



SEC Staff Provides XBRL Relief for Foreign Private Issuers with IFRS Financial Statements

With the last phase of implementation of interactive data rules fast approaching, the Director of the Division of Corporation Finance and the Chief Accountant of the U.S. Securities and Exchange Commission (the “SEC”) have provided foreign private issuers that prepare their financial statements in accordance with International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (the “IASB”) with relief from having to submit interactive data files to the SEC and post the interactive data files on their corporate websites. The relief is available until the SEC specifies a taxonomy for use by foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB.¹

Background

In 2009, the SEC adopted rules requiring that public companies submit their financial statements, schedules and notes to the financial statements to the SEC in the form of interactive data, and post such interactive data on corporate websites.² The interactive data must be “tagged” utilizing “XBRL,” which stands for eXtensible Business Reporting Language. The implementation of the interactive data filing requirements has been phased-in over a three-year period, with the last group of public companies required to submit and post interactive data files for fiscal periods ending after June 15, 2011. The phase-in began in 2009 with domestic and foreign large accelerated filers using U.S. GAAP that had a public float of at least \$5 billion as of the end of the second quarter of the most recently completed fiscal year (approximately 500 companies), continued with all other domestic and foreign large accelerated filers using U.S. GAAP (approximately 1,500 companies) in 2010, and was anticipated to be completed this year with all remaining filers using U.S. GAAP and all foreign issuers that prepare financial statements using IFRS as issued by the IASB (approximately 8,500 companies in total).

Once companies are required to submit interactive data, the interactive data files themselves must be included as exhibits to the relevant SEC filing, and are subject to the same deadlines that apply to the associated periodic or current reports, with some special exceptions. There is a one-time, 30-day grace period for a company’s first XBRL submission, and a one-time, 30-day grace period for a company’s first XBRL submission with detailed footnote tagging. The interactive data files also must be posted to the company’s website for 12 months. The website posting must occur by the end of the same calendar day as the earlier of when the filing was made or when

¹ The Staff’s guidance is limited to only those foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB. The implementation of the interactive data requirements for issuers preparing financial statements in accordance with U.S. GAAP is unaffected by the Staff’s relief.

² SEC Release No. 33-9002 (2009). This release is available at <http://www.sec.gov/rules/final/2009/33-9002.pdf>. It is amended by SEC Release No. 33-9002A (2009), available at <http://www.sec.gov/rules/final/2009/33-9002a.pdf>.

the filing was required to be made, and a link to the EDGAR system is not allowed to satisfy this website posting requirement.

The Necessity for a Taxonomy

The initial phase-in of the interactive data requirements for all foreign private issuers that prepare financial statements using IFRS as issued by the IASB was delayed until 2011 because of the lack of a “taxonomy” at the time of adoption for financial statements, schedules and notes prepared using IFRS. In order to create an interactive data file using XBRL, filers must first “tag” the various data included in the financial statement or schedule in question. The tagging process involves marking each piece of data with a label of what the associated data represents. The tags themselves come from a specific “taxonomy,” a dictionary of tags that relate to, for instance, U.S. GAAP, a specific industry group, or company-specific disclosures.

To date, the SEC has not specified a taxonomy for IFRS as issued by the IASB on its website. The IFRS Taxonomy 2011 was published by the IFRS Foundation on March 25, 2011.³ However, the SEC has not yet specified this particular taxonomy on its website, and therefore the taxonomy is not available for use to tag financial statements, notes and schedules to be submitted to the SEC under the interactive data rules.

The Center for Audit Quality Request

On March 29, 2011, the Center for Audit Quality (the “CAQ”), an autonomous public policy organization affiliated with the American Institute of Certified Public Accountants, submitted a letter to the SEC Staff noting that the IFRS Taxonomy 2011 had not yet been specified by the SEC on its website, and noting that concerns had been raised about the IFRS Taxonomy 2011 that may require further development in order to make the taxonomy more useful to investors. In particular, the CAQ noted that users of the IFRS Taxonomy 2011 may need to create numerous “extensions” for their interactive data exhibits, which may limit the usefulness of such interactive data to users of financial statements.⁴ The CAQ noted that these extensions may be necessary because IFRS Taxonomy 2011 “does not yet fully address common reporting practice or industry specific disclosures and does not include standard definitions.” The CAQ also noted that significant further development of the IFRS taxonomy was necessary for footnote disclosures, when such tagging would be necessary for foreign private issuers using IFRS in the second year of their phase-in.

The CAQ requested that, given the uncertainties involved with implementation of the IFRS taxonomy, a one-year deferral of the phase-in date should be provided for foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB, so that the earliest required interactive data submissions would be for fiscal periods ending on or after June 30, 2012.

The SEC Staff's Relief

In response to the CAQ's request, the Staff stated that it was of the view that foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB are not required to submit to the SEC and post on their corporate websites interactive data files until the Commission specifies on its website a taxonomy for use by such foreign private issuers in preparing their interactive data files. The Staff did not specify a one-year delay in the phase-in of the interactive data rules applicable to such foreign private issuers as requested by the CAQ. However, given the concerns about the usefulness of the IFRS Taxonomy 2011, it may be some time (and at this point likely after the June 15, 2011 implementation date) before the SEC is satisfied with the taxonomy and specifies the IFRS Taxonomy 2011 on its website.

³ The IFRS Taxonomy 2011 is available at: <http://www.ifrs.org/XBRL/IFRS+Taxonomy/IFRS+Taxonomy+2011/IFRS+Taxonomy+2011.htm>.

⁴ While companies must primarily use the most recent, SEC-approved taxonomy, they are also allowed to create or “extend” their own derivative tags to apply to figures that are not adequately covered by the official taxonomy.

Conclusion

At this juncture, foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB have a temporary reprieve from the applicability of interactive data rules in the United States. However, there remains some uncertainty as to how long this reprieve will last, as the specific issues raised with the IFRS Taxonomy 2011 are addressed by the IFRS Foundation. As such, foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB should continue with their implementation plans for interactive data reporting, including exploring options for how to effect the tagging of financial statements schedules and notes (*i.e.*, using an outside vendor or accomplishing the tagging in-house), modifying disclosure controls and procedures and internal control over financial reporting to accommodate interactive data reporting, and preparing for the website posting of interactive data files.

Contacts

David M. Lynn
(202) 887-1563
dlynn@mofo.com

Nilene R. Evans
(212) 468-8088
nevans@mofo.com

Joseph R. Magnas
(212) 336-4170
jmagnas@mofo.com

About Morrison & Foerster

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for seven straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com. © 2011 Morrison & Foerster LLP. All rights reserved.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.