



JONES DAY COMMENTARY

SEC ALLOWS FOREIGN PRIVATE ISSUERS TO USE FINANCIAL STATEMENTS PREPARED IN ACCORDANCE WITH INTERNATIONAL FINANCIAL REPORTING STANDARDS

On December 21, 2007, the Securities and Exchange Commission published a final rule accepting financial statements prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"), from foreign private issuers, without reconciliation to U.S. generally accepted accounting principles ("U.S. GAAP").¹ This new rule is applicable to annual financial statements for financial years ending after November 15, 2007, and to interim periods within

those years contained in filings made after the effective date of the rule.

ACCEPTANCE OF IFRS FROM FOREIGN PRIVATE ISSUERS

Under the SEC's final rule, a foreign private issuer² will not be required to reconcile its financial statements to U.S. GAAP if the following criteria are met:

- 1 Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP, Securities Act Release No. 33-8879, Exchange Act Release No. 34-57026 (Dec. 21, 2007), *available at* <http://www.sec.gov/rules/final/2007/33-8879.pdf>.
- 2 A "foreign private issuer" means, under Rule 405 of the Securities Act of 1933, any foreign issuer, other than a foreign government, except an issuer that meets the following conditions: (i) more than 50 percent of its outstanding voting securities are directly or indirectly owned of record by residents of the United States and (ii) any of the following: (a) the majority of the executive officers or directors are United States citizens or residents; (b) more than 50 percent of the assets of the issuer are located in the United States; or (c) the business of the issuer is administered principally in the United States.

- the foreign private issuer files its financial statements in full compliance with IFRS as issued by the IASB;
- the foreign private issuer, in a prominent footnote to its financial statements, states that its financial statements are in compliance with IFRS as issued by the IASB; and
- the foreign private issuer's independent auditor opines in its report that the financial statements are in compliance with IFRS as issued by the IASB.

Foreign private issuers also are allowed to file financial statements for required interim periods without a U.S. GAAP reconciliation or providing disclosure under Article 10 of Regulation S-X, provided that the interim financial statements filed comply with International Accounting Standard No. 34, the international accounting standard containing interim period financial statement requirements.

Any foreign private issuer that files financial statements that include any deviations from IFRS as issued by the IASB would be required to provide a U.S. GAAP reconciliation. Portions of Regulation S-X that do not relate to the form and content of financial statements, such as provisions dealing with auditor qualifications and reports, continue to apply to filings of foreign private issuers that file financial statements prepared using IFRS as issued by the IASB.

The SEC also provided transition relief to SEC registrants from the European Union ("EU") that have prepared their financial statements applying the EU's carve-out from International Accounting Standard No. 39 with respect to hedge accounting for certain financial instruments. Registrants that have previously filed such financial statements with the SEC may file financial statements for only the first two financial years

ending after November 15, 2007, without a reconciliation to U.S. GAAP, provided those financial statements otherwise comply with IFRS as issued by the IASB and contain a reconciliation to IFRS as issued by the IASB. Financial statements for years ending prior to November 15, 2007, that used the IAS 39 carve-out must be reconciled to U.S. GAAP.

In addition, the SEC's current accommodations allowing first-time adopters of IFRS as issued by the IASB to provide only two, rather than three, years of audited financial statements has been extended indefinitely.

In adopting the new rule, the SEC noted that while more progress needs to be made on the convergence of IFRS and U.S. GAAP, as well as matters relating to the consistent application of IFRS in practice, SEC acceptance of IFRS as issued by the IASB will encourage the use of IFRS and support its development as a truly globally accepted set of high-quality accounting standards.

CONCEPT RELEASE RELATING TO THE USE OF IFRS BY U.S. ISSUERS

As noted in an earlier *Jones Day Commentary*,³ in August 2007 the SEC published for public comment a concept release regarding allowing U.S. issuers to prepare their financial statements using IFRS instead of U.S. GAAP.⁴ The concept release requests comments with respect to a number of matters, including the establishment and oversight of IFRS, the practical implications that would arise for U.S. issuers applying IFRS, and the possible impact on the U.S. capital markets. In December 2007, the SEC held two roundtable sessions with market participants to discuss the use of IFRS in the U.S. market. Many of the participants at these ses-

3 *Jones Day Commentary*, "SEC Considers Allowing Non-U.S. and U.S. Issuers to Use Financial Statements Prepared in Accordance With International Financial Reporting Standards" (Sept. 2007), available at http://www.jonesday.com/pubs/pubs_detail.aspx?pubID=S4601.

4 Concept Release On Allowing U.S. Issuers To Prepare Financial Statements In Accordance With International Financial Reporting Standards, Securities Act Release No. 33-8831, Exchange Act Release No. 34-56217 (Aug. 7, 2007), available at <http://www.sec.gov/rules/concept/2007/33-8831.pdf>.

sions strongly supported the proposal to accept IFRS, and it is expected that the SEC will continue to closely evaluate permitting U.S. issuers to use IFRS. To date, however, the SEC has not yet scheduled any rulemaking to propose rules relating to the matters addressed in the August 2007 concept release.

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