

Annual Report on Form 20-F Planning Reminders: Accelerated Filing Deadline for 2012 and XBRL Format Requirements

November 1, 2011

Below are planning reminders for foreign private issuers of the earlier Annual Report on Form 20-F filing deadline and the requirement to provide financial statement information in interactive data format using the eXtensible Business Reporting Language (XBRL), which are applicable in 2012 under rule amendments adopted by the U.S. Securities and Exchange Commission (SEC) in recent years.

Accelerated Filing Deadline for Form 20-F

Under rule amendments adopted by the SEC in 2008, the deadline for foreign private issuers to file Annual Reports on Form 20-F will be four months (previously six months) after their fiscal year end for fiscal years ending on or after December 15, 2011. Accordingly, for calendar-year issuers the new deadline will be effective starting with Annual Reports on Form 20-F for 2011, with such filings due by April 30, 2012.¹

This deadline applies to all foreign private issuers irrespective of their size or the accounting principles used to prepare their financial statements. Foreign private issuers that are required to reconcile their financial statements to U.S. Generally Accepted Accounting Principles (U.S. GAAP) (i.e., those not using either U.S. GAAP or the International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), which are no longer required to be reconciled) may find compliance with the new filing deadline more burdensome.

XBRL-Formatted Financial Statement Information

Under rules adopted by the SEC in 2009, *all* foreign private issuers that prepare their financial statements using U.S. GAAP and are not “large accelerated filers”² will be required to begin providing financial statement information in an interactive data format using XBRL in connection with their

1. See our December 5, 2008 LawFlash on this topic, “Filing Deadline for Annual Reports on Form 20-F Accelerated to Four Months after Fiscal Year End,” available online at http://www.morganlewis.com/pubs/Securities_LF_FilingDeadlineAnnualReportsForm20-F_05dec08.pdf.

2. Foreign private issuers that are “large accelerated filers” and prepare their financial statements in accordance with U.S. GAAP became obligated to provide financial information in XBRL format in their Annual Report on Form 20-F covering fiscal periods ending on or after June 15, 2010 (or in the case of large accelerated filers with public common equity floats of \$5 billion or more, in their Annual Report on Form 20-F covering fiscal periods ending on or after June 15, 2009).

Annual Reports on Form 20-F covering a period ending on or after June 15, 2011.³ Accordingly, for calendar-year issuers this requirement will apply starting with the upcoming Annual Report on Form 20-F filings due in 2012 with respect to the year ending December 31, 2011.

IFRS; U.S. GAAP Reconciliation. Earlier this year, the SEC provided foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB with relief from having to submit XBRL-format interactive data files to the SEC and to post the interactive data files on their corporate websites until the SEC specifies a taxonomy for use in connection therewith. However, such relief does not apply to foreign private issuers that prepare their financial statements in accordance with U.S. GAAP. Foreign private issuers that prepare their financial statements in accordance with accounting standards other than U.S. GAAP or IFRS as issued by the IASB and reconcile to U.S. GAAP will not be required to submit XBRL-formatted interactive data.

Applicability and Timing. Interactive financial data in XBRL format required to be filed with the SEC must be posted on the filing companies' corporate websites no later than the end of the calendar day the information is filed with the SEC and must remain on their corporate websites for 12 months.

Financial statement footnotes and financial statement schedules can be tagged individually as a block of text⁴ in the first required XBRL-formatted filing. After a year of such tagging, filers will also be required to tag the detailed quantitative disclosures within the footnotes and schedules and will be permitted, but not required, to the extent they choose, to tag each narrative disclosure. In addition, for both the first Form 20-F filing required to include XBRL-formatted financial information and the first Form 20-F filing required to include detailed tagging of footnotes and schedules, the XBRL tagging can be made by amendment within 30 days of the initial filing of the Form 20-F.⁵

After the initial Form 20-F filings required to include XBRL-formatted financial information, subsequent Forms 6-K that incorporate into registration statements (1) revised audited annual financial statements that reflect the effects of certain subsequent events or (2) current interim financial statements pursuant to the nine-month updating requirement of Item 8.A.5 of Form 20-F will also be required to contain XBRL-formatted financial information. Other Form 6-K filings with financial information will not be required to include XBRL-formatted financial information.

In addition, after the initial Form 20-F filings required to include XBRL-formatted financial information, subsequent registration statements, or registration statement amendments, containing financial statements will be required to contain XBRL-formatted financial information.⁶

As the first filings by foreign private issuers required to contain XBRL-formatted financial information are on Form 20-F, XBRL-formatted financial information will not be required for (1) registration

3. XBRL is an interactive electronic format that defines or "tags" data, which enables users to download the data directly into spreadsheets, analyze it using commercial software, or reorganize it into databases. The required interactive data in XBRL format will supplement, not replace or change, the disclosure requirements using the traditional filing formats. See our March 3, 2009 LawFlash on this topic, "SEC Adopts Rules Requiring XBRL Format Filing for Financial Statement Information," available online at http://www.morganlewis.com/pubs/BF_XBRLFormatFiling_LF_03mar09.pdf.

4. "Block" text means that the entire footnote or other discrete item, such as a schedule or table, would be tagged as an individual element.

5. This 30-day grace period applies only to the first such filing, whether voluntary or required.

6. The XBRL-formatted financial information is required with respect to registration statements once a price or price range is included in the registration statement and any time thereafter that the financial information contained in the registration statement is changed.

statements or applicable Forms 6-K that contain financial information covering periods ending on or after the applicable time (June 15, 2011 for foreign private issuers reporting in U.S. GAAP, other than large accelerated filers subject to earlier applicability of these requirements), but prior to such Form 20-F filing, or (2) initial public offering registration statements at any time.

Effect of Failure to File or Post Required XBRL-Formatted Data. If a company fails to file the required XBRL-formatted exhibit with the SEC, or post the same XBRL-formatted data on its corporate website, it will be deemed not to be current with its U.S. Securities Exchange Act of 1934 (Exchange Act) reports and, as a result, would lose its eligibility to use short-form registration statements on Form S-3, F-3, or S-8 for as long as the company fails to file and/or post the XBRL-formatted data. Furthermore, during this period of ineligibility, a company will not be deemed to have available adequate current public information for purposes of the resale exemption safe harbor provided by Rule 144 under the U.S. Securities Act of 1933.

Treatment of XBRL Data. The XBRL interactive data exhibits will be excluded from the officer certification requirements under Rules 13a-14 and 15d-14 of the Exchange Act. Furthermore, during the two-year period after the time a filer is initially required to submit XBRL interactive data, but until no later than October 31, 2014, the XBRL interactive data is generally subject to the federal securities laws in a modified manner as follows:

- The XBRL interactive data exhibits will be deemed “furnished” and not “filed” for purposes of certain liability provisions under federal securities law.
- The filing company will be protected from liability for the failure to comply with the “tagging” requirements if the XBRL interactive data file failed to meet those requirements despite the filing company’s good-faith effort and the filing company corrected the failure promptly after becoming aware of it.

To view the SEC’s release adopting the XBRL requirements, and its release of amendments thereto, please visit <http://www.sec.gov/rules/final/2009/33-9002.pdf> and <http://www.sec.gov/rules/final/2009/33-9006a.pdf>. To view the SEC no-action letter providing relief for filers preparing financial statements in accordance with IFRS as issued by the IASB, please visit www.sec.gov/divisions/corpfin/cf-noaction/2011/caq040811.htm.

Implications

In order to meet the earlier Form 20-F filing deadline, while also implementing XBRL tagging of financial information for the first time, we recommend that companies start to prepare their Annual Reports on Form 20-F earlier this year, including in particular the audited financial statements that will need to be tagged in XBRL format. Companies have generally found that the XBRL tagging process takes a not insignificant amount of additional time.

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For more information regarding the topics discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

New York

Stephen P. Farrell
Howard A. Kenny
Finnbarr D. Murphy

212.309.6050
212.309.6843
212.309.6704

sfarrell@morganlewis.com
hkenny@morganlewis.com
fmurphy@morganlewis.com

Washington, D.C.

Linda L. Griggs

202.739.5245

lgriggs@morganlewis.com

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