

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 210, 229, 230, 240, 244 and 249**

**[RELEASE NOS. 33-8982; 34-58960; File No. S7-27-08]**

**RIN 3235-AJ93**

**ROADMAP FOR THE POTENTIAL USE OF FINANCIAL STATEMENTS  
PREPARED IN ACCORDANCE WITH INTERNATIONAL FINANCIAL  
REPORTING STANDARDS BY U.S. ISSUERS**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is proposing a Roadmap for the potential use of financial statements prepared in accordance with International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board by U.S. issuers for purposes of their filings with the Commission. This Roadmap sets forth several milestones that, if achieved, could lead to the required use of IFRS by U.S. issuers in 2014 if the Commission believes it to be in the public interest and for the protection of investors. This Roadmap also includes discussion of various areas of consideration for market participants related to the eventual use of IFRS in the United States. As part of the Roadmap, the Commission is proposing amendments to various regulations, rules and forms that would permit early use of IFRS by a limited number of U.S. issuers where this would enhance the comparability of financial information to investors. Only an issuer whose industry uses IFRS as the basis of financial reporting more than any other set of standards would be eligible to elect to use IFRS, beginning with filings in 2010.

**DATES:** Comments should be received on or before [insert date 90 days following publication in the Federal Register].

**ADDRESSES:** Comments may be submitted by any of the following methods:

Electronic Comments:

- Use of the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-27-08 on the subject line; or
- Use the Federal Rulemaking ePortal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-27-08. The file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed/shtml>). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change; we do not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Craig Olinger, Deputy Chief Accountant, Division of Corporation Finance, at (202) 551-3400 or Michael D. Coco, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 551-3450, or Liza McAndrew Moberg, 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 publishing for comment a proposed Roadmap and proposed amendments to Regulations S-X,<sup>1</sup> S-K<sup>2</sup> and C<sup>3</sup> under the Securities Act of 1933 (the “Securities Act”),<sup>4</sup> and Rule 12b-2,<sup>5</sup> Schedule 13E-3,<sup>6</sup> Schedule TO,<sup>7</sup> Regulation G,<sup>8</sup> and Form 8-K,<sup>9</sup> under the Securities Exchange Act of 1934 (the “Exchange Act”).<sup>10</sup> In Regulation S-X, we propose to amend Rules 1-01,<sup>11</sup>

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<sup>1</sup> 17 CFR 210.1-01 – 210.12-29. Regulation S-X sets forth the form and content of requirements for financial statements.

<sup>2</sup> 17 CFR 229.10 et seq.

<sup>3</sup> 17 CFR 230.400 et seq.

<sup>4</sup> 15 U.S.C. 77a et seq.

<sup>5</sup> 17 CFR 240.12b-2.

<sup>6</sup> 17 CFR 240.13e-100.

<sup>7</sup> 17 CFR 240.14d-100.

<sup>8</sup> 17 CFR 244 et seq.

<sup>9</sup> 17 CFR 249.308.

<sup>10</sup> 15 U.S.C. 78a et seq.

<sup>11</sup> 17 CFR 210.1-01.

1-02,<sup>12</sup> 3-10,<sup>13</sup> 4-01<sup>14</sup> and 8-01,<sup>15</sup> and to add Article 13. We are proposing the new Article 13 to apply to U.S. issuers and, as a conforming change, to foreign private issuers<sup>16</sup> that file IFRS financial statements.<sup>17</sup> In Regulation S-K, we propose to amend Items 10,<sup>18</sup> 101,<sup>19</sup> 301,<sup>20</sup> 504,<sup>21</sup> 1100,<sup>22</sup> 1112,<sup>23</sup> 1114<sup>24</sup> and 1115.<sup>25</sup> In Regulation C, we propose to amend Rule 405.<sup>26</sup> In Regulation G, we propose to amend Item 101.<sup>27</sup>

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<sup>12</sup> 17 CFR 210.1-02.

<sup>13</sup> 17 CFR 210.3-10.

<sup>14</sup> 17 CFR 210.4-01.

<sup>15</sup> 17 CFR 210.8-01.

<sup>16</sup> A “foreign private issuer,” as defined in Rule 3b-4(c) [17 CFR 240.3b-4(c)], 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.

<sup>17</sup> As explained in Section V.B. below, inclusion of foreign private issuers in Article 13 will not change the content of their financial statements filed under Form 20-F.

<sup>18</sup> 17 CFR 229.10.

<sup>19</sup> 17 CFR 229.101.

<sup>20</sup> 17 CFR 229.301.

<sup>21</sup> 17 CFR 229.504.

<sup>22</sup> 17 CFR 229.1100.

<sup>23</sup> 17 CFR 229.1112.

<sup>24</sup> 17 CFR 229.1114.

<sup>25</sup> 17 CFR 229.1115.

<sup>26</sup> 17 CFR 230.405.

<sup>27</sup> 17 CFR 244.101.

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## I. OVERVIEW

The Commission is proposing this Roadmap towards requiring the use of International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”)<sup>28</sup> by U.S. issuers<sup>29</sup> as part of its consideration of the role a single set of high-quality accounting standards plays in investor protection and the efficiency and effectiveness of capital formation and allocation. As capital markets have become increasingly global, U.S. investors have a corresponding increase in international investment opportunities. In this environment, we believe that U.S. investors would benefit from an enhanced ability to compare financial information of U.S. companies with that of non-U.S. companies. The Commission has long expressed its support for a single set of high-quality global accounting standards as an important means of enhancing this comparability.<sup>30</sup> We believe that IFRS has the potential to best provide the common platform on which companies can report and investors can compare financial information.

This proposed Roadmap first addresses the basis for considering the mandatory use of IFRS by U.S. issuers. It then sets forth seven milestones which, if achieved, could

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<sup>28</sup>As used in this release, the phrase “IFRS as issued by the IASB” refers to the authoritative text of IFRS, which, according to the Constitution of the International Accounting Standards Committee Foundation (“IASC Foundation”), is published in English. See “International Financial Reporting Standards, including International Accounting Standards and Interpretations as at 1 January 2007,” Preface to International Financial Reporting Standards, at paragraph 23. Unless otherwise noted, the phrase “IFRS” refers to IFRS as issued by the IASB.

<sup>29</sup> The terms “U.S. issuer” and “domestic issuer” are used interchangeably in this release. Although there is no specific definition of those terms under the Exchange Act or the Securities Act, they are used in this document to refer to any issuer that files annual reports pursuant to the Exchange Act on Form 10-K [17 CFR 249.310] or a registration statement under the Securities Act for which foreign private issuer status is not an eligibility requirement. For purposes of this release, the terms U.S. issuer and domestic issuer also include a foreign issuer or foreign private issuer, as defined in Rule 3b-4 under the Exchange Act [17 CFR 240.3b-4(c)] and in Rule 405 under the Securities Act [17 CFR 230.405], that elects to file on domestic forms.

<sup>30</sup> See, for example, Release No. 33-6807 (November 14, 1988) [53 FR 46963 (November 21, 1988)].

lead to the use of IFRS by U.S. issuers in their filings with the Commission.<sup>31</sup> The Commission in 2011 would determine whether to proceed with rulemaking to require that U.S. issuers use IFRS beginning in 2014 if it is in the public interest and for the protection of investors to do so. These milestones relate to:

- improvements in accounting standards;
- the accountability and funding of the IASC Foundation;
- the improvement in the ability to use interactive data for IFRS reporting;
- education and training relating to IFRS;
- limited early use of IFRS where this would enhance comparability for U.S. investors;
- the anticipated timing of future rulemaking by the Commission; and
- the implementation of the mandatory use of IFRS by U.S. issuers.

After describing the milestones, this proposed Roadmap also discusses how IFRS reporting by U.S. issuers may affect other participants in the capital markets.

As a step along this Roadmap, this release then describes proposed amendments to permit a U.S. issuer that is among the largest companies worldwide within its industry, and whose industry uses IFRS as the basis of financial reporting more than any other set of standards, to elect to use IFRS beginning with filings for fiscal years ending on or after December 15, 2009. These amendments include a process by which U.S. issuers would

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<sup>31</sup> This release does not address the method the Commission would use to mandate IFRS for U.S. issuers. One of the options **would be** for the Financial Accounting Standards Board (“FASB”) to continue to be the designated standard setter for purposes of establishing the financial reporting standards in issuer filings with the Commission. In this option our presumption would be that the FASB would incorporate all provisions under IFRS, and all future changes to IFRS, directly into generally accepted accounting principles as used in the United States (“U.S. GAAP”). This type of approach has been adopted by a significant number of other jurisdictions when they adopted IFRS as the basis of financial reporting in their capital markets.

seek confirmation from Commission staff that they are eligible to use IFRS in their Commission filings. This release also seeks comment on two alternative proposals under which U.S. issuers that elect to use IFRS would disclose U.S. GAAP information.

## **II. THE ROLE OF IFRS IN THE U.S. CAPITAL MARKETS**

### **A. The Promise of Global Accounting Standards**

#### **1. The Global Nature of Today's Capital Markets**

Today, investors, issuers and other capital markets participants are able to engage in financial transactions across national boundaries and to make investment, capital allocation and financing decisions on a global basis more readily than ever before. This is due in large measure to today's ever-faster communications, and ever-more-closely linked markets. Advances in technology that facilitate securities transactions have reduced barriers that previously existed and that may have impeded cross-border investment for both retail and institutional investors. For instance, investors can more readily obtain information on a wide variety of international investment opportunities than in the past, largely due to the availability of information over the Internet. Further, it is now possible for U.S. investors to have access to real-time securities transaction data from stock exchanges and other securities markets from around the world and to trade on global exchanges through accounts they manage over the Internet. As trading and investment become more global, investors face an increasing need for full, fair and reliable disclosure that enables comparison of financial information across investment alternatives that cross national boundaries.

A large and increasing number of U.S. investors hold securities of non-U.S. issuers. Further, U.S. investors have the ability to make cross-border investments

readily.<sup>32</sup> Thus, we believe it is important for U.S. investors to have access to the tools to compare effectively and efficiently their investment opportunities in a global capital market. The Commission has long considered a reduction in the disparity between the accounting and disclosure practices of the United States and those of other countries as an important objective for both the protection of investors and the efficiency of capital markets.<sup>33</sup> Further, while our recent Advisory Committee on Improvements to Financial Reporting (“CIFiR”) purposefully limited its scope relating to international matters due to ongoing efforts by the Commission and the FASB, it did similarly note the following in its final report to the Commission:<sup>34</sup>

We broadly support the continued move to a single set of high-quality global accounting standards, coupled with enhanced international coordination to foster their consistent interpretation and to avoid jurisdictional variants. Further, we encourage the development of a roadmap to identify issues and milestones to transition to this end state in the U.S., with sufficient time to minimize disruptions, resource constraints, and the complexity arising from such a significant change.<sup>35</sup>

The Commission recognizes that the use of a single, widely accepted set of high-quality accounting standards would benefit both the global capital markets and U.S. investors by providing a common basis for investors, issuers and others to evaluate

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<sup>32</sup> Over the period from 1990 to 2006, estimated investments in foreign equity securities held by U.S. residents has grown from approximately \$200 billion to \$4,300 billion, based on estimates published by the U.S. Bureau of Economic Analysis, U.S. Treasury statistics. See [http://bea.gov/international/xls/intinv07\\_t2.xls](http://bea.gov/international/xls/intinv07_t2.xls). Included in this category are investments in equities, whether listed or unlisted, where the holding by the U.S. resident is less than 10%.

<sup>33</sup> See, for example, Release No. 33-6360 (November 20, 1981) [46 FR 58511 (December 2, 1981)]. For a further discussion of the Commission’s previous actions promoting development of a single set of high-quality globally accepted accounting standards, see Section III.C. of Release No. 33-8831 (August 7, 2007) [72 FR 45600 (August 14, 2007)] (“2007 Concept Release”).

<sup>34</sup> See Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission (August 1, 2008) (“CIFiR Final Report”).

<sup>35</sup> CIFiR Final Report, at page 21 (footnotes references omitted).

investment opportunities and prospects in different jurisdictions. U.S. investors would be able to make better-informed investment decisions if they were to obtain high-quality financial information from U.S. companies that is more comparable to the presently available information from non-U.S. companies operating in the same industry or line of business. Capital formation and investor understanding would be enhanced if the world's major capital markets all operated under a single set of high-quality accounting standards that elicit comparable, high-quality financial information from public companies.

## **2. Potential for IFRS as the Global Accounting Standard**

The increasing acceptance and use of IFRS in major capital markets throughout the world over the past several years, and its anticipated use in other countries in the near future, indicate that IFRS has the potential to become the set of accounting standards that best provide a common platform on which companies can report and investors can compare financial information. Approximately 113 countries around the world currently require or permit IFRS reporting for domestic, listed companies.<sup>36</sup>

Foreign jurisdictions have chosen to require or allow IFRS for many different reasons. For example, in the European Union (the "E.U."), prior to its requirement relating to IFRS applicable to companies incorporated and publicly traded in its Member States,<sup>37</sup> accounting standards in each of the E.U. Member States generally were

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<sup>36</sup> Some countries have enacted IFRS as national standards and require compliance to be stated with those national standards. In some cases, these national standards are identical to IFRS as issued by the IASB; in other cases, these national standards have been more narrow, yet consistent with IFRS as issued by the IASB; and, in yet other cases, these national standards may permit additional options that are inconsistent with IFRS as issued by the IASB, although companies may opt to apply standards so that they comply with IFRS as issued by the IASB. See <http://www.iasplus.com/country/useias.htm>.

<sup>37</sup> See Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of the European Union of 19 July 2002 on the application of international accounting standards, Official Journal L. 243, 11/09/2002 P. 0001- 0004.

established individually in each jurisdiction. Further, each Member State would typically permit the use in its capital markets of accounting standards set in other jurisdictions, in addition to its own domestic accounting standards.<sup>38</sup> IFRS provided a common set of accounting principles under which all domestic listings in the E.U. could report. In Canada, accounting standard setters concluded that, given the increasing globalization of capital markets and other recent developments, that it was timely for public Canadian companies to adopt globally accepted, high-quality accounting standards by converging Canadian GAAP with IFRS over a transitional period, after which a separate and distinct Canadian GAAP would cease to exist as a basis of financial reporting for public companies.<sup>39</sup> In Australia, the decision to adopt IFRS was part of a strategy to ensure consistency and comparability of Australian financial reporting with financial reporting across global financial markets.<sup>40</sup> More countries have adopted IFRS, including Israel,<sup>41</sup> and others have plans to allow it, including Brazil.<sup>42</sup> The market capitalization of exchange listed companies in the E.U., Australia and Israel totals \$11 trillion (or approximately 26% of global market capitalization), and the market capitalization from

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<sup>38</sup> For example, U.S. GAAP was accepted by some E.U. Member States for domestic registrants and still is accepted for foreign registrants.

<sup>39</sup> For additional information, see [http://www.cica.ca/index.cfm/ci\\_id/44036/la\\_id/1.htm](http://www.cica.ca/index.cfm/ci_id/44036/la_id/1.htm). The staff of the Canadian Securities Administrators (“CSA”) has proposed retaining the existing option for a domestic Canadian issuer that is also an SEC issuer to use U.S. GAAP. See <http://www.cica.ca/3/9/1/6/6/index1.shtml>. for the link to “CSA Announcement re: IFRS in Canada” (CSA Staff Notice 52-321).

<sup>40</sup> See <http://www.asic.gov.au/asic/asic.nsf/byheadline/Your+questions+about+implementing+the+IFRS?openDocument#1>.

<sup>41</sup> See Israel Accounting Standard No. 29 “Adoption of International Financial Reporting Standards,” which describes the adoption of IFRS in Israel for years starting on January 1, 2008.

<sup>42</sup> See <http://www.cvm.gov.br/port/snc/inst457.pdf>.

those countries plus Brazil and Canada totals \$13.4 trillion (or approximately 31% of global market capitalization).<sup>43</sup>

The Commission is aware of the transitions made by other countries to IFRS. For example, the vast majority of listed European companies, including banks and insurance companies, moved to comply with the E.U. IFRS requirement in 2005 with the remainder transitioning in 2007. Under these transition approaches, in essence all or almost all of the listed companies transitioned to IFRS at the same time. Some foreign regulators have published reports relating to the implementation of IFRS in their country. For example, the U.K. Financial Reporting Review Panel and the Autorité des Marchés Financiers of France (“AMF”) have both published reports making observations on IFRS as applied in their jurisdictions.<sup>44</sup>

As with all countries that have evaluated the potential use of IFRS in their own markets, the policy considerations in the United States must factor in the individual circumstances of its investors and capital markets. The U.S. capital markets are among the largest and most liquid in the world. U.S. GAAP is a well-established basis of financial reporting and is applied by all U.S. public companies, many foreign companies, and many U.S. private companies, as well as their auditors. Today, U.S. GAAP is accepted in capital markets around the world, and the Commission requires its use by all

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<sup>43</sup> All figures are from the World Federation of Stock Exchanges, Domestic Market Capitalization as of September 30, 2008, in U.S. dollars.

<sup>44</sup> For the report of the U.K. Financial Reporting Review Panel, see “Preliminary Report: IFRS Implementation” available at <http://www.frc.org.uk/images/uploaded/documents/IFRS%20Implementation%20-%20preliminary.pdf>. For the report of the AMF, see “Recommendations on accounting information reported in financial statements for 2006,” dated December 19, 2006, available at [http://www.amf-france.org/documents/general/7565\\_1.pdf](http://www.amf-france.org/documents/general/7565_1.pdf).

domestic issuers.<sup>45</sup> The accounting principles established by the FASB have been recognized by the Commission as “generally accepted” for purposes of the U.S. federal securities laws.<sup>46</sup>

Regardless of whether the Commission decides to allow or require IFRS for U.S. issuers in the future, the past and anticipated move towards the use of IFRS in other jurisdictions may have begun to affect U.S. investors’ ability to evaluate investment alternatives as their level of investment in non-U.S. companies has increased over time.<sup>47</sup> The growing level of foreign investment by U.S. residents in international investment opportunities, including opportunities to invest in issuers that do not file reports with the Commission, makes it likely that U.S. investors will increasingly need to use IFRS financial statements.<sup>48</sup> Also, it is likely that large U.S. issuers that compete for capital on a global basis will increasingly need to use and understand IFRS financial statements in order to remain competitive. For these reasons, the Commission finds it advisable to continue to pursue consideration of the use of IFRS in the U.S. markets in order to better equip U.S. investors to make comparisons of U.S. companies with certain non-U.S. companies, while balancing this with the fact that U.S. investors should be able to compare U.S. companies with other U.S. companies.

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<sup>45</sup> See Rule 4-01(a)(1) of Regulation S-X [17 CFR 210.4-01(a)(1)].

<sup>46</sup> See Release No. 33-8221, Financial Reporting Release (“FR”) 70 (April 25, 2003) [68 FR 23333 (May 1, 2003)] (“FR 70”).

<sup>47</sup> As more companies move towards IFRS reporting, current and potential investors in U.S. issuers may increasingly be comparing those U.S. issuers’ financial information to IFRS-based financial information of competing investment opportunities. For example, approximately 120 foreign private issuers currently report to the Commission using IFRS financial statements.

<sup>48</sup> For example, U.S. investors may purchase securities issued by a non-reporting foreign company directly on a foreign exchange, or they may invest in American Depositary Receipts representing the securities of a foreign private issuer that is exempt from Exchange Act reporting requirements pursuant to Rule 12g3-2(b) [17 CFR 240.12g3-2(b)].



Promoting a single set of globally accepted accounting standards will benefit investors as more and more companies prepare their financial statements applying a single set of high-quality accounting standards. With a single set of accounting standards, investors can more easily compare information and will be in a better position to make informed investment decisions. This benefit is dependent upon use of a single set of high-quality standards globally and financial reporting that is, in fact, consistently applied across companies, industries and countries. Any decision we may take to expand the use of IFRS to U.S. issuers would necessitate our evaluation of whether global developments support the assertion of IFRS as the single set of high-quality globally accepted accounting standards that is applied consistently across companies, industries and countries.

The Commission has identified certain considerations which may influence the degree to which comparability may be achieved through widespread adoption of IFRS. These considerations include the extent to which IFRS is adopted and applied globally, and whether IFRS is adopted and applied in foreign jurisdictions as issued by the IASB or as jurisdictional variants of IFRS.<sup>49</sup> We believe that the benefits of moving towards a single set of globally accepted standards as a long-term objective for increased comparability of financial statements are attainable through the use of IFRS only if IFRS represents a single set of high-quality accounting standards, which is best accomplished through the use of IFRS as issued by the IASB. As stated previously, each jurisdiction's considerations surrounding the use of IFRS in its markets are unique to the jurisdiction's

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<sup>49</sup> Different jurisdictions often have internal processes through which they adopt or incorporate IFRS into their national accounting standards. Decisions made during those processes may result in discrepancies from IFRS as issued by the IASB.

circumstances. Therefore, the large number of countries allowing or requiring IFRS in their markets does not alone determine the Commission's decision. However, in determining whether to proceed with requiring the use of IFRS by U.S. issuers, the Commission will consider the extent to which IFRS as issued by the IASB is used globally, is applied consistently, and supports the assertion of IFRS as the single set of high-quality global accounting standards.<sup>50</sup>

### **B. Past Policy Considerations Regarding IFRS**

Over time, the Commission has undertaken a series of initiatives to promote a single set of high-quality globally accepted accounting standards as a means of advancing the objective of reduced disparity in financial reporting between U.S. issuers and foreign issuers. Convergence of U.S. GAAP and IFRS as issued by the IASB, which involves the best efforts of the IASB and the FASB (referred to jointly as "the Boards") to make their financial reporting standards fully compatible on a standard-by-standard basis, has been the predominant approach taken in the United States to achieve that objective over the past six years.<sup>51</sup> As discussed further below, the Commission continues to support the joint efforts of the IASB and the FASB as an important means of increasing the quality of IFRS and U.S. GAAP and, at the same time, reducing disparity between the two.

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<sup>50</sup> In 2007, as part of our efforts to foster a single set of globally accepted accounting standards, we adopted amendments to allow foreign private issuers to file IFRS financial statements without reconciliation to U.S. GAAP only if the financial statements were prepared in accordance with IFRS as issued by the IASB. See "Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards without Reconciliation to U.S.," Release No. 33-8879 (December 21, 2007) [73 FR 986 (January 4, 2008)] (the "2007 Adopting Release"). The Commission proposed these rules in June 2007 [Release No. 33-8818 (July 3, 2007)] [72 FR 37962 (July 11, 2007)] (the "2007 Proposing Release").

<sup>51</sup> The Norwalk Agreement, issued in 2002, and a Memorandum of Understanding entered into by the FASB and the IASB in 2006 express the Boards' intentions to, on a best efforts basis, converge U.S. GAAP and IFRS. See <http://www.fasb.org/news/memorandum.pdf> and [http://www.fasb.org/intl/mou\\_02-27-06.pdf](http://www.fasb.org/intl/mou_02-27-06.pdf) for further details.

More recently, the Commission's consideration of the use of IFRS by U.S. issuers has included the issuance of a Concept Release addressing whether U.S. issuers should be permitted, but not required, to use IFRS in their filings with the Commission.<sup>52</sup> Specifically, the Commission sought input on the nature and extent of the public's interest in giving U.S. issuers the option to file with the Commission financial statements prepared in accordance with IFRS as issued by the IASB. The Commission received over 80 comment letters from a wide range of issuers, investors, accounting firms and other market participants.<sup>53</sup>

The Commission also has held three public roundtables consisting of investors, issuers, accounting firms, educators, standard setters and other capital market participants to receive further input about the use of IFRS.<sup>54</sup> In December 2007, the Commission held one roundtable on IFRS in U.S. markets and a second on practical issues surrounding the use of IFRS in recent years and its potential expanded use in future years. The third roundtable, in August 2008, related to the performance of U.S. GAAP and IFRS during the sub-prime crisis.

While many commenters on the 2007 Concept Release and the participants at the roundtables supported allowing U.S. issuers to use IFRS, certain commenters expressed the belief that IFRS should be mandated for all U.S. issuers and not limited to a specific group of U.S. issuers. Other commenters believed that U.S. issuers should continue to use U.S. GAAP, while supporting ongoing convergence.

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<sup>52</sup> See 2007 Concept Release.

<sup>53</sup> These comments are available at <http://www.sec.gov/comments/s7-20-07/s72007.shtml>.

<sup>54</sup> Information on these Roundtables, including transcripts, is available on the Commission's Web site at <http://www.sec.gov/spotlight/ifrsroadmap.htm>.

### **III. A PROPOSED ROADMAP TO IFRS REPORTING BY U.S. ISSUERS**

#### **A. Milestones to be Achieved Leading to the Use of IFRS by U.S. Issuers**

The Commission is proposing this Roadmap to set forth milestones which, if achieved, could lead to the eventual use of IFRS by all U.S. issuers. Through this Roadmap, the Commission is seeking to realize the objective of providing investors with financial information from U.S. issuers under a set of high-quality globally accepted accounting standards, which would enable U.S. investors to better compare financial information of U.S. issuers and competing international investment opportunities. This Roadmap is further intended to encourage market participants to consider the effect of IFRS in our capital markets and to prepare for the use of IFRS financial statements by U.S. issuers in their filings with the Commission.

In addition to the milestones, the Commission also expects to consider, among other things, whether IFRS as issued by the IASB is a globally accepted set of accounting standards and whether it is consistently applied. The advantages to U.S. investors of increased comparability across investment alternatives, as contemplated under this Roadmap, are dependent upon financial reporting under IFRS that is, in fact, consistent across companies, industries and countries.

The course of action described in this proposed Roadmap reflects the deliberations of the Commission in light of current circumstances. We intend to publish the final Roadmap, if adopted, in our Codification of Financial Reporting Policies.<sup>55</sup> We recognize, however, that as events occur, new circumstances may require us to update or revise the Roadmap. With the knowledge of the anticipated timetable for Commission

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<sup>55</sup> See FR 1 (April 15, 1982), 7 Fed. Sec. L. Rep. (CCH) ¶72,401, at 62,021.

rulemaking initiatives on this policy matter, investors, issuers and other market participants may engage more concretely in discussions about IFRS for U.S. issuers, both through comments provided to the Commission as well as in further dialogue among parties potentially affected. The Commission believes that any future actions relating to the use of IFRS by U.S. issuers would benefit from the increased awareness by all affected parties of the related issues and preparedness that this Roadmap is intended to foster. As we progress along this initiative, we anticipate receiving extensive input from investors, issuers and other affected parties, which we will consider carefully.

This proposed Roadmap relates solely to U.S. issuers with respect to their periodic reporting requirements under Sections 13 and 15(d) of the Exchange Act, proxy and information statements under Section 14 of the Exchange Act and registration statements under Section 12 of the Exchange Act and Section 7 of the Securities Act. Our considerations at this time with respect to the possible use of IFRS do not include issuers that are investment companies under the Investment Company Act of 1940. Likewise, at this time, the Roadmap does not extend to other types of financial reports that are filed or furnished to the Commission by regulated entities, such as registered broker-dealers.

### **1. Improvements in Accounting Standards**

In October 2002, the FASB and the IASB announced the issuance of a memorandum of understanding, called the Norwalk Agreement. The two bodies acknowledged their joint commitment to the development, “as soon as practicable,” of high-quality, compatible accounting standards that could be used for both domestic and cross-border financial reporting. At that time, the FASB and the IASB pledged to use

their best efforts to make their existing financial reporting standards fully compatible as soon as is practicable and to co-ordinate their future work programs to ensure that once achieved, compatibility is maintained. In a 2006 Memorandum of Understanding, the FASB and the IASB indicated that a common set of high-quality global standards remains the long-term strategic priority of both the FASB and the IASB. As part of this commitment, the IASB and the FASB set out a work plan covering several projects and coordinated agendas so that major projects that one board takes up may also be taken up by the other board. That plan covered specific long- and short-term projects for work into 2008. In November 2007, the Trustees of the IASC Foundation reiterated their support for continuing the 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. The FASB and the IASB have updated the timetable for their joint work under the 2006 Memorandum of Understanding.<sup>56</sup> The next phase of the joint work plan goes through 2011.

The current joint work plans of the two standard setters, as well as other work undertaken by them, furthers the goal of comprehensive, high-quality standards. The Commission will continue to monitor the activities of both the FASB and the IASB and the progress of their efforts. In past Commission releases, we have noted areas where IFRS provides limited guidance on a particular topic, such as accounting for insurance contracts and for extractive activities.<sup>57</sup> Further, the current work plan of the FASB and the IASB includes accounting standards, including (without emphasizing priority)

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<sup>56</sup> See the update to the 2006 Memorandum of Understanding at [http://www.fasb.org/intl/MOU\\_09-11-08.pdf](http://www.fasb.org/intl/MOU_09-11-08.pdf).

<sup>57</sup> See the discussion in Section III.B.4, below.

revenue recognition and financial statement presentation, that when completed should improve financial reporting significantly. The Commission will consider the degree of progress made by the FASB and the IASB in any future evaluation of the potential expanded role of IFRS in the reporting by U.S. issuers. When the Commission considers mandating use of IFRS by U.S. issuers in 2011, it would consider whether those accounting standards are of high quality and sufficiently comprehensive.<sup>58</sup> The Commission urges the two Boards to continue working towards the completion of their joint work plan estimated to be completed in 2011 and other projects that are expected to improve financial reporting.

In addition, it is important that accounting standards be established under a robust, independent process that includes careful consideration of possible alternative approaches and due process, which allows for input from and consideration of views expressed by affected parties, including investors. It is also important that accounting standards are promptly considered to keep standards current and reflect emerging accounting issues and changing business practices. Further, it is important that the accounting standards produced are capable of improving the accuracy and effectiveness of financial reporting and the protection of investors, and of resulting in a high quality of financial reporting relative to the standards which may be replaced. Thus, in considering future action as set out in this Roadmap, the Commission would also assess whether it believes that the IASB continues to develop its standards, including converged standards, through a process that reflects these elements.

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<sup>58</sup> High quality accounting standards consist of a set of neutral principles that require consistent, comparable, relevant and reliable information that is useful for investors. See “SEC Concept Release: International Accounting Standards,” Release No. 33-7801 (February 16, 2000) [65 FR 8896 (February 23, 2000)].

## 2. Accountability and Funding of the IASC Foundation

The IASB is based in London and is an accounting standard setting body established to develop global standards for financial reporting.<sup>59</sup> It is overseen by the IASC Foundation. The IASC Foundation is based in London and is a stand-alone, not-for-profit organization, incorporated in Delaware. It is responsible for the activities of the IASB and other work that centers on IFRS, such as initiatives related to translation of IFRS from the English language, education about IFRS and the development of interactive data taxonomies for IFRS. The IASC Foundation is governed by 22 trustees (“IASC Foundation Trustees”) whose backgrounds are geographically diverse.

The IASC Foundation has financed IASB operations largely through voluntary contributions from a wide range of market participants from across the world’s capital markets, including from a number of firms in the accounting profession, companies, international organizations, central banks and governments. Funding commitments were made for the period 2001-2005 and then were extended for an additional two years through 2007. In June 2006, the IASC Foundation Trustees agreed on four elements that should govern the establishment of a funding approach designed to enable the IASC Foundation to remain a private-sector organization with the necessary resources to conduct its work in a timely fashion. The IASC Foundation Trustees determined that characteristics of the new scheme for 2008 would be broad-based, compelling, open-ended and country-specific.<sup>60</sup> The

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<sup>59</sup> For more information on the structure and operation of the IASB, see [www.iasb.org](http://www.iasb.org).

<sup>60</sup> Further description of these elements can be found on the IASB’s Web site at <http://www.iasb.org/About+Us/About+the+IASC+Foundation/Funding.htm>. The IASC Foundation describes these principles as follows:

\* Broad-based: 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: A 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.



IASC Foundation Trustees continue to make progress in obtaining funding that satisfies those elements.<sup>61</sup>

The Commission will carefully consider the degree to which the IASC Foundation has a secure, stable funding mechanism that permits it to function independently and that enhances the IASB's standard setting process. The IASC Foundation has developed targeted contribution levels from individual jurisdictions. Realizing the IASC Foundation's goal of receiving open-ended funding commitments from a broad base of constituents and that are compulsory would encourage the independent functioning of the IASB in its standard setting process. Otherwise, the IASB may be subject to a perceived or, potentially, an actual connection between the availability of funding and the outcome of its standard setting process. We believe that our future determination regarding the required use of IFRS for all U.S. issuers should only occur after the IASC Foundation reaches its goal of securing a stable funding mechanism that supports the independent functioning of the IASB.

National accounting standard setters traditionally have been accountable to a national securities regulator or other government authority. In the United States, the Financial Accounting Foundation ("FAF"), the parent of the FASB, is overseen by the Commission. The IASC Foundation has not historically had a similar link with any national securities regulators. Recognizing that such a relationship would enhance the

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\* 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 IASB. This should include sustained support from official international organizations, central banks and the major accounting firms.

\* Country-specific: The funding burden should be shared by the major economies of the world on a proportionate basis, using GDP as the key determining factor of measurement. Each country should meet its designated target in a manner consistent with the principles above. Trustees should be assigned to specific countries to assist in the development of the funding scheme.

<sup>61</sup> See <http://www.iasb.org/About+Us/About+the+IASC+Foundation/2008+funding+commitments.htm>.

public accountability of the IASC Foundation, its Trustees have proposed amendments to its Constitution to establish a connection between the IASC Foundation and a Monitoring Group composed of securities authorities charged with the adoption or recognition of accounting standards used in their respective jurisdictions.<sup>62</sup> The Commission has been working with other national securities authorities and the International Organization of Securities Commissions to establish the Monitoring Group to enable it to begin its work once the IASC Foundation adopts the necessary changes to its Constitution.<sup>63</sup> The securities authorities, including the Commission, envision that the Monitoring Group will participate in and approve nominations for IASC Foundation Trustees, review the funding arrangements of the IASC Foundation for adequacy and appropriateness, and address matters that the IASC Foundation Trustees are responsible for, such as oversight of the IASB and potential areas for consideration by the IASB in its ongoing work.<sup>64</sup>

The Commission believes that the accountability of the IASC Foundation will be enhanced once the Monitoring Group provides the forum for interaction between securities authorities and the IASC Foundation Trustees. The Commission believes that effective oversight is critical to mandating that U.S. issuers prepare financial statements in accordance with IFRS. Based on the progress of the discussions among securities regulators, as well as the IASC Foundation's timetable for adopting the relevant changes to its Constitution, the Commission assumes that the Monitoring Group will have been

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<sup>62</sup> See [http://www.iasb.org/NR/rdonlyres/12CC476D-B88F-418A-826F-71A7465FC2E0/0/Proposal\\_and\\_issues\\_for\\_the\\_Constitution.pdf](http://www.iasb.org/NR/rdonlyres/12CC476D-B88F-418A-826F-71A7465FC2E0/0/Proposal_and_issues_for_the_Constitution.pdf) for a full description of the proposed amendments to the Constitution.

<sup>63</sup> See the Commission's joint statement with other national securities regulators with respect to the establishment of a Monitoring Group at <http://www.sec.gov/news/press/2007/2007-226.htm>.

<sup>64</sup> The proposed responsibilities of the Monitoring Group do not extend to the standard setting process.

established and be functioning by the time the Commission considers mandating the use of IFRS for U.S. issuers. We will evaluate the effectiveness of the oversight mechanism (including the functioning of the multilateral nature of the Monitoring Group) in making the determination whether mandating IFRS is in the public interest for the protection of investors and our markets.

### **3. Improvement in the Ability to Use Interactive Data for IFRS Reporting**

In May 2008, the Commission proposed rules to require companies to provide their financial statements to the Commission and on their corporate Web sites in interactive data format using the eXtensible Business Reporting Language (“XBRL”) in order to improve their usefulness to investors.<sup>65</sup> Under those proposed rules, financial statement information could be submitted by public companies in interactive data format, and that financial information could then be downloaded directly into spreadsheets, analyzed in a variety of ways using off-the-shelf commercial software, or used within investment models in any of a number of other software formats. The rules proposed in May, if adopted, would apply to domestic and foreign public companies that prepare their financial statements in accordance with U.S. GAAP, and foreign private issuers that prepare their financial statements using IFRS as issued by the IASB. Under the proposal, foreign private issuers that prepare their financial statements using IFRS as issued by the IASB would be required to provide financial statements in interactive data format starting with their fiscal periods ending on or after December 15, 2010. If the Commission adopts its proposed rules relating to interactive data, it is anticipated that they would

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<sup>65</sup> See “Interactive Data to Improve Financial Reporting,” Release No. 33-8924 (May 30, 2008) [73 FR 32794 (June 10, 2008)].

apply to the limited number of U.S. issuers that could elect to file IFRS financial statements as proposed in this release.

In order to realize the improvements in the usefulness and comparability of financial information anticipated upon the widespread use of interactive data, U.S. issuers would have to be capable of providing IFRS financial statements to the Commission in interactive data format at a greater level of detail than is currently available. Therefore, the state of development of an IFRS list of tags for interactive data reporting will be a consideration in the Commission's determination of whether to require the use of IFRS for all U.S. issuers. The IASC Foundation first published a complete list of tags for the IFRS "Bound Volume" in 2004, and has published annual updates since then to reflect new pronouncements, changes in XBRL technical standards, and other improvements; the most recent such update was published in July 2008. The Commission staff is actively involved in the improvement and monitoring of the IFRS list of tags via participation in the IASC Foundation's XBRL Advisory Council. The Commission believes it is appropriate to consider the IASC Foundation's progress in the development of IFRS taxonomies prior to proceeding with rulemaking on IFRS for all U.S. issuers.

#### **4. Education and Training**

Reporting in accordance with IFRS by U.S. issuers would increase the need for effective training and education about IFRS for investors, accountants, auditors and others involved in the preparation and use of financial statements, as there are differences between U.S. GAAP and IFRS.<sup>66</sup> Investor education is particularly important, so that

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<sup>66</sup> See, as just one example, [http://www.kpmgifrsinstitute.com/documents/IFRS/721200810043IFRS%20compared%20to%20U.S.%20GAAP%20An%20Overview%20\(2008\).pdf](http://www.kpmgifrsinstitute.com/documents/IFRS/721200810043IFRS%20compared%20to%20U.S.%20GAAP%20An%20Overview%20(2008).pdf).

users of financial statements can work with the financial information issuers publish. The main benefits to investors of a single set of high-quality globally accepted accounting standards would be realized only if investors more fully understood the basis for the reported results. In addition to investors, other financial statement users may include customers, vendors, rating agencies and analysts.

The education and ongoing training of most accountants in the United States is limited to or predominantly focused on the current provisions of U.S. GAAP. Consequently, many parties would likely need to undertake comprehensive education on IFRS. The need for IFRS training would involve personnel of issuers, their governing bodies, such as audit committees, and their auditors. Such requirements for training also extend to specialists, such as actuaries and valuation experts, since these professionals are engaged by management to assist in measuring certain assets and liabilities, and likely are not currently proficient in IFRS. Professional associations and industry groups would need to integrate IFRS into their training materials, publications, testing and certification programs. Colleges and universities would need to include IFRS in their curricula.<sup>67</sup> Furthermore, it would be appropriate to include IFRS in the Uniform CPA Examination.<sup>68</sup>

On the regulatory side, the Commission staff has continued to develop its familiarity with IFRS, and such efforts would need to continue and intensify if the Commission were to require U.S. issuers to file financial statements prepared in

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<sup>67</sup> IFRS supplements to and IFRS content in accounting textbooks used in U.S. universities have become increasingly available.

<sup>68</sup> The Board of Examiners of the AICPA has issued an exposure draft, “Proposed Content and Skill Specifications for the Uniform CPA Examination” which proposed, among other things, inclusion of certain aspects of the IFRS conceptual framework and standard setting process in future Uniform CPA Examinations. Further, the proposal states that if IFRS becomes generally accepted in the United States, inclusion of those standards in the examination would expand. See [http://www.cpa-exam.org/cpa/exposure\\_draft.html](http://www.cpa-exam.org/cpa/exposure_draft.html) for the full text of the exposure draft.

accordance with IFRS. The Public Company Accounting Oversight Board (“PCAOB”), as part of its inspection of registered public accounting firms, regularly reviews the audits of public companies. We understand the PCAOB has already begun to implement training courses in IFRS to assist its staff in carrying out inspections, but would need to expand these training programs.

The strategies taken by those participants in markets where issuers already report in accordance with IFRS may serve as examples of approaches to increasing education and awareness of IFRS. The private sector may also respond to any increase in demand for education about IFRS by making educational materials available. Since the Commission’s issuance of the Concept Release in August 2007, several of the largest accounting firms in the United States have increased the material made available to the public about IFRS generally as well as about the application of specific IFRS standards. For example, several of the accounting firms have held web casts accessible free of charge to the general public discussing different aspects of IFRS. The Commission would take into account the then current status of the overall education, training and readiness of investors, preparers, auditors and other parties involved in the preparation of financial statements prior to proceeding with rulemaking on IFRS for all U.S. issuers.

**5. Limited Early Use of IFRS Where This Would Enhance Comparability for U.S. Investors**

This Roadmap contemplates that the Commission would make a decision in 2011 with regard to the mandated use of IFRS for U.S. issuers, as described below in Sections III.A.6. and 7. As part of this Roadmap, we also are proposing amendments to our rules, regulations and forms which, if adopted, would allow a limited number of U.S. issuers to

file IFRS financial statements prior to any mandated use of IFRS in Commission filings. These proposed amendments are described later in this release.

These proposed amendments would allow the limited early use of IFRS by U.S. issuers where it would enhance the comparability of financial reporting to U.S. investors for purposes of comparing the largest U.S. issuers with the largest non-U.S. companies in the same industry. Further, the Commission anticipates that providing the alternative to U.S. issuers to file IFRS financial statements would broaden the awareness and attention given to IFRS as a single set of high-quality globally accepted accounting standards.

The Commission acknowledges the wide variety of opinion that has been expressed on this subject, including through comment letters received on the 2007 Concept Release and feedback received in the Commission's roundtables. Many commenters expressed the view that the option to use IFRS should be extended to all U.S. issuers. Others stated that we should require IFRS for all U.S. issuers. Several of these commenters indicated that any option to use IFRS should only be part of a transition to the mandatory use of IFRS. Others opposed the optional or mandatory use of IFRS at this time, and instead called for a continuation of the ongoing work to improve and converge U.S. GAAP and IFRS. Still others cited concerns in such areas as tax regimes, the stage of development of IFRS in certain areas in comparison to U.S. GAAP, the U.S. legal environment, and the ability of auditors to issue opinions on IFRS financial statements, as bearing on the questions of whether and how the use of IFRS should be extended to any U.S. issuers. We believe allowing the limited use of IFRS by U.S. issuers, only in those cases where to do so would enhance the comparability of an industry's financial reporting for the benefit of investors in making comparisons to non-

U.S. issuers, may help inform the decision whether to mandate the use of IFRS for U.S. public issuers. We also believe that the ability of capital market participants to evaluate and comment on these questions would be enhanced by allowing this limited use of IFRS. We believe this is a prudent approach that will support and inform our consideration of the milestones in the proposed Roadmap as well as any future Commission action.

We also are aware that the proposed amendments would permit some U.S. issuers to use IFRS financial statements while other U.S. issuers continue to use U.S. GAAP, thereby creating a dual system of financial reporting that has not existed previously for U.S. public companies. This would reduce the comparability among U.S. issuers and would require investor familiarity with both sets of accounting standards. If the Commission did not act on further milestones in this Roadmap, this dual system could continue and could increase if more issuers eligible to use IFRS elect to do so. To the extent a dual system of financial reporting develops in the United States for U.S. public companies, and this development affects the comparability of financial statements among U.S. public companies, this may create a need to reach a final resolution on the Roadmap. In order to increase the likelihood that the comparability between issuers would be enhanced, we therefore have limited the proposed option to use IFRS to a group of larger U.S. companies in industries in which IFRS is the most-used set of standards globally.<sup>69</sup> We believe that U.S. investors would benefit from an enhanced ability to compare investment opportunities.

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<sup>69</sup> Mindful that all U.S. issuers currently use U.S. GAAP in their Commission filings, we are also making alternative proposals for U.S. issuers that elect to use IFRS with respect to the disclosure of U.S. GAAP information, which should promote the continued comparability among U.S. issuers whether they use IFRS or U.S. GAAP in their primary financial statements.



## **6. Anticipated Timing of Future Rulemaking by the Commission**

After reviewing the status of the milestones and the study discussed below, the Commission would determine, in 2011, whether to proceed with rules requiring U.S. public companies to file financial statements prepared in accordance with IFRS by 2014 if it is in the public interest and promotes investor protection for us to do so. In order to assist the Commission in determining whether to proceed with such a rulemaking, the staff has already begun a comprehensive review of all Commission rules relating to financial reporting in order to recommend amendments that would fully implement IFRS reporting throughout the regulatory framework for registration and reporting under the Exchange Act and the Securities Act.<sup>70</sup> We believe that a Commission decision and action in 2011 would provide issuers with sufficient early notice of the transition to IFRS to permit them to begin their internal accounting using IFRS in 2012, which would be the earliest fiscal year that would be covered under the earliest anticipated phase-in for IFRS reporting in 2014, as described below in Section III.A.7.

We are proposing this Roadmap towards the mandatory, rather than elective, use of IFRS for U.S. issuers in order to promote fully a single set of high-quality globally accepted accounting standards to improve the comparability of financial information prepared by U.S. public companies and foreign companies. As described in Section I, IFRS is the basis of financial reporting used in a large and increasing number of countries worldwide. Because IFRS has the greatest potential to become the global standard of accounting, we believe it is in the interest of U.S. investors, U.S. issuers and U.S. markets to consider mandating reporting using IFRS in the United States as well. Additionally,

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<sup>70</sup> The Commission also would evaluate the role of a private sector accounting standard setter, including the role of the FASB and how IFRS would be incorporated as mandatory accounting standards for U.S. issuers.

we believe that over the long term the existence of dual accounting standards in the United States may create challenges in the U.S. capital markets, such as comparability for investors and other users of financial information and professional competence of auditors. We therefore are proposing this Roadmap towards the mandatory use of IFRS by U.S. issuers.

If we decide to move forward with rulemaking for the use of IFRS by U.S. issuers, we expect to continue to require that issuers provide three years of audited annual IFRS financial statements. Currently, U.S. issuers are required to provide in their filings with the Commission three years of audited U.S. GAAP financial statements.<sup>71</sup> Because the initiative to require the use of IFRS by U.S. issuers relates to the set of accounting principles that is used for financial reporting and not to the periods for which financial reporting is required, the Commission expects that it would require three years of audited financial statements in the first year of IFRS reporting.<sup>72</sup>

To assist the Commission in its decision to mandate the use of IFRS by U.S. issuers, the Commission directs the Office of the Chief Accountant with appropriate consultation with other Divisions and Offices to undertake a study and report to the Commission on the implications for investors and other market participants of the implementation of IFRS for U.S. issuers. We anticipate that the report would be made public by the Commission.

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<sup>71</sup> See Rule 3-02(a) of Regulation S-X [17 CFR 210.3-02(a)].

<sup>72</sup> To illustrate, if we require IFRS for the years ending on or after December 15, 2014, a calendar year company would report for the year ending December 31, 2014 using IFRS for the years ending December 31, 2012, 2013 and 2014. Many such companies would want to start IFRS internal accounting on January 1, 2012. However, during 2012, 2013 and the first three quarters of 2014, they would continue to be publicly reporting under existing U.S. GAAP.

## **7. Implementation of the Mandatory Use of IFRS**

One means of implementing IFRS reporting by U.S. issuers that we are considering is a staged transition, as opposed to all U.S. issuers transitioning at once. Provisionally, under the transition, IFRS filings would begin for large accelerated filers for fiscal years ending on or after December 15, 2014.<sup>73</sup> Accelerated filers would begin IFRS filings for years ending on or after December 15, 2015. Non-accelerated filers, including smaller reporting companies, would begin IFRS filings for years ending on or after December 15, 2016. In each instance, this would allow the filer to begin its books and records and internal accounting controls with respect to IFRS reporting for all three years of audited financial statements that would be required in its first year of IFRS reporting (e.g., 2012 to 2014 for large accelerated filers, 2013 to 2015 for accelerated filers, and 2014 to 2016 for non-accelerated filers).

We understand that a transition from one set of accounting standards to another, including changing the controls and systems relating to the production of financial statements, would involve costs. The definitions of accelerated filer and large accelerated filer under the Exchange Act reference the size of an issuer based on its worldwide public float of its equity securities. Our current expectation that an issuer's status as an accelerated filer could determine the date of a required transition to IFRS is based on the premise that larger issuers would be better able to allocate resources to the transition to IFRS more quickly than smaller issuers, and a staged transition also may help manage resource demands on auditors, consultants and other market participants. Reliance on the

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<sup>73</sup> The terms "large accelerated filer" and "accelerated filer" are defined in Exchange Act Rule 12b-2 [17 CFR 240.12b-2]. Although the term "non-accelerated filer" is not defined in our rules, we use it in this release to refer to an Exchange Act reporting company that does not meet the Rule 12b-2 definition of either an "accelerated filer" or a "large accelerated filer."

existing definitions of accelerated/large accelerated filer also is expected to facilitate an orderly, predictable transition to IFRS because an issuer would already need to ascertain its status as an accelerated filer for other reporting purposes and allow it to predict when it would be required to adopt IFRS.<sup>74</sup> This predictability may also encourage voluntary movement to IFRS, as an issuer may have an incentive to use IFRS prior to the date the rules would require it to do so if its competitors were already using IFRS.<sup>75</sup> We also recognize, however, that sequencing the transition, while it would avoid some costs associated with all issuers transitioning at once, also would result in some non-comparability of financial information due to application of the IFRS transition provisions at differing dates. Staging the transition by an issuer's size would embed that non-comparability among the issuers within an industry. Further, a staged transition would, temporarily, create a dual system of reporting for U.S. issuers that would require investor familiarity with both IFRS and U.S. GAAP, as described above in Section III.A.5.

As part of the Commission's evaluation, it also may consider transition rules to expand the eligibility criteria of those U.S. issuers which could elect to use IFRS in their Commission filings, so that additional U.S. issuers would be able to use IFRS prior to a mandatory transition date. In proceeding along the Roadmap, the Commission would consider the circumstances in which the early use of IFRS would be most appropriate for investor protection and capital formation. Another consideration would be how to

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<sup>74</sup> Exchange Act Rule 12b-2 contains provisions for entering and exiting accelerated filer and large accelerated filer status, including when an issuer must determine its status.

<sup>75</sup> In addition, we anticipate that newly public companies, which are non-accelerated filers until after their first year of reporting, would be able to use IFRS prior to a mandatory phase-in date for non-accelerated filers if the Commission decided to adopt a staged or sequenced transition to IFRS as discussed.

address the current choices available to foreign private issuers for their financial reporting in filings with the Commission. Currently, foreign private issuers can choose to prepare their financial statements in accordance with U.S. GAAP, IFRS as issued by the IASB, or another comprehensive set of accounting principles with a reconciliation to U.S. GAAP.

## **B. Other Areas of Consideration**

The process of incorporating new accounting standards into any financial reporting system naturally varies between jurisdictions and is accomplished gradually. Differences between national accounting standards, including the extent of similarities or differences between financial reporting frameworks and the degree of judgment they require, affect any given jurisdiction's experience with transition to financial reporting that is in accordance with IFRS. In addition, there are many elements forming the infrastructure underpinning a set of accounting standards that keep it current and functioning effectively in a given jurisdiction. Integration considerations related to the use of IFRS in different jurisdictions also are manifested in the different regulatory and legal environments. If the Commission were to require U.S. issuers to report in accordance with IFRS, a number of considerations and actions with a series of lead times may be required for investors, issuers, and other parties that use financial statements or have a role in the capital markets or the financial reporting infrastructure. Some of these considerations are discussed in the remainder of this section.

### **1. The Roles of Financial Information**

In addition to filing financial statements with the Commission, U.S. issuers commonly provide financial information to other parties. While the federal securities laws provide the Commission with the authority to prescribe accounting principles and

standards to be followed by public companies and other entities that file financial statements with the Commission, the provision and content of information to other parties may not be generally or directly regulated by the Commission. However, changes in the accounting standards used for purposes of preparing financial statements included in filings with the Commission could have an effect on financial reporting by companies to other parties. The following provides examples of circumstances or parties that may be affected.

Various federal and state regulators, including regulators of financial institutions, insurance companies and public utilities, are provided with periodic financial information on an on-going basis. For example, U.S. GAAP financial statements frequently are used as the basis for determining capital requirements for financial institutions. Another example of the effect on reporting to others relates to federal and state income taxes. As the Internal Revenue Code has developed over an extended period of time with existing U.S. GAAP as the predominant set of accounting standards used in the United States, certain interactions exist between certain provisions of U.S. GAAP and income tax requirements. For example, the Internal Revenue Code has conformity provisions related to the method of accounting for inventory for tax reporting purposes and the method used for reporting to shareholders (and other owners or beneficiaries) or for credit purposes.<sup>76</sup> IFRS does not allow for the use of the last-in, first-out, or LIFO, method of accounting for inventory.<sup>77</sup> As a result, a company that reports in accordance with IFRS would be required to use a method of accounting for inventory that is acceptable under IFRS, for example the first-in, first-out, or FIFO, method. U.S. issuers changing to FIFO for

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<sup>76</sup> See Section 472 of the Internal Revenue Code.

<sup>77</sup> See IAS 2 “Inventories,” paragraph IN63.

financial reporting purposes may experience a change in taxable income based on the difference between inventory valued on a LIFO basis and on a FIFO basis.

Many U.S. companies have issued debt securities under indentures or have entered into lending agreements that may contain various covenants based upon financial measurements, such as a stated minimum net worth. Those indentures and agreements, as well as other types of contractual agreements to which issuers may be subject, may require periodic reporting of financial information. These contractual obligations may explicitly require the use of U.S. GAAP in connection with financial covenants or financial reporting. Other contractual obligations may have an assumption about the nature of the accounting model under which such reporting will occur. For a U.S. issuer, it is likely that such requirements are based on how U.S. GAAP would report financial results.

Some market indices, such as the S&P 500, currently only include issuers that report financial statements in accordance with U.S. GAAP. IFRS reporting might affect an issuer's ability to be included in such indices or financial instruments based on those indices, exclusion from which may have an adverse effect on these issuers, unless the instruments or indices make any necessary changes to include issuers which report in IFRS.

## **2. Accounting Systems, Controls and Procedures**

Use of any new accounting standards requires changes to financial reporting systems and procedures to identify, collect, analyze and report financial information and the corresponding controls. Changing numerous accounting standards at the same time, regardless of the starting point, would require numerous changes in a company's policies and procedures and system of internal controls. Some changes may prove more

complicated than others. Systems changes would apply not only to the issuers preparing such statements, but also to various other market participants such as users of financial information and regulators. Some companies that have significant foreign operations may already have familiarity with IFRS. It may not be as difficult for these companies to adopt IFRS for all of their operations for U.S. reporting purposes.

There would be additional implications on financial reporting. Two examples of the implications relate to an issuer's equity method investment in another company and initial public offerings. Many issuers hold investments in other entities which are accounted for under the equity method. In order for an issuer to properly record the equity method investment, the issuer would need IFRS-based information about the investee each reporting period. If the investment were in equity of a company using U.S. GAAP for its own financial statement preparation and reporting purposes, obtaining the required IFRS-based information may prove difficult and costly. This would be similar to the situation that exists today if an issuer using U.S. GAAP has an equity investee that uses a different basis of financial reporting. Further, an additional cost and complication would be added to the initial public offering process if a private company whose financial statements were not in accordance with IFRS were required to provide them for purposes of its initial registration statement with the Commission.

### **3. Auditing**

Another affected party is the audit firms that are engaged to audit a U.S. issuer's financial statements and to report on the effectiveness of its internal control over financial reporting. This may be particularly challenging for less globally oriented audit firms, which typically may have fewer resources available through affiliated or network firms



located in jurisdictions in which issuers already report in accordance with IFRS. This could be a further factor affecting concentration in the auditing profession.

Audit firms would need to consider elements of their systems of quality control, such as their practices related to hiring, assigning personnel to engagements, professional development and advancement activities. Some U.S. audit firms already have some experience with conducting audits of financial information prepared in accordance with IFRS, as they may be involved in the audit of the U.S. operations of a foreign company that does so. But because U.S. auditors generally have less experience with IFRS than with U.S. GAAP, in the short term, U.S. audit firms may encounter challenges in establishing policies and procedures, and hiring and training personnel, to provide themselves with reasonable assurance that their personnel would possess knowledge appropriate to perform audits of U.S. issuers. Even with appropriate systems of quality control, however, additional auditing guidance still may be necessary.

Additionally, U.S. firms that are members of global audit networks may have already begun to consider systems of quality control to foster the high quality and consistent application in reporting under IFRS across national borders. If U.S. issuers were to report in accordance with IFRS, the U.S. firms of these global audit networks could be affected more than they are presently by the reporting of audit clients of their foreign affiliates and by U.S. subsidiaries of those clients.

One consideration for audit firms relates to their ability to issue opinions on IFRS financial statements in accordance with PCAOB standards. For example, one of the conditions under IFRS for recognizing a provision for a legal contingency is that it is

more likely than not that an obligation exists.<sup>78</sup> This recognition threshold is lower than the current recognition threshold in U.S. GAAP, resulting in the potential for an earlier income statement recognition of costs associated with litigation.<sup>79</sup> Concerns have been raised about an auditor's ability to corroborate the information furnished by management related to litigation, claims, and assessments by obtaining an audit inquiry letter from a client's attorney.<sup>80</sup>

We note that references to current U.S. GAAP literature exist in various standards issued by the PCAOB and other accounting or auditing organizations. If IFRS were required for all U.S. issuers, amendments to existing references to U.S. GAAP literature may be appropriate. Certain changes have already begun with respect to IFRS in the U.S. accounting profession. For example, under AICPA rules, a member of the AICPA can only report on financial statements prepared in accordance with standards promulgated by standard setting bodies designated by the AICPA Council. In May 2008, the AICPA's Council voted to designate the IASB in London as an international accounting standard setter for purposes of establishing international financial accounting and reporting

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<sup>78</sup> See IAS 37, paragraphs 15 and 16.

<sup>79</sup> See FAS 5.

<sup>80</sup> Some believe that changes to the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information may be necessary. See AU § 337C. The Statement of Policy, commonly referred to as the "Treaty," recognizes the professional responsibilities of attorneys and auditors and seeks to preserve confidentiality while providing the necessary level of assurance for the audit. The Treaty recognizes that the confidentiality of communications between an attorney and a client may be impaired by the disclosure of the substance of such communications to third parties, including auditors. By describing thresholds for disclosure and limitations on responses, the Treaty sets the scope of the attorney's responses to audit requests for information on legal matters. Some believe that the thresholds and limitations described in the Treaty are inconsistent with certain provisions within IFRS.

principles, and to make related amendments to its rules to provide AICPA members with the option to use IFRS.<sup>81</sup>

#### **4. Considerations of IFRS and the IASB's Standard Setting Process**

##### **a. State of IFRS**

As discussed in the 2007 Concept Release, IFRS is not as developed as U.S. GAAP in certain areas.<sup>82</sup> IFRS also is not as prescriptive as U.S. GAAP in certain areas and in certain areas permits a greater amount of options than in U.S. GAAP.<sup>83</sup> The smaller volume of IFRS literature as compared to U.S. GAAP may decrease the amount of authoritative guidance available in a particular circumstance. This relatively lesser amount of guidance and, in some cases, greater optionality in IFRS could reduce comparability of reported financial information, as different issuers may account or provide disclosure for similar transactions or events in different ways but this flexibility also allows a financial statement that may more closely reflect the economics of transactions. As we noted in the 2007 Concept Release, in certain limited areas in which the IASB has yet to develop guidance on particular industry activities in which IFRS

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<sup>81</sup> See [http://www.aicpa.org/download/info/AICPA\\_NewsUpdate\\_Vol.11\\_No.21.pdf](http://www.aicpa.org/download/info/AICPA_NewsUpdate_Vol.11_No.21.pdf).

<sup>82</sup> IFRS does not have a specific standard or interpretation on accounting treatment for insurance contracts, extractive activities, certain common control transactions, recapitalization transactions, reorganizations, acquisitions of minority shares not resulting in a change of control and similar transactions. However, there are areas where current U.S. GAAP also does not have a single comprehensive standard or interpretations, such as for revenue recognition or property, plant and equipment.

<sup>83</sup> As noted by CIFIIR in its Final Report:

From an international perspective, we note that IFRS currently permits numerous alternative accounting policies. While we acknowledge the IASB's efforts in reducing some of these alternative treatments, we nonetheless believe the SEC should encourage the IASB to [...] seek to eliminate alternatives as part of its standards-setting projects.

CIFIIR Final Report, at 51.

permits disparate options, we have noted that the level of diversity has manifested itself in the reporting practices of foreign private issuers.

As U.S. GAAP has been used longer and more extensively than IFRS, more U.S. GAAP implementation guidance has developed over time. A variety of factors may have resulted in the accounting profession in the United States becoming more accustomed to relying on a greater degree of detailed accounting guidance, including factors such as seeking consistency and reducing exposure to litigation and liabilities. Such guidance also can affect the outcomes of discussions between management and auditors on the use of a particular accounting treatment. Less prescriptive guidance also may make litigation or enforcement outcomes more difficult to predict.

On the other hand, less prescriptive guidance may increase issuers' ability to account for transactions or events in accordance with their underlying economics, which could improve comparability of economically similar situations and highlight differences in dissimilar situations. As CIFI<sup>R</sup> noted in its final report:

Investors are likely to benefit from more emphasis on principles-based standards, since rules-based standards... may provide a method, such as through exceptions and bright-line tests, to avoid the accounting objectives underlying the standards. In other words, without the exercise of judgment, rules in the form of bright lines may result in a false consistency – that is, ostensibly uniform accounting for differing fact patterns. If properly implemented, “principles-based” standards should improve the information provided to investors while reducing investor concerns about “financial engineering” by companies using the rules to avoid accounting for the substance of a transaction.<sup>84</sup>

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<sup>84</sup> See CIFI<sup>R</sup> Final Report, at 88.

The Commission and its staff also have supported the increased use of objectives, outcomes and principles in accounting standards in contrast to detailed prescriptive guidance.<sup>85</sup>

In addition, in cases where specific guidance is not available, IFRS encourages disclosure on the accounting policies that the preparer of the financial statements has elected and applied.<sup>86</sup> The same also is generally true where IFRS permits greater optionality.<sup>87</sup> In adopting IFRS, an issuer may find it appropriate to evaluate its disclosure practices, such as the disclosure provided in financial statement footnotes and management's discussion and analysis, to clearly communicate these choices. Further, as we indicated when we adopted changes to accept IFRS financial statements from foreign private issuers without a reconciliation to U.S. GAAP,<sup>88</sup> our staff has indicated that the

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<sup>85</sup> For example, the SEC issued "Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter" Release No. 33-8821 (April 25, 2003), which included numerous recommendations for the FAF and FASB to consider, including greater use of principles-based accounting standards whenever reasonable to do so. The SEC staff also issued "Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System" (July 25, 2003), which further explained the benefits of objectives-oriented standards.

<sup>86</sup> In areas for which an IFRS does not exist, IAS 8 "Accounting Policies, Changes in Accounting Estimates and Errors" 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. Additionally, IAS 8 allows preparers to consider pronouncements of other standard setting bodies if those pronouncements are drawn from a conceptual framework similar to that underlying IFRS, to the extent that such pronouncements do not conflict with IFRS.

<sup>87</sup> See IAS 1 "Presentation of Financial Statements," paragraph 119 for general guidance on disclosure of accounting policies from among alternatives. Certain standards under IFRS specifically require disclosure of selected accounting policies when choices are allowed. See for example IAS 16 "Property, Plant and Equipment," paragraph 73.

<sup>88</sup> See the 2007 Adopting Release.

issues it has observed in its 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.

**b. Relationship to the Accounting Standard Setting Process**

A change to commit U.S reporting to following IFRS would include a change in the relationship of the U.S. capital markets to the accounting standard setting process.

The IASB and its related organizations include members from a number of countries. The IASB is expected to be responsive to broad, world-wide constituencies of investors, issuers, regulators and many others in all facets of its work, including the establishment of its agenda and the development of standards. These constituencies can be expected to represent a wide-range of interests, reflecting varying economic, social and political environments.

These factors likely would mean that the interaction, and potentially the relevance and influence, of U.S. capital market participants, including the Commission and its staff, would be reduced compared to the current standard setting process in the United States. The IASB is expected to consider its world-wide constituencies of investors, issuers, and regulators during the deliberative process for issuing new or revised accounting standards. Further, the IASB has entered into convergence agreements with other national accounting standard setters, such as with the Accounting Standards Board of Japan.<sup>89</sup> Due to the IASB's need to develop standards with a wider variety of constituents in mind, U.S. capital market participants will have a lesser degree of input into the standard setting process including fewer members of the IASB and fewer participants on

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<sup>89</sup> See <http://www.iasb.org/News/Press+Releases/The+ASBJ+and+the+IASB+announce+Tokyo+Agreement+on+achieving+convergence+of+accounting+standards+by+2.htm>.

roundtables and advisory and other groups than they currently have in the U.S. standard setting process. Further, in the U.S. standard setting process, participants from multiple constituencies but in the same geographic market (i.e., the United States) are involved. On the IASB, constituencies and geographic market (i.e., different countries) participation are commingled. Also, constituents involved in the IFRS standard setting process may come from different financial reporting environments and may have objectives that are different from or not present in the standard setting process for U.S. GAAP.

In addition, individual jurisdictions' processes for incorporating IFRS into their markets may result in varying degrees of pressure placed on the IASB in the development of individual standards. For example, some jurisdictions adopt or endorse IFRS on a standard-by-standard basis unlike the historical approach in the United States to look to a standard setter to establish the body of accounting standards as a whole. Further, the IASB's need to consider a greater number of constituents in seeking consensus on a new or revised standard, and the associated need to consider multiple jurisdictions in scheduling implementation, could lead to a longer deliberative process in issuing accounting standards. Further, individual jurisdictions, through their securities regulators, accounting standard setters or other bodies, could adopt or provide for interpretations or applications of IFRS for companies in those jurisdictions which are different from those in other jurisdictions.

The Commission's participation in the oversight of the IASB would principally be through participation in the Monitoring Group proposed by the IASB's governing body, the IASC Foundation. This would be a less direct oversight relationship as to the

participation in board and trustee appointments, review of finances, and interaction with the board than the Commission and its staff has currently with respect to the FASB and the Financial Accounting Foundation.<sup>90</sup>

#### Request for Comment

1. Do commenters agree that U.S. investors, U.S. issuers and U.S. markets would benefit from the development and use of a single set of globally accepted accounting standards? Why or why not? What are commenters' views on the potential for IFRS as issued by the IASB as the single set of globally accepted accounting standards?
2. Do commenters agree that the milestones and considerations described in Section III.A. of this release ("Milestones to be Achieved Leading to the Use of IFRS by U.S. Issuers") comprise a framework through which the Commission can effectively evaluate whether IFRS financial statements should be used by U.S. issuers in their filings with the Commission? Are any of the proposed milestones not relevant to the Commission's evaluation? Are there any other milestones that the Commission should consider?
3. Do commenters agree with the timing presented by the milestones? Why or why not? In particular, do commenters agree that the Commission should make a determination in 2011 whether to require use of IFRS by U.S. issuers? Should the Commission make a determination earlier or

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<sup>90</sup> See FR 70. As noted earlier, this release does not address the method the Commission would use to mandate IFRS for U.S. issuers. In addition, the Commission would retain the ability to take such action as may be appropriate to address financial reporting issues in filings with the Commission.



later than 2011? Are there any other timing considerations that the Commission should take into account?

4. What are commenters' views on the mandated use of IFRS by U.S. issuers beginning in 2014, on an either staged-transition or non-staged transition basis? Should the date for mandated use be earlier or later? If the Commission requires the use of IFRS, should it do so on a staged or sequenced basis? If a staged or sequenced basis would be appropriate, what are commenters' views on the types of U.S. issuers that should first be subject to a requirement to file IFRS financial statements and those that should come later in time? Should any sequenced transition be based on the existing definitions of large accelerated filer and accelerated filer? Should the time period between stages be longer than one year, such as two or three years?
5. What do commenters believe would be the effect on convergence if the Commission were to follow the proposed Roadmap or allow certain U.S. issuers to use IFRS as proposed?
6. Is it appropriate to exclude investment companies and other regulated entities filing or furnishing reports with the Commission from the scope of this Roadmap? Should any Roadmap to move to IFRS include these entities within its scope? Should these considerations be a part of the Roadmap? Are there other classes of issuers that should be excluded from present consideration and be addressed separately?

7. Do commenters agree that these matters would affect market participants in the United States as described above? What other matters may affect market participants? Are there other market participants that would be affected by the use by U.S. issuers of IFRS in their Commission filings? If so, who are they and how would they be affected?
8. Would a requirement that U.S. issuers file financial statements prepared in accordance with IFRS have any effect on audit quality, the availability of audit services, or concentration of market share among certain audit firms (such as firms with existing international networks)? Would such a requirement affect the competitive position of some audit firms? If the competitiveness of some firms would be adversely affected, would these effects be disproportionately felt by firms other than the largest firms?
9. What are commenters' views on the IASB's and FASB's joint work plan? Does the work plan serve to promote a single set of high-quality globally accepted accounting standards? Why or why not?
10. How will the Commission's expectation of progress on the IASB's and FASB's joint work plan impact U.S. investors, U.S. issuers, and U.S. markets? What steps should be taken to promote further progress by the two standard setters?
11. The current phase of the IASB's and FASB's joint work plan is scheduled to end in 2011. How should the Commission measure the IASB's and FASB's progress on a going-forward basis? What factors should the

Commission evaluate in assessing the IASB's and the FASB's work under the joint work plan?

12. What are investors', U.S. issuers', and other market participants' views on the resolution of the IASB governance and funding issues identified in this release?
13. What steps should the Commission and others take in order to determine whether U.S. investors, U.S. issuers, and other market participants are ready to transition to IFRS? How should the Commission measure the progress of U.S. investors, U.S. issuers, and other market participants in this area? What specific factors should the Commission consider?
14. Are there any other significant issues the Commission should evaluate in assessing whether IFRS is sufficiently comprehensive?
15. Where a standard is absent under IFRS and management must develop and apply an accounting policy (such as described in IAS 8, for example) should the Commission require issuers to provide supplemental disclosures of the accounting policies they have elected and applied, to the extent such disclosures have not been included in the financial statements?

#### **IV. PROPOSAL FOR THE LIMITED EARLY USE OF IFRS WHERE THIS WOULD ENHANCE COMPARABILITY FOR U.S. INVESTORS**

##### **A. Eligibility Requirements**

We are proposing amendments to our rules that would allow certain U.S. issuers that meet specific criteria to file financial statements in accordance with IFRS as issued by the IASB, rather than U.S. GAAP, for use in their annual and other reports made

under Section 13(a) or 15(d) of the Exchange Act,<sup>91</sup> proxy statements and information statements under Schedules 14A and 14C under the Exchange Act,<sup>92</sup> as well as in registration statements under the Securities Act and the Exchange Act.<sup>93</sup> The Commission is proposing these amendments for several reasons. Investors may find the financial information provided by eligible issuers who elect to report such information in accordance with IFRS to be more comparable to the financial information of non-U.S. competitors. Permitting some U.S. issuers to report under IFRS may provide assistance in a transition to mandatory financial reporting in accordance with IFRS by creating additional, but manageable, demand for IFRS-related services at this time. The Commission also could learn from investors and the U.S. public capital market participants about their consideration of IFRS financial information from domestic issuers. Further, investors in the industry sectors for which the eligibility requirements are met likely would have familiarity with IFRS given that it is used more than any other financial reporting standard on a global basis. The Commission recognizes that there are many questions relating to permitting some U.S. issuers to report under IFRS, particularly in light of the proposed milestones, and encourages public comment on the proposal and the related alternative proposals concerning what, if any, additional U.S. GAAP information should be provided by electing issuers.

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<sup>91</sup> 15 U.S.C. 78m(a) or 78o(d). Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 78j] to file with the Commission such annual reports and such other reports as the Commission may prescribe. Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act to file such supplementary and periodic information, documents and reports as may be required pursuant to Section 13 in respect of a security registered pursuant to Section 12, unless the duty to file under Section 15(d) has been suspended for any financial year.

<sup>92</sup> 17 CFR 240.14a-101 and 17 CFR 240.14c-101.

<sup>93</sup> As such, the proposed option would not apply to the filing requirements for other regulatory purposes, such as those of regulated entities such as broker-dealers.

In deciding which issuers should be proposed for inclusion in this group, the objective of the Commission was to identify those categories of U.S. issuers for whom the use of IFRS would promote comparability with their significant industry competitors. Since investors frequently make capital allocation decisions among companies within a particular industry sector,<sup>94</sup> the first element of the eligibility criteria relates to the use of IFRS in the issuers' industry. The second element is intended to focus on significant competitors within the industry group, and so requires an identification of the accounting standards used by the largest twenty companies by market capitalization. We believe these are the competitors which are the most likely to be comparable among themselves and most likely to be ready to make the transition to IFRS. Both proposed elements – the prevalence of the use of IFRS and the significance of the issuer in a given industry – would need to be met for a U.S. issuer to be eligible to file its financial statements in accordance with IFRS with the Commission.

The industry criterion identifies companies for which we preliminarily believe it would be overall beneficial to investors for the U.S. issuer to be eligible to use IFRS because financial statement comparability with other significant competitors in their industry would be promoted and enhanced. Under this test, an industry would be eligible if IFRS is used as the basis of financial reporting more often than any other basis of financial reporting by the 20 largest listed companies worldwide within that industry as measured by market capitalization. The U.S. issuer would make that determination as follows:

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<sup>94</sup> For example, at the end of 2007, there were 219 exchange-traded funds with an industry/sector-based investment objective, with net assets of approximately \$93 billion. 2008 Investment Company Factbook, published by the Investment Company Institute.

- (1) An issuer would ascertain its industry group by using the North American Industry Classification System (NAICS)<sup>95</sup> code at the three-digit level, Standard Industrial Classification (SIC)<sup>96</sup> codes at the two-digit level, or the International Standard Industrial Classification (ISIC)<sup>97</sup> codes at the “Division” level. Alternatively, the issuer could use a privately provided, published, and widely accepted industry classification scheme at a similar level of detail, such as the Industry Classification Benchmark (ICB)<sup>98</sup> at the “Sector” level or the Global Industry Classification Standard (GICS)<sup>99</sup> at the “Industry” level. For classifications of individual companies, the issuer must use a single published and widely accepted industry source. (The provider of the classification scheme may be the same entity as the source of classifications of individual companies.)
- (2) Then, the U.S. issuer would determine whether IFRS is used as the basis of financial reporting more than any other basis of financial reporting by the 20 largest listed companies worldwide within its industry.
  - a. An issuer would do this by first identifying the 20 largest listed companies globally in its industry by market capitalization.<sup>100</sup> For

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<sup>95</sup> See <http://www.census.gov/epcd/www/naics.html>.

<sup>96</sup> See <http://www.census.gov/epcd/www/sic.html>.

<sup>97</sup> See <http://unstats.un.org/unsd/class/family/family2.asp?Cl=27>.

<sup>98</sup> See <http://www.icbenchmark.com/>.

<sup>99</sup> See <http://www.msibarra.com/products/gics/>.

<sup>100</sup> For these purposes, market capitalization refers to the worldwide market value of a company’s outstanding voting and non-voting common equity securities.

the purposes of this calculation, market capitalization should be determined as of the same day within the 180 days preceding the date on which the SEC staff receives a request for a letter of no objection (as described below). Market capitalization would need to be determined from a widely accepted source.

- b. Next, the U.S. issuer would ascertain which accounting standards each of the 20 companies uses to report its financial results to the public capital markets. Companies within the industry are considered to report under a specified set of accounting standards if they have published audited annual financial statements under those accounting standards.<sup>101</sup> As described below, a U.S. company that elects to report using IFRS would be required to file financial statements prepared in accordance with IFRS as issued by the IASB.

If the U.S. issuer were among the 20 largest companies globally in a particular industry and IFRS is used as the basis of financial reporting more often than any other basis of financial reporting among the 20 largest listed companies worldwide in that industry, then the U.S. issuer would be eligible to elect to use IFRS in its filings with the Commission. To illustrate, if among the top 20 companies in a given industry, there were 8 companies using IFRS, 7 using U.S. GAAP and 5 using other bases of financial reporting, the industry would be viewed as an “IFRS industry” and the 7 U.S. companies

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<sup>101</sup> For purposes of the calculation, companies reporting under more than one set of standards can be counted as using any of these standards.

would be eligible to change to IFRS.<sup>102</sup> If among the top 20 companies there were 4 using IFRS, 3 using U.S. GAAP and 13 using other bases of financial reporting but no single other basis accounted for more than 3, the industry would be viewed as an IFRS industry. In contrast, if among the top 20 companies there were 7 using IFRS, 7 using U.S. GAAP and 6 using other bases of financial reporting, the industry would not be considered an IFRS industry. If there were 8 companies using U.S. GAAP, 7 using IFRS and 5 using other bases of financial reporting, then the industry also would not be an IFRS industry and the U.S. companies would not be eligible to use IFRS.

Using one of the industry classification systems (SIC codes), we estimate that at present a minimum of approximately 110 U.S. issuers in 34 “IFRS industries” would be eligible to receive a letter of no objection from the staff using the proposed criteria.<sup>103</sup> Our estimate contains a number of assumptions and may be impacted by some data not being readily available, as indicated below. Further, certain factors could result in the number of eligible issuers becoming higher, although this availability is most likely to occur in periods beyond 2011 when the Commission would expect to make its decision on IFRS implementation under the Roadmap.<sup>104</sup>

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<sup>102</sup> The distribution of size among the top 20 companies would not matter. In other words, there would be no requirement that the group of companies using a given set of accounting principles, such as IFRS, would constitute the largest percentage by market capitalization within the industry or in comparison to other groups of countries using other sets of accounting principles. The only criterion would be that the number of companies using IFRS was more than the number of companies using any other basis of financial reporting.

<sup>103</sup> For example, under the methodology described in this section, metal mining under SIC code 10 and conglomerates under SIC code 99 may be eligible.

<sup>104</sup> The number of eligible companies at the outset could be higher due to the fact that different industry classification systems would be available to determine eligibility. This could affect the number of U.S. issuers that would be ranked among the 20 largest in their industry by market capitalization, because companies may be eligible to use IFRS under one classification system, but not another. In addition, if companies in an industry that is eligible under one classification system switch to IFRS, this action may result in IFRS being used more often than any other set of standards within a separate industry, under a



To develop our estimate of the potentially eligible issuers, our staff obtained data from publicly available sources on the 20 largest listed companies measured by market capitalization in each industry, using two-digit SIC industry classification codes as assigned by Standard and Poors' COMPUSTAT.<sup>105</sup> We did not estimate what the population of eligible issuers would be under other industry classification methods available under this proposed rule. Therefore, our estimate represents a lower bound on the number of U.S. issuers at present that we believe may be eligible to adopt IFRS under this proposed rule.

To simplify the analysis, the staff relied on a number of assumptions regarding the bases of accounting of the companies in the estimated population. In evaluating what bases of financial reporting were used by the companies within this estimated population, our staff assumed that all U.S. entities were registered with the Commission and therefore

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different classification system. This effect could result in an expansion of IFRS industries as U.S. companies switch to IFRS, and, in turn, an increase in eligible U.S. companies. In addition, under the proposed eligibility criteria, as more countries change to IFRS, more industries may become "IFRS industries," and more U.S. companies would become eligible to file IFRS financial statements. For example, assuming that Brazil, Canada, Chile and South Korea follow IFRS, the number of IFRS industries increases by 9 and total number of eligible U.S. companies under our methodology would increase to approximately 160, representing approximately 23% of the market capitalization in the United States. Also, to the extent the mix of competitors by market capitalization changes to include more competitors that report in IFRS, additional industries may qualify as IFRS industries over time. We estimate that, if all 74 industries under our methodology were IFRS industries the theoretical maximum number of U.S. issuers that could be eligible given the present assumptions of companies in the top 20 by industry would be approximately 380, representing 57% of the market capitalization in the United States. The potential impact of this dynamic is limited, however, by the fact that the Roadmap anticipates a decision by the Commission on the use of IFRS by 2011. Eligibility would likely expand for other reasons. For example, relatively young foreign public equity markets, particularly in emerging markets, are developing at a faster rate than the mature U.S. equity market, resulting in greater representation of large foreign companies on equity exchanges. This factor may result in an increase in the number of IFRS-using listed companies in the top 20 of each industry, by market capitalization, and a corresponding increase in eligible industries.

<sup>105</sup> There are 74 industry groups under this classification approach. For some industries, there were less than 20 companies available under the data obtained. Our staff kept these industries in its population applying the test of whether IFRS was used more than any other basis of reporting among the available list of companies in that industry.

reporting under U.S. GAAP. In addition, the staff assumed that any company from an E.U. country, Australia, New Zealand, South Africa or Switzerland was reporting under IFRS. For other companies, our staff attempted to obtain information on the set of accounting standards used. For purposes of this analysis, an assumption was made that any assertion as to the use of IFRS, such as on the issuer's Web site, in the issuer's financial statements or in the audit report, was considered as reporting under IFRS.

In some cases, our staff was not able to obtain sufficient information about the basis of financial reporting used. For example, published financial statements could not be readily located for all companies and for others financial statements were not readily available in English. Because of this and other limitations, the staff's estimate is an approximate minimum number of issuers that would currently be eligible under the proposed rule, and the actual number could be significantly greater. Based on these assumptions, approximately 34 of the 74 industries identified would be "IFRS industries." The minimum of approximately 110 U.S. issuers that we estimate presently would be eligible to file IFRS financial statements had as of December 2007 a total market capitalization of \$2.5 trillion, which represented approximately 12% of the total U.S. market capitalization.<sup>106</sup> The market capitalization of these eligible companies range from approximately \$250 million to \$300 billion, with a mean of \$23 billion and a median of \$8.3 billion. Approximately 94% of these eligible issuers would have a worldwide market capitalization over \$700 million.

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<sup>106</sup> Based on an estimated U.S. market capitalization of \$20 trillion. See <http://www.world-exchanges.org/WFE/home.asp?menu=395>.

## **B. Staff Letter of No Objection to the Use of IFRS**

To be able to use IFRS financial statements in filings with the Commission, the U.S. issuer would need to obtain a letter of no objection from the SEC staff. This process would assist U.S. issuers in determining whether they would be eligible to switch to IFRS financial statements and provide them with greater certainty before they undertake the complex process of converting their financial statements from U.S. GAAP to IFRS. In addition, through our postings of these letters on our Web site, we would provide information to investors and others about the possibility of the issuer filing reports using IFRS. Obtaining a staff no-objection letter would not commit the issuer to use IFRS. As noted later, such a letter would provide an issuer with the ability to commence filing reports using IFRS for a period of three years from the date of the staff response.

To obtain such a letter, the issuer would make a submission to the staff of the Division of Corporation Finance's Office of Chief Accountant.<sup>107</sup> In that submission, the issuer would describe its analysis in determining its eligibility to use IFRS.<sup>108</sup> In preparing a request for a staff letter of no objection to the use of IFRS, we would expect U.S. issuers to undertake reasonable efforts to determine the sets of accounting standards for all companies that comprise the twenty largest in its industry group. If the staff has no objections to the issuer's conclusion that it is eligible to file IFRS financial statements, the staff would issue a letter of no objection. When issued, the staff letter would be made

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<sup>107</sup> To the extent applicable, an applicant could invoke Rule 83.

<sup>108</sup> To the extent an issuer's analysis includes companies whose financial statements are prepared under a jurisdictional version of IFRS or as to which it is not clear whether the financial statements are prepared under IFRS as issued by the IASB, the issuer should state that no information came to its attention from the content of the financial statements of the companies analyzed or otherwise that causes it to believe that the financial statements are not in accordance with IFRS as issued by the IASB.

publicly available on the Commission Web site, together with the issuer's incoming submission. The incoming submission from the issuer would not be made public on the Commission Web site if the staff did not issue a letter of no objection. A U.S. issuer could file IFRS financial statements only if it received a letter of no objection. Once the staff issued a letter of no objection, the issuer could adopt IFRS at any time during the three-year period following issuance of the letter without the criteria being recalculated with more current data.<sup>109</sup> The company would also disclose in its first filing using IFRS the date that it submitted its request to the staff demonstrating that it met the criteria and the date the staff issued its letter of no objection.

The proposed definition of "IFRS Issuer" in Rule 1-02(cc) of Regulation S-X, which contains the eligibility criteria that must be demonstrated in the issuer's request to the staff of the Commission, specifically excludes investment companies; employee stock purchase, savings and similar plans; and smaller reporting companies.<sup>110</sup> We have excluded smaller reporting companies from the proposed definition of IFRS issuer as a limitation on the number of issuers that would be eligible to file IFRS financial statements under the proposed rules. Investment companies are proposed to be excluded because of the separate regulatory requirements that exist for those entities. Employee stock purchase, savings and similar plans are proposed to be excluded because they are special investment entities that are subject to tailored accounting practices.

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<sup>109</sup> If we were to adopt the proposal, once a U.S. issuer commenced filing reports using IFRS under these rules, it would not have to recalculate its eligibility using more current data. A recalculation and a new staff letter of no objection would be necessary only if the issuer did not commence filing reports using IFRS within three years of receipt of the letter.

<sup>110</sup> The term "smaller reporting company" is defined in Exchange Act Rule 12b-2 [17 CFR 240.12b-2] and in Securities Act Rule 405 [17 CFR 230.405].

### Request for Comment

16. Do commenters agree that certain U.S. issuers should have the alternative to report using IFRS prior to 2011? What circumstances should the Commission evaluate in order to assess the effects of early adoption on comparability of industry financial reporting to investors?
17. Do commenters agree with the proposed criteria by which the comparability of an industry's financial reporting would be assessed? If not, what should the criteria be?
18. Which eligible U.S. issuers have the incentive to avail themselves of the proposed amendments, if adopted? Are there reasons for which an issuer that is in a position to file IFRS financial statements under the proposed amendments would elect not to do so? If so, what are they?
19. Is limiting the proposal to the largest 20 competitors by market capitalization an appropriate criterion? Should it be higher or lower? Should additional U.S. issuers be eligible to elect to report in IFRS if some minimum threshold of U.S. issuers (based on the actual number or market capitalization of U.S. issuers choosing to report in IFRS) elects to report in IFRS under the eligibility requirements proposed? To the extent additional U.S. issuers are not permitted to report in IFRS even if such a minimum threshold is met, are such non-eligible U.S. issuers placed at a competitive disadvantage vis-à-vis U.S. issuers reporting in IFRS?
20. Would the use of different industry classification schemes as proposed be unclear or create confusion in determining whether an issuer is IFRS

eligible? Should we require that all issuers use a single industry classification scheme? Why or why not?

21. What impact will the Commission's determination to allow an industry to qualify as an "IFRS industry" without majority IFRS use have on the Commission's objective of promoting comparability for U.S. investors? How will this impact U.S. investors, U.S. issuers, and U.S. markets? Is the use of IFRS more than any other set of financial reporting standards the right criterion? Should it be higher or lower?
22. Should the Commission permit additional industries to qualify as IFRS industries, and thus additional U.S. issuers to become early adopters, as more countries outside the U.S. adopt IFRS? Alternatively, should the group of potential industries and early adopters be limited to those that qualify at the time the Commission determines to permit early adoption?
23. Do commenters have any suggestions about the procedural aspects of the proposed eligibility requirements, e.g., the procedure for obtaining a letter of no objection from the Commission staff or the minimum contents of the required submission? Is such a procedure necessary? Do commenters agree that such a procedure would assist both issuers and investors? Should the procedural aspects of the proposed eligibility requirements be less formal? Should the procedure be similar to that in the no action letter process regarding shareholder proposals under Rule 14a-8 of the Exchange Act? Should the letter of no objection be advisory only? Should obtaining a letter of no objection be optional? Is the method for

calculating eligibility clear and appropriate or are there alternative suggestions that should be considered? Should the Commission publish standards or criteria to guide the staff's determination? What do commenters believe the respective role of the Commission and its staff should be in making these eligibility determinations? Should the Commission post on its Web site all submissions and responses, including those for which the staff does not issue a no-objection letter?

24. Currently, some public companies in the U.S. public capital market report in accordance with IFRS and others in accordance with U.S. GAAP. Today, however, this ability to report using IFRS exists only for foreign companies. What consequences, opportunities or challenges would be created, and for whom, of extending the option to use IFRS to a limited number of U.S. companies based on the criterion of improving the comparability of financial reporting for investors?
25. Do commenters agree that the criterion of enhanced comparability is the correct one? Are there other criteria that should be used? For example, should issuers be eligible based on their size or their global activities? If a size criterion were used to include the largest U.S issuers, what should the cut-off be? Should there be a criterion based on the absence of past violations of the federal securities laws<sup>111</sup> or based on shareholder approval?

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<sup>111</sup> An example of such a criterion is found under clauses (vi), (vii) and (viii) under the definition of "ineligible issuer" under Rule 405 under the Securities Act [17 CFR 230.405].

26. Do commenters agree that the proposed required disclosures are appropriate? If not, what disclosures should be provided?
27. What are commenters' views on the accounting principles that should be used by those U.S. issuers that elect to file IFRS financial statements if the Commission decides not to mandate or permit other U.S. issuers to file IFRS financial statements in 2011? Should the Commission require these issuers to revert back to U.S. GAAP in that situation?
28. Is it appropriate to exclude investment companies, employee stock purchase, savings and similar plans and smaller reporting companies? Are there other classes of issuers or certain industries that should be excluded?

**C. Transition**

We believe that the option to move to IFRS should be made available to eligible U.S. issuers upon adoption of rule amendments; thus we propose that it be applicable for filings for fiscal years ending on or after December 15, 2009. We believe that the ease with which an eligible issuer could transition to IFRS in filings with the Commission, and thus the actual transition timing for an eligible issuer, would depend on the extent to which the issuer has experience with IFRS. An eligible issuer that elects to file IFRS financial statements with the Commission under the proposed amendments would be required first to do so in an annual report containing three years of audited financial statements. Similarly, an IFRS issuer changing from IFRS as issued by the IASB to U.S. GAAP may only begin reporting using U.S. GAAP in an annual report on Form 10-K. An eligible issuer would not be able to file IFRS financial statements with the Commission for the first time in a quarterly report, Securities Act or Exchange Act



registration statement, or proxy or information statement. We propose limiting first time filing to annual reports to minimize the potential diversity of filings available, as a multitude of options may be difficult for investors to track and some of the filings may be directed only to a subset of investors. We also do not believe the transition to IFRS requires amendments to our rules relating to the timing of filings with the Commission.

An issuer that is eligible to file IFRS financial statements with the Commission and is a “first-time adopter” of IFRS would provide the reconciliation and disclosure information required by IFRS 1 “First-Time Adoption of IFRS” (“IFRS 1”).

If we adopt these amendments, we would continue to require that issuers provide three years of audited annual financial statements. Currently, U.S. issuers are required to provide in their filings with the Commission three years of audited financial statements prepared in accordance with U.S. GAAP. Because these proposals relate to the set of accounting principles that is used for preparing financial statements and not to the periods for which financial statements are required, we propose to continue to require three years of audited financial statements from U.S. issuers in the first year of IFRS reporting. We are not inclined to allow U.S. issuers to present only two years of IFRS financial statements, although we request comment below on a potential option for when a company would file three years of U.S. GAAP and two years of IFRS financial statements.

Under the proposal, an eligible issuer that elects to file IFRS financial statements may begin to file financial statements prepared in accordance with IFRS as issued by the IASB for fiscal years ending on or after December 15, 2009.<sup>112</sup> As discussed in further

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<sup>112</sup> A company filing an annual report for the year ended December 31, 2009 would have to present IFRS financial statements for its fiscal years ended December 31, 2007, 2008 and 2009.

detail below in Section V.D.3., we also are proposing that an issuer that elects to file IFRS financial statements with the Commission disclose information related to its decision to change to IFRS in its first Form 10-K that contains IFRS financial statements.

Request for Comment

29. Should we limit the first filing available to an annual report on Form 10-K, as proposed? If not, why not? Is the proposed transition date of fiscal years ending on or after December 15, 2009 appropriate? Should it be earlier or later, and why? What factors should be considered in setting the date?
30. Are there any considerations that may make it difficult for an eligible U.S. issuer to file IFRS financial statements? Are there considerations about filing IFRS financial statements that would weigh differently for an eligible U.S. issuer than they would for a foreign private issuer that files IFRS financial statements?
31. What difficulties, if any, do U.S. issuers anticipate in applying the requirements of IFRS 1 on first-time adoption of IFRS, including the requirements for restatement of and reconciliation from previous years' U.S. GAAP financial statements?
32. What would affect a company's willingness to use IFRS if it were eligible to do so? For example, some market indices, such as the S&P 500, currently only include issuers that report in U.S. GAAP. Are there other investment instruments or indices that would affect companies that would be eligible to use IFRS under the proposed criteria? Would the ability to

be included in the S&P 500, or other instrument or index affect whether an eligible U.S. issuer decides to use IFRS? Would these indices be prepared to accept IFRS, and, if so, how long would it take for them to change their criteria? Would more issuers be likely to use IFRS after they do? Should these considerations influence our decision on whether or when to permit or require U.S. issuers to use IFRS in their Commission filings?

33. To facilitate the transition to IFRS, should we add an instruction to Form 10-K and Form 10-Q under which an issuer could file two years, rather than three years, of IFRS financial statements in its first annual report containing IFRS financial statements as long as it also filed in that annual report three years of U.S. GAAP financial statements? Under such an approach, an issuer could, during its third year after beginning its IFRS accounting, choose to file a Form 10-K/A with IFRS financial statements covering the previous two fiscal years.<sup>113</sup> For the current (third) fiscal year, the issuer could then file quarterly reports on Form 10-Q using IFRS financial statements.<sup>114</sup> For example, a calendar-year issuer that began its IFRS accounting for the 2010 fiscal year would use U.S. GAAP to prepare its Forms 10-Q and Forms 10-K for the 2010 and 2011 fiscal years. In 2012, that issuer would have the option of filing a Form 10-K or a Form 10-K/A with IFRS financial statements for 2010 and 2011, which would

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<sup>113</sup> The IFRS financial statements covering the two prior years could be included in the Form 10-K if the issuer were prepared to do so as of the due date. In that case, the Form 10-K would also contain three years of U.S. GAAP financial statements. Compliance with Exchange Act Rule 13a-14 [240.13a-14] would be required for both a Form 10-K and a Form 10-K/A that contained IFRS financial statements.

<sup>114</sup> An issuer that did not choose to file two years of IFRS financial statements would file its quarterly reports for the third year using U.S. GAAP.

allow it to use IFRS in its quarterly reports during 2012, or continuing to use U.S. GAAP. In either case, the Form 10-K covering the 2012 fiscal year would include three years of IFRS financial statements.

**D. Alternative Proposals for U.S. GAAP Information**

The Commission is proposing two alternatives with respect to the disclosure of U.S. GAAP information by U.S. issuers that elect to use IFRS financial statements in their Commission filings. Under the first proposal, U.S. issuers would provide a one-time reconciliation from certain U.S. GAAP financial statements to IFRS in accordance with IFRS 1. Under the second proposal, U.S. issuers also would provide on an annual basis a reconciliation from IFRS financial statements to U.S. GAAP covering a three-year period. The Commission is soliciting comment on these alternative proposals to assist it with assessing whether a one-time reconciliation in accordance with IFRS is sufficient or whether it also should require the on-going disclosure of supplemental U.S. GAAP financial information by U.S. issuers that have elected to file IFRS financial statements.

**1. Proposal A – Reconciled Information Pursuant to IFRS 1**

Under the first alternative, Proposal A, a U.S. issuer that elects to file IFRS financial statements would provide the reconciling information from U.S. GAAP to IFRS called for under IFRS 1 in a footnote to its audited financial statements. IFRS 1 provides the requirements for transition from a prior basis of reporting, in this case U.S. GAAP, to IFRS as issued by the IASB. This information includes the restatement of and reconciliation from prior year's financial statements and the related disclosures. This information helps investors and users of financial statements to understand the

differences between financial statements prepared in accordance with the prior basis of financial reporting and IFRS as issued by the IASB.

This reconciliation called for under IFRS 1 would be included as part of the issuer's audited financial statements in its first annual report that includes IFRS financial statements. IFRS 1 requires that entities explain how the transition from previous GAAP to IFRS affects its reported financial position, financial performance and cash flows. To comply with this requirement, an entity's first IFRS financial statements must include reconciliations of its equity reported under previous GAAP to its equity under IFRS for the date of transition to IFRS and the end of the latest period presented in the most recent annual financial statements prepared under previous GAAP, and of its profit and loss, and cash flows, reported under previous GAAP for the latest period in the most recent annual financial statements to its profit and loss under IFRS for the same period.<sup>115</sup> Under Proposal A, U.S. issuers would comply with these requirements under IFRS. We are not proposing additional requirements, including specific form and content requirements for the reconciliations presented under IFRS 1. This reconciling information from U.S. GAAP to IFRS as of the dates and for the annual period required under IFRS would provide investors with information relating to the financial statement effects of the change from U.S. GAAP to IFRS for these dates and annual period.

Under Proposal A, an eligible issuer that elects to file IFRS financial statements may begin to file financial statements prepared in accordance with IFRS for fiscal years ending on or after December 15, 2009. As an example, under this alternative, a U.S. issuer filing an annual report for the year ending December 31, 2009 in accordance with IFRS for the first time would include a reconciliation of its reported equity from U.S.

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<sup>115</sup> See IFRS 1, paragraph 39.

GAAP to IFRS as of January 1, 2007 and December 31, 2008 and a reconciliation for the year ending December 31, 2008 of its reported total comprehensive income. After the initial reconciliation, the issuer would not be required to provide any reconciliation in future filings with the Commission. However, nothing would prevent a U.S. issuer from voluntarily disclosing such U.S. GAAP information to the market that it believes may be useful for investors.

## **2. Proposal B – Supplemental U.S. GAAP Information**

Under the second alternative, Proposal B, U.S. issuers that elect to file IFRS financial statements would provide the reconciling information from U.S. GAAP to IFRS required under IFRS 1, and would also disclose on an annual basis certain unaudited supplemental U.S. GAAP financial information covering a three-year period. This unaudited supplemental financial information would be in the form of a reconciliation from IFRS as issued by the IASB to U.S. GAAP. For each period covered, the reconciliation would be substantially similar to that required under IFRS 1, except that it would reconcile from IFRS financial statements to U.S. GAAP and it would reconcile the financial statements indicated below. Under Proposal B, the reconciliation would relate to all annual periods covered by IFRS audited financial statements, usually the most recent three fiscal years. This unaudited information would be disclosed on an annual basis in the issuer's annual report on Form 10-K.

The supplemental U.S. GAAP information provided under Proposal B would incrementally increase comparability in the following ways. In the annual report covering the year in which a U.S. issuer elected to report in accordance with IFRS, Proposal B would require U.S. GAAP information concerning the three most recently

completed fiscal years. It also would require U.S. GAAP information in annual reports for periods after that in which an issuer elected to report in accordance with IFRS. In addition to improved comparability, the additional periods of U.S. GAAP information would incrementally aid investors in understanding the differences between IFRS and U.S. GAAP, including trends. Proposal B also increases the likelihood that U.S. issuers would maintain U.S. GAAP controls, procedures, and books and records, for periods after the election to report in IFRS. Consequently, were the Commission to determine not to continue to permit or require U.S. issuers to use IFRS, those issuers who had elected to report under IFRS could more easily return to reporting in accordance with U.S. GAAP. In addition, even if the Commission did not require issuers to revert to U.S. GAAP, some issuers may find it appropriate to do so.

To implement Proposal B, we would amend Item 101 “Business” of Regulation S-K by adding a paragraph (j). Under proposed Item 101(j), an issuer that uses IFRS as issued by the IASB as its basis of financial reporting would provide reconciliations from its IFRS financial statements to U.S. GAAP for each of the three fiscal years covered by the audited IFRS financial statements included elsewhere in the Form 10-K. The reconciliations would cover all of the financial statements required to be presented under IFRS: the balance sheets, statements of income (loss), statements of cash flow, statements of changes in shareholders’ equity, and statements of comprehensive income. Quarterly reports on Form 10-Q would not be required to provide disclosure pursuant to Item 101(j).

Under proposed Item 101(j), the reconciliations would be presented in a form and level of information in sufficient detail to explain all material adjustments to the relevant

financial statements.<sup>116</sup> We are not proposing specific form and content requirements for the reconciliations presented under Item 101(j). While issuers could elect to reconcile the statements of comprehensive income and shareholders' equity from IFRS to U.S. GAAP, they may find it easier to prepare these statements using U.S. GAAP amounts.

Under this alternative, the information disclosed pursuant to proposed Item 101(j) would be contained under an appropriate caption in the body of the annual report on Form 10-K. As such, consistent with other non-financial statement information, it would be considered "filed" for purposes of Section 18 of the Exchange Act<sup>117</sup>, would be subject to the certifications by the principal executive and financial officers pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002<sup>118</sup>, and would be subject to the disclosures and certifications relating to disclosure controls and procedures.<sup>119</sup>

The preparation of the supplemental U.S. GAAP information, the underlying books and records on which that information is based and the internal accounting controls and procedures used to prepare such information would not be subject either to management's assessment of, or to the independent auditor's report relating to, internal controls and procedures over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act.<sup>120</sup> In addition, the supplemental U.S. GAAP information would not be required to be audited or reviewed by the issuer's independent auditors.

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<sup>116</sup> Item 101(j) is based on paragraph 40 of IFRS 1.

<sup>117</sup> 15 U.S.C. 78r.

<sup>118</sup> 15 U.S.C. 7241 and 18 U.S.C. 1349.

<sup>119</sup> Exchange Act Rules 13a-15 and 15d-15 [17 CFR 240.13a-15 and 240.15d-15].

<sup>120</sup> 15 U.S.C. 7262.



If we subsequently adopt rules to mandate the use of IFRS or subsequently determine not to mandate the use of IFRS and require “early use” issuers to revert back to U.S. GAAP, we anticipate eliminating any requirement to disclose supplemental U.S. GAAP financial information.

Under Proposal B, an eligible issuer that elects to file IFRS financial statements may begin to file financial statements prepared in accordance with IFRS for fiscal years ending on or after December 15, 2009. As an example, under this alternative, a U.S. issuer filing an annual report for the year ending December 31, 2009 in accordance with IFRS for the first time would include, in addition to the one-time reconciliation required under IFRS 1 (as described under Proposal A), the reconciliation from IFRS to U.S. GAAP as of December 31, 2008 and 2009 for balance sheet information and for the three years ending December 31, 2009 for the statements of income (loss) and other annual period financial statements. Thereafter, in each annual report on Form 10-K, the issuer would provide the IFRS to U.S. GAAP reconciliation covering the same three-year period as the audited financial statements included in the Form 10-K.

### **3. Discussion of Proposals A and B**

We believe that U.S. GAAP financial information, whether presented under either Proposal, would be useful to investors in order to facilitate their understanding of and education with respect to IFRS during the early stages of the transition of U.S. issuers to IFRS. This reconciliation, under either Proposal, would assist investors in their understanding and appreciation of the differences between U.S. GAAP and IFRS as issued by the IASB as such differences relate to the issuer providing the disclosure. The Proposal B requirement to provide a U.S. GAAP reconciliation on an annual and on-

going basis would provide U.S. GAAP information for additional and future periods beyond the one-time requirement under IFRS 1. Under Proposal B, issuers would need to have in place sufficient records and controls to prepare this U.S GAAP information.

In addition, U.S. GAAP financial information, whether presented under either Proposal, would facilitate the ability of investors to make comparisons among U.S. issuers that prepare U.S. GAAP financial statements and those that have elected the early use of IFRS. As proposed, only a limited number of U.S. issuers would be eligible to elect the early use of IFRS. While we believe the early use of IFRS by these eligible issuers may promote their comparability to non-U.S. issuers in certain industries, investors may also find it useful to make comparisons with other U.S. issuers, the majority of which would continue to prepare U.S. GAAP financial statements. The Proposal B requirement to provide a U.S. GAAP reconciliation on an annual and on-going basis could promote comparability with U.S. issuers that continue to use U.S. GAAP.

Were the Commission to determine not to continue to permit or require additional U.S. issuers to use IFRS, the Commission would determine whether to require U.S. issuers that had elected the early use of IFRS to revert back to U.S. GAAP. In addition, those issuers may find it appropriate to revert back to U.S. GAAP even if not required to do so. Thus, it would appear important that U.S. issuers electing to file IFRS financial statements maintain sufficient information, records and controls in place to be able to revert back to U.S. GAAP. The Proposal A requirement to provide only the reconciliation under IFRS 1 would not appear to promote the ability of U.S. issuers to revert back to U.S. GAAP, since U.S. GAAP information would not have been required

to be accumulated or disclosed beyond the last year that the issuer previously reported under U.S. GAAP. The Proposal B requirement to provide a U.S. GAAP reconciliation on an annual and on-going basis may promote the ability of U.S. issuers to revert back to U.S. GAAP.

Request for Comment

34. What are commenters' views on Proposals A and B relating to U.S. GAAP reconciling information? Which Proposal would be most useful for investors? Is there a need for the supplemental information provided by Proposal B? Would the requirement under Proposal B have an effect on whether eligible U.S. companies elect to file IFRS financial statements? To what extent might market discipline (i.e., investor demand for reconciliation information) encourage early adopters to reconcile to U.S. GAAP even in the absence of a reconciliation requirement?
35. What role does keeping a set of books in accordance with U.S. GAAP play in the transition of U.S. issuers to IFRS? What impact will keeping U.S. GAAP books have on U.S. investors, U.S. issuers, and market participants?
36. How valuable is reconciliation to U.S. investors, U.S. issuers, and market participants? How valuable is reconciliation to global market participants? Are there some financial statements (such as the statement of comprehensive income) which should not be required to be reconciled to U.S. GAAP?

37. Under either Proposal, would investors find the U.S. GAAP information helpful in their education about IFRS or in being able to continue to make financial statement comparisons with U.S. (and non-U.S.) issuers that continue to prepare U.S. GAAP financial statements? Would one alternative be more helpful to U.S. investors, regulators, or others in understanding information prepared under IFRS or to continue to make comparisons with issuers who prepare U.S. GAAP financial statements?
38. Should we be concerned about the ability of U.S. issuers that elect the early use of IFRS to revert to U.S. GAAP? Would either Proposal be preferred to facilitate such a reversion, should that be appropriate or required as described above?
39. Under Proposal B, should the proposed U.S. GAAP financial information be audited? Is the proposed role of the auditor appropriate? Should the proposed U.S. GAAP financial information be filed as an exhibit to the Form 10-K annual report, instead of as part of the body of the report? Is the proposed treatment of the information appropriate? For example, should the information be deemed “furnished” and not “filed” for purposes of Section 18 of the Exchange Act? Should we require that the supplemental U.S. GAAP information be contained in the annual report that is prepared pursuant to Exchange Act Rule 14a-3(b)?<sup>121</sup> Should the supplemental U.S. GAAP information appear as a note to the financial statements? Is the proposed role of the auditor appropriate?

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<sup>121</sup> 17 CFR 240.14a-3(b).

40. Under either Proposal, should we provide more guidance as to the form and content of the information called for? Under either Proposal, should we require that additional information be provided, such as a “full reconciliation” as is required under Item 18 of Form 20-F?<sup>122</sup> Is there an intermediate position between the reconciliation under Proposal B and the reconciliation under Item 18 of Form 20-F?
41. Under either Proposal, should we require that the issuer’s “Management’s Discussion and Analysis of Financial Condition and Results of Operations” prepared under Item 303 of Regulation S-K contain a discussion of the reconciliation and the differences between IFRS as issued by the IASB and U.S. GAAP?<sup>123</sup>
42. Should we require supplemental U.S. GAAP information, such as that in Proposal B, for all quarterly periods covered by IFRS financial statements?
43. Should the option to report under IFRS, whether under Proposal A or Proposal B, automatically terminate as of a date certain? If so, should that date be a set period of time? For example, should it be three years following the effective date of an adopting release? Should it be a longer or shorter time period? Should it be measured from another date (e.g., the first permissible compliance date or the date of the first letter of no

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<sup>122</sup> Item 18 of Form 20-F requires that a foreign private issuer provide as part of the U.S. GAAP reconciliation “all other information required by U.S. generally accepted accounting principles and Regulation S-X.”

<sup>123</sup> Foreign private issuers that provide a U.S. GAAP reconciliation are required to provide such disclosure. See Instruction 2 to Item 5 of Form 20-F.

objection issued)? What considerations should be part of our decision as to the date or duration?

44. Under Proposal B, does providing U.S. GAAP information require issuers electing to file IFRS financial statements to maintain sufficient information, records and controls in order to revert back to U.S. GAAP? If not, what additional information, records or controls must be maintained?
45. Under Proposal A, what additional information, records or controls would be necessary for U.S. issuers electing to file IFRS financial statements to maintain so that they could revert back to U.S. GAAP?

## **V. DISCUSSION OF PROPOSED AMENDMENTS**

Because we have not previously permitted U.S. issuers to use financial statements prepared in accordance with IFRS as issued by the IASB in their Securities Act and Exchange Act filings, our disclosure requirements and forms have not been specifically adapted for IFRS. This section discusses the proposed amendments to our rules and forms designed to permit the limited early use of IFRS as issued by the IASB as described in Section IV. The amendments also are designed to provide further instruction as to how any issuer that prepares its financial statements in accordance with IFRS as issued by the IASB for filings with the Commission, whether a U.S. issuer or a foreign private issuer that elects to file IFRS financial statements, should respond to disclosure requirements.<sup>124</sup>

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<sup>124</sup> As discussed below in Section V.B., inclusion of foreign private issuers in Article 13 will not change the content of their financial statements filed under Form 20-F.

**A. The Use of IFRS Financial Statements in Commission Filings by Eligible Issuers**

**1. Proposed Amendments to Rule 4-01 of Regulation S-X**

Regulation S-X contains, among other things, the form and content requirements for financial statements included in Securities Act registration statements, registration statements under Section 12 of the Exchange Act, annual and other reports under Sections 13 and 15(d) of the Exchange Act, and proxy and information statements under Section 14 of the Exchange Act. Article 4 of Regulation S-X sets out the rules of general application for those financial statements, and Rule 4-01 of Article 4 describes the form, order and terminology to be used for financial statements included in filings under the Securities Act and the Exchange Act.

Under current Regulation S-X, the financial statements contained in the filings of any domestic issuer must be prepared in accordance with U.S. GAAP, unless the Commission has otherwise provided.<sup>125</sup> Although the Commission has made such provisions for foreign private issuers, which may prepare their financial statements in accordance with a comprehensive set of accounting principles other than U.S. GAAP with a reconciliation to U.S. GAAP or in accordance with IFRS as issued by the IASB without a reconciliation to U.S. GAAP,<sup>126</sup> issuers that are not foreign private issuers are permitted to use only U.S. GAAP.

To accommodate the limited early use of IFRS proposed in this release, we are proposing to add a new paragraph (a)(3) to Rule 4-01 of Regulation S-X so that a new category of issuers (e.g., those meeting the proposed definition of “IFRS issuer”

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<sup>125</sup> See Rule 4-01(a)(1) of Regulation S-X.

<sup>126</sup> See Rule 4-01(a)(2) of Regulation S-X.

discussed further below) may prepare their financial statements in accordance with IFRS as issued by the IASB. Under the proposed Rule 4-01(a)(3), financial statements prepared in accordance with IFRS as issued by the IASB would be subject to the proposed new Article 13, as described in Section V.B., below. Neither proposed Rule 4-01(a)(3) nor the proposed definition of “IFRS issuer” would affect the use of financial statements prepared in accordance with IFRS as issued by the IASB by foreign private issuers.

## **2. Proposed Definition of “IFRS Issuer”**

We are proposing to include a definition of “IFRS Issuer” in the definitions section of Regulation S-X as new Rule 1-02(cc). The term “IFRS issuer” would be defined as any issuer, other than a foreign private issuer that files financial statements pursuant to Item 17 or Item 18 of Form 20-F, that prepares its financial statements in accordance with IFRS as issued by the IASB and meets the eligibility criteria discussed in Section IV.A. We also propose to add a definition of “IFRS issuer” to the general definitions section of Rule 405 of Regulation C under the Securities Act and Rule 12b-2 of Regulation 12B under the Exchange Act. These proposed definitions would refer to the definition contained in proposed Rule 1-02(cc) of Regulation S-X. We propose defining “IFRS issuer” in the same way under Regulation S-X, the Securities Act and the Exchange Act in order to indicate clearly that the term is to have the same meaning in the application of all applicable rules, regulations and forms under the Securities Act and the Exchange Act.



## Request for Comment

46. Are the criteria for issuers eligible to file financial statements in accordance with IFRS as issued by the IASB clear from the proposed definition of “IFRS issuer?” If not, in what way is the definition unclear, and what revisions would be necessary to eliminate any lack of clarity?
47. Is there any ambiguity in the proposed amendments regarding the reasons for the distinction between “IFRS issuer” and foreign private issuer, and the application of the rules to each? If so, what is the nature of the ambiguity and what would be necessary to provide clarity?
48. Is the application of Regulation S-X and Regulation S-K to financial statements prepared in accordance with IFRS as issued by the IASB clear from the proposed amendments, or are there other items within those regulations that should be specifically amended to permit the filing of financial statements prepared in accordance with IFRS as issued by the IASB? If so, how would the application of Regulation S-X and Regulation S-K be unclear if there were no changes to those other than those proposed? What changes would be suggested in order to make them clear?

### **B. Application**

#### **1. Article 13 of Regulation S-X**

We are proposing a new Article 13 to Regulation S-X which relates to the use of IFRS and sets out requirements as to the application of Regulation S-X and related rules and forms for any issuer, be it an eligible U.S. issuer or a foreign private issuer, that

prepares financial statements in accordance with IFRS as issued by the IASB for filings with the Commission. We believe aggregating provisions relating to the use of IFRS as issued by the IASB into a single new article provides for the greatest simplicity and ease of use at this time.

Proposed Rule 13-01 relates to the application of proposed Article 13 with regard to both financial statements and issuers. Under proposed Rule 13-01(a), Article 13 applies to financial statements that are prepared in accordance with IFRS as issued by the IASB filed by an IFRS issuer, by a foreign private issuer pursuant to Form 20-F, or by an issuer with regard to non-issuer financial statements pursuant to Rule 3-05, 3-09 or 3-14 of Regulation S-X, as discussed further in Section V.E.1. below. We do not include foreign private issuers under the definition of IFRS issuer, and consequently list foreign private issuers and IFRS issuers separately in proposed Rule 13-01(a), because financial statement and other disclosure requirements for foreign private issuers are contained separately in Form 20-F. Because Form 20-F refers a foreign private issuer back to Regulation S-X, we believe providing for the application of Article 13 in this manner will provide that our rules relating to the use of financial statements prepared in accordance with IFRS as issued by the IASB will apply equally to both domestic issuers and foreign private issuers, while recognizing that foreign private issuers are subject to a separate disclosure and reporting regime under Form 20-F.

Proposed Rule 13-01(b) brings together three basic requirements for IFRS financial statements. First, such financial statements must contain an appropriate captioned note in which the issuer unreservedly and explicitly states compliance with IFRS as issued by the IASB. Second, the applicable accountant's report must include an

opinion on whether the financial statements comply with IFRS as issued by the IASB. Finally, financial statements which are not prepared in accordance with IFRS as issued by the IASB will be presumed to be misleading or inaccurate, despite footnote or other disclosures, unless the Commission has otherwise provided. The first two requirements currently exist for foreign private issuers that use IFRS as issued by the IASB, but exist outside of Regulation S-X. The third clarifies the application of Rule 4-01(a) for IFRS financial statements.

The purpose of these requirements is so that issuers that file IFRS financial statements with the Commission do not deviate from IFRS as issued by the IASB. Deviations would not foster the development and use of a single set of high-quality global accounting standards and would undercut an objective of the proposed option, which as stated previously is intended to enhance comparability in an industry where IFRS is used more often than any other set of accounting standards. As we stated in the adopting release accepting IFRS financial statements by foreign private issuers without reconciliation to U.S. GAAP, we believe that the benefits of moving towards a single set of globally accepted standards as a long-term objective, including increased transparency and comparability of financial statements, are attainable only if IFRS represents a single set of high-quality accounting standards and not a multiplicity of divergent standards using the same name. However, we would retain the ability to take such action as may be appropriate to address financial reporting issues in filings with the Commission.

Proposed Rule 13-02 describes how the other articles contained in Regulation S-X would apply to IFRS financial statements. Regulation S-X has various provisions that specify the financial presentation, disclosure content, and in some cases, recognition and

measurement of amounts, to be provided within an issuer's financial statements. Under the proposed rules, an eligible IFRS issuer would apply IFRS as issued by the IASB in its entirety, and ordinarily would not be required to comply with provisions of Regulation S-X that specify financial presentation, disclosure content, or recognition and measurement of amounts within the issuer's financial statements. However, as described more fully in Section V.D.4., in many instances an eligible IFRS issuer may be permitted to follow these types of provisions as acceptable accounting policy choices under IAS 8. Also, in many instances disclosures of the types specified by Regulation S-X may be necessary in IFRS financial statements to fully comply with the general requirement for fair presentation of IFRS financial statements under IAS 1 "Presentation of Financial Statements."

Regulation S-X also has various provisions that specify the age, dates and periods to be covered by financial statements of the issuer in Commission filings under various circumstances, the qualifications of auditors and the content of audit reports, and circumstances in which financial statements of entities other than the issuer are required in the issuer's filings. These provisions are relevant irrespective of any particular system of accounting principles and would continue to apply to IFRS issuers.

A walkthrough of how proposed Rule 13-02 would specify this application follows. In those instances where an eligible IFRS issuer is not required to comply with the particular provision of Regulation S-X, but may be permitted to do so as an acceptable accounting policy choice under IAS 8, the provision is described as "need not

apply”.<sup>127</sup> If the particular provision of Regulation S-X is by its nature not applicable to IFRS financial statements, or would be in conflict with IFRS as issued by the IASB, the provision is described as “shall not apply”. Otherwise, the provisions of Regulation S-X would apply.

Article 1 “Application of Regulation S-X” describes the application of Regulation S-X in setting forth the form and content requirements for financial statements filed as part of Commission filings, and includes definitions of terms used throughout Regulation S-X. Except as noted below regarding Rule 4-10, Article 1 would apply.

Article 2 “Qualifications and Reports of Accountants” describes the qualifications and reports of accountants and includes certain requirements related thereto. Article 2 would apply.

Article 3 “General Instructions as to Financial Statements”, which principally addresses the age, dates and periods to be covered by financial statements of the issuer and the circumstances in which financial statements of entities other than the issuer are required in the issuer’s filings, would apply. However, some of the individual rules contained in Article 3 specify certain disclosure content within an issuer’s financial statements, and need not, or would not, apply to IFRS financial statements. Specifically, Rule 3-03 “Instructions to income statement requirements,” and Rule 3-04 “Changes in other stockholders’ equity,” need not apply to IFRS financial statements because the areas to which they relate are provided for in IFRS as issued by the IASB. Rule 3-15(a)(1) “Special provisions as to real estate investment trusts,” would not apply because

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<sup>127</sup> However, such a provision could not be used to the extent it would create a conflict with IFRS. For example, certain provisions of Rule 4-10(c) “Full Cost Method” may conflict with certain requirements of particular IFRS standards or the IFRS Framework.

its requirements with respect to income statement presentation are incompatible with IFRS as issued by the IASB.<sup>128</sup> Rules 3-15(b) and (c) need not apply to IFRS financial statements but the disclosures specified therein may be necessary for a fair presentation under IAS 1. Rule 3-20 “Currency for financial statements of foreign private issuers” by its terms applies only to foreign private issuers.

Article 3A “Consolidated and Combined Financial Statements” need not apply, because the areas to which those rules relate are provided for in IFRS as issued by the IASB.<sup>129</sup>

Article 4 “Rules of General Application” would apply, except for Rules 4-07, 4-08, and certain paragraphs of Rule 4-10. Rule 4-07 “Discount on shares” and Rule 4-08 “General notes to financial statements,” need not apply to IFRS financial statements, because the areas to which those rules relate are provided for in IFRS as issued by the IASB.<sup>130</sup>

Rule 4-10, “Financial Accounting and Reporting for Oil and Gas Producing Activities Pursuant to the Federal Securities Laws and the Energy Policy and Conservation Act of 1975” references energy-related statutes and contains references to specific pronouncements under U.S. GAAP.<sup>131</sup> With respect to Commission filings, Rule

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<sup>128</sup> See IAS 1 “Presentation of Financial Statements.”

<sup>129</sup> See IAS 27 “Consolidated and Separate Financial Statements” and SIC 12 “Consolidation – Special Purpose Entities.”

<sup>130</sup> Financial statement footnote disclosure requirements on particular topical areas are found throughout the standards and interpretations of IFRS.

<sup>131</sup> The Commission has recently issued a proposing release relating to oil and gas disclosure requirements contained in Regulation S-X and Regulation S-K. See Release No. 33-8935 [73 FR 39526 (July 9, 2008)].

4-10 would apply, except as noted below.<sup>132</sup> Specifically, Rule 4-10(a) would apply to IFRS financial statements because the definitions it contains are used in the disclosure requirements under Industry Guide 2 and FAS 69, with which an issuer using IFRS would continue to comply.<sup>133</sup> Rule 4-10(b) “Successful Efforts Method,” which specifies compliance with FAS 19 “Financial Accounting and Reporting by Oil and Gas Producing Companies,” need not be applied to IFRS financial statements. Although FAS 19 may be applied in IFRS financial statements in the absence of specific guidance on oil and gas accounting under IFRS, IFRS does not require the application of FAS 19.<sup>134</sup> Rule 4-10(c) “Full Cost Method” need not apply to IFRS financial statements. Rule 4-10(d) “Income Taxes” need not apply to IFRS financial statements because the areas to which they relate are provided for in IFRS as issued by the IASB.<sup>135</sup>

With respect to Article 5 “Commercial and Industrial Companies,” Article 7 “Insurance Companies,” and Article 9 “Bank Holding Companies,” which prescribe specific financial statement captions and certain footnote disclosures for issuers in their respective industries, these articles need not apply to IFRS financial statements. However, the schedules under Rules 5-04, 7-05, and 9-06, which specify supplemental parent company-only information or separate supplemental tabular disclosures, would still apply. As discussed in Section V.B.2., below, in providing separate audited

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<sup>132</sup> We propose to clarify in Rule 1-01(c) of Regulation S-X that the proposed application of Rule 4-10 in Rule 13-02 would apply only to Commission filings.

<sup>133</sup> See Section V.G.2. below.

<sup>134</sup> For discussion relating to IAS 8 “Accounting Policies, Changes in Accounting Estimates and Errors” and the use of guidance to areas for which specific IFRS do not exist, see Section III.B.4., above, and Section V.C.4., below.

<sup>135</sup> IAS 12 “Income Taxes.”

schedules pursuant to those rules, we propose that an IFRS issuer or foreign private issuer may use amounts based on IFRS as issued by the IASB.

Article 6 “Registered Investment Companies,” Article 6A “Employee Stock Purchase, Savings and Similar Plans,” and Article 8 “Financial Statements of Smaller Reporting Companies” would not apply because, as described in Section IV above, such issuers would be excluded from the definition of “IFRS issuer.”

Article 10, “Interim Financial Statements,” would not generally apply to IFRS financial statements. This is because interim financial statements that comply with IFRS as issued by the IASB must comply with 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.

However, several paragraphs of Rule 10-01 would continue to apply to IFRS financial statements. Rule 10-01(a)(1) would apply because it contains the general requirement for interim financial statements that must be provided. Rule 10-01(a)(6) would continue to apply so as to allow the omission of schedules for IFRS interim financial statements. Rule 10-01(b)(6) would continue to apply to require disclosure relating to any material accounting changes and the filing of a preferability letter from the issuer’s independent auditor. For issuers that file IFRS financial statements, the disclosure required by this paragraph should comply with the requirements of IAS 34. Rules 10-01(c)(1) - (3)<sup>136</sup> would also continue to apply to IFRS financial statements for interim periods, as those paragraphs describe the periods for which balance sheets, income statements, and changes in financial position are required to be presented in

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<sup>136</sup> Rule 10-01(c)(4) would not apply to an IFRS issuer. IAS 34 permits a highly seasonal entity to present a 12-month interim period in addition to, but not in lieu of, the year-to-date interim period.



quarterly reports on Form 10-Q.<sup>137</sup> Rule 10-01(d), which requires that interim financial statements included in quarterly reports be reviewed by an independent accountant, would continue to apply. Rule 10-01(e) also continues to apply to permit the filing of interim financial information to be waived in certain cases.

Finally, both Article 11 “Pro Forma Financial Information,” and Article 12 “Form and Content of Schedules,” would apply in their entirety. Additional information on the proposed application of Article 11 is provided in Section V.E.

#### Request for Comment

49. Is there any reason why an issuer would be unable to assert compliance with IFRS as issued by the IASB and obtain the necessary opinion from its independent auditor?
50. Is the application of Articles 1 through 12 of Regulation S-X to IFRS financial statements clear from the proposed Rule 13-02? If not, what further clarification is necessary? Are there other rules contained in Articles 1 through 12 that do not, or may not, apply to financial statements prepared in accordance with IFRS as issued by the IASB and that are not addressed in proposed Rule 13-02? If so, what are they and how should they be addressed?
51. A U.S. issuer engaged in oil and gas producing activities that has followed the successful efforts method and carries forward that practice under IFRS will have consistent reserves disclosure under FAS 19, FAS 69 and Industry Guide 2. If that issuer were to apply another method of

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<sup>137</sup> IAS 34 uses the term “changes in equity” rather than the term “changes in financial position” that is used in Regulation S-X.

accounting permitted under IFRS, it may lead to inconsistencies between Industry Guide disclosure, FAS 69 disclosure, and the financial statements. Would such potential inconsistencies create ambiguity for users of that information or otherwise be a cause for concern? If so, what would be an appropriate means of addressing the inconsistencies?

## **2. Proposed Clarifying Amendments with Respect to References to IFRS as Issued by the IASB**

The federal securities laws contain several references to “generally accepted accounting principles.”<sup>138</sup> In addition, our regulations contain numerous accounting references, which include both references to “generally accepted accounting principles”, or “GAAP” and specific references to provisions of U.S. GAAP. This may cause some doubt as to how such references should apply with respect to financial statements prepared in accordance with IFRS as issued by the IASB. In order to provide clarity as to application of our regulations, we are proposing Rule 13-03 to address application of both general references to GAAP as well as the references to specific U.S. GAAP pronouncements for IFRS financial statements. Consistent with our proposed approach to Article 13 of Regulation S-X overall, we propose an approach to address these matters on a consolidated basis rather than amending each of the specific references at this time.

With regard to general references to GAAP, we are proposing an approach consistent with the approach we used when we adopted rules pursuant to Section 401(b) of the Sarbanes-Oxley Act of 2002<sup>139</sup> with respect to the use of non-GAAP financial

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<sup>138</sup> See, e.g., Exchange Act Section 13(b)(2)(B)(ii) [15 U.S.C. 78m(b)(2)(B)(ii)].

<sup>139</sup> 15 U.S.C. 7201 et seq.

measures by foreign private issuers.<sup>140</sup> In both Regulation G and Item 10(e)(3) of Regulation S-K, we specified that GAAP refers to U.S. GAAP, but in the case of foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared.<sup>141</sup> Similarly, we are proposing a similar approach for administrative purposes only in Rule 13-03(a) that, unless otherwise specifically provided,<sup>142</sup> references to “generally accepted accounting principles” in Parts 210, 229, 230, 239, 240 and 249, except for certain rules in Part 240 not relating to financial statements in Exchange Act registration statements, periodic reports and proxy or information statements,<sup>143</sup> should be construed by issuers to which Article 13 applies to mean IFRS as issued by the IASB.<sup>144</sup>

In addition to general references to GAAP, our regulations also contain numerous references to specific standards and interpretations included in U.S. GAAP.<sup>145</sup> We are proposing an approach consistent with the approach we used for our amendments removing the reconciliation requirement for IFRS financial statements by foreign private issuers. Proposed Rule 13-03(b) would indicate that, unless otherwise specifically

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<sup>140</sup> See Release No. 33-8176 (January 22, 2003) [68 FR 4820 (January 30, 2003)]. See also Rule 407(d)(5) of Regulation S-K for a similar approach with respect to audit committee financial expert disclosure.

<sup>141</sup> See, e.g., Section 101(b) of Regulation G and Item 10(e)(3)(i) of Regulation S-K.

<sup>142</sup> An example of specifically providing otherwise is in Regulation G and Item 10(e)(3) of Regulation S-K, where references to U.S. GAAP and other comprehensive bases of accounting is intended to be specific. See also Rule 4-01 of Regulation S-X.

<sup>143</sup> Specifically, Rules 11a-1h, 15c3-1g, 17a-5, 17g-3, 17h-1T, and 17i-6.

<sup>144</sup> The staff has taken a similar approach in the application of internal control reporting requirements by foreign private issuers without recognizing foreign bases of accounting as “generally accepted.” See <http://www.sec.gov/info/accountants/controlfaq.htm>.

<sup>145</sup> See, e.g., Item 303(a)(4) of Regulation S-K [17 CFR 229.303(a)(4)].

provided, in providing information in response to requirements in Parts 210, 229, 230, 239, 240 and 249 that refer to pronouncements of U.S. GAAP, disclosure is to be provided that satisfies the objective of the relevant disclosure requirements. We are not proposing to revise the references to U.S. GAAP standards and interpretation to include their analog under IFRS as issued by the IASB. We believe that issuers preparing IFRS financial statements would be able to determine which, if any, IFRS standards would provide useful reference in satisfying the relevant disclosure requirements without undue burden.

Finally, proposed Rule 13-03(c) would clarify that in providing general caption data, segment data or schedule information in response to Regulation S-K item requirements, IFRS issuers may present amounts based on IFRS as issued by the IASB. This proposed approach is consistent with the approach adopted for foreign private issuers that file IFRS financial statements without a reconciliation to U.S. GAAP.<sup>146</sup> It is also consistent with the proposed approach to schedule information from IFRS issuers under Articles 5, 7 and 9 of Regulation S-X, as discussed above.

#### Request for Comment

52. With regard to specific references to U.S. GAAP in our regulations, should we amend the references to U.S. GAAP pronouncements to also reference appropriate IFRS guidance, and, if so, what should the references refer to? Would issuers be able to apply the proposed broad approach to U.S. GAAP pronouncements and would this approach elicit appropriate information for investors? Should we retain the U.S. GAAP references for definitional purposes?

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<sup>146</sup> See Instruction 5 to Item 5 of Form 20-F.

53. With regard to general references to U.S. GAAP, is our proposed approach appropriate and sufficiently clear? If not, how should these matters be addressed differently and why?
54. Is our proposed approach sufficiently clear on how to address general caption data, segment data and schedule information outside the financial statements? If not, what changes should we make? Are there other places in our regulations that need to be addressed?

**C. Proposed Amendments to Item 10(e) of Regulation S-K and Regulation G**

In addition to the general references to “generally accepted accounting principles” described above, certain rules relating to the use of non-GAAP financial measures contain specific references to “U.S. generally accepted accounting principles:” both Item 10(e)(3) of Regulation S-K<sup>147</sup> and Rule 101(b) of Regulation G<sup>148</sup> state that for purposes of those regulations, “GAAP refers to generally accepted accounting principles in the United States.” In each case, there is an express provision addressing the application of Item 10(e) and Regulation G to foreign private issuers that prepare financial statements in accordance with non-U.S. generally accepted accounting principles.<sup>149</sup> In order to similarly address the situation of U.S. issuers preparing their financial statements in accordance with IFRS as issued by the IASB, we are proposing to amend Item 10(e)(3) of Regulation S-K and Rule 101(b) of Regulation G to include IFRS issuers together with foreign private issuers in how to apply our rules relating to the use of non-GAAP

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<sup>147</sup> 17 CFR 229.10(e)(3).

<sup>148</sup> 17 CFR 244.101(b).

<sup>149</sup> See Item 10(e)(3)(i) and (ii) of Regulation S-K [17 CFR 229.10(e)(3)(i) and 229.10(e)(3)(ii)] and Rule 101(b)(1) and (2) of Regulation G [17 CFR 244.101(b)(1) and 244.101(b)(2)].

financial measures when the issuer's primary financial statements are prepared on a basis other than U.S. GAAP.

**D. Related Disclosure and Financial Reporting Issues**

**1. Selected Financial Data**

Under Item 301(a) of Regulation S-K, issuers must provide five years of selected financial data. As part of our proposal to accept financial statements prepared using IFRS as issued by the IASB from certain domestic issuers, we are proposing to add an instruction to Item 301 to clarify that an IFRS issuer shall present selected financial data on the basis of IFRS as issued by the IASB.

We recognize that, under the amendments proposed in this release, many IFRS issuers will be adopting IFRS as issued by the IASB for the first time and therefore will not have available five years of financial data based on IFRS as issued by the IASB. Accordingly, the proposed instruction to Item 301 allows an IFRS issuer that prepares its financial statements in accordance with IFRS as issued by the IASB for the first time to present selected historical financial data for the three most recent fiscal years. If this instruction is adopted, in each of the two subsequent fiscal years that IFRS issuer would provide an additional year of selected financial data based on IFRS as issued by the IASB, building up to five years.

Request for Comment

55. Will three years of selected financial data based on IFRS be sufficient for investors, or should IFRS issuers be required to disclose in their selected financial data previously published information based on U.S. GAAP with respect to previous financial years or interim periods?

## 2. Market-Risk and the Safe Harbor Provisions

Pursuant to Item 305 of Regulation S-K,<sup>150</sup> an issuer is required to provide quantitative and qualitative disclosure about market risk related to certain financial instruments. This information, which is not included in the financial statements of a filing, is expressly subject to the statutory safe harbors provided under Section 27A of the Securities Act<sup>151</sup> and Section 21E of the Exchange Act<sup>152</sup> to the extent it constitutes “forward looking statements.”<sup>153</sup>

IFRS 7 “Financial Instruments: Disclosure” as recently amended, requires market risk disclosure that is similar to that required under Item 305.<sup>154</sup> In this respect, the sensitivity analysis provided under IFRS will be based on forward-looking information. This information will appear in the footnotes to audited IFRS financial statements.

Section 27A of the Securities Act and Section 21E of the Exchange Act expressly exclude from the safe harbor any information “included in a financial statement prepared in accordance with generally accepted accounting principles.”<sup>155</sup> The safe harbor therefore is not available for any forward looking information included in IFRS financial statements. When we adopted the market risk disclosure requirements, the Commission considered whether the market risk disclosure could be included in a registrant’s financial

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<sup>150</sup> 17 CFR 229.3-05.

<sup>151</sup> 15 U.S.C. 77z-2.

<sup>152</sup> 15 U.S.C. 78u-5.

<sup>153</sup> See Item 305(d) of Regulation S-K. See also Release No. 33-7386 (January 31, 1997) [62 FR 6044 (February 10, 1997)] for the release adopting the derivatives disclosure requirement and the related express safe harbor.

<sup>154</sup> IFRS 7 requires this information beginning with the 2007 fiscal year.

<sup>155</sup> See Securities Act Section 27A(b)(2)(A) and Exchange Act Section 21E(b)(2)(A).

statements and, if so, whether the safe harbor should apply to that disclosure. The Commission decided to require that the information required under Item 305 be disclosed outside the financial statements.

As required by Article 4-01 of Regulation S-X, the financial statements filed by a registrant must comply fully with a comprehensive body of accounting principles, which, under the proposed amendments, includes IFRS 7 for those companies that use IFRS as issued by the IASB.

We recognize that foreign private issuers that are IFRS filers have expressed particular concerns related to the applicability of the safe harbor for forward-looking statements.<sup>156</sup> As we did in connection with our approach to foreign private issuers, we are not proposing any changes in this area for U.S. issuers that elect to use IFRS, although we are soliciting comments below. At this time, we believe the question warrants further consideration and, if appropriate, we may address through a separate rulemaking initiative.

#### Request for Comment

56. Should the Commission address the implications of forward-looking disclosure contained in a footnote to the financial statements in accordance with IFRS 7? For example, would some kind of safe harbor provision or other relief or statement be appropriate?

### **3. Disclosure of First-Time Adoption of IFRS in Form 10-K**

As referenced above in Section IV.C., we are proposing that an eligible U.S. issuer that changes to IFRS disclose certain information related to that change in its

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<sup>156</sup> See the 2007 Adopting Release, discussion at Section III.C.2.c.



annual report on Form 10-K covering the fiscal year for which IFRS financial statements are first filed. Because U.S. issuers have not previously been permitted to use a basis of financial reporting other than U.S. GAAP, we believe it is appropriate that an issuer provide disclosure related to a change in its basis of financial reporting prominently in its Form 10-K, such as at the beginning of the Business section.<sup>157</sup>

Under our integrated disclosure system, disclosure requirements for Form 10-K are contained in Regulation S-K. To implement these disclosure requirements in Form 10-K, we are proposing to amend Item 101 “Business” in Regulation S-K by adding a paragraph (i). Under the proposed Item 101(i), an issuer that changes the comprehensive set of accounting principles used in preparing its primary financial statements to IFRS must prominently disclose the following in its first annual report on Form 10-K that uses IFRS:

- The financial statements are prepared using IFRS;
- The reasons for the change;
- The corporate governance processes followed in electing to make the change (including whether a shareholder vote was held and whether the company’s board of directors and audit committee considered the matter); and
- The date the issuer submitted its request to the staff demonstrating that it met the criteria to change to IFRS and the date the staff issued its letter of no objection.

Under proposed Item 101(i), similar disclosure relating to the first three items above would be required from any IFRS issuer that subsequently chose to revert back to

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<sup>157</sup> We have not proposed amendments to Form 20-F to require similar disclosure from foreign private issuers that adopt IFRS for the first time because foreign private issuers have previously been permitted to change their basis of financial reporting and because a foreign private issuer’s change to IFRS in many cases will be mandatory.

U.S. GAAP. That disclosure would be included in the annual report on Form 10-K for the year in which the issuer reverted to U.S. GAAP.

Request for Comment

57. Is the proposed disclosure in Form 10-K sufficient in prominence and content to indicate to investors that the issuer has changed its basis of financial reporting from that used in previous filings? If not, what further disclosure should be provided, and where? Should we require that an issuer disclose the criteria under which it is eligible to file IFRS financial statements? Should issuers be required to reference the letter of no objection in their first IFRS filing?
58. Should we amend Form 8-K to require “forward-looking” disclosure relating to an issuer’s consideration of whether it will file IFRS financial statements in the future? If so, what type of information should be disclosed, and at what point in time prior to the issuer actually filing IFRS financial statements? Would a requirement to make such forward-looking disclosure have any impact on an issuer’s decision to adopt IFRS? If so, what would the effect be?

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

The Commission recognizes that a U.S. issuer that files financial statements prepared in accordance with IFRS as issued by the IASB may nevertheless pursuant to the application of IAS 8 look for guidance from Commission sources other than rules and regulations, including Accounting Series Releases (“ASRs”) and Financial Reporting

Releases (“FRs”).<sup>158</sup> In addition, such an issuer may look to the guidance that the Commission staff provides in Staff Accounting Bulletins (“SABs”), and, if the issuer is engaged in certain lines of business, various Industry Guides.<sup>159</sup> No changes to such guidance are planned. We believe that an issuer that prepares its financial statements in accordance with IFRS as issued by the IASB, and its auditor, would continue to be required to follow any Commission guidance that relates to auditing issues.<sup>160</sup> An issuer using IFRS as issued by the IASB, although not required to follow U.S. GAAP guidance, may find reference to FRs, ASRs, SABs, and Industry Guides and other forms of guidance useful in the application of IAS 8.<sup>161</sup>

#### Request for Comment

59. Are there issues on which further guidance for IFRS issuers would be necessary and appropriate?

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<sup>158</sup> FRs 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 FR 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.

<sup>159</sup> 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. They have not been issued pursuant to notice and comment rulemaking, and the Commission has neither approved nor disapproved these interpretations.

<sup>160</sup> Issuers are required to have audits conducted in accordance with the standards of the PCAOB regardless of the comprehensive basis of financial reporting they use to prepare their financial statements.

<sup>161</sup> The provisions of IAS 8 are described above in footnote 76.

## **E. Financial Statements of Other Entities under Regulation S-X**

Several rules under Regulation S-X relate to financial statements of other entities that an issuer must include in its filings. This section describes how these rules would apply to an issuer that files IFRS financial statements.

### **1. Application of the Amendments to Rules 3-05, 3-09 and 3-14**

Under Rules 3-05, 3-09 and 3-14 of Regulation S-X, an issuer, in certain circumstances, must include the financial statements of another entity in its filings.<sup>162</sup> Although we are not proposing specific amendments to those rules as part of this rulemaking initiative, as noted in proposed Rule 13-03(a), the amendments we are proposing in this release will apply equally in the application of Rules 3-05, 3-09 and 3-14.

#### **a. Significance Testing**

Under Rules 3-05, 3-09 and 3-14, an issuer is required to include the financial statements of another entity if the entity meets certain significance tests.<sup>163</sup> If the significance thresholds under Rule 3-05, 3-09 or 3-14 are met, then the issuer must provide on a separate basis audited annual financial statements of the subject entity.

Significance testing under Rule 1-02(w) has historically been performed using U.S. GAAP amounts. As part of our adopting release accepting IFRS financial

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<sup>162</sup> 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% or less owned investments accounted for by the equity method. Rule 3-14 specifies requirements for financial statements of real estate operations (properties) acquired or to be acquired.

<sup>163</sup> An entity is significant to the issuer under Rules 3-05 and 3-09 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. Rule 3-14 significance is based on the 10% level in Rule 1-02(w).

statements by foreign private issuers without reconciliation to U.S. GAAP, we amended Rule 1-02(w) to clarify that a foreign private issuer that prepares its financial statements in accordance with IFRS as issued by the IASB should conduct significance testing using amounts determined under IFRS as issued by the IASB. We are proposing to revise Rule 1-02(w) to clarify that an IFRS issuer that prepares its financial statements in accordance with IFRS as issued by the IASB also should perform significance testing using amounts determined under IFRS as issued by the IASB.

Requirements for significance testing are governed by the financial statements of the issuer. Generally, if an issuer prepares its own financial statements using IFRS as issued by the IASB, that issuer would perform the significance tests under Rules 3-05, 3-09 and 3-14 using IFRS as issued by the IASB, regardless of the basis of financial reporting used by the other entity.

**b. Separate Historical Financial Statements of Another Entity Provided under Rule 3-05, 3-09 or 3-14**

Generally, the historical financial statement requirements for an acquired business or investee under Rule 3-05, 3-09 or 3-14 are governed by the status of that entity, and the burden of providing the financial statements of a non-issuer entity would be no higher than if it were the issuer. Under the adopting release accepting IFRS financial statements by foreign private issuers without reconciliation to U.S. GAAP, we permit foreign and domestic issuers to file financial statements under Rules 3-05 and 3-09 for foreign businesses under IFRS as issued by the IASB without reconciliation to U.S. GAAP. In addition, in applying the proposed amendments, if an IFRS issuer or foreign private issuer is required to file financial statements under Rule 3-05, 3-09, or 3-14 for any entity, whether domestic or foreign, whose audited financial statements are in accordance

with IFRS as issued by the IASB, those financial statements would be acceptable in a Commission filing.<sup>164</sup> For example, IFRS issuers and foreign private issuers that acquire a “significant” business, domestic or foreign, under Rule 3-05 would be permitted, under the proposed rules, to include the acquiree’s financial statements prepared in accordance with IFRS as issued by the IASB. The same would be true for the financial statements of a “significant” investee under Rule 3-09 or acquired property under Rule 3-14. To clarify this ability to use IFRS as issued by the IASB for any financial statements under Rule 3-05, 3-09 or 3-14, we are proposing to amend Rule 4-01(a) of Regulation S-X to clarify that such an option is available.

## **2. 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.<sup>165</sup> 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 were IFRS issuers, we would accept the financial statements prepared in accordance with IFRS as issued by the IASB.

However, Rule 3-10 permits modified reporting by subsidiary issuers of guaranteed 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. A parent issuer or guarantor that presents consolidated financial statements under IFRS as

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<sup>164</sup> The entity need not meet the proposed definition of “IFRS issuer.”

<sup>165</sup> 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).

issued by the IASB would present the condensed consolidating financial information on the basis of IFRS as issued by the IASB.<sup>166</sup> We do not believe that any revision to Rule 3-10 is necessary to implement the acceptance of financial statements prepared using IFRS as issued by the IASB, other than extending the reference to the articles of Regulation S-X to incorporate Article 13.

### **3. Financial Statements Provided under Rule 3-16**

Rule 3-16 specifies the requirement for financial statements of affiliates of an issuer 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.<sup>167</sup> Affiliates whose securities collateralize a security registered or being registered are not themselves issuers, but the issuer whose securities are collateralized (ordinarily the parent company) must file the financial statements of those affiliates under Rule 3-16 “that would be required if the affiliate were a registrant.” The affiliates will ordinarily be consolidated subsidiaries of the parent/issuer. If the parent/issuer is an eligible IFRS issuer, then we would accept financial statements prepared in accordance with IFRS as issued by the IASB for both the parent/issuer and the Rule 3-16 affiliates. If the parent/issuer files U.S. GAAP financial statements, we would expect the Rule 3-16 financial statements to be U.S. GAAP as well. We do not believe that any revision to Rule 3-16 is necessary to implement the

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<sup>166</sup> We took a similar approach in our adopting release accepting IFRS financial statements by foreign private issuers without reconciliation to U.S. GAAP.

<sup>167</sup> Substantial portion of the collateral is defined in Rule 3-16(b) as “the aggregate principal amount, par value, or book value of the [affiliate’s] securities as carried by the registrant, or the market value of such securities, whichever is the greatest, equals 20 percent or more of the principal amount of the secured class of securities.”

acceptance of financial statements prepared in accordance with IFRS as issued by the IASB.

**F. Pro Forma Financial Statements Provided under Article 11**

Under Article 11 of Regulation S-X, issuers are required 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. 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 financial reporting as the issuer. Similarly, these rules do not impose a higher presentation burden on pro forma financial information than would be imposed on the historical financial statements of the issuer. We are not proposing to amend Article 11, but the proposed amendments will apply in the application of Article 11. Accordingly, if the proposed amendments are adopted, an IFRS issuer would 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.<sup>168</sup>

Request for Comment

60. Is the application of the proposed rules to the preparation of financial statements and financial information described in Sections V.D and V.E above sufficiently clear? If not, what areas need to be clarified? Are any

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<sup>168</sup> We took a similar approach in our adopting release accepting IFRS financial statements by foreign private issuers without reconciliation to U.S. GAAP.



further changes needed for issuers that prepare their financial statements using IFRS as issued by the IASB?

61. Under the proposed rules, an IFRS issuer or foreign private issuer may file financial statements of an entity under Rule 3-05, 3-09 or 3-14 prepared in accordance with IFRS as issued by the IASB even though the entity does not meet the definition of “IFRS issuer.” Should we also accept financial statements required under Rule 3-05, 3-09 or 3-14 prepared in accordance with IFRS as issued by the IASB without regard to the status of the issuer as an IFRS issuer or foreign private issuer? Should our acceptance depend on characteristics of the entity whose financial statements are being provided, such as that the entity already prepares IFRS financial statements or the entity principally operates outside the United States?
62. Are there other rules in Regulation S-X that should be specifically amended to accommodate our proposal? If so, how would the application of those rules be unclear if there were no changes to those rules, and what changes would be suggested in order to make them clear?

## **G. Industry Specific Matters**

### **1. Disclosure Pursuant to Industry Guides**

Companies that are engaged in certain lines of business are subject to various Industry Guides.<sup>169</sup> The Commission is not proposing any specific amendments with respect to information required to be disclosed pursuant to the Industry Guides by IFRS

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<sup>169</sup> 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. See 17 CFR 229.801(a) - (g) and 229.802(a) - (d) and (e).

issuers and believes that IFRS issuers that transition to IFRS and to which these Guides apply do not need a general accommodation.

Several of the Industry Guides contain specific references to U.S. GAAP pronouncements. Although we are not proposing to amend the Industry Guides, IFRS issuers should respond to those provisions in a manner consistent with the approach taken in the proposed Rule 13-03 of Regulation S-K. Specifically, an IFRS issuer that is subject to the Industry Guides, in responding to Industry Guide items that refer to U.S. GAAP pronouncements, should provide disclosure that satisfies the objective of the Industry Guide disclosure requirements. In providing such disclosure, an IFRS issuer would not need to repeat information contained in its IFRS financial statements.

Industry Guide disclosure is intended to provide a “track-record” of trend information such as loan quality information for banks providing disclosure under Industry Guide 3 or property casualty loss reserve development under Industry Guide 6. The Commission recognizes that transition to IFRS will impact the Industry Guide disclosure of IFRS issuers for the first time, who may not have available prior years of Industry Guide information prepared under IFRS as issued by the IASB. Although the staff does not intend to amend the Industry Guides, the staff believes and intends to apply the Industry Guides such that a first-time adopter of IFRS who relies on the amendments, if adopted, would be consistent with existing Industry Guides if it provides three years of Industry Guide information under IFRS as issued by the IASB, with information provided under U.S. GAAP to cover earlier years as called for by the Industry Guides, as applicable.

Under Industry Guide 5 “Preparation of Financial Statements Relating to Interest in Real Estate Limited Partnerships,” real estate limited partnerships provide prior performance information of programs sponsored by the general partner and its affiliates in tabular form. The tables containing this information may encompass numerous affiliates of the General Partner, and often are quite voluminous. For issuers that prepare their financial statements in accordance with IFRS as issued by the IASB, the staff would permit this prior performance information to continue to be presented in U.S. GAAP. The General Partner and affiliated partnerships need not convert their prior performance information to IFRS if the partnership is otherwise eligible to use IFRS under the proposed rules.

## **2. Disclosure from Oil and Gas Companies under FAS 69**

Pursuant to either earlier Commission rules or more recent FASB standards, public companies with significant oil and gas activities have been required to disclose reserve and other information relating to those activities. In November 1982, the FASB adopted FAS 69 “Disclosures about Oil and Gas Producing Activities,” which establishes a comprehensive set of disclosures for oil and gas producing activities. Under this standard, public companies with such significant activities are required to disclose unaudited supplementary information relating to proved oil and gas reserves, and capitalized costs relating to oil and gas producing activities. As a result of the FASB’s adoption of FAS 69, the Commission initially suspended the effectiveness of a rule under Regulation S-X calling for substantially similar information,<sup>170</sup> and then deleted the rule

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<sup>170</sup> The requirement was found in former Rule 4-10(k) of Regulation S-X. The application of this rule was suspended in Release No. 33-6444 (December 15, 1982) [47 FR 57911 (December 29, 1982)].

altogether.<sup>171</sup> The Commission noted that, in light of the FASB standard, its own earlier rule requiring this disclosure was duplicative and no longer necessary.

As we did with foreign private issuers when we provided the option to provide IFRS financial statements without a reconciliation to U.S. GAAP, we are proposing to continue to require an IFRS issuer to provide the information called for under FAS 69 even though the company is preparing financial statements in accordance with IFRS as issued by the IASB. See proposed Rule 13-03(d) of Regulation S-X. The nature of the information provided under FAS 69 is not in the nature of U.S. GAAP information but rather is supplementary information included as an unaudited footnote to the audited financial statements. We believe that the information required by FAS 69 is useful to investors and would not otherwise be required to be disclosed under IFRS.

#### Request for Comment

63. Should an IFRS issuer be required to continue to comply with the disclosure requirements of FAS 69? What alternatives may be available to elicit the same or substantially the same disclosure? Proposed Rule 13-03(d) of Regulation S-X is modeled on an instruction relating to FAS 69 in Item 18 of Form 20-F. Does this proposed rule need to be modified in any way to more clearly require filers to provide information required by FAS 69?

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<sup>171</sup> Release No. 33-6818 (February 17, 1989) [54 FR 8202 (February 27, 1989)] proposed the deletion which was adopted in Release No. 33-6959 (September 17, 1992).

## **H. Application of the Proposed Amendments to Other Forms, Rules and Schedules**

### **1. Application of Proposed Amendments to Exempt Offerings**

The proposed amendments, if adopted, would apply to financial statements filed with the Commission by an eligible IFRS issuer that are included in any registration statement filed under the Securities Act or the Exchange Act, periodic or other report filed under Section 13(a) or 15(d) of the Exchange Act and any proxy or information statement pursuant to Section 14 of the Exchange Act. An IFRS issuer that would be eligible to file with the Commission financial statements prepared in accordance with IFRS under the proposed rules also would be able to use those financial statements when conducting an offer or sale of securities that is exempt from registration under the Securities Act, where the exemption relied upon requires that financial statements be furnished to investors.<sup>172</sup> We believe allowing an eligible IFRS issuer to use IFRS financial statements in its Commission filings while disallowing the use of those financial statements in an exempt offering would be unduly burdensome to issuers and inconsistent with our proposed acceptance of the use of IFRS as issued by the IASB in the United States capital market. However, an issuer to which proposed Article 13 of Regulation S-X would not apply would not be able to use financial statements prepared in accordance with IFRS as issued by the IASB in exempt offers or sales of securities where the exemption relied upon requires that financial statements be furnished to investors

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<sup>172</sup> For example, a reporting issuer that makes an offering of over \$7,500,000 under Regulation D of the Securities Act (Sections 230.501 - 230-508) must furnish purchasers with information contained in any reports filed by the issuer under Sections 13(a), 14(a), 14(c), and 15(d) of the Exchange Act. See Rule 502(b)(2)(ii)(C).

(including if that issuer would have been permitted to file IFRS financial statements solely for purposes of Rules 3-05, 3-09 and 3-14 pursuant to proposed Rule 4-01(a)(4)).

## **2. References to FASB Pronouncements in Form 8-K**

The proposed amendments, if adopted, would apply to current reports on Form 8-K filed pursuant to Rule 13a-11 or Rule 15d-11 under the Exchange Act and for reports of nonpublic information required to be disclosed by Regulation FD.<sup>173</sup> The proposed amendments also would apply to filings made pursuant to Rule 425 under the Securities Act, regarding written communications related to business combination transactions, or Rules 14a-12(b) or Rule 14d-2(b) under the Exchange Act relating to soliciting materials and pre-commencement communications pursuant to tender offers.

Form 8-K contains several items that contain references to specific standards included in U.S. GAAP. We are proposing to add instructions to those items to provide references to specific IFRS standards to which an IFRS issuer would refer instead of the U.S. GAAP standard. Specifically, we are proposing to add a new sentence at the end of instruction 4 to Item 2.04 to refer to IAS 37 “Provisions, Contingent Liabilities and Contingent Assets,” as may be modified, supplemented or succeeded. We also are proposing to add a new instruction to Item 2.05 to refer to IFRS 5, “Non-current Assets Held for Sale and Discontinued Operations,” as may be modified, supplemented or succeeded. Finally, we are proposing to add a new instruction to Item 4.02 to refer to IAS 8 “Accounting Policies, Changes in Accounting Estimates and Errors,” as may be modified, supplemented or succeeded.

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<sup>173</sup> 17 CFR 243.100 and 243.101.

This proposed reference to specific IFRS standards in Form 8-K differs from the general approach in proposed Rule 13-03(c), where we are not proposing to identify specific IFRS standards that an IFRS issuer should look to when responding to item requirements that make reference to specific U.S. GAAP pronouncements.<sup>174</sup> We believe that providing the specific IFRS standard is necessary as the occurrence of an event specified in Items 2.04, 2.05 and 4.02 of Form 8-K requires the U.S. issuer to file a Form 8-K in addition to disclosing these events.

### **3. Application of IFRS to Tender Offer and Going-Private Rules**

Instructions 6 and 8 to Item 10 of Schedule TO, the tender offer statement under the Exchange Act,<sup>175</sup> contain references to a reconciliation to U.S. GAAP. Instructions 1 and 2 to Item 13 of Schedule 13E-3,<sup>176</sup> the transaction statement under Section 13(e) of the Exchange Act, also contain references to a reconciliation to U.S. GAAP. In order to implement fully the proposed use of IFRS by eligible U.S. issuers, we are proposing conforming amendments to these instructions of Schedule TO and Schedule 13E-3 to clarify that issuers eligible to use IFRS financial statements may use those financial statements in Schedule TO and Schedule 13E-3 without a reconciliation to U.S. GAAP.

#### Request for Comment

64. Is the guidance in this proposal sufficient to avoid any ambiguity about the use of IFRS financial statements in exempt offerings? If not, what

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<sup>174</sup> See Section V.B.2., above.

<sup>175</sup> 17 CFR 240.14d-100.

<sup>176</sup> 17 CFR 240.13e-100.

additional clarification is needed? Is any revision to forms or rules necessary?

65. Are there other rules or forms under the Securities Act or the Exchange Act that should be specifically amended to permit the filing of financial statements prepared in accordance with IFRS as issued by the IASB? If so, how would the rules or forms be unclear if there were no changes to those forms, and what changes would be suggested in order to make them clear?

## **VI. GENERAL REQUEST FOR COMMENTS**

We request and encourage any interested persons to submit comments regarding:

- the proposed changes that are the subject of this release;
- additional or different changes; or
- other matters that may have an effect on the proposals contained in this release.

In addition to providing comments on these matters, we encourage interested parties to provide comment on broader matters related to the development of a single set of globally accepted accounting standards, for example:

66. Are there other considerations in addition to those discussed in this release that the Commission should consider as part of the proposed amendments to permit the limited use of IFRS or its future decision regarding the use of IFRS by U.S. issuers?

We request comment from the point of view of registrants, investors, accountants, accounting standard setters, users of financial statements and other market participants. With regard to any comments, we note that such comments are of greatest assistance to our



rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

## **VII. PAPERWORK REDUCTION ACT**

### **A. Background**

Certain provisions of the proposed amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>177</sup> We are submitting the proposed amendments to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.<sup>178</sup> The titles for the collection of information are:<sup>179</sup>

- (1) “Form 10-K” (OMB Control No. 3235-0063);
- (2) “Form 10-Q” (OMB Control No. 3235-0070);
- (3) “Form 8-K” (OMB Control No. 3235-0060);
- (4) “Form S-4” (OMB Control No. 3235-0324);
- (5) “Schedule 14A” (OMB Control No. 3235-0059);
- (6) “Schedule 14C” (OMB Control No. 3235-0057);
- (7) “Regulation S-X” (OMB Control No. 3235-0009);
- (8) “Regulation S-K” (OMB Control No. 3235-0071);

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<sup>177</sup> 44 U.S.C. 3501 *et seq.*

<sup>178</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

<sup>179</sup> Certain provisions of the proposed amendments to Regulation S-X could also affect collection of information requirements within the meaning of the PRA for Form S-1 under the Securities Act and Form 10 under the Exchange Act. However, all of the issuers that currently would be eligible to use IFRS accounting if these proposals were adopted are issuers that are eligible to use alternative forms in lieu of Forms S-1 and 10 that would allow an issuer to incorporate the Regulation S-X disclosures from the issuer’s Exchange Act periodic reports. We reviewed the types of filings made by a sample of the issuers that we estimate are currently eligible over a three year period, and none of the issuers filed a Form S-1 or Form 10 over this time. Accordingly, we do not believe the proposed amendments would impose any new recordkeeping or information collection requirements, or other collections of information requiring OMB’s approval for Forms S-1 and 10.

- (9) “Regulation C” (OMB Control No. 3235-0074); and
- (10) “Request for a Letter of No Objection to use IFRS”

The regulations, schedules and forms were adopted under the Securities Act and the Exchange Act and set forth the disclosure requirements for annual, quarterly and current reports; registration statements; and proxy and information statements filed by U.S. issuers to help shareholders make informed voting and investment decisions. The hours and costs associated with preparing, filing and sending the form constitute reporting and cost burdens imposed by each collection of information. The Request for a Letter of No Objection to use IFRS would constitute a new collection of information under the Exchange Act to be used by issuers that would be eligible to switch to IFRS accounting. 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. Compliance with the proposed amendments by eligible U.S. issuers opting to file their financial statements in accordance with IFRS would be mandatory. Responses to the information collections would not be kept confidential and there would be no mandatory retention period for the information disclosed.

As discussed in more detail above, we are proposing two alternatives that would allow certain U.S. issuers to file financial statements in accordance with IFRS, rather than U.S. GAAP, for use in their periodic and current reports made under Section 13(a) or 15(d) of the Exchange Act; Schedules 14A and 14C under the Exchange Act, as well as in registration statements under the Securities Act and Exchange Act. Under Proposal A, eligible U.S. issuers would be allowed to file their financial statements in accordance with IFRS and would need to include a one-time reconciliation from certain U.S. GAAP

financial statements to IFRS in accordance with IFRS 1. Under Proposal B, eligible U.S. issuers would be allowed to file their financial statements in accordance with IFRS but would be required to provide a reconciliation from IFRS financial statements to U.S. GAAP for each of the three years presented.

Under both Proposal A and Proposal B, once an issuer determines that it is eligible to use IFRS accounting and seeks to use IFRS accounting, it would first need to submit a Request for a Letter of No Objection to use IFRS describing its analysis in determining its eligibility to use IFRS accounting. In addition, an eligible issuer would need to disclose in its first Form 10-K filing using IFRS accounting that its financial statements are prepared using IFRS as issued by the IASB. As described in Section V.D.3., the issuer also must disclose the reasons for the change to IFRS, the corporate governance processes by which the issuer decided to transition to IFRS, the date of the issuer's submission to the Commission staff requesting a letter of no objection and the date such a letter was issued by the Commission staff.

#### **B. Burden and Cost Estimates Related to the Proposed Amendments**

We anticipate that the amendments would increase the burdens and costs for U.S. issuers that switch from U.S. GAAP to IFRS accounting. We estimated the average number of hours an issuer would spend completing the forms and the average hourly rate for outside professionals. In deriving this estimate, we recognize that the burdens will likely vary among individual companies based on a number of factors, including the complexity of their organizations, the nature of their current accounting procedures, the types of transactions they enter into and the approach they take in adopting IFRS. We believe that some issuers will experience costs in excess of this average in the first year

of compliance with proposals and some issuers may experience less than the average costs. As further discussed below, we also believe that costs will decrease after the first year of compliance due to the extent of effort required for first-time adoption of IFRS as compared to subsequent years. We have considered all of these factors in formulating our proposed estimates.

We derived the burden hour estimates for the forms and schedules by estimating the total amount of time that it would take an issuer to transition to presenting its financial statements in accordance with IFRS. The estimates include 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.<sup>180</sup> Our estimates are based on the number of filings, over the past three years, received from a selection of issuers with characteristics similar to those that we currently anticipate may be eligible to rely on the proposals, if adopted.

The estimate is based in part on data published in a report on IFRS implementation in the E.U. prepared by the Institute of Chartered Accountants of England and Wales.<sup>181</sup> In this report, the ICAEW estimated that the typical cost incurred

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<sup>180</sup> Consistent with other recent rulemakings, we estimate an hourly rate of \$400 based on our discussions with several private law firms 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 underwriters and their counsel.

<sup>181</sup> See “EU Implementation of IFRS and Fair Value Directive” by the Institute of Chartered Accountants of England and Wales (“ICAEW”), available at [http://www.icaew.com/index.cfm/route/145392/icaew\\_ga/en/Technical\\_amp\\_Business\\_Topics/Topics/Accounting\\_and\\_corporate\\_reporting/em\\_IFRS\\_one\\_year\\_on\\_ICAEW\\_assesses\\_implementation\\_em](http://www.icaew.com/index.cfm/route/145392/icaew_ga/en/Technical_amp_Business_Topics/Topics/Accounting_and_corporate_reporting/em_IFRS_one_year_on_ICAEW_assesses_implementation_em). The ICAEW published the report for the European Commission on the first year of implementation IFRS in the E.U. The report evaluates the implementation of IFRS across E.U. industries, market places and member states, and includes an estimate of implementation costs based on an on-line survey of approximately 100 companies drawn from across most E.U. member states

The staff also used its own experience with IFRS to estimate the burden.

by a publicly traded company established in the E.U. to prepare its first IFRS consolidated financial statements was approximately 0.05% of the company's revenue. We estimated that the cost of IFRS transition under Proposal A would be 0.125% of revenue for the U.S. issuers that would be eligible to use IFRS accounting, and would be approximately 0.13% of revenue under Proposal B to reflect the additional U.S. GAAP reconciliation disclosure.<sup>182</sup> We used a higher percentage of revenue to take into account our different filing obligations in the U.S., which require, among other things, issuers to include three years of audited financial statements, and our requirements related to internal controls over financial reporting.

Our annual burden estimates are also based on several other assumptions. First, we assumed that the transition from U.S. GAAP to IFRS by eligible issuers would be a multi-year process. Therefore, our PRA estimates represent the average annual burden over a three-year period. We estimated that the first-year burden would be greater than that for subsequent years, as a portion of the costs will reflect some one-time expenditures associated with making the transition from U.S. GAAP to IFRS, such as compiling documentation, preparing the Request for a Letter of No Objection to use IFRS and implementing new processes. We reduced the second-year estimates by 75% as compared to the first-year estimates to eliminate the one-time costs and to account for the fact that eligible issuers applying IFRS should become more efficient at preparing their financial statements after the first year as the process becomes more routine. We adjusted the third-year estimates by a 90% reduction in costs as compared to the second-

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<sup>182</sup> The Commission staff estimated the cost based on revenues reported by a selection of U.S. issuers with characteristics similar to those issuers that we currently anticipate may be eligible to rely on the proposals, if adopted.

year costs to reflect continuing improvements in efficiency with reporting under IFRS.<sup>183</sup>

This reflects the assumption that the costs of transition would likely have been largely reduced by the third year of actual reporting.

Second, we assumed that 110 U.S. issuers, representing the approximate minimum number of those presently eligible to use IFRS accounting under the proposals, would elect to switch from U.S. GAAP to IFRS. This assumption is conservative, in that it is unlikely that all of those issuers would elect to file their financial statements in accordance with IFRS. We do not know the actual number of eligible issuers that would choose to switch to IFRS accounting. We also acknowledge that eligibility extends beyond this estimated group, which represents a minimum of eligible issuers under the proposals. We request comment and supporting empirical data, for purposes of the PRA, on the number of eligible issuers, and the number that would elect to switch to IFRS accounting.

Third, we assumed that there would be a direct correlation between the extent of the burden and the size of the eligible issuer, with the burden increasing commensurate with the size of the company.

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<sup>183</sup> In developing our annual burden estimates we included many costs that will reflect one-time expenditures associated with making the transition from U.S. GAAP to IFRS by large companies. Activities giving rise to these costs include, but are not limited to, identifying differences between U.S. GAAP and IFRS, determining accounting policies under IFRS, maintaining systems for financial reporting under both U.S. GAAP and IFRS for up to three years in order to present comparative IFRS information in the first Form 10-K including IFRS financial statements, implementing new accounting systems and the associated changes to internal controls over financial reporting and disclosures, and drafting financial statement disclosures under IFRS. Our estimates of the annual burden for years 2 and 3 represent the continuation of many of these activities but at significantly lower levels, as refinements are made to IFRS reporting. These refinements include improvements in the accounting and internal control systems and to financial statement disclosures. The decreases in the annual burden estimates between years 1 and 2 (75%) and between years 2 and 3 (90%) were based on the collective experience of the staff in working with and at preparers and audit firms in adopting new accounting standards, updating accounting policies, implementing new information technology systems and complying with internal control reporting requirements over multi-year periods. Comment on these and other PRA estimates are sought at the end of this PRA section.

Fourth, we assumed that substantially all of the burdens associated with the proposed amendments would be associated with Forms 10-K and 10-Q as these would be the primary forms for which IFRS financial statements would be prepared and presented, and that any IFRS financial statements that would be required in Form S-4 and Schedules 14A and 14C would be incorporated from Forms 10-K and 10-Q.

Table 1 below illustrates the total annual compliance burden of the collection of information in hours and in cost under Proposal A for annual reports; quarterly reports; proxy and information statements; Form S-4 under the Securities Act, the Request for a Letter of No Objection to use IFRS; and Regulations S-X, S-K and C. Table 2 below illustrates the total annual compliance burdens under Proposal B for the same collections. The burden was calculated by multiplying the estimated number of responses by the estimated average number of hours each entity would spend completing the different forms and schedules. For Exchange Act reports, the proxy and information statements, and the Request for a Letter of No Objection to use IFRS, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of \$400 per hour. For Form S-4, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden of preparation is carried by outside professionals retained by the company at an average cost of \$400 per hour. There is no change to the estimated burden of the collections of information entitled “Regulation S-K,” “Regulation S-X,” and “Regulation C” because the burdens that these regulations impose are reflected in our revised estimates for the forms. The portion of the

burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

Table 1. Incremental Paperwork Burden under Proposal A:<sup>184</sup>

	Number of Responses (A)	Burden Hours/Form (B)	Total Burden Hours (C)=(A)*(B)	75% Company (D)=(C)*0.75	25% Professional (E)=(C)*0.25	Professional Costs (F)=(E)*\$400
10-K	110	50,636	5,570,004	4,177,503	1,329,501	\$557,000,400
10-Q	330	4,134	1,364,098	1,023,073	341,024	\$136,409,780
8-K	880	110	96,996	72,747	24,249	\$9,699,615
Sch. 14A	108	1	108	81	27	\$10,800
Sch. 14C	2	1	2	1.5	0.5	\$200
Form S-4	6	1	6	4.5	1.5	\$600
No Objection Request	110	50	5,500	4,125	1,375	\$550,000
Reg. S-K	N/A	1	1	N/A	N/A	N/A
Reg. S-X	N/A	1	1	N/A	N/A	N/A
Reg. C	N/A	1	1	N/A	N/A	N/A
Total	1,546		7,036,717	5,277,535	1,696,178	\$703,671,395

Table 2. Incremental Paperwork Burden under Proposal B:

	Number of Responses (A)	Burden Hours/Form (B)	Total Burden Hours (C)=(A)*(B)	75% Company (D)=(C)*0.75	25% Professional (E)=(C)*0.25	Professional Costs (F)=(E)*\$400
10-K	110	55,301	6,083,125	4,562,323	1,520,781	\$608,312,454
10-Q	330	4,134	1,364,098	1,023,073	341,024	\$136,409,780
8-K	880	110	96,996	72,747	24,249	\$9,699,615
Sch. 14A	108	1	108	81	27	\$10,800
Sch. 14C	2	1	2	1.5	0.5	\$200
Form S-4	6	1	6	4.5	1.5	\$600
No Objection Request	110	50	5,500	4,125	1,375	\$550,000
Reg. S-K	N/A	1	1	N/A	N/A	N/A
Reg. S-X	N/A	1	1	N/A	N/A	N/A
Reg. C	N/A	1	1	N/A	N/A	N/A
Total	1,546		7,549,838	5,662,355	1,887,458	\$754,983,449

<sup>184</sup> The number of responses was calculated by examining the actual number of forms and schedules filed over the last three fiscal years by a sample of U.S. issuers with characteristics similar to those of issuers that may be eligible to request IFRS accounting use under the rule proposals. Our PRA estimates also include an estimated 0.5 hour burden in the forms and schedules to account for the filing by an eligible issuer of one-time disclosure that an issuer would have to disclose, such as, when the decision to file IFRS financial statements was made, the reasons for the change, and the corporate governance processes by which the issuer decided to transition to IFRS. Figures in both Tables have been rounded to the nearest whole number.



### **C. Request for Comment**

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- evaluate the accuracy of our estimates of the burden of the proposed collections of information;
- determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- evaluate whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, with reference to File No. S7-27-08. Requests for materials submitted to the OMB by us with regard to

these collections of information should be in writing, refer to File No. S7-27-08 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street NE, Washington DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

### **VIII. COST-BENEFIT ANALYSIS**

We are proposing amendments to existing regulations, rules and forms to accept financial statements from U.S. issuers meeting specific criteria (“eligible U.S. issuers”) prepared in accordance with IFRS as issued by the IASB. Currently, financial statements that U.S. issuers file with the Commission must be prepared in accordance with U.S. GAAP. The amendments, if adopted, would therefore provide eligible U.S. issuers with an option to use IFRS in preparing financial statements for filing with the Commission. The amendments would apply to a registrant’s financial statements contained in annual reports on Form 10-K, its quarterly reports on Form 10-Q, its proxy or information statements, and its financial statements included in Securities Act and Securities Exchange Act registration statements filed by U.S. issuers or, when applicable, included in a registration statement or reported pursuant to Rule 3-05, 3-09 or 3-14 of Regulation S-X.

Currently, there are approximately 12,000 U.S. issuers registered with the Commission. The proposed amendments would be available to only a limited number of U.S. issuers that operate in industry sectors in which IFRS is used more than any other set of standards. Specifically, the eligible U.S. issuers are among the top 20 listed companies

worldwide, as measured by market capitalization, in any industry in which IFRS is used more than any other basis of financial reporting to prepare financial statements for the public capital markets. For example, if 6 companies among the top 20 by market capitalization in an industry reported in IFRS, 4 reported in U.S. GAAP and the other 12 reported in 4 different bases of accounting among them (and no other basis of financial reporting was used by more than 5 companies), then the 4 U.S. issuers among the top 20 in market capitalization in this industry would each be eligible to use IFRS.

We estimate that an approximate minimum of 110 issuers, accounting for approximately 12% of total U.S. market capitalization as of December 2007, would be eligible to be an “IFRS issuer” as we propose to define it. For reasons described in Section IV, these amounts represent the estimated lower bounds on current eligibility. Additionally, in the future, we expect both the number of eligible issuers and the portion of total U.S. market capitalization to increase. Several countries have announced plans to require IFRS financial statements from their listed companies, and others are considering this step. Overall trends point to the continuing increase in use of IFRS in preference to other bases of financial reporting. Further, relatively young foreign public equity markets, especially emerging markets, are developing at a faster rate than the mature U.S. equity market. Existing large foreign companies are increasingly listing in these markets. The result is that the number of foreign companies in an industry in the top 20 by market capitalization worldwide is growing over time. These companies are more likely to use IFRS than U.S. GAAP. These factors may result in an increase in the number of IFRS-using listed companies in the top 20 of each industry, by market capitalization, and a corresponding increase in eligible industries. Early adoption of IFRS by eligible U.S.

issuers would also increase eligibility.<sup>185</sup> For these reasons, both current and future levels of eligibility are subject to substantial uncertainty.

Only eligible U.S. issuers, which we expect would be limited in number, would be permitted to file financial statements with the Commission that are prepared in accordance with IFRS. Of this limited number of eligible issuers, we believe few would be in a position to file IFRS financial statements with the Commission immediately upon adoption of the proposed rules. This is because we understand that there are few U.S. issuers that have already prepared IFRS financial statements for any other purpose. In order to avail themselves of the IFRS alternative, eligible U.S. issuers would need to (1) make a submission to the Commission and obtain a letter of no objection as described in Section IV., (2) work through the first time adoption requirements of IFRS, (3) apply IFRS to the preparation of their financial statements for the entire period called for in our filings,<sup>186</sup> (4) make the necessary disclosures proposed in Section V.D.3., and (5) provide the supplemental U.S. GAAP information required under Proposal B, if adopted.

Our proposed rules to allow for the limited use of financial statements prepared using IFRS, if adopted, may foster the use of IFRS as issued by the IASB as a way of moving to a single set of globally accepted accounting standards. This effect would be strengthened by 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.

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<sup>185</sup> Under the proposed rules, issuers may choose from multiple industry classification systems. These systems classify companies differently, implying that companies may be eligible under one classification system, but not another. If companies in an industry that is eligible under one classification system switch to IFRS, this action may result in IFRS then being used more often than any other set of standards within a separate industry, under a different classification system. This effect results in an expansion of eligibility across industries as U.S. companies switch to IFRS.

<sup>186</sup> As noted, this period is generally three years.

The cost-benefit analysis analyzes separately three components of the proposed rules. The first component is the acceptance of IFRS financial statements from U.S. issuers under the proposed eligibility criteria. The second component is Proposal A, under which U.S. issuers adopting IFRS would only be required to provide the reconciling information from U.S. GAAP to IFRS called for under IFRS 1. The third component is Proposal B, under which U.S. issuers adopting IFRS would, in addition to providing the reconciling information called for under IFRS 1, disclose on an annual basis certain unaudited supplemental U.S. GAAP financial information covering the financial statements included in an annual report, including the current year.

**A. Proposal for Early Use of IFRS by U.S. Issuers**

**1. Expected Benefits**

In industries with a large number of companies using IFRS, allowing U.S. issuers to move to IFRS could help eliminate the principal source of accounting differences within the industry and potentially enhance comparability within the industry, improving the ability of investors to allocate capital. Thus, if a large percentage of companies use IFRS, allowing U.S. issuers to use IFRS could potentially benefit investors by improving the comparability of companies within the industry. If investors prefer IFRS and we do allow a switch to IFRS, then a U.S. issuer may experience an increased following in the marketplace. In contrast, if an industry consists primarily of companies using other bases of accounting, particularly bases of accounting that produce results more comparable to U.S. GAAP than to IFRS, allowing U.S. issuers to move to IFRS would not improve comparability – investors would still need to interpret multiple bases of accounting to perform within-industry comparisons.

Comparability within any set of accounting standards depends on consistent interpretation and application across jurisdictions. In particular, potential benefits of the proposed rule relating to increased within-industry comparability across jurisdictions depend on the consistent interpretation and application of IFRS. Such benefits may be limited to the extent that, for example, foreign companies use local variations of IFRS as issued by the IASB. Transparent disclosure about the nature and effect of variations from IFRS as issued by the IASB may offset some of these limitations to benefits in comparability. In recognition of the benefits associated with consistent application of IFRS, the proposed rule makes eligibility contingent on use of IFRS as issued by the IASB by a large number of companies in the industry.

The utility for investors of a set of accounting standards increases as the number of issuers using it increases. Investors reap a benefit from the network effects caused by numerous individual issuers each deciding to use IFRS. To the extent an issuer switching to IFRS does not internalize the full benefits of any such network effects, such issuer is expected to be less likely to switch even if eligible to do so.

The benefits associated with a set of accounting standards are dependent upon the quality of the standards, including how the standards are applied in practice. Factors that could affect the quality of IFRS are both institutional with respect to the IASB Foundation, including its governance and funding, as well as operational with respect to the actual standard setting process of the IASB. We recognize that our relationship with the IASB is currently less direct than our relationship with the FASB. Further, constituents of the IASB are greater in number and more varied than the constituents of the FASB. The result is that our view - based on U.S. constituents - is one of many views

that the IASB receives from around the world and considers when developing future standards. As the IASB must prioritize the needs of its various constituents, including investors, the timeliness in which improvements or development of standards occur of particular relevance or importance to our issuers and markets could be affected.

The use of IFRS by a limited number of U.S. issuers in industries in which IFRS is used more often than any other set of standards would provide some empirical basis for evaluating, among other things, the cost of converting to IFRS. Early adoption of IFRS will generate information for regulators, including the Commission, to be used in further decision making. Using IFRS would also give U.S. investors the opportunity to better understand and compare the financial reports of U.S. and foreign issuers if all of their reports are prepared in accordance with IFRS. This effect may not be immediate because it may take time for U.S. investors to become familiar with working with financial results reported under IFRS.

Over the longer term, if all other things are equal, the increased worldwide demand for the securities of U.S. issuers using IFRS could make their capital more efficiently priced. This effect is contingent on the degree to which foreign investors can use IFRS more effectively than U.S. GAAP. While U.S. GAAP is accepted worldwide, foreign investors may become increasingly familiar with IFRS and may be more likely to make their decisions to invest in U.S. issuers contingent on use of IFRS by those issuers. Currently, U.S. issuers, using exclusively U.S. GAAP, comprise a large portion of worldwide equity market capitalization, and foreign investors likely have a correspondingly thorough understanding of U.S. GAAP. This percentage may decrease

as foreign equity markets continue to develop, and it may become less advantageous for foreign investors to maintain this level of understanding.

Some U.S. issuers currently may use IFRS in addition to U.S. GAAP. For example, some foreign subsidiaries of U.S. issuers may be required to use IFRS. Under the proposed rules, any such issuer who is eligible and elects to adopt IFRS may need fewer resources to prepare Commission filings. Investors may benefit from this to the extent that an issuer can realize cost savings from having the parent company and all its subsidiaries use one basis of accounting.

As discussed in the 2007 Proposing Release and in Section III.B.4., above, IFRS is not as developed as current U.S. GAAP in certain areas. IFRS also is not as prescriptive as U.S. GAAP in certain areas and in certain areas permits a greater amount of allowable options than currently in U.S. GAAP.<sup>187</sup> This relatively lesser amount of guidance and greater optionality may increase issuers' ability to account for transactions or events in accordance with their underlying economics but may also result in the application of greater judgment in applying the standards.

## **2. Expected Costs**

Under the proposed amendments, if adopted, the required financial information that investors in the U.S. capital markets receive from any U.S. issuer that avails itself of the option to use IFRS will differ from what it was previously. This may or may not

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<sup>187</sup> As noted by CIFIr in its Final Report:

From an international perspective, we note that IFRS currently permits numerous alternative accounting policies. While we acknowledge the IASB's efforts in reducing some of these alternative treatments, we nonetheless believe the SEC should encourage the IASB to [...] seek to eliminate alternatives as part of its standards-setting projects.

CIFIr Final Report, at 51.



represent a loss or an increase of information in absolute terms. Whether there is an absolute loss or gain in information will depend upon whether IFRS financial statements yield more or less information, or higher or lower quality information, about a particular issuer than the U.S. GAAP financial statements yielded. The usefulness of any omitted U.S. GAAP information or any additional IFRS information depends on the extent to which the investor used the U.S. GAAP information provided, if at all, relative to the extent to which the investor will use the new IFRS information, if at all.

Investors are differently situated in the market and have varying levels of familiarity with IFRS. Consequently, investors may not all bear the costs or obtain the benefits from the proposed amendments equally. The extent to which a particular investor may use IFRS financial information will depend on many factors including the size and nature of the investor and the industry to which the issuer in question belongs.

The proposed amendments, if adopted, may lead to some costs to both investors and U.S. issuers. If the investor community prefers the information communicated by U.S. GAAP, then a U.S. 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 U.S. GAAP. In addition, unfamiliarity with IFRS as issued by the IASB may have an adverse effect on investors' confidence in the reported results. At a minimum, for those investors who seek to understand accounting principles, they will bear incremental transitional learning costs to become familiar with IFRS. While many regard both U.S. GAAP and IFRS as high-quality sets of accounting standards, the relative quality of the financial information provided under each set of standards may differ. Potential costs involved in moving to or

remaining on a set of standards that provides relatively lower quality information may include reductions in liquidity and pricing efficiency of the issuers' securities. These effects are related to changes in information asymmetry between insiders and investors. Any potential changes in information asymmetry may also affect transaction costs for issuers in raising capital.

Companies may choose to adopt IFRS only after concluding the benefits justify the costs to their investors; alternatively, because of principal-agent problems inherent in corporate governance, companies may choose to adopt IFRS after concluding that benefits to management exceed costs to management. In either calculation, costs to the company of adopting IFRS play a key role in the analysis. Costs to adopt IFRS may include those associated with making a submission to the Commission staff in order to obtain a no objection letter, as described in Section IV.B.; costs to transition to IFRS reporting, including determining the effect of first-time adoption under IFRS 1 and systems changes to support financial reporting in accordance with IFRS; costs to prepare the disclosures proposed in Section V.D.3. upon initially reporting under IFRS; and potentially higher costs for accounting personnel, outside consultants and auditors who are familiar with IFRS. Additionally, for those issuers currently audited by an accounting firm without extensive IFRS experience, incremental costs may be incurred in order to change to an audit firm with a sufficient background in IFRS. For the companies we estimate to be eligible, based on the data used for purposes of the Paperwork Reduction Act we estimate the costs for issuers of transitioning to IFRS to sum to approximately \$32 million per company and relate to the first three years of filings on Form 10-K under IFRS. Total estimated costs for the approximate minimum of 110 issuers estimated to be

eligible would therefore be approximately \$3.5 billion. We expect that the majority of these transition costs would be incurred primarily in preparation of filings for the first year in which an issuer reports with the Commission using IFRS.<sup>188</sup> These estimates will continue to be re-evaluated during the comment period as more information is known.

A further cost of allowing U.S. issuers to file IFRS financial statements is the potential change in the level of comparability among the reported results of U.S. issuers. This affects investors to the extent they are seeking to compare only U.S. companies rather than companies in the top 20 by market capitalization within a worldwide industry. If some U.S. issuers in an industry in which IFRS is used more than any other set of standards choose to switch from U.S. GAAP, comparing the financial results of any remaining U.S. issuers to those that have switched will be more costly and less precise. In eligible industries, it is likely that not all companies will convert to IFRS simultaneously, if at all. This may lead to enhanced comparability on an industry-wide basis, but potential reductions in comparability for the subset of the industry represented by U.S. firms. In addition, if investors wish to compare companies across different industries - for example, they may want to compare companies sharing the same inputs, such as energy or labor - there would be either improvements or a diminution in comparability. If one industry is eligible to convert to IFRS, but another is not, comparability may be diminished. If IFRS is used more frequently than any other set of accounting standards in the top 20 companies by market capitalization in each industry to be compared and if U.S. issuers choose to adopt IFRS, on the other hand, comparability

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<sup>188</sup> Specifically, we assume that per-year costs decline by 75% in the second year and by 90% in the third year. See Section VII., Paperwork Reduction Act. Costs do not include incremental reconciliation requirements of Proposal B.

may be improved. In companies with multiple business lines, switching to IFRS could potentially enhance the comparability of some business lines, but detract from comparability of others. Any change in comparability would potentially have the greatest impact on less sophisticated investors. Because they are less able to compare financial results across different bases of accounting, changes in comparability would disproportionately affect them. In all cases, the extent to which the comparability could be affected would in part depend on the degree to which companies across jurisdictions consistently apply IFRS as issued by the IASB.

While improving the comparability of financial reporting across entire industries is a benefit to investors, assuming the information being compared is not of lower quality than the information produced under the prior basis of financial reporting, a number of considerations limit the extent of that benefit in the case of international comparisons, relative to domestic comparisons. There are reporting differences between U.S. registrants and non-registrants that are unrelated to the basis for accounting. These differences include language used in presenting financial statements, the level of information provided in non-financial statement disclosures, and the extent of interim disclosure. Additionally, other economic differences, such as product markets and regulatory structures, may exist. To the extent these differences diminish the value of international comparisons for investors, the benefit of the proposed amendments is correspondingly limited.

The number of eligible U.S. issuers that elect to adopt IFRS may influence a future decision by the Commission regarding the ongoing role of IFRS in the U.S. capital markets. If, in the future, all U.S. issuers were required to use U.S. GAAP in filings with

the Commission, those eligible issuers that had elected to adopt IFRS under these proposed rules would incur costs of switching back to U.S. GAAP. These costs could be expected to be less than the estimated costs of adoption of IFRS, due to the existing knowledge of U.S. GAAP by accountants in the United States and because issuers would have previous U.S. GAAP policies and reported information available. However, if a substantial number of issuers or percentage of total U.S. market capitalization adopts IFRS under the proposed “early use” option, the costs of requiring these issuers to return to U.S. GAAP may be large enough that they may affect the Commission’s consideration of this decision, which would be a cost to investors. Alternatively, if the Commission chooses to continue to allow both IFRS and U.S. GAAP use by U.S. issuers, investors may continue to face the costs of limited comparability across U.S. companies, as described above, in perpetuity, or at least until convergence reduces differences between bases of accounting. However, U.S. investors would continue to receive the benefit of increased comparability between U.S. issuers reporting in IFRS and their foreign counterparts reporting in IFRS. If the Commission chooses to require mandatory IFRS reporting, transition costs to IFRS could be similar, on a per-company basis, to transition costs described in the PRA analysis.

Another consideration if the Commission were to adopt the amendments as proposed is the impact on the continued improvement of IFRS. The Commission’s intention is to enhance the incentives for the continued improvements to IFRS and U.S. GAAP. We believe, moreover, that the needs of the marketplace will continue to support the IASB and the FASB working together on their next phase of joint work to develop the best international standards to be used in the United States and internationally. Without

prejudice as to priority, the current joint work program includes topics such as revenue recognition and financial statement presentation. These are topics on which both the IASB and the FASB seek to develop better standards (rather than one standard setter adopting the other standard setter's existing U.S. GAAP or IFRS standard). We believe that investors and issuers seek comparable information in global capital markets, thereby providing an incentive for continued improvements to U.S. GAAP and IFRS. It is possible, though, that acceptance of IFRS for U.S. issuers could reduce the incentive to converge standards under IFRS and U.S. GAAP.

This proposed rulemaking, if adopted, may create costs to investors in eligible issuers that choose to continue to prepare their financial statements under U.S. GAAP. The desire of potential investors for comparability of financial information may create an incentive for those that continue to use U.S. GAAP, where comparable companies have adopted IFRS, to provide additional financial information prepared under IFRS as issued by the IASB in addition to U.S. GAAP financial statements. If those U.S. issuers make this choice voluntarily to provide their investors with additional information, their investors would bear additional preparation cost, while benefiting, along with potential investors and regulators, from additional information provided. U.S. issuers currently compete 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 U.S. issuers to provide financial information under IFRS, perhaps because U.S. GAAP is accepted by investors in foreign markets.

As discussed above, IFRS is not as developed as current U.S. GAAP in certain areas. IFRS also is not as prescriptive as U.S. GAAP in certain areas and in certain areas

permits a greater amount of allowable options than currently in U.S. GAAP.<sup>189</sup> This relatively lesser amount of guidance and greater optionality may reduce comparability of reported financial information, as different issuers may account or provide disclosure for similar transactions or events in different ways. This increased level of managerial choice could affect comparability across companies.

**B. Proposal A: Reconciled Information Pursuant to IFRS 1**

Under Proposal A, U.S. issuers adopting IFRS would only be required to publish the reconciling information required under IFRS 1. This information is a one-time disclosure related to transition from a prior basis of reporting, in this case U.S. GAAP, to IFRS. This information includes, among other things, reconciliation of the prior year's total comprehensive income and ending equity under previous GAAP to IFRS and certain disclosures to assist users' understanding of the effect and implications of transitioning to IFRS. Adoption of IFRS as issued by the IASB requires implementation of IFRS 1 and therefore Proposal A represents the minimum reconciliation disclosure that would be required of an eligible U.S. issuer electing to adopt IFRS under these proposed rules. The following sections separately describe the benefits and costs of these IFRS 1-related requirements, relative to a theoretical benchmark in which these requirements were excluded from IFRS.

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<sup>189</sup> As noted by CIFIIR in its Final Report:

From an international perspective, we note that IFRS currently permits numerous alternative accounting policies. While we acknowledge the IASB's efforts in reducing some of these alternative treatments, we nonetheless believe the SEC should encourage the IASB to [...] seek to eliminate alternatives as part of its standards-setting projects.

CIFIIR Final Report, at 51.

## **1. Expected Benefits**

The IASB noted in the basis for conclusion discussion accompanying IFRS 1 that the required reconciliations and disclosures were necessary to help users understand the effect and implementation of the transition to IFRS. Further, such information is expected to assist users in identifying changes needed to their analytical models to make use of information presented under IFRS.

## **2. Expected Costs**

Both Proposal A and Proposal B require an issuer that elects to adopt IFRS to prepare financial information under both IFRS and U.S. GAAP for a period of time. This could be accomplished in a number of ways, including maintaining systems for financial reporting under both IFRS and U.S. GAAP contemporaneously or maintaining such systems under one set of accounting standards and making adjustments to determine the appropriate amounts and information under the other set of accounting standards. Regardless of the approach taken, the preparation of financial information under two sets of accounting standards would impose costs on issuers.

Due to the requirement to present financial statements that generally include three years of activity, the application of IFRS 1, as contemplated in Proposal A, would result in certain gaps in information provided to investors about the amounts and nature of differences between previously-reported U.S. GAAP information and IFRS comparative information included in an issuer's first annual report under IFRS. Specifically, a U.S. issuer would be required under IFRS 1 to reconcile equity as of the date of transition to IFRS, which is the first day of the fiscal year for the earliest period presented. Additionally, a U.S. issuer would be required under IFRS 1 to reconcile the previously



reported U.S. GAAP equity to IFRS equity as of the end of the second year presented, along with a reconciliation of total comprehensive income for that second fiscal year. However, no reconciling information would be required for the year-end equity or total comprehensive income related to the first year presented. Further, under the proposed rules, an issuer would present and file with the Commission on Form 10-Q quarterly information under U.S. GAAP during the first year of IFRS reporting, but would report under IFRS in its annual report on Form 10-K. IFRS 1 would not require reconciling information for the year in which IFRS financial statements are first presented.

As an example, if a U.S. issuer with a December 31 fiscal year end were to elect to report under IFRS beginning with the year ending December 31, 2012, the financial statements included in Form 10-K would present IFRS financial statements for 2010, 2011 and 2012.<sup>190</sup> IFRS 1 would require a reconciliation of equity from U.S. GAAP to IFRS as of January 1, 2010. Further, IFRS 1 would require a reconciliation of ending equity and total comprehensive income for the year ending December 31, 2011. In this example, users of the financial statements who wish to evaluate trends for the three years presented would not have information about the effects of IFRS adoption for the year ending 2010 nor for the year ending December 31, 2012.

### **C. Proposal B: Supplemental U.S. GAAP Information**

Under Proposal B, in addition to the reconciling information from U.S. GAAP required under IFRS 1, U.S. issuers adopting IFRS would annually disclose certain unaudited supplemental U.S. GAAP financial information covering the period called for in our filings, generally three years, including the current year. The following sections

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<sup>190</sup> In addition, for purposes of this example, the Form 10-Q filed for the first three fiscal quarters of 2012 would contain U.S. GAAP financial statements.

describe benefits and costs of Proposal B as a whole, combining the benefits and costs of IFRS 1 disclosures and the benefits and costs of the additional, continuing reconciliation.

### **1. Expected Benefits**

Because IFRS 1 disclosure requirements are part of Proposals A and B, the expected benefits of Proposal B include the expected benefits of Proposal A. Specifically, users of financial statements would be provided the information to help them understand the effect and implementation of the transition to IFRS. Such disclosure is expected to assist users in identifying changes needed to analytical models applied to issuers' reported financial information.

Under the additional reconciliation requirements of Proposal B, investors benefit from the inclusion of a continuing reconciliation to U.S. GAAP of certain items in the financial statements. Ongoing reconciliation to U.S. GAAP of certain items allows a degree of continued comparability between U.S. issuers adopting IFRS and other U.S. issuers continuing to report under U.S. GAAP, and a degree of comparability between current and past financial results of issuers electing to adopt IFRS. Additionally, reconciliation may help to highlight differences between U.S. GAAP and IFRS, providing useful information for regulators and for other U.S. issuers contemplating adoption.

Reconciliation also reduces the costs to issuers of returning to U.S. GAAP, should the Commission require such an action.<sup>191</sup> As previously described, such costs could

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<sup>191</sup> Absent such future rulemaking, the Commission may decide to propose rules requiring the use of U.S. GAAP for all U.S. issuers. Alternatively, an issuer may decide to resume reporting under U.S. GAAP only. In such cases, associated costs would include audit fees and internal labor costs associated with obtaining an audit of the U.S. GAAP information for the periods during which the issuer was reporting with the Commission under IFRS.

affect the Commission's decision in 2011, representing a cost to investors; by reducing these costs, reconciliation creates a benefit for investors. On the other hand, eligible U.S. issuers choosing to report in IFRS may be able to assess for themselves the possibility of a return to U.S. GAAP and have an incentive to take voluntary steps as they see appropriate to enable reporting in U.S. GAAP should we require them to do so in the future.

Reductions in comparability mentioned above as costs to investors are substantially mitigated by the inclusion of a reconciliation to U.S. GAAP. This effect is tempered by the unaudited and selective nature of the reconciliation.

The benefits of the additional reconciliation requirements of Proposal B related to comparability are mitigated by several factors. Not all items in financial statements are reconciled; investors seeking to compare details between IFRS and U.S. GAAP financial statements will be less able to do so, even with a reconciliation. Because the reconciliation would not be required to be audited, information contained therein would not be subject to external assurances by an independent auditor of fair presentation. To the extent that investors benefit from such scrutiny, they may be affected. However, the possibility that U.S. GAAP books and records will be audited in the future, upon any potential return to reporting by the issuer under U.S. GAAP, may help to diminish any such effect.<sup>192</sup>

## **2. Expected Costs**

Because IFRS 1 disclosure requirements are part of Proposals A and B, the expected costs of Proposal B include certain expected costs of Proposal A. Specifically,

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<sup>192</sup> Moreover, if the reconciliation requirement addressed these matters and thus became more costly, it could discourage eligible issuers from switching to IFRS.

the costs related to the preparation of financial information under both IFRS and U.S. GAAP for a period of time would be imposed under either proposal. However, certain expected costs under Proposal A relate to the absence of certain reconciliation disclosures to assist users of financial information to understand the impact of reporting under IFRS rather than U.S. GAAP. Thus, the expected costs under Proposal A associated with providing users with less information would not be imposed under Proposal B.

Because Proposal B would require continued reconciliation between certain U.S. GAAP and IFRS information, the expected costs of preparing information under two sets of accounting standards would be greater under Proposal B. The additional requirements of Proposal B to provide a continuing reconciliation of certain items to U.S. GAAP increase reporting costs and, potentially, record-keeping costs for issuers, which may be passed through to their investors. Based on the data used for purposes of the Paperwork Reduction Act, we currently estimate the costs at this time to be approximately \$2.7 million per adopting company over three years, or an aggregate of approximately \$297 million over three years, for the approximately 110 issuers estimated to be the approximate minimum eligible under the proposed amendments.<sup>193</sup> These cost estimates assume an annual, recurring cost of \$900,000 per company and reflect an assumption that issuers will choose to keep two sets of books and records as a result of the proposed reconciliation requirement.<sup>194</sup> The degree to which ongoing reconciliation imposes an incremental cost depends on the manner in which a company would implement adoption in the absence of an ongoing reconciliation requirement. Under the proposed rule,

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<sup>193</sup> These estimated amounts are based on an estimated annual recurring cost of \$900,000 per eligible issuer, over a three year period and assuming that all 110 of the approximate minimum estimated eligible issuers would adopt IFRS and be subject to the annual reconciliation requirement.

<sup>194</sup> See Section VII., Paperwork Reduction Act.

companies adopting IFRS may keep two parallel sets of books and records, one in U.S. GAAP and one in IFRS, for a period of time, whether or not an ongoing reconciliation is required. Keeping parallel books and records would help a company to ensure a smooth transition between accounting systems and would allow flexibility to return to U.S. GAAP reporting, were such an action necessary. If such a practice is the norm, we expect that the costs of required ongoing reconciliation would be small, as U.S. GAAP results would be readily available. Alternatively, some companies adopting IFRS, in the absence of the requirements in Proposal B, may elect to switch to IFRS without keeping two sets of books and records. If companies follow this practice, then the incremental costs of a required ongoing reconciliation would be larger. In either case, some companies may continue to provide ongoing U.S. GAAP information voluntarily, in the absence of a requirement, based on market demand. Shareholder efforts to require consistent and high-quality disclosure can be considered a public good, which is expected to be underprovided in the absence of regulation. Addressing this underprovision of monitoring efforts through disclosure is one of the key purposes of regulatory disclosure requirements. In this case, the incremental costs of required ongoing reconciliation for these companies would be small. We are aware of very few companies that publish financial results in accordance with more than one set of accounting standards absent a requirement to do so.

As noted, if some U.S. issuers elect to adopt IFRS, regulators and investors benefit from enhanced information about the use of IFRS in U.S. markets, information useful for investment and regulatory decision making. This benefit may be mitigated if, under Proposal B, some companies would be less likely to adopt IFRS. Proposal B could

have two potential effects affecting likelihood of an eligible issuer adopting IFRS. First, a reconciliation requirement involves some costs to the issuer, discussed in the previous paragraph; any increase in adoption costs likely reduces issuers' willingness to adopt IFRS. Second, as discussed in the benefits section of Proposal B, a reconciliation reduces the costs of requiring a return to U.S. GAAP. These lowered costs may result in issuers believing that the Commission will decide in 2011 not to require IFRS, and issuers may also then believe that there is a chance of a required return to U.S. GAAP. This would lower their net benefits from early adoption, and they may elect not to adopt IFRS.

#### Request for Comment

67. Do you agree with our assessment of the costs and benefits as discussed in this section? Are there costs or benefits that we have not considered? Are you aware of data and/or estimation techniques for attempting to quantify these costs and/or benefits? If so, what are they and how might the information be obtained?

### **IX. REGULATORY FLEXIBILITY ACT CERTIFICATION**

The Commission hereby certifies pursuant to 5 U.S.C. 605(b), that the amendments contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposal would amend those regulations, rules and forms to allow eligible U.S. issuers to use as their basis of financial reporting IFRS as issued by the IASB and to file their financial statements prepared in that manner. The Commission is not proposing that filing in this manner be required, therefore if these amendments were adopted small entities need not take any action. We propose to exclude smaller reporting companies from the proposed definition of "IFRS

issuer” as a limitation on the number of issuers that would be eligible to file IFRS financial statements under the proposed rules. In addition, we believe that few small entities would meet the eligibility test under the proposed rules, which would permit an issuer to use IFRS only if is in the largest 20 companies in its industry worldwide as measured by market capitalization. For these reasons, the proposed amendments should not have a significant economic impact on a substantial number of small entities. Additionally, in the event that we decide in 2011 to mandate the use of IFRS for all U.S. issuers, any disparate impact on small entities caused by the proposed amendments in this release would be temporary. We solicit written comments regarding this certification. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

**X. CONSIDERATION OF IMPACT ON THE ECONOMY, BURDEN ON COMPETITION AND PROMOTION OF EFFICIENCY, COMPETITION AND CAPITAL FORMATION**

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or “SBREFA,”<sup>195</sup> we solicit data to determine whether the proposals constitute a “major” rule. Under SBREFA, a rule is considered “major” where, if adopted, it results or is likely to result in:

- An annual effect on the economy of \$100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

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<sup>195</sup> 5 U.S.C. 603.

We request comment on the potential impact of the proposals on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 23(a)(2) of the Exchange Act<sup>196</sup> also requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. 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 addition, Section 2(b)<sup>197</sup> of the Securities Act and Section 3(f)<sup>198</sup> of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

The proposed amendments would allow eligible U.S. issuers to use IFRS rather than U.S. GAAP to prepare their financial statements in filings with the Commission. This proposal is designed to increase efficiency, competition and capital formation by helping to move towards the use of a single set of globally accepted accounting standards. The use of a single set of accounting standards could help investors better understand investment opportunities than the use of differing sets of accounting standards. In addition, presenting investors with financial information that varies substantially depending on which set of accounting standards is employed can cause

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<sup>196</sup> 15 U.S.C. 78w(a).

<sup>197</sup> 15 U.S.C. 77b(b).

<sup>198</sup> 15 U.S.C. 78c(f).



confusion about the actual financial results of a company and result in a correspondingly adverse effect on investor confidence and cost of capital.

The proposals are intended to increase efficiency by enabling investors to better compare financial statements of U.S. issuers that adopt IFRS with those of non-U.S. issuers operating in the same industry. Issuers with subsidiaries that already use IFRS also may be able to streamline their accounting systems and increase their efficiency if they adopt IFRS across all of their operations. We also are aware that the proposed amendments would permit some U.S. issuers to use IFRS financial statements while other U.S. issuers continue to use U.S. GAAP, thereby creating a dual system of financial reporting that has not existed previously for U.S. public companies. This could reduce the comparability among U.S. issuers and would require investor familiarity with both sets of accounting standards, which may adversely affect efficiency. However, we anticipate any such dual system may be transitional and not permanent.

The proposed amendments are designed to promote competition by enhancing the ability of eligible U.S. issuers that adopt IFRS to compete with non-U.S. issuers that use IFRS. The proposed rules would not enhance the competitiveness of U.S. issuers that would not be eligible to adopt IFRS but that compete with issuers that do use IFRS.

The proposed amendments may facilitate capital formation for eligible U.S. issuers that adopt IFRS by allowing them greater access to global capital raising opportunities. As more jurisdictions accept financial statements prepared in accordance with IFRS for local regulatory or statutory filing purposes, companies accessing global capital markets would not incur any additional costs to translate financial statements using different accounting standards to IFRS. However, U.S. issuers that would not be

eligible to use IFRS under the proposed amendments may be for a time at a comparative disadvantage in this regard.

It is possible that the amendments would not confer comparative advantages on those eligible issuers who transition to IFRS versus the companies that continue using U.S. GAAP. In addition, the amendments could have a negative impact on capital formation if IFRS does not gain acceptance by U.S. investors. We solicit public comment that will assist us in assessing the impact that the proposed amendments could have on competition, efficiency and capital formation.

#### Request for Comment

68. We solicit comment on whether the proposed rules would impose a burden on competition or whether they would promote efficiency, competition and capital formation. For example, would the proposals have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act?
69. Would the proposals create an adverse competitive effect on U.S. issuers that are not in a position to rely on the alternative or on foreign private issuers that do not report in IFRS?
70. Would the proposed amendments, if adopted, promote efficiency, competition and capital formation?

Commenters are requested to provide empirical data and other factual support for their views if possible.

## **XI. PROPOSED AMENDMENTS TO THE CODIFICATION OF FINANCIAL REPORTING POLICIES**

We propose to update the "Codification of Financial Reporting Policies" announced in Financial Reporting Release 1 (April 15, 1982) [47 FR 21028] as follows:

By adding at the end of Section 101, under the Financial Reporting Number (FR-XX) assigned to this release, the text of Sections I through III of this release.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations System.

## **XII. STATUTORY BASIS AND TEXT OF PROPOSED AMENDMENTS**

We are proposing amendments to Rules 1-01, 1-02, 3-10, 4-01, 8-01 and Article 13 of Regulation S-X; Items 10, 101, 301, 504, 1100, 1112, 1114 and 1115 of Regulation S-K and Rule 405 of Regulation C under the Securities Act; and Rule 12b-2 of Regulation 12B, Schedule 13E-3, Schedule TO, Rule 101(b) of Regulation G and Form 8-K under the Exchange Act; pursuant to Sections 6, 7, 10, and 19 of the Securities Act, Sections 3, 12, 13, 15, 23 and 36 of the Exchange Act , and Sections 3(c)(2) and 108(c) of the Sarbanes Oxley Act of 2002.

### **Text of Amendments**

List of Subjects

17 CFR Parts 210, 229, 230, 240, 244 and 249

Reporting and recordkeeping requirements, Securities.

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

2. Section 210.1-01 is amended by adding a sentence at the end of paragraph (c) to read as follows:

**§210.1-01 Application of Regulation S-X (17 CFR part 210).**

\* \* \* \* \*

(c) \* \* \* In this regard, the application of § 210.4-10 in Article 13 of this Part only applies to filings pursuant to the federal securities laws.

3. Section 210.1-02 is amended by
  - a. revising the last sentence to the “Note to paragraph (w),” and
  - b. adding paragraph (cc).

The revision and addition read as follows:

**§210.1-02 Definitions of terms used in Regulation S-X (17 CFR part 210).**

\* \* \* \* \*

(w) \* \* \*

(3) \* \* \*

Note to paragraph (w): \* \* \* An IFRS issuer or a foreign private issuer that files its financial statements in accordance with International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”) shall make the prescribed tests using amounts determined under IFRS as issued by the IASB.

\* \* \* \* \*

(cc) IFRS issuer. The term IFRS issuer means any issuer, other than a foreign private issuer that files financial statements pursuant to Item 17 or Item 18 of Form 20-F (§249.220f of this chapter), that meets the following criteria and files its financial statements in accordance with IFRS as issued by the IASB pursuant to Rule 4-01(a)(3) and Article 13 of Regulation S-X (§§ 210.4-01(a)(3) and 210.13):

(1) The issuer is not an investment company, an employee stock purchase, savings and similar plan, or a smaller reporting company;

(2) The issuer has requested and received a letter from the staff of the Commission expressing no objection that the issuer is eligible to file with the Commission financial statements prepared in accordance with IFRS as issued by the IASB;

(3) The issuer makes its first filing preparing its required financial statements in accordance with IFRS as issued by the IASB within 3 years following issuance of the most recently dated letter from the staff of the Commission described in paragraph (cc)(2) of this section; and

(4) The issuer's incoming request to the staff of the Commission pursuant to paragraph (cc)(2) of this section must be sent to the attention of the Division of Corporation Finance - Office of the Chief Accountant and demonstrate the following:

(i) The issuer is in an industry in which IFRS as issued by the IASB is used as the basis of financial reporting more than any other basis of financial reporting by the 20 largest listed companies worldwide by market capitalization within that industry; and

(ii) The issuer is one of the 20 largest listed companies worldwide by market capitalization within that industry as of a date within 180 days prior to the request.

Note 1 to paragraph (cc): An issuer, in determining its industry and the top 20 largest listed companies worldwide by market capitalization within that industry, must use one of the following classification schemes: the North American Industry Classification System (NAICS) codes at the three-digit level, the Standard Industrial Classification (SIC) codes at the two-digit level, or the International Standard Industrial Classification (ISIC) codes at the “Division” level. In the alternative, an issuer could use a private industry classification scheme provided that such classification scheme is published and is widely accepted as an industry classification scheme, such as, for example, the Industry Classification Benchmark (ICB) at the “Sector” level or the Global Industry Classification Standard (GICS) at the “Industry” level. For classifications of individual companies, the issuer must use a single published and widely accepted industry source. The provider of the classification scheme may be the same entity as the source of classifications of individual companies.

Note 2 to paragraph (cc): Market capitalization for purposes of this section means aggregate worldwide market value of voting and non-voting common equity. Market capitalization must be determined from a widely accepted source as of the same day within 180 days prior to the request.

Note 3 to paragraph (cc): The basis of financial reporting is to be determined based on a specified set of accounting principles. Companies in an industry are considered to report under a specified set of accounting principles if they have published audited financial statements under those accounting principles. Companies reporting

under more than one set of accounting principles can be counted as using any of those sets of accounting principles. In determining its eligibility to use IFRS as issued by the IASB, an issuer must undertake reasonable efforts to determine the set of accounting standards used by the twenty largest companies in its industry group. To the extent an issuer's analysis includes companies whose financial statements are prepared under a jurisdictional version of IFRS or as to which it is not clear whether the financial statements are prepared under IFRS as issued by the IASB, the issuer should state that no information came to its attention from the content of the financial statements of the companies analyzed or otherwise that causes it to believe that the financial statements are not in accordance with IFRS as issued by the IASB.

4. Section 210.3-10, paragraph (g)(2)(ii), is amended by revising the reference “( §§ 210.1-01 through 12-29)” to read “( §§ 210.1-01 through 210.13-03).”

5. Section 210.4-01 is amended by:

- a. redesignating paragraph (a)(3) as paragraph (a)(5), and
- b. adding new paragraphs (a)(3), (a)(4) and (d).

The addition reads as follows.

**§210.4-01 Form, order and terminology.**

(a) \* \* \*

(3) In filings of IFRS issuers defined in § 210.1-02(cc) financial statements may be prepared according to International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”).

(4) With respect to financial statements required by Rule 3-05, 3-09 or 3-14 of Regulation S-X ( §§ 210.3-05, 210.3-09 or 210.3-14) in the filings of IFRS issuers or

foreign private issuers, the financial statements may be prepared in accordance with IFRS as issued by the IASB.

\* \* \* \* \*

(d) Financial statements prepared in accordance with IFRS as issued by the IASB are subject to Article 13 (§§ 210.13-01 through 210.13-03).

6. Section 210.8-01, in Note 6 to § 210.8, is amended by revising the reference “Section 210.4-01(a)(3)” to read “Section 210.4-01(a)(5)”.

7. Add §§ 210.13-01, 210.13-02 and 210.13-03 and an undesignated center heading following § 210.12-29 to read as follows:

**Article 13 – Use of International Financial Reporting Standards**

**Sec.**

**210.13-01 Application of Article 13.**

**210.13-02 Application of Regulation S-X.**

**210.13-03 Application of references.**

**Article 13 – Use of International Financial Reporting Standards**

**§ 210.13-01 Application of Article 13.**

(a) This article shall be applicable to financial statements that are to be prepared in accordance with International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”) filed:

(1) By an IFRS issuer as defined in § 210.1-02(cc);

(2) By a foreign private issuer pursuant to Item 17 or Item 18 of Form 20-F (§ 249.220f of this chapter); or



(3) Pursuant to Rule 3-05, 3-09 or 3-14 of Regulation S-X (§ 210.3-05, 210.3-09 or 210.3-14), where applicable.

(b) With respect to the financial statements described in paragraph (a) of this section:

(1) Such financial statements must contain an appropriately captioned note in which the issuer unreservedly and explicitly states compliance with IFRS as issued by the IASB;

(2) The applicable accountant's report must include an opinion on whether the financial statements comply with IFRS as issued by the IASB; and

(3) Financial statements which are not prepared in accordance with IFRS as issued by the IASB will be presumed to be misleading or inaccurate, despite footnote or other disclosures, unless the Commission has otherwise provided.

(c) Transition provisions for IFRS issuers. An IFRS issuer changing from U.S. GAAP to IFRS as issued by the IASB may only begin reporting using IFRS as issued by the IASB in an annual report on Form 10-K (§ 249.310 of this chapter). Similarly, an IFRS issuer changing from IFRS as issued by the IASB to U.S. GAAP may only begin reporting using U.S. GAAP in an annual report on Form 10-K.

#### **§210.13-02 Application of Regulation S-X.**

Unless a specific provision of Regulation S-X does not otherwise apply, the provisions of Article 1 through Article 12 of Regulation S-X shall apply to financial statements described in § 210.13-01(a) as follows:

(a) Article 1 "Application of Regulation S-X" shall apply;

(b) Article 2 "Qualifications and Reports of Accountants" shall apply;

- (c) Article 3 “General Instructions as to Financial Statements” shall apply, except for:
- (1) Section 210.3-03 which need not apply;
  - (2) Section 210.3-04, which need not apply;
  - (3) Section 210.3-15(a), which shall not apply;
  - (4) Section 210.3-15(b) and (c), which need not apply; and
  - (5) Section 210.3-20, which shall not apply to an IFRS issuer.
- (d) Article 3A “Consolidated and Combined Financial Statements” need not apply.
- (e) Article 4 “Rules of General Application” shall apply, except for:
- (1) Section 210.4-07, which need not apply,
  - (2) Section 210.4-08, which need not apply; and
  - (3) The following paragraphs of § 210.4-10:
    - (i) Paragraph (b) which need not apply;
    - (ii) Paragraph (c) which need not apply; and
    - (iii) Paragraph (d) which need not apply.
- (f) Article 5 “Commercial and Industrial Companies” need not apply, except for § 210.5-04, which shall apply.
- (g) Article 6 “Registered Investment Companies” shall not apply.
- (h) Article 6A “Employee Stock Purchase, Savings and Similar Plans” shall not apply.
- (i) Article 7 “Insurance Companies” need not apply, except for § 210.7-05, which shall apply.

(j) Article 8 “Financial Statements of Smaller Reporting Companies” shall not apply.

(k) Article 9 “Bank Holding Companies” need not apply, except for § 210.9-06, which shall apply.

(l) Article 10 “Interim Financial Statements” need not apply, except for the following, which shall apply:

(1) Sections 210.10-01(a)(1) and (a)(6);

(2) Section 210.10-01(b)(6);

(3) Sections 210.10-01(c)(1) through (c)(3);

(4) Section 210.10-01(d); and

(5) Section 210.10-01(e).

(m) Article 11 “Pro Forma Financial Information” shall apply.

(n) Article 12 “Form and Content of Schedules” shall apply.

**§ 210.13-03 Application of references.**

(a) Unless otherwise specifically provided, references in Parts 210, 229, 230, 239, 240 (other than §§ 240.11a1-h, 240.15c3-1g, 240.17a-5, 240.17g-3, 240.17h-1T, and 240.17i-6 of this chapter) and 249 to “generally accepted accounting principles,” should be construed solely for purposes of application of the relevant requirement to mean IFRS as issued by the IASB.

(b) Unless otherwise specifically provided, in providing information in response to requirements in Parts 210, 229, 230, 239, 240 and 249 that refer to specific pronouncements of U.S. GAAP, disclosure is to be provided that satisfies the objective of the relevant disclosure requirements.

(c) In providing general caption data, segment data or schedule information in response to Regulation S-K item requirements (§§ 229.10 through 229.915 of this chapter), amounts may be presented based on IFRS as issued by the IASB. In providing schedules pursuant to § 210.5-04 or 210.7-05, an IFRS issuer or foreign private issuer that prepares financial statements in accordance with IFRS as issued by the IASB may present amounts based on IFRS as issued by the IASB. Financial information presented pursuant to § 210-9.06 may be presented as a separate audited schedule and may use amounts based on IFRS as issued by the IASB.

(d) An issuer or entity that is required to provide disclosure under FASB Statement of Accounting Standards No. 69, “Disclosure about Oil and Gas Producing Activities,” shall do so regardless of whether its financial statements are prepared in accordance with IFRS as issued by the IASB.

**PART 229 - STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 - REGULATION S-K**

8. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

9. Sections 229.10 is amended by revising paragraphs (e)(3)(i) and (ii) to read as follows:

**§ 229.10 (Item 10) General.**

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(i) In the case of foreign private issuers or IFRS issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared; and

(ii) In the case of foreign private issuers or IFRS issuers that include a non-GAAP financial measure derived from a measure calculated in accordance with U.S. generally accepted accounting principles, GAAP refers to U.S. generally accepted accounting principles for purposes of the application of the requirements of this paragraph (e) to the disclosure of that measure.

\* \* \* \* \*

10. Section 229.101 is amended by adding paragraphs (i) and (j) before the Instructions to Item 101 to read as follows:

**§229.101 (Item 101) Description of business.**

\* \* \* \* \*

(i) Change in comprehensive set of accounting principles. An issuer that has elected to change the comprehensive set of accounting principles used in preparing its primary financial statements to International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”), or to U.S. GAAP from IFRS as issued by the IASB, for purposes of its filings with the Commission shall

prominently disclose the following in its first annual report on Form 10-K (§ 249.310 of this chapter) that contains financial statements prepared using such comprehensive set of accounting principles:

(1) The new comprehensive set of accounting principles used to prepare the financial statements;

(2) The reasons for which the issuer elected to make the change;

(3) The corporate governance processes followed in electing to make the change, including, for example, whether a shareholder vote was held and the extent to which the issuer's board of directors and audit committee considered the matter; and

(4) With respect to an election to IFRS as issued by the IASB, the date the issuer made its request to the staff of the Commission demonstrating that the issuer met the criteria in Rule 1-02(cc) of Regulation S-X (§ 210.1-02(cc) of this chapter) for being an "IFRS issuer," and the date the staff of the Commission issued its letter of no objection to such request.

(j) Supplemental U.S. GAAP information. An issuer that prepares its primary financial statements included in an annual report on Form 10-K (§ 249.310 of this chapter) in accordance with IFRS as issued by the IASB, pursuant to Article 13 of Regulation S-X (§§ 210.13-01 through 210.13-03 of this chapter) shall provide in the annual report a reconciliation of financial information from IFRS as issued by the IASB to U.S. generally accepted accounting principles. The reconciliation shall give sufficient details to enable users to understand the material adjustments to the primary financial statements presented in accordance with IFRS as issued by the IASB that would be

necessary were the primary financial statements presented in accordance with U.S. generally accepted accounting principles.

\* \* \* \* \*

11. Section 229.301 is amended adding Instruction 8 to the Instructions to Item 301 to read as follows:

**§ 229.301 (Item 301) Selected financial data.**

\* \* \* \* \*

Instructions to Item 301:

\* \* \* \* \*

8. IFRS issuers shall present the selected financial data on the basis of IFRS as issued by the IASB. An IFRS issuer that prepares its primary financial statements in accordance with IFRS as issued by the IASB for the first time may provide selected financial data based on IFRS as issued by the IASB for the three most recent years.

12. Instruction 6 to § 229.504 is amended by revising the reference “(17 CFR 210.1-01 through 210.12-29)” to read “(17 CFR 210.1-01 through 210.13-03)”.

13. Section 229.1100(c)(2)(ii)(F), § 229.1112(b)(2), first sentence, § 229.1114(b)(2)(ii), first sentence, and § 229.1115(b)(2), first sentence, are amended by revising the reference “(§§ 210.1-01 through 210.12-29 of this chapter)” to read “(§§ 210.1-01 through 210.13.03 of this chapter)”.

**PART 230 – GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

14. 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, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

\* \* \* \* \*

15. Amend §230.405 to add the definition of “IFRS issuer” in alphabetical order to read as follows.

**§230.405 Definition of terms.**

\* \* \* \* \*

IFRS issuer. The term IFRS issuer means any issuer that meets the definition of “IFRS issuer” contained in Rule 1-02 of Regulation S-X (§ 210.1-02 of this chapter).

\* \* \* \* \*

**PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

16. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

17. Amend § 240.12b-2 to add the definition “IFRS issuer” in alphabetical order to read as follows:

**§240.12b-2 Definitions.**

\* \* \* \* \*



IFRS issuer. The term IFRS issuer means any issuer that meets the definition of “IFRS issuer” contained in Rule 1-02 of Regulation S-X (§ 210.1-02 of this chapter).

\* \* \* \* \*

18. Amend § 240.13e-100, Instructions to Item 13, by revising the last sentence of Instruction 1 and revising Instruction 2 to read as follows:

**§ 240.13e-100 Schedule 13E-3, Transaction statement under section 13(e) of the Securities Exchange Act of 1934 and Rule 13e-3 (§ 240.13e-3) thereunder.**

\* \* \* \* \*

Instructions to Item 13:

1. \* \* \* If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than either U.S. GAAP, or International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”) if filed by a foreign private issuer or an IFRS issuer as defined in Rule 1-02(cc) of Regulation S-X (§ 210.1-02(cc) of this chapter), the summarized financial information must be accompanied by a reconciliation as described in Instruction 2 of this Item.

2. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, or IFRS as issued by the IASB if filed by a foreign private issuer or an IFRS issuer, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F (§ 249.220f of this chapter).

\* \* \* \* \*

19. Amend § 240.14d-100, Instructions to Item 10, by revising the last sentence of Instruction 6 and revising Instruction 8 to read as follows:

**§ 240.14d-100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.**

\* \* \* \* \*

Instructions to Item 10:

\* \* \* \* \*

6. \* \* \* If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than either U.S. GAAP, or International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”) if filed by a foreign private issuer or an IFRS issuer as defined in Rule 1-02(cc) of Regulation S-X (§ 210.1-02(cc) of this chapter), the summarized financial information must be accompanied by a reconciliation as described in Instruction 8 of this Item.

\* \* \* \* \*

8. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than either U.S. GAAP, or IFRS as issued by the IASB if filed by a foreign private issuer or an IFRS issuer, 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, however, when financial statements are prepared on a basis other than U.S. GAAP, or IFRS as issued by the IASB if filed by a foreign private issuer or an IFRS issuer, 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. must be presented.

\* \* \* \* \*

**PART 244 – REGULATION G**

20. The authority citation for part 244 continues to read as follows:

Authority: 15 U.S.C. 7261, 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a-29.

21. Amend § 244.101 by revising paragraphs (b)(1) and (b)(2) to read as follows:

**§ 244.101 Definitions.**

\* \* \* \* \*

(b) \* \* \*

(1) In the case of foreign private issuers or IFRS issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared; and

(2) In the case of foreign private issuers or IFRS issuers that include a non-GAAP financial measure derived from a measure calculated in accordance with U.S. generally accepted accounting principles, GAAP refers to U.S. generally accepted accounting principles for purposes of the application of the requirements of Regulation G to the disclosure of that measure.

\* \* \* \* \*

**PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934**

22. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a et seq., and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

23. Amend Form 8-K (referenced in § 249.308) as follows:
- a. in Item 2.04, add a sentence at the end of Instruction 4;
  - b. in Item 2.05, add an Instruction following paragraph (d); and
  - c. in Item 4.02, add an Instruction following paragraph (c)(3).

The additions and revisions read as follows.

**Note: The text of Form 8-K does not and this amendment will not appear in the Code of Federal Regulations.**

### FORM 8-K

\* \* \* \* \*

#### **Item 2.04 Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement.**

\* \* \* \* \*

##### Instructions.

\* \* \* \* \*

4. \* \* \* When providing disclosure in response to provisions of this Item that refer to SFAS No. 5, an IFRS issuer should refer instead to IAS 37 “Provisions, Contingent Liabilities and Contingent Assets,” as may be modified, supplemented or succeeded.

\* \* \* \* \*

#### **Item 2.05 Costs Associated with Exit or Disposal Activities.**

\* \* \* \* \*

(d) \* \* \*

##### Instruction.

When providing disclosure in response to provisions of this Item that refer to SFAS No. 146, an IFRS issuer should refer instead to IFRS 5 “Non-current Assets Held for Sale and Discontinued Operations,” as may be modified, supplemented or succeeded.

\* \* \* \* \*

**Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

Instruction.

When providing disclosure in response to provisions of this Item that refer to Accounting Principles Board Opinion No. 20, as may be modified, supplemented or succeeded, an IFRS issuer should refer instead to IAS 8 “Accounting Policies, Changes in Accounting Estimates and Errors,” as may be modified, supplemented or succeeded.

\* \* \* \* \*

By the Commission.

Florence E. Harmon  
Acting Secretary

Dated: November 14, 2008