

# Management Alert

## SEC Adopts Rules Permitting IFRS Compliance by Foreign Private Issuers Without Reconciliation to U.S. GAAP

The Securities and Exchange Commission (SEC) has adopted new rules to allow foreign private issuers to use financial statements prepared in accordance with the English language version of the International Financial Reporting Standards (IFRS) as published by the International Accounting Standards Board (IASB) in their filings with the SEC without the requirement to reconcile those financial statements to generally accepted accounting principles used in the United States (U.S. GAAP). The new rules affect financial statements required in annual reports on Form 20-F, Multi-jurisdictional Disclosure System filings by Canadian issuers and any registration statement filed by a foreign private issuer that is a Form 20-F filer.

### *Background*

Approximately 100 countries, including all member states in the European Union (EU), now require or allow the use of IFRS. The EU requires that all companies incorporated in one of its member states whose securities are listed on an EU regulated market

report their consolidated financial statements using IFRS as adopted by the EU. These requirements affect approximately 7,000 companies in the EU.

Currently, the SEC requires U.S. issuers to include with their SEC filings financial statements prepared in accordance with U.S. GAAP. SEC filings by foreign private issuers must include either financial statements that are prepared in accordance with U.S. GAAP or financial statements which are prepared in accordance with the issuer's home country GAAP together with a reconciliation of those financial statements to U.S. GAAP. In such a reconciliation, a foreign private issuer must identify and quantify the material differences between its financial statements and the requirements of U.S. GAAP and SEC rules.

### *IFRS Reporting*

The new rules will be available to foreign private issuers whether they are using IFRS voluntarily or as a result of compliance with their domestic rules or

local stock exchange requirements. Under the new rules, a foreign private issuer that prepares its financial statements in accordance with IFRS as issued by the IASB will not have to reconcile those financial statements with U.S. GAAP. In order to be exempt from having to provide a reconciliation to U.S. GAAP, the new rules require a foreign private issuer to state unreservedly and explicitly in a prominent footnote to its financial statements that its financial statements have been prepared in accordance with IFRS as issued by the IASB. Additionally, the independent auditor of the financial statements must state in its report that those financial statements comply with IFRS as issued by the IASB.

A foreign private issuer will continue to be required to provide a reconciliation of its financial statements to U.S. GAAP under the new rules if:

1. The financial statements include deviations from IFRS as issued by the IASB;
2. The financial statements do not state unreservedly and explicitly that the financial statements are in compliance with IFRS as issued by the IASB;
3. The auditor does not opine on compliance with IFRS as issued by the IASB; or
4. The auditor's report contains any qualification relating to compliance with IFRS as issued by the IASB.

Under the new rules, foreign private issuers may elect to continue to submit financial statements prepared in accordance with non-U.S. GAAP or non-IFRS, in either case with U.S. GAAP reconciliation information.

## *Compliance*

IFRS reporting by foreign private issuers will be permitted with respect to annual financial statements relating to fiscal years ending after November 15, 2007. The new rules will become effective March 4, 2008, and IFRS reporting will be permitted with respect to financial statements for interim fiscal periods ending on or after March 4, 2008.

## *Transition Period for EU Listed Issuers*

The EU requires that all companies incorporated in one of its member states whose securities are listed on an EU regulated market report their consolidated financial statements using IFRS as adopted by the EU. In adopting the new rules, the SEC noted that the only difference between IFRS as issued by the IASB and IFRS as adopted by the EU relates to IAS 39, "Financial Instruments: Recognition and Measurement," whereby IFRS as adopted by the EU offers greater flexibility with respect to hedge accounting for certain financial instruments than does IFRS as issued by the IASB.

Under the new rules, existing SEC registrants from the EU that have already utilized the IAS 39 carve out in financial statements previously filed with the SEC will be permitted to file with the SEC, only for the first two fiscal years ending after November 15, 2007, financial statements that do not include a reconciliation to U.S. GAAP, if those financial statements otherwise comply with IFRS as issued

by the IASB and contain a reconciliation to IFRS as issued by the IASB. This reconciliation to IFRS as issued by the IASB is to contain information relating to financial statement line items and footnote disclosure based on full compliance with IFRS as issued by the IASB. It is to be prepared and disclosed in the same manner that foreign private issuers presently provide reconciliations of their financial statements to U.S. GAAP. All financial statements of foreign private issuers that used the IAS 39 carve out for periods prior to the financial year that ends after November 15, 2007 must continue to be reconciled to U.S. GAAP.

*If you have any questions regarding this Management Alert, please contact the Seyfarth Shaw attorney with whom you work, or any Corporate attorney on our website, [www.seyfarth.com](http://www.seyfarth.com).*

**ATLANTA**

One Peachtree Pointe  
 1545 Peachtree Street, N.E.  
 Suite 700  
 Atlanta, GA 30309-2401  
 404-885-1500  
 404-892-7056 fax

**BOSTON**

World Trade Center East  
 Two Seaport Lane  
 Suite 300  
 Boston, MA 02210-2028  
 617-946-4800  
 617-946-4801 fax

**CHICAGO**

131 South Dearborn Street  
 Suite 2400  
 Chicago, IL 60603-5577  
 312-460-5000  
 312-460-7000 fax

**HOUSTON**

700 Louisiana Street  
 Suite 3700  
 Houston, TX 77002-2797  
 713-225-2300  
 713-225-2340 fax

**LOS ANGELES**

One Century Plaza, Suite 3300  
 2029 Century Park East  
 Los Angeles, CA 90067-3063  
 310-277-7200  
 310-201-5219 fax

**NEW YORK**

620 8th Avenue  
 32nd Floor  
 New York, NY 10018  
 212-218-5500  
 212-218-5526 fax

**SACRAMENTO**

400 Capitol Mall  
 Suite 2350  
 Sacramento, CA 95814-4428  
 916-448-0159  
 916-558-4839 fax

**SAN FRANCISCO**

560 Mission Street  
 Suite 3100  
 San Francisco, CA 94105-2930  
 415-397-2823  
 415-397-8549 fax

**WASHINGTON, D.C.**

815 Connecticut Avenue, N.W.  
 Suite 500  
 Washington, D.C. 20006-4004  
 202-463-2400  
 202-828-5393 fax

**BRUSSELS**

Boulevard du Souverain 280  
 1160 Brussels, Belgium  
 (32) (2) 647 60 25  
 (32) (2) 640 70 71 fax



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