

SEC Moves To Encourage Use Of International Financial Reporting Standards In Financial Filings

SEC PROPOSES TO ALLOW USE OF IFRS BY U.S. ISSUERS

On August 27, 2008, the Securities and Exchange Commission (the "SEC") announced a proposal that, if approved, would allow U.S. public companies to include in their SEC filings financial statements prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board in London ("IFRS"). The SEC's proposed "roadmap" would give qualifying U.S. public companies the option of using IFRS as early as 2010, and could lead to the required use of IFRS by all U.S. public companies within the next six to eight years.

U.S. public companies currently use U.S. Generally Accepted Accounting Principles ("U.S. GAAP") in their financial reporting. Foreign private issuers that are public in the U.S. may use IFRS as described below. IFRS has achieved global acceptance outside the U.S., with more than 100 nations, including those in the European Union and parts of Asia and Latin America, currently requiring or allowing the use of IFRS. The SEC's proposed roadmap creates various milestones that, if achieved, may lead to the permitted or required use of IFRS by U.S. public companies by 2014.

A U.S. company would be eligible to use IFRS as early as next year if it meets two criteria: (i) it is among the 20 largest public companies in its industry internationally; and (ii) IFRS is the most utilized accounting method for financial reporting among the largest 20 public companies in that industry internationally. Based on publicly available information, the SEC estimates that approximately 110 U.S. compa-

nies, in about 34 different industries, would qualify for permission to adopt IFRS at the end of 2009, for filings beginning in 2010. Qualifying companies who choose to adopt IFRS early will need to provide the SEC with either: (i) a one-time reconciliation from U.S. GAAP to IFRS covering one year, the year of transition, which would appear as a note to the audited financial statements; or (ii) on an ongoing basis in its Form 10-K annual report, an unaudited reconciliation from IFRS to U.S. GAAP covering the three years of IFRS financial statements included in the Form 10-K.

If the roadmap is approved in its entirety, the SEC proposes to evaluate the benefits and costs of early adoption in 2011. At that time, the SEC will decide whether to mandate the filing of IFRS financial statements by U.S. public companies for their 2014 fiscal years. However, the proposed roadmap has several unresolved questions. For example, one issue under consideration is whether the 2014 transition date should be staggered so that in 2014, large accelerated filers would be required to file IFRS financial statements, in 2015 accelerated filers would be required to file IFRS financial statements and, in 2016, non accelerated filers would be required to file IFRS financial statements.

There is a sixty-day public comment period on the SEC's proposed roadmap.

SEC'S PRIOR ACCOMMODATION FOR IFRS

The SEC's proposed roadmap is the latest development in an ongoing effort by the agency to accommodate companies that use IFRS in their finan-

cial reporting. Until earlier this year, foreign private issuers who used non-U.S. GAAP accounting methods were required to reconcile their financial reports to U.S. GAAP for their SEC filings. In March, the SEC adopted rules permitting certain foreign private issuers to submit financial statements that are prepared in accordance with IFRS without reconciling such statements to U.S. GAAP. The new rules took effect on March 4, 2008 and apply to companies filing their financial statements in a registration statement under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or an annual report on Form 20-F under the Exchange Act. The new rules also made conforming changes to Regulation S-X, and conforming amendments to other regulations, forms and rules under the Securities Act of 1933, as amended (the “Securities Act”), and the Exchange Act.

To be exempt from the U.S. GAAP reconciliation requirement, foreign private issuers must state explicitly in the notes to their financial statements that such statements are in compliance with IFRS. The issuer’s independent auditor must also opine in its report that the issuer’s financial statements comply with IFRS. Foreign private issuers who are eligible to omit U.S. GAAP reconciliation from their audited annual financial statements may also omit the reconciliation from their unaudited interim period financial statements if the interim financial statements comply with IAS 34 and are prepared in accordance with IFRS. Furthermore, General Instruction G to Form 20-F provides for an accommodation allowing foreign private issuers in their first year reporting under IFRS to file two years’ rather than three years’ of statements of

income, changes in shareholders’ equity and cash flows. The accommodation was scheduled to expire after the first fiscal year starting on or after January 1, 2007. However, the March 2008 rules extended this accommodation indefinitely to accommodate the expected increase in filers that will use IFRS for the first time as a result of the relief on reconciliations.

The March 2008 rules apply to financial statements for financial years ending after November 15, 2007, and interim filings within those years made after March 4, 2008. The amendments relating to issuers adopting IFRS for the first time will apply to their filings made after March 4, 2008.

CONCLUSION

The developments discussed above recognize the increased integration of the world’s capital markets and the growing global acceptance of IFRS as a high-quality accounting standard. The adoption of IFRS by the SEC is expected to benefit American investors by facilitating the comparability of companies internationally and encouraging more non-U.S. companies to offer securities publicly in the United States.

**For more information about this
Client Advisory, please contact:**

M. RIDGWAY BARKER

(203) 351-8032

mrbarke@kelleydrye.com