

## Legal Updates & News

### Legal Updates

---

#### Countdown to the Elimination of U.S. GAAP Reconciliation Requirements For Foreign Private

##### Issuers

February 2008

by [Stephanie S. Wingader](#), [Kristian E. Wiggert](#)

##### Related Practices:

- [Corporate](#)
- [Public Companies & Corporate Governance](#)

On March 4, 2008, the United States Securities and Exchange Commission's (the "SEC") amendments to current rules and forms that will allow foreign private issuers to file their financial statements without reconciliation to U.S. generally accepted accounting principles ("U.S. GAAP"), as currently required, will become effective. As an alternative, once the amendments are effective, foreign private issuers (generally, non-U.S. domiciled entities with a majority of their shareholders and other operations located outside the U.S.) will be able to include in their SEC filings financial statements that are prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

In adopting these new rules, the SEC once again demonstrated its commitment to two initiatives that have received so much of that agency's attention over the last year. First, the SEC reiterated its desire to encourage the development of a single set of high-quality, globally accepted accounting standards. Second and as follow-up to some of the SEC's other recently adopted amendments, including the amendments regarding deregistration for foreign private issuers and the revisions to Rule 144, the SEC once again proved its resolve to enhance the attractiveness of the U.S. capital markets to foreign private issuers.

#### Previous SEC Requirements Concerning U.S. GAAP Reconciliation

Under the previous rules and regulations, any foreign private issuer that registered its securities with the SEC and that is obligated to file periodic reports under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), was required to either prepare its financial statements in accordance with U.S. GAAP or provide a U.S. GAAP reconciliation for those statements. The required reconciliation generally included a narrative description of differences and a quantitative reconciliation of specific line items in the financial statements, including net income, major balance sheet captions and cash flow.

The additional expense and time involved in preparing these reconciliations and auditing these additional financial reports had long been cited as a significant obstacle for a foreign private issuer contemplating a listing in the United States.

#### Amendments Eliminating the Need for U.S. GAAP Reconciliation

Under the amended rules, a foreign private issuer who files a Form 20-F (the general form on which a foreign private issuer may register its securities with the SEC) with the SEC will no longer be required to reconcile its financial statements to U.S. GAAP if the following criteria are met:

- the foreign private issuer files its financial statements in full compliance with IFRS as issued by the IASB;
- the foreign private issuer states explicitly and unreservedly in the notes to its financial statements that such financial statements are in compliance with IFRS as issued by the

- IASB; and
- the foreign private issuer's independent auditor opines in its report that the financial statements are in compliance with IFRS as issued by the IASB.

Form 20-F will continue to include a number of disclosure requirements that refer to specific pronouncements of U.S. GAAP, for example statements and interpretations of the Financial Accounting Standards Board. Under the new rules, foreign private issuers using IFRS as issued by the IASB will still be required to respond to items of Form 20-F that refer to U.S. GAAP. However, rather than using the specific pronouncements of U.S. GAAP, the new rules allow for the issuer to disclose information using IFRS concepts as long as the disclosure still satisfies the purpose underlying those pronouncements.

A foreign private issuer will, however, be required to include a reconciliation to U.S. GAAP if its financial statements include any deviations from IFRS as issued by the IASB or if it is unable to assert compliance with IFRS as issued by IASB. Additionally, under the new rules, a foreign private issuer may elect to continue to submit financial statements prepared in accordance with non-U.S. GAAP or non-IFRS as issued by the IASB, in either case by submitting a U.S. GAAP reconciliation.

### **Continued Relief for First-Time Adopters of IFRS**

Under current SEC rules, a foreign private issuer reporting under IFRS as issued by the IASB for the first time may file two years rather than three years of audited statements of income, changes in shareholders' equity and cash flows prepared in accordance with IFRS. However, this current rule was set to expire.

Under the rule amendments, this current accommodation to first-time adopters of IFRS as issued by IASB has been extended indefinitely.

### **Special Accommodations for IFRS as issued by the European Union**

In addition to eliminating the requirement of all financial statements being reconciled to U.S. GAAP, the SEC has also provided transition relief to SEC registrants from the European Union ("EU") that have prepared their financial statements applying IFRS as adopted by the EU. IFRS as adopted by the EU offers greater flexibility with respect to hedge accounting for certain financial instruments under International Accounting Standard ("IAS") No. 39. For the first two fiscal years after November 15, 2007, financial statements of existing foreign private issuer registrants that have previously filed financial statements utilizing the IAS No. 39 carve-out will be accepted by the SEC without reconciliation to U.S. GAAP, provided those financial statements otherwise comply with IFRS as issued by the IASB and contain a reconciliation to IFRS as issued by the IASB. Financial statements for years ending prior to November 15, 2007 that used the IAS No.39 carve-out must continue to be reconciled to U.S. GAAP.

### **Effective Dates**

The rule amendments will become effective on March 4, 2008. They will apply to all annual financial statements for fiscal years ending after November 15, 2007 and any interim periods within those fiscal years, including those financial statements covering fiscal years ending on December 31, 2007.

For more background on the SEC's proposals regarding a variety of reporting requirement modifications for foreign private issuers, please see our [Client Alert](#).