. We fully support continued progress on convergence towards the optimal standard, whether that standard may be based on U.S. GAAP, IFRS, or a jointly developed new approach.

As part of this commitment, both the IASB and the FASB are working together on several major projects, and have coordinated agendas so that major projects that one board takes up may also be taken up by the other board.<sup>58</sup> Also, both boards have been working on "short-term convergence," under which convergence will occur quickly in certain areas. This process allows for incremental improvements and the opportunity to eliminate differences without rethinking an issue entirely. If the IASB and the FASB conclude that neither of their models in a particular

area is sufficient, they consider a broader standard-setting project.

We do not believe that a particular degree of convergence should be a prerequisite for our acceptance of financial statements prepared under IFRS as published by the IASB without reconciliation. Our proposal to do so is based on, among other considerations, the robustness of a process that lends itself to continued progress of the IASB and the FASB towards convergence over time through, among other things, the joint development of future standards. As noted elsewhere, we recognize that there remain specific accounting subjects and other matters in IFRS that have not been fully addressed. There is a risk that constituents of the two boards may not continue to support convergence if IFRS financial statements are accepted by the Commission without reconciliation to U.S. GAAP. The future work of the IASB and the FASB may result in standards that are significantly different or that are not timely in their development. Nonetheless, we believe that if robust processes for the joint development of high quality standards by the IASB and the FASB are in place, we need not delay considering the acceptance of financial statements that comply with IFRS as published by the IASB without reconciliation to U.S. GAAP.

We will continue to consider the convergence process and the continued progress of the IASB and the FASB in their work plan. We also will consider whether interested parties will continue to have an incentive to support this convergence work should the Commission accept IFRS financial statements from foreign private issuers without reconciliation to U.S. GAAP.

#### *Questions*

1. Do investors, issuers and other commenters agree that IFRS are widely used and have been issued through a robust process by a stand-alone standard setter, resulting in high-quality accounting standards?

2. Should convergence between U.S. GAAP and IFRS as published by the IASB be a consideration in our acceptance in foreign private issuer filings of financial statements prepared in accordance with IFRS as published by the IASB without a U.S. GAAP reconciliation? If so, has such convergence been adequate? What are commenters' views on the processes of the IASB and the FASB for convergence? Are investors and other market participants comfortable with the convergence to date, and the ongoing process for convergence? How will this global process, and,

<sup>54</sup> Release No. 33-8545 (March 2, 2005).

<sup>55</sup> "A Roadmap for Convergence between IFRS and U.S. GAAP—2006–2008," Memorandum of Understanding between the FASB and the IASB, February 27, 2006 (the "2006 Memorandum of Understanding").

<sup>56</sup> See the 1988 Policy Statement.

<sup>57</sup> See the 2006 Memorandum of Understanding.

<sup>58</sup> The joint projects of the FASB and IASB constitute part of the IASB's broader goal to work with national standard setters to develop high quality solutions.

particularly, the work of the IASB and FASB, be impacted, if at all, if we accept financial statements prepared in accordance with IFRS as published by the IASB without a U.S. GAAP reconciliation? Should our amended rules contemplate that the IASB and the FASB may in the future publish substantially different final accounting standards, principles or approaches in certain areas?

### *B. Consistent and Faithful Application of IFRS*

The consistent and faithful application of IFRS as published by the IASB is an important consideration both to accepting financial statements prepared on that basis without a U.S. GAAP reconciliation and to demonstrating that IFRS as published by the IASB represent a single set of high-quality accounting standards, and not a multiplicity of standards under the same name. Over the years, the Commission staff has acquired a broad understanding of the standards comprising IFRS. For over ten years, a limited number of foreign private issuers have included in their filings under the Securities Act and the Exchange Act financial statements prepared in accordance with IAS or IFRS, and over the past year, many more companies have done so. These filings have been subject to the staff's review process, through which the staff has gained experience with the standards.

#### 1. Staff Review of IFRS Financial Statements Filed in 2006

Over the course of 2006, many foreign private issuers filed annual reports on Form 20-F that contained IFRS financial statements following their switch to IFRS for the 2005 financial year. The Commission staff has conducted reviews of those IFRS financial statements as part of its function of reviewing the periodic reports of publicly registered companies, consistent with its normal practice in reviewing filings from U.S. companies and from foreign issuers with financial statements other than those prepared in accordance with IFRS reconciled to U.S. GAAP.<sup>59</sup> These ongoing reviews are an important part of the Commission's effort to gain familiarity with IFRS. In conducting its reviews of IFRS financial statements, the staff made a number of comments regarding the application of IFRS, which have been brought to the attention of

<sup>59</sup> Section 408 of the Sarbanes-Oxley Act of 2002 mandates that the Commission shall review disclosures made by reporting companies on a regular and systematic basis.

issuers through the comment process.<sup>60</sup> Consistent with practice in the staff review program, many issuers indicated that they will address the matters that the staff has raised in future filings, most commonly through improved presentations or enhanced disclosures. The staff has been, and, following the issuance of this Proposing Release, will continue to consider whether issuers address those matters adequately in their Forms 20-F for the 2006 financial year which will help inform the Commission's view as to the quality of the application of IFRS in practice. The staff will continue its regular review function with regard to issuer and auditor practice in applying IFRS. Information obtained from this work will assist in our evaluation of the quality of the application of IFRS in practice.

At present, in filings with the Commission, IFRS (either as published by the IASB or a jurisdictional variation) is used principally by issuers from Europe and Australia. The number of companies from these areas that are registered under the Exchange Act has decreased over the last several years.<sup>61</sup> Thus, although our staff has reviewed the annual reports of first-time adopters of IFRS, its level of experience is not as great as with U.S. GAAP. In addition, the staff has not undertaken any review of financial statements prepared in accordance with IFRS by foreign companies that are not registered under the Exchange Act. Therefore, the staff's review of IFRS financial statements is limited to a small portion of the total universe of companies that use IFRS.

We recognize the first-year effort undertaken by preparers, auditors, and others in changing the basis of accounting to IFRS. Our staff will continue to identify the areas for improvement to IFRS filers in order to promote increased disclosure and clearer presentation in subsequent financial statements filed with the Commission.

#### 2. Market Participants' Views Regarding IFRS Application in Practice

Market participants from whom the Commission has heard at a March 2007 roundtable held by the Commission staff

have indicated their support for the use of IFRS by foreign issuers. Although we have heard from a limited group of representatives from the investor community, those participants, which included representatives of mutual funds, pension funds, rating agencies and other institutional investors, expressed their acceptance of IFRS financial statements for foreign private issuers.<sup>62</sup>

Based on information that we have gathered through the Roundtable and from other commenters, we believe that the auditor community has embraced IFRS as a workable set of standards that can generally be applied across industries and countries. The global auditing profession has been able to audit and report on many thousands of financial statements prepared using either IFRS as published by the IASB or a jurisdictional variation of IFRS.

Some foreign regulators have published reports relating to the implementation of IFRS in their country. For example, the U.K. Financial Reporting Review Panel and the Autorité des Marchés Financiers (the "AMF") of France have both published such reports making observations on IFRS as applied in their jurisdictions.<sup>63</sup>

Although a small number of companies have prepared IFRS financial statements for several years, it was not until the first half of 2006 that a large number of companies published audited annual IFRS financial statements for the first time. Also, as discussed below, audit firms have not been required to opine on IFRS as published by the IASB but have limited their opinions to jurisdictional variations of IFRS, consistent with a company's basis of presentation. In light of this wide-scale use of IFRS being less than two years old, the degree of experience, familiarity and understanding among companies, audit firms, investors, analysts, brokers, regulators, and others is continuing to develop. As experience with IFRS continues to grow, the Commission will monitor for any possible flaws in the standards and any issues associated

<sup>62</sup> Information regarding the Roundtable held on March 6, 2007, including a transcript, is available on the SEC Web site at <http://www.sec.gov/spotlight/ifrsroadmap.htm>.

<sup>63</sup> For the report of the U.K. Financial Reporting Review Panel, see "Preliminary Report: IFRS Implementation" available at <http://www.frc.org.uk/images/uploaded/documents/IFRS%20Implementation%20-%20preliminary.pdf>. For the report of the AMF, see "Recommendations on accounting information reported in financial statements for 2006," dated December 19, 2006, available at [http://www.amf-france.org/documents/general/7565\\_1.pdf](http://www.amf-france.org/documents/general/7565_1.pdf).

<sup>60</sup> Staff comment letters are available, 45 days or longer after completion of the staff review, through the SEC Web site at <http://www.sec.gov>. See SEC Press Release dated June 24, 2004.

<sup>61</sup> The number of registered companies from Europe and Australia has declined from over 400 at the end of 2002 to less than 250 at the end of 2006. Not all companies from these jurisdictions switched to IFRS for their filings in 2006. The number of foreign private issuers that filed annual reports on Form 20-F that contained IFRS financial statements during 2006 was less than 200.

with the faithful and consistent application of those standards.

### 3. Processes and Infrastructure To Promote Consistent and Faithful Application of IFRS

As discussed in Part I.B. above, the IASB has stated it is committed to developing a single set of high-quality, understandable and enforceable global accounting standards. In working towards this goal, both the IASB and IFRIC have demonstrated their commitment to resolving significant accounting issues as expeditiously as possible. However, developing high-quality standards and issuing high-quality interpretations of IFRS may take some time.

A question arises as to what should be done, if anything, in circumstances where neither the IASB nor IFRIC has addressed a particular accounting issue that causes significant difficulties in practice. A securities regulator or its staff, including the Commission, may find it necessary as an interim measure to state a view on such an accounting issue.<sup>64</sup> If it were to do so, the regulator subsequently could consider referring the accounting issue to the IASB or the IFRIC for resolution of the issue for all constituencies. Any view expressed by the regulator may be rescinded upon the IASB or the IFRIC establishing authoritative literature addressing the issue. The Commission and the staff would not expect to issue guidance that is inconsistent with IFRS as published by the IASB, the interpretations provided by IFRIC, or the definitions, recognition criteria and measurement concepts in the IASB's *Framework*.

Regulators have put in place infrastructure to identify and address the inconsistent and inaccurate application of IFRS globally. This infrastructure will foster the consistent and faithful application of IFRS around the world. The International Organization of Securities Commissions ("IOSCO"), in which the Commission participates, continues to support the implementation and consistent application of IFRS in the global financial markets. In January 2007, IOSCO's database for cataloguing IFRS interpretations and sharing decisions on application by regulators around the world became operational.<sup>65</sup>

Further, the Commission and the European Commission (the "EC") have agreed that regulators should endeavor

to avoid conflicting conclusions regarding the application and enforcement of IFRS. To this end, the Commission and CESR, which the EC has charged with evaluating the implementation of IFRS in the EU, published a work plan in August 2006.<sup>66</sup> That work plan covers information-sharing regarding IFRS implementation in regular meetings of the Commission staff and CESR-Fin, the group within CESR focused on financial reporting. The SEC-CESR work plan also contemplates the confidential exchange of issuer-specific information between CESR members and the Commission, with implementing protocols. In addition, CESR has established among its members a forum and a confidential database for participants to exchange views and share experiences with IFRS.<sup>67</sup>

Having noted the areas for improvement identified in the Commission staff's review to date of the application of IFRS in filings with the Commission, as well as the potential for other areas requiring standard-setting action, we believe that the approach proposed by the Commission and the information-sharing infrastructure which the international regulatory community is building should contribute to increasing consistency and faithfulness in the application of IFRS across jurisdictions.

### Questions

3. Is there sufficient comparability among companies using IFRS as published by the IASB to allow investors and others to use and understand the financial statements of foreign private issuers prepared in accordance with IFRS as published by the IASB without a U.S. GAAP reconciliation?

4. Do you agree that the information-sharing infrastructure being built in which the Commission participates through both multilateral and bilateral platforms will lead to an improved ability to identify and address inconsistent and inaccurate applications of IFRS? Why or why not?

5. What are commenters' views on the faithful application and consistent application of IFRS by foreign companies that are registered under the Exchange Act and those that are not so registered?

6. Should the timing of our acceptance of IFRS as published by the IASB without a U.S. GAAP reconciliation depend upon foreign issuers, audit firms and other constituencies having more experience with preparing IFRS financial statements?

7. Should the timing of any adoption of these proposed rules be affected by the number of foreign companies registered under the Exchange Act that use IFRS?

### C. The IASB as Standard Setter

Our consideration of acceptance of financial statements prepared using IFRS as published by the IASB is also premised on the IASB's sustainability, governance and continued operation in a stand-alone manner as a standard setter, which is a factor in the development of a set of high-quality globally accepted accounting standards. As described in more detail in Part I.B., oversight by the IASC Foundation Trustees through the governance reforms that have been implemented, as well as the due process mechanisms established for the consideration and adoption of new IFRSs, contribute to the IASB's role as a standard setter dedicated to developing accounting standards in the public interest. The IASB is free to choose and conduct projects necessary to promote convergence and develop high-quality standards. The IASB solicits views and seeks input from the public throughout the standard-setting process from selecting items for its agenda to developing and publishing an exposure draft and issuing a final standard. The IASB's meetings are open to public observers and summaries of comments received on discussion papers and exposure drafts are made public on the IASB Web site.<sup>68</sup> This transparent process enables the IASB to obtain relevant views from interested parties, and at the same time to conclude final standards based on its own deliberations, and without undue external pressure.

Since the late 1980s, the Commission staff has participated in the development of IAS and IFRS primarily through IOSCO, taking an active role in the standard-setting process undertaken by the IASC and the IASB. In this regard, the Commission staff has reviewed and contributed to comments on many exposure drafts of standards published by the IASC and the IASB.

<sup>64</sup> This is not new, as securities regulators have long been involved in resolving issues related to national accounting standards.

<sup>65</sup> See IOSCO's press release regarding its IFRS database at <http://www.iosco.org/news/pdf/IOSCONEW92.pdf>.

<sup>66</sup> The press release announcing the SEC-CESR work plan, and the text of the work plan, are available at <http://www.sec.gov/news/press/2006/2006-130.htm>.

<sup>67</sup> See CESR Press Release 07-163 (April 2007), available at <http://www.cesr-eu.org/index.php?page=groups&mac=0&id=13>.

<sup>68</sup> See the IASC Foundation Due Process Handbook for the IASB approved by the Trustees March 2006. For additional information, see <http://www.iasb.org/NR/rdonlyres/7D97095E-96FD-4F1F-B7F2-366527CB4FA7/0/DueProcessHandbook.pdf>.

Additionally, the Commission staff as an IOSCO representative serves as a non-voting observer at IFRIC meetings. The Commission also is an observer of the IASB Standards Advisory Council.<sup>69</sup>

#### Questions

8. The IASB *Framework* establishes channels for the communication of regulators' and others' views in the IFRS standard-setting and interpretive processes. How should the Commission and its staff further support the IFRS standard-setting and interpretive processes?

9. How should the Commission consider the implication of its role with regard to the IASB, which is different and less direct than our oversight role with the FASB?

#### D. Summary

Fostering the use of a single set of high-quality, globally accepted accounting principles, would, in our view, serve to protect investors and promote capital formation by enhancing comparability across companies and increasing access to foreign issuer investment opportunities for investors in the U.S. public capital markets while reducing regulatory burdens and costs for issuers. As noted earlier, the Commission has for over 20 years sought to promote the development of a global, high-quality set of accounting principles. The acceptance of financial statements prepared in accordance with IFRS as published by the IASB without a U.S. GAAP reconciliation will further promote this goal. By such acceptance, the Commission will demonstrate its commitment to both investors and to the global capital markets.

Achieving a single set of globally accepted accounting standards will require the contributions of many parties, including standard setters, regulators, auditors, issuers, and investors themselves. The IASB and the FASB have established procedures for their ongoing joint efforts to achieve convergence. The infrastructure is being developed to lead to the consistent and faithful application of IFRS by issuers. We will continue to evaluate the progress towards convergence, the application of IFRS, and the work of the IASB.

We believe it is an appropriate time to propose and solicit comment on acceptance, in the filings of foreign private issuers, of financial statements prepared in accordance with IFRS as published by the IASB without reconciliation to U.S. GAAP.

#### Questions

10. The Commission has gathered certain information from representatives of issuers, investors, underwriters, exchanges and other market participants at its public roundtable on IFRS. We are interested in receiving information from a broader audience. Is the development of a single set of high-quality globally accepted standards important to investors? To what degree are investors and other market participants able to understand and use financial statements prepared in accordance with IFRS as published by the IASB without a U.S. GAAP reconciliation? We also encourage commenters to discuss ways in which the Commission may be able to assist investors and other market participants in improving their ability to understand and use financial statements prepared in accordance with IFRS. How familiar are investors with financial statements prepared in accordance with IFRS as published by the IASB? Will the ability of an investor to understand and use financial statements that comply with IFRS as published by the IASB vary with the size and nature of the investor, the value of the investment, the market capitalization of the issuer, the industry to which the issuer in question belongs, the trading volume of its securities, the foreign markets on which those securities are traded and the regulation to which they may be subjected, or any other factors? If so, should any removal of the reconciliation requirement be sensitive to one or more of these matters, and, if so, how?

### III. Discussion of the Proposed Amendments To Allow the Use of IFRS Financial Statements Without Reconciliation to U.S. GAAP

#### A. Eligibility Requirements

The proposed amendments to allow a foreign private issuer to file financial statements without reconciliation to U.S. GAAP as currently required under Item 17 or 18 of Form 20-F, as appropriate, would apply only to a foreign private issuer that files its financial statements in full compliance with the English language version of IFRS as published by the IASB.<sup>70</sup> The proposed amendments will apply to an eligible issuer regardless of whether it complies with IFRS as published by the IASB voluntarily or in accordance with any requirements of its home country regulator or an exchange on which its securities are listed.

Under the proposals, in order to be eligible to omit the reconciliation, an issuer would be required, in a prominent footnote to its financial statements, to state unreservedly and explicitly that its financial statements are in compliance with IFRS as published by the IASB.<sup>71</sup> In addition, in its report, the independent auditor must opine similarly on whether those financial statements comply with IFRS as published by the IASB.<sup>72</sup>

The proposed amendments would not be available to an issuer that files financial statements that include deviations from IFRS as published by the IASB. A foreign private issuer that does not state unreservedly and explicitly that its financial statements are in compliance with IFRS as published by the IASB, or for which the auditor's report contains any qualification relating to the application of IFRS as published by the IASB, would continue to be required to provide the U.S. GAAP reconciliation under current rules. Similarly, an issuer that files its financial statements using a set of generally accepted accounting principles of another jurisdiction also would continue to reconcile to U.S. GAAP as under current rules when preparing its financial statements for inclusion in a registration statement or annual report.<sup>73</sup>

The proposed amendments will not apply to issuers using a jurisdictional or other variation of IFRS. It would be acceptable for an issuer to state compliance with both IFRS as published by the IASB and a jurisdictional variation of IFRS, so long as the statement relating to the former was unreserved and explicit.

In their filings with the SEC, the majority of foreign private issuers that have referenced IFRS have stated that their financial statements are in compliance with IFRS as published by the IASB (in addition to stating compliance with a jurisdictional variation of IFRS). In contrast, few audit reports contained an opinion on IFRS as

<sup>71</sup> This statement is consistent with the language requirements of IAS 1 "Presentation of Financial Statements," paragraph 14.

<sup>72</sup> This language could be provided in addition to any representation about compliance with standards required by the home country.

<sup>73</sup> An issuer that is eligible to rely on the proposed rules, if adopted, would be permitted to continue to reconcile its IFRS financial statements to U.S. GAAP. An issuer that elects to do so would follow all current requirements with regard to the preparation of that U.S. GAAP reconciliation contained in Item 17 or 18 of Form 20-F, as applicable.

<sup>69</sup> See <http://www.iasb.org/About+Us/About+SAC/SAC+Members.htm>.

<sup>70</sup> These proposed amendments would not encompass use, if finalized, of the IASB's proposed IFRS for Small and Medium-sized Entities.

published by the IASB (in addition to opining on a jurisdictional variation of IFRS).

We believe that the benefits of moving towards a single set of globally accepted standards as a long-term objective, including increased transparency and comparability of financial statements, are attainable only if IFRS represents a single set of high-quality accounting standards and not a multiplicity of divergent standards using the same name. Thus, we believe that it is appropriate to condition our acceptance of IFRS without reconciliation on the financial statements being in full compliance with IFRS as published by the IASB.

Our acceptance of a set of financial statements without reconciliation to U.S. GAAP would mark a significant change in our requirements. We are proposing that the amendments apply if an issuer follows the approved English language version of the standards to assist U.S. investors to understand IFRS, to assist in achieving comparability and consistency across jurisdictions, and, as a practical matter, because the Commission's work is conducted in English.

#### Questions

11. Without a reconciliation, will investors be able to understand and use financial statements prepared using IFRS as published by the IASB in their evaluation of the financial condition and performance of a foreign private issuer? How useful is the reconciliation to U.S. GAAP from IFRS as published by the IASB as a basis of comparison between companies using different bases of accounting? Is there an alternative way to elicit important information without a reconciliation?

12. In addition to reconciling certain specific financial statement line items, issuers presenting an Item 18 reconciliation provide additional information in accordance with U.S. GAAP. What uses do investors and other market participants make of these additional disclosures?

13. Should we put any limitations on the eligibility of a foreign private issuer that uses IFRS as published by the IASB to file financial statements without a U.S. GAAP reconciliation? If so, what type of limitations? For example, should the option of allowing IFRS financial statements without reconciliation be phased in? If so, what should be the criteria for the phase-in? Should only foreign private issuers that are well-known seasoned issuers, or large

accelerated filers, or accelerated filers,<sup>74</sup> and that file IFRS financial statements be permitted to omit the U.S. GAAP reconciliation?

14. At the March 2007 Roundtable on IFRS, some investor representatives commented that IFRS financial statements would be more useful if issuers filed their Form 20-F annual reports earlier than the existing six-month deadline. We are considering shortening the deadline for annual reports on Form 20-F. Should the filing deadline for annual reports on Form 20-F be accelerated to five, four or three months, or another date, after the end of the financial year? Should the deadline for Form 20-F be the same as the deadline for an issuer's annual report in its home market? Should we adopt the same deadlines as for annual reports on Form 10-K? Why or why not? Would the appropriateness of a shorter deadline for a Form 20-F annual report depend on whether U.S. GAAP information is included? If a shorter deadline is appropriate for foreign private issuers that would not provide a U.S. GAAP reconciliation under the proposed amendments, should other foreign private issuers also have a shorter deadline? Should it depend on the public float of the issuer?

15. Although reconciliation to U.S. GAAP of interim periods is not ordinarily required under the Exchange Act, foreign private issuers that conduct continuous offerings on a shelf registration statement under the Securities Act may face black-out periods that prevent them from accessing the U.S. public capital market at various times during the year if their interim financial information is not reconciled. Even if commenters believe we should continue the U.S. GAAP reconciliation requirement for annual reports that include IFRS financial statements, to address this issue should we at least eliminate the need for the U.S. GAAP reconciliation requirement with respect to required interim period financial statements prepared using IFRS as published by the IASB for use in continuous offerings?<sup>75</sup> Should we extend this approach to all required interim financial statements?

16. Is there any reason why an issuer should not be able to unreservedly and explicitly state its compliance with IFRS as published by the IASB? Is there any

<sup>74</sup> The terms "accelerated filer" and "large accelerated filer" are defined in Rule 12b-2 under the Exchange Act [17 CFR 240.12b-2]. "Well-known seasoned issuer" is defined in Rule 405 under the Securities Act [17 CFR 230.405].

<sup>75</sup> See Item 8.A.4 of Form 20-F, which requires interim period financial statements in certain circumstances.

reason why an audit firm should not be able to unreservedly and explicitly opine that the financial statements comply with IFRS as published by the IASB? What factors may have resulted in issuers and, in particular, auditors refraining from expressing compliance with IFRS as published by the IASB?

17. If the proposed amendments are adopted, should eligible issuers be able to file financial statements prepared using IFRS as published by the IASB without a U.S. GAAP reconciliation for their first filing containing audited annual financial statements? If the amendments are adopted, what factors should we consider in deciding when issuers can use them? For example, should we consider factors such as the issuer's public float (either in the United States or worldwide), whether the issuer has issued only public debt, or the nature of the filing to which the amendments would be applied? Will investors be prepared to analyze and interpret IFRS financial statements without the reconciliation by 2009? If not, what further steps, including investor education, may be necessary?

#### B. U.S. GAAP Reconciliation

##### 1. General

The basic requirements for financial statements filed by foreign private issuers are described in Items 17 and 18 of Form 20-F. Under Item 17(c), a foreign private issuer currently has two options: Either to prepare its financial statements and schedules according to U.S. GAAP; or, alternatively, to prepare them under the generally accepted accounting principles of another jurisdiction with a reconciliation of specific line items to U.S. GAAP as enumerated under Item 17(c)(2). This reconciliation includes a narrative discussion of reconciling differences,<sup>76</sup> a reconciliation of net income for each year and any interim periods presented,<sup>77</sup> a reconciliation of major balance sheet captions for each year and any interim periods,<sup>78</sup> and a reconciliation of cash flows for each year and any interim periods.<sup>79</sup> We are proposing to revise Item 17(c)(2) so that reconciliation will no longer be required from issuers using IFRS as published by the IASB.<sup>80</sup>

<sup>76</sup> See Item 17(c)(1) of Form 20-F.

<sup>77</sup> See Item 17(c)(2)(i) of Form 20-F.

<sup>78</sup> See Item 17(c)(2)(ii) of Form 20-F.

<sup>79</sup> See Item 17(c)(2)(iii) of Form 20-F, containing the exception relating to IAS 7 "Cash Flow Statements."

<sup>80</sup> We are not proposing to amend Item 17(b), which we do not read as imposing U.S. GAAP requirements on financial statements prepared using IFRS as published by the IASB.

As discussed in Section III.D., portions of Regulation S-X that do not relate to the form and content of an issuer's financial statements, including, for example, auditor qualification and report requirements and financial statement requirements for entities other than the issuer, would still continue to apply to foreign private issuers that prepare their financial statements using IFRS as published by the IASB without a U.S. GAAP reconciliation.

Several sub-paragraphs of Item 17(c)(2) relate to reconciling disclosure required of issuers that rely on certain IAS. The partial accommodations contained in these sub-paragraphs were available to issuers using home country GAAP or IFRS. They are rarely relied upon in practice and appear no longer needed by issuers that use IFRS as published by the IASB.<sup>81</sup> We are therefore proposing to eliminate these sub-paragraphs for purposes of all foreign private issuer filings. Specifically, we are proposing to delete Items 17(c)(2)(iv)(B) and (C), which relate to reconciling disclosures to be provided by issuers that rely on IAS 21 "The Effects of Changes in Foreign Exchange Rates." We also are proposing to delete Item 17(c)(2)(viii) relating to reconciling disclosures to be provided by issuers using IAS 22 "Business Combinations," with respect to the period of amortization of goodwill and negative goodwill, as IAS 22 has been superseded by IFRS 3 "Business Combinations" and may no longer be used by an issuer preparing financial statements under IFRS. For this reason, we also are proposing to eliminate the related Instruction 6 to Item 17. However, we are retaining the IAS 7 "Cash Flow Statements" accommodation contained in Item 17(c)(2)(iii).

Item 17(c)(2)(vii) relates to disclosures that issuers using proportionate consolidation may omit from their U.S. GAAP reconciliation. We are not proposing any revision to this paragraph, which continues to apply to issuers using home country GAAP (if permitted by that GAAP). An issuer using IFRS as published by the IASB would satisfy the requirements of this paragraph by providing IAS 31 "Interests in Joint Ventures" disclosures.

<sup>81</sup> As noted above, the IASB has incorporated IAS developed by the IASB into IFRS. In addition, the sub-paragraphs were added at a time when IFRS was undergoing substantial development and it was appropriate to permit compliance with selected international standards. Such partial compliance with IFRS is not consistent with these proposals, which are based on full compliance with IFRS as published by the IASB.

A U.S. GAAP reconciliation under Item 18 builds on the information content of Item 17. In addition to providing reconciling information for the line items specified in Item 17(c), Item 18(b) requires that an issuer also provide in its financial statements all information required by U.S. GAAP and Regulation S-X.<sup>82</sup> The proposed elimination of the reconciliation requirement for IFRS financial statements also applies in situations in which the issuer currently would be required to prepare a reconciliation under Item 18. Accordingly, we propose revising Item 18(b) to indicate that disclosures required by U.S. GAAP and Regulation S-X would not be required if a registrant files its financial statements using IFRS as published by the IASB.

#### Questions

18. Do we need to make any other changes to Items 17 or 18 or elsewhere to implement fully the proposed elimination of the reconciliation requirement for issuers using IFRS as published by the IASB?

19. Is any revision necessary to clarify that the provisions relating to issuers that use proportionate consolidation contained in Item 17(c)(2)(vii) would not apply to IFRS financial statements that are not reconciled to U.S. GAAP under the proposed amendments? If so, what changes would be appropriate?

20. Is the IAS 21 accommodation still useful for non-IFRS issuers? Is it clear that an issuer using IFRS would not need to provide disclosure under Item 17(c)(2)(iv)? If not, what changes would be necessary to make it clear?

#### 2. Interim Period Financial Statements

Under the proposal, foreign private issuers that are eligible to omit the U.S. GAAP reconciliation in their audited annual financial statements would likewise be able to omit a reconciliation from their unaudited interim period financial statements. To the extent a foreign private issuer is required to provide interim period financial statements, the financial statements would have to be prepared in accordance with IFRS as published by the IASB.<sup>83</sup>

<sup>82</sup> U.S. GAAP and Regulation S-X information need not be provided for a period in which net income has not been reconciled to U.S. GAAP, or for financial statements for an entity or subsidiary covered by Rules 3-05 or 3-09 of Regulation S-X.

<sup>83</sup> The discussion in this section relates solely to registration statements and prospectuses under the Securities Act and initial registration statements under the Exchange Act. There are currently no requirements under our rules relating to the form or content requirements of a foreign private issuer's

#### Questions

21. Would issuers have any difficulty in preparing interim period financial statements that are in accordance with IFRS as published by the IASB?

22. Do foreign private issuers that have changed to IFRS generally prepare interim financial statements that are in accordance with IFRS, and do they make express statements to that effect?

a. Financial Information in Securities Act Registration Statements and Prospectuses and Initial Exchange Act Registration Statements Used Less Than Nine Months After the Financial Year End

In registration statements and prospectuses under the Securities Act and initial registration statements under the Exchange Act, if the document is dated less than nine months after the end of the last audited financial year, foreign private issuers are not required to include interim period financial information. However, if a foreign private issuer has published interim period financial information, Item 8.A.5 of Form 20-F requires these registration statements and prospectuses to include that information.<sup>84</sup> The intent of this requirement is to make information available in U.S. offering documents as current as information that is available elsewhere.

The instructions to Item 8.A.5 require that an issuer providing interim financial information describe any material variations between the accounting principles, practices and methods used and U.S. GAAP, and quantify any material variations that are not already quantified in the financial statements. We are adding an instruction to Item 8.A.5 of Form 20-F with regard to interim period financial information that is made public by a foreign private issuer to clarify that interim period information does not need to be reconciled to U.S. GAAP when the interim information is prepared in accordance with IFRS as published by the IASB.

reports on Form 6-K under the Exchange Act. See Form 6-K [17 CFR 249.306].

<sup>84</sup> Under Item 512(a)(4) of Regulation S-K [17 CFR 22.512(a)(4)], a foreign private issuer that registers securities on a shelf registration statement basis is required to undertake to include any financial statements required by Item 8.A of Form 20-F at the start of any delayed offering or throughout a continuous offering.

b. Financial Statements in Securities Act Registration Statements and Prospectuses and Initial Exchange Act Registration Statements Used More Than Nine Months after the Financial Year End

In registration statements and prospectuses under the Securities Act and initial registration statements under the Exchange 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 period financial statements covering at least the first six months of the financial year and the comparative period for the prior financial year.<sup>85</sup> These unaudited interim period financial statements must be prepared using the same basis of accounting as the audited financial statements contained or incorporated by reference in the document and include or incorporate by reference a reconciliation to U.S. GAAP.<sup>86</sup> The instruction that we are proposing to add to Item 8.A.5 would clarify that an issuer does not need to provide that reconciliation if it prepares its interim financial statements using IFRS as published by the IASB.

Under the proposed rules, although an eligible issuer may provide IFRS financial statements for an interim period without reconciliation, that issuer would continue to be required to comply with Article 10 of Regulation S-X with regard to financial statements for interim periods, when that information is required under Item 8.A.5 of Form 20-F. There are several differences between IAS 34 "Interim Financial Reporting," which prescribes the minimum content of an interim financial report and the principles for recognition and measurement in financial statements presented for an interim period, and Article 10 of Regulation S-X. First, because IAS 34 permits more condensed balance sheet, income statement and cash flow information detail than does Article 10, financial statements prepared under IAS 34 can be limited to major headings and subtotals. Second, unlike IAS 34, Article 10 contains an explicit statement that interim disclosures must be sufficient to make interim period information presented not misleading. Third, Article 10 requires contingent liability disclosures even if no change has occurred since the year end, whereas IAS 34 requires disclosure of any changes in contingent liabilities since the year end. Fourth, Article 10 requires

footnote disclosure of summarized data for equity investees that is not required under IAS 34.

### Questions

23. How significant are the differences between IAS 34 and Article 10? Is the information required by IAS 34 adequate for investors? If not, what would be the best approach to bridge any discrepancy between IAS 34 and Article 10? Should issuers be required to comply with Article 10 if their interim period financial statements comply with IAS 34? Should we consider any revision to existing rules as they apply to an issuer that would not be required to provide a U.S. GAAP reconciliation under the proposed rules?

### 3. IFRS Treatment of Certain Areas

As noted, IFRS as published by the IASB constitute a comprehensive basis of accounting that may be used by foreign private issuers in the preparation of their financial statements that are contained in Commission filings. There are certain limited areas in which the IASB has yet to develop standards or in which IFRS permits disparate options. These areas are not new, and existed at the time the IASB and the FASB were developing their 2006–2008 work plan.<sup>87</sup> However, based on our staff's review of IFRS filings with the Commission to date, we have a number of observations regarding the application in practice in these areas, in which we also ask for public feedback.

#### a. Accounting for Insurance Contracts and Extractive Activities

There are two industry areas that have been identified by the IASB as lacking standards: Insurance contracts and extractive activities.

IFRS 4 "Insurance Contracts" provides limited guidance on the accounting to be followed by companies that issue insurance contracts or hold reinsurance contracts. Except in some areas, IFRS 4 permits a company to continue to apply its pre-existing home country accounting principles for insurance contracts. Insurance company accounting and practices vary greatly throughout the world in areas such as revenue recognition, claim expense recognition, policy benefit recognition, and policy acquisition costs, resulting in substantial variation in reporting practices.

The IASB has noted that it is in the process of developing a standard for insurance contracts because "there was

no IFRS on insurance contracts, and insurance contracts were excluded from the scope of existing IFRSs that would have been relevant (e.g., IFRSs on provisions, financial instruments, intangible assets); and accounting practices for insurance contracts were diverse, and also often differed from practices in other sectors."<sup>88</sup>

IFRS 6 "Exploration for and Evaluation of Mineral Resources" provides limited guidance with respect to the accounting for exploration and evaluation activities undertaken by oil and gas and mining companies. Except in certain areas, companies are permitted to look to other sources for guidance. Items not addressed by IFRS 6 include, for example, thresholds for capitalizing or expensing a variety of costs, and the manner in which capitalized costs are subsequently depreciated or amortized.

The IASB adopted IFRS 6 in December 2004 as a first step in light of the need to develop a standard in time for it to be applied by companies that were adopting IFRS in 2005.<sup>89</sup> The IASB acknowledged that its complete consultation in this area could not be completed in that time frame, and that developing a global consensus on a rigorous and comprehensive approach would require extensive consultation.

On both of these projects, the IASB continues to make progress towards developing standards under IFRS. Nonetheless, we do not believe that the lack of comprehensive standards in IFRS in these areas alone should delay our consideration of fully accepting IFRS as published by the IASB without a U.S. GAAP reconciliation.

#### b. Accounting Treatment for Common Control Mergers, Recapitalization Transactions, Reorganizations, Acquisitions of Minority Shares Not Resulting in a Change of Control, and Similar Transactions

There are certain areas, for example, accounting treatment for common control mergers, recapitalizations, reorganizations, acquisitions of minority interests, and similar transactions, for which IFRS does not have a specific standard or interpretation. When a standard or interpretation of IFRS does not address a matter, IAS 8 "Accounting Policies, Changes in Accounting Estimates and Errors," provides guidance, including looking to the most recent pronouncements of other standard-setting bodies. With a lack of

<sup>85</sup> See Item 8.A.5 of Form 20-F and Item 512(a)(4) of Regulation S-K.

<sup>86</sup> See Items 17(c) and 18 of Form 20-F.

<sup>87</sup> See "SEC Welcomes Plans of U.S., International Standard Setters for Convergence of Accounting Systems," SEC Press Release dated February 27, 2007.

<sup>88</sup> Excerpt from the IASB Web site at <http://www.iasb.org/Current+Projects/IASB+Projects/Insurance+Contracts/Insurance+Contracts.htm>.

<sup>89</sup> See IASB Press Release dated December 9, 2004.

specific guidance, companies can look to various (and differing) recognition, measurement and presentation practices, including their home country accounting principles, in establishing their accounting policies.<sup>90</sup> IFRS, however, does not require the disclosure of the impact if an alternative accounting treatment had been used.

The IASB and the FASB have a joint project underway entitled "Business Combinations: Applying the Acquisition Method."<sup>91</sup> This project is the second phase of an overall project on business combinations. In this phase of the business combinations project, the IASB and the FASB are reconsidering their existing guidance for applying the purchase method of accounting for business combinations (now called the acquisition method). This project will converge numerous areas of application and reduce alternative treatments but will not address all of the transactions discussed above. Final standards by the IASB and the FASB are expected to be issued in the third quarter of 2007.

#### c. Income Statements and Per Share Amounts

IFRS does not provide specific conventions as to the format or content of the income statement.<sup>92</sup> In addition, IFRS permits a company to present on the face of its income statement or elsewhere in its financial statements any measure on a per share basis so long as the figure is reconciled to a line item on the income statement.<sup>93</sup> Companies preparing IFRS financial statements are thus permitted to use numerous different income statement formats and to characterize subtotals and amounts using multiple and varied caption headings. In addition, companies using IFRS are permitted to present on the income statement and in footnotes measures that would be otherwise considered non-GAAP measures that would not be permitted under our rules.<sup>94</sup>

The IASB and FASB have a joint project underway entitled "Financial Statement Presentation" to establish a

<sup>90</sup> IAS 1 requires an entity to disclose the measurement basis used in preparing financial statements and the other accounting policies used that are relevant to an understanding of the financial statements.

<sup>91</sup> For more information on this joint project, see [http://www.fasb.org/project/bc\\_acquisition\\_method.shtml](http://www.fasb.org/project/bc_acquisition_method.shtml) and <http://www.iasb.org/Current+Projects/IASB+Projects/Business+Combinations/Business+Combinations+II.htm>.

<sup>92</sup> IAS 1 provides guidance regarding minimum required line items and provides examples to which issuers may refer.

<sup>93</sup> See IAS 33 "Earnings per Share."

<sup>94</sup> See Item 10(e) of Regulation S-K [17 C.F.R. 229.20(E)].

common, high-quality standard for the presentation of information in the financial statements, including the classification and display of line items and the aggregation of line items into subtotals and totals. A discussion paper which addresses the more fundamental issues related to the presentation of information on the face of the financial statements is expected to be published in the fourth quarter of 2007.

#### Questions

24. Are there accounting subject matter areas that should be addressed by the IASB before we should accept IFRS financial statements without a U.S. GAAP reconciliation?

25. Can investors understand and use financial statements prepared using IFRS as published by the IASB in those specific areas or other areas that IFRS does not address? If IFRS do not require comparability between companies in these areas, how should we address those areas, if at all? Would it be appropriate for the Commission to require other disclosures in these areas not inconsistent with IFRS published by the IASB?

#### C. Accounting and Disclosure Issues

##### 1. Selected Financial Data

Under Item 3.A of Form 20-F, issuers must provide five years of selected financial data. As part of this proposal to accept financial statements prepared using IFRS as published by the IASB without reconciliation to U.S. GAAP, we are proposing to revise the instruction to Item 3.A to clarify that selected financial data based on the U.S. GAAP reconciliation is required only if the issuer prepares its primary financial statements using a basis of accounting other than IFRS as published by the IASB.

#### Question

26. Should issuers that are permitted to omit a U.S. GAAP reconciliation for their current financial year or current interim period be required to disclose in their selected financial data previously published information based on the U.S. GAAP reconciliation with respect to previous financial years or interim periods?

##### 2. Other Form 20-F Disclosure

###### a. Reference to U.S. GAAP Pronouncements in Form 20-F

Several non-financial statement disclosure items of Form 20-F make reference to specific U.S. GAAP pronouncements, including Financial Accounting Standards ("FASs") and interpretations of the FASB. For

example, issuers are required to provide disclosure of off-balance sheet arrangements under Item 5 ("Operating and Financial Review and Prospects"), which expressly refers to FASB Interpretations No. 45 "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," and No. 46 "Consolidation of Variable Interest Entities."<sup>95</sup> Also, Item 11 of Form 20-F ("Quantitative and Qualitative Disclosures About Market Risk") sets out the requirements for certain summary disclosures about market risk which refer to FAS 52 "Foreign Currency Translation," FAS 5 "Accounting for Contingencies," as well as to other FASs.

An IFRS filer that would not be required to provide a U.S. GAAP reconciliation under the proposed amendments would continue to be required to respond to those items of Form 20-F that make reference to FASs, FASB interpretations, or other specific pronouncements of U.S. GAAP for definitional purposes. In providing that disclosure, however, the issuer should apply the corresponding IFRS notion of the principles embodied in the referenced U.S. GAAP pronouncement.

In order to convey this view, we are proposing to add an instruction to Item 5 and Item 11 indicating that issuers preparing their financial statements in accordance with IFRS as published by the IASB should, in responding to paragraphs of those items that refer to specific pronouncements of U.S. GAAP, look to the appropriate corresponding standards and interpretations of IFRS that contain similar definitions. If information called for by the non-financial statement requirements of Form 20-F duplicates information that is contained in the IFRS financial statements, an issuer need not repeat such information but may cross-reference to the appropriate footnote in the audited financial statements.

###### b. Disclosure From Oil and Gas Companies Under FAS 69

Pursuant to either earlier Commission rules or more recent FASB standards, public companies with significant oil and gas activities have been required to disclose reserve and other information relating to those activities. In November 1982, the FASB adopted FAS 69 "Disclosures about Oil and Gas Producing Activities," which establishes a comprehensive set of disclosures for oil and gas producing activities. Under this standard, public companies with such significant

<sup>95</sup> See Item 5.E of Form 20-F.

activities are required to disclose unaudited supplementary information relating to proved oil and gas reserves, and capitalized costs relating to oil and gas producing activities. As a result of the FASB's adoption of FAS 69, the Commission at first suspended the effectiveness of a rule under Regulation S-X calling for substantially similar information,<sup>96</sup> and then deleted the rule altogether.<sup>97</sup> The Commission noted that, in light of the FASB standard, its own earlier rule requiring this disclosure was no longer necessary.

We are proposing to amend Item 18 of Form 20-F to expressly require that any company that provides disclosure under FAS 69 continue to provide the information called for under that statement even though the company is preparing financial statements in accordance with IFRS as published by the IASB without a reconciliation to U.S. GAAP. The nature of the information provided under FAS 69 is not in the nature of a U.S. GAAP reconciliation but rather is supplementary information included as an unaudited footnote to the audited financial statements. We believe that FAS 69 requires the disclosure of important information that is useful to investors and that would not otherwise be required to be disclosed under IFRS.

### c. Market Risk Disclosure and the Safe Harbor Provisions

Pursuant to Item 11 of Form 20-F, foreign private issuers are required to provide disclosure of qualitative and quantitative information about market risk inherent in derivative financial instruments, other financial instruments, and derivative commodity instruments. This information, which is not included as part of the financial statements in a filing, is expressly subject to the safe harbor provided under Section 27A of the Securities Act<sup>98</sup> and Section 21E of the Exchange Act<sup>99</sup> to the extent it constitutes "forward looking statements."<sup>100</sup>

IFRS 7 "Financial Instruments: Disclosure" as recently amended, requires market risk disclosure that is similar to that required under Item

11.<sup>101</sup> In this respect, the sensitivity analysis provided under IFRS will be based on forward-looking information. This information will appear in the footnotes to audited IFRS financial statements.

Section 27A of the Securities Act and Section 21E of the Exchange Act expressly exclude from the safe harbor any information "included in a financial statement prepared in accordance with generally accepted accounting principles."<sup>102</sup> The safe harbor may not be available to the forward looking information included in IFRS financial statements. When we adopted the market risk disclosure requirements, the Commission considered whether the market risk disclosure could be included in a registrant's financial statements and, if so, whether the safe harbor should apply to that disclosure. The Commission decided to require that the information required under Item 11 be disclosed outside the financial statements.<sup>103</sup>

The apparent non-availability of the safe harbor provisions to information included in financial statements, including information called for by IFRS 7, is separate and distinct from our proposed acceptance of IFRS as published by the IASB without a U.S. GAAP reconciliation. Regardless of whether we eliminate the U.S. GAAP reconciliation for IFRS filers, the financial statements filed by a registrant must comply fully with a comprehensive body of accounting principles, which includes IFRS 7 for those companies that use IFRS.

### Questions

27. With regard to references to U.S. GAAP in non-financial statement disclosure requirements, should we amend the references to U.S. GAAP pronouncements that are made in Form 20-F to also reference appropriate IFRS guidance, and, if so, what should the references refer to? Would issuers be able to apply the proposed broad approach to U.S. GAAP pronouncements and would this approach elicit appropriate information for investors? Should we retain the U.S. GAAP references for definitional purposes?

28. Should foreign private issuers that prepare financial statements in accordance with IFRS as published by the IASB be required to continue to

comply with the disclosure requirements of FAS 69? What alternatives may be available to elicit the same or substantially the same disclosure?

29. Should the Commission address the implications of forward-looking disclosure contained in a footnote to the financial statements in accordance with IFRS 7? For example, would some kind of safe harbor provision or other relief or statement be appropriate?

### 3. Other Considerations Relating to IFRS and U.S. GAAP Guidance

The Commission recognizes that an issuer that would not be required to reconcile its IFRS financial statements to U.S. GAAP may nevertheless pursuant to the application of IAS 8 look for guidance from Commission sources other than rules and regulations, including Accounting Series Releases ("ASRs") and Financial Reporting Releases ("FRRs").<sup>104</sup> In addition, such an issuer may look to the guidance that the Commission staff provides in Staff Accounting Bulletins ("SABs"), and, if the company is engaged in certain lines of business, various Industry Guides.<sup>105</sup> No changes to such guidance are planned. We believe that a company that would no longer be required to reconcile its IFRS financial statements to U.S. GAAP under the proposed amendments, and its auditor, would continue to be required to follow any Commission guidance that relates to auditing issues.<sup>106</sup> An issuer using IFRS as published by the IASB, although not required to follow U.S. GAAP guidance,

<sup>104</sup> FRRs contain the Commission's views and interpretations relating to financial reporting. Prior to 1982, the Commission published its views and interpretations relating to financial reporting in Accounting Series Releases (ASRs). In FRR 1, Adoption of the Financial Reporting Release Series and Codification of Currently Relevant ASRs, the Commission codified certain previously issued ASRs on financial reporting matters.

<sup>105</sup> Staff Accounting Bulletins reflect the Commission staff's views regarding accounting-related disclosure practices. They represent interpretations and policies followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the federal securities laws. Industry 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. SABs and Industry Guides are not rules, regulations, or statements of the Commission. They have not been issued pursuant to notice and comment rulemaking, and the Commission has neither approved nor disapproved these interpretations.

<sup>106</sup> In addition, foreign private issuers are required to have audits conducted in accordance with the Standards of the PCAOB (U.S.)/U.S. Generally Accepted Audit Standards regardless of the comprehensive basis of accounting they use to prepare their financial statements.

<sup>96</sup> The requirement was found in former Rule 4-10(k) of Regulation S-X. The application of this rule was suspended in Release 33-6444 (December 15, 1982).

<sup>97</sup> Release 33-6818 (February 17, 1989) proposed the deletion which was adopted in Release 33-6959 (September 17, 1992).

<sup>98</sup> 15 U.S.C. 77z-2.

<sup>99</sup> 15 U.S.C. 78u-5.

<sup>100</sup> See Release 33-7386 (Jan. 31, 1997) for the release adopting the derivatives disclosure requirement and the related express safe harbor.

<sup>101</sup> IFRS 7 will require this information beginning with the 2007 financial year.

<sup>102</sup> See Securities Act Section 27A(b)(2)(A) and Exchange Act Section 21E(b)(2)(A).

<sup>103</sup> U.S. companies are subject to the same disclosure requirement. See Item 305 of Regulation S-K [17 CFR 229.3-05].

may find reference to FRRs, ASRs, SABs, and Industry Guides and other forms of U.S. GAAP guidance useful in the application of IAS 8.<sup>107</sup>

#### Questions

30. Are there issues on which further guidance for IFRS users that do not reconcile to U.S. GAAP would be necessary and appropriate? Should issuers and auditors consider guidance related to materiality and quantification of financial misstatements?

#### 4. First Time Adopters of IFRS

In 2005 the Commission adopted amendments to Form 20-F to permit foreign private issuers, for their first year of reporting under IFRS as adopted by the IASB, 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.<sup>108</sup> These amendments are contained in General Instruction G to Form 20-F. The proposed amendments do not affect the applicability of General Instruction G to issuers that are first-time adopters of IFRS. If adopted, however, the proposed amendments to eliminate the U.S. GAAP reconciliation will apply to eligible issuers that also may be eligible to rely on General Instruction G, which currently contains a number of references to a reconciliation to U.S. GAAP from IFRS. We therefore are proposing to amend General Instruction G to ensure consistency with the proposed elimination of the U.S. GAAP reconciliation requirement for users of IFRS as published by the IASB.

Paragraph (d) of General Instruction G, "Information on the Company," currently refers to the basis of accounting that an issuer uses to prepare "the U.S. GAAP reconciliation." As the U.S. GAAP reconciliation would no longer be required of an issuer to which General Instruction G applies, we propose to change to reference to "a U.S. GAAP reconciliation." This change is intended to eliminate any potential inference that the U.S. GAAP reconciliation would still be required, and to clarify that the body of accounting principles referenced in the paragraph does not refer to a basis that the issuer used to prepare financial statements for which a U.S. GAAP reconciliation was required. Paragraph

(e) of General Instruction G directs an issuer to refer to the U.S. GAAP reconciliation for the years for which financial statements were prepared in accordance with IFRS and to discuss any differences between IFRS and U.S. GAAP not otherwise discussed in the reconciliation that the issuer believes are necessary for an understanding of the financial statements. Because an issuer would no longer be required to prepare a reconciliation to U.S. GAAP under the proposed rules, we are proposing to eliminate the reference to the reconciliation in this instruction.

Paragraph (f) of General Instruction G stipulates the financial information that a first-time IFRS user must provide in a registration statement filed during the year in which it makes the change, including interim information. Sub-paragraphs (f)(2)(B)(i), (ii) and (iii) set forth three options by which the requirements of Item 8.A.5 for interim financial statements may be satisfied.<sup>109</sup> The first option allows for three years of financial statements prepared in accordance with Previous GAAP (as defined in Form 20-F) and reconciled to U.S. GAAP. As the proposed amendments would continue to require a reconciliation to U.S. GAAP from financial statements prepared using any basis of accounting other than IFRS as published by the IASB, we are not proposing to amend this requirement. The second option allows for two financial years of audited financial statements and interim financial statements prepared in accordance with IFRS as published by the IASB and reconciled to U.S. GAAP as required by Item 17(c) or 18. Consistent with the proposed amendments to Items 17 and 18, we also are proposing to eliminate the reconciliation requirement from this option. Under the third option, a first-time IFRS adopter may provide three years of audited financial statements prepared in accordance with the issuer's Previous GAAP, reconciled to U.S. GAAP, and two years of interim financial statements prepared in accordance with IFRS and reconciled to U.S. GAAP. We are not proposing to amend this option, which was provided as a bridge between an issuer's Previous GAAP and IFRS. Because an issuer eligible to rely on that option would not yet have provided audited IFRS financial statements in a filing with the Commission, we believe it is appropriate to continue to require the U.S. GAAP reconciliation of the interim

financial statements prepared under IFRS.

Paragraph (h) of General Instruction G currently requires that financial statements prepared in accordance with IFRS for the most recent two financial years be reconciled to U.S. GAAP under Item 17 or 18. Because first-time filers of financial statements using IFRS as published by the IASB are a subset of the IFRS filers that would be subject to the amendments we are proposing in this release, we also propose to eliminate that requirement from General Instruction G(h) in a manner consistent with the other proposed revisions to Form 20-F. As a conforming amendment we also are proposing to revise Instruction 2.b of General Instruction G(h) to specify that disclosure on operating and financial review and prospects provided in response to Item 5 of Form 20-F need not refer to a reconciliation to U.S. GAAP. That revision is intended to eliminate ambiguity as to whether the disclosure should refer to any U.S. GAAP reconciling information prepared for previous years.

Currently, the accommodation to first-time adopters of IFRS contained in General Instruction G expires after the first financial year starting on or after January 1, 2007. That timing was intended to comport with the requirements of the EU Regulation relating to the transition to IFRS of European companies, although the accommodation is available to an eligible first-time adopter of IFRS issuer from any jurisdiction. The Commission is aware that several countries will be changing their national accounting standards to IFRS, and is therefore proposing to extend the accommodation contained in General Instruction G to Form 20-F for five years, to cover financial statements for the 2012 financial year or earlier that are included in annual reports or registration statements.

Paragraph (i) of General Instruction G contains a special instruction that requires European issuers that prepare their financial statements using IFRS as adopted by the EU to reconcile their financial statements to IFRS as published by the IASB. A U.S. GAAP reconciliation also is required. This paragraph presently applies only to issuers incorporated in an EU Member State, and would cease to be applicable after the 2007 financial year, at which time the mandatory switch to IFRS under the EU Regulation will be complete. Because the provisions would no longer be applicable after that time, we are considering whether or not to

<sup>107</sup> Under IAS 8, in the absence of an IFRS standard or interpretation that specifically applies to a transaction or event, management should use its judgment in developing and applying a relevant and reliable accounting policy and look to other pronouncements in applying that judgment.

<sup>108</sup> See the 2005 Adopting Release.

<sup>109</sup> Item 8.A.5 of Form 20-F describes the financial information for interim periods to be included in a registration statement.

delete General Instruction G(i) as part of this rulemaking.

#### Questions

31. If a first-time IFRS adopter provides, in a registration statement filed during the year in which it changes to IFRS, three years of annual financial statements under a Previous GAAP and two years of interim financial statements prepared under IFRS as published by the IASB, should we continue to require that the interim financial statements be reconciled to U.S. GAAP?

32. Would a U.S. GAAP reconciliation be a useful bridge from Previous GAAP financial statements to annual financial statements prepared under IFRS as published by the IASB that are not reconciled to U.S. GAAP?

33. Should the Commission extend the duration of the accommodation contained in General Instruction G for a period longer or shorter than the proposed five years? Would seven years, ten years or an indefinite period be appropriate? If so, why?

34. Should any extension of the accommodation to first-time adopters be tied in any way to U.S. GAAP reconciliation? If so, how?

#### 5. Check Boxes on the Cover Page of Form 20-F

Currently, an issuer filing a registration statement or annual report on Form 20-F is required to identify, on the cover page of its filing, whether it prepares its financial statements in accordance with Item 17 or 18. The purpose of this information is to allow the reader to identify at a glance the type of U.S. GAAP reconciliation that the filing contains. If the proposed amendments are adopted, the reconciliation requirements contained in Items 17 and 18 will not apply to a Form 20-F filer that files its financial statements using IFRS as published by the IASB. To eliminate possible confusion as to the information that an issuer would provide on the cover page of Form 20-F in response to the current check box, we are proposing to add a check box in which a Form 20-F filer would indicate whether the financial statements included in the filing have been prepared using U.S. GAAP, IFRS as published by the IASB, or another basis of accounting. If, in response to this check box, an issuer has indicated that it uses a basis of accounting other than U.S. GAAP or IFRS as published by the IASB, the issuer would then indicate in response to a subsequent check box whether it follows Item 17 or 18.

It is often difficult for the staff to communicate with foreign private

issuers or their counsel, who may be located overseas. As a means of facilitating communication with foreign private issuers by the Commission staff, we also are proposing to revise the cover page of Form 20-F to require that issuers provide contact information for a person to whom enquiries may be directed.<sup>110</sup> This information would include the name of an individual at the company or its legal counsel and the telephone, e-mail, and/or facsimile number, or other means by which that person can be contacted. Information provided on the Form 20-F in response to the proposed check boxes and the company contact information will constitute required disclosure that is subject to all applicable federal securities laws.

#### D. Regulation S-X

Regulation S-X contains, among other things, the form and content requirements for financial statements included in filings made with the Commission. It also includes many provisions that do not relate to U.S. GAAP, for example, requirements for auditor qualifications and reports. If the proposed rules are adopted, Regulation S-X, other than its form and content requirements, will continue to apply to the filings of all foreign private issuers, including those who file financial statements prepared using IFRS as published by the IASB without reconciliation to U.S. GAAP.

#### 1. Application of the Proposed Amendments to Rules 3-05, 3-09, and 3-16

Under Rules 3-05, 3-09 and 3-16 of Regulation S-X, an issuer, in certain circumstances, must include the financial statements of another entity in its filings.<sup>111</sup> Although we are not proposing any specific amendments to those sections as part of this rulemaking initiative, the amendments that we are proposing in this release will apply

<sup>110</sup> An example of this enquiry would be a staff comment letter. Identifying the person on the cover page would not make that person an agent for service of process.

<sup>111</sup> Rule 3-05 specifies the requirements for financial statements of businesses acquired or to be acquired. Rule 3-09 specifies the requirements for financial statements of unconsolidated majority-owned subsidiaries and 50 percent or less owned investments accounted for by the equity method. Both Rule 3-05 and 3-09 require financial statements when the applicable entity is significant to the issuer.

Rule 3-16 specifies the requirement for financial statements of affiliates whose securities collateralize an issue registered or being registered. The requirement to provide separate financial statements under Rule 3-16 is based upon whether or not the securities are a substantial portion (as defined) of the collateral for the class of securities registered or being registered.

equally in the application of Rules 3-05, 3-09 and 3-16.

#### a. Significance Testing

Under Rules 3-05, 3-09 and 3-16, an issuer is required to include the financial statements of another entity if the entity meets certain significance tests.<sup>112</sup> Requirements for significance testing are governed by the financial statements of the issuer. Generally, if a foreign private issuer prepares its own financial statements using IFRS as published by the IASB, that issuer would perform the significance tests under Rules 3-05, 3-09 and 3-16 using IFRS as published by the IASB, regardless of the basis of accounting used by the other entity. If the significance thresholds under Rule 3-05, 3-09 or 3-16 are met, then the issuer must provide on a separate basis audited annual financial statements of the subject entity.

#### b. Separate Historical Financial Statements of Another Entity Provided Under Rules 3-05 or 3-09

Generally, the historical financial statement requirements for a foreign acquired business or investee under Rules 3-05 or 3-09 are governed by the status of that entity, and the burden of reconciling the financial statements of a non-issuer entity would be no higher than if it were the issuer. In applying the proposed amendments, if the entity's audited financial statements are in accordance with IFRS as published by the IASB, those financial statements would not be required to be reconciled to U.S. GAAP. For example, under Rule 3-05 both foreign private issuers and U.S. companies that acquire a "significant" foreign business would be permitted, under the proposed rules, to include the acquiree's financial statements prepared in accordance with IFRS as published by the IASB without reconciliation, U.S. GAAP, or another comprehensive basis of accounting reconciled to U.S. GAAP. The same would be true for the financial statements of a "significant" foreign investee under Rule 3-09.

An issuer that includes financial statements for a foreign entity under Rule 3-05 or Rule 3-09 currently is permitted to omit the reconciliation to U.S. GAAP for that entity, regardless of the comprehensive basis of accounting in which that entity's financial statements are presented, if the

<sup>112</sup> An entity is significant to the issuer if the issuer's investment in the entity exceeds 20% of the issuer's total assets, the entity's income (as defined) exceeds 20% of the issuer's corresponding income, or (for Rule 3-05 only) the entity's total assets exceed 20% of the issuer's total assets.

significance of that entity, as defined in Rule 1-02(w) of Regulation S-X, does not exceed 30 percent of the registrant.<sup>113</sup> Although we are not proposing to amend Rules 3-05 or 3-09, we are proposing to revise Items 17(c)(2)(v) and (vi) of Form 20-F to clarify, respectively, that an issuer that uses IFRS as published by the IASB to prepare the financial statements of the foreign entity under Rule 3-05 or 3-09 may omit the reconciling information specified under Item 17(c)(2)(i)-(iii) regardless of the significance of the entity.

## 2. Pro Forma Financial Statements Provided Under Article 11

Under Article 11 of Regulation S-X, issuers are required to prepare unaudited pro forma financial information that is intended to give effect as if a particular transaction, such as a significant recent or probable business combination, had occurred at the beginning of the financial period. Requirements for pro forma financial information under Article 11 continue to be governed by the financial statements of the issuer rather than of the acquiree or other entity, as the pro forma results must be presented using the same basis of accounting as the issuer. Similarly, these rules do not impose a higher presentation burden on pro forma financial information than would be imposed on the historical financial statements of the issuer. We are not proposing to amend Article 11, but the proposed amendments will apply in the application of Article 11. Accordingly, if the proposed amendments are adopted, a foreign private issuer using IFRS as published by the IASB as its basis of accounting would not be required to reconcile to U.S. GAAP its pro forma financial information. Therefore, an issuer using IFRS as published by the IASB would prepare the pro forma financial information by presenting its IFRS results and converting the financial statements of the business acquired (or to be acquired) into IFRS as published by the IASB.

## 3. Financial Statements Provided under Rule 3-10

Rule 3-10 of Regulation S-X specifies financial statement requirements for issuers of guaranteed securities and guarantors.<sup>114</sup> Generally, under this rule both the issuer of the guaranteed security and the guarantor must follow

the financial statement requirements of a registrant. If both entities are reporting foreign private issuers filing on Form 20-F, we would accept the financial statements prepared in accordance with IFRS as published by the IASB without reconciliation from each one under the proposed rules.<sup>115</sup>

However, Rule 3-10 permits modified reporting by subsidiary issuers of guaranteed securities and subsidiary guarantors. Separate financial statements need not be filed for subsidiaries meeting the applicable conditions contained in Rules 3-10(b) through 3-10(f). Instead, condensed consolidating financial information is presented in the parent company's reports in an additional audited footnote to the financial statements. In applying modified reporting under Rule 3-10, however, the reconciliation requirement would be based on the consolidated financial statements of the parent company, as under current rules. A parent issuer or guarantor that presents consolidated financial statements under IFRS as published by the IASB would present the condensed consolidating financial information on the basis of IFRS as published by the IASB, without reconciliation to U.S. GAAP. We do not believe that any substantive revision to Rule 3-10 is necessary to implement the acceptance of financial statements prepared using IFRS as published by the IASB without reconciliation as proposed.

The instructions for preparation of condensed consolidating financial information required by certain paragraphs of Rule 3-10 contain a reference to a reconciliation of the condensed consolidating financial information to U.S. GAAP. As a conforming amendment, we are proposing to revise this reference to clarify that we would accept the condensed consolidating financial information without a U.S. GAAP reconciliation if it is prepared using IFRS as published by the IASB.

## 4. Conforming Amendment to Rule 4-01

Rule 4-01 of Regulation S-X sets out the general requirements for financial statements included in Commission filings and requires that foreign private issuers include an Item 18 reconciliation if they use a basis of accounting other than U.S. GAAP, except as otherwise stated in the

applicable form.<sup>116</sup> In order to implement fully the proposed acceptance of financial statements prepared using IFRS as published by the IASB and to avoid ambiguity for issuers, we propose to revise Rule 4-01 to clarify that financial statements of foreign private issuers may be prepared using IFRS as published by the IASB without reconciliation to U.S. GAAP.

## Questions

35. Are the proposed changes to Rules 3-10 and 4-01 sufficient to avoid any ambiguity about our acceptance of IFRS financial statements without reconciliation? If not, what other revisions would be necessary?

36. Are there other rules in Regulation S-X that should be specifically amended to permit the filing of financial statements prepared in accordance with IFRS as published by the IASB without a reconciliation to U.S. GAAP? If so, how would the application of those rules be unclear if there were no changes to those rules, and what changes would be suggested in order to make them clear?

37. Is the application of the proposed rules to the preparation of financial statements provided under Rules 3-05, 3-09, 3-10 and 3-16 sufficiently clear? If not, what areas need to be clarified? Are any further changes needed for issuers that prepare their financial statements using IFRS as published by the IASB?

## E. Application of the Proposed Amendments to Other Forms, Rules and Schedules

### 1. Conforming Amendments to Securities Act Forms F-4 and S-4

In addition to being the combined registration statement and annual report for foreign private issuers under the Exchange Act, Form 20-F also sets forth the disclosure requirements for registration statements filed by foreign private issuers under the Securities Act. Because the Securities Act registration statements applicable to foreign private issuers reference the disclosure and financial statement item requirements of Form 20-F, the proposed amendments to Form 20-F to eliminate the U.S. GAAP reconciliation requirement for IFRS issuers also will serve to eliminate the reconciliation requirement from most Securities Act forms without direct revision of those forms. In order to implement fully our acceptance of financial statements prepared in accordance with IFRS as published by the IASB and to eliminate potential

<sup>116</sup> As noted above, Item 17 reconciliation is permitted in various circumstances.

<sup>113</sup> See Item 17(c)(2)(v) and (vi) of Form 20-F.

<sup>114</sup> A guarantee of a registered security is itself a security, so a guarantor of a registered security is itself considered an issuer of a security. See Securities Act Section 2(a)(1).

<sup>115</sup> In this situation, when an issuer of a guaranteed security and a guarantor each file complete audited financial statements, the separate financial statements of each entity also may be on a different basis of accounting and, if not prepared under U.S. GAAP or IFRS as published by the IASB, must be reconciled to U.S. GAAP.

ambiguity, we are proposing to make conforming amendments to references to the U.S. GAAP reconciliation contained in Securities Act Forms F-4 and S-4.

Form F-4, the registration statement for securities of foreign private issuers issued in certain business combinations, contains specific references to the U.S. GAAP reconciliation.<sup>117</sup> We are proposing to revise these references to the U.S. GAAP reconciliation contained in Items 10, 12 and 17 of this form to make them consistent with the proposed revisions to Item 17(c) and 18(b) of Form 20-F to indicate that the referenced U.S. GAAP reconciliation would apply only to financial statements prepared using a basis of accounting other than U.S. GAAP or IFRS as published by the IASB. Form S-4, the registration statement for securities of domestic issuers issued in business combination transactions, also contains reference to the U.S. GAAP reconciliation in the instruction to Item 17 which we propose to revise in the same manner.

## 2. Conforming Amendment to Rule 701

Rule 701 under the Securities Act provides an exemption from registration for offers and sales made under certain compensatory benefit plans. The rule is generally not available to an issuer that has a reporting obligation under the Exchange Act. An issuer that offers securities in reliance on Rule 701 does not file any information with the Commission, but is required to deliver to investors certain information, including financial statements, if more than \$5 million in securities are sold over a 12-month period. For foreign private issuers relying on Rule 701, these financial statements must include a reconciliation under Item 17 of Form 20-F if they are not prepared in accordance with U.S. GAAP.

To implement the proposed rules fully, we believe that a foreign private issuer that conducts an offering under Rule 701 and that uses in its financial statements IFRS as published by the IASB should not be required to present a U.S. GAAP reconciliation. We propose to amend Rule 701 to clarify that a U.S. GAAP reconciliation will not be required in that circumstance.

## 3. Small Business Issuers

A Canadian foreign private issuer that qualifies as a small business issuer under Regulation S-B may elect to provide disclosure in its registration statements and annual reports, in compliance with forms based on

Regulation S-B rather than on Form 20-F.<sup>118</sup> Regulation S-B describes the financial statement requirements for a small business issuer, which must be prepared in accordance with U.S. GAAP or, if filed by a foreign private issuer that also is a small business issuer, reconciled to U.S. GAAP in accordance with the requirements of Items 17 or 18 of Form 20-F, as appropriate.<sup>119</sup> At a recent meeting,<sup>120</sup> the Commission approved a proposal to integrate most of the substantive provisions of Regulation S-B into Regulation S-K and to eliminate current Regulation S-B as a separate disclosure system for smaller companies. If we do not adopt those proposals, we would consider making conforming changes to Regulation S-B and to small business forms to implement fully the amendments we are proposing in this release.

If the new small business rules are adopted as proposed, a foreign private issuer that also is eligible to rely on those rules would have a choice as to the accounting standards used to prepare its financial statements. If we adopt the proposed amendments, a small business issuer that files annual reports on Form 20-F or a Securities Act registration statement based on Form 20-F would be able to file financial statements prepared using U.S. GAAP, IFRS as published by the IASB without a U.S. GAAP reconciliation, or another comprehensive basis of accounting with a U.S. GAAP reconciliation. If that issuer chose to file annual reports on Form 10-K or a Securities Act form based on Regulation S-K, financial statements prepared using U.S. GAAP would be required.

### Questions

38. Are the proposed changes in Forms F-4 and S-4, and in Rule 701, sufficient to avoid any ambiguity about our acceptance of IFRS financial statements without reconciliation? If not, how should we revise those forms or rule?

<sup>118</sup> 17 CFR 228. A "small business issuer" is defined in Item 10 of Regulation S-B (17 CFR 228.10) as a company that (i) has revenues of less than \$25,000,000, (ii) is a U.S. or Canadian issuer; and (iii) is not an investment company and is not an asset-backed issuer; and (iv) if a majority owned subsidiary, the parent corporation is also a small business issuer. An entity that meets all of these criteria is not a small business issuer if it has a public float (defined as the aggregate market value of the issuer's outstanding voting and non-voting common equity held by non-affiliates) of \$25,000,000 or greater.

<sup>119</sup> See Notes 1 and 2 to Item 310 of Regulation S-B.

<sup>120</sup> The proposal that the Commission made in its meeting held May 23, 2007 is described at <http://www.sec.gov/news/press/2007/2007-102.htm>.

39. Under Part F/S of Form 1-A relating to offerings conducted under Regulation A, Canadian issuers may use unaudited financial statements that are reconciled to U.S. GAAP. Should we amend Form 1-A to permit the use by Canadian companies of financial statements prepared in accordance with IFRS as published by the IASB without a reconciliation? Does the fact that financial statements under Form 1-A are not required to be audited militate in favor of retaining a U.S. GAAP reconciliation whenever a Canadian issuer uses a GAAP other than U.S. GAAP?

40. Are there other rules or forms under the Securities Act that should be specifically amended to permit the filing of financial statements prepared in accordance with IFRS as published by the IASB without a reconciliation to U.S. GAAP? If so, how would the rules or forms be unclear if there were no changes to those forms, and what changes would be suggested in order to make them clear?

## 4. Schedule TO and Schedule 13E-3

Instruction 8 to Item 10 of Schedule TO, the tender offer statement under the Exchange Act,<sup>121</sup> contains a reference to reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F. Instruction 2 to Item 13 of Schedule 13E-3,<sup>122</sup> the transaction statement under Section 13(e) of the Exchange Act, also contains a reference to U.S. GAAP reconciliation under Item 17. Because reconciliation requirements for Schedule TO and Schedule 13E-3 are provided in Item 17 of 20-F, which we are proposing to amend, we do not believe any amendment to Schedule TO or Schedule 13E-3 is necessary to fully implement our proposed acceptance of financial statements prepared in accordance with IFRS as published by the IASB when contained without reconciliation to U.S. GAAP.

### Question

41. Should Schedule TO and Schedule 13E-3 be specifically amended to permit the filing of financial statements prepared in accordance with IFRS as published by the IASB without a reconciliation to U.S. GAAP? If so, how would the rules or forms be unclear if there were no changes to those Schedules, and what changes would be suggested in order to make them clear?

## F. Quality Control Issues

On April 16, 2003, the PCAOB adopted certain pre-existing standards

<sup>121</sup> 17 CFR 240.14d-100.

<sup>122</sup> 17 CFR 240.13e-100.

<sup>117</sup> See Form F-4, Items 10(c), 12(b) and 17(b).

of the American Institute of Certified Public Accountants ("AICPA") as interim standards to be used on an initial transition basis.<sup>123</sup> Among these interim standards was PCAOB Rule 3400T, Interim Quality Control Standards, which consist of the AICPA's Auditing Standard Board's Statements on Quality Control Standards and the AICPA SEC Practice Section's membership requirements, in each case as in existence on April 16, 2003 and to the extent not superseded or amended by the PCAOB.

One of these membership requirements related to compliance with Appendix K, which was applicable to member firms that were members of, correspondents with, or similarly associated with international firms or international associations of firms. Appendix K provides that member firms seek adoption of policies and procedures by their international organizations or individual foreign associated firms that address the review of SEC filings by persons knowledgeable in accounting, auditing and independence standards generally accepted in the United States. This requirement seeks to enhance the quality of SEC filings by SEC registrants whose financial statements are audited by foreign associated audit firms.<sup>124</sup>

We are not proposing amendments to our rules that relate to the continued need for compliance with PCAOB Auditing Standards, including Appendix K. However, we believe that commenters may wish to address this area in light of our proposed acceptance of IFRS as published by the IASB without a reconciliation to U.S. GAAP.

#### Questions

42. Without the reconciliation to U.S. GAAP, should we be concerned about member firm requirements to have persons knowledgeable in accounting, auditing and independence standards generally accepted in the United States review IFRS financial statements filed with the Commission? Are there alternative ways in which concerns may be addressed?

#### G. Application to Filings Under the Multijurisdictional Disclosure System

Certain Canadian foreign private issuers file registration statements and annual reports under the

<sup>123</sup> See "Interim Standards" at [http://www.pcaobus.org/Standards/Interim\\_Standards/index.aspx](http://www.pcaobus.org/Standards/Interim_Standards/index.aspx).

<sup>124</sup> See Appendix K at [http://www.pcaob.org/Standards/Interim\\_Standards/Quality\\_Control\\_Standards/SECPS\\_1000.08\\_Appendices\\_bookmarks.pdf#nameddest=k](http://www.pcaob.org/Standards/Interim_Standards/Quality_Control_Standards/SECPS_1000.08_Appendices_bookmarks.pdf#nameddest=k).

Multijurisdictional Disclosure System ("MJDS"), which permits eligible Canadian companies to use their disclosure documents prepared in accordance with Canadian requirements in filings with the Commission. Certain filings under the MJDS are not required to contain a reconciliation to U.S. GAAP.<sup>125</sup> However, a U.S. GAAP reconciliation is required in registration statements and annual reports on Form 40-F,<sup>126</sup> and registration statements on Form F-10,<sup>127</sup> each when used for common equity securities, securities convertible into common equity securities and other securities not rated investment grade.

At present, Canadian companies filing under the MJDS generally use either Canadian GAAP (with a U.S. GAAP reconciliation when called for) or U.S. GAAP in filings with the Commission. As discussed above, officials in Canada are considering permitting the use of IFRS as published by the IASB as the basis of accounting for all Canadian public companies. To implement the proposed rules fully, we believe that a Canadian company that uses the MJDS forms and that changes its basis of accounting to IFRS as published by the IASB should not be required to present a U.S. GAAP reconciliation. However, we do not believe any amendments to Forms 40-F and F-10 are necessary to accomplish this. Forms 40-F and F-10 already contain a cross-reference to the U.S. GAAP reconciliation requirement under Items 17 and 18 of Form 20-F, which will be amended as described above to allow the filing of IFRS financial statements without a U.S. GAAP reconciliation.

#### Questions

43. Should Form 40-F or F-10 be specifically amended to permit the filing of financial statements prepared in accordance with IFRS as published by the IASB without a reconciliation to U.S. GAAP? If so, how would the forms be unclear if there were no changes to those forms, and what changes would be suggested in order to make them clear?

#### IV. General Request for Comments

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

<sup>125</sup> A U.S. GAAP reconciliation is not required under Form F-7 relating to rights offers, Forms F-8 and F-80 for exchange offers and business combinations, Form F-9 relating to investment grade securities, and Form 40-F when used as an annual report relating to an issuer's Section 15(d) reporting obligations for any of these offerings or a Section 13(a) reporting obligation relating to investment grade securities.

<sup>126</sup> 17 CFR 249.240f.

<sup>127</sup> 17 CFR 239.40.

- 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.

In addition to providing comments on these matters, we encourage interested parties to provide comment on broader matters related to the development of a single set of globally accepted accounting standards, for example:

44. If progress does not continue towards implementing a single set of high-quality globally accepted accounting standards, will investors and issuers be served by the absence of a U.S. GAAP reconciliation for financial statements prepared using IFRS as published by the IASB?

45. Where will the incentives for continued convergence lie for standard setters, issuers, investors and other users of financial statements if the reconciliation to U.S. GAAP is eliminated for issuers whose financial statements are prepared using IFRS as published by the IASB?

46. Are there additional interim measures, beyond the proposed elimination of the U.S. GAAP reconciliation from IFRS financial statements, that would advance the adoption of a single set of high-quality globally accepted accounting standards? If so, what are they? Who should undertake them?

We request comment from the point of view of registrants, investors, accountants, accounting standard setters, users of financial statements and other market participants. 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 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").<sup>128</sup> We are submitting the proposed amendments to the Office of Management and Budget ("OMB") for review in accordance with the PRA.<sup>129</sup> The titles for the affected collections of information are:

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

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

<sup>128</sup> 44 U.S.C. 3501 *et seq.*

<sup>129</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

(3) "Form F-4" (OMB Control No. 3235-0325);

(4) "Form S-4" (OMB Control No. 3235-0324); and

(5) "Rule 701" (OMB Control No. 3235-0522).

These forms were adopted pursuant to the Exchange Act and the Securities Act and set forth the disclosure requirements for annual reports and registration statements filed by foreign private issuers. 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 amendments, if adopted, would allow a foreign private issuer that prepares its consolidated financial statements in accordance with IFRS as published by the IASB, and meets the other eligibility requirements, to file those financial statements in its registration statements and periodic reports filed with the Commission without reconciliation to U.S. GAAP. These amendments would be collections of information for purposes of the Paperwork Reduction Act. For purposes of this Paperwork Reduction Analysis, these proposed amendments, if adopted, would result in a decrease in the hour and cost burden calculations. We believe this proposed amendment would eliminate potential burdens and costs for foreign issuers that use IFRS. 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 incremental decrease in the paperwork burden for all foreign private issuers that use IFRS and issuers that acquire foreign private issuers that use IFRS would be approximately 3,861 hours of company time and approximately \$4,600,720 for the services of outside professionals. We estimated the average number of hours 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.<sup>130</sup>

<sup>130</sup>In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of \$400 as the cost

Our estimates of the number of impacted foreign private issuers are based on the number of recent filings received from issuers that we believe may be immediately eligible to rely on the proposals, if adopted.

#### *B. Burden and Cost Estimates Related to the Proposed Accommodation*

##### 1. Form 20-F

We estimate that currently foreign private issuers file 942 Form 20-Fs each year. We assume that 25% of the burden required to produce the Form 20-Fs is borne internally by foreign private issuers, resulting in 619,601 annual burden hours borne by foreign private issuers out of a total of 2,478,404 annual burden hours. Thus, we estimate that 2,631 total burden hours per response are currently required to prepare the Form 20-F. We further assume that 75% of the burden to produce the Form 20-Fs is carried by outside professionals retained by foreign private issuers at an average cost of \$400 per hour, for a total cost of \$743,520,600.

We estimate that approximately 110 companies that file Form 20-F will be currently impacted by the proposal.<sup>131</sup> We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have fewer burden hours. We estimate that for each of the companies affected by the proposal, there would occur a decrease of 5% (131.55 hours) in the number of burden hours required to prepare their Form 20-F, for a total decrease of 14,471 hours. We expect that 25% of these decreased burden hours (3,618 hours) will be saved by foreign private issuers. We further expect that 75% of these decreased burden hours (10,853 hours) will be saved by outside firms, at an average cost of \$400 per hour, for a total of \$4,341,120 in decreased costs to the respondents of the information collection.

Thus, we estimate that the proposed amendment to Form 20-F would decrease the annual burden borne by foreign private issuers in the preparation of Form 20-F from 619,601 hours to 615,983 hours. We further estimate that the proposed amendment would decrease the total annual burden

to companies for the services of outside professionals retained to assist in the preparation of these disclosures. For Securities Act registration statements, we also consider additional reviews of the disclosure by underwriter's counsel and underwriters.

<sup>131</sup>We are using this figure for purposes of the Paperwork Reduction Analysis based on the number of Form 20-Fs that were filed with IFRS financial statements during the 2006 calendar year. As additional jurisdictions adopt IFRS as their basis of accounting in the future, the number of issuers that use IFRS is expected to increase.

associated with Form 20-F preparation to 2,463,932 burden hours, which would decrease the average number of burden hours per response to 2,616. We further estimate that the proposed amendment would decrease the total annual costs attributed to the preparation of Form 20-F by outside firms to \$739,179,600.

##### 2. Form F-1

We estimate that currently foreign private issuers file 42 registration statements on Form F-1 each year. We assume that 25% of the burden required to produce a Form F-1 is borne by foreign private issuers, resulting in 18,999 annual burden hours incurred by foreign private issuers out of a total of 75,996 annual burden hours. Thus, we estimate that 1,809 total burden hours per response are currently required to prepare a registration statement on Form F-1. We further assume that 75% of the burden to produce a Form F-1 is carried by outside professionals retained by foreign private issuers at an average cost of \$400 per hour, for a total cost of \$22,798,800.

We estimate that currently approximately five companies that file registration statements on Form F-1 will be impacted by the proposal.<sup>132</sup> We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have fewer burden hours. We estimate that each company affected by the proposal would have a 5% decrease (90.45 hours) in the number of burden hours required to prepare their registration statements on Form F-1, for a total decrease of 452 hours. We expect that 25% of these decreased burden hours (113 hours) will be saved by foreign private issuers. We further expect that 75% of the decreased burden hours (339 hours) will be saved by outside firms, at an average cost of \$400 per hour, for a total of \$135,600 in decreased costs to the respondents of the information collection.

Thus, we estimate that the proposed amendment to Form 20-F would decrease the annual burden incurred by foreign private issuers in the preparation of Form F-1 from 18,999 hours to 18,886 hours. We further estimate that the proposed amendment would decrease the total annual burden associated with Form F-1 preparation to 75,544 burden hours, which would decrease the average number of burden hours per response to 1,799. We further estimate that the proposed amendment would decrease the total annual costs

<sup>132</sup>This figure is based on our estimate of the number of Form F-1s that were filed with IFRS financial statements during the 2006 calendar year.

attributed to the preparation of Form F-1 by outside firms to \$22,663,200.

### 3. Form F-4

We estimate that currently foreign private issuers file 68 registration statements on Form F-4 each year. We assume that 25% of the burden required to produce a Form F-4 is borne internally by foreign private issuers, resulting in 24,503 annual burden hours incurred by foreign private issuers out of a total of 98,012 annual burden hours. Thus, we estimate that 1,441 total burden hours per response are currently required to prepare a registration statement on Form F-4. We further assume that 75% of the burden to produce a Form F-4 is carried by outside professionals retained by foreign private issuers at an average cost of \$400 per hour, for a total cost of \$29,403,600.

We estimate that currently approximately 5 companies that file registration statements on Form F-4 will be impacted by the proposal.<sup>133</sup> We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have fewer burden hours. We estimate that each of the affected companies would have a decrease of 5% (72 hours) in the number of burden hours required to prepare their registration statements on Form F-4, for a total decrease of 360 hours. We expect that 25% of these decreased burden hours (90 hours) will be saved by foreign private issuers. We further expect that 75% of the decreased burden hours (270 hours) would be saved by outside firms at an average cost of \$400 per hour, for a total of \$108,000 in decreased costs to the respondents of the information collection.

Thus, we estimate that the proposed amendment to Form 20-F would decrease the annual burden incurred by foreign private issuers in the preparation of Form F-4 from 24,503 hours to 24,413 hours. We further estimate that the proposed amendment would decrease the total annual burden associated with Form F-4 preparation to 97,652 burden hours, which would decrease the average number of burden hours per response to 1,436. We further estimate that the proposed amendment would decrease the total annual costs attributed to the preparation of Form F-4 by outside firms to \$29,295,600.

### 4. Form S-4

When a domestic issuer files a registration statement on Form S-4 for the acquisition of a foreign private

<sup>133</sup> This figure is based on our estimate of the number of Form F-4s that were filed with IFRS financial statements during the 2006 calendar year.

issuer, the domestic issuer must include the financial statements of the acquired company in the Form S-4. If those financial statements are prepared using a basis of accounting other than U.S. GAAP, the domestic issuer must provide a reconciliation to U.S. GAAP, unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense.

We estimate that issuers file 619 registration statements on Form S-4 each year. We estimate that 1,355 total burden hours per response are currently required to prepare a registration statement on Form S-4. We assume that 75% of the burden required to produce a Form S-4 is borne by the domestic issuer, resulting in 629,059 annual burden hours incurred by issuers out of a total of 838,745 annual burden hours. We further assume that 25% of the burden to produce a Form S-4 is carried by outside professionals retained by the issuer at an average cost of \$400 per hour for a total cost of \$83,874,500.

We estimate that currently approximately 6 registration statements filed on Form S-4 will contain the financial statements of a foreign target that will be impacted by the proposal.<sup>134</sup> We expect that, if adopted, the proposed amendment would cause the domestic issuers that file the Form S-4 registration statements to have fewer burden hours. We estimate that for each of these domestic registrants, there would be a decrease of 2% (27 hours) in the number of burden hours required to prepare their registration statements on Form S-4, for a total decrease of 162 hours.<sup>135</sup> We expect that 75% of these decreased burden hours (122 hours) would be saved by issuers. We further expect that 75% of the decreased burden hours (40 hours) would be saved by outside professionals at an average cost of \$400 per hour for a total of \$16,000 in decreased costs to the respondents of the information collection.

Thus, we estimate that the proposed amendment would decrease the annual burden incurred by issuers in the preparation of Form S-4 from 629,059 hours to 628,937 hours. We further estimate that the proposed amendment

<sup>134</sup> This figure is based on our estimate of the number of Form S-4s that were filed during the 2006 calendar year that contained IFRS financial statements.

<sup>135</sup> We estimate the burden decrease for purposes of this Paperwork Reduction Analysis would be less for Form S-4 than for other forms described in this section because, in the case of Form S-4, the registrant is obtaining the U.S. GAAP reconciliation from the foreign private issuer. Further, the registrant is not required to provide the reconciliation if it is unavailable or unobtainable without unreasonable cost or expense.

would decrease the total annual burden associated with Form S-4 preparation to 838,584 burden hours, which would decrease the average number of burden hours per response to 1,354.7. We further estimate that the proposed amendment would decrease the total annual costs attributed to the preparation of Form S-4 by outside firms to \$83,858,500.

### 5. Rule 701

Rule 701 provides an exemption from registration for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation. Issuers conducting employee benefit plan offerings in excess of \$5 million in reliance on Rule 701 are required to provide employees covered by the plan with certain disclosures, including financial statement disclosures. This disclosure is a collection of information.

We estimate that currently 300 issuers provide information under Rule 701, and that the estimated number of burden hours per respondent is two. Therefore, we estimate an aggregate of 600 burden hours per year. We believe that the reduction in burden hours caused by the proposed rules will be insignificant. Therefore, we do not believe the proposed rules will alter current burden estimates associated with Rule 701.

#### C. 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 Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090, with reference to File No. S7-13-07. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7-13-07 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., 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

We are proposing amendments to existing rules and forms to accept financial statements from foreign private issuers prepared using IFRS as published by the IASB without reconciliation to U.S. GAAP. Currently, financial statements that foreign private issuers file with the Commission must be prepared either in accordance with U.S. GAAP, or in accordance with another GAAP with a reconciliation to U.S. GAAP. The amendments, if adopted, would therefore provide foreign private issuers with a third method of preparing financial statements filed with the Commission. We are not proposing to amend the current reconciliation requirements for foreign private issuers that prepare their financial statements using a basis of accounting other than IFRS as published by the IASB.

The amendments would apply to a registrant's financial statements contained in annual reports and registration statements on Form 20-F as well as to financial statements included in the Securities Act registration statements filed by foreign private issuers or, when applicable, included in a registration statement or reported pursuant to Rules 3-05, 3-09 or 3-16 of Regulation S-X. We also are proposing a conforming amendment to Rule 701, which provides an exemption from Securities Act registration for securities offered in certain employee benefit plans, to clarify that a foreign private issuer conducting an offering in excess of \$5 million in reliance on that rule

may furnish investors with financial statements prepared using IFRS as published by the IASB without reconciliation.

Currently, there are between 1,000 and 1,200 foreign private issuers registered with the Commission. The proposed amendments would be available to any of those foreign private issuers that comply with IFRS as published by the IASB, whether voluntarily or pursuant to a requirement. Some foreign companies that are registered under the Exchange Act already include in their filings with the Commission financial statements that comply with IFRS as published by the IASB. We estimate that there are approximately 110 foreign private issuers that represent in the footnotes to their financial statements that the financial statements comply with IFRS as published by the IASB. This representation may be in addition to a representation that the financial statements comply with a jurisdictional variation of IFRS. If a registrant's auditors are able to opine that those financial statements are in compliance with IFRS as published by the IASB, then those registrants would be in a position to immediately file their existing financial statements under the proposed approach. Another approximately 70 foreign private issuers already include in their filings financial statements that they state are prepared in accordance with solely a jurisdictional variation of IFRS. If these companies are also able to state (and their auditors are able to opine) that their financial statements comply with IFRS as published by the IASB, the companies would be in a similar position. Lastly, approximately 50 additional foreign private issuers that are incorporated in jurisdictions that have moved to IFRS include in their filings with the Commission financial statements prepared using U.S. GAAP. Some of these issuers also may be in a position to file financial statements under the proposed approach.<sup>136</sup>

We recognize that other registered foreign companies include financial statements in accordance with a home country GAAP. We believe that there would be different incentives for these companies to change their basis of accounting to IFRS as published by the IASB and thus be able to omit the U.S. GAAP reconciliation under the proposed approach. Some foreign companies are required under home country law or stock exchange rule to use a home country GAAP and are not

permitted for home country purposes to use IFRS. At present, these companies generally include in their SEC filings financial statements prepared under home country GAAP with a U.S. GAAP reconciliation. These companies would be able to take advantage of the proposed amendments by preparing for the purpose of Commission filings (but not for home country purposes) financial statements in accordance with IFRS as published by the IASB. While these companies would incur the costs of preparing a separate set of financial statements, companies may elect to do so in light of benefits they may derive from preparing a set of IFRS financial statements as well as the costs of preparing the U.S. GAAP reconciliation.

Lastly, in coming years, as more countries adopt IFRS as their basis of accounting or permit companies to use IFRS as their basis of accounting, we believe that the number of foreign private issuers that would be eligible to rely on the proposed amendments will increase, although it is difficult to quantify that increase at this point in time.

In summary, while all foreign private issuers would receive a potential benefit from the third option for preparing financial statements described in this proposal, this option will not be immediately equally attractive to all such issuers. We recognize that the proposed acceptance of financial statements prepared using IFRS as published by the IASB without reconciliation does not confer an equal benefit on all foreign private issuers, as there are some issuers that will continue to find it more attractive to reconcile their financial statements to U.S. GAAP. For some foreign private issuers the proposed amendments are immediately attractive. For other foreign private issuers the option may become attractive at a later date when their situational constraints or opportunities change. For still other such issuers, the option may not become attractive or applicable at any time in the foreseeable future. The cost of preparing (or not having to additionally prepare) the relevant IFRS financial statements is one factor that may influence whether a foreign private issuer will use the option proposed, be it immediately or at some time in the future. The proposed option may be most attractive for issuers whose home jurisdiction or other capital markets in which the issuer lists securities allow financial statements prepared in accordance with IFRS. Foreign private issuers also may be concerned about public perception costs, as they may be perceived as being the outlier if companies with which

<sup>136</sup> The figures contained in this paragraph are per staff estimates based on the jurisdiction of the filers.

they compete for capital commonly report using another basis of accounting. Such an effect is likely to be smaller if a critical mass of issuers with whom the issuer competes for capital (such as those in its industry sector) also report in IFRS. In such situations, by reporting in IFRS, the foreign private issuer has made it more efficient for investors to analyze its financial results in comparison with the results of others with whom it competes for capital.

#### A. Expected Benefits

Our proposed acceptance of financial statements prepared using IFRS as published by the IASB is expected to help foster the preparation of financial statements in accordance with IFRS as a way of moving to a single set of globally accepted accounting standards, which we believe will have positive effects on investors and also issuers. Financial statements prepared using a common set of accounting standards help investors better understand investment opportunities as compared to financial statements prepared under differing sets of national accounting standards. Without a common standard and without a required reconciliation, global investors must incur the time and effort to understand financial statements reported using different bases of accounting so that they can compare opportunities.

The proposals are expected to increase the likelihood of realizing the net benefits of a single set of globally accepted accounting standards. This benefit is due to potential network effects of the proposed amendments: The more issuers that use IFRS as published by the IASB and file without a U.S. GAAP reconciliation, the more benefits there may be for other issuers to do so since the utility for investors of a set of accounting standards increases as the number of issuers using it increases.

The resulting reduction of the multiplicity of accounting standards that presently exist is expected to benefit investors by allowing them to spend less time and allocate fewer resources to learning, or keeping up with developments in, myriad GAAPs of varying quality in favor of a single, high-quality set of globally accepted standards. In addition to these benefits of moving away from a multiplicity of accounting standards towards a single set of standards, investors will further benefit from better information if the single set of standards that issuers use results in higher disclosure quality.

We believe that issuers would be affected by the proposal in a number of ways, including needing fewer

resources to prepare U.S. filings.<sup>137</sup> To the extent that an issuer relying on the proposed amendments can reallocate its cost savings from not preparing a reconciliation to U.S. GAAP or possibly a second set of financial statements in U.S. GAAP to higher earning opportunities, and not suffer a relatively greater increase in the cost of its capital as a result, then the issuer also will realize a better rate of return on its capital which will benefit investors. Issuers also may enjoy greater timing flexibility in accessing the U.S. market if they can prepare IFRS financial statements more quickly without reconciliation, particularly with regard to the use of automatic shelf registration statements.

The proposed amendments are expected to benefit investors and issuers alike to the extent that they facilitate capital formation by foreign companies in the United States capital markets. Our proposed amendments to accept IFRS financial statements without reconciliation would reduce regulatory burdens for foreign private issuers that rely on them, thereby lowering the information disclosure preparation cost of raising capital in the United States for those issuers. We believe that foreign private issuers may therefore be more likely to enter the U.S. capital markets. If they do, investors would, in turn, benefit from having more investment opportunities in the United States and generally would incur lower transaction costs when trading a foreign company's securities in the United States relative to a foreign market. To the extent our acceptance of IFRS financial statements without reconciliation encourages foreign private issuers to enter or remain in the U.S. capital market, investors also will benefit from the protections of the U.S. regulatory and disclosure system relative to the protections they may receive if purchasing those securities overseas. Investors also are expected to benefit from the potential reduction in the cost of capital to issuers, as discussed above.

<sup>137</sup> For purposes of the Paperwork Reduction Analysis, as described above, we have estimated that the incremental decrease in the paperwork burden for all foreign private issuers that use IFRS and issuers that acquire foreign private issuers that use IFRS would be approximately 3,861 hours of company time and approximately \$4,600,720 for the services of outside professionals. For purposes of these calculations, we estimated the average number of hours each entity spends completing the forms and the average hourly rate for outside professionals, including 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. The impact on an individual issuer may vary, based on its specific circumstances.

#### B. Expected Costs

This proposal has no cost upon either a foreign private issuer or its investors until the issuer uses the proposed IFRS option. In so doing, the minimum required financial information the investors in the U.S. capital markets receive from any such issuer would differ from what it was previously. The extent to which this yields a different required information set will depend upon how the foreign issuer previously reported its financial statements. For instance, if the foreign issuer currently files its financial statements using U.S. GAAP and transitions to reporting in IFRS, then this may or may not represent a loss of required information in absolute terms. Whether there is an absolute loss of information would depend upon whether IFRS financial statements yielded more or less information about a particular issuer than do U.S. GAAP financial statements. On the other hand, if the foreign private issuer currently prepares its statements in IFRS and reconciles to U.S. GAAP, then a loss of information would result as U.S. GAAP information is omitted.

The proposed amendments may lead to some costs to both investors and to issuers. If the investor community prefers the information communicated by a U.S. GAAP reconciliation, a foreign private issuer that uses IFRS as published by the IASB without a reconciliation may face a reduced following in the marketplace. Investors may prefer a U.S. GAAP reconciliation, if investors are not sufficiently familiar with IFRS accounting standards. In addition, unfamiliarity with IFRS as published by the IASB may have an adverse effect on investors' confidence in what they would be investing in and thus lead them to insist on a risk premium for an investment in the company.

The proposed amendments also would entail some costs to investors. If an issuer provides IFRS financial statements without reconciliation as permitted under the proposed amendments, investors would not have the benefit of the reconciling information that previously would have been available to them as they evaluate the financial performance of that issuer. The usefulness of this information may depend on the nature of the investor and other considerations, as discussed below. Also, to the extent that an investor is not accustomed to working with IFRS financial statements, that investor also may be required to dedicate more time and resources to gaining familiarity with IFRS and

financial statements prepared using them.

Based in part on comments we received from participants at the Commission's IFRS roundtable held in March 2007, however, we believe that some investors are familiar with IFRS as a basis of accounting and therefore may make limited use of the reconciliation from IFRS to U.S. GAAP. However, because various investors may be differently situated in the market and have varying levels of familiarity with IFRS—for example, institutional investors may be more familiar with IFRS than retail investors—they may not all bear the cost from the proposed amendments equally. We are aware that investor familiarity with IFRS and the use that a particular investor may make of the reconciliation will depend on many factors. We believe that these factors may include, among other things, the size and nature of the investor, the size of the investment, the size of the issuer, the industry to which the issuer in question belongs. We also believe that the costs to investors of working without the reconciliation would be reduced over time as the use of IFRS as published by the IASB becomes even more widespread and investors gain increasing familiarity in working with IFRS financial statements.

Given these considerations, in this proposal we are soliciting comment on how familiar investors are with IFRS, the use they make of the U.S. GAAP reconciliation of IFRS financial statements, and how their ability to assess and compare investment opportunities would be impacted by the proposed amendment to permit the filing of financial statements prepared using IFRS as published by the IASB without reconciliation to U.S. GAAP.

#### Questions

47. Do you agree with our assessment of the costs and benefits as discussed in this section? Are there costs or benefits that we have not considered? Are you aware of data and/or estimation techniques for attempting to quantify these costs and/or benefits? If so, what are they and how might the information be obtained?

48. Which foreign private issuers would have the incentive to avail themselves of the proposed amendments, if adopted? Are there any reasons for which an issuer that is eligible to file IFRS financial statements without reconciliation under the proposed amendments would elect to file a reconciliation? If so, what are they?

49. Are there particular industry sectors for which a critical mass of the

issuers who raise capital globally already report in IFRS? If so, which industries are they and why?

#### VII. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b), that the amendments to Form 20-F under the Exchange Act, Forms F-4 and S-4 and Rule 701 under the Securities Act and Regulation S-X contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposal would amend Form 20-F, Form F-4, Form S-4, Rule 701 and Regulation S-X to allow foreign private issuers that use as their basis of accounting IFRS as published by the IASB to file their financial statements without reconciliation to U.S. GAAP as described under Items 17 and 18 of Form 20-F. 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 Analysis

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),<sup>138</sup> we solicit data to determine whether the proposals constitute a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of \$100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposals 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 Act<sup>139</sup> and Section 3(f) of the Exchange Act<sup>140</sup> 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. When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act<sup>141</sup> requires us 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 the proposed amendments to Form 20-F under the Exchange Act, Forms F-4 and S-4 and Rule 701 under the Securities Act, and Regulation S-X is to allow foreign private issuers that use as their basis of accounting IFRS as published by the IASB to include those financial statements in their annual reports and registration statements filed with the Commission without reconciliation to U.S. GAAP. This proposal is designed to increase efficiency, competition and capital formation by helping to move towards a single set of globally accepted accounting standards, as well as by alleviating the burden and cost that eligible companies would face if required to prepare a U.S. GAAP reconciliation for inclusion in annual reports and registration statements filed with us. Due to the cost to issuers of preparing the reconciliation to U.S. GAAP from IFRS, we believe that the proposed amendment would be likely to promote efficiency by eliminating financial disclosure that is costly to produce. We believe that investors would have adequate information on which to base their investment decisions and that capital may be allocated on a more efficient basis.

The proposed amendments are expected to facilitate capital formation by foreign companies in the U.S. capital markets by reducing regulatory compliance burdens for foreign private issuers that rely on the proposed amendments. Reduced compliance burdens are expected to lower the cost of preparing disclosure for purposes of raising capital in the United States for those issuers.

The proposed amendments also may have other impacts on efficiency and capital formation, which may not be felt equally by all market participants. For

<sup>138</sup> Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

<sup>139</sup> 15 U.S.C. 77b(b).

<sup>140</sup> 15 U.S.C. 78c(f).

<sup>141</sup> 15 U.S.C. 78w(a)(2).

example, the amendments may have a more favorable competitive impact on foreign private issuers from jurisdictions in which the use of IFRS is already required or permitted. Issuers from such jurisdictions may be able to benefit from the amendments more quickly than issuers from jurisdictions that do not permit the use of IFRS. Also, some foreign private issuers may be concerned about the public perception costs of not including a U.S. GAAP reconciliation, particularly if they compete for capital with other foreign companies that provide a reconciliation or that prepare financial statements that comply with U.S. GAAP.

The proposed amendments also may have effects on efficiency and capital formation to the extent that investors need to increase their familiarity with IFRS in order to compare investment opportunities without reference to a U.S. GAAP reconciliation. If investors prefer the information provided in a U.S. GAAP reconciliation, a foreign private issuer that uses IFRS as published by the IASB without reconciliation may face adverse competitive effects in the capital markets. For example, investor unfamiliarity with IFRS may adversely affect investor confidence in issuers that prepare IFRS financial statements without reconciliation to U.S. GAAP. This may lead investors to insist on a risk premium in those companies, which would affect their competitiveness in the capital markets. Also, if investors must incur costs in order to understand IFRS financial statements without a U.S. GAAP reconciliation, there may be an incentive for intermediary parties to provide U.S. GAAP reconciliation services.

We solicit comment on whether the proposed rules would impose a burden on competition or whether they would promote efficiency, competition and capital formation. 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? Would the proposals create an adverse competitive effect on U.S. issuers or on foreign issuers that are not in a position to rely immediately on the accommodation? Would the proposed amendments, if adopted, promote efficiency, competition and capital formation? Commenters are requested to provide empirical data and other factual support for their views if possible.

## IX. Statutory Basis and Text of Proposed Amendments

We propose the amendment to Exchange Act Form 20-F pursuant to Sections 6, 7, 10, and 19 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 Parts 210, 230, 239 and 249

Accounting, 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 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975**

1. The authority citation for part 210 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w(a), 78ll, 78mm, 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, unless otherwise noted.

2. Section 210.3-10 is amended by:

a. Revising the introductory text of paragraph (i), and

b. Revising paragraph (i)(12).

The revisions read as follows.

#### **§ 210.3-10 Financial statements of guarantors and issuers of guaranteed securities registered or being registered.**

(i) *Instructions for preparation of condensed consolidating financial information required by paragraphs (c), (d), (e) and (f) of this section.*

(12) Where the parent company's consolidated financial statements are prepared on a comprehensive basis other than U.S. Generally Accepted Accounting Principles or *the English language version of International Financial Reporting Standards as published by the International Accounting Standards Board*, reconcile the information in each column to U.S. Generally Accepted Accounting Principles to the extent necessary to allow investors to evaluate the sufficiency of the guarantees. The reconciliation may be limited to the information specified by Item 17 of Form 20-F (§ 249.220f of this chapter).

The reconciling information need not duplicate information included elsewhere in the reconciliation of the consolidated financial statements.

3. Amend § 210.4-01 by revising paragraph (a)(2) to read as follows:

#### **§ 210.4-01 Form, order and terminology.**

(a) \* \* \*

(2) In all filings of foreign private issuers (see § 230.405 of this chapter), except as stated otherwise in the applicable form, the financial statements may be prepared according to a comprehensive set of accounting principles, other than those generally accepted in the United States or *the English language version of International Financial Reporting Standards as published by the International Accounting Standards Board*, if a reconciliation to United States generally accepted accounting principles and the provisions of Regulation S-X of the type specified in Item 18 of Form 20-F (§ 249.220f of this chapter) is also filed as part of the financial statements. Alternatively, the financial statements may be prepared according to United States generally accepted accounting principles or *the English language version of International Financial Reporting Standards as published by the International Accounting Standards Board*.

\* \* \* \* \*

#### **PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

4. The authority citation for Part 230 continues to read as follows:

**Authority:** 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

5. Amend § 230.701 by revising the introductory text of paragraph (e) and revising paragraph (e)(4) to read as follows:

#### **§ 230.701 Exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation.**

\* \* \* \* \*

(e) *Disclosure that must be provided.* The issuer must deliver to investors a copy of the compensatory benefit plan or the contract, as applicable. In addition, if the aggregate sales price or amount of securities sold during any consecutive 12-month period exceeds \$5 million, the issuer must deliver the following disclosure to investors a

reasonable period of time before the date of sale:

\* \* \* \* \*

(4) Financial statements required to be furnished by Part F/S of Form 1-A (Regulation A Offering Statement) (§ 239.90 of this chapter) under Regulation A (§§ 230.251—230.263). Foreign private issuers as defined in Rule 405 must provide a reconciliation to generally accepted accounting principles in the United States (U.S. GAAP) if their financial statements are not prepared in accordance with U.S. GAAP or the English language version of IFRS as published by the IASB (Item 17 of Form 20-F (§ 249.220f of this chapter)). The financial statements required by this section must be as of a date no more than 180 days before the sale of securities in reliance on this exemption.

\* \* \* \* \*

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

6. The authority citation for part 239 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w, 78ll(d), 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

\* \* \* \* \*

7. Amend Form S-4 (referenced in § 239.25) by revising the instruction to Item 17 to read as follows:

**Note:** The text of Form S-4 does not and this amendment will not appear in the Code of Federal Regulations.

**Form S-4**

\* \* \* \* \*

Item 17. Information with Respect to Companies other than S-3 Companies.

\* \* \* \* \*

Instructions:

1. \* \* \*

2. *If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP or the English language version of IFRS as published by the IASB, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. when the financial statements are*

*prepared on a basis other than U.S. GAAP.*

\* \* \* \* \*

8. Amend Form F-4 (referenced in § 239.34) by:

- a. Revising Item 10(c)(2);
- b. Revising Item 10(c)(3);
- c. Revising Item 12(b)(2)(iii) and (iv);
- d. Revising the Instruction to Item 17(b)(5) and (b)(6).

The revisions read as follows.

**Note:** The text of Form F-4 does not and this amendment will not appear in the Code of Federal Regulations.

**Form F-4**

\* \* \* \* \*

Item 10. Information With Respect to F-3 Companies.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(2) Restated financial statements prepared in accordance with *or, if prepared using a basis of accounting other than the English language version of IFRS as published by the IASB*, reconciled to U.S. GAAP and Regulation S-X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(3) Restated financial statements prepared in accordance with *or, if prepared using a basis of accounting other than the English language version of IFRS as published by the IASB*, reconciled to U.S. GAAP and Regulation S-X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X (§ 210.11-01(b) of this chapter); or

\* \* \* \* \*

Item 12. Information With Respect to F-3 Registrants.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) Restated financial statements prepared in accordance with *or, if prepared using a basis of accounting other than the English language version of IFRS as published by the IASB*, reconciled to U.S. GAAP and Regulation S-X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(iv) Restated financial statements prepared in accordance with *or, if*

*prepared using a basis of accounting other than the English language version of IFRS as published by the IASB*, reconciled to U.S. GAAP and Regulation S-X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X; and

\* \* \* \* \*

Item 17. Information With Respect to Foreign Companies Other Than F-3 Companies.

\* \* \* \* \*

*Instructions to paragraph (b)(5) and (b)(6):* If the financial statements required by paragraphs (b)(5) and (b)(6) are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP or the English language version of IFRS as published by the IASB, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. when the financial statements are prepared on a basis other than U.S. GAAP.

\* \* \* \* \*

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

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

**Authority:** 15 U.S.C. 78a et seq., 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

10. Amend Form 20-F (referenced in § 249.220f) as follows:

- a. Add a check box to the cover page indicating the basis of accounting used to prepare the financial statements;
- b. Revise the check box on the cover page indicating whether Item 17 or Item 18 was used;
- c. Revise the cover page to require contact information for the issuer;
- d. Revise General Instruction G(b)(1)(A) and G(b)(2)(A);
- e. Revise General Instruction G(d);
- f. Revise General Instruction G(e);
- g. Revise General Instruction G(f)(2)(B)(ii);
- h. Revise General Instruction G(f)(2)(B)(iii);

- i. Revise General Instruction G(h)(2);
- j. Revise Instruction 2.b to General Instruction G(h);
- k. Revise Item 3.A, Instruction 2;
- l. Add an Instruction to Item 5;
- m. In Item 8.A.5, add a sentence to the end of Instruction 3;
- n. Add an Instruction to Item 11;
- o. Revise Item 17(c);
- p. Remove Item 17(c)(2)(iv)(B);
- q. Remove Item 17(c)(2)(iv)(C);
- r. Add text at the end of Item 17(c)(2)(v);
- s. Add text at the end of Item 17(c)(2)(vi);
- t. Remove Item 17(c)(2)(viii);
- u. Remove Item 17, Instruction 6; and
- v. Revise Item 18(b).

The additions and revisions 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**

\* \* \* \* \*

(Exact name of Registrant as specified in its charter)  
 (Translation of Registrant's name into English)  
 (Jurisdiction of incorporation or organization)  
 (Address of principal executive offices)  
 (Name, Telephone and Address of Company Contact Person)

Large accelerated  
 filer \_\_\_\_\_ Accelerated  
 filer \_\_\_\_\_ Non-accelerated  
 filer \_\_\_\_\_

Indicate by check which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP \_\_\_\_\_ International  
 Financial Reporting Standards as published by the International Accounting Standards Board (in English) \_\_\_\_\_ Other \_\_\_\_\_

If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow.

Item 17 \_\_\_\_\_ Item 18 \_\_\_\_\_  
 \* \* \* \* \*

**General Instructions**

\* \* \* \* \*

**G. First-Time Application of International Financial Reporting Standards.**

\* \* \* \* \*

- (b) \* \* \*
- (1) \* \* \*

(A) the issuer's most recent audited financial statements required by Item 8.A.2 are for the 2012 financial year or an earlier financial year;

\* \* \* \* \*

(2) \* \* \*  
 (A) the annual report relates to the 2012 financial year or an earlier financial year;  
 \* \* \* \* \*

(d) *Information on the Company.* The reference in Item 4.B to the "body of accounting principles used in preparing the financial statements," means IFRS and not the basis of accounting that was previously used ("Previous GAAP") or accounting principles used only to prepare a U.S. GAAP reconciliation.

(e) *Operating and Financial Review and Prospects.* The issuer shall present the information provided pursuant to Item 5. The discussion should focus on the financial statements for the two most recent financial years prepared in accordance with IFRS. No part of the discussion should relate to financial statements prepared in accordance with Previous GAAP.

(f) *Financial Information.*

\* \* \* \* \*

(2)(B)(i) \* \* \*  
 (ii) Two financial years of audited financial statements and interim financial statements (which may be unaudited) for the current and comparable prior year period, prepared in accordance with IFRS;

(iii) Three financial years of audited financial statements prepared in accordance with Previous GAAP and reconciled to U.S. GAAP as required by Item 17(c) or 18, as applicable; interim statements (which may be unaudited) for the current and comparable prior year period prepared in accordance with IFRS; and condensed financial information prepared in accordance with U.S. GAAP for the most recent financial year and the current and comparable prior year interim period (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.

\* \* \* \* \*

(h) *Financial Statements.*

\* \* \* \* \*

(2) *U.S. GAAP Information.* The U.S. GAAP reconciliation referenced in Item 17(c) or 18 shall not be required for periods presented in accordance with the English language version of IFRS as published by the IASB.

*Instructions:*

\* \* \* \* \*

b. *Present or incorporate by reference 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 should not refer to a reconciliation to U.S. GAAP. No part of the discussion should relate to financial statements prepared in accordance with IFRS.*

\* \* \* \* \*

**Item 3. Key Information**

\* \* \* \* \*

*Instructions to Item 3.A:*

\* \* \* \* \*

2. *You may present the selected financial data on the basis of the accounting principles used in your primary financial statements. If you use a basis of accounting other than the English language version of IFRS as published by the IASB ("IFRS"), however, you also must include in this summary any reconciliations of the data to U.S. generally accepted accounting principles and Regulation S-X, pursuant to Item 17 or 18 of this Form. For financial statements prepared using a basis of accounting other than IFRS, you only have to provide selected financial data on a basis reconciled to U.S. generally accepted accounting principles for (i) those periods for which you were required to reconcile the primary annual financial statements in a filing under the Securities Act or the Exchange Act, and (ii) any interim periods.*

\* \* \* \* \*

**Item 5. Operating and Financial Review and Prospects**

\* \* \* \* \*

*Instructions to Item 5:*

\* \* \* \* \*

5. *Issuers preparing their financial statements in accordance with the English language version of IFRS as published by the IASB ("IFRS") should, in providing information in response to paragraphs of this Item 5 that refer to specific provisions of U.S. GAAP, refer to appropriate provisions of IFRS that contain the definitional principles embodied in the referenced U.S. GAAP items. In responding to this Item 5, issuers need not repeat information contained in financial statements prepared in accordance with IFRS.*

\* \* \* \* \*

**Item 8. Financial Information**

\* \* \* \* \*

*Instructions to Item 8.A.5:*

\* \* \* \* \*

3. \* \* \* \* \*

*A registrant using the English language version of IFRS as published by the IASB as its basis of accounting is not required to provide the information described in paragraphs*

3(a) and (b) to this Instruction to Item 8.A.5.

\* \* \* \* \*

Item 11. Quantitative and Qualitative Disclosures About Market Risk

\* \* \* \* \*

*Instruction: Issuers preparing their financial statements in accordance with the English language version of IFRS as published by the IASB should, in providing information in response to paragraphs of this Item that refer to specific provisions of U.S. GAAP, follow the appropriate provisions of IFRS that contain the principles embodied in the referenced U.S. GAAP items. In responding to this Item, issuers need not repeat information contained in financial statements prepared in accordance with the English language version of IFRS as published by the IASB.*

\* \* \* \* \*

Item 17. Financial Statements

\* \* \* \* \*

(c): The financial statements and schedules required by paragraph (a) above may be prepared according to U.S. generally accepted accounting principles or the English language version of IFRS as published by the IASB. If the financial statements comply with the English language version of IFRS as published by the IASB, (i) it must be clearly stated in the notes to the financial statements and (ii) the auditor's report must include an opinion on whether the financial statements comply with the English

language version of IFRS as published by the IASB. If the notes and auditor's report of an issuer do not contain the information in the preceding sentence, then the U.S. GAAP reconciliation information described in paragraphs (c)(1) and (c)(2) must be provided. Alternatively, such financial statements and schedules may be prepared according to a comprehensive body of accounting principles other than those generally accepted in the United States or the English language version of IFRS as published by the IASB if the following are disclosed:

\* \* \* \* \*

(c)(2)(v): \* \* \* Issuers that prepare financial statements using the English language version of IFRS as published by the IASB that are furnished pursuant to § 210.3.05 may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this Item regardless of the size of the business acquired or to be acquired.

(c)(2)(vi): \* \* \* Issuers that prepare financial statements using the English language version of IFRS as published by the IASB that are furnished pursuant to § 210.3.09 may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this Item regardless of the size of the investee.

(c)(2)(vii):

\* \* \* \* \*

*Instructions to Item 17(C)(2):*

\* \* \* \* \*

Item 18. Financial Statements

\* \* \* \* \*

(b) *If the financial statements are prepared using a basis of accounting other than the English language version of IFRS as published by the IASB, all other information required by U.S. generally accepted accounting principles and Regulation S-X unless such requirements specifically do not apply to the registrant as a foreign issuer. However, information may be omitted (i) for any period in which net income has not been presented on a basis reconciled to United States generally accepted accounting principles, or (ii) if the financial statements are furnished pursuant to § 210.3.05 or less-than-majority owned investee pursuant to § 210.3.09 of this chapter.*

*Instructions to Item 18:*

1. All of the instructions to Item 17 also apply to this Item, except Instruction 3 to Item 17, which does not apply.

2. An issuer that is required to provide disclosure under FASB, Statement of Accounting Standards No. 69, "Disclosures about Oil and Gas Producing Activities," shall do so regardless of the basis of accounting on which it prepares its financial statements.

\* \* \* \* \*

Dated: July 2, 2007.

By the Commission.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7-13163 Filed 7-10-07; 8:45 am]

**BILLING CODE 8010-01-P**