

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 240 and 249

[RELEASE NOS. 33-8900; 34-57409; INTERNATIONAL SERIES RELEASE NO. 1308; File No. S7-05-08]

RIN 3235-AK03

FOREIGN ISSUER REPORTING ENHANCEMENTS

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to forms and rules.

SUMMARY: We are proposing a number of changes to our rules relating to foreign private issuers that are intended to improve the accessibility of the U.S. public capital markets to these issuers, as well as to enhance the information that is available to investors. These amendments are part of a series of initiatives that seek to address changes in our disclosure and other requirements applicable to foreign private issuers in light of market developments, new technologies and other matters in a manner that promotes investor protection, cross-border capital flows and the elimination of unnecessary barriers to our capital markets. We are proposing amendments that would enable foreign issuers to test their qualification to use the forms and rules available to foreign private issuers once a year, rather than continuously. We are also proposing amendments to change the deadline for annual reports filed by foreign private issuers and to eliminate an option under which foreign private issuers are permitted to omit segment data from their U.S. GAAP financial statements, and an amendment to the rule pertaining to going private transactions to reflect the new termination of reporting and deregistration rules for foreign private issuers. In addition, we are soliciting comment on proposals that

would revise the annual report and registration statement forms used by foreign private issuers to improve certain disclosures provided in these forms.

DATES: Comments should be received on or before May 12, 2008.

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-05-08 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 Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-05-08. 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 are also 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 a.m. and 3:00 p.m. 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: Felicia H. Kung, Senior Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 551-3450, or Craig Olinger, Deputy Chief Accountant, Division of Corporation Finance, at (202) 551-3400, or Katrina A. Kimpel, 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: We are proposing amendments to Rule 405¹ of Regulation C,² Form F-1,³ Form F-3⁴ and Form F-4⁵ under the Securities Act of 1933 (“Securities Act”),⁶ Form 20-F⁷ under the Securities Exchange Act of 1934 (“Exchange

¹ 17 CFR 230.405.

² 17 CFR 230.400 et seq.

³ 17 CFR 239.31.

⁴ 17 CFR 239.33.

⁵ 17 CFR 239.34.

⁶ 15 U.S.C. 77a et seq.

⁷ 17 CFR 249.220f.

Act”),⁸ and Exchange Act Rules 3b-4,⁹ 13a-10,¹⁰ 13e-3,¹¹ and 15d-10.¹² Our proposed amendments would: (1) Permit foreign issuers to test their qualification to use the forms and rules available to foreign private issuers on an annual basis, rather than on the continuous basis that is currently required; (2) Accelerate the filing deadline for annual reports filed on Form 20-F by foreign private issuers under the Exchange Act by shortening the filing deadline from 6 months to within 90 days after the foreign private issuer’s fiscal year-end in the case of large accelerated and accelerated filers, and to within 120 days after a foreign private issuer’s fiscal year-end for all other issuers, after a two-year transition period; (3) Eliminate an instruction to Item 17 of Form 20-F that permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements; and (4) Amend Rule 13e-3 under the Securities Exchange Act by adding cross-references to the new termination of reporting and deregistration rules for foreign private issuers.

In addition, we are soliciting comments on proposals to: (5) Require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F; (6) Amend Form 20-F to require foreign private issuers to disclose information about changes in the issuer’s certifying accountant, the fees and charges paid by holders of American Depositary Receipts, the payments made by the

⁸ 15 U.S.C. 78a et seq.

⁹ 17 CFR 240.3b-4.

¹⁰ 17 CFR 240.13a-10.

¹¹ 17 CFR 240.13e-3.

¹² 17 CFR 240.15d-10.

depository to the foreign issuer whose securities underlie the American Depositary Receipts, and, for listed issuers, the differences in the foreign private issuer's corporate governance practices and those applicable to domestic companies under the relevant exchange's listing rules; and (7) Require foreign private issuers to provide certain financial information in annual reports on Form 20-F about a significant, completed acquisition that is significant at the 50% or greater level.

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I. Overview of the Proposed Amendments

When the Commission adopted Form 20-F in 1979,¹³ the form used by foreign private issuers¹⁴ to register a class of securities under the Exchange Act and to file annual reports,¹⁵ we indicated our basic philosophy that U.S. investors should be provided with information that is equal “as nearly as possible and practicable” to that provided by domestic issuers in our markets.¹⁶ Our objective in adopting Form 20-F was to place the disclosures required of foreign private issuers on a more equal footing to that required of domestic issuers. At the same time, we acknowledged that differences in the national laws and accounting regulations applicable to foreign private issuers should be considered when establishing disclosure requirements for foreign private issuers.¹⁷ As a result, we provided certain disclosure accommodations in Form 20-F, although we

¹³ Release No. 34-16371 (Nov. 29, 1979) [44 FR 70132] (hereinafter “Form 20-F Adopting Release”).

¹⁴ The definition for "foreign private issuer" is contained in Exchange Act Rule 3b-4(c). A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that (1) has more than 50% of its outstanding voting securities held of record by U.S. residents and (2) any of the following: (i) a majority of its officers and directors are citizens or residents of the United States, (ii) more than 50 percent of its assets are located in the United States, or (iii) its business is principally administered in the United States.

¹⁵ Form 20-F is the combined registration statement and annual report form for foreign private issuers under the Exchange Act. It also sets forth disclosure requirements for registration statements filed by foreign private issuers under the Securities Act.

¹⁶ Form 20-F Adopting Release, supra note 13.

¹⁷ See id.

indicated that our assessment of the appropriate disclosure requirements for foreign private issuers was part of an ongoing evolutionary process.¹⁸

In the nearly thirty years since the adoption of Form 20-F, there has been a movement toward greater international agreement on the accounting and other non-financial statement disclosures that should be provided by issuers. Last December, we published rules to permit foreign private issuers to file financial statements with the Commission that comply with International Financial Reporting Standards (IFRS), as issued by the International Accounting Standards Board (IASB), without reconciliation to generally accepted accounting principles (GAAP) used in the United States.¹⁹ These rules support the efforts of the IASB and the Financial Accounting Standards Board (FASB) to converge their accounting standards. In addition, through the efforts of the International Organization of Securities Commissions (IOSCO),²⁰ securities regulators around the world are increasingly requiring the same types of disclosures in prospectuses used for public offerings and listings in their securities markets. In 1998, the IOSCO Technical Committee published the International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers²¹ (“International Equity

¹⁸ Form 20-F Adopting Release, supra note 13.

¹⁹ Release No. 33-8879 (Dec. 21, 2007) [73 FR 986].

²⁰ IOSCO consists of securities regulators from 188 countries (including ordinary, associate, and affiliate members) who are committed to working together “to promote high standards of regulation to maintain just, efficient and sound markets.” IOSCO, General Information About IOSCO, at <http://www.iosco.org/about/>.

²¹ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD81.pdf>. The IOSCO Technical Committee recently published the International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities (2007), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD242.pdf>, which applies to

Disclosure Standards”), which pertains to prospectuses prepared by foreign issuers for public offerings and listings of equity securities. The Commission explicitly incorporated all of the International Equity Disclosure Standards into Form 20-F, effective in 2000.²² Other members of IOSCO have also based their prospectus requirements on the International Equity Disclosure Standards.

At the same time, we remain fully committed to facilitating cross-border capital flows and eliminating inadvertent barriers to our capital markets. In March 2007, we adopted rules that made it easier for foreign private issuers to terminate their reporting obligations and deregister their securities.²³ We adopted these rules out of concern that the burdens and uncertainties associated with terminating their registration and reporting obligations under the Exchange Act could serve as a disincentive to foreign private issuers accessing the U.S. public capital markets.²⁴ As noted previously, we adopted rules last December to permit foreign private issuers to file financial statements with the Commission that are prepared in accordance with IFRS, as issued by the IASB, without reconciliation to U.S. GAAP. In our implementation of the provisions of the Sarbanes-

prospectuses used by foreign issuers for offerings and listings of debt securities. The Commission’s prospectus disclosure requirements for debt securities offered by foreign private issuers, contained in Form 20-F, are consistent with these IOSCO Principles, as well.

²² Release No. 33-7745 (Sept. 28, 1999) [64 FR 53900].

²³ Release No. 34-55540 (Mar. 27, 2007) [72 FR 16934].

²⁴ Id.

