# INSTITUTE OF INTERNATIONAL BANKERS

299 Park Avenue, 17th Floor
New York, N.Y. 10171
Telephone: (212) 421-1611
Facsimile: (212) 421-1119
www.iib.org

**LAWRENCE R. UHLICK**
Chief Executive Officer
E-mail: luhlick@iib.org

May 9, 2008

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
rule-comments@sec.gov

Re: Securities and Exchange Commission File No. S7-05-08

Dear Ms. Morris:

The Institute of International Bankers appreciates the opportunity to comment on the proposal by the Securities and Exchange Commission (the "Commission") to accelerate the filing deadline for annual reports by foreign private issuers on Form 20-F from 6 months to either 90 days or 120 days after the issuer's fiscal year-end, depending on the worldwide market value of the issuer's common equity securities held by non-affiliates.[1] The Institute's members are internationally headquartered banking/financial institutions, many of which have securities registered under the federal securities laws and therefore are required to file an annual report on Form 20-F. Given the worldwide market value of their common equity held by non-affiliates, those of our members that are required to file an annual report on Form 20-F would be subject to the proposed 90-day filing deadline.

The Institute supports efforts to promote transparency and facilitate cross-border capital flows. As discussed in the Release, shortening the filing deadline for the annual report on Form 20-F would "provide investors with more timely access to these filings, and would improve the delivery and flow of reliable information to investors and the capital markets, thereby helping to improve the efficiency of the markets."[2] These are laudable goals, but care must be taken to ensure that the filing deadline is not

[1] *See* Release Nos. 33-8900; 34-57409, 73 Fed. Reg. 13403, 13408-10 (March 12, 2008) (the "Release"). In addition to requesting comments on accelerating the filing deadline for the annual report on Form 20-F, the Commission has requested comments on several other proposed enhancements to the reporting requirements applicable to foreign private issuers. Our comments are limited to the proposed accelerated filing deadline; we do not address the other matters addressed in the Release.

[2] Id. at 13409.

unreasonably shortened to a period that would create disincentives for foreign private issuers seeking access to the U.S. capital markets. We favor a deadline that appropriately balances and accommodates investors' need for timely information with the practical limitations foreign private issuers confront in striving to comply with the reporting requirements prescribed by Form 20-F. We believe that such an accommodation can be made in a manner that both further enhances the attractiveness of the U.S. capital markets to foreign private issuers and provides appropriate disclosure to U.S. investors.

While the Institute therefore does not object in principle to shortening the filing deadline for Form 20-F to less than six months, we respectfully submit that the filing deadline proposed in the Release would impose too great a burden on many foreign private issuers, especially those that are "dual GAAP issuers" – *i.e.*, foreign private issuers that prepare their financial statements on the basis of generally accepted accounting principles ("GAAP") used in their home country – in many instances, use of home country GAAP is mandated by home country regulatory requirements – and are required under the Commission's rules to prepare a reconciliation of those financial statements to U.S. GAAP or prepare a full set of U.S. GAAP financial statements for purposes of their Form 20-F filing.

The Institute urges the Commission to adopt instead a bifurcated filing deadline. Under this approach, the filing deadline for the annual report on Form 20-F would be (i) 120 days from a foreign private issuer's year-end for those issuers that prepare their annual financial statements on the basis of either U.S. GAAP or International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board (the "IASB"), and (ii) 150 days from year-end for dual GAAP issuers. To permit foreign private issuers sufficient time to adjust their systems and operations to these changes, we recommend that they be implemented during a two-year transition period, as proposed in the Release.

As the Commission recognizes in the Release, several competing and equally legitimate considerations are relevant to determining what an appropriate filing deadline should be for foreign private issuers. On the one hand, there is the strong desire to promote market transparency and provide investors information regarding an issuer without unnecessary delay. On the other hand, the annual report on Form 20-F imposes significant burdens on foreign private issuers. Among other things, these include the obligation on foreign private issuers, whether or not they are dual GAAP issuers, to provide the Commission certain information that is not required under their home country reporting regime – the certifications required under the Sarbanes-Oxley Act are a prime example. A further example is the requirement that bank holding companies furnish extensive Guide 3 statistical disclosures.

In addition, foreign private issuers are required to provide other information that is different from what is called for under applicable home country requirements, as is the case in particular, but not exclusively, with respect to dual GAAP issuers (the challenges

dual GAAP issuers face in having to prepare in effect two different sets of financial statements in connection with filing their annual report on Form 20-F are discussed in the attachment to this letter). Moreover, in many instances the information included in the Form 20-F must be translated into English, a task whose burdensomeness should not be underestimated given the complexity and length of the Form 20-F report and the significant differences that exist between English and other languages, especially those that are not derived from Latin.

Thus, preparation of the report on Form 20-F necessarily involves considerable time and effort (to say nothing of the cost) on the part of foreign private issuers. As a matter of basic fairness, they should be accorded additional time to adapt the information prepared under their home country requirements to the form and content prescribed by the Commission on Form 20-F. The question, of course, is how much time is appropriate.

At a minimum, to avoid the anomaly of U.S. requirements in effect displacing those of the issuer's home country foreign private issuers should not be obligated to file the report on Form 20-F earlier than the date on which they are required to file their annual financial reports in their home country.[3] Yet the proposed 90-day filing deadline would threaten exactly that result for many foreign private issuers, including those subject to the European Union's Transparency Directive, which, as the Commission itself recognizes in the Release, requires companies listed on an EU-regulated market to file their annual financial reports four months after the end of each financial year at the latest.[4]

The bifurcated filing deadline proposed above would provide foreign private issuers sufficient time after filing their annual financial reports in their home country to prepare and file the report on Form 20-F. Permitting dual GAAP issuers an additional 30

---

[3] The Commission should also take into account the deadlines that regulators outside the United States impose on U.S. and other non-domestic issuers. In this regard, we believe the approach taken in the European Union is especially instructive. For example, the Committee of European Securities Regulators ("CESR") recently recommended that the European Commission accept U.S. GAAP and Japanese GAAP as "equivalent" to IFRS as adopted in the EU. *See* "Advice on the Equivalence of Chinese, Japanese and US GAAPs" (March 31, 2008), available at http://www.cesr-eu.org/popup2.php?id=5004 (CESR's recommendation regarding Japanese GAAP was qualified by there being "adequate evidence" that the timetable for accelerating convergence between Japanese GAAP and IFRS is met). If implemented, this approach would enable U.S. and Japanese issuers that have their securities admitted to trading on an EU-regulated market to file their annual financial results four months after their fiscal year-end at the latest (in accordance with the EU Transparency Directive), using the same financial statements filed in their home country.

[4] *See* 73 Fed. Reg. at 13408, note 54. We recognize that as a matter of practice many foreign private issuers, including those subject to the EU Transparency Directive, publish their home country annual financial reports, as well as their reports on Form 20-F, ahead of the applicable deadlines, but the issue at hand is what deadline <u>all</u> foreign private issuers reasonably should be obligated to meet as a matter of law.

days takes into account the additional time and effort necessary for such issuers to prepare a reconciliation or conversion of their financial statements as prepared in accordance with home country GAAP to U.S. GAAP. We do not believe this approach would be confusing to investors. To the contrary, we believe investors generally recognize and understand the practical limitations that foreign private issuers encounter – especially those that are dual GAAP issuers – in connection with the preparation of their annual reports on Form 20-F. Moreover, many foreign private issuers publish their unaudited financial statements in their home country well in advance of filing the report on Form 20-F and soon thereafter submit this information, translated into English, to the Commission on Form 6-K, so that U.S. investors in this regard receive the same level of disclosure as investors in the issuer's home country.

We would be pleased to discuss any of the comments in this letter with the Commission or its staff. If we can be of further assistance to the Commission in this regard, please do not hesitate to contact the Institute.

Very truly yours,

Lawrence R. Uhlick

Lawrence R. Uhlick
Chief Executive Officer

**ATTACHMENT**

**IMPACT OF THE PROPOSAL TO ACCELERATE THE FORM 20-F FILING DEADLINE ON "DUAL GAAP ISSUERS"**

For purposes of the following discussion, the term "dual GAAP issuers" is understood to refer to foreign private issuers that prepare their financial statements on the basis of generally accepted accounting principles ("GAAP") used in their home country – in many instances, use of home country GAAP is mandated by home country regulatory requirements – and are required under the Commission's rules to prepare a reconciliation of those financial statements to U.S. GAAP for purposes of their Form 20-F filing. The adverse effect on foreign private issuers of having to prepare two sets of financial statements in connection with filing the annual report on Form 20-F is significant and would only be exacerbated by the proposal to accelerate the filing deadline for the Form 20-F from 6 months to 90 or 120 days, depending on the issuer's filing status.

The burdens imposed on dual GAAP issuers in complying with the information requirements of Form 20-F include the following:

- As a practical matter, dual GAAP issuers cannot prepare both home country GAAP and U.S. GAAP financial statements concurrently. Rather, a large part of the work to prepare U.S. GAAP financial statements can be performed only after a substantial portion of the work necessary to prepare the home country GAAP financial statements has been completed. Furthermore, the home country requirements and practices in some jurisdictions are very different from those under Form 20-F, so the exercise of preparing the report on Form 20-F is a largely separate project rather than involving merely a translation of information already prepared.

- In order to reconcile or convert home country GAAP financial statements into U.S. GAAP financial statements, dual GAAP issuers typically must adjust a significant volume of journal entries. Many of those adjustments must be done manually and often require additional valuation work, which in the case of a large global financial institution can require substantial time and effort. The differences between home country GAAP and U.S. GAAP can be wide-ranging, including, for example, with respect to consolidation rules, accounting for derivatives, recognition of certain financial asset transfers, recognition of gains from certain asset revaluations, accounting for business combinations, the carrying value of various assets and liabilities, and others. One area of potentially significant adjustment would be in responding to different rules in home country GAAP and U.S. GAAP regarding valuation of a bank's securities portfolio, the reconciliation of which can be a heavily manual and extremely lengthy and complex process.

- The conversion issues are likely to be even greater for foreign private issuers that are subject to industry specific disclosure requirements, as is the case for bank holding companies under the Commission's Industry Guide 3, Statistical Disclosure by Bank Holding Companies. For example, many dual GAAP issuers are required under their local laws to classify and report problem loans under different standards than those specified in Industry Guide 3. Industry Guide 3 also requires the collection and disclosure of certain additional information that is not required to be collected or disclosed under home country laws and regulations.

- The conversion difficulties may increase significantly if a dual GAAP issuer acquires a business with no prior history of U.S. GAAP reporting, which is much more likely for a foreign private issuer than for a U.S. domestic issuer.

- Additional time is often necessary to translate local disclosure information from the home country language to English. Similar to the case of financial information, that disclosure information is typically prepared first in the language of the home country, and thereafter translated into English. Subsequently, the English language translation must be supplemented to meet Form 20-F disclosure requirements and then reviewed by native English-speaking legal and accounting professionals, often located in the United States rather than the local country of the foreign private issuer. The resulting lengthy process is often complicated by the fact that many dual GAAP filers are based in countries, such as in Asia, where the local language is not derived from Latin.

- Moreover, there are a number of specific disclosure requirements under Form 20-F, in addition to the U.S. GAAP reconciliation, that have no analogue in other jurisdictions and that impose significant burdens on a dual GAAP issuer. These include the "market risk" disclosures in Item 11 of Form 20-F and numerous requirements added to Item 5 in recent years, such as the table of contractual obligations.