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SEC Adopts Final Rules on Mandatory Interactive Data Tags Filings

On December 17, 2008, the SEC adopted final rules integrating interactive data tagging technology into the SEC filing process.¹ The final rules require public companies and mutual funds to use interactive data for financial information, which has the potential to increase the speed, accuracy and usability of financial disclosure, and eventually reduce costs for investors. In 2008, the SEC announced that it will eventually replace the EDGAR electronic filing system with its new financial reporting system, IDEA (Interactive Data Electronic Applications), facilitating interactive data tagging technology. This new tagging structure, along with the IDEA system, will give investors faster and easier access to key financial information about public companies and mutual funds. Interactive data can be dynamically searched and analyzed, facilitating the comparison of financial and business performance across companies, reporting periods and industries.

Background

The final rules apply to domestic and foreign reporting companies that prepare their financial statements in accordance with U.S. generally accepted accounting principles (GAAP), and foreign private issuers that prepare their financial statements in accordance with International Financial Reporting Standards (IFRS), as issued by the International Accounting Standards Board (IASB). Interactive data will need to be provided on

a company's website and as exhibits to registration statements and periodic reports that contain financial statements, as well as on transition reports for a change in fiscal year.

Interactive Data Tags

The final rules require the use of eXtensible Business Reporting Language (XBRL). Current SEC filings must be in HTML or ASCII format, both of which are static in nature. XBRL, however, is an open standard that defines or "tags" data using standard definitions. The tags establish a consistent structure of identity and context, which can be recognized and processed by a variety of different software applications, such as databases, financial reporting systems and spreadsheets.

Interactive financial reporting requires a standard list of tags used to identify what the tagged item represents and how it relates to the other items in the report. The tags will be applied to both monetary and nonmonetary financial information, and will contain descriptive labels, definitions and authoritative references to U.S. GAAP and SEC regulations where applicable.

Interactive data tags are applied to financial statements using commercially available software that guides a preparer in mapping information in the financial statements to the appropriate tags in the standard list. Each element in the standard list of tags has a standard label. A company would then be able to match the standard labels to captions in its financial statements. However, a company will have the ability to create custom tags that fit its particular needs if the standard collection of tags is not sufficient. Separate tags

¹ SEC Release Nos. 33-9002; 34-59324; 39-2461; IC-28609; File No. S7-11-08. A copy of the release is available on the SEC's website at www.sec.gov/rules/final/2009/33-9002.pdf.

have been developed for U.S. GAAP and IFRS financial statements.

The interactive data requirements would not change the information currently reported, but would add additional requirements. As discussed below, companies would be required to include financial statements in a new format as an exhibit to their SEC filings. The new rules will not alter the disclosure or formatting standards of periodic reports, registration statements or transition reports.

Summary of Final Rule

The principal elements of the final rules are as follows:

- A new exhibit will be required with Securities Act registration statements, quarterly and annual reports and transition reports, as well as reports on Form 8-K or Form 6-K that contain revised or updated financial statements. The exhibit will contain the financial statements and any applicable financial statement schedules in interactive data format. The requirement will be phased in over a three year period, as set forth in the chart below, beginning with a quarterly report on Form 10-Q, or an annual report on Form 20-F or Form 40-F, containing financial statements for a fiscal period ending on or after June 15 of the applicable year:

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|-------------|---|
| 2009 | Domestic and foreign large accelerated filers that use U.S. GAAP and have a worldwide public common equity float above \$5 billion as of the end of the second fiscal quarter of their most recently completed fiscal year. |
| 2010 | All other domestic and foreign large accelerated filers using U.S. GAAP. |
| 2011 | All remaining filers that use U.S. GAAP, including smaller reporting companies, and all foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB. |

- Filers that first become subject to the requirement to submit interactive data after year three (*i.e.*, companies that become subject to reporting requirements after the phase-in is complete), will first be required to submit an interactive data file for their first quarterly report on Form 10-Q or first annual report on Form 20-F or Form 40-F, as applicable.
- Financial statements in interactive data format will be provided as exhibits identified in Item 601(b) of Regulation S-K and Forms F-9, F-10, 20-F, 6-K and 40-F.
- Financial statement footnotes and financial statement schedules initially will be tagged individually as a block of text. After a year of such tagging, a filer also will be required to tag the detailed quantitative disclosures within the footnotes and schedules and will be permitted, but not required, to the extent they choose, to tag each narrative disclosure.
- The final rules require the financial information and document and entity identifier elements, such as the form type, company name, and public float, to be tagged according to Regulation S-T and the EDGAR Filer Manual.
- Interactive data exhibits will be required at the same time as the rest of the related report or Securities Act registration statement, except for the following two circumstances:
 - The initial interactive data exhibit of a filer will be required within 30 days after the earlier of the due date or filing date of the related report or registration statement, as applicable.
 - In year two, a filer will have a similar 30-day grace period for its first interactive data exhibit that includes detailed tagging of its footnotes and schedules.
- A filer required to provide financial statements in interactive data format to the SEC also will be

required to post those financial statements in interactive data format on its corporate website not later than the end of the calendar day it filed or was required to file the related registration statement or report with the SEC, whichever is earlier. The website data must be maintained for 12 months.

- Filers that do not provide or post required interactive data on the date required will be deemed not current with their Exchange Act reports and, as a result, will not be eligible to use the short-form Form S-3, F-3 or S-8, or elect under Form S-4 or F-4 to provide short-form disclosure required under Form S-3 or F-3. Similarly, such filers will not be deemed to have available adequate current public information for purposes of the resale exemption safe harbor provided by Rule 144. A filer that is deemed not current solely as a result of not providing or posting an interactive data exhibit when required will be deemed current upon providing and posting the interactive data.
- Filers that are not required to provide interactive data until a later time will have the option to do so earlier, and may provide interactive data at their discretion until required by the final rules. Such a filer may also tag footnotes individually as a block of text until required to tag the detailed quantitative disclosures within the footnotes and schedules. If a filer elects to do this, it must follow the same requirements as those mandated, and can only use a grace period for its initial submission and the initial detail-tagged footnote submission, whether submitted voluntarily or as required by the final rules.
- An interactive data file submitted within 24 months of the time the filer first is required to submit interactive data files, but no later than October 31, 2014, will be:
 - deemed not “filed” for purposes of specified liability provisions; and
 - protected from liability for failure to comply with the tagging requirements if the interactive data file failed to meet those requirements, so long as the filer made a good faith effort to comply and corrected the failure promptly after becoming aware of it.
- Interactive data files will be excluded from the officer certification requirements under Rules 13a-14 and 15d-14 of the Exchange Act.

The principal changes from the proposed rules include:

 - The modified liability standards described above will only be available for interactive data files that a filer submits within 24 months of the time the filer first is required to submit interactive data files and not after October 31, 2014.
 - The phase-in schedule has been changed from the proposed rule.
 - The final rules require that interactive data be submitted with a Securities Act registration statement filing only after a price or price range has been determined and any later time when the financial statements are changed, rather than requiring interactive data submissions with each filing.
 - The final rules require companies to submit interactive data for financial statements contained in additional forms, including Securities Act registration statements on Forms F-9 and F-10 and periodic reports on Form 40-F, as well as current reports on Forms 8-K and 6-K that contain revised or updated financial statements.
 - The timing of the required website posting has been eased from the end of the business day to the end of the calendar day.

While the final rules require filers to tag separately each amount within a footnote or schedule (*i.e.*, monetary value, percentage and number), the rules permit, but do not require, filers to tag, to the extent they choose, each narrative disclosure.

More Information

Investors interested in seeing financial information incorporating interactive data tagging

technology from the SEC's voluntary filer program can visit <http://idea.sec.gov>. Clearly labeled buttons will guide the user to a company's voluntary interactive data submissions to date. As soon as companies make their mandatory interactive data submissions to the SEC, their financial information will be immediately available online through the IDEA system, as well as on the company's website disclosing the financial data, if one is maintained.

Our client alerts are for general informational purposes and should not be regarded as legal advice. If you would like additional information or have any questions, please contact:

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