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CLIENT MEMORANDUM

SEC Adopts Amendments to Rule 12g3-2(b) and Foreign Issuer Reporting Requirements

October 15, 2008

On August 27, 2008, the U.S. Securities and Exchange Commission adopted amendments to Rule 12g3-2(b) under the U.S. Securities Exchange Act of 1934, as amended.[1] Key provisions of these amendments include:

- automatic granting of the Rule 12g3-2(b) exemption to foreign private issuers[2] that meet specified conditions; and
- a requirement that all foreign private issuers claiming the Rule 12g3-2(b) exemption publish electronically in English specified non-U.S. disclosure documents, eliminating the option of submitting paper copies of such documents to the SEC.

In addition, on August 27, 2008, the SEC adopted amendments to Forms F-1, F-3 and F-4 and Rule 405 under the U.S. Securities Act of 1933, as amended, and Form 20-F and Rules 3b-4, 13a-10, 13e-3, 15d-2 and 15d-10 under the Exchange Act.[3] The key provisions of these amendments:

- accelerate the filing deadline for annual reports on Form 20-F;
- permit foreign issuers to test their qualification to use forms and rules available to foreign private issuers once a year, rather than on a continuous basis;
- eliminate an option that permits certain foreign private issuers to omit segment data from U.S. GAAP financial statements;

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1 "Exemption from Registration Under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers," Release No. 34-58465 (September 5, 2008) [17 CFR 239, 240 and 249].

2 As defined in Rule 405 under the Securities Act and Rule 3b-4(c) under the Exchange Act, a "foreign private issuer" is a corporation or other organization incorporated or organized in a foreign country that either has 50% or less of its outstanding voting securities held of record by U.S. residents or, if more than 50% of its voting securities are held by U.S. residents, about which none of the following are true: (1) a majority of its executive officers or directors are U.S. citizens or residents; (2) more than 50% of its assets are located in the United States; and (3) its business is administered principally in the United States.

3 "Foreign Issuer Reporting Enhancements," Release No. 33-8959; 34-58620 (September 23, 2008) [17 CFR 230, 239, 240 and 249].

- amend Exchange Act Rule 13e-3 pertaining to going private transactions to reflect the new rules governing termination of reporting obligations and deregistration by foreign private issuers; and
- revise the annual report and registration statement forms used by foreign private issuers to enhance the level of disclosure required by those forms.

RULE 12g3-2(b) AMENDMENTS

Background

Under Section 12(g) of the Exchange Act and Rule 12g-1 thereunder, an issuer that has 500 or more record holders of a class of its equity securities and assets in excess of U.S.$10 million at the end of its most recently completed fiscal year must register that class of equity securities under the Exchange Act, absent an available exemption. Rule 12g3-2 provides exemptions from the registration requirements of Section 12(g) for foreign private issuers.

Rule 12g3-2(a) exempts foreign private issuers without further conditions if the class of equity securities has fewer than 300 holders resident in the United States at the previous fiscal year end. The SEC did not amend this exemption.

Rule 12g3-2(b) allows a foreign private issuer to exceed the above shareholder thresholds without being required to register with the SEC.

Prior to the amendments, in order to obtain the Rule 12g3-2(b) exemption, a non-reporting foreign private issuer was required to initially submit to the SEC, in hard copy form, a list of the issuer's non-U.S. disclosure obligations as well as English-language versions of information that the issuer:

- had made, or was required to make, public under the laws of its jurisdiction of organization;
- had made public pursuant to its non-U.S. stock exchange filing requirements; and
- had distributed, or was required to distribute, to its securityholders (collectively, the "non-U.S. disclosure documents"),

in each case since the beginning of its last fiscal year. The initial hard copy submission to the SEC also was required to include the number of U.S. holders of the issuer's equity securities and the percentage of those securities held by those holders, as well as a brief description of how they were believed to have acquired those securities. The initial submission to the SEC had to be made before the date that a registration statement would otherwise have become due under Section 12(g), which is 120 days after the fiscal year end on which the number of U.S. holders of the class of equity securities exceeded 300. After obtaining the Rule 12g3-2(b) exemption, an issuer was required to furnish to the SEC on an ongoing basis English-language versions of all non-U.S. disclosure documents.

In March 2007, the SEC adopted amendments that permit a foreign private issuer to claim the Rule 12g3-2(b) exemption immediately upon the effectiveness of its termination of Exchange Act registration and reporting obligations pursuant to newly-adopted Rule 12h-6 under the Exchange Act,[4] provided that the issuer publishes English-language versions of its non-U.S. disclosure documents on an ongoing basis on its Internet website or through an electronic information delivery system generally available to the public in its primary trading market. In addition, the March 2007 amendments permit, but do not require, a foreign private issuer that has previously established the Rule 12g3-2(b) exemption to elect to publish its non-U.S. disclosure documents electronically in lieu of continuing to make paper submissions of those documents to the SEC.

Under the March 2007 amendments, an issuer that publishes its non-U.S. disclosure documents electronically must, at a minimum, publish English translations of:

- its annual report, including or accompanied by annual financial statements;
- its interim reports that include financial statements;
- its press releases; and
- all other communications and documents distributed directly to securityholders of each class of securities to which the Rule 12g3-2(b) exemption relates.

[4] Foreign private issuers that have terminated their Exchange Act reporting obligations under Rule 12g-4 or 12h-3 are required to wait at least 18 months prior to taking advantage of the Rule 12g3-2(b) exemption.

For a foreign private issuer that publishes its non-U.S. disclosure documents electronically, the Rule 12g3-2(b) exemption remains in effect for as long as the issuer fulfills its ongoing disclosure requirements or until it registers a class of securities under Section 12 of the Exchange Act or incurs reporting obligations under Section 15(d) of the Exchange Act.

In February 2008, the SEC proposed amendments to Rule 12g3-2(b),[5] which were, for the most part, adopted as proposed and which are as discussed herein.

Principal Amendments

The amendments to Rule 12g3-2(b) eliminate the written application requirement for the Rule 12g3-2(b) exemption and, instead, make the exemption available automatically at any time to foreign private issuers that meet specified conditions, including the electronic publication in English of specified non-U.S. disclosure documents.

In order to be eligible to claim the Rule 12g3-2(b) exemption under the amended Rule:

- an issuer must not be required to file or furnish reports under Section 13(a) or Section 15(d) of the Exchange Act;
- an issuer must maintain a listing of the subject securities on one or more exchanges in one or two foreign jurisdictions comprising its primary trading market;[6] and
- the issuer must have published since the beginning of its most recently completed fiscal year specified non-U.S. disclosure documents in English on its Internet website or through an electronic information delivery system that is generally available to the public in its primary trading market.

Under the amended Rule, all foreign private issuers that meet the above requirements will be immediately exempt from Exchange Act registration under Rule 12g3-2(b) without having to apply to, or otherwise notify, the SEC concerning the exemption. There is no eligibility requirement based on the number of U.S. resident holders. A foreign private issuer may also immediately claim the Rule 12g3-2(b) exemption upon the effectiveness of its Exchange Act deregistration, whether pursuant to Rule 12g-4, 12h-3 or 12h-6, or the suspension of its reporting obligations under Section 15(d), if it meets the foregoing requirements (other than the electronic publication requirement for its most recently completed fiscal year).

In order to maintain the Rule 12g3-2(b) exemption, a foreign private issuer:

- must electronically publish specified non-U.S. disclosure documents in English for each subsequent fiscal year on an ongoing basis;
- must continue to maintain a listing of the subject securities on one or more exchanges in its primary trading market; and
- may not otherwise incur any Exchange Act reporting obligations (*e.g.*, by conducting a registered offering or listing securities on a U.S. national securities exchange).

If an issuer fails to meet any of the foregoing conditions, it will lose its eligibility to claim the Rule 12g3-2(b) exemption.[7] The issuer would then need to either re-establish compliance with the Rule in a reasonably prompt manner or register under the Exchange Act.

The electronic publishing condition requires, at a minimum, full translations of the same documents mandated by the electronic publishing option included in the March 2007 amendments and, thus, eliminates the current ability of foreign private issuers to provide English summaries of certain items. However, in the adopting release, the SEC clarified that, generally, an issuer may

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[5] "Exemption from Registration Under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers," Release No. 34-57350 (February 19, 2008) [17 CFR 239, 240 and 249].

[6] "Primary trading market" is defined by the SEC to mean that at least 55% of the worldwide trading in the subject class of securities took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year. If a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be greater than the trading in the United States for the same class of the issuer's securities.

[7] "The definition of "primary trading market" uses a trading volume standard for an issuer's most recently completed fiscal year, so that an issuer will have to redetermine its relative U.S. and foreign trading volumes on an annual basis.

provide an English summary of a non-U.S. disclosure document if such a summary would be permitted for a document submitted under cover of Form 6-K or pursuant to Exchange Act Rule 12b-12(d)(3).[8]

The amendments provide for a three-month transition period from September 10, 2008 during which time the SEC staff will continue to process paper submissions of non-U.S. disclosure documents under Rule 12g3-2(b). After this transition period, the SEC will no longer process paper submissions, and an issuer that continues to make paper submissions and does not electronically publish the submitted documents as required will not be eligible to claim the Rule 12g3-2(b) exemption. The SEC also established a three-year transition period to provide sufficient time for any current Rule 12g3-2(b)-exempt issuer which will no longer qualify for the exemption under the amended Rule either to comply with all of the conditions of amended Rule 12g3-2(b) or to register under the Exchange Act.

Other Amendments

In the adopting release, the SEC eliminated, as proposed, (1) a prior provision that generally prohibited the Rule 12g3-2(b) exemption to successor issuers; (2) a provision that allowed a Canadian issuer filing under the Multijurisdictional Disclosure System (MJDS) to obtain the Rule 12g3-2(b) exemption for a class of equity securities while having Exchange Act reporting obligations regarding a class of debt securities; (3) a prior provision that prohibited an issuer from relying on the Rule 12g3-2(b) exemption if its securities were traded through an automated inter-dealer quotation system; and (4) a related provision grandfathering Nasdaq-traded companies meeting specified conditions from Rule 12g3-2(b)'s automated inter-dealer quotation system prohibition.

The proposing release and various comment letters had questioned whether the SEC should make changes to Form F-6, the registration statement used by a depositary bank to establish an ADR program. One of the conditions to filing a Form F-6 has been that the issuer of the underlying equity securities must either be a reporting company under the Exchange Act or have established the 12g3-2(b) exemption. Historically, the SEC has published annually a list of 12g3-2(b)-exempt companies, and a depositary bank could establish an unsponsored ADR program relating to shares of such issuers without their consent. Following the amendments, the SEC will no longer accept Rule 12g3-2(b) applications or publish a list of exempt companies. In addition, foreign private issuers are not required to make a public statement regarding any intention to claim the exemption. To clarify that depositary banks may still establish unsponsored ADR programs, however, the SEC amended the requirements applicable to registration statements on Form F-6 to enable depositary banks using that Form in the context of unsponsored ADR programs to represent on the basis of a "reasonable, good faith belief after exercising reasonable diligence" that the issuer of the underlying securities has published electronically the information required by the Rule 12g3-2(b) exemption. One consequence of these amendments is that shares of a foreign private issuer that electronically publishes disclosure materials in English may become the subject of one or more unsponsored ADR programs even if that issuer did not wish to claim the 12g3-2(b) exemption.

Finally, in the adopting release, the SEC clarified that compensatory stock options for which the underlying securities are in a class exempt under Rule 12g3-(2(b) are also exempt under the Rule.

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[8] Under Rule 12b-12(d)(3), a party may submit an English summary instead of an English translation of a foreign language document as an exhibit or attachment to a filing or submission, as long as the applicable form permits the use of an English summary and the foreign language document does not consist of: (i) articles of incorporation, memoranda of association, bylaws, and other comparable documents, whether original or restated; (ii) instruments defining the rights of securityholders, including indentures qualified or to be qualified under the Trust Indenture Act of 1939; (iii) voting agreements, including voting trust agreements; (iv) contracts to which directors, officers, promoters, voting trustees or securityholders named in a registration statement, report or other document are parties; (v) contracts upon which a registrant's business is substantially dependent; (vi) audited annual and interim consolidated financial information; or (vii) any document that will be the subject of a confidential treatment request.

The SEC originally had proposed, in addition to the conditions for initial and ongoing eligibility described above, a requirement that either:

- the average daily U.S. trading volume for the subject securities for the most recently completed fiscal year was no greater than 20% of the average daily worldwide trading volume for the same period; or
- the issuer had terminated its registration of a class of securities under Section 12(g) of the Exchange Act or terminated its obligation to file or furnish reports under Section 15(d) of the Exchange Act pursuant to Rule 12h-6.

The SEC did not adopt this separate trading volume condition.

AMENDMENTS TO FOREIGN ISSUER REPORTING REQUIREMENTS

Overview

The principal amendments to the foreign issuer reporting requirements are as follows:

- accelerating the filing deadline for annual reports on Form 20-F from six months to four months after the issuer's fiscal year-end;
- permitting reporting foreign issuers to assess their eligibility to use forms and rules available to foreign private issuers once a year on the last business day of their second fiscal quarter, rather than on a continuous basis;
- revising Form 20-F to eliminate an accommodation that permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements;
- amending Exchange Act Rule 13e-3 to extend the scope of covered going private transactions to include transactions that might result in deregistration and termination of reporting under recently adopted rules applicable to foreign private issuers;
- eliminating the availability of the limited U.S. GAAP reconciliation option contained in Item 17 of Form 20-F for foreign private issuers that are only listing a class of securities on a U.S. national securities exchange or registering a class of equity securities under Section 12(g) of the Exchange Act, and not conducting a public offering, for annual reports filed on Form 20-F, and for certain non-capital raising offerings; and
- requiring disclosure in annual reports filed on Form 20-F regarding:
  - changes in a foreign private issuer's certifying accountant;
  - fees and other charges paid by holders of ADRs to depositaries, as well as payments made by depositaries to a foreign private issuer whose securities underlie the ADRs; and
  - significant differences in the corporate governance practices of a listed foreign private issuer compared to the corporate governance practices applicable to U.S. issuers under the relevant exchange's listing standards.

The SEC largely adopted the amendments to foreign issuer reporting requirements as proposed in February 2008.[9] However, the SEC had also proposed an amendment that would have required foreign private issuers to provide the financial information solicited by Rule 3-05 and Article 11 of Regulation S-X in their Exchange Act annual reports for any single completed business acquisition significant at the 50% or greater level.[10] This proposed amendment would have required the presentation of such historical and pro forma financial information for highly significant acquisitions on a basis broadly comparable to that required to be presented by domestic issuers. The SEC did not, however, adopt this proposal.

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[9] "Foreign Issuer Reporting Enhancements," Release No. 33-8900; 34-57409 (February 29, 2008) [17 CFR 230, 239, 240 and 249].

[10] Historically, foreign private issuers have not been required to present financial information about significant, completed acquisitions in their annual reports filed on Form 20-F. Rule 3-05 and Article 11 of Regulation S-X identify the financial statements that must be provided for significant, completed acquisitions and the preparation of pro forma financial statements, respectively.

Accelerating Filing Deadline for Form 20-F Annual Reports

Currently, a foreign private issuer must file its annual report on Form 20-F within six months after its fiscal year-end (*e.g.*, by June 30 in the case of an issuer with a fiscal year ended on the preceding December 31). In what may be the most significant change affecting all foreign private issuers registered with the SEC, the amendments accelerate the due date for annual reports filed on Form 20-F to within four months after the foreign private issuer's fiscal year-end (*e.g.*, by April 30 in the case of an issuer with a fiscal year ended on the preceding December 31). The acceleration of the Form 20-F annual report filing deadline will become effective after a three-year transition period.[11] The SEC also adopted a conforming deadline for transition reports filed on Form 20-F, so that the deadline is the same as the deadline for annual reports filed on Form 20-F.

This change will require some foreign private issuers to file their annual reports on Form 20-F with the SEC prior to, or simultaneously with, the time they are required to publish the same or similar information in their home jurisdictions. Even where the accelerated deadline falls after the publication deadline in its home jurisdiction, a foreign private issuer that does not prepare financial statements under U.S. GAAP or International Financial Reporting Standards (IFRS) may find it difficult to meet the new deadlines if its financial statements must be translated into English and/or reconciled to U.S. GAAP. It is expected that the accelerated deadlines will require many foreign private issuers to accelerate their internal processes for preparing financial and other disclosures required to be included in annual reports on Form 20-F. These concerns may make foreign private issuers reluctant to engage in transactions that would require them to become subject to SEC reporting requirements and may cause some foreign private issuers to terminate their SEC reporting obligations by deregistering their securities.[12]

Annual Test for Foreign Private Issuer Status

Historically, the SEC had taken the position that a foreign issuer must assess whether it meets the SEC definition of foreign private issuer at different times during its fiscal year. The amendments now permit reporting companies to assess their status only once a year – on the last business day of their second fiscal quarter.[13] If a reporting company determines that it no longer qualifies as a foreign private issuer on the last business day of its second fiscal quarter, it will be required to file an annual report on Form 10-K with respect to that fiscal year and to comply with the reporting requirements (including, among others, the proxy rules and Section 16) and use the forms prescribed for domestic companies beginning on the first day of the fiscal year following the determination date. However, a reporting company that determines that it qualifies as a foreign private issuer will be permitted to avail itself of the foreign private issuer accommodations, including use of the foreign private issuer forms and reporting requirements, beginning on the determination date on which it establishes its eligibility as a foreign private issuer. Thus, a newly qualified foreign private issuer will not need to continue to provide reports on Forms 8-K and 10-Q for the remainder of the fiscal year.

Segment Data Disclosure Requirement

Under Instruction 3 to Item 17 of Form 20-F, a foreign private issuer that presents financial statements otherwise fully in compliance with U.S. GAAP may omit segment

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[11] The new Form 20-F filing deadlines will apply for fiscal years ending on or after December 15, 2011.

[12] The SEC recently published amendments facilitating the deregistration process for foreign private issuers. See "Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty To File Reports Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934," Release No. 34–55540 (March 27, 2007) [17 CFR 200, 232, 240 and 249].

[13] The test date is the same as that used to determine accelerated filer status under Exchange Act Rule 12b-2. It should be noted that, under the amendments, a Canadian issuer using MJDS is required to test its status as a foreign private issuer only as of the last business day of its second fiscal quarter. However, as was the case prior to the amendments, a Canadian issuer will have to continue to test its eligibility to file annual reports on Form 40-F based on all of the other requirements of that Form, such as public float, at the end of its fiscal year and to test its ability to use the MJDS Securities Act registration statement forms at the time of filing. New registrants are required to assess whether they meet the definition of foreign private issuer within 30 days prior to the filing of an initial registration statement.

data from its financial statements and also is permitted to have a qualified U.S. GAAP audit report as a result of this omission. The amendments eliminate this accommodation beginning with fiscal years ending on or after December 15, 2009.

Amendment to Exchange Act Rule 13e-3

Exchange Act Rule 13e-3 currently requires any issuer or affiliate that engages in a Rule 13e-3 transaction to file a Schedule 13E-3 disclosing its plan to take the company private, and to make prompt amendments to reflect certain information about the proposed transaction. Currently, Rule 13e-3 is triggered when an issuer and/or any of its affiliates are engaged in a specified transaction or series of transactions[14] that have either a reasonable likelihood or a purpose of causing (i) any class of equity securities of the issuer that is subject to Section 12(g) or Section 15(d) of the Exchange Act to be held of record by less than 300 persons, or (ii) the securities to be neither listed on any national securities exchange nor authorized to be quoted on an inter-dealer quotation system of any registered national securities association. The amendments revise Rule 13e-3 to reflect the recently adopted rules pertaining to the ability of foreign private issuers to terminate their Exchange Act registration and reporting obligations. Rule 13e-3(a)(3)(ii)(A) now specifies that the cited effect is deemed to have occurred when a domestic or foreign private issuer becomes eligible under Exchange Act Rule 12g-4 to deregister a class of securities; a foreign private issuer becomes eligible under Exchange Act Rule 12h-6 to deregister a class of securities or terminate a reporting obligation; or any issuer becomes eligible under Exchange Act Rule 12h-3 or Exchange Act Section 15(d) to have a reporting obligation suspended.

Requiring Item 18 Reconciliation in Annual Reports and Registration Statements Filed on Form 20-F

Currently, a foreign private issuer that is only listing a class of securities on a national securities exchange, or only registering a class of securities under Exchange Act Section 12(g), without conducting a public offering of those securities, may provide financial statements according to Item 17 of Form 20-F. Foreign private issuers may also provide financial statements according to Item 17 for their annual reports on Form 20-F. Under Item 17, a foreign private issuer must either prepare its financial statements and schedules in accordance with U.S. GAAP, or IFRS as issued by the International Accounting Standards Board (IASB), or include a reconciliation of its financial statements prepared in accordance with another basis of accounting to U.S. GAAP. This reconciliation must include a narrative discussion of reconciling differences, a reconciliation of net income for each year and any interim periods presented, a reconciliation of major balance sheet captions for each year and any interim periods, and a reconciliation of cash flows for each year and any interim periods. In contrast, if a foreign private issuer that presents its financial statements on a basis other than U.S. GAAP, or IFRS as issued by the IASB, provides financial statements under Item 18 of Form 20-F, it must provide all the information required by U.S. GAAP and Regulation S-X, in addition to the reconciling information for the line items specified in Item 17.

The amendments require Item 18 information for foreign private issuers that are only listing a class of securities on an exchange, or only registering a class of securities under Exchange Act Section 12(g), without conducting a public offering; that file annual reports on Form 20-F; or that register certain non-capital raising offerings, such as offerings pursuant to reinvestment plans, or offerings upon the conversion of securities or of investment grade securities.[15] A foreign private issuer that currently prepares its financial statements in accordance with Item 17 will be

[14] A "Rule 13e-3 transaction" is defined as (i) a purchase of any equity security by the issuer of such security or by an affiliate, (ii) a tender offer, (iii) a proxy solicitation or information statement distribution in connection with a merger or similar transaction, (iv) the sale of substantially all the assets of an issuer to its affiliate or (v) a reverse stock split.

[15] The SEC did not, however, eliminate the availability of Item 17 disclosure for Canadian MJDS filers, or with respect to the financial statements of non-registrants that are required to be included in a foreign or domestic issuer's registration statement, annual report or other Exchange Act report.

required to present its financial statements pursuant to Item 18 for its first fiscal year ending on or after December 15, 2011.

Disclosure about Changes in a Foreign Private Issuer's Certifying Accountant

U.S. reporting companies are required to report any changes in and disagreements with their certifying accountant in a current report on Form 8-K and in a registration statement on Form 10 under the Exchange Act, as well as in their registration statements filed on Forms S-1 and S-4 under the Securities Act. Historically, foreign private issuers have not been required by the SEC to provide this disclosure. However, foreign private issuers that are listed on the New York Stock Exchange or The Nasdaq Stock Market are required to notify the relevant exchange of a change in their auditors. This information is required to be furnished under cover of Form 6-K, which does not have the substantive disclosure requirements of Form 8-K.

The amendments require substantially the same disclosures currently provided by U.S. reporting companies about changes in and disagreements with their certifying accountant under Form 20-F and Forms F-1, F-3 and F-4 with respect to fiscal years ending on or after December 15, 2009. New Item 16F of Form 20-F elicits similar disclosures to those required by Item 4.01 (Changes in Registrant's Certifying Accountant) of Form 8-K, including the disclosure requirements of Item 304(a) of Regulation S-K, [16] which are referenced in Form 8-K, and Item 9 (Changes in and Disagreements with Accountants on Accounting and Financial Disclosure) of Form 10-K, which refers to the disclosure requirements of Item 304(b) of Regulation S-K.[17] However, new Item 16F eliminates or modifies some of the due dates contained in Item 304(a)(3) of Regulation S-K because the disclosure will need to be made on an annual, rather than current, basis.

Annual Disclosure About ADR Fees and Payments

Currently, disclosures about fees and other payments made by ADR holders to a depositary are provided in the registration statement filed to register the deposited securities under the Securities Act or the Exchange Act, but are not required to be disclosed in annual reports filed on Form 20-F. The amendments revise Item 12.D.3. and the Instructions to Item 12 of Form 20-F to require disclosure of ADR fees, including the annual fee for general depositary services and payments made to foreign issuers whose securities underlie ADRs, on an annual and per payment basis. These disclosures must be included in Form 20-Fs with respect to fiscal years ending on or after December 15, 2009. The revised Form 20-F will require disclosure of these payments in any registration statement on Form 20-F that is filed for deposited securities, as well as in any annual report for sponsored ADR facilities.

Disclosure About Differences in Corporate Governance Practices

The New York Stock Exchange and The Nasdaq Stock Market exempt foreign issuers with listed securities from certain corporate governance requirements applicable to U.S. companies, but require those foreign issuers to disclose the significant differences between their corporate governance practices and those followed by U.S. companies under the relevant securities exchange's listing standards. The amendments require disclosure of this information in

[16] Among other things, Item 304(a) of Regulation S-K requires an issuer to disclose whether an independent accountant that was previously engaged as the principal accountant to audit the issuer's financial statements, or a significant subsidiary on which the accountant expressed reliance in its report, has resigned, declined to stand for re-election, or was dismissed. Item 304(a) of Regulation S-K also requires an issuer to disclose any disagreements or reportable events that occurred within the issuer's latest two fiscal years and any interim period preceding the change of accountant.

[17] Item 304(b) of Regulation S-K solicits disclosure about whether, during the fiscal year in which the change of accountants took place or during the subsequent year, the issuer had similar, material transactions to those which led to the disagreements with the former accountants, and whether such transactions were accounted for or disclosed in a manner different from that which the former accountants would have concluded was required. If so, Item 304(b) requires the issuer to disclose the existence and nature of the disagreement or reportable event, and also disclose the effect on the financial statements if the method that would have been required by the former accountants had been followed.

the Form 20-F annual reports filed by all foreign issuers whose securities are listed on a U.S. securities exchange.[18] New Item 16G to Form 20-F will require foreign private issuers to provide a concise summary of the significant ways in which their corporate governance practices differ from the corporate governance practices of U.S. companies listed on the same exchange in their annual reports for their first fiscal year ending on or after December 15, 2008.

This memorandum is for general informational purposes and should not be regarded as legal advice. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as memoranda regarding recent corporate reporting and governance developments, can be obtained from our website, www.simpsonthacher.com.

[18] Currently, foreign private issuers are required to provide in their annual reports the disclosure required by Exchange Act Rule 10A-3(d) regarding an exemption from the listing standards for audit committees.

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