

There is no comparable Incorporated NYSE Rule.

On June 15, 2009, the SEC approved a proposed rule change to modernize NASD Rule 2720 (the "2009 Rule Change").<sup>9</sup> The 2009 Rule Change became effective on September 14, 2009.<sup>10</sup>

The proposed rule change would adopt NASD Rule 2720 without material change as FINRA Rule 5121 in the Consolidated FINRA Rulebook. The proposal would make minor changes to the Rule to reflect the new terminology conventions of the Consolidated FINRA Rulebook.

### III. Comment Letters

The Commission received one comment letter in response to the proposed rule change.<sup>11</sup> The Commission also received FINRA's response to comments.<sup>12</sup> While the commenter had no objection to the proposal itself to move NASD Rule 2720 without material change into the Consolidated FINRA Rulebook, the commenter did offer a number of comments about the substance of the Rule. The specific comments from this letter, as well as FINRA's response, are discussed in detail below.

The commenter suggested that FINRA clarify what "participation in a public offering" means for purposes of the Rule and suggested an alternative definition. FINRA responded that "participation in a public offering" for purposes of the Rule are already widely understood and that the alternative definition suggested by the commenter would be an inappropriate narrowing of the Rule.

The commenter also suggested that FINRA clarify what "primarily responsible for managing the public offering" means for purposes of the Rule and suggested an alternative for the term. FINRA asserted that the commenter's alternative would inappropriately narrow the application of the Rule and that the Rule as written provided FINRA flexibility to keep pace with developments in the underwriting process while also acknowledging the varied roles its members play currently.

the participation of a qualified independent underwriter. Members also must comply with certain net capital, discretionary accounts and filing requirements, as applicable.

<sup>9</sup> See Securities Exchange Act Release No. 60113 (June 15, 2009), 74 FR 29255 (June 19, 2009) (File No. SR-FINRA-2007-009).

<sup>10</sup> See *Regulatory Notice* 09-49 (SEC Approves Amendments to Modernize and Simplify NASD Rule 2720 Relating to Public Offerings in Which a Member Firm With a Conflict of Interest Participates) (August 2009).

<sup>11</sup> See ABA Letter.

<sup>12</sup> See FINRA Response Letter.

The commenter also offered an alternative to the experience standard necessary to qualify as a "qualified independent underwriter" under the Rule. FINRA recognized the issue raised by the commenter and stated their intention to take a more comprehensive review of the matter. FINRA also pointed out that they have exemptive authority in extreme circumstances where the standard may unnecessarily limit the availability of a qualified independent underwriter.

The commenter also suggested that FINRA clarify that the definition of "affiliate" used in the Rule only applies to the Rule. FINRA did not agree with this change and stated the thrust of this comment was directed at rules beyond the rule proposal.

Lastly, the commenter suggested that FINRA amend the definition of "entity" used in the Rule to except financing instrument-backed securities from being considered an "entity" for purposes of the Rule. FINRA points out that these securities were purposefully not included in the exceptions to the definition of "entity."

### IV. Discussion and Findings

After careful review of the proposed rule change, the comment, and FINRA's response to the comment, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.<sup>13</sup> In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>14</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the Rule continues regulation that protects investors in offerings where the member has a conflict of interest. The Commission also notes that FINRA is adopting NASD Rule 2720 into the Consolidated FINRA Rulebook as FINRA Rule 5121 without material change.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (File No. SR-

<sup>13</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

FINRA-2010-026) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-20365 Filed 8-17-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-9133; 34-62699; File No. 4-607]

### Notice of Solicitation of Public Comment on Consideration of Incorporating IFRS Into the Financial Reporting System for U.S. Issuers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Request for comment.

**SUMMARY:** The Securities and Exchange Commission is requesting public comment on behalf of the staff on three topics related to its ongoing consideration of incorporating International Financial Reporting Standards ("IFRS") into the financial reporting system for U.S. issuers. These three topics, derived from the staff's work plan on consideration of the incorporation of IFRS, involve the impact of such incorporation on: U.S. investors' current knowledge of IFRS and preparedness for incorporation of IFRS into the financial reporting system for U.S. issuers; how investors educate themselves on changes in accounting standards and the timeliness of such education; and the extent of, logistics for, and estimated time necessary to undertake changes to improve investor understanding of IFRS and the related education process to ensure investors have a sufficient understanding of IFRS prior to potential incorporation.

**DATES:** Comments should be received on or before October 18, 2010.

**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/other.shtml>);
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-607 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

### Paper Comments

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

All submissions should refer to File No. 4-607. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/other.shtml>). Comments are also available for Web site viewing and printing 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:

Wesley R. Bricker, Professional Accounting Fellow, or Vassilios Karapanos, Associate Chief Accountant, Office of the Chief Accountant at (202) 551-5300, or Tamara Brightwell, Senior Special Counsel, Division of Corporation Finance, at (202) 551-3500, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

### I. Introduction

On February 24, 2010, the Commission issued a Statement in Support of Convergence and Global Accounting Standards (the "Statement"), reiterating its belief "that a single set of high-quality globally accepted accounting standards will benefit U.S. investors and that this goal is consistent with our mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation."<sup>1</sup> In this Statement, the Commission directed its staff to develop and execute a work plan ("Work Plan"), the purpose of which is to consider specific areas and factors before potentially repositioning our current financial reporting system for U.S. issuers to a system incorporating IFRS.<sup>2</sup>

The Work Plan identifies a number of topics for further study, including the three topics described below that are the subject of this solicitation for comment.

<sup>1</sup> Release Nos. 33-9109; 34-61578 (Feb. 24, 2010) [75 FR 9494] (Mar. 2, 2010).

<sup>2</sup> Available at: <http://www.sec.gov/spotlight/globalaccountingstandards/globalaccountingstandards.pdf>.

### II. Investors' Current Knowledge of IFRS and Preparedness for Incorporation of IFRS<sup>3</sup>

#### A. Background

The consideration of incorporating IFRS into the financial reporting system for U.S. issuers requires, among other things, consideration of the impact on investors. This consideration requires an assessment of investor understanding and education regarding IFRS, because the main benefits to investors of a single set of high-quality globally accepted accounting standards would be realized only if investors understand and have confidence in the basis for the reported results.

IFRS currently differs from U.S. GAAP in a number of areas. Consequently, incorporation of IFRS into the financial reporting system for U.S. issuers may require significant investor education regarding IFRS. However, U.S. investors already may possess some understanding of IFRS due to global industry focus, cross-border investment decisions, and investments in foreign private issuers. Moreover, through the convergence process undertaken by the Financial Accounting Standards Board ("FASB") and the International Accounting Standards Board ("IASB"), the differences between the two sets of standards should become fewer and narrower.

#### B. Request for Comment

• To what extent and in what ways is the set of accounting standards (such as U.S. GAAP or IFRS) used by a company in its financial reporting significant to an investor's decision to invest in that company?

• To what extent are investors aware of the potential impact of incorporation of IFRS into the financial reporting system for U.S. issuers that they invest in or follow, compared with current U.S. GAAP? How significant of a change would the use of IFRS as compared to current U.S. GAAP be for investors?

• To what extent and in what ways would any of the current differences between U.S. GAAP and IFRS affect an investor's use of information reported in the financial statements? How would completion of the convergence projects being jointly undertaken by the FASB and the IASB affect an investor's use of those financial statements?

• How do investors develop and maintain an understanding of the impact of accounting standards, whether IFRS or U.S. GAAP, on the companies that they currently, or may

in the future, invest in? How confident are investors in their understanding of IFRS? To what extent and in what ways would that change if IFRS were incorporated into the financial reporting system for U.S. issuers?

• How much time do investors currently devote to understanding or maintaining an understanding of accounting standards? To what extent would the time increase or decrease if IFRS were incorporated into the financial reporting system for U.S. issuers?

• If IFRS were to be incorporated into the financial reporting system for U.S. issuers, to what extent would an investor (or an investor's organization) have adequate resources to develop an understanding of IFRS, such as knowledgeable professionals, training materials, and access to standards?

• To what extent and in what ways do investors think incorporation of IFRS would affect comparability among different issuers' financial statements? Which standards or treatments in IFRS that are elective are most important? To what extent do reporting format and disclosures affect any lack of comparability?

• To what extent and in what ways would an investor's investment decision-making processes change if a U.S. issuer's financial statements were prepared using IFRS? Would investors need additional or different information to perform their analysis and, if so, what?

• To what extent and in what ways would an investor's investment decision-making processes change if U.S. issuers were given a choice to elect to prepare their financial statements using either U.S. GAAP or IFRS? Would an investor have greater or lesser confidence in a company's financial reporting if a U.S. issuer were to elect to prepare its financial statements in accordance with IFRS rather than U.S. GAAP?

• To what extent would use of IFRS by a U.S. issuer influence an investor to invest in that issuer? Not to invest? To hold? To sell?

• Do the answers to the questions above change depending on the nature of the investor (for example, if the investor is a retail investor, mutual-fund investor, institutional investor, or asset or portfolio manager) or the class of investments (debt, equity or convertible securities)?

<sup>3</sup> See the Work Plan, 75 FR at 9507.

### III. Investors' Education Processes on Changes in Accounting Standards and Timeliness of Such Education

#### A. Background

Incorporation of IFRS into the financial reporting system for U.S. issuers may affect investors' education processes on changes in accounting standards and the timeliness of such education. As part of the Work Plan, the staff is considering how U.S. investors currently become educated about changes to accounting standards, in order to better assess the extent of investor educational effort necessary to effectively incorporate IFRS into the financial reporting system for U.S. issuers.

#### B. Request for Comment

- In what ways do investors educate themselves about accounting standards and changes to accounting standards? For example, do investors review accounting standard setters' project activities and related board materials? Observe meetings? Review meeting summaries? Review other observers' commentaries?

- At what point do investors educate themselves about standard-setting activities? Is it during the standard-setting process? Is it after completion of the standard-setting process? Would the timing of investors' education processes change if accounting standards for U.S. issuers were primarily developed by an organization other than the FASB?

- To what extent and in what ways do investors participate in the standard-setting process when the FASB and IASB set standards? Do they monitor standard-setting deliberations? Do they prepare response letters to requests for comment? Do they participate in the standard setters' working groups and roundtables?

- To what extent does the timing of an investor's education about a possible outcome of the accounting standard-setting process affect investment decisions? Do investors consider possible changes in accounting standards when analyzing an issuer's reported financial information, even before any such change in accounting is required to be adopted?

- Are there ways to improve the representation and communication of investors' perspectives in connection with accounting standard setting?

- To what extent do investors believe more education or communication about accounting standards or accounting standard-setting is needed? If more education or communication is needed, how should the education or

communication be delivered? By whom?

### IV. Extent of, Logistics for, and Estimated Time Necessary To Undertake Any Necessary Changes

#### A. Background

Incorporating IFRS into the financial reporting system for U.S. issuers could impact the extent of, logistics for, and estimated time necessary to undertake changes to improve investor understanding of IFRS and the related education process to ensure investors have a sufficient understanding of IFRS prior to potential incorporation.

#### B. Request for Comment

- How much time, if any, do investors need to improve their understanding of IFRS and related education processes so they have a sufficient understanding of IFRS prior to any incorporation?

- What mechanisms would aid investors in improving their understanding of IFRS? Who should provide those mechanisms?

Persons submitting comments on any of these questions are invited to consider and comment on whether the manner in which IFRS incorporation is implemented would affect the responses to the questions above.

All interested parties are invited to submit their views, in writing, on these questions.

Dated: August 12, 2010.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-9134; 34-62700; File No. 4-608]

### Notice of Solicitation of Public Comment on Consideration of Incorporating IFRS Into the Financial Reporting System for U.S. Issuers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Request for comment.

**SUMMARY:** The Securities and Exchange Commission is requesting public comment on behalf of the staff on three topics related to its ongoing consideration of incorporating International Financial Reporting Standards ("IFRS") into the financial reporting system for U.S. issuers. These three topics, derived from the staff's

Work Plan on considering the incorporation of IFRS into the financial reporting system for U.S. issuers, involve the impact of such incorporation on: Issuers' compliance with contractual arrangements that require the use of U.S. Generally Accepted Accounting Principles ("U.S. GAAP"); Issuers' compliance with corporate governance requirements; and the application of certain legal standards tied to amounts determined for financial reporting purposes.

**DATES:** Comments should be received on or before October 18, 2010.

**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/other.shtml>);
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-608 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper Comments

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

All submissions should refer to File No. 4-608. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/other.shtml>). Comments are also available for Web site viewing and printing 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:

Tamara Brightwell, Senior Special Counsel, Larry Hamermesh, Attorney-Fellow, or Jennifer Zepralka, Senior Special Counsel, Division of Corporation Finance, at (202) 551-3500, or Jeffrey S. Cohan, Senior Special Counsel, Office of the Chief Accountant, at (202) 551-5300, 100 F Street, NE., Washington, DC 20549.