



SEC Proposes Mandatory Use of XBRL Tagging of Financial Statements in Securities Act and Exchange Act Filings

In keeping with the advancement of web-based technologies, on May 30, 2008, the SEC proposed new rules that will mandate domestic and foreign companies that prepare their financial statements in accordance with US GAAP, and foreign private issuers that prepare their financial statements in accordance with IFRS, as issued by the International Accounting Standards Board, to file financial statements contained in their Securities Act and Exchange Act filings in XBRL format.¹ Under the proposal, the mandatory XBRL format will initially apply only to filings containing financial statements for fiscal periods ending on or after December 15, 2008 by "large accelerated filers" that use US GAAP and that have a worldwide public common equity float above US\$5 billion. XBRL filings for most other filers will be phased in over the subsequent three years.

The proposed rules are intended to provide investors with the ability to download and analyze financial data with greater ease. The proposed rules do not supersede current financial statement filing requirements and filings must continue to be made via EDGAR in HTML or ASCII format. The proposed rules do not apply to registered investment companies or business development companies, which are the only companies that will be permitted to continue using the SEC's existing voluntary XBRL-based filing program. In addition, the proposed rules do not apply to Canadian filers that file registration statements or reports under the multijurisdictional disclosure system (MJDS).

What is XBRL?

- XBRL is an abbreviation for eXtensible Business Reporting Language. Current EDGAR filings are required to be made in HTML or ASCII format, which "tags," or identifies, data so that its structure can be read and presented in the correct format in a Web browser. The data contained in HTML or ASCII filings is, however "dead data" that simply forms part of the text of the document. Investors wishing to analyze data from these filings either have to pay a third-party vendor to extract and analyze the data or re-enter the data manually (or copy and paste the data) into their own spreadsheets for analysis. In an XBRL-based filing, portions of the data are tagged in a manner that allows a range of software applications, such as databases, financial reporting systems and spreadsheets, to identify the type of information represented by each data entry and the value reported. The data can then be identified and extracted by investors for an assortment of functions, such as detailed company-specific analysis, performing comparative analysis with data from other XBRL-based filings and generating charts.

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1. *Interactive Data to Improve Financial Reporting*; Release Nos. 33-8934; 34-57896; IC-28293 (May 30, 2008).

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- In order to enable consistent implementation of XBRL reporting, the SEC has developed a list of standard tags for data appearing in financial statements. These standard tags contain descriptive labels, definitions and references under the applicable accounting standard that are necessary to ensure that the data is uniformly understood by software applications. The SEC has developed tags for US GAAP, and the International Accounting Standards Committee Foundation has developed tags for IFRS. As of April 28, 2008, there were approximately 13,000 standard tags for different data elements contained in US GAAP financial statements. A company can use standard tags or can develop its own tags, called "extensions," if it reports financial information differently from the standard tags. The SEC gives an example of a company that uses a data element called "operating revenues" instead of the traditional "net revenues." In this situation, the company would need to extend the standard label to refer to "operating revenues."
 - Tags are further defined in "taxonomies," which can be thought of as data dictionaries that describe individual items of information and mathematical and definitional relationships among the items. The SEC has defined taxonomies for five different industry groups: commercial, industrial, banking and savings, insurance and investment companies. The SEC expects most companies to fall within the commercial or industrial group. Filers can use the appropriate taxonomy as a template to create their own XBRL-formatted financial statements.
- submit financial statements and other financial data in XBRL format voluntarily via EDGAR as an additional exhibit to the filer's Forms 10-K, 10-Q, 8-K and 10 filings under the Exchange Act. For this purpose, the SEC created a new Exhibit 100 under Item 601 of Regulation S-K solely for voluntary XBRL submissions. These submissions were in addition to, and not in place of, the issuer's regular HTML and ASCII filings, and were intended to allow the SEC to gather data on the benefits of XBRL reporting. The SEC adopted Rule 402 under Regulation S-T, which provides that XBRL-based documents are not subject to liability under Sections 11 and 12 of the Securities Act, Section 18 of the Exchange Act or Section 34(b) of the Investment Company Act, and are not covered by the CEO's and CFO's certifications under Section 302 of the Sarbanes-Oxley Act of 2002. Voluntary XBRL filers are required to include a cautionary legend that investors should not rely on the interactive data when making an investment decision. As of April 17, 2008, 350 interactive data reports had been submitted by 78 voluntary filing companies.³
- In August 2007, the SEC extended its voluntary XBRL-based filing program to mutual funds.⁴ Mutual funds were permitted to submit supplemental "tagged" information for the risk/return summary section of their prospectuses.
 - In December 2007, the SEC released a database of compensation information for named executive officers from 500 companies using "tagged" information from proxy statements.⁵ Using this interactive data, the SEC launched its Executive Pay Reader application, which allows investors to retrieve pay data for named executive officers of the 500 firms in the database.

What is the background to the proposed rule?

- In March 2005, the SEC adopted its first rules regarding the use of XBRL.² Under these rules, the SEC permitted issuers to

2. *XBRL Voluntary Financial Reporting Program on the EDGAR System*; Release Nos. 33-8529, 34-51129, 35-27944, 39-2432, IC-26747 (February 3, 2005).

3. The Interactive Financial Report Viewer application, showing which companies are currently participating, as well as XBRL filings available for export to Excel, is available on the SEC website at <http://216.241.101.197/viewer>.

4. *Extension of Interactive Data Voluntary Reporting Program on the EDGAR System to include Mutual Fund Risk/Return Summary Information*; Release Nos. 33-8823; IC-27884 (July 11, 2007)

5. *Chairman Cox Unveils New Internet Tool With Instant Comparisons of Executive Pay*; Press Release No. 2007-268 (December 21, 2007). The Executive Pay Finder application is available at <http://216.12.130.224/compensation/action/main/list.action>.

What will the proposed rules require, if adopted?

- The proposed rules do not supersede current financial statement filing requirements and filings must continue to be made via EDGAR in HTML or ASCII format. However, filers will also be required to submit a separate XBRL-formatted exhibit containing their financial statements. The exhibit will be filed as a new Exhibit 101 under Item 601 of Regulation S-K or Form 20-F. The XBRL tagging requirement applies to all periods appearing on the face of the financial statements (e.g., balance sheet, income statement, statement of comprehensive income, statement of cash flows and statements of owners equity, as applicable), to any required financial statement schedules and to financial statement footnotes. However, the SEC will permit companies to tag financial statement schedules and footnotes as a single block of text in the first year that they are required to file financial statements in XBRL format.
 - The tags for each data entry must conform to the most updated requirements contained in the taxonomies set forth in the SEC's EDGAR filer manual. In order to maximize comparability, a key element of the proposed rules is that companies will only be permitted to develop their own "extensions" to the standard tags if an appropriate financial statement element does not exist in the standard list of tags. The SEC gives the example of a company that uses the term "gross margin" instead of "gross profit" stating that a company should not create its own tag for "gross margin," but should instead change the label attached to the "gross profit" tag included in the standard list and rename it "gross margin." This particular aspect of the proposed rules and the open nature of XBRL are likely to present significant challenges in maintaining comparability and in the development of appropriate standards for auditors evaluating the accuracy of tags in XBRL filings. An amendment to the filing will be required to correct a material tagging error.
 - Filers will be able to submit a filing that contains an XBRL exhibit as a test submission. If the SEC's validation system identifies an error, the filer will be advised whether it is a major or minor error. If there is a major error in an XBRL exhibit contained in a live filing, but no major errors outside of the XBRL exhibit, the XBRL exhibit will be held in suspense in the electronic filing system while the rest of the filing will be accepted and disseminated. The filer will then need to file a revised XBRL exhibit as an amendment to the filing to eliminate the major error. If there is a minor error in an XBRL exhibit contained in a live filing and no major errors in the rest of the filing, the entire filing, including the XBRL exhibit, will be accepted and disseminated.
 - The XBRL exhibit filing requirement will apply to financial statements contained in the following filings:
 - *Securities Act registration statements.* The requirement will apply to Securities Act registration statements, which actually contain financial statements, including a Form S-1 used in connection with an IPO. The requirement will not apply to registration statements, such as a Form S-3, that merely incorporate financial statements by reference.
 - *Exchange Act reports.* The requirement will apply to Exchange Act periodic reports on Forms 10-K, 10-Q and 20-F and transition reports that contain financial statements.
- Any amendment to the financial statements contained in the foregoing registration statements or reports will also need to be re-filed as an exhibit to the amended registration statement or report.

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The exhibit filing requirement will not apply to financial statements or other financial data in the following filings:

- *MJDS filings.* Financial statements filed by Canadian issuers under the MJDS on Forms F-9, F-10 and 40-F.
 - *Final prospectuses.* Final prospectus filed pursuant to Rule 424(b) under the Securities Act.
 - *Acquired companies.* Financial statements of a company proposed to be acquired that are included in a Form S-4 or F-4.
 - *Forms 6-K and 8-K.* Financial statements or other financial data filed under cover of Form 6-K or 8-K.
- *Financial statements other than the issuer's financial statements.* This would exclude financial statements of businesses acquired or to be acquired (Rule 3-05 of Regulation S-X), financial statements of unconsolidated subsidiaries and 50 percent or less owned persons (Rule 3-09 of Regulation S-X) and financial statements of guarantors (Rule 3-10 of Regulation S-X).

- Each XBRL-formatted exhibit will also need to be posted directly on the filer's website in interactive format (as opposed to hyperlinked to the SEC website) on the same day as the EDGAR filing is made or is required to be made.

- The XBRL filing requirements described above will be phased in as follows:

Type of Issuer	Initial Compliance Deadline
Domestic and foreign companies that: <ul style="list-style-type: none"> ■ Are large accelerated filers⁶ ■ Use US GAAP ■ Have a worldwide public common equity float above US\$5 billion as of their most recently completed second fiscal quarter 	Registration statements and reports that contain financial statements for fiscal periods ending on or after December 15, 2008.
All other domestic and foreign companies that are: <ul style="list-style-type: none"> ■ Large accelerated filers ■ Use US GAAP 	Registration statements and reports that contain financial statements for fiscal periods ending on or after December 15, 2009.
All remaining companies that use US GAAP (including "smaller reporting companies") and all foreign private issuers that use IFRS as issued by the IASB	Registration statements and reports that contain financial statements for fiscal periods ending on or after December 15, 2010.

6. The term "large accelerated filer" is defined in Rule 12b-2 under the Exchange Act as an issuer that has common equity held by unaffiliated persons with a value of at least US\$700 million as of the last business day of its most recently completed second fiscal quarter, has been subject to the Exchange Act's periodic reporting requirements for at least 12 months, has filed at least one annual report, and is not eligible to use the disclosure requirements available to smaller reporting companies for its periodic reports.

- The proposed rules provide for an initial 30-day grace period for the first submission of financial statements made using XBRL format and a second 30-day grace period for the first submission of financial statement schedules and footnotes made using XBRL format. Companies would be able to file the exhibit as an amendment to the previously filed report during this period.

- Financial statements, schedules and footnotes submitted in XBRL-format, when displayed through software available on the SEC’s website in a form identical in all material respects to the corresponding HTML or ASCII filings, will be subject to liability under Sections 11 and 12 of the Securities Act, Section 18 of the Exchange Act and Section 34(b) of the Investment Company Act, and will be covered by the CEO’s and CFO’s certifications under Section 302 of the Sarbanes-Oxley Act of 2002 (collectively, the “*Liability Provisions*”) in the same manner as the corresponding HTML or ASCII filing. Other than the foregoing circumstance, financial statements, schedules and footnotes submitted in XBRL-format will not be subject to the Liability Provisions. In addition, an issuer will be deemed to have complied with the SEC’s XBRL filing requirement if it made a good-faith and reasonable effort to comply and corrected any failure to comply as soon as reasonably practicable after becoming aware of it. The practical implications of this appear to be as follows:

- If data from an XBRL exhibit is displayed through software available on the SEC’s website and contains a material misstatement or omission, the issuer may be liable under the Liability Provisions if the data displayed is the same in all material respects as the related HTML or ASCII filing. The Liability Provisions do not apply to data displayed through third-party software on other websites.
- If data from an XBRL exhibit is displayed through software available on the SEC’s website and contains a material misstatement or omission, but the data is materially different from the data in the related HTML or ASCII filing, the issuer

will not be liable under the Liability Provisions. The issuer may still be subject to SEC action for a violation of the XBRL reporting requirements unless it can demonstrate that it complied with the requirements or made a good-faith and reasonable effort to comply and corrected the failure as soon as reasonably practicable after becoming aware of it.

The liability regime that attaches to XBRL filings is one of the most challenging aspects of the proposed rules since the SEC is trying to balance its desire to roll out XBRL filings while acknowledging the potential exposure that companies face from a simple tagging error in financial statements. Such a tagging error has the potential to result in a material misstatement or omission.

- The SEC encourages companies to make XBRL filings on a voluntary basis. Any voluntary filings, however, will be made under the proposed rules and not under the rules governing the SEC’s current voluntary program. For a company that currently makes XBRL filings voluntarily, this means that the liability regime described above would apply to its filings and the cautionary legend permitted under the SEC’s voluntary program—to the effect that investors should not rely on the interactive data when making an investment decision—would no longer be required or permitted.

What steps should companies take to prepare for, and comply with, the XBRL filing requirement?

- For most filers, XBRL “tagging” and production of the XBRL files will be an additional process that will have to be performed before an actual filing. Particularly with respect to the first filing in XBRL format, the proposed rules will require registrants to build more time into preparing EDGAR submissions and reviewing for compliance with the new requirements. The SEC estimated that the internal hours required to tag the financial statements for the first filing (excluding the financial statement schedules and footnotes)

would be 125 hours and for the second filing (with financial statement schedules and footnotes) would be an additional 100 hours. These times assume that the infrastructure for tagging (i.e., the appropriate software, training and decisions regarding which tags to use) have already been taken. These activities will add additional time beyond the above estimates. After the first successful filing, though, the XBRL files may be reused as templates for subsequent filings, subject to changes as needed, and the lead time should diminish.

- Companies should start considering whether to convert their financial statements from ASCII or HTML into XBRL using third-party software or whether to engage a third party, such as a financial printer, to do so. Companies choosing to convert in-house using third-party software will need to designate persons responsible for tagging, and ensure close coordination between their financial reporting staff and IT experts trained in XML.⁷
- As noted above, the SEC currently permits, and will continue to permit, companies to submit XBRL-based filings on a voluntary basis. Companies should consider taking advantage of the voluntary program before the filings become mandated. This will provide an opportunity to overcome any technical challenges and perfect in-house protocols for mandatory filings. It will also enable companies to contrast different third-party vendors that provide services to create XBRL-formatted exhibits.
- Whether tagging their financial statements in-house or through a third party, companies will need to carefully check the tags for each item of data. The SEC expects that the tagging process will become easier after the first year; however, extra care and attention will need to be paid in the first year of tagging. In-house counsel will also need to have some understanding of the rules governing tagging to ensure that the issuer is creating “extensions” only when permitted, since to do otherwise would result in a violation of the proposed rules.

What are the consequences of noncompliance?

- A failure to submit the required XBRL exhibit electronically to the SEC and post it on the filer’s corporate website would result in the filer not being considered current in its Exchange Act reports. This would result in the filer’s ineligibility to use Forms S-3, F-3 or S-8 for registered offerings, and inability to incorporate certain items by reference into Forms S-4 or F-4. In addition, the filer would be considered to have inadequate public information available for the purpose of the resale exemption safe harbor provided by Rule 144. Eligibility would be regained as soon as the company submits the required XBRL exhibit.
- The SEC is, however, proposing to modify the hardship exemption provided by Rule 201 under Regulation S-T so that it would apply without any action on the part of the SEC if a filer experienced unanticipated technical difficulties that prevented the timely preparation and electronic submission of an XBRL filing. The exemption would only apply for six business days from the date that the XBRL filing was required to be submitted.

What are the benefits?

- The SEC believes that in the long run, companies will benefit from improved consistency, reliability, accuracy and speed of reporting. By using commercially available XBRL software, a single entry of any financial data could stream through all reports, including the final report filed via EDGAR. This means that if financial data needs to be modified near the filing date, simply updating the data in one place would cascade the change through all other locations and documents.
- Using the Interactive Financial Report Viewer, a web-based application created by the SEC, analysts and investors will be able to view, analyze and compare a company’s filings. They will also be able to export the filings to spreadsheet applications, like Excel, for further analysis. The viewer is

7. XBRL is an extension, or subset, of XML (eXtensible Markup Language), and persons with expertise in XML could learn XBRL with some supplemental training.

an example of the analysis potential of XBRL-formatted exhibits, and the SEC expects that future commercial off-the-shelf products will lead to even more sophisticated applications using the “tagged” data.

- The SEC anticipates that analysts and investors will be able to increase the number of businesses they follow and easily compare financial data. Every investor with a computer and Internet access will be able view and use the interactive reports they would otherwise have to purchase from third-party sources. As more XBRL-based filings become

accessible, the SEC expects the magnitude of the benefit of interactive data to become more apparent.

Conclusion

- The SEC is accepting comments on the proposed rules until August 1, 2008. In addition to comments on the proposed rules, the SEC is seeking comments on the advisability of permitting optional XBRL filings with respect to financial disclosures such as MD&A, executive compensation or other financial, statistical or narrative data.

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We would be pleased to discuss any questions you may have arising from this memorandum. Please contact the lawyer at White & Case with whom you regularly discuss securities matters or any of the lawyers identified on the cover page of this memorandum.

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