

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

12 May 2008

**Foreign Issuer Reporting Enhancements  
(Release Nos. 33-8900; 34-57409)  
Commission File No. S7-05-08**

Dear Ms. Morris:

Ernst & Young LLP is pleased to respond to the Securities and Exchange Commission's (the "Commission" or the "SEC") request for comment regarding its proposal to enhance the reporting of foreign private issuers (the "Proposal"). Our comments also reflect the views of Ernst & Young Global, which is the global organization of Ernst & Young member firms. The following are our comments by major section of the Proposal. Certain detailed comments on the proposed text of the amendments are included in the Attachment.

We support the Commission's overall efforts in the Proposal to enhance the reporting of foreign private issuers. We generally agree with the individual aspects of the Proposal, but we suggest a few refinements, generally in the spirit of acknowledging the ongoing efforts of regulators in other countries that are designed to enhance financial reporting in their respective markets.

**Accelerating the reporting deadline for Form 20-F annual reports**

The proposal to shorten the Form 20-F reporting deadline, by as much as half from the current six-month deadline, would have the most significant effect on practice of any aspect of the Proposal. We strongly support the efforts of the SEC to achieve timelier financial reporting by foreign private issuers. Since establishment of the six-month deadline nearly 30 years ago, information that could affect the market for a foreign private issuer's securities, including information released by the issuer itself, is now more readily available on a more timely basis to investors around the world. At a March 2007 SEC Roundtable, investors and analysts indicated that they use financial statements prepared in accordance with home country generally accepted accounting principles ("GAAP") for their analyses, because these financial statements are released far earlier than the Form 20-F filing with the same financial statements reconciled to United States ("US") GAAP. Accelerating the Form 20-F deadline would provide US investors with more timely, and as a result more useful, information. The overwhelming majority of foreign private issuers' home country securities regulators already have reporting deadlines of either three or four months after year-end, which generally correspond to the proposed Form 20-F reporting deadlines for accelerated and large accelerated filers on the one hand, and for non-accelerated filers on the other hand.

For foreign private issuers who prepare their financial statements under US GAAP or International Financial Reporting Standards as issued by the International Accounting Standards Board (“IFRS”), we support using the Commission’s proposed market capitalization framework to determine the Form 20-F reporting deadline. These issuers do not have to prepare the additional US GAAP reconciliation in order to file Form 20-F. While for some accelerated and large accelerated filers a 90 day reporting deadline would be earlier than their home country deadlines, their same-sized US counterparts have even earlier SEC annual reporting deadlines of 75 or 60 days, respectively. Given its market capitalization, a foreign private issuer that prepares its financial statements using US GAAP or IFRS and that qualifies as either an accelerated or a large accelerated filer, could be expected to have a financial reporting infrastructure sufficient to meet the proposed 90-day Form 20-F reporting deadline. We agree that a two-year period should be adequate to allow foreign private issuers without a US GAAP reconciliation requirement to transition to a shorter Form 20-F reporting deadline.

However, for foreign private issuers that are still required to reconcile home country GAAP to US GAAP, an acceleration of the Form 20-F reporting deadlines could impose a significant additional burden due to the time required to gather and provide more information than is required in the home jurisdiction. For example, many of these foreign private issuers currently file their annual report on Form 20-F near the current six-month reporting deadline. While we support the acceleration of the reporting deadline for annual reports on Form 20-F, we believe the reporting deadline should be within 120 days after the foreign private issuer’s fiscal year-end for all foreign private issuers that reconcile home country GAAP to US GAAP, regardless of the size of the issuer. Furthermore, we recommend that the Commission provide a three-year transition period for foreign private issuers that must file a US GAAP reconciliation. For example, the Form 20-F filing deadline should not change until fiscal years ending on or after December 15, 2011. A three-year transition period should allow sufficient time to enhance financial reporting systems. A three-year transition period also would allow continued progress in many jurisdictions toward the adoption of IFRS, which would eliminate the requirement to prepare a reconciliation to US GAAP.

### **Annual test for foreign private issuer status**

We agree with the Commission’s proposal to simplify the testing for foreign private issuer status, and we strongly support permitting foreign private issuers to assess their reporting status only once a year, as proposed. If an issuer no longer qualifies as a foreign private issuer, substantial incremental effort is often required to comply with the SEC requirements applicable to a domestic issuer, with which the SEC currently requires immediate compliance. Therefore, we also support the SEC’s proposal to permit a former foreign private issuer to begin to comply as a domestic issuer on the first day of its fiscal year following the determination date (i.e., the last business day of its most recently completed second fiscal quarter). We believe the proposal would provide the necessary advance notice to allow management, the audit committee, and the independent auditors sufficient time to prepare to report using domestic forms, reporting deadlines and other applicable SEC rules. Finally, we also support the proposed amendment that would permit a newly qualifying foreign private issuer to begin to avail itself of the related accommodations immediately.

### **Requiring Item 18 reconciliation in annual reports and registration statements filed on Form 20-F**

If an appropriate transition period is provided, we support the proposal to require all foreign private issuers to use the more extensive disclosure requirements of Item 18 of Form 20-F. While this would increase the burden on foreign private issuers that currently use the less extensive disclosure requirements of Item 17 of Form 20-F, the additional benefit to investors appears to outweigh the burden of providing the additional disclosures required under Item 18.

As proposed, a foreign private issuer currently providing a reconciliation of its financial statements according to Item 17 would be required to use Item 18 for fiscal years ending on or after December 15, 2009. Until, and even after, this proposed effective date, many countries will be progressing towards adoption of IFRS as their basis of accounting. For example, Canada is working towards a first quarter of 2011 adoption of IFRS. Under the Proposal, a calendar year-end Canadian non-MJDS filer that provides a reconciliation of its financial statements according to Item 17 would provide the additional Item 18 disclosures for its December 31, 2009 Form 20-F and then adopt IFRS in 2011. This would result in a transitory adoption of the Item 18 disclosures for two years. Similar scenarios could exist in other countries.

Furthermore, foreign private issuers providing a reconciliation of their financial statements according to Item 17 tend to be smaller issuers. The stress on their financial accounting and reporting systems of providing the additional Item 18 disclosures and then adopting IFRS, while at the same time complying with a shorter Form 20-F reporting deadline, could be significant. We believe there is little value in requiring Item 18 information in cases where IFRS adoption is imminent. Instead, the transition period for requiring Item 18 information should accommodate foreign private issuers from those countries that will be adopting IFRS in the next several years. This would avoid a foreign private issuer providing disclosures to meet Item 18 requirements for a year or two, only to then adopt IFRS and become exempt from that reconciliation requirement. Therefore, we believe a reasonable approach to transition would be to select a compliance date that is effective for fiscal years ending on or after December 15, 2011.

### **Segment data disclosure**

Notwithstanding the proposal discussed above regarding Item 18, our understanding is that a small number of Japanese foreign private issuers avail themselves of the accommodation provided by Item 17 to omit segment data when preparing financial statements that otherwise fully comply with US GAAP. Furthermore, we understand that there is an exposure draft outstanding for a new accounting standard in Japan that would require segment reporting using a management approach that is substantially equivalent to US GAAP and IFRS. The proposed exposure draft would be effective for the fiscal year ending March 31, 2011; March 31 generally is the fiscal year-end for companies in Japan. We believe that the proposal to eliminate this Item 17 accommodation should provide a transition period that considers the effective date of various countries' final or proposed accounting standards on segment reporting. By recognizing accounting standard-setting activities of other countries in developing the related transition period, an affected foreign private issuer would not be required to early adopt new segment disclosures that it otherwise would be adopting in due course. Similar to our view on the effective date of the proposed mandatory Item 18 reconciliation above, an

appropriate transition period should accommodate the pending adoption of changes by a foreign private issuer's home country accounting standard setter that would either accomplish the intended result within a reasonable period or render the requirement moot.

### **Financial information for significant, completed acquisitions**

We do not support the proposal to require a foreign private issuer's Form 20-F to provide the financial information specified by Rule 3-05 and Article 11 of Regulation S-X for "highly significant" (greater than 50% significant) acquisitions completed during the year. Such information would not be sufficiently timely to provide investors meaningful information. In most cases, the effect of such a significant business acquisition will have been reflected in the market for an issuer's securities long before the filing of the Form 20-F. The information (particularly the earliest of the three years of audited financial statements of the acquired company) would be largely outdated by the time the Form 20-F is filed. Furthermore, the foreign private issuer's financial statements already would include disclosure of the pro forma combined results of operations as if the acquisition had taken place at the beginning of the year, as required by US GAAP or IFRS (as applicable).

### **Disclosure about changes in a registrant's certifying accountant**

We support the Commission's proposal to require a foreign private issuer's Form 20-F to provide the disclosures specified by Item 304 of Regulation S-K regarding any change in certifying accountant. The need for these disclosures is the same for both domestic and foreign registrants. Among other things, Item 304 provides investors with useful information about any disagreements with the former certifying accountant and any "opinion shopping" involving the successor auditor. Item 304 disclosures can provide investors with insight about the quality of a registrant's financial reporting, and the potential disclosure of the required information can serve to influence appropriately the behaviors of foreign private issuers and their certifying accountants.

Although we believe the proposed disclosure could be valuable, the usefulness and value of that information diminishes over time. Thus, the disclosure on a delayed basis in the annual report on Form 20-F, potentially more than a year after the event, seems to diminish its value to an investor. Furthermore, we believe the SEC should consider whether compliance with the proposed disclosures might be problematic for some foreign-based certifying accountants because of privacy laws that exist in their jurisdictions.

### **Disclosure about differences in corporate governance practices**

We support the proposal to require disclosure in Form 20-F about any differences in corporate governance practices of a foreign private issuer and its home country, as compared with those of a domestic registrant. We agree that concise disclosure in Form 20-F of differences as compared to US corporate governance practices would facilitate a review of the corporate governance information in one location and would benefit investors. We also agree that foreign private issuers should have the flexibility to report such information in a manner similar to that used to report it to their respective US exchange as a requirement of listing their securities in the US. This would minimize the incremental cost of providing such information in Form 20-F. A standard format or tabular presentation might not capture the variety of corporate governance practices that exist around the globe.

We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Very truly yours,

*Ernst & Young LLP*

We provide comments on certain drafting matters in the text of the proposed amendments as follows.

### **§230.405 Definition of Terms**

The concept of “determination date” is proposed in §230.405 (and affects §240.3b-4); however, “determination date” is not defined. To provide clarity, we believe that “determination date” should be defined to be “the last business day of its most recently completed second fiscal quarter.”

### **Form F-1**

The Proposal proposes revisions to Item 4 paragraph (c) and removes the Instruction to Item 4A. In the current Form F-1, these sections refer to the requirements of Items 17 and 18. Because of these proposed revisions, there does not appear to be a clear direct link to the requirement to provide Item 18 information in Form F-1, as proposed.

The proposed revision to Item 4 Instruction 2 states, “You do not have to provide the information required by Item 4(c) if you are required to file reports under section 13(a) or 15(d) of the Exchange Act.” Item 4(c) refers to the proposed disclosure requirement related to changes in certifying accountant information. We believe the intent of the Instruction 2 revision is to exempt issuers that have previously provided this information (e.g., in a previously filed Form 20-F). However, the language as drafted appears to exempt any issuer that is ultimately required to file this information in its Exchange Act reports, even if that is after the Form F-1 is filed.

### **Form 20-F**

The Proposal indicates that the SEC expects to provide a two-year transition period, if adopted. However, the proposed amendment to Form 20-F General Instruction A(b) simply replaces the current reporting deadlines and specifies that the new reporting deadlines would take effect for fiscal years ending on or after December 15, 2010. Depending on when the SEC adopts a final rule, it should adjust the specified effective date and provide transition guidance to foreign private issuers for filings on Form 20-F for fiscal years ending prior to the specified effective date.

The proposed amendment to Form 20-F General Instruction E(c) would delete the reference that the audit of financial statements of other entities (e.g., Rule 3-09) must be in accordance with US generally accepted auditing standards and the auditor must comply with US standards for auditor independence. Instruction 2 to Item 8.A.2 would still provide that the audit of financial statements in general must be in accordance with US GAAS and US standards for independence. However, it would not be as clear as the current text of General Instruction E(c) that these requirements continue to apply to audits of financial statements of the other entities.

The proposed Instruction to Item 18 states, “All of the instructions to Item 17 also apply to this Item”. It is not clear whether this revision is intended to replace both existing instructions a) and b) to Item 18. We suspect the intent is to replace only instruction a).