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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 230, 239 and 249

[Release Nos. 33–8879; 34–57026; International Series Release No. 1306; File No. S7–13–07]

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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: Final rule.

SUMMARY: The Commission is adopting rules to accept from foreign private issuers in their filings with the Commission financial statements prepared in accordance with International Financial Reporting Standards (''IFRS'') as issued 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 are adopting amendments to Form 20–F, conforming changes to Regulation S–X, and conforming amendments to other regulations, forms and rules under the Securities Act and the Securities Exchange Act. Current requirements regarding the reconciliation to U.S. GAAP do not change for a foreign private issuer that files its financial statements with the Commission using a basis of accounting other than IFRS as issued by the IASB.

EFFECTIVE DATE: March 4, 2008.

Compliance Date: Amendments regarding acceptance of financial statements prepared in accordance with IFRS as issued by the IASB are applicable to financial statements for financial years ending after November 15, 2007 and interim periods within those years contained in filings made after the effective date. Amendments to General Instruction G of Form 20–F relating to first-time adopters of IFRS are applicable to filings made after the effective date.

FOR FURTHER INFORMATION CONTACT: Michael D. Coco, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 551–3450, or 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 amending Form 20–F [1] under the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] Rules 1–02, 3–10 and 4–01 of Regulation S–X,[3] Forms F–4 and S–4 under the Securities Act of 1933 (the ''Securities Act''),[4] and Rule 701 under the Securities Act.[5]

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I. Executive Summary

A. Proposed Amendments

The Commission has long viewed reducing the disparity between the accounting and disclosure practices of the United States and other countries as an important objective both for the protection of investors and the efficiency of capital markets.[6] The use

[1] 17 CFR 249.220f.

[2] 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. 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.

[3] 17 CFR 210.1–02, 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] 17 CFR 239.34 and 17 CFR 239.13.

[5] 17 CFR 230.701.

[6] *See* ''Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with

of a single set of high-quality globally accepted accounting standards by issuers will help investors understand investment opportunities outside the United States more clearly and with greater comparability than if those issuers disclosed their financial results under a multiplicity of national accounting standards, and it will enable issuers to access capital markets worldwide at a lower cost.

Towards this end, the Commission has undertaken several measures to foster the use of International Financial Reporting Standards (''IFRS'') as issued by the International Accounting Standards Board (''IASB'') and fully supports the efforts of the IASB and the Financial Accounting Standards Board (''FASB'') to converge their accounting standards.[7] Specifically, the Commission has adopted rules to encourage the use of IFRS, which has become increasingly widespread throughout the world. Approximately 100 countries now require or allow the use of IFRS, and many other countries are replacing their national standards with IFRS. Following the adoption of a regulation in the European Union (''EU'') to require companies incorporated in one of its Member States and whose securities are listed on an EU regulated market to use IFRS beginning with their 2005 financial year,[8] we adopted an accommodation to allow any foreign private issuer preparing its financial statements using IFRS for the first time to provide two years rather than three years of financial statements in their filings with the Commission.[9] Acknowledging the significant efforts expended by many foreign private issuers in their transition to IFRS, we also extended compliance dates for management's report on internal control over financial reporting.[10]

Most recently, on July 11, 2007, the Commission issued for public comment a proposal to amend Form 20–F and Regulation S–X to 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.[11] We did not propose 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 issued by the IASB.[12] As part of our efforts to foster a single set of globally accepted accounting standards, we are now adopting amendments to accept from foreign private issuers financial statements prepared in accordance with IFRS as issued by the IASB in filings with the Commission without reconciliation to U.S. GAAP.

B. Overview of Comments Received

In the Proposing Release we sought comment on a number of issues, including the goal of achieving a single set of global accounting standards, the role of the IASB as standard setter, the potential effect of the proposed rule changes on convergence, the ability of investors and others to understand and use IFRS financial statements without a U.S. GAAP reconciliation, and the application of IFRS by preparers of financial statements. We received approximately 125 comment letters in response to the Proposing Release from a wide variety of respondents, including investors, analysts, foreign and U.S. issuers, business associations, accounting firms, law firms, credit rating agencies and regulators.[13] The majority of commenters agreed that, overall, the use of high-quality, internationally accepted accounting standards was an important and worthwhile goal. In general, commenters supporting the proposal, which included many foreign private issuers, accounting firms, legal firms and foreign standard setters, as well as some investors, agreed that IFRS were suitable to be used as an internationally accepted set of standards. Further, they expressed that allowing IFRS without a U.S. GAAP reconciliation would be perceived as recognition of the adequacy of the convergence process to date and would promote and encourage the ongoing convergence process. However, the views of several other commenters, including those representing some institutional investors and analysts, were mixed. While these commenters also expressed the view that IFRS have the potential to fulfill the role of a set of high-quality, international standards at some time in the future, some thought the time was not yet ripe for accepting those financial statements without a U.S. GAAP reconciliation. Among the varying reasons cited by those who believed the time had not yet come were that the convergence process is insufficient to date and adopting the proposal would likely slow, and possibly halt, the convergence process. Other commenters did think that the time was ripe to accept financial statements prepared in accordance with IFRS as issued by the IASB without a U.S. GAAP reconciliation.

Regarding the effect on information quality if the U.S. GAAP reconciliation was removed, many commenters in support of the proposal stated that the reconciliation information is highly technical and not widely understood. These commenters also generally expressed confidence in the quality of application of IFRS in practice. On the other hand, commenters that expressed concerns with the proposal supported the usefulness of both the quantitative and qualitative aspects of the U.S. GAAP reconciliation. These commenters cited the presence of significant differences in important line items, such as net income, in the U.S. GAAP reconciliations of many foreign private issuers as evidence that the convergence process is not sufficiently complete. In their view, such differences would be more difficult to discern without the U.S. GAAP reconciliation. They also asserted that the U.S. GAAP reconciliation is helpful to financial statement quality, and they advocated further cross-jurisdictional structural and enforcement efforts regarding IFRS, including efforts to strengthen governance of the IASB and funding of the International Accounting Standards Committee (''IASC'') Foundation, the stand-alone

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International Financial Reporting Standards without Reconciliation to U.S. GAAP,'' Release No. 33–8818 (July 2, 2007) [72 FR 37962 (July 11, 2007)] (the ''Proposing Release'') for a summary of the Commission's past consideration of a single set of globally accepted accounting standards.

[7] *See* the Proposing Release for a summary of the IASB, the FASB and the process of convergence.

[8] 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.

[9] Release No. 33–8567 (April 12, 2005) [70 FR 20674 (April 20, 2005)] (the ''2005 Adopting Release''). Other than first-time adopters of IFRS eligible to rely on that accommodation, 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, are required to present audited statements of income, changes in shareholders' equity and cash flows for each of the past three financial years.

[10] Release No. 33–8545 (March 2, 2005) [70 FR 11528 (March 8, 2005)].

[11] As used in this release the phrase ''IFRS as issued by the IASB'' refers to the authoritative text of IFRS, which, according to the IASC Foundation Constitution, is published in English. *See* ''International Financial Reporting Standards (IFRSs), including International Accounting Standards (IASs) and Interpretations as at 1 January 2007,'' Preface to International Financial Reporting Standards, at 23. As described below in Section III.A.2., the Proposing Release used the phrase ''IFRS as published by the IASB'' to refer to the authoritative text of IFRS.

[12] *See* Items 17 and 18 of Form 20–F; *see also* Article 4 of Regulation S–X. *See* the Proposing Release for a history of the reconciliation requirement.

[13] These comment letters are available on the Commission's Internet Web site, located at *http://www.sec.gov/comments/s7–13–07/s71307.shtml,* and in the Commission's Public Reference Room in its Washington, DC headquarters.

organization responsible for overseeing the activities of the IASB.

Many commenters that supported the proposal also urged the Commission to make amendments that go further than those we proposed. These commenters suggested that the Commission also accept from foreign private issuers financial statements prepared using jurisdictional adaptations of IFRS without a U.S. GAAP reconciliation, jurisdictional adaptations of IFRS with a reconciliation to IFRS as issued by the IASB, or any home country GAAP with a reconciliation to IFRS as issued by the IASB.

C. Summary of Final Amendments

The Commission has considered the comments received and believes it is appropriate at this time to adopt revisions, substantially as proposed, to Items 17 and 18 of Form 20–F to allow foreign private issuers to include in their filings with the Commission financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP. However, the amendments adopted differ in some areas in consideration of the responses we received to questions we asked in the Proposing Release.

In summary, the Commission is adopting amendments that:

- Permit foreign private issuers to file financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP;
- Require that foreign private issuers taking advantage of this option state explicitly and unreservedly in the notes to their financial statements that such financial statements are in compliance with IFRS as issued by the IASB and provide an unqualified auditor's report that opines on that compliance;
- Allow these foreign private issuers also to file financial statements for required interim periods without reconciliation to U.S. GAAP (and without providing disclosure under Article 10 of Regulation S–X) if the interim financial statements fully comply with IAS 34;
- Extend indefinitely the two-year accommodation contained in General Instruction G of Form 20–F to all first-time adopters of IFRS as issued by the IASB; and
- Make conforming amendments to Rules 1–02, 3–10 and 4–01 of Regulation S–X, Securities Act Forms F–4 and S–4, and Securities Act Rule 701.

II. Acceptance of IFRS Financial Statements From Foreign Private Issuers Without a U.S. GAAP Reconciliation

In the Proposing Release, the Commission requested comment on a number of broad areas with regard to whether we should proceed with our proposal to accept from foreign private issuers IFRS financial statements without a reconciliation to U.S. GAAP. Commenters had a range of views on these areas and offered useful input, and we considered many factors in our determination to adopt these amendments. We received mixed views on the utility of the information provided by the U.S. GAAP reconciliation of IFRS financial statements. Some commenters expressed concern about the overall quality of IFRS, either due to institutional considerations such as the governance or funding of the IASB or due to operational considerations such as the future of the convergence process. As described below, there are initiatives that directly address these concerns. We believe these initiatives will be more effective in addressing concerns than any indirect effects of retaining the reconciliation requirement to U.S. GAAP for financial statements that comply with IFRS as issued by the IASB.

We believe that it is appropriate to adopt these amendments at this time because we expect our acceptance of IFRS financial statements without a U.S. GAAP reconciliation will encourage more foreign issuers to prepare financial statements in accordance with IFRS. We also expect it will facilitate capital formation for foreign private issuers that are registered with the Commission. Adopting these amendments now may serve as an incentive to encourage the use of IFRS as issued by the IASB, as well as to support their development as a truly globally accepted set of high-quality accounting standards.

A. The IASB

In the Proposing Release we noted that the IASB's sustainability, governance and continued operation in a stand-alone manner as a standard setter are significant considerations in our acceptance of IFRS financial statements without a U.S. GAAP reconciliation, as those factors relate to the ability of the IASB to continue to develop high-quality globally accepted standards. We solicited comment on ways in which the Commission could further support the IFRS standard-setting and interpretive processes, and also how the Commission should consider its role with regard to the IASB.

1. Governance and Structure

Commenters generally agreed that the IASB is a stand-alone standard setter with a robust due process in its standard-setting procedures.[14] Although most commenters did not express concerns over governance, a few commenters identified several concerns relating to the organization, governance and operation of the IASB as standard setter. Specifically, these commenters felt that improvements were needed to enhance the geographic diversity of the board,[15] and to better align its membership with investor interests.[16]

In reflection on these comments and its own considerations, the Commission has joined other authorities responsible for capital market regulation—the European Commission, the Financial Services Agency of Japan and the International Organization of Securities Commissions (''IOSCO'')—to work together to achieve a means of greater accountability for the IASB and the IASC Foundation to those governmental authorities charged with protecting investors and regulating capital markets.[17] This interest in increasing the accountability of the IASB and the IASC Foundation is a reflection of the widespread acceptance of IFRS. The increased use of IFRS has raised interest in establishing formal ties between securities regulatory stakeholders and the IASC Foundation.

The authorities described in the paragraph above propose to utilize the occasion of the IASC Foundation's 2008 Constitution review to put forward, in collaboration with the IASC Foundation, certain changes to strengthen the IASC Foundation's governance framework, while emphasizing the continued importance of an independent standard-setting process. Central to this effort is the establishment of a new monitoring body within the governance structure of the IASC Foundation to reinforce the existing public interest oversight function of the IASC Foundation Trustees. Likewise we note the IASC Foundation Trustees' announcement of their proposals, following a strategy

[14] *See,* for example, letters from American Bankers Association, Georg Merkl (''Merkl''), and UBS AG (''UBS'').

[15] *See,* for example, letter from Korean Accounting Institute and Korean Accounting Standards Board (''KAI–KASB'').

[16] *See,* for example, letter from CFA Institute Centre for Financial Market Integrity (''CFA Institute'').

[17] *See,* SEC Press Release No. 2007–226, November 7, 2007, available at: *http://www.sec.gov/news/press/2007/2007-226.htm.*

review over recent months, to enhance the organization's governance arrangements and reinforce the organization's public accountability.[18]

As described in the Proposing Release, the Commission participates in the development of IFRS primarily through its participation in IOSCO, in which it takes an active role in reviewing and contributing to comments on exposure drafts of standards issued by the IASB and in contributing to its working groups. The Commission staff, as an IOSCO representative, serves as a non-voting observer at International Financial Reporting Interpretations Committee (''IFRIC'') meetings.[19] The Commission also is an observer of the IASB Standards Advisory Council, whose responsibilities include consulting with the IASB as to technical issues on the IASB's agenda and project priorities. Most commenters that addressed the role of the Commission with respect to the IASB felt that the Commission should continue to participate in the IASB and IFRIC's due process.[20] Many felt that continued interaction with the IASB through IOSCO was appropriate.[21]

One commenter noted that in July 2006, following the reaffirmation of the IASB and the FASB of their commitment to convergence, the IASB announced that it would not require the application of new standards before January 1, 2009.[22] The establishment of that lead time for the application of major new standards was intended to allow increased opportunity for consultation, to set a clear target date for adoption, and to provide stability in the IFRS platform of standards for issuers that had already adopted IFRS. The commenter expressed concern that the 2009 effective date would delay improvement in the quality of financial statements and disclosures, and argued that our acceptance of IFRS financial statements without reconciliation should not occur until after the IASB lifted its ''moratorium'' on new standards.[23] We note, however, that the IASB continues to issue new standards even if it does not require their application before January 1, 2009, and that voluntary early adoption of new standards prior to their mandatory effective date generally is allowed.

2. Funding

Several comment letters, including those from financial statement users and investors, raised the independence of IASB funding as an issue.[24] Most of these commenters were concerned that the current voluntary nature of contributions might impact at least the appearance of the IASB's independence as well as the quality and timeliness of its standards.[25] A few commenters pointed out that the concentration of private contributions was a concern that led to the FASB's current funding mechanism.[26]

We support a strong, independent IASB, and as we noted in the Proposing Release, there are initiatives underway to address its funding structure. We believe promotion of these efforts is a more efficient and productive course of action than continuing to require a U.S. GAAP reconciliation for financial statements prepared in accordance with IFRS as issued by the IASB. Currently the operations of the IASC Foundation are financed by a combination of voluntary, private contributions and levied funds. Trustees of the IASC Foundation have indicated that a long-term objective of its funding plan is to move away from relying on voluntary, private contributions. 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.[27] The Trustees continue to make progress in obtaining stable funding that satisfies those elements. Commenters have indicated that such a change would be beneficial to the stability of the organization, as it would spread the costs more equitably.[28]

In light of the comments received and its own considerations, the Commission has taken note of the IASC Foundation's funding progress as most recently announced following an October 31, 2007 IASC Foundation Trustee meeting.[29] The Commission is encouraged by the progress in diversifying the sources of the IASC Foundation's funding among and within jurisdictions, as well as by the number of jurisdictions (such as Australia, the Netherlands, New Zealand and the United Kingdom) that have moved away from a voluntary funding scheme either to a levy or national payment.

B. The Convergence Process

As discussed in the Proposing Release, continued progress towards convergence between U.S. GAAP and IFRS as issued by the IASB is another consideration in our acceptance of IFRS financial statements without a U.S. GAAP reconciliation. We believe that investors can understand and work with both IFRS and U.S. GAAP and that these two systems can co-exist in the U.S. public capital markets in the manner described in this rulemaking, even though convergence between IFRS and U.S. GAAP is not complete and there are differences between reported results under IFRS and U.S. GAAP. As we

[18] *See,* IASC Foundation Press Release, ''Trustees Announce Strategy to Enhance Governance—Report on Conclusions at Trustees Meeting,'' November 6, 2007, available at *http://www.iasb.org/News/Press+Releases/Trustees+Announce+Strategy+to+Enhance+Governance+-+Report+on+Conclusions+at+Trustees++Meeting.htm* (the ''IASC Foundation November 6 Press Release'').

[19] 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 currently comprised of twelve voting members, and the IASC Foundation has recently approved an increase to fourteen voting members. All IFRIC members are appointed by the IASC Foundation Trustees for renewable terms of three years. IFRIC Interpretations are ratified by the IASB prior to becoming effective.

[20] *See,* for example, letters from Deloitte Touche Tohmatsu (''Deloitte''), Institute of International Finance, London Investment Banking Association (''LIBA''), PricewaterhouseCoopers LLP (''PwC'') and the Swedish Export Credit Corporation (''SEK'').

[21] *See,* for example, letters from UBS and PwC.

[22] The press release in which the IASB made this announcement is available at: *http://www.iasb.org/News/Press+Releases/IASB+takes+steps+to+assist+adoption+of+IFRSs+and+reinforce+consultation+No+new+IFRSs+effective+until.htm.*

[23] *See* letter from CFA Institute.

[24] *See,* for example, letters from California Public Employees' Retirement System, CFA Institute, and Goldman Sachs.

[25] *See,* for example, letters from Colgate-Palmolive Company and Investors Technical Advisory Committee (''ITAC'').

[26] *See,* for example, letters from Council of Institutional Investors (''CII''), Lawrence A. Cunningham, and Gaylen R. Hansen.

[27] 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, 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.

[28] *See* the letter from KPMG IFRG Limited (''KPMG'').

[29] *See* the IASC Foundation November 6 Press Release.

stated in the Proposing Release, we do not believe that eliminating the reconciliation should be contingent upon achieving a particular degree of convergence. Rather, the robustness of the convergence process over time, among other factors, is of greater importance.

The majority of commenters agreed that attaining a single set of high-quality global accounting standards was a worthwhile goal, with several agreeing that a specific level of convergence was not required to eliminate the reconciliation requirement.[30] In highlighting that acceptance of IFRS financial statements without a U.S. GAAP reconciliation should not be contingent on achieving a particular level of convergence, one commenter noted, ''[e]ven today users cannot assume that the U.S. GAAP reconciliation always ensures direct comparability with U.S. GAAP financial statements of other entities.'' [31]

We received a variety of viewpoints about the level of convergence between U.S. GAAP and IFRS as issued by the IASB and about the potential effect of eliminating the reconciliation requirement on the convergence process. Respondents in favor of the amendments generally felt that acceptance of IFRS financial statements [32] without a reconciliation to U.S. GAAP would be perceived as an indication of the adequacy of convergence and the convergence process to date.[33] Many of those not in favor of the amendments believed that convergence to date was insufficient to merit the removal of the reconciliation requirement at this time,[34] or that acceptance of IFRS financial statements without reconciliation would impede progress on further convergence.[35] Some commenters who took the latter view cited the presence of substantial differences in important items in the reconciliation as evidence that the convergence process is not sufficiently complete, and gave examples of several items that are disclosed in the reconciliation of which they would be unaware if they had to rely on IFRS financial statements alone.[36] Several commenters suggested that if we accept IFRS financial statements without reconciliation, users of financial statements would benefit if issuers continued to provide qualitative disclosure of the nature of the differences between IFRS and the unreported U.S. GAAP results.[37] Other commenters representing users of financial statements, though, noted that the reconciling information is not very useful to them in evaluating IFRS financial statements,[38] and many foreign issuers commented that they rarely receive questions from securities analysts and others relating to their U.S. GAAP reconciliations.[39] Many commenters believed that market forces and demand for comparable information in global capital markets will continue to provide sufficient incentive for further convergence of U.S. GAAP and IFRS as issued by the IASB.[40]

IFRS as issued by the IASB and U.S. GAAP are both sets of high-quality accounting standards that are similar to one another in many respects, and the convergence efforts to date have progressed in eliminating many differences. We recognize, however, that there are still a number of differences between U.S. GAAP and IFRS as issued by the IASB, and that there remain specific accounting subjects that IFRS has yet to address fully. One goal of the convergence effort underway with the FASB and IASB is to remove the remaining differences and to avoid creating significant new differences as standard setters continue to address existing and emerging accounting issues.

These rule amendments are based on many factors, including the progress of the IASB and the FASB towards convergence, the joint commitment that both boards have expressed to achieving further convergence of accounting standards in the future, and our belief that investors and capital markets are best served with high-quality accounting standards. Our focus is on whether IFRS is a set of high-quality accounting standards established through a robust process, the application of which yields information investors can understand and work with despite any differences with U.S. GAAP.

We anticipate that the process towards convergence will continue, because capital markets will provide an ongoing incentive for a common set of high-quality globally accepted accounting standards, regardless of the existence of an IFRS to U.S. GAAP reconciliation requirement. The IASB and the FASB are now developing standards in areas where improvement is warranted. These circumstances exist regardless of whether the U.S. GAAP reconciliation requirement is in place. The IASB and the FASB have, in 2002 and 2006, issued Memoranda of Understanding that acknowledge their joint commitment to developing high-quality global standards, the establishment of which remains a long-term strategic priority for both Boards. In November 2007, the Trustees of the IASC Foundation reiterated their support for continuing the convergence work program described in these Memoranda, noting that future work is largely focused on areas in which the objective is to develop new world-class international standards.[41]

It also is important to note that some reconciling differences between IFRS and U.S. GAAP will continue to exist independent of the U.S. GAAP reconciliation and the convergence process. Due to their sources, these differences between U.S. GAAP and IFRS will remain regardless of the level of future convergence that can be attained. These differences include the effects of legacy transactions, such as business combinations, that occurred before U.S. GAAP and IFRS became more converged, and of self-selected differences that arise as a function of differing accounting elections (*e.g.* hedge accounting) that foreign private issuers make under IFRS and U.S. GAAP.

C. Investor Understanding and Education

In the Proposing Release we posed several questions about the ability of investors to understand and use financial statements prepared in accordance with IFRS as issued by the IASB without a U.S. GAAP reconciliation, and whether that ability would depend on the size or nature of

[30] *See*, for example, letters from the American Insurance Group, Inc. (''AIG''), Ernst & Young LLP (''Ernst & Young''), PwC, American Accounting Association—Financial Accounting Standards Committee.

[31] *See* letter from KPMG.

[32] The phrase ''IFRS financial statements'' as used in this release refers to financial statements prepared in accordance with IFRS as issued by the IASB, unless otherwise specified.

[33] *See*, for example, letters from Institute of Chartered Accountants in England and Wales (''ICAEW''), Siemens Aktiengesellschaft (''Siemens''), KPMG, Goldman Sachs, and Federation of European Accountants (''FEE'').

[34] *See*, for example, letters from New York State Society of Certified Public Accountants (''NYSSCPA''), Maverick Capital (''Maverick''), and ITAC.

[35] *See*, for example, letters from CFA Institute, ITAC, NYSSCPA, R.G. Associates, and Terry Warfield (''Warfield'').

[36] *See*, for example, letters from the CFA Institute, Maverick, and R.G. Associates.

[37] *See*, for example, letters from AIG, BP plc (''BP''), and Fitch Ratings.

[38] *See,* for example, letters from Corporate Reporting Users' Forum (''CRUF''), Goldman Sachs, and Merrill Lynch & Company.

[39] *See,* for example, letters from Novartis and Nokia.

[40] *See,* for example, letters from British Bankers' Association, Microsoft Corporation (''Microsoft''), Ernst & Young, PwC, Prudential plc (''Prudential''), and Fitch Ratings.

[41] *See* the IASC Foundation November 6 Press Release.

the investor, the value of the investment, or other considerations.

Commenters noted that investors vary considerably in their ability to understand and use IFRS financial statements and that the same is true of their ability to understand and use financial statements prepared using U.S. GAAP.[42] However, many commenters were encouraged by the apparent lack of difficulty with transition to IFRS in the EU from many different country-specific GAAPs.[43] One respondent took an opposing view and asserted that the present lack of investor understanding of IFRS should be a factor in deciding whether to eliminate the reconciliation requirement.[44] That commenter believed that eliminating the reconciliation will require more work (and possibly self-education) by investors to understand IFRS financial statements, which may result in investment decisions becoming more costly.[45] Another commenter indicated its belief that currently there is a lack of IFRS-based educational programs.[46]

As is also the case with U.S. GAAP, we understand investors and other users of financial statements do not all possess the same level of understanding of IFRS or the resources that would facilitate gaining such an understanding. We anticipate, however, that by encouraging the use of IFRS as issued by the IASB, these amendments will help investors to understand international investment opportunities more clearly and with greater comparability in the long-term than if they had to continue to rely on a multiplicity of national accounting standards. The disclosures provided pursuant to the U.S. GAAP reconciliation are not an exact substitute for an issuer preparing its financial statements in U.S. GAAP. While some commenters have indicated that the U.S. GAAP reconciliation is useful, it is not the equivalent of U.S. GAAP financial statements. Investors currently must make use of IFRS financial statements and financial statements under various national GAAPs, even when accompanied by a U.S. GAAP reconciliation. We are encouraged by comments from other institutional investors indicating their degree of comfort and familiarity with IFRS financial statements.[47]

The present use of IFRS financial statements described above does not diminish the importance of recognizing that some investors are not as familiar with using IFRS financial statements as they are with using U.S. GAAP financial statements or the information provided in the U.S. GAAP reconciliation. These investors may need to obtain training or education in IFRS before they are comfortable working without the U.S. GAAP reconciliation. In this regard, we note the amendments we are adopting will affect a small number of issuers relative to the overall size of the U.S. public capital markets. In addition, we are allowing only financial statements prepared in accordance with IFRS as issued by the IASB to be filed without a U.S. GAAP reconciliation, so concern over having to learn multiple jurisdictional variations of IFRS is not a factor. More broadly, as companies increasingly move to IFRS, investors that have gained familiarity with IFRS should see an increasing return on their investment in education. A number of accounting firms and other organizations currently provide information about IFRS as issued by the IASB on their web sites free of charge. As more countries adopt IFRS as the basis of accounting for their listed companies, we anticipate that investors who are not yet familiar with IFRS will have the opportunity to gain such familiarity.

D. Consistent and Faithful Application of IFRS in Practice

The degree of consistency and faithfulness with which IFRS is applied is another consideration in our acceptance of IFRS financial statements without reconciliation to U.S. GAAP. The Commission staff has gained an increasing understanding of the application of IFRS standards through its regular review of the periodic reports of publicly registered companies, a number of which prepare their financial statements in accordance with IFRS.[48] The Commission staff will continue to review and comment on IFRS financial statements and disclosure as part of its normal review function.[49]

Commenters had a range of views with regard to our request for comments on the application of IFRS as issued by the IASB. Some commenters who favored the amendments highlighted the fact that IFRS has been applied for more than two years by thousands of companies throughout the world, including approximately seven thousand in the EU, and that investors are already employing information from IFRS financial statements to make investment decisions.[50] In contrast, some commenters who were not supportive of the proposal noted that the U.S. GAAP reconciliation offers auditors a quality control mechanism that identifies IFRS application issues, and referred to the staff's ''Observations in the Review of IFRS Financial Statements'' as evidence that supports their concerns about the consistent application of IFRS by reporting issuers.[51] One such commenter also felt that it would be difficult to audit for compliance with IFRS as issued by the IASB because of the current state of IFRS-based training for auditors.[52] Auditors, however, generally commented that they do have sufficient experience and familiarity with IFRS to be able to opine on IFRS financial statements, and that the elimination of the U.S. GAAP reconciliation would provide an incentive to develop IFRS capabilities faster than if the U.S. GAAP reconciliation were retained.[53] Some respondents believed that latitude in the application of IFRS results in inconsistent reporting,[54] while several supporters of the proposal believed application of IFRS did not vary between companies that are registered under the Exchange Act and those that are not.[55] One firm, while acknowledging diversity in the application of IFRS, felt that such diversity should diminish with time as application and interpretive issues are identified and addressed.[56]

As described in the Proposing Release, the Commission has a long

[42] *See*, for example, letters from BDO Global Coordination B.V. (''BDO''), ICAEW, Merkl, and Shell International B.V. (''Shell'').

[43] *See*, for example, letters from British Bankers' Association, LIBA, International Swaps and Derivatives Association (''ISDA''), and Financial Reporting Council.

[44] *See* letter from ITAC.

[45] *Id.*

[46] *See* letter from CFA Institute.

[47] *See*, for example, letter from CRUF.

[48] The Staff of the Commission's Division of Corporation Finance has published its observations on the review of IFRS financial statements included in the annual reports of more than 100 foreign private issuers. Those observations are available at *http://www.sec.gov/divisions/corpfin/ifrs_staffobservations.htm.*

[49] Pursuant to Section 408 of the Sarbanes-Oxley Act of 2002, the Commission is required to review disclosures made by reporting issuers with securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association on a regular and systematic basis for the protection of investors. Such review shall include a review of the issuer's financial statements.

[50] *See*, for example, letters from Deutsche Bank, Ernst & Young, HSBC Holdings plc (''HSBC''), SEK, and Siemens.

[51] *See*, for example, letters from ITAC, R.G. Associates, CFA Institute.

[52] *See* letter from CFA Institute.

[53] *See*, for example, letter from Grant Thornton LLP (''Grant Thornton'').

[54] *See*, for example, letters from Robert Mladek, and Fund for Stockowners Rights.

[55] *See*, for example, letters from HSBC, Cleary Gottlieb Steen & Hamilton (''Cleary''), Syngenta AG (''Syngenta'').

[56] *See* letter from Deloitte.

history of supporting the work of the IASB and its predecessor the International Accounting Standards Committee in developing high-quality global accounting standards. In addition to understanding the standards, the Commission staff has developed a growing familiarity with their application. The Commission staff has reviewed and commented upon the filings of foreign private issuers that prepare their financial statements using IFRS. The staff has indicated that issues that it has observed in its ordinary review of IFRS financial statements do not appear to be more pervasive or significant than those it has identified in U.S. GAAP financial statements. We anticipate that the increasing use of IFRS as issued by the IASB will lead to even greater consistency of application, as well as to increased training opportunities for preparers, auditors, and investors.

E. Regulatory Processes and Infrastructure to Promote Consistent and Faithful Application of IFRS

In the Proposing Release, we discussed the cooperative infrastructure that regulators have put in place to identify and avoid inconsistent or inaccurate applications of IFRS globally so as to foster the consistent and faithful application of IFRS around the world. This infrastructure includes IOSCO, in which the Commission participates, which has established a database among member regulators for sharing regulators' decisions on the application of IFRS.[57] The Commission and the Committee of European Securities Regulators (''CESR''), which the European Commission has charged with evaluating the implementation of IFRS in the EU, have established a work plan in which they agree to consult with one another with the goal of avoiding conflicting conclusions regarding the application and enforcement of IFRS.[58]

In the Proposing Release, we asked for feedback regarding our work with other regulators to provide for the enforcement of IFRS as issued by the IASB. Many commenters did not express concern with the current processes and infrastructure that have been established between regulators to promote consistent and faithful application of IFRS. Most commenters responding on this topic believed that the infrastructure is in place to identify and avoid inconsistent and inaccurate applications of IFRS globally.[59] Some of these commenters noted the Commission's involvement and leadership role in IOSCO and encouraged the Commission to continue to work through IOSCO to coordinate with other regulators in bringing matters to the IASB and to IFRIC.[60] Several of these commenters also supported the Commission's continued involvement in information sharing arrangements with other regulators and the interaction with CESR.[61] Some commenters who did not support the proposal believed that the lack of a global enforcement mechanism means that the necessary controls to successfully implement global standards are currently lacking.[62] The Commission believes the current system can be effective, and will continue its work in this area to support multilateral and bilateral efforts, including its participation in IOSCO and its collaboration with CESR and other regulators as appropriate.

III. Discussion of the Amendments

We are adopting the amendments substantially as proposed. We have, however, in response to comments, made some modification in certain areas, as discussed below.

A. Eligibility and Implementation

1. Foreign Private Issuer Status

The amendments the Commission is adopting will apply only to foreign private issuers that file on Form 20–F, regardless of whether the issuer complies with IFRS as issued by the IASB voluntarily or in accordance with the requirements of the issuer's home country regulator or exchange on which its securities are listed.

A large number of comment letters addressed eligibility requirements and commenters almost unanimously supported the applicability of the proposed amendments to all foreign private issuers.[63] Some commenters indicated that other types of issuers also should be permitted to file IFRS financial statements without a U.S. GAAP reconciliation, for example reporting U.S. subsidiaries of foreign private issuers that use IFRS to prepare their consolidated financial statements[64] or reporting foreign issuers that did not fall within the definition of foreign private issuer under Rule 3b–4 under the Exchange Act.[65] We note that the scope of our proposal was limited to foreign private issuers, for which the Commission has an established disclosure regime distinct from that applicable to companies that are not foreign private issuers. The question of which disclosure regime an entity should report under was beyond the scope of the proposal, and thus we are not extending the application of the adopted amendments to entities that do not satisfy the definition of foreign private issuer under Rule 3b–4, or foreign private issuers that do not file their annual report on Form 20–F. We are examining the possibility of the broader use of IFRS by entities that are not foreign private issuers in the Concept Release on Allowing U.S. Issuers to Prepare Financial Statements in Accordance with International Financial Reporting Standards.[66]

We requested comment as to whether we should place limitations on the eligibility of a foreign private issuer to file financial statements prepared in accordance with IFRS as issued by the IASB without a U.S. GAAP reconciliation. We also asked whether our acceptance of IFRS financial statements without a U.S. GAAP reconciliation should be phased in based on, for example, issuer size or other criteria. Most commenters opposed any limitations on the application of any final rules, and did not see any benefit to a transition approach that phases in registrants.[67] One commenter pointed out that appropriate application of IFRS would not be dependent on an issuer's size,[68] while others stated that smaller companies face a greater relative burden in preparing a U.S. GAAP reconciliation.[69] One commenter also opposed a phase-in based on issuers' experience with IFRS, as it would be difficult to establish meaningful criteria to evaluate that experience.[70] We are not adopting any issuer limitations or phase-in for the application of the

[57] *See* IOSCO's press release regarding its IFRS database at *http://www.iosco.org/news/pdf/IOSCONEWS92.pdf*.

[58] 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*.

[59] *See*, for example, letters from HSBC, LIBA, and SIFMA.

[60] *See*, for example, letters from Business Europe, BP, HSBC, and UBS.

[61] *See*, for example, letters from International Finance, LIBA, PwC, and Securities Industry and Financial Markets Association (''SIFMA'').

[62] *See*, for example, letters from CFA Institute, and Brent Kobayashi.

[63] *See*, for example, letters from Grant Thornton, Microsoft, and Sullivan & Cromwell LLP (''Sullivan & Cromwell'').

[64] *See*, for example, letter from Financial Security Assurance Holdings Ltd.

[65] *See* memorandum from the Executive Staff on a meeting with representatives of INVESCO plc.

[66] Release No. 33-8831 (August 7, 2007) [72 FR 45600 (August 14, 2007)], available on the Commission Web site at *http://www.sec.gov/rules/concept/2007/33-8831.pdf*.

[67] *See*, for example, letters from Cleary, Deloitte, Fitch Ratings, PwC, and Sullivan & Cromwell.

[68] *See* letter from Fitch Ratings.

[69] *See*, for example, letters from Cleary, Deloitte, Grant Thornton, and Sullivan & Cromwell.

[70] *See* letter from Grant Thornton.

adopted amendments, as we believe that to do so would not effectively encourage the use by foreign private issuers of IFRS as issued by the IASB and may create inappropriate disparity in our treatment of foreign private issuers.

2. IFRS as Issued by the IASB

We are adopting as proposed the amendments to Items 17 and 18 of Form 20–F. Under the amendments, a foreign private issuer is eligible to omit the reconciliation to U.S. GAAP if it states, unreservedly and explicitly in an appropriate note to the financial statements, that its financial statements are in compliance with IFRS as issued by the IASB.[71] Also, the independent auditor must opine in its report on whether those financial statements comply with IFRS as issued by the IASB. As described in the Proposing Release, the auditor's report can include this language in addition to any opinion relating to compliance with standards required by the home country.

The majority of commenters believed that auditors should be able to provide audit opinions that financial statements were fully compliant with IFRS as issued by the IASB.[72] Several commenters indicated that they were not aware of any reason why the auditor and the issuer would not be able to provide the dual statement of compliance with both IFRS as issued by the IASB and a jurisdictional variation of IFRS in cases where accounting policy choices ensure compliance with both IFRS as issued by the IASB and the jurisdictional variation of IFRS.[73] One commenter, however, believed that the additional opinion in the auditor's report relating to compliance with IFRS as issued by the IASB would be both duplicative and unnecessary, as the auditor would already be expected to issue a qualified opinion if it found deviations from IFRS as issued by the IASB given an issuer's unreserved statement of compliance.[74] We believe that in cases where there is no discrepancy between IFRS as issued by the IASB and a jurisdictional variation, the issuer and the auditor should be able to provide the dual statements without undue difficulty.

A foreign private issuer will continue to be required to provide a reconciliation to U.S. GAAP under these amendments if its financial statements include deviations from IFRS as issued by the IASB, if it does not state unreservedly and explicitly that its financial statements are in compliance with IFRS as issued by the IASB, if the auditor does not opine on compliance with IFRS as issued by the IASB, or if the auditor's report contains any qualification relating to compliance with IFRS as issued by the IASB. A foreign private issuer using a jurisdictional or other variation of IFRS will be able to rely on the amendments if that issuer also is able to state compliance with both IFRS as issued by the IASB and a jurisdictional variation of IFRS (and does so state), and its auditor opines that the financial statements comply with both IFRS as issued by the IASB and the jurisdictional variation, as long as the statement relating to the former is unreserved and explicit.

Many commenters supported the objective of encouraging the development of a single set of high-quality international accounting standards, but suggested that we also accept without a U.S. GAAP reconciliation financial statements prepared in accordance with a jurisdictional variation of IFRS, and in particular IFRS as adopted by the EU.[75] Some of these and other commenters thought it would be appropriate also to permit a reconciliation from a jurisdictional variation of IFRS to IFRS as issued by the IASB. Further, some commenters suggested the Commission also permit a reconciliation from any home country GAAP to IFRS as issued by the IASB. Commenters did not suggest that accepting financial statements that comply with IFRS as issued by the IASB from foreign private issuers was dependent on implementing any of these additional suggested approaches. We are not extending the proposal to these variations because we believe that allowing any of these approaches would not as effectively foster the development and use of a single set of high-quality global accounting standards.

In the Proposing Release, the phrase we used to describe the authoritative text of IFRS was ''the approved English language version of IFRS as published by the IASB.'' The final amendments refer to the same authoritative text of IFRS as it is provided for by the IASC Foundation Constitution, although we are using the phrase ''IFRS as issued by the IASB'' to describe it. As one commenter pointed out, according to the IASC Foundation Constitution, ''the authoritative text of any Exposure Draft or International Accounting Standard or International Financial Reporting Standards or Draft or final Interpretation shall be that published by the IASB in the English language'' and, for this reason, there is no need to make reference to language when describing the authoritative text.[76] Further, because the standards are issued by the Board and published by the IASC Foundation, it is to standards ''issued'' that we refer.

3. Implementation

In the Proposing Release we sought input on what commenters thought might be an appropriate compliance date if the Commission were to adopt the proposed amendments, as well as on issues relating to the timing of implementation for any adopted amendments.

Of the commenters who provided feedback relating to implementation and timing, a majority of those who supported acceptance of IFRS financial statements without reconciliation

[71] The amendments would not encompass use of the IASB's proposed IFRS for Small and Medium-sized Entities (''IFRS for SMEs''), because those proposed standards relate only to smaller issuers that do not have debt or equity securities listed on a public market. More information on IFRS for SMEs is available on the IASB Web site at *http://www.iasb.org/Current+Projects/IASB+Projects/Small+and+Medium-sized+Entities/Small+and+Medium-sized+Entities.htm*.

[72] *See*, for example, letters from Galileo Global Advisors LLC, Grant Thornton, Microsoft, PwC, and UBS.

[73] *See*, for example, letters from PwC and UBS.

[74] *See* letter from CESR.

[75] Many commenters noted that issuers listed in the EU are required to prepare their statutory financial statements using IFRS as adopted by the EU. Commenters noted that presently 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. We understand that few companies make use of this ability to ''carve-out'' these provisions of IAS 39 from IFRS as issued by the IASB. As the European Commission noted in its comment letter, ''[f]or the vast majority of EU issuers listed in the U.S., this carve-out has no practical significance and as such their financial statements prepared under *IFRS as adopted by the EU* would be identical to those prepared under *IFRS as published by the IASB*.'' As a practical matter, this difference applies only to foreign financial institutions, several of which have commented that they do not avail themselves of the approach afforded by the EU-endorsed standard (*see* letters from Deutsche Bank, HSBC, Lloyds), and that therefore they would be able to assert compliance with both IFRS as endorsed by the EU and IFRS as issued by the IASB. Other commenters either did not address the issue or did not express concern about their ability to assert dual compliance at the present time.

Issuers expressed concern, however, that they may not be able to express dual compliance in the future if the timing of the EU's endorsement of new standards, or an EU decision not to endorse a standard, were to create differences between EU IFRS and IFRS as issued by the IASB such that compliance with EU IFRS necessarily precluded compliance with IFRS as issued by the IASB.

See Section III.A.3. below for a discussion of transition provisions applicable to European companies that make use of the EU's carve-out from IAS 39.

[76] *See* letter from KPMG.

indicated that the amendments should be effective for filings covering the 2008 financial year, with some of those commenters indicating that such timing would allow investors and other affected parties more time to familiarize themselves with IFRS.[77] A significant portion of commenters that supported the proposed rules felt that the amendments should be effective at the earliest date possible.[78]

Commenters did not indicate that the number of issuers that prepare their financial statements in accordance with IFRS should be a factor in determining the implementation of any adopted rules, and some stated that acceptance of IFRS financial statements without a U.S. GAAP reconciliation would encourage other issuers to adopt IFRS, which may assist in promoting the achievement of a single set of high-quality internationally accepted accounting standards.[79] Most commenters responding to our question as to whether the timing of any rule should be based on further experience and knowledge of IFRS stated that these should not be factors in determining the implementation timing,[80] with some noting that there was already sufficient experience in the application of IFRS to warrant immediate effectiveness of the amendments.[81] Some commenters, including some from the investor community, however, felt that elimination of the reconciliation may be premature, or thought deferral of adopting the amendments would be appropriate until more experience was gained with IFRS even if they supported the idea of accepting IFRS without reconciliation as a move towards the use of a single set of high-quality international accounting standards.[82] Those that thought taking action at this time was premature cited the ''readiness'' concerns described in Part II above; namely concerns regarding IASC Foundation's governance and funding, the state of and prospects for convergence of IFRS and U.S. GAAP, investor education, regulators' mechanisms for interaction, and so forth. The Commission's consideration of those comments is noted in Part II with respect to its decision to adopt rule amendments at this time.

The Commission has concluded that the amendments to accept financial statements from foreign private issuers prepared in accordance with IFRS as issued by the IASB will be applicable to annual financial statements for financial years ending after November 15, 2007, and to interim periods within those years, that are contained in filings made after the effective date of these rule amendments.

In deciding to make the rule amendments available for financial statements that cover the 2007 financial year for many foreign private issuers, the Commission considered the fact that it was not awaiting any particular event to support its policy decision and, further, by making the rule amendments available for the 2007 financial year for many foreign private issuers, the Commission's objectives in implementing this policy decision would begin to be realized that much sooner.

The Commission notes that there may be foreign private issuers that are existing Commission registrants who—pursuant to policy decisions the European Union made in its role as an ''early adopter'' of IFRS—have already been preparing their financial statements by applying the EU's ''carve out'' from IAS 39 with respect to hedge accounting for certain financial instruments (the ''IAS 39 carve out''), as described above in Section III.A.2.[83] Given the timing of this decision, registrants who may have taken advantage of the IAS 39 carve out would have done so without the knowledge that its use would be at odds with the IFRS reporting alternative that the Commission is adopting today. Accordingly, the Commission is making available temporary transition relief to these existing registrants. Specifically, for only their first two financial years that end after November 15, 2007, the Commission will accept from existing SEC registrants from the EU that have already utilized the IAS 39 carve out in financial statements previously filed with the Commission 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 under Item 17 and Item 18 of Form 20–F. 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. At the end of this transition period, these registrants will have the same financial statement reporting choices as that of any foreign private issuer (*e.g.*, if they continue to use the IAS 39 carve out as described in Section III.A.2., above, they will remain subject to the U.S. GAAP reconciliation requirements of Items 17 and 18). The Commission has adopted an amendment to Items 17 and 18 of Form 20–F to accommodate this transition provision.

The Commission observes that the IAS 39 carve out relates to hedge accounting for certain financial instruments. The Commission and its staff have had several opportunities to consult and discuss with different constituencies regarding the accounting for derivative and hedging transactions. The Commission will make its staff available to the staffs of the IASB, FASB and European Commission to identify any ways to address this area.

B. Amendments To Effect Acceptance of IFRS Financial Statements Without Reconciliation to U.S. GAAP

1. General

The basic financial statement requirements for foreign private issuers are described in Items 17 and 18 of Form 20–F. Under Item 17(c), a foreign private issuer must either prepare its financial statements and schedules in accordance with U.S. GAAP or, if the financial statements and schedules are prepared using another basis of accounting, include a reconciliation to U.S. GAAP as described under Item 17(c)(2). This reconciliation includes a narrative discussion of reconciling differences,[84] a reconciliation of net income for each year and any interim periods presented,[85] a reconciliation of major balance sheet captions for each year and any interim periods,[86] and a reconciliation of cash flows for each year and any interim periods.[87] The Commission is adopting as proposed amendments to Item 17(c) so that a reconciliation will no longer be required from foreign private issuers that prepare

[77] *See*, for example, letter from Syngenta.

[78] *See*, for example, letters from Citigroup, Financial Reporting Counsel, and PwC.

[79] *See*, for example, letters from BP, British Bankers' Association, and UBS.

[80] *See*, for example, letters from Deutsche Bank, Fitch Ratings, and ICAEW.

[81] *See*, for example, letter from Deloitte.

[82] *See*, for example, letters from CFA Institute, William Craven, Gaylen R. Hansen, and ITAC.

[83] *See http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_363/l_36320041209en00010065.pdf.*

[84] *See* Item 17(c)(1) of Form 20–F.

[85] *See* Item 17(c)(2)(i) of Form 20–F.

[86] *See* Item 17(c)(2)(ii) of Form 20–F.

[87] *See* Item 17(c)(2)(iii) of Form 20–F, containing the exception relating to IAS 7 ''Cash Flow Statements.''

financial statements that comply with IFRS as issued by the IASB.

Several subparagraphs of Item 17(c)(2) relate to reconciling disclosures that rely on certain International Accounting Standards (''IAS'') and were available to foreign private issuers that use home country GAAP or IFRS. We proposed to delete Items 17(c)(2)(iv)(B) and (C), which relate to reconciling disclosures from issuers that rely on IAS 21, ''The Effects of Changes in Foreign Exchange Rates.'' Because some commenters recommended that the IAS 21 accommodation could continue to be useful to foreign private issuers that may operate in a hyperinflationary economy, we are retaining that provision.[88] We are eliminating Item 17(c)(2)(viii), which relates to reconciling disclosures to be provided by issuers that use IAS 22, ''Business Combinations,'' as IAS 22 has been superseded by IFRS 3, ''Business Combinations.'' Because IAS 22 may no longer be used by an issuer preparing IFRS financial statements, we also are deleting Instruction 6 to Item 17 as proposed.

A reconciliation to U.S. GAAP under Item 18 of Form 20–F requires that an issuer provide all information required by U.S. GAAP and Regulation S–X, in addition to the reconciling information for line items specified in Item 17(c). Because our acceptance of financial statements prepared using IFRS as issued by the IASB without a U.S. GAAP reconciliation is intended to apply equally to an Item 18 reconciliation, we are revising Item 18(b) as proposed to indicate that U.S. GAAP and Regulation S–X disclosures will not be required if the issuer files financial statements using IFRS as issued by the IASB.

2. Interim Period Financial Statements

We are adopting as proposed that a foreign private issuer that is eligible to omit a U.S. GAAP reconciliation from its audited annual financial statements also will be able to omit a reconciliation from its unaudited interim period financial statements which, to the extent such financial statements are required,[89] also will have to be prepared in accordance with IFRS as issued by the IASB. Based on the responses that we received to questions posed in the Proposing Release relating to the ability of issuers to prepare interim period financial statements that are in accordance with IFRS as issued by the IASB,[90] we believe that the preparation of interim period financial statements in accordance with the provisions of IFRS as issued by the IASB that pertain to interim financial reporting will not create difficulties for issuers, and that issuers that have changed to IFRS as issued by the IASB for their annual financial statements and prepare interim financial statements will do so in accordance with IFRS as issued by the IASB.

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. If a foreign private issuer has published interim period financial information, however, Item 8.A.5 of Form 20–F requires these registration statements and prospectuses to include that information.[91] 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 which provides published interim financial information describe any material variations between the accounting principles used and U.S. GAAP and quantify any material variations that have not been quantified in the annual financial statements. We are adopting as proposed an instruction to Item 8.A.5 of Form 20–F to clarify that interim period financial information that is made public by a foreign private issuer need not be reconciled to U.S. GAAP if the basis of accounting used in the audited annual financial statements and the published interim information is IFRS as issued by the IASB.

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.[92] These unaudited 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.[93]

We proposed a new instruction to Item 8.A.5 to clarify that an issuer would not need to provide that reconciliation if it prepares its interim financial statements using IFRS as issued by the IASB. Under the proposed amendment, an issuer relying on the new instruction to provide IFRS financial statements for an interim period without reconciliation would continue to be required to comply with Article 10 of Regulation S–X with regard to the minimum content of the financial statements for interim periods, when that information is required under Item 8.A.5 of Form 20–F.

In the Proposing Release we enumerated several differences between the requirements of Article 10 of Regulation S–X and IAS 34, ''Interim Financial Reporting,'' which prescribes the minimum content of an interim financial report and the principles for recognition and measurement in interim period financial statements. These differences relate primarily to the detail required for major headings and subtotals used in the financial statements, statements regarding the sufficiency of the interim disclosures, minimum contingent liability disclosures, and footnote disclosure of summarized data for equity investees.

Many commenters did not view differences between IAS 34 and Article 10 as significant[94] and felt that IAS 34

[88] *See*, for example, letters from Deloitte and Shell.

[89] *See* Item 8.A.5 of Form 20–F for requirements relating to interim period financial statements.

[90] *See*, for example, letters from BP, Deutsche Bank, Shell, and UBS.

[91] 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 also 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.

[92] *See* Item 8.A.5 of Form 20–F and Item 512(a)(4) of Regulation S–K.

[93] *See* Items 17(c) and 18 of Form 20–F.

[94] *See*, for example, letters from BP, British Bankers Association, Ernst & Young, and Royal Bank of Scotland Group plc.

information was sufficient without needing to require compliance with Article 10 when preparing IFRS financial statements for interim periods.[95] Accordingly, under the rules we are adopting a foreign private issuer that relies on the new instruction to provide IFRS financial statements for an interim period without reconciliation to U.S. GAAP will not be required to comply with Article 10 of Regulation S–X for interim period financial statements provided pursuant to Item 8.A.5 of Form 20–F, if it complies with and explicitly states compliance with IAS 34.

c. Transition Period Interim Financial Statements in Securities Act Registration Statements and Prospectuses and Initial Exchange Act Registration Statements

Eligible foreign private issuers will be able to omit the U.S. GAAP reconciliation from their unaudited financial statements relating to interim periods only if the audited annual financial statements included or incorporated by reference for all required periods are prepared in accordance with IFRS as issued by the IASB, as described in Section III.A.2. above. If the audited annual financial statements are not so prepared, then in order to be able to omit the U.S. GAAP reconciliation from required interim period financial statements, an issuer would amend prior filings in order to appropriately revise the audited financial statements.[96]

C. Related 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. We proposed 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 issued by the IASB.

Almost all commenters that addressed the issue believed that U.S. GAAP selected financial data should not be required if an issuer prepares its primary financial statements in accordance with IFRS as issued by the IASB.[97] One commenter noted that efforts to keep the previously filed selected U.S. GAAP financial information current, for example due to retrospective effects of changes of accounting methods or discontinued operations, would not be cost-effective.[98]

We are amending Item 3.A. of Form 20–F as proposed 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 issued by the IASB.

2. Other Form 20–F Disclosure

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

Several non-financial statement disclosure items in Form 20–F refer to specific U.S. GAAP pronouncements.[99] We proposed to add an Instruction to Item 5 and Item 11 stating that an IFRS filer that will not be required to provide a U.S. GAAP reconciliation will continue to respond to those items of Form 20–F that make reference to U.S. GAAP pronouncements. Under the proposed instruction, in providing that disclosure the issuer would apply the appropriate corresponding IFRS pronouncements that embody the principles contained in the referenced U.S. GAAP pronouncement.

A number of commenters suggested that individual issuers may reach different determinations as to which IFRS pronouncement to look to in response to Form 20–F item requirements that refer to U.S. GAAP provisions. To facilitate the use of Form 20–F by IFRS users, those commenters recommended that we revise the non-financial statement disclosure requirements to itemize the specific IFRS pronouncements that correspond to the referenced U.S. GAAP pronouncements.[100]

In evaluating these comments, we concluded that in responding to the non-financial statement disclosure requirements of Form 20–F, issuers should continue to meet the objective of the stated disclosure regardless of the basis on which the financial statements are prepared. We believe issuers should not have undue difficulty in determining the objective of those disclosure requirements. We therefore are adopting instructions to Item 5 and Item 11 to indicate that issuers preparing their financial statements in accordance with IFRS as issued by the IASB should provide, in responding to paragraphs of those items that refer to specific pronouncements of U.S. GAAP, disclosure that satisfies the objective of the item's disclosure requirements. 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. We will continue to evaluate whether specific changes to the non-financial statement disclosure items of Form 20–F would be beneficial.

b. Disclosure From Oil and Gas Companies

We proposed to amend Item 18 of Form 20–F to expressly require that any issuer that provides disclosure under FAS 69, ''Disclosures about Oil and Gas Producing Activities,'' continue to provide that disclosure even if the issuer is preparing financial statements in accordance with IFRS as issued by the IASB without a reconciliation to U.S. GAAP.[101] We are adopting this amendment as proposed to continue to require FAS 69 disclosure. Most commenters responding to our question on this matter supported our proposal to continue to require FAS 69 disclosure, which they felt was useful to investors and analysts.[102] Some issuers indicated, however, that FAS 69 disclosure should cease to be required once the IASB issues disclosure requirements for oil and gas related activities.[103] We will continue to consider appropriate revisions to our requirements in this area in light of future developments.

c. Market Risk Disclosure and the Safe Harbor Provisions

We recognize that IFRS filers have expressed particular concerns related to the applicability of the safe harbor for forward-looking statements provided under Section 27A of the Securities Act[104] and Section 21E of the Exchange

[95] *See*, for example, letters from AXA, Deloitte, KAI–KASB, and Group of 100.

[96] For example, an issuer that previously had filed an annual report on Form 20–F containing financial statements which were not prepared in accordance with IFRS as issued by the IASB, as described in Section III.A.2. above, could file an amendment to that annual report which included financial statements that were so prepared.

[97] *See*, for example, letters from BP, DaimlerChrysler, Deloitte, and KAI-KASB.

[98] *See* letter from PwC.

[99] *See*, for example, Item 5 (''Operating and Financial Review and Prospects''), which contains references 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,'' and Item 11, which contains reference to multiple FASs.

[100] *See*, for example, letters from Accounting Standards Committee of Germany and Germany Accounting Standards Board, and Center for Audit Quality (''CAQ'').

[101] Disclosure provided pursuant to FAS 69 is supplementary information that is provided with the financial statements.

[102] *See*, for example, letters from Ernst &Young and Deloitte.

[103] *See*, for example, letters from BP and Shell.

[104] 15 U.S.C. 77z–2.

Act.[105] Those safe harbor provisions expressly exclude any information ''included in a financial statement prepared in accordance with generally accepted accounting principles.'' [106] Because forward-looking market risk disclosure required by IFRS 7, ''Financial Instruments: Disclosure,'' will appear in the footnotes to audited IFRS financial statements, it is not covered by the safe harbor provisions. In contrast, market risk disclosure provided pursuant to Item 11 of Form 20–F is not included as part of the financial statements in a filing and is expressly subject to the safe harbor provisions.

In the Proposing Release, while we did not propose any changes, we did solicit feedback on the non-availability of the safe harbor provisions to financial statement information, including disclosure required by IFRS 7. In response, a number of commenters indicated that the Commission should address the implications of the safe harbor provisions and financial statement disclosure, including forward-looking information called for by IFRS 7.[107] This is an issue that exists currently even with a U.S. GAAP reconciliation, and therefore is distinct from our acceptance of IFRS financial statements without a U.S. GAAP reconciliation and affects foreign private issuers generally.[108] We therefore believe the question warrants further consideration and, if appropriate, we may address it through a separate rulemaking initiative.

3. IFRS Treatment of Certain Areas

In the Proposing Release we noted that although IFRS as issued by the IASB constitutes a comprehensive basis of accounting that may be used by foreign private issuers in the preparation of their financial statements contained in Commission filings, there are certain areas in which the IASB has yet to develop standards or in which IFRS permits disparate options. As discussed in the Proposing Release, IFRS does not have a specific standard or interpretation on accounting treatment for common control mergers, recapitalization transactions, reorganizations, acquisitions of minority shares not resulting in a change of control and similar transactions.[109] While IFRS does include a standard on financial statement presentation, it lacks specific conventions as to the form and content of the income statement.[110] We did not receive extensive comments in these areas. Other examples given in the Proposing Release include accounting for insurance contracts and extractive activities.

IFRS 4, ''Insurance Contracts,'' provides some requirements in accounting for issued insurance contracts and held reinsurance contracts. As IFRS 4 was the first part of a two-phase project, the standard generally permits a company to continue to apply its home country accounting principles for insurance contracts, though it imposes certain accounting requirements in order to eliminate certain inconsistencies in application, and establishes many disclosure requirements. The IASB has a project to further address the accounting for insurance contracts and has issued a discussion paper on its preliminary views on such a standard.[111]

IFRS 6, ''Exploration for and Evaluation of Mineral Resources,'' provides some requirements in accounting for exploration and evaluation activities of oil and gas and mining companies. For limited areas of accounting for extractive activities, IFRS 6 establishes guidelines under which preparers can continue to apply home country accounting principles.

In the Proposing Release we solicited comment as to whether there are any accounting subject areas that the IASB should address before we accept IFRS financial statements without reconciliation, and whether investors can understand and use IFRS financial statements which include activities in areas for which IFRS does not have a specific standard. Some commenters noted that IFRS is not alone in having gaps in accounting for certain areas, and gave as examples the lack of standards for property, plant and equipment, revenue recognition, consolidation and joint venture accounting under U.S. GAAP.[112]

Several commenters indicated that, where gaps might exist in IFRS, preparers may look to accounting guidance issued by other standards, such as U.S. GAAP, pursuant to IAS 8, ''Accounting Policies, Changes in Accounting Estimates and Errors.'' [113] In areas for which an IFRS does not exist, IAS 8 requires preparers to use judgment in developing accounting policies such that financial information is provided that, among other things, is relevant to the needs of users and the financial statements reliably reflect the economic substance of transactions. In applying such judgment, preparers must consider other guidance found in IFRS and, if no analogous guidance is found, the definitions, criteria and concepts in the IFRS conceptual framework. Finally, IAS 8 allows preparers to consider pronouncements of other standard-setting bodies to the extent that such guidance does not conflict with the concepts underlying IFRS. In areas that are not addressed by IFRS, we expect companies, consistent with IAS 1 and IAS 8, to provide full and transparent disclosure in the financial statements and operating and financial review and prospects disclosure [114] about the accounting policies selected and the effects of those policies on the IFRS financial statements.[115]

Accounting for insurance contracts was the area most frequently cited by commenters as lacking complete standards, and some letters addressed extractive activities as well.[116] However, most of the commenters believed that, while IFRS 4 has not addressed many recognition and measurement items for insurance contracts, the rule amendments to allow the filing of IFRS financial statements without reconciliation to U.S. GAAP should not be delayed and noted that European investors are currently using financial statements prepared under IFRS by

[105] 5 U.S.C. 78u–5.

[106] *See* Securities Act Section 27A(b)(2)(A) and Exchange Act Section 21E(b)(2)(A).

[107] *See*, for example, letters from American Bar Association, CAQ, and PwC.

[108] Some foreign private issuers have early adopted IFRS 7 in their financial statements relating to their 2006 financial years.

[109] The IASB and the FASB are expected to issue a final standard for the accounting for business combinations and non-controlling interests. This joint project is expected to converge numerous areas of application and reduce certain alternative treatments currently available under IFRS, but will not address all areas listed herein.

[110] Early in 2008, the IASB and the FASB are expected to publish a discussion document relating to financial statement presentation, including the presentation of information on the face of the financial statements.

[111] The IASB currently has projects underway addressing accounting for insurance contracts and extractive activities. *See* the IASB work plan for further detail at *http://www.iasb.org/Current+Projects/IASB+Projects/IASB+Work+Plan.htm.*

[112] *See*, for example, letter from Kurt S. Schulzke.

[113] *See*, for example, letters from Diageo plc (''Diageo'') and Ernst & Young.

[114] *See* Item 5 of Form 20–F.

[115] For example, the embedded deposit component of certain types of insurance contracts written by an insurance company might be unbundled as a liability, or might not be unbundled and thus included in premium revenues and policy benefit expenses. Similarly, exploration and evaluation costs of a company in the extractive industries might be expensed as incurred, or capitalized as assets and subsequently depreciated. Similarly, common control mergers, reorganizations or recapitalizations might be reported at the historical cost basis of the entit(ies) involved or at a new basis in whole or in part.

[116] *See*, for example, letters from CFA Institute and Fitch Ratings.

insurance companies to make financial decisions.[117] One commenter noted that even though the implementation of an insurance standard may occur after the Commission's acceptance of IFRS financial statements without reconciliation to U.S. GAAP, global practices in this area are sufficiently developed to not require reconciliation.[118] Another commenter indicated that IFRS 4 does provide minimum requirements for insurance contracts accounting and requires extensive disclosure of the accounting policies used and other matters so that investors can inform themselves. The commenter noted that in some areas these disclosures are more extensive than those called for under U.S. GAAP.[119] Another commenter indicated that although IFRS provides more options in the selection of accounting policies in some areas compared to U.S. GAAP, it also provides sufficient transparency of the options chosen such that the U.S. GAAP reconciliation does not provide added benefit.[120]

In a few cases, commenters recommended that some or all insurance companies be excluded from the scope of the proposed amendments or that additional disclosure requirements be imposed because IFRS 4 may not provide the same level of transparency to investors as other IFRS applicable to other sectors of the financial services industry.[121] Another commenter said that once there is a robust IFRS on insurance, the lack of convergence should not further delay the elimination of the reconciliation.[122]

The IASB continues to make progress towards developing standards under IFRS for both insurance and extractive activities. As we accept and support the use of IFRS as issued by the IASB as a comprehensive basis of accounting for the preparation of financial statements included in filings with the Commission by foreign private issuers, we do not believe that the IFRS standards in these or other discrete areas should delay our full acceptance of IFRS as issued by the IASB without a U.S. GAAP reconciliation.

4. Other Considerations Relating to IFRS and U.S. GAAP Guidance

As discussed in the Proposing Release and in Section III.C.3. of this release, the Commission recognizes that an issuer that will 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, such as rules and regulations, and including Accounting Series Releases (''ASRs'') and Financial Reporting Releases (''FRRs'').[123] 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.[124]

As described in the Proposing Release, we believe that a company that is no longer required to reconcile its IFRS financial statements to U.S. GAAP under the adopted amendments, and its auditor, must continue to follow any Commission guidance that relates to auditing issues.[125]

5. First-Time Adopters of IFRS

General Instruction G to Form 20–F provides for an accommodation that permits a foreign private issuer in its first year of reporting under ''IFRS as published 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 in its registration statements or annual report filed with the Commission.[126] The amendments to accept financial statements prepared in accordance with IFRS as issued by the IASB that we are adopting today will apply to, among others, foreign private issuers that are able to rely on the accommodation to first-time adopters of IFRS contained in General Instruction G. As a conforming amendment, we are changing all references to ''IFRS as published by the IASB'' contained in General Instruction G to ''IFRS as issued by the IASB,'' which has the same definition.

We proposed to amend General Instruction G to provide consistency with the proposed acceptance of financial statements prepared in accordance with IFRS as issued by the IASB without a U.S. GAAP reconciliation. Commenters were supportive of the conforming amendments as proposed, which we are adopting. Specifically, we are revising paragraph (a) of General Instruction G, ''Omission of Certain Required Financial Statements,'' to provide for this. We also are revising paragraph (d) of General Instruction G, ''Information on the Company,'' to refer to ''a U.S. GAAP reconciliation'' rather than ''the U.S. GAAP reconciliation'' to avoid any inference that a reconciliation would be required. In addition, we are revising paragraph (e) to eliminate the reference to the U.S. GAAP reconciliation, which will no longer be required.

Contained in paragraph (f) of General Instruction G are three options by which an issuer relying on the two-year accommodation could satisfy the interim financial statement requirements of Item 8.A.5 of Form 20–F in a transitional registration statement. One of these options allows for two years of audited financial statements and interim financial statements prepared in accordance with IFRS as issued by the IASB and reconciled to U.S. GAAP as required by Item 17(c) or 18 of Form 20–F. We proposed to eliminate the reconciliation requirement from this option in a manner consistent with the proposed amendments to Items 17 and 18. We did not receive extensive comment on this aspect of the proposal, and are eliminating the reconciliation requirement from this option as proposed. We are retaining the other options as they currently stand, and note that few if any issuers appeared to use the option requiring condensed U.S. GAAP financial information as a bridge between three years of previous GAAP financial statements and two years of IFRS interim information. We also note that issuers may continue to contact the staff if they are unable to comply with one of the options but have comparable information available.[127]

We are adopting as proposed the revisions to paragraph (h) of General Instruction G to eliminate the U.S.

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[117] *See*, for example, letters from Allianz, Prudential, and PwC.

[118] *See* letter from AIG.

[119] *See* letter from ING.

[120] *See* letter from PwC.

[121] *See*, for example, letters from ACLIG, American Academy of Actuaries, and GNAIE.

[122] *See* letter from Fitch Ratings.

[123] 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.

[124] 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. The Commission has neither approved nor disapproved these interpretations.

[125] In addition, foreign private issuers are required to have audits conducted in accordance with the Standards of the PCAOB (U.S.) regardless of the comprehensive basis of accounting they use to prepare their financial statements.

[126] *See* the 2005 Adopting Release.

[127] *See* the Instruction to General Instruction G(f) of Form 20–F.

GAAP reconciliation requirement for the two most recent financial years for which financial statements prepared in accordance with IFRS as issued by the IASB are filed. We also are adopting the conforming amendment to 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 clarify that disclosure should not refer to any U.S. GAAP reconciling information prepared for previous years.

As we noted in the Proposing Release, the accommodation to first-time adopters of IFRS contained in General Instruction G was scheduled to expire 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 from any jurisdiction. As many other countries are expected to adopt IFRS in the coming years, we proposed 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. We also solicited comment as to whether extending the accommodation for a longer or indefinite period would be appropriate.

All commenters addressing this matter supported extension of the accommodation contained in General Instruction G.[128] Rather than the five-year extension as proposed, most commenters believed that the accommodation should be extended indefinitely to provide an ongoing incentive for the adoption of IFRS as issued by the IASB in filings with the Commission.[129] We agree with this view, and therefore are extending the accommodation to first-time adopters of IFRS as issued by the IASB contained in General Instruction G for an indefinite period.

One accounting firm commented that temporary or permanent recognition or measurement differences between IFRS as issued by the IASB and local variations of IFRS may create difficulties in the ability of an issuer to rely on IFRS 1, ''First-time Adoption of International Financial Reporting Standards.'' [130] The firm indicated that similar difficulties may arise if an entity that prepares its financial statements in accordance with a local GAAP that has converged with IFRS over time has not gone through the adoption process of IFRS 1 with appropriate transition adjustments. We recognize that a specific issuer may need to make a determination as to when it may rely on IFRS 1 as a first-time adopter of IFRS. We believe that an issuer may rely on the provisions of General Instruction G if and only if that issuer has not previously stated its reliance on IFRS 1. Further, an issuer may only rely on the provisions of General Instruction G once.

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 issued by the IASB to qualify for the accommodation. 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 will no longer be applicable after that time, we are deleting General Instruction G(i) of Form 20–F.[131]

6. Check Boxes on the Cover Page of Form 20–F

We proposed adding check boxes to the cover page of Form 20–F in which a filer would indicate whether the financial statements included in the filing have been prepared using U.S. GAAP, IFRS as issued 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 issued by the IASB, the issuer would then indicate in response to a subsequent check box whether it follows Item 17 or 18 to prepare its U.S. GAAP reconciliation.

We also proposed to revise the cover page of Form 20–F to require that issuers provide contact information for a person to whom Commission or staff enquiries may be directed.[132] 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.

We did not receive extensive comment on these proposed revisions to Form 20–F. One commenter thought that the naming of individuals on the cover page would be viewed as sensitive because of potential exposure to litigation, and suggested that we obtain contact information by non-public means.[133] Because identification on the cover page does not expose that individual to additional liability or responsibility for the contents of the filing, we are adopting the amendments as proposed.[134] We also note that forms for domestic issuers already require contact information. Consistent with the usage throughout the amendments we are adopting today, however, the reference in the check boxes on the Form 20–F cover page has been changed to ''IFRS as issued by the IASB'' rather than the proposed ''IFRS as published by the IASB.'' [135]

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. Regulation S–X will continue to apply to the filings of all foreign private issuers, including those who file financial statements prepared using IFRS as issued by the IASB without reconciliation to U.S. GAAP.[136]

1. Application of the 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

[128] *See*, for example, letters from CAQ and Deloitte.

[129] *See*, for example, letters from BDO, CAQ, Deloitte, Ernst & Young, Grant Thornton, ICAEW, PwC, and Shell.

[130] *See* letter from Ernst & Young.

[131] The transition provisions discussed in Section III.A.3. relating to IFRS as adopted by the EU are available only for existing registrants, all of whom have already been first-time adopters of IFRS.

[132] 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.

[133] *See* letter from Fried, Frank, Harris, Shriver & Jacobson (London), LLP.

[134] We will consider the possibility of including this information as an EDGAR header.

[135] EU companies using the transition provisions discussed in Section III.A.3. should check the ''IFRS as issued by the IASB'' box.

[136] Foreign private issuers that file financial statements prepared in accordance with IFRS as issued by the IASB will comply with IASB requirements for form and content within the financial statements, rather than with the specific presentation and disclosure provisions in Articles 4, 5, 6, 7, 9, and 10 of Regulation S–X.

circumstances, must include the financial statements of another entity in its filings.[137] We did not propose any changes to Rules 3–05, 3–09, and 3–16 of Regulation S–X, although the amendments that we are adopting to accept IFRS financial statements without a U.S. GAAP reconciliation will apply equally in their application. In response to our questions, respondents found the description in the Proposing Release of how the new amendments would apply to the preparation of financial statements provided under Rules 3–05, 3–09, and 3–16 to be sufficiently clear. We have summarized below the guidance provided in the Proposing Release.

a. Significance Testing

Requirements for significance testing are governed by the financial statements of the issuer.[138] Generally, a foreign private issuer that prepares its own financial statements using IFRS as issued by the IASB also would perform the significance tests under Rules 3–05, 3–09, and 3–16 using IFRS as issued 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.

Some commenters pointed out that significance testing under Rule 1–02(w) has historically been performed using U.S. GAAP amounts and, notwithstanding the amendments we are adopting today, an issuer would still need to prepare a U.S. GAAP reconciliation for the purpose of significance testing even if such a reconciliation was no longer required to be disclosed.[139] In order to clarify our intent and to implement fully our acceptance from foreign private issuers of financial statements prepared in accordance with IFRS as issued by the IASB, we are revising Rule 1–02(w) to specify significance testing using amounts determined under IFRS as issued by the IASB when the issuer's financial statements are prepared in accordance with IFRS as issued by the IASB.

b. Separate Historical Financial Statements of Another Entity Provided Under Rule 3–05 or 3–09

Generally, the historical financial statement requirements for a foreign acquired business or investee under Rule 3–05 or 3–09 are governed by the status of that entity, and do not impose a higher presentation burden on a non-issuer entity than on an issuer. In applying the amendments, if the entity's audited financial statements are in accordance with IFRS as issued by the IASB, those financial statements will 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 will be permitted, under the adopted rules, to include the acquiree's financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP, in accordance with U.S. GAAP, or in accordance with another comprehensive basis of accounting reconciled to U.S. GAAP. The same is 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 significance of that entity, as defined in Rule 1–02(w) of Regulation S–X, does not exceed 30 percent of the registrant.[140] Although we are not amending Rules 3–05 or 3–09, we are revising Items 17(c)(2)(v) and (vi) of Form 20–F as proposed to clarify, respectively, that if the financial statements of a foreign entity filed under Rule 3–05 or 3–09 are presented in accordance with IFRS as issued by the IASB, those financial statements 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

Article 11 of Regulation S–X requires issuers 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. Following the adoption of the amendments described in this release, 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, the rules that we are adopting do not impose a higher presentation burden on pro forma financial information than would be imposed on the historical financial statements of the issuer.

As proposed, we are not amending Article 11, although the amendments that we are adopting will affect the application of Article 11. Accordingly, a foreign private issuer using IFRS as issued by the IASB as its basis of accounting will not be required to reconcile to U.S. GAAP its pro forma financial information. Therefore, an issuer using IFRS as issued by the IASB will 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 issued 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.[141] 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 will accept financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation from each one under the rules we are adopting.[142]

Rule 3–10 permits modified reporting by subsidiary issuers of guaranteed

[137] 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.

[138] 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.

[139] *See*, for example, letter from CAQ.

[140] *See* Item 17(c)(2)(v) and (vi) of Form 20–F.

[141] 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).

[142] 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.

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 in accordance with IFRS as issued by the IASB would present the condensed consolidating financial information on the basis of IFRS as issued by the IASB, without reconciliation to U.S. GAAP. As noted in the Proposing Release, 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 issued by the IASB without reconciliation.

As a conforming amendment, we did propose to revise the reference to the reconciliation to U.S. GAAP of the condensed consolidating financial information contained in Rule 3–10 to clarify that we would accept the condensed consolidating financial information without a U.S. GAAP reconciliation if it is prepared using IFRS as issued by the IASB. Commenters generally agreed that this change was sufficient, and we are adopting it as proposed.[143]

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.[144] In order to implement fully the proposed acceptance of financial statements prepared using IFRS as issued by the IASB and to avoid ambiguity for issuers, we proposed to revise Rule 4–01 to clarify that financial statements of foreign private issuers may be prepared using IFRS as issued by the IASB without reconciliation to U.S. GAAP. Commenters generally agreed that this approach was sufficient, and we are adopting the revision to Rule 4–01 as proposed.

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

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

In order to implement fully our acceptance of financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP,[145] we proposed to make certain conforming amendments to references to the U.S. GAAP reconciliation that are contained in Securities Act Forms F–4 and S–4.[146]

Based on the comments received, our acceptance of IFRS financial statements from foreign private issuers in both Exchange Act and Securities Act filings appears to be well understood. Many of the commenters that responded to the questions we posed indicated that the proposed changes were sufficiently clear, and did not believe that any other rules or forms would need to be specifically amended to permit the filing of IFRS financial statements without a reconciliation to U.S. GAAP.[147] A few commenters thought that various other forms, rules and regulations would require modification, and set forth the changes they thought would be necessary in their comment letters.[148] After considering the suggestions, we continue to believe that the proposed revisions to other rules and forms were sufficiently clear, and therefore we do not believe additional revisions are necessary and are adopting the revisions proposed.

We therefore are adopting as proposed the revisions to the references to the U.S. GAAP reconciliation contained in Items 10, 12 and 17 of Form F–4 to make that form consistent with the amendments we are adopting to Items 17(c) and 18(b) of Form 20–F to indicate that the referenced U.S. GAAP reconciliation would be required only for financial statements prepared using a basis of accounting other than U.S. GAAP or IFRS as issued by the IASB. We also are adopting as proposed the analogous revision to the reference to the U.S. GAAP reconciliation contained in the instruction to Item 17 of Form S–4.

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 exemption generally is not available to issuers that have a reporting obligation under the Exchange Act and does not involve the filing of any information with the Commission. However, an issuer conducting an offering under Rule 701 must 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, financial statements provided under Rule 701 must include a reconciliation under Item 17 of Form 20–F if they are not prepared in accordance with U.S. GAAP. To implement fully our acceptance of IFRS financial statements without reconciliation to U.S. GAAP, we proposed to amend Rule 701 to clarify that a foreign private issuer that conducts an offering under Rule 701 and prepares its financial statements using IFRS as issued by the IASB should not be required to present a U.S. GAAP reconciliation. Commenters were supportive of the revision to Rule 701 as a means of facilitating stock ownership and compensatory plans for employees of foreign private issuers,[149] which we are adopting as proposed.

3. Schedule TO and Schedule 13E–3

Schedule TO, the tender offer statement under the Exchange Act, and Schedule 13E–3, the transaction statement under Section 13(e) of the Exchange Act, both contain a reference to U.S. GAAP reconciliation in accordance with Item 17 of Form 20–F.

Respondents who commented on the issue, including accounting firms and foreign private issuers, generally felt that changes to Schedule TO and Schedule 13E–3 were not necessary where changes to Item 17 of Form 20–F were made.[150] Other accounting firms and law firms suggested additional specific revisions to those schedules to clarify that no reconciliation or discussion of differences from U.S. GAAP would be necessary if financial statements that complied with IFRS as issued by the IASB were included.[151]

The amendments we are adopting to Form 20–F to implement our acceptance

[143] *See,* for example, letters from Ernst & Young and UBS.

[144] As noted above, Item 17 reconciliation is permitted in various circumstances.

[145] Form 20–F serves as the combined registration statement and annual report for foreign private issuers under the Exchange Act, and also sets forth the disclosure requirements for registration statements filed by foreign private issuers under the Securities Act.

[146] Form F–4 is the registration statement for securities of foreign private issuers in certain business combinations, and Form S–4 is the registration statement for securities of domestic issuers issued in business combinations.

[147] *See,* for example, letters from UBS and Deutsche Bank.

[148] *See,* for example, letters from Ernst & Young and Cleary.

[149] *See,* for example, letter from Cleary.

[150] *See,* for example, letters from PwC, Deloitte, Deutsche Bank, and UBS.

[151] *See,* for example, letters from Cleary and Ernst & Young.

of IFRS financial statements without reconciliation to U.S. GAAP are intended to apply to all Securities Act and Exchange Act filings that reference the U.S. GAAP reconciliation requirement contained in Item 17 or Item 18 of Form 20–F. We therefore are not adopting any revision to Schedule TO or Schedule 13E–3.

4. Small Business Issuers

Under rules currently in effect, 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.[152] 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.[153]

We recently adopted amendments under which disclosure requirements for smaller companies previously contained in Regulation S–B are integrated into Regulation S–K[154] and smaller reporting companies that file annual reports on Form 20–F or a Securities Act registration statement based on Form 20–F will be able to file financial statements prepared using U.S. GAAP, IFRS as issued by the IASB without a U.S. GAAP reconciliation, or another comprehensive basis of accounting with a U.S. GAAP reconciliation. If that issuer chooses to file a registration statement or annual report on a domestic form based on Regulation S–K, financial statements prepared using U.S. GAAP would be required. Because we adopted these amendments for smaller company regulatory simplification, we are not making any revisions to Regulation S–B as part of our final rules to accept IFRS financial statements from foreign private issuers.

In the Proposing Release we solicited comment asking whether we should permit the use in Form 1–A of financial statements prepared in accordance with IFRS as issued by the IASB without a reconciliation.[155] Presently, a Canadian issuer that files a
Form 1–A may use unaudited financial statements reconciled to U.S. GAAP. We received several comment letters noting that it would be appropriate to make such an amendment to Form 1–A once Canada officially adopts IFRS,[156] with one commenter indicating that requiring a reconciliation could make a Regulation A offering cost prohibitive for a Canadian issuer that did not use U.S. GAAP.[157] Some issuers supported immediate revision to Form 1–A in this way as a means of furthering our acceptance of IFRS.[158] While we fully support the use of financial statements prepared in accordance with IFRS as issued by the IASB in filings with the Commission by foreign private issuers, we are not at this time revising Form 1–A as it appears that Canadian issuers filing on that form would not be able to avail themselves of the adopted amendments until Canadian accounting standards setters permit the use of IFRS, as discussed below in Section III.F.

F. Application to Filings Under the Multijurisdictional Disclosure System

Certain Canadian foreign private issuers file registration statements and annual reports under the 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.[159] A U.S. GAAP reconciliation is required, however, in registration statements and annual reports on Form 40–F[160] and registration statements on Form F–10,[161] each when used for common equity securities, securities convertible into common equity securities and other securities not rated investment grade. Canadian issuers that participate in the MJDS generally use either Canadian GAAP, with a U.S. GAAP reconciliation when required, or U.S. GAAP in their filings with the Commission.

Canadian accounting standards setters have indicated that they expect to permit the use of IFRS as issued by the IASB as the basis of accounting for all Canadian public companies. The date for application of IFRS in Canada has not yet been confirmed, but is expected to be 2011.[162] A number of commenters therefore have felt that it would be too early to describe acceptance of IFRS by a Canadian company before Canadian requirements allow the use of IFRS.[163] Canadian issuers supported the acceptance of IFRS financial statements without reconciliation, and urged that it should apply equally to MJDS filers.[164]

We are not adopting any revisions to the MJDS forms. As described in the Proposing Release, we do not believe any amendments to Forms 40–F and F–10 would be necessary to permit an MJDS issuer to file financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation. Some commenters shared this view, as 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 are being amended.[165]

G. Periodic Reporting Deadlines for Foreign Private Issuers

In the Proposing Release we solicited comment on periodic reporting due dates for foreign private issuers, including whether it would be appropriate to shorten the current six-month deadline for annual reports on Form 20–F if a reconciliation were not required. We received significant feedback from commenters raising a number of considerations applicable to reporting deadlines for foreign private issuers that are independent of the reconciliation requirement, including annual report deadlines in home jurisdictions and time needed for

[152] 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.

[153] *See* Notes 1 and 2 to Item 310 of Regulation S–B.

[154] *See* ''Smaller Reporting Company Regulatory Relief and Simplification,'' Release No. 33-8819 (July 5, 2007), available at *http://www.sec.gov/rules/proposed/2007/33–8819.pdf.*

[155] Form 1–A is the Securities Act form for offerings made under Regulation A, a conditional exemption from Securities Act registration for securities offerings not exceeding $5 million. Regulation A may be used by eligible U.S. or Canadian issuers that do not have a reporting obligation under the Exchange Act.

[156] *See,* for example, letter from CAQ.

[157] *See* letter from CAQ.

[158] *See,* for example, letters from BP and Deloitte.

[159] 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 the these offerings or a Section 13(a) reporting obligation relating to investment-grade securities.

[160] 17 CFR 249.240f.

[161] 17 CFR 239.40.

[162] *See* letter from Canadian Accounting Standards Board.

[163] *See,* for example, letters from PwC and Ernst & Young.

[164] *See* letter from Manulife Financial.

[165] *See,* for example, letter from Deloitte.

language translation, among others.[166] Most commenters indicated that in no event should the Form 20–F deadline be earlier than in an issuer's home jurisdiction, and ideally the Form 20–F should be due after the home country filing deadline.[167] A number of commenters support consideration of deadlines for Form 20–F in a separate rulemaking.[168] Given the many considerations that may affect our consideration of periodic reporting deadlines, which may apply to foreign private issuers generally, we believe it is appropriate to consider the issue in a separate rulemaking initiative so as to obtain broader public input.

H. Quality Control Issues

As part of the quality control standards of the PCAOB, Appendix K applies to PCAOB-registered firms that are associated with international firms and establishes procedures to enhance the quality of SEC filings by registrants whose financial statements are audited by foreign associated firms.[169] Appendix K procedures require that the international organization or individual foreign associated firm of PCAOB-registered firms adopt policies and procedures that address the review of filings by persons knowledgeable about U.S. GAAP, U.S. generally accepted auditing standards, and independence matters. We did not propose and are not adopting any amendments to our rules that relate to the continued need for compliance with standards of the PCAOB, including Appendix K. However, in the Proposing Release we did provide commenters the opportunity to address compliance with PCAOB standards, including Appendix K, in the context of the proposed acceptance of IFRS financial statements without a U.S. GAAP reconciliation. In particular, we asked whether we should be concerned about PCAOB-registered firm requirements to have persons knowledgeable in U.S. auditing and independence standards review IFRS financial statements filed with the Commission.

Several commenters, including those from registered public accounting firms, pointed out that since the Appendix K procedures were adopted in 1999 the concerns that it sought to address have been mitigated by developments in the global financial reporting environment.[170] Because of these changes, they believed that it is no longer necessary for the Appendix K procedures to require the involvement of a filing reviewer. Commenters also pointed out that if U.S. GAAP information were no longer required, then a primary focus of Appendix K filing reviews would no longer apply.[171] However, some commenters believe that Appendix K procedures would still be useful because U.S. auditing standards, independence rules, and SEC rules still would apply.[172] We understand that the PCAOB is aware of this matter.[173]

IV. Paperwork Reduction Act

A. Background

The final amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[174] We are submitting the amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[175] 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);

(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 amendments will allow a foreign private issuer that prepares its financial statements in accordance with IFRS as issued by the IASB to file those financial statements in its registration statements and periodic reports filed with the Commission without reconciliation to U.S. GAAP. These amendments are collections of information for purposes of the Paperwork Reduction Act. For purposes of this Paperwork Reduction Analysis, these amendments will result in a decrease in the hour and cost burden calculations. We believe these amendments will eliminate potential burdens and costs for foreign issuers that use IFRS. The disclosure will be mandatory. There will be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

We are adopting the amendments substantially as proposed, and do not believe any differences between the proposed and adopted amendments will impact our burden estimates for purposes of the Paperwork Reduction Act. We solicited comments on the Paperwork Reduction Analysis included in the Proposing Release. The few commenters who addressed the issue thought, based on their experience in preparing their U.S. GAAP reconciliation, that we had underestimated the number of hours by which registrant burdens would be reduced if the amendments were adopted.[176] We note, however, that the time required to prepare a U.S. GAAP reconciliation may vary greatly between issuers. We are not changing our estimates of the percentage of incremental decrease in the burden resulting from our amendments. Our Paperwork Reduction Analysis for Form F–1 and Rule 701 is unchanged from the Proposing Release. However, we are revising our estimates for Forms 20–F, F–4, and S–4. For Form 20–F, we have revised our estimate of the number of filers affected by the amendments from 110 to 140. For Form F–4, the total burden hour estimates were revised from 24,503 hours to 24,599 hours subsequent to the issuance of the Proposing Release. We are revising our analysis for Form F–4 accordingly, although we are not changing our estimate of the percentage of incremental decrease in burden that we expect to result from the adopted

[166] *See,* for example, letters from HSBC, ING, and Sullivan & Cromwell.

[167] *See,* for example, letters from European Association of Listed Companies and Union of Issues Quoted in Europe, UNIQUE, New York City Bar, and ING.

[168] *See,* for example, letters from Ernst & Young, and LIBA.

[169] The text of Appendix K is available at: *http://www.pcaobus.org/Standards/Interim_Standards/Quality_Control_Standards/SECPS_1000.08_Appendicies_bookmarks.pdf#nameddest=k.*

[170] *See,* for example, letters from CAQ, KPMG, PwC, and Deloitte.

[171] *See,* for example, letter from KPMG.

[172] *See,* for example, letters from ICAEW and Syngenta.

[173] The audit implications of IFRS financial statements in SEC filings was a matter on the agenda of the PCAOB Standing Advisory Group Meeting on October 18, 2007. *See http://www.pcaobus.org/News_and_Events/Events/2007/10-18.aspx.* A PCAOB briefing paper on the subject is available at: *http://www.pcaobus.org/Standards/Standing_Advisory_Group/Meetings/2007/10-18/IFRS_Briefing_Paper.pdf.*

[174] 44 U.S.C. 3501 *et seq.*

[175] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[176] *See,* for example, letters from Diageo and Syngenta.

amendments. For Form S–4, we are revising the analysis to reflect an assumption that 25% of the burden to prepare financial statements for that form is borne by the registrant and 75% is borne by outside professionals retained by the registrant at an average cost of $400 per hour.

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 will be approximately 4,945 hours of company time and approximately $5,934,000 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.[177] Our estimates of the number of affected 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 adopted amendments.

B. Burden and Cost Estimates Related to the 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 currently are 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 140 companies that file Form 20–F may be currently impacted by the amendment.[178] We expect that the 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% (132 hours) in the number of burden hours required to prepare their Form 20–F, for a total decrease of 18,480 hours. We expect that 25% of these decreased burden hours (4,620 hours) will be saved by foreign private issuers. We further expect that 75% of these decreased burden hours (13,860 hours) will be saved by outside firms, at an average cost of $400 per hour, for a total of $5,544,000 in decreased costs to the respondents of the information collection.

Thus, we estimate that the amendment to Form 20–F will decrease the annual burden borne by foreign private issuers in the preparation of Form 20–F from 619,601 hours to 614,981 hours. We further estimate that the amendment will decrease the total annual burden associated with Form 20–F preparation to 2,459,924 burden hours, which will decrease the average number of burden hours per response to 2,611. We further estimate that the amendment will decrease the total annual costs attributed to the preparation of Form 20–F by outside firms to $737,977,200.

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 currently are 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 amendment.[179] We expect that the proposed amendment will cause those foreign private issuers to have fewer burden hours. We estimate that each company affected by the amendment 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 amendment to Form 20–F will 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 amendment will decrease the total annual burden associated with Form F–1 preparation to 75,544 burden hours, which will decrease the average number of burden hours per response to 1,799. We further estimate that the amendment will decrease the total annual costs 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 24,599 annual burden hours incurred by foreign private issuers out of a total of 98,396 annual burden hours. Thus, we estimate that 1,447 total burden hours per response currently are 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 $29,518,800.

We estimate that currently approximately 5 companies that file registration statements on Form F–4 will be impacted by the amendment.[180] We expect that the amendment will cause those foreign private issuers to have fewer burden hours. We estimate that each of the affected companies will 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

[177] 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 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.

[178] 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 last twelve months. As additional jurisdictions adopt IFRS as their basis of accounting in the future, the number of issuers that use IFRS is expected to increase.

[179] 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.

[180] 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.

burden hours (270 hours) will 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 amendment to Form 20–F will decrease the annual burden incurred by foreign private issuers in the preparation of Form F–4 from 24,599 hours to 24,509 hours. We further estimate that the amendment will decrease the total annual burden associated with Form F–4 preparation to 98,036 burden hours, which will decrease the average number of burden hours per response to 1,441. We further estimate that the amendment will decrease the total annual costs attributed to the preparation of Form F–4 by outside firms to $29,410,800.

4. Form S–4

When a domestic issuer files a registration statement on Form S–4 for the acquisition of a foreign business, the domestic issuer may be required to include the financial statements of the acquired business 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 U.S. GAAP 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 4,065 total burden hours per response currently are required to prepare a registration statement on Form S–4. We assume that 25% of the burden required to prepare the financial statements for use in a Form S–4 is borne by the registrant, resulting in 629,059 annual burden hours incurred by registrants out of a total of 2,516,236 annual burden hours. We further assume that 75% of the burden to produce financial statements for 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 $754,871,000.

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 amendment.[181] We expect that the amendment will cause registrants that file Form S–4 registration statements to have fewer burden hours. We estimate that for each of these registrants, there will be a decrease of 2% (81 hours) in the number of burden hours required to prepare their registration statements on Form S–4, for a total decrease of 486 hours.[182] We expect that 25% of these decreased burden hours (122 hours) will be saved by issuers. We further expect that 75% of the decreased burden hours (364 hours) will be saved by outside professionals at an average cost of $400 per hour for a total of $145,600 in decreased costs to the respondents of the information collection.

Thus, we estimate that the amendment will 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 amendment will decrease the total annual burden associated with Form S–4 preparation to 2,515,748 burden hours, which will decrease the average number of burden hours per response to 4,064. We further estimate that the amendment will decrease the total annual costs attributed to the preparation of Form S–4 by outside firms to $754,725,400.

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 rules will be insignificant. Therefore, we do not believe the rules will alter current burden estimates associated with Rule 701.

V. Cost-Benefit Analysis

The adopted amendments provide foreign private issuers the option of not including a U.S. GAAP reconciliation in their Commission filings if their financial statements comply with IFRS as issued by the IASB. We are not amending the current reconciliation requirements for foreign private issuers that prepare their financial statements using a basis of accounting other than IFRS as issued by the IASB.

The amendments apply to a foreign private issuer's financial statements contained in annual reports and registration statements on Form 20–F as well as to financial statements included in 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 adopting 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 issued by the IASB without reconciliation.

The amendments are available to any foreign private issuer that files financial statements that comply with IFRS as issued by the IASB, whether voluntarily or in accordance with the requirements of the issuer's home country regulator or exchange on which its securities are listed.

We recognize that the acceptance of financial statements that comply with IFRS as issued by the IASB without reconciliation does not affect all foreign private issuers equally, as there are some issuers that will continue to find it more attractive to reconcile their financial statements to U.S. GAAP or to continue to prepare financial statements in U.S. GAAP. Approximately 140 of approximately 1,100 foreign private issuers currently file financial statements in which they represent in the footnotes to the financial statements that the financial statements either comply with IFRS as issued by the IASB or a jurisdictional variation of IFRS where such jurisdictional variation may not prevent compliance with IFRS as issued by the IASB. If these issuers are able to state, and their auditors are able to opine, that the financial statements comply with IFRS as issued by the IASB, then these issuers will be able to file their IFRS financial statements without reconciliation to U.S. GAAP. In coming years, as more countries adopt IFRS as their basis of accounting or permit companies to use IFRS as issued by the IASB as their basis of accounting, we believe that the number of foreign private issuers that will be eligible to rely on the adopted amendments will increase. For instance, approximately 80

[181] 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.

[182] 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.

foreign private issuers from Israel [183] and approximately 500 from Canada [184] file financial statements with the Commission and both of these countries have announced moves to IFRS reporting. Additionally, foreign private issuers incorporated in other jurisdictions would be able to take advantage of the adopted amendments by preparing financial statements in accordance with IFRS as issued by the IASB for purposes of Commission filings. Finally, approximately 40 additional foreign private issuers that are incorporated in jurisdictions that have moved to IFRS historically have included 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 that comply with IFRS as issued by the IASB without a U.S. GAAP reconciliation under the amendments.[185]

Although few commenters provided quantitative data to support their views,[186] the Commission has revised the proposed amendments in response to the concerns that the commenters expressed. The Commission expects that the adopted amendments will result in the following benefits and costs to investors.

A. Expected Benefits

Our acceptance of financial statements prepared using IFRS as issued by the IASB is expected to help foster the use of IFRS as issued by the IASB as a way of moving to a single set of globally accepted accounting standards, which we believe will have positive effects on investors. Financial statements prepared using a common, high-quality set of accounting standards are expected to help investors better understand and compare investment opportunities as compared to financial statements prepared under differing sets of national accounting standards. Without a common standard, global investors are likely to incur the extra costs of time and effort to understand financial statements reported using different bases of accounting so that they can compare opportunities. While financial statements filed with the Commission and prepared under a set of home country accounting standards have included a reconciliation to U.S. GAAP, this reconciliation is not a complete substitute for comparing financial statements prepared using U.S. GAAP.

The benefits of a single set of globally accepted, high-quality accounting standards that improve financial statement comparability may be diminished if there is a wide latitude in application of IFRS that results in inconsistent reporting. This latitude potentially harms investors' ability to compare financial statements across companies and potentially allows more opportunity for obfuscatory reporting as noted by one commenter.[187] As noted in Section II., the Commission and its staff continue to be involved in efforts to promote consistent and faithful application of IFRS. We believe, based on the staff's review of IFRS financial statements, that financial statements prepared in accordance with IFRS as issued by the IASB are of sufficient quality. Investors therefore should be able to understand and work with them, a situation which will contribute to the use of globally accepted accounting standards, likely resulting in a more efficient allocation of capital.

The amendments are expected to increase the likelihood of realizing the net benefits to investors of the use of globally accepted accounting standards. This benefit is due to potential network effects of the proposed amendments: the more issuers that use IFRS as issued by the IASB, the greater the incentive for other issuers to do so. The utility for investors of a set of accounting standards increases as the number of issuers using it increases. For example, a foreign private issuer may be concerned about public perception costs, as it may be perceived as being the outlier if companies with which it competes for capital report using a different basis of accounting. The perception costs of being an outlier in such a case are likely to be smaller if a critical mass of issuers with whom the issuer competes for capital (such as those in its industry sector) report pursuant to the same set of standards, such as IFRS as issued by the IASB. In such situations, the use of IFRS as issued by the IASB is expected to make it more efficient for investors to analyze an issuer's financial results in comparison with the results of others with whom that issuer competes for capital. At the same time, the issuers reporting in home country GAAP may experience higher perception costs if a critical mass of comparable issuers adopts IFRS as issued by the IASB.

We believe that issuers will be affected by the amendments in a number of ways, including needing fewer resources to prepare Commission filings.[188] Issuers that commented on our estimates of the cost of reconciliation believe we underestimated these costs suggesting that accepting IFRS financial statements without a U.S. GAAP reconciliation will result in greater than expected savings to issuers.[189] Investors will benefit to the extent that an issuer relying on the 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 an even greater increase in its cost of capital relative to the cost of reconciling to U.S. GAAP.

The amendments are expected to facilitate capital formation by foreign companies in the United States capital markets. Our amendments to accept IFRS financial statements without reconciliation to U.S. GAAP are expected to 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 therefore may be more likely to enter or remain in the U.S. capital markets. To the extent our acceptance of IFRS financial statements without reconciliation encourages foreign private issuers to enter or remain in the U.S. capital markets, 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 and the ease of investing in these opportunities in the United States.

[183] 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.

[184] *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?sfgdata=4.*

[185] The figures contained in this paragraph are per staff estimates based on the jurisdiction of the filers.

[186] *See,* for example, letters from Diageo and Syngenta.

[187] *See* letter from Maverick.

[188] 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 currently use IFRS and issuers that acquire foreign private issuers that currently use IFRS would be approximately 3,943 hours of company time and approximately $4,731,120 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.

[189] *See,* for example, letters from Diageo and Syngenta.

The expected benefits of a single set of high quality accounting standards may be mitigated if the standards were not to continue to be of a high quality. Investors may face uncertainty about the future quality of IFRS. Factors that could affect the quality of IFRS are both institutional with respect to the IASC Foundation including its governance and funding, as discussed in Section II. above, as well as operational with respect to the actual standard setting process. We recognize that our relationship with the IASB is less direct than our relationship with the FASB and that there are more and varied constituents of the IASB than of the FASB. The result may be that our view will be one of many views that the IASB receives from around the world and considers when developing future standards. We continue to support the IASC Foundation's objectives for its work to achieve a stable and independent funding structure.

B. Expected Costs

Under the amendments, the minimum required financial information that investors in the U.S. capital markets receive from any foreign private issuer will differ from what it was previously. The extent to which an investor receives less information for a particular foreign private issuer who reports under the amendments will depend upon how the issuer previously reported its financial statements. For instance, if the foreign private issuer currently files financial statements prepared in 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 will depend upon whether IFRS financial statements yielded more or less information about a particular issuer than the U.S. GAAP financial statements yielded. On the other hand, if the foreign private issuer currently prepares its financial statements in IFRS and includes reconciling information to U.S. GAAP, then a loss of information will result as the reconciling information is omitted. A potential cost could be incurred if an investor loses information contained in the reconciliation that the investor would use to understand differences in certain financial results under IFRS and U.S. GAAP for a particular issuer. The usefulness of this omitted information depends on the extent to which the investor uses the information provided by the reconciliation to U.S. GAAP. Some investors, including investors who appear to be familiar with IFRS, currently make use of the information provided in the U.S. GAAP reconciliation by quantifying or estimating differences in certain financial results under IFRS and U.S. GAAP and comparing results in certain line items such as net income of foreign private issuers with those of domestic issuers.[190] Alternatively, other 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.[191] Because investors may be differently situated in the market and have varying levels of familiarity with IFRS and with the information provided in the U.S. GAAP reconciliation, investors may not all bear the cost from the amendments equally and some commenters recognized this.[192] The use that a particular investor may make of the reconciliation will depend on many factors including the size and nature of the investor and the industry to which the issuer in question belongs.

Additionally, under the amendments, the comparability of IFRS and U.S. GAAP results may change. To the extent that an issuer elected IFRS accounting policies that were consistent with U.S. GAAP solely to avoid having to disclose a U.S. GAAP reconciling item, future accounting policy elections may not be influenced by this incentive. This may result in future IFRS financial information from that issuer differing from U.S. GAAP. Eligible foreign private issuers who register their securities after this rulemaking is effective will not be influenced by this incentive.

The 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 issued by the IASB to prepare financial statements may face a reduced following in the marketplace. Investors that are not sufficiently familiar with IFRS accounting standards may prefer a U.S. GAAP reconciliation. In addition, unfamiliarity with IFRS as issued by the IASB may have an adverse effect on investors' confidence in the reported results which may lead them to insist on a risk premium.

The reconciliation may highlight the areas in which IFRS and U.S. GAAP are not converged, thus providing a possible benchmark to gauge convergence, although the efficacy of this benchmark could be affected by many other factors, and convergence may not eliminate all differences. With respect to IFRS financial statements, there are generally three sources for differences identified in the reconciliation to U.S. GAAP:

- Legacy differences arising from transactions that occurred before U.S. GAAP and IFRS became more converged;
- Self-selected differences that arise as a function of differing accounting elections that foreign private issuers make in accounting for the same area under IFRS and U.S. GAAP; and
- Regenerating differences that continue to recur each year in areas in which the standards are not converged.

With the differing reasons for reconciling items, we do not believe that the reconciliation solely or primarily provides investors or the IASB and FASB with an understanding of areas that are not yet converged.

There may be differing incentives for the convergence of IFRS and U.S. GAAP to continue. We believe, however, that the needs of the marketplace will support the IASB and the FASB working together to develop the best international standards to be used in the U.S. and internationally regardless of our regulatory requirement to reconcile financial statements. The current convergence work program includes topics such as revenue recognition, financial statement presentation, and leases. These are topics on which both the IASB and the FASB seek to develop better standards (rather than using the existing U.S. GAAP or IFRS standards). We believe that investors and issuers seek comparable information in global capital markets thereby providing an incentive for continued convergence of U.S. GAAP and IFRS.

This rulemaking also may create costs to investors in domestic issuers required by the Commission's rules to prepare their financial statements under U.S. GAAP. The desire of potential investors for comparability of financial information among companies that report in IFRS and domestic issuers that report in U.S. GAAP may create an incentive for domestic issuers to provide financial information prepared under IFRS as issued by the IASB in addition to U.S. GAAP financial statements. If domestic issuers make this choice, their investors bear additional preparation cost, while benefiting from additional information provided. Domestic issuers currently compete internationally for capital with companies who provide financial information prepared under IFRS. In spite of this international competition for capital, we do not believe it is currently a widespread practice for

[190] *See,* for example, letters from ITAC, Maverick, R.G. Associates, and Standard & Poor's.

[191] *See,* for example, letter from CRUF.

[192] *See,* for example, letters from CFA Institute and ITAC.

domestic issuers to provide financial information under IFRS.

VI. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act,[193] the Commission certified that 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 contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. It included this certification in Part VII of the Proposing Release. While the Commission encouraged written comments regarding this certification, none of the commenters responded to this request.

VII. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation Analysis

Section 2(b) of the Securities Act [194] and Section 3(f) of the Exchange Act[195] 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 [196] 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.

In the Proposing Release we considered the proposed amendments in light of the standards set forth in the above statutory sections. We solicited comment on whether, if adopted, the proposed rule amendments would result in any anti-competitive effects or promote efficiency, competition and capital formation. We further encouraged commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that might result from adoption of the proposed amendments.

We did not receive any comments or any empirical data in this regard concerning the proposed amendments. Accordingly, since the adopted rules are substantially similar to the proposed rules, we continue to believe the new rules will contribute to efficiency, competition and capital formation. The purpose of 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 is to allow foreign private issuers that prepare financial statements that comply with IFRS as issued 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. These amendments are designed to increase efficiency, competition and capital formation by helping to move towards a 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 amendments are 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 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 them. 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 amendments also may have other impacts on efficiency and capital formation, which may not be felt equally by all market participants. For 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 amendments also are expected to 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 issued 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.

VIII. Statutory Basis and Text of Final Amendments

We are adopting the amendments to Exchange Act Form 20–F, Regulation S–X Rules 1–02, 3–10 and 4–01, Securities Act Forms F–4 and S–4, and Securities Act Rule 701 pursuant to Sections 6, 7, 10, and 19 of the Securities Act of 1933 as amended, Sections 3, 12, 13, 15, 23 and 36 of the Securities Exchange Act of 1934, and Sections 3(c)(2) and 108(c) of the Sarbanes Oxley Act of 2002.

Text of Amendments

List of Subjects in 17 CFR Parts 210, 230, 239 and 249

Accounting, Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended 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, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202, 7218 and 7262, unless otherwise noted.

[193] 5 U.S.C. 605(b).

[194] 15 U.S.C. 77b(b).

[195] 15 U.S.C. 78c(f).

[196] 15 U.S.C. 78w(a)(2).

■ 2. Section 210.1–02 is amended by adding a note following paragraph (w)(3) before the computational note to read as follows.

§ 210.1–02 Definitions of terms used in Regulation S–X (17 CFR Part 210).

* * * * *

(w) * * *

(3) * * *

Note to paragraph (w): A registrant that files its financial statements in accordance with or provides a reconciliation to U.S. Generally Accepted Accounting Principles shall make the prescribed tests using amounts determined under U.S. Generally Accepted Accounting Principles. A foreign private issuer that files its financial statements in accordance with IFRS as issued by the IASB shall make the prescribed tests using amounts determined under IFRS as issued by the IASB.

* * * * *

■ 3. 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 International Financial Reporting Standards as issued 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.

■ 4. 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 International Financial Reporting Standards as issued by the International Accounting Standards Board, if a reconciliation to U.S. 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 U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards as issued by the International Accounting Standards Board.

* * * * *

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

■ 5. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, 80a–37, 7202 and 7218, unless otherwise noted.

* * * * *

■ 6. Amend § 230.701 by 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) * * *

(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 through 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 International Financial Reporting Standards as issued by the International Accounting Standards Board (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

■ 7. 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, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37, 7202 and 7218, unless otherwise noted.

* * * * *

■ 8. Amend Form S–4 (referenced in § 239.25) by revising instruction 2 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:

* * * * *

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 International Financial Reporting Standards as issued by the International Accounting Standards Board, 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.

* * * * *

■ 9. 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); and

■ 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) * * *

(2) Restated financial statements prepared in accordance with or, if prepared using a basis of accounting other than International Financial Reporting Standards (''IFRS'') as issued by the International Accounting Standards Board (''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 IFRS as issued 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 IFRS as issued 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 IFRS as issued 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.

* * * * *

Instruction 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 IFRS as issued 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

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

Authority: 15 U.S.C. 78a *et seq.*, 7202, 7218, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 11. Amend Form 20–F (referenced in § 249.220f) as follows:

■ a. Add issuer contact information to the cover page below the address line;

■ b. Add a check box to the cover page indicating the basis of accounting used to prepare the financial statements below the accelerated filer line;

■ c. Revise the check box on the cover page indicating whether Item 17 or Item 18 was used below the new check box indicating the basis of accounting;

■ d. Revise General Instruction G.(a);

■ e. Remove General Instruction G.(b)(1)(A) and G.(b)(2)(A);

■ f. Redesignate General Instructions G.(b)(1)(B) and (G).(b)(1)(C) as General Instructions (G).(b)(1)(A) and G.(b)(1)(B) and redesignate General Instructions (G).(b)(2)(B) and (G).(b)(2)(C) as General Instructions (G).(b)(2)(A) and G.(b)(2)(B);

■ g. Revise General Instructions G.(d) and (e);

■ h. Revise General Instructions G.(f)(2)(B)(ii) and G.(f)(2)(B)(iii);

■ i. Revise General Instruction G.(h)(2);

■ j. Revise Instruction 2.b. to General Instruction G.(h);

■ k. Remove General Instruction G.(i);

■ l. Revise Item 3.A, Instruction 2;

■ m. Add Instruction 5 to Item 5;

■ n. Add a sentence to the end of Instruction 3 in Item 8.A.5;

■ o. Add Instruction 4 to Item 8.A.5;

■ p. Add an Instruction to Item 11 before Instruction to Item 11(a);

■ q. Revise the introductory text of Item 17(c);

■ r. Add a sentence at the end of Items 17(c)(2)(v) and (c)(2)(vi);

■ s. Remove Item 17(c)(2)(viii);

■ t. Remove Item 17, Instruction 6;

■ u. Add a Special Instruction to the end of Item 17;

■ v. Revise Item 18(b);

■ w. Revise the Instruction to Item 18; and

■ x. Add a Special Instruction to the end of Item 18.

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

* * * * *

(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

* * * * *

Indicate by check mark 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 issued by the International Accounting Standards Board _____. 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

(a) *Omission of Certain Required Financial Statements.* An issuer that changes the body of accounting principles used in preparing its financial statements presented pursuant to Item 8.A.2 (''Item 8.A.2'') to International Financial Reporting Standards (''IFRS'') issued by the International Accounting Standards Board (''IASB'') may omit the earliest of three years of audited financial statements required by Item 8.A.2 if the issuer satisfies the conditions set forth in this Instruction G. For purposes of this instruction, the term ''financial year'' refers to the first financial year beginning on or after January 1 of the same calendar 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 as issued by the IASB 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 as issued by the IASB. No part of the discussion should relate to financial statements prepared in accordance with Previous GAAP.

(f) *Financial Information.*

* * * * *

(2) * * *

(B) * * *

(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 as issued by the IASB;

(iii) Three financial years of audited financial statements prepared in accordance with Previous GAAP; interim statements (which may be unaudited) for the current and comparable prior year period prepared in accordance with IFRS as issued by the IASB; 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 IFRS as issued by the IASB.

Instructions:

* * * * *

2. * * *

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 IFRS as issued by the IASB, 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 as issued by the IASB, 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. An issuer filing financial statements that comply with IFRS as issued by the IASB should, in providing information in response to paragraphs of this Item 5 that refer to pronouncements of the FASB, provide disclosure that satisfies the objective of the Item 5 disclosure requirements. In responding to this Item 5, an issuer need not repeat information contained in financial statements that comply with IFRS as issued by the IASB.

* * * * *

Item 8. Financial Information

* * * * *

Instructions to Item 8.A.5:

* * * * *

3. * * *

(a) * * *

(b) * * *

A registrant filing financial information that complies with IFRS as issued by the IASB is not required to provide the information described in paragraphs 3(a) and (b) to this Instruction to Item 8.A.5. if that registrant prepares its annual financial statements in accordance with IFRS as issued by the IASB.

4. A registrant that files interim period financial statements pursuant to Item 8.A.5 is not required to comply with Article 10 of Regulation S–X if that registrant prepares its annual financial statements in accordance with IFRS as issued by the IASB, prepares its interim period financial statements in compliance with IAS 34 ''Interim Financial Reporting,'' and explicitly states its compliance with IAS 34 in the notes to the interim financial statements.

* * * * *

Item 11. Quantitative and Qualitative Disclosures About Market Risk.

* * * * *

Instruction to Item 11: An issuer filing financial statements that comply with IFRS as issued by the IASB should, in providing information in response to paragraphs of this Item 11 that refer to pronouncements of the FASB, provide disclosure that satisfies the objective of the Item 11 disclosure requirements. In responding to this Item 11, an issuer need not repeat information contained in financial statements that comply with IFRS as issued 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 IFRS as issued by the IASB. If the financial statements comply with IFRS as issued by the IASB, such compliance must be unreservedly and explicitly stated in the notes to the financial statements and the auditor's report must include an opinion on whether the financial statements comply with IFRS as issued 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 IFRS as issued by the IASB if the following are disclosed:

* * * * *

(c)(2)(v) * * * Issuers that prepare financial statements using IFRS as issued 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 IFRS as issued 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.

* * * * *

Special Instruction for Certain European Issuers:

An issuer incorporated in a Member State of the European Union that has complied with the carve out to IAS 39 ''Financial Instruments: Recognition and Measurement,'' as adopted by the European Union, in financial statements previously filed with the Commission, may file financial statements for its first two financial years that end after November 15, 2007 without reconciling to U.S. GAAP if that issuer's financial statements otherwise comply with IFRS as issued by the IASB and the issuer provides an audited 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, and is to be prepared and disclosed in the same manner that an issuer would provide a reconciliation to U.S. GAAP, following the requirements in Item 17(c)(2). All financial statements of such an issuer for periods prior to the financial year that ends after November 15, 2007 must continue to be reconciled to U.S. GAAP. For financial years following the two financial years ending after November 15, 2007, such an issuer will be required to include reconciliations to U.S. GAAP unless the issuer complies with the requirements in Item 17(c).

Item 18. Financial Statements.

* * * * *

(b) If the financial statements are prepared using a basis of accounting other than IFRS as issued 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.

Special Instruction for Certain European Issuers:

An issuer incorporated in a Member State of the European Union that has complied with the carve out to IAS 39 ''Financial Instruments: Recognition and Measurement,'' as adopted by the European Union, in financial statements previously filed with the Commission, may file financial statements for its first two financial years that end after November 15, 2007 without reconciling to U.S. GAAP if that issuer's financial statements otherwise comply with IFRS as issued by the IASB and the issuer provides an audited 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, and is to be prepared and disclosed in the same manner that an issuer would provide a reconciliation to U.S. GAAP, following the requirements in Item 18. All financial statements of such an issuer for periods prior to the financial year that ends after November

15, 2007 must continue to be reconciled to U.S. GAAP. For financial years following the two financial years ending after November 15, 2007, such an issuer will be required to include reconciliations to U.S. GAAP unless the issuer complies with the requirements in Item 18(a).

Dated: December 21, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

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