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Foreign Issuer Reporting Enhancements; Proposed Rule

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 a.m. and 3 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 405 [1] of Regulation C,[2] Form F–1,[3] Form F–3 [4] and Form F–4 [5] under the Securities Act of 1933 (''Securities Act''),[6] Form 20–F [7] under the Securities Exchange Act of 1934 (''Exchange 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 depositary 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.

Table of Contents

I. Overview of the Proposed Amendments
II. Proposed Changes
  A. Annual Test for Foreign Private Issuer Status
  B. Accelerating the Reporting Deadline for Form 20–F Annual Reports
  C. Segment Data Disclosure
  D. Exchange Act Rule 13e–3
III. Other Matters Under Consideration
  A. Requiring Item 18 Reconciliation in Annual Reports and Registration Statements Filed on Form 20–F
  B. Disclosure About Changes in a Registrant's Certifying Accountant
  C. Annual Disclosure About ADR Fees and Payments
  D. Disclosure About Differences in Corporate Governance Practices
  E. Financial Information for Significant, Completed Acquisitions

[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.
[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.

IV. General Request for Comments
V. Paperwork Reduction Act
VI. Cost-Benefit Analysis
VII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation
VIII. Regulatory Flexibility Act Certification
IX. Statutory Authority and Text of the Proposed Amendments

I. Overview of the Proposed Amendments

When the Commission adopted Form 20–F in 1979,[13] the form used by foreign private issuers [14] 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 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 Issuers* [21] (''*International Equity 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-Oxley Act of 2002,[25] we also provided several accommodations to foreign private issuers. For example, we permitted foreign private issuers to comply with the requirement to include in their annual reports management's report on the company's internal control over financial reporting and the auditor's attestation on a delayed basis compared to some domestic issuers.[26] Foreign private issuers are also permitted to report changes in their internal controls over financial reporting on an annual basis, rather than on a quarterly basis as is required of domestic issuers.[27] In addition, with respect to the audit committee independence requirements under Section 301 of the Sarbanes-Oxley Act, foreign private issuers listed on U.S. exchanges were accorded certain accommodations that recognized non-U.S. practices and requirements.[28] More recently, in a companion release,[29] we are proposing amendments to Exchange Act Rule 12g3–2(b) [30] to modify the availability of this exemption from registration under Section 12(g) [31] of the Exchange Act for foreign private issuers, so that a qualified foreign private issuer that meets specified conditions can claim the exemption automatically

[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.*

[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 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.*

[25] 15 U.S.C. 7201 *et seq.*

[26] *See* Release No. 33–8392 (Feb. 24, 2004) [69 FR 9722] (extending the original compliance dates for accelerated filers to fiscal years ending on or after November 15, 2004, and for companies that are not accelerated filers and for foreign private issuers, to fiscal years ending on or after July 15, 2005); Release No. 33–8545 (Mar. 2, 2005) [70 FR 11528] (adopting an additional one-year extension of the compliance dates for companies that are non-accelerated filers and for foreign private issuers filing annual reports on Forms 20–F or 40–F); Release No. 33–8730A (Aug. 9, 2006) [71 FR 47056] (extending for one year the date by which a foreign private issuer that is an accelerated filer and that files annual reports on Forms 20–F or 40–F must begin to comply with the requirement to provide the auditor's attestation report on internal control over financial reporting).

[27] Release No. 33–8238 (June 5, 2003) [68 FR 36636].

[28] Release No. 33–8220 (Apr. 9, 2003) [68 FR 18788].

[29] Release No. 34–57350 (Feb. 19, 2008).

[30] 17 CFR. 240.12g3–2(b).

[31] 15 U.S.C. 78*l*(g).

without regard to the number of its U.S. shareholders.

As the nature of the global capital markets have evolved, and because of marked advancements in technology with respect to the gathering and processing of information, some of the disclosure accommodations that we provided to foreign private issuers almost 30 years ago may no longer be appropriate. As a result, we are proposing today amendments to rules and forms that should enhance the reporting of information by foreign private issuers, as well as the timeframe within which investors can have access to this information.

The amendments that we are proposing today balance our dual objectives of enhancing the disclosures that foreign private issuers provide to investors in the U.S. public markets, and improving the accessibility of our public markets to these issuers.

Our principal proposals are as follows:

- Permit reporting foreign issuers to assess their eligibility to use the special 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, which is currently required;
- Accelerate the reporting deadline for annual reports filed on Form 20–F by foreign private issuers from six months to 90 days after the issuer's fiscal year-end in the case of large accelerated filers and accelerated filers, and to 120 days after the issuer's fiscal year-end for all other issuers, after a two-year transition period;
- Amend Form 20–F by eliminating an instruction to Item 17 of that form that permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements; and
- Amend Exchange Act Rule 13e–3, which pertains to going private transactions by reporting issuers or their affiliates, to reference the recently adopted deregistration and termination of reporting rules applicable to foreign private issuers.

In addition, we are also seriously considering other possible amendments that would affect foreign private issuers, and are seeking public comment on these proposals. These matters include the following:

- Eliminate the availability of the limited U.S. GAAP reconciliation option that is 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 only registering a class of equity securities under Section 12(g) of the Exchange Act, and not conducting a public offering. We are also proposing to eliminate this limited reconciliation option for annual reports filed on Form 20–F, and for certain non-capital raising offerings, such as offerings pursuant to reinvestment plans, offerings upon the conversion of securities, or offerings of investment grade securities. Thus, all foreign private issuers that are required to provide a U.S. GAAP reconciliation must do so pursuant to Item 18 of Form 20–F, although required third party financial statements could continue to be prepared pursuant to Item 17 of Form 20–F;
- Amend Form 20–F to require disclosure in annual reports filed on that Form about any changes in the registrant's certifying accountant;
- Amend Form 20–F to require annual disclosure of the fees and other charges paid by holders of American Depositary Receipts (ADRs) to depositaries, as well as any payments made by depositaries to the foreign private issuers whose securities underlie the ADRs;
- Amend Form 20–F to require annual disclosure of the significant differences in the corporate governance practices of listed foreign private issuers compared to the corporate governance practices applicable to domestic companies under the relevant exchange's listing standards; and
- Amend Form 20–F to require foreign private issuers to present information about highly significant completed acquisitions that are significant at the 50% or greater level.

II. Proposed Changes

A. Annual Test for Foreign Private Issuer Status

The Commission has a longstanding policy of facilitating the access of foreign companies to the U.S. capital markets, as evidenced by the accommodations to foreign practices and policies that are accorded to foreign companies that qualify as ''foreign private issuers.'' [32] For example, foreign private issuers are exempt from the Commission's proxy rules,[33] and from the insider stock trading reports and short-swing profit recovery provisions under Section 16 [34] of the Exchange Act.[35] They also provide any interim reports on the basis of home country regulatory and stock exchange practices, rather than the quarterly reports that are required of U.S. issuers,[36] and executive compensation disclosure on an aggregate basis if the information is reported on such a basis in the issuer's home country.[37]

For many companies, the determination of whether they qualify as a foreign private issuer is important because of these various accommodations and exemptions. However, to make sure that it qualifies for these accommodations, a foreign private issuer that has close to 50% of its outstanding voting securities held of record by U.S. residents may find that it must monitor on a continuous basis the different factors used to assess foreign private issuer status.[38] This can result in some uncertainty for foreign private issuers as to which reporting and regulatory requirements will apply to them within a given period of time, as well as result in confusion for investors if an issuer needs to move between foreign and domestic reporting forms in the same fiscal year. For example, if a foreign issuer concludes that it does not qualify as a foreign private issuer in the middle of its fiscal year, it may find it difficult to change its basis of accounting to U.S. GAAP in order to comply on a timely basis with the reporting requirements applicable to domestic issuers under the Exchange Act. These issuers also face the challenge of modifying their

[32] *See supra* note 14 for the definition of ''foreign private issuer.''

[33] 17 CFR 240.14a–1 *et seq.*

[34] 15 U.S.C. 78p.

[35] These exemptions are contained in Exchange Act Rule 3a12–3(b) [17 CFR 240.3a12–3(b)].

[36] Foreign private issuers submit current reports to the Commission on Form 6–K [17 CFR 249.306]. Unlike Form 8–K [17 CFR 249.308], which is the current report form used by domestic issuers, there are no specific substantive disclosures that are required by Form 6–K. Instead, foreign private issuers furnish under cover of Form 6–K whatever information that they (i) make or are required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, or (ii) file or are required to file with a stock exchange on which their securities are traded and which was made public by that exchange, or (iii) distribute or are required to distribute to their securityholders. These reports are required to be furnished promptly after the material contained in the report is made public.

[37] Item 6.B. of Form 20–F.

[38] *See* note 14 above for a description of the factors that foreign issuers must monitor. The Commission's staff has taken the position that, for the purpose of the exemptions contained in Exchange Act Rule 3a12–3(b), foreign private issuers need to assess their status at the end of each fiscal quarter. In addition, they must assess their status at the completion of any purchase or sale by the issuer of its equity securities (other than in connection with an employee benefit plan or compensation arrangement, conversion of outstanding convertible securities, or exercise of outstanding options, warrants or rights), any purchase or sale of assets by the issuer other than in the ordinary course of business, and any purchase of equity securities of the issuer in a public tender offer or exchange offer by a non-affiliate. Foreign Private Issuers Relying on Rule 3a12–3(b) under the Exchange Act, SEC No-Action Letter, [1993 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 76,667 (Mar. 30, 1993).

information and processing systems to comply with the domestic reporting and registration regime, as well as the executive compensation disclosure requirements, proxy rules and Section 16 reporting requirements that are applicable to domestic issuers. To provide greater certainty to both issuers and investors as to the status of these foreign issuers within a given period of time, we are proposing to permit foreign private issuers to assess their status once a year. Aside from facilitating a smoother transition when foreign private issuers change status in the middle of a fiscal year, we believe that this approach would benefit investors by eliminating confusion in the markets as to an issuer's status. This approach would also be more consistent with our approach to determining accelerated filer and smaller reporting company status, and should simplify compliance with the Commission's regulations.

We are proposing to permit reporting foreign issuers to assess their status on the last business day of their second fiscal quarter,[39] which is the same date used to determine accelerated filer status under Exchange Act Rule 12b–2[40] and smaller reporting company status in Item 10(f)(2)(i)[41] of Regulation S–K.[42] We believe that selecting this date would provide regulatory consistency and ease of issuer application, as opposed to different dates for determining filing status. In addition, if a foreign issuer determines that it no longer qualifies as a foreign private issuer on the last business day of its second fiscal quarter, it would be required to comply with the reporting requirements and use the forms prescribed for domestic companies beginning on the first day of the fiscal year following the determination date. For example, a foreign issuer that did not qualify as a foreign private issuer as of the end of its second fiscal quarter in 2009 would file a Form 10–K in 2010 for its 2009 fiscal year. The issuer would also begin complying with the proxy rules and Section 16, and become subject to reporting on Forms 8–K and 10–Q on the first day of its 2010 fiscal year. This would give such issuers six months' advance notice that they will need to transition to the domestic forms and applicable reporting requirements.

On the other hand, we are proposing to permit a reporting company that qualifies as a foreign private issuer 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. We are proposing this distinction because we believe the new foreign private issuer, who would be eligible to file its annual report for that fiscal year on Form 20–F, need not continue to provide reports on Form 8–K and 10–Q for the remainder of that fiscal year. Instead, the issuer would be required to provide reports on Form 6–K.

Under the proposed amendment, a Canadian issuer that files registration statements and Exchange Act reports using the multijurisdictional disclosure system (''MJDS'')[43] would also be required to test its status as a foreign private issuer only as of the last business day of its second fiscal quarter. Currently, a Canadian issuer that is eligible to file a Form 40–F[44] annual report at the end of a fiscal year is presumed to be eligible to use that Form, as well as Form 6–K, from the date of filing until the end of its next fiscal year.[45] If adopted, the proposed amendment would require a Canadian issuer that plans to use the MJDS to test its foreign private issuer status earlier in the year. However, as noted in the adopting release to the MJDS, it would have 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 the fiscal year.[46] The proposed amendment would not change the responsibility of the Canadian issuer to check its eligibility to use Forms 40–F and 6–K at the end of its fiscal year, or the requirement that a Canadian issuer test its ability to use the MJDS Securities Act registration statement forms at the time of filing.

Comments Solicited

1. Is it appropriate for foreign issuers to have six months' notice that they no longer qualify as foreign private issuers, and therefore must use the domestic registration and reporting forms as of the beginning of the next fiscal year? Should issuers who have been foreign private issuers, but who fail to qualify as foreign private issuers, be required to use the domestic forms immediately, as is currently required?

2. Is it likely that foreign issuers will attempt to manipulate the amount of their voting securities that are held by U.S. residents at the end of the second fiscal quarter as a result of the proposed test? Are there other factors under the definition of foreign private issuer that may be susceptible to manipulation on the test date, such as the resignation and reappointment of officers and directors, or the transfer of non-physical assets such as cash, receivables or securities out of the United States?

3. If a foreign issuer that has been filing on domestic issuer forms qualifies as a foreign private issuer on the last business day of its second fiscal quarter, should it be allowed to switch over immediately to the foreign private issuer forms, such as Forms 20–F and 6–K? In some cases, an event may trigger the filing of a Form 8–K, but a Form 6–K might not be required because the foreign issuer's home jurisdiction or stock exchange does not require the publication of information about the event.[47] If a foreign issuer would have been required to file a Form 8–K shortly after the end of its second fiscal quarter, but qualifies as a foreign private issuer on the last business day of the second quarter, should it be allowed to forgo the filing of the Form 8–K even if a Form 6–K would not be required? Should the foreign issuer be required to file the Form 8–K and make all the filings it would otherwise be required to make on the domestic forms until it files a Form 20–F or furnishes its first Form 6–K? Even if a foreign issuer is permitted to switch to the foreign private issuer forms immediately, should the foreign issuer be required to file a Form 8–K in the scenario described above because the event that triggered the filing occurred during its second fiscal quarter?

4. Because of the many accommodations provided to foreign private issuers, should foreign issuers be

[39] The proposed determination date for foreign private issuer status differs from the determination date for well-known seasoned issuer (WKSI) status. Under Rule 405 under the Securities Act, the determination date as to whether an issuer is a WKSI is the latest of: (i) *The* time of filing its most recent shelf registration statement, (ii) the time of filing its most recent amendment to a shelf registration statement for purposes of complying with Section 10(a)(3) of the Securities Act, 15 U.S.C. 77j(a)(3), or (iii) in the event that the issuer has not filed a shelf registration statement or amended a shelf registration statement for purposes of complying with section 10(a)(3) of that Act for 16 months, the time of filing of the issuer's most recent annual report on Form 10–K [17 CFR 249.310] or Form 20–F.

[40] 17 CFR 240.12b–2.

[41] 17 CFR 229.10(f)(2)(i).

[42] 17 CFR 229.10 *et seq. See also* Release No. 33–8876 (Dec. 19, 2007) [73 FR 934] (adopting amendments to the disclosure and reporting requirements under the Securities Act and the Exchange Act to expand the number of companies that qualify for the scaled disclosure requirements for smaller reporting companies).

[43] 17 CFR 239.37 to 17 CFR 239.41 and 17 CFR 249.240f.

[44] 17 CFR 249.240f. MJDS filers file annual reports on Form 40–F and current reports on Form 6–K.

[45] 45 *See* Release No. 33–6902 (June 21, 1991) [56 FR 30036] (adopting the MJDS system).

[46] *See id.*

[47] *See* note 36 above for a discussion for the Form 6–K requirements.

required to test their status twice a year, rather than just once a year? For example, should foreign issuers be required to test their status as of the last business day of their second fiscal quarter, as well as at the end of the fiscal year?

5. If we adopt the proposed amendment, to avoid confusion by investors, should a foreign issuer be required to notify the market when it has determined that it has switched its status from domestic issuer to foreign private issuer, or vice versa? If so, how should this notification be made, *e.g.*, press release, notice on its Web site?

6. How should we address the potential flowback of securities into the United States if a reporting foreign issuer concludes that it does not qualify as a foreign private issuer in its third fiscal quarter and, under the proposed rule, is able to qualify as a Category 2 [48] issuer under Regulation S [49] and also avoid the restrictions of Category 3 [50] and Rule 905 [51] of Regulation S for unregistered offshore offerings of its equity securities for almost a year and a half after it has made this determination?

7. Should MJDS filers be required to test their foreign private issuer status on the last business day of their most recent second fiscal quarter, as well as at the end of the fiscal year? Would it be reasonable to require MJDS filers to assess their status twice a year because they must test their qualification to use the Form 40–F at the end of the fiscal year in any case? Would such a testing requirement be reasonable in light of the accommodations made for MJDS filers, *e.g.*, they comply with the disclosure requirements of their home jurisdiction?

8. As proposed, a Canadian MJDS filer that did not qualify as a foreign private issuer on the last day of its second fiscal quarter would immediately not be able to use the MJDS forms for Securities Act offerings, since the eligibility to use the MJDS Securities Act forms is tested at the time that the registration statement is filed. In that case, the issuer would still be able to use the other foreign private issuer registration statement forms, such as Form F–3, until the end of its fiscal year. Should these issuers be permitted to file on the foreign private issuer registration statement forms in this circumstance? Alternatively, should these issuers be permitted to use the MJDS Securities Act registration statement forms until the end of their fiscal year?

B. Accelerating the Reporting Deadline for Form 20–F Annual Reports

As the Commission noted when it proposed to accelerate the filing dates for periodic reports filed by domestic issuers,[52] technological advances have made it easier for companies to process and disseminate information quickly. At the same time, investors evaluate and react to information in a shorter timeframe, and many now expect to receive information on a faster basis. Although some information about foreign private issuers is available through their earnings releases and other announcements, investors may not have access to the more complete disclosure contained in an issuer's Form 20–F annual reports until six months after the end of the issuer's fiscal year. The longer filing due date for these reports was initially established as an accommodation to the different disclosure requirements in the foreign private issuers' home jurisdictions. [53] However, many companies that operate in the international markets gather and evaluate information on a vastly expedited basis compared to 29 years ago, when Form 20–F was adopted, so that such a delayed filing date for these reports may no longer be necessary. Today, foreign private issuers in many jurisdictions are expected to file annual reports with their home securities regulator on a faster timetable,[54] so that a significant portion of the information required in a Form 20–F is readily available.

Consistent with our efforts to modernize the periodic reporting system for domestic issuers, we are now proposing to shorten the filing due date for annual reports filed by foreign private issuers on Form 20–F.[55] Currently, a foreign private issuer must file its annual report on Form 20–F within six months after its fiscal year-end. We are proposing to accelerate the due date for annual reports filed on Form 20–F 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 the issuer's fiscal year-end for all other issuers, after a two-year transition period. We note that the proposed due dates for Form 20–F would still provide an accommodation to many foreign private issuers, since large accelerated and accelerated domestic filers are required to file annual reports on Form 10–K [56] within 60 days and 75 days, respectively, of their fiscal year-ends.[57] All other domestic issuers are required to file annual reports on Form 10–K within 90 days after their fiscal year-end.[58]

When we proposed to accelerate the periodic report filing dates for domestic issuers, we solicited comments on whether the deadline for annual reports filed on Form 20–F should be shortened to four or five months after the end of

[48] 17 CFR 230.903(b)(2).

[49] 17 CFR 230.901–230.905 and Preliminary Notes.

[50] 17 CFR 230.903(b)(3).

[51] 17 CFR 230.905.

[52] *See* Release No. 33–8089 (Apr. 12, 2002) [67 FR 19896].

[53] Form 20–F Adopting Release, *supra* note 13 (noting that the Commission decided not to adopt a filing due date for Form 20–F annual reports of four months after the registrant's fiscal year-end in deference to commenters' concerns about the need for more time to comply with applicable foreign regulations, which at that time often permitted annual reports to be furnished to shareholders more than four months after the issuer's fiscal year-end).

[54] For example, the European Union's (EU) Transparency Directive requires companies listed on an EU regulated market to file their annual financial reports four months after the end of each financial year at the latest. Directive 2004/109/EC of the European Parliament and of the Council (Dec. 15, 2004). All EU member states were required to implement the Transparency Directive by January 20, 2007. Canadian issuers are also required to file their annual financial statements within a similar timeframe. Under *National Instrument 51–102 Continuous Disclosure Obligations*, a reporting Canadian issuer must file its annual financial statements within 90 to 120 days after its most recently completed financial year-end, depending on its status as a ''venture issuer.'' Israeli companies are required to file their annual reports within three months of the end of their reporting year, provided that the report is submitted 14 days or more before the date fixed for convening the general meeting at which the company's financial statements will be presented, or within three days of the date when the company's accountant signed his audit opinion, whichever is earlier. Regulation 7, Israeli Securities Regulations (Periodic and Immediate Reports).

[55] We are not proposing a similar acceleration in the filing deadline for annual reports filed on Form 40–F, which is used by eligible Canadian issuers under the MJDS. Under the MJDS, issuers who file annual reports on Form 40–F must comply with the substantive disclosure requirements and filing deadlines established by the relevant Canadian securities regulator. In keeping with the purpose of MJDS, which is to facilitate cross-border capital flows between the United States and Canada by streamlining the registration and periodic reporting process for cross-border issuers, the Form 40–F must continue to be filed with the Commission on the same day that the information is due to be filed with the relevant Canadian securities regulatory authority, as set forth in General Instruction D.(3) of Form 40–F. However, we note that a reporting Canadian issuer that is not a ''venture issuer'' must file its annual financial statements on or before 90 days after its most recently completed financial year-end, while all other Canadian issuers must file their annual financial statements on or before 120 days after their most recently completed financial year-end. *See supra* note 54.

[56] 17 CFR 249.310.

[57] *See* General Instructions A.(2)(a) and (b) of Form 10–K. At the time that we first adopted rule and form amendments to accelerate the filing of the quarterly and annual reports of reporting U.S. issuers, we noted that those amendments would increase the discrepancy in the due dates for filing annual reports between foreign private issuers and larger seasoned U.S. issuers, and indicated that we would continue to consider this issue. Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480].

[58] *See* General Instruction A.(2)(c) of Form 10–K.

the issuer's fiscal year.[59] Several commenters indicated that they supported accelerating the deadline for filing annual reports on Form 20–F, citing considerations such as recent technological and information processing improvements, as well as concerns about the potential competitive disadvantage faced by domestic companies as a result of the large discrepancy in reporting deadlines applicable to domestic versus foreign companies.[60] However, others noted the additional challenges faced by foreign registrants, such as requirements to reconcile their financial statements to U.S. GAAP, to prepare English translations, and to comply with home country reporting requirements.[61] These commenters expressed concern that accelerating the Form 20–F deadlines for foreign private issuers would result in additional costs and burdens that would discourage foreign issuers from accessing the U.S. capital markets.

Since the adoption of the accelerated reporting deadlines for domestic companies, the Commission has adopted rule amendments that addressed some of the specific concerns highlighted by commenters. For example, as noted previously, we adopted rule amendments that free foreign private issuers that prepare financial statements in accordance with IFRS as issued by the IASB from the obligation to reconcile their financial statements to U.S. GAAP.[62] When we proposed that rule, we noted that some investor representatives at a March 2007 roundtable on IFRS organized by the Commission's staff (''March 2007 IFRS Roundtable'') commented that IFRS financial statements would be more useful if issuers filed their Form 20–F annual reports on an accelerated basis.[63] As a result, we solicited comment again on whether the deadline for annual reports filed on Form 20–F should be accelerated.[64]

Many of the commenters supported accelerating the deadline for Form 20–F filers, although several expressed concern that any deadline should not impede the ability of foreign private issuers to fulfill their obligations to file annual reports with their home regulators on a timely basis. To that end, some commenters urged a deadline that was later than the foreign private issuer's home filing requirements to permit sufficient time for translation of the annual report into English and compliance with the additional disclosure requirements imposed by the Commission.[65] In contrast, other commenters supported a deadline that was consistent with the deadline faced by the foreign private issuers in its home jurisdiction.[66] Others noted that dropping the requirement to reconcile financial statements prepared in accordance with IFRS, as issued by the IASB, to U.S. GAAP would expedite the preparation of Form 20–F, so that an accelerated deadline would be feasible.[67]

After carefully considering the concerns expressed by all of the commenters, we believe that it is appropriate to propose accelerating the deadline for filing annual reports on Form 20–F. Annual reports that are filed on an expedited basis would provide investors with more timely access to these filings, and would improve the delivery and flow of reliable information to investors and the capital markets, thereby helping to improve the efficiency of the markets. The current six-month deadline was adopted at a time when many of the current technologies to gather information and to process it were not available. A number of foreign private issuers already file their annual reports on Form 20–F well before the current six-month deadline. In addition, the recent rule amendments that would exempt foreign private issuers from the reconciliation requirement if they prepare their financial statements according to IFRS as issued by the IASB should make it easier for many foreign private issuers to prepare their annual reports on Form 20–F. We estimate that in the next several years a majority of the foreign private issuers who file annual reports with the Commission will have incentives to use either U.S. GAAP, or IFRS as issued by the IASB as more countries adopt IFRS as their basis of accounting, or permit companies to use IFRS as issued by the IASB as their basis of accounting. We are not proposing to change the age of financial statement requirements for registration statements under the Securities Act or Exchange Act.[68] Accelerating the deadline for filing annual reports on Form 20–F should enable investors in the U.S. markets to get annual reports on the more current basis in which they are provided in other jurisdictions.

If the Commission decides to adopt amendments to accelerate the deadline for filing annual reports on Form 20–F, several commenters who responded to our IFRS Proposing Release[69] urged the Commission to provide a transition period for any accelerated deadline that was adopted.[70] We expect that the proposal, if adopted, would provide a two-year transition period. For example, if the proposal is adopted this year, the Form 20–F filing deadline would change for the fiscal years ending on or after December 15, 2010. For foreign private issuers that are large accelerated or accelerated filers, the Form 20–F due date would be 90 days after the fiscal year-end, and for all other foreign private issuers, annual reports filed on Form 20–F would be due 120 days after the fiscal year end, for fiscal years ending on or after December 15, 2010. In addition to these proposed amendments, we are proposing 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.[71]

Comments Solicited

9. Would accelerating the due date for Form 20–F annual reports be beneficial for investors? Given the differences in the reporting requirements that exist among the various foreign reporting

[59] Release No. 33–8089, *supra* note 52.

[60] *See, e.g.*, comment letters from Association for Investment Management and Research; Brown-Forman Corporation; Chevron Phillips Chemical Company LLP; Comcast Corporation; Deloitte & Touche LLP; The Dow Chemical Company; Eastman Kodak Company, Robert Krakauer, Markel Corporation; Maverick Capital Ltd.; SBC Communications Inc.

[61] *See, e.g.*, comment letters from Cleary, Gottlieb, Steen & Hamilton (''Cleary Gottlieb''); The Association of the Bar of the City of New York (NYCBA). For a summary of the comments received relating to the question of whether the deadline for filing Form 20–F should be accelerated, *see* U.S. Securities & Exchange Commission, Summary of Comments Relating to Proposed Amendments to Accelerate Periodic Report Filing Dates and Disclosure Concerning Web site Access to Reports, Section III.C.6., July 1, 2002, at *http://www.sec.gov/rules/extra/33–8089summary.htm.*

[62] Release No. 33–8879, *supra* note 19.

[63] *See* Unedited Transcript, SEC Staff's International Financial Reporting Standards Roadmap Roundtable (Mar. 6, 2007), *available at http://www.sec.gov/spotlight/ifrsroadmap/ifrsroadmap-transcript.txt.*

[64] Release No. 33–8818 (July 2, 2007) [72 FR 37962] (hereinafter ''IFRS Proposing Release'').

[65] *See, e.g.*, comment letter from Sullivan & Cromwell (supporting the acceleration of the Form 20–F deadline). *See also* comment letter from Cleary Gottlieb (not supporting an accelerated Form 20–F deadline, but nonetheless suggesting a deadline after the issuer's home country annual report is due if the Commission plans to accelerate the deadline).

[66] *See, e.g.*, comment letter from HSBC.

[67] *See, e.g.*, comment letters from the NYCBA and Swedish Export Credit Corporation.

[68] Under Item 8.A.4. of Form 20–F, the last year of audited financial statements may not be older than 15 months at the time of the offering or listing.

[69] IFRS Proposing Release, *supra* note 64.

[70] *See, e.g.*, comment letters from Merrill Lynch; Nippon Keidanren.

[71] We also took this approach when we adopted amendments to accelerate the periodic report filing dates for domestic companies. *See* Release No. 33–8128, *supra* note 57; Release No. 33–8644 (Dec. 21, 2005) [70 FR 76626] (adopting further refinements to the acceleration rules). *See also* Release No. 33–6823 (Mar. 13, 1989) [54 FR 10306] (conforming the transition report rules to the periodic report rules).

regimes, would accelerating the due date for Form 20–F annual reports have different impacts on foreign private issuers or investors depending on the particular country or the nature of the issuer's business? Would any of these differences affect the usefulness of the information to investors? If you believe that the due date should be accelerated, are the proposed due dates appropriate? Should different due dates be applied to foreign private issuers depending on the worldwide market value of their common equity held by non-affiliates, similar to the different annual report filing deadlines that are applied to domestic issuers? Should foreign private issuers with a larger worldwide market value be required to provide reports on a faster basis than other foreign private issuers because they presumably have additional resources and a better developed infrastructure that would enable them to comply with an accelerated due date?

10. Would accelerating the due date for filing annual reports on Form 20–F impose any unreasonable burdens on foreign private issuers, who may have to collect and provide more information in that Form than may be required in their home jurisdictions, and may also have to translate the information into English? Would the proposed accelerated due dates impose any burdens on foreign private issuers that may be required to file annual reports on Form 20–F with the Commission before they are required to provide annual reports in their home jurisdictions? Should the due date be accelerated to within 120 days of the foreign private issuer's fiscal year-end for all foreign private issuers, including large accelerated and accelerated filers?

11. Should different due dates be imposed on foreign private issuers depending on whether they file financial statements using U.S. GAAP, IFRS as issued by the IASB, or another GAAP with a reconciliation to U.S. GAAP? Should different due dates be imposed on foreign private issuers depending on whether their disclosure was originally prepared in a foreign language and needs to be translated into English?

12. Should the deadline for filing Form 20–F annual reports be linked to the issuer's home country requirements for filing annual reports? If so, should the deadline be the same as the one in the issuer's home country, or should it be on a delayed basis, such as one or two months later? If you believe that the deadline for filing Form 20–F should be linked to the issuer's home country requirements, should the foreign private issuer be responsible for submitting supporting materials that indicate when annual reports are due in its home jurisdiction, such as the applicable legislation or regulation, to the Commission at the time of its Form 20–F submission? Would varying deadlines according to home country requirements cause confusion for investors?

13. Would a different transition period be more appropriate for implementation of the accelerated deadline? For example, should foreign private issuers be subject to the accelerated deadline after a longer or shorter transition period instead?

14. Do foreign private issuers face unique challenges in preparing transition reports that would render a reduced filing period for those reports unduly burdensome?

C. Segment Data Disclosure

Under Item 17 of Form 20–F, foreign private issuers that present financial statements otherwise fully in compliance with U.S. GAAP may omit segment data from their financial statements, and also are permitted to have a qualified U.S. GAAP audit report as a result of this omission. We estimate that fewer than 10 foreign private issuers currently use this accommodation. We are proposing to amend Form 20–F by eliminating this narrow accommodation.

The reporting permitted by this accommodation is inconsistent with recent international developments in financial reporting. For example, in order to file financial statements without reconciliation to U.S. GAAP, foreign private issuers must comply fully with IFRS as issued by the IASB, including presentation of segment data. An accommodation that permits a foreign private issuer to present incomplete and non-compliant U.S. GAAP financial statements may no longer be necessary or appropriate. Accordingly, we are proposing to amend Item 17 of Form 20–F by removing Instruction 3 to that Form, which currently permits the omission of segment data from U.S. GAAP financial statements.

Comments Solicited

15. In Part III.A. of this release, we propose an amendment to eliminate the option to prepare financial statements according to Item 17 of Form 20–F. Under that proposed amendment, foreign private issuers would be required to prepare their financial statements according to the requirements of Item 18 of Form 20–F, which requires all of the information required by U.S. GAAP and Regulation S–X. If that proposal is adopted, would it still be useful to eliminate the exemption from providing segment data?

16. Should we provide an exemption for foreign private issuers that are currently preparing financial statements under U.S. GAAP that omit segment data pursuant to Instruction 3 of Item 17? If we adopt the proposed amendment, should we provide a ''grandfather'' provision or an exemptive order to permit the small number of foreign private issuers to continue to not report segment data?

D. Exchange Act Rule 13e–3

We are proposing to amend Exchange Act Rule 13e–3,[72] which pertains to going private transactions by reporting issuers or their affiliates, to reflect the recently adopted rules pertaining to the ability of foreign private issuers to terminate their Exchange Act registration and reporting obligations.[73] 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 [74] 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) [75] 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.

Rule 13e–3 requires any issuer or affiliate that engages in a Rule 13e–3 transaction to file a Schedule 13E–3 [76] disclosing its plan to take the company private, and to make prompt amendments to reflect certain information about the proposed transaction. In the Schedule 13E–3, the filing party must disclose the purposes for the transaction, whether any alternative means for accomplishing the stated purposes were considered, the reasons for the structure of the transaction and why it was being undertaken at the time, the effects that the transaction would have on the issuer and its unaffiliated security holders, whether or not the filing party believes the transaction is fair to unaffiliated

[72] 17 CFR 240.13e–3.

[73] Release No. 34–55540, *supra* note 23.

[74] 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. 17 CFR 240.13e–3.

[75] 15 U.S.C. 78*o*(d).

[76] 17 CFR 240.13e–100.

security holders, and the factors considered in determining fairness. Rule 13e–3(f)[77] also requires dissemination of the information required by Schedule 13E–3 to security holders within specified time periods.

When the Commission adopted Rule 13e–3, we indicated that the Rule would be triggered if a specified transaction has either the reasonable likelihood or purpose of causing the termination of reporting obligations under the Exchange Act because the class of securities would be held of record by less than 300 persons as a result of the transaction.[78] Recently, we adopted amendments to the deregistration provisions applicable to foreign private issuers that would permit them to terminate their reporting obligations under the Exchange Act by meeting a quantitative benchmark designed to measure relative U.S. market interest for their equity securities that does not depend on a head count of the issuers' U.S. security holders.[79] Although Rule 13e–3 does not reflect the termination of registration and reporting provisions that were previously applicable to foreign private issuers, we propose to amend the Rule to better reflect the current deregistration provisions. As a result, we are proposing to amend Rule 13e–3(a)(3)(ii)(A)[80] to specify that the cited effect is deemed to have occurred when a domestic or foreign issuer becomes eligible to deregister under Exchange Act Rules 12g–4[81] and 12h–6,[82] respectively.

When a foreign private issuer engages in a Rule 13e–3 transaction that would cause the termination of its registration or reporting obligations under the Exchange Act, Rule 13e–3 is intended to provide the issuer's security holders with one last opportunity to obtain information about the company and consider their alternatives. This is equally true in the context of a foreign private issuer that is deregistering as it is for a domestic or foreign company that is ceasing to file reports because the number of its shareholders falls below 300.

Comments Solicited

17. Is it appropriate to amend Rule 13e–3 by using the quantitative benchmark set forth in the new termination of reporting and deregistration provisions?

18. Instead of referencing the applicable termination of reporting and deregistration provisions, is there another threshold that should be applied in Rule 13e–3(a)(3)(ii)(A) to foreign private issuers?

19. If the proposed amendment is adopted, would more registrants be required to comply with Rule 13e–3 than intended because they may be engaged in one of the transactions described in Rule 13e–3(a)(3)(i) as a step toward terminating their registration or reporting obligations with respect to a class of securities, transactions that previously might not have resulted in the application of Rule 13e–3?

20. To what extent may foreign private issuers engage in ordinary course securities transactions (such as buybacks or repurchases) that may trigger Rule 13e–3, and is it necessary to provide exceptions so that these transactions do not trigger Rule 13e–3?

III. Other Matters Under Consideration

The Commission is considering whether it is appropriate to amend Form 20–F in order to revise the disclosure elicited from foreign private issuers in annual reports and registration statements. The proposals discussed in this section touch on a number of different areas. Unlike our proposal relating to the annual report filing deadline, we have not discussed these matters in previous releases and we are especially interested in comments from investors, foreign issuers and others as to whether we should impose these new disclosure requirements.

In addition to the specific proposals discussed below, we would also welcome commenters' views regarding other areas as to which we should consider revising our disclosure requirements applicable to foreign private issuers, either with respect to requiring new areas of disclosure or eliminating current disclosure requirements.

A. 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 prepare its financial statements and schedules in accordance with U.S. GAAP, or IFRS as issued by the IASB. If its financial statements and schedules are prepared in accordance with another basis of accounting, the issuer must include a reconciliation 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.[83] 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.

We are proposing to eliminate this distinction between the disclosure provided to the primary and secondary markets by requiring 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. We are also proposing to require Item 18 information for foreign private issuers that file annual reports on Form 20–F. In addition, foreign private issuers that are making certain non-capital raising offerings, such as offerings pursuant to reinvestment plans, offerings upon the conversion of securities or offerings of investment grade securities, currently are permitted to provide Item 17 financial statements in their registration statements under the Securities Act. To ensure that the same type of financial information is provided regardless of the type of offering that is being made, we are also proposing to require foreign private issuers to file financial statements that comply with Item 18 when registering these types of offerings under the Securities Act.

The majority of foreign private issuers who do not prepare financial statements in accordance with U.S. GAAP elect to provide financial information pursuant to Item 18, rather than Item 17, of Form 20–F.[84] In our view, a reconciliation

[77] 17 CFR 240.13e–3(f).

[78] Release No. 33–6100 (Aug. 2, 1979) [44 FR 46736].

[79] Release No. 34–55540, *supra* note 23.

[80] 17 CFR 240.13e–3(a)(3)(ii)(A).

[81] 17 CFR 240.12g–4.

[82] 17 CFR 240.12h–6.

[83] *See* Item 17(c)(2) of Form 20–F.

[84] A foreign private issuer's latest annual report filed on Form 20–F and all subsequent Form 20–F annual reports are incorporated by reference into its Form F–3 shelf registration statement. See Item 6 (Incorporation of Certain Information by Reference) in Form F–3. General Instruction I.B.1. of Form F–3 requires foreign private issuers to

Continued

that includes the footnote disclosures required by U.S. GAAP and Regulation S–X [85] can provide important additional information.[86] As a result, we are proposing to amend Form 20–F and the registration statement forms available to foreign private issuers under the Securities Act (Forms F–1, F–3 and F–4) to require the disclosure of financial information according to Item 18 of Form 20–F for registration statements filed under both the Exchange Act and the Securities Act, as well as for annual reports. However, we are not proposing to eliminate the availability of Item 17 disclosures for Canadian MJDS filers in light of the special recognition accorded to MJDS filings. In addition, more countries are expected to adopt IFRS as their basis of accounting, or to permit companies to use IFRS as issued by the IASB as their basis of accounting in the next few years. We therefore believe that eliminating the availability of Item 17 in MJDS registration statements would not be necessary. Item 17 would also continue to be available for 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. These include significant acquired businesses under Rule 3–05 [87] of Regulation S–X, significant equity method investees under Rule 3–09 [88] of Regulation S–X, entities whose securities are pledged as collateral under Rule 3–16 [89] of Regulation S–X, and exempt guarantors under Rule 3–10(i) [90] of Regulation S–X.

If this amendment is adopted, we propose to establish a compliance date that would provide foreign private issuers with sufficient time to transition to the Item 18 requirements when preparing their financial statements. We anticipate that if this amendment is adopted in 2008, a foreign private issuer that currently prepares its financial statements according to Item 17 of Form 20–F would not be required to prepare financial statements pursuant to Item 18 until it files an annual report for its first fiscal year ending on or after December 15, 2009.

Comments Solicited

21. Would the proposed amendment to eliminate the availability of the Item 17 option benefit investors?

22. Is it appropriate to provide a transition period for foreign private issuers that are currently preparing financial statements in accordance with Item 17 of Form 20–F? Is a compliance date that provides a transition period in the best interests of investors? If so, is the suggested transition period appropriate in length, or should it be shorter or longer than proposed?

23. As proposed, Item 17 will now only be available for the presentation of financial information for non-issuer entities required to be included in a foreign or domestic issuer's registration statement or Exchange Act report. Is there any reason for retaining the Item 17 financial information option for non-capital raising offerings made by foreign private issuers or annual reports?

24. Would the elimination of the Item 17 option increase costs for companies? If so, what types of compliance costs would be affected? Are there ways to mitigate the costs?

25. To what extent are the benefits to investors from the additional Item 18 financial disclosure linked to more timely filing of Form 20–F? If we decide not to accelerate the deadline for filing Form 20–F as proposed, should we still require the additional Item 18 financial disclosure?

26. Should we provide an exemption for foreign private issuers that are currently preparing financial statements pursuant to Item 17? If we adopt the proposed amendment, should we provide a ''grandfather'' provision or an exemptive order to permit these foreign private issuers to continue to provide financial information pursuant to Item 17?

B. Disclosure About Changes in a Registrant's Certifying Accountant

Domestic companies currently 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 [91] under the Exchange Act,[92] as well as in their registration statements filed on Forms S–1[93] and S–4 [94] under the Securities Act. Among other things, this disclosure provides information about potential opinion shopping situations by issuers. ''Opinion shopping'' generally refers to the search for an auditor that is willing to support a proposed accounting treatment that is designed to help a company achieve its reporting objectives, even though that treatment could frustrate reliable reporting.[95]

Foreign private issuers have not been required to provide this disclosure. When we proposed the adoption of Form 20–F, we proposed a disclosure requirement soliciting information about changes in the registrant's certifying accountant.[96] The disclosure item was not included in Form 20–F.[97] However, the issues underlying the need for this disclosure also apply to foreign private issuers, and the relationship between issuers and their auditors in this area would seem to be as important for investors. Moreover, foreign private issuers that are listed on the New York Stock Exchange (NYSE) are already required by that Exchange to notify the market about a change in their auditors,[98] although 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.[99] As a result, we are proposing amendments that would require substantially the same types of disclosures currently provided by domestic issuers about changes in and disagreements with their certifying accountant.

We are proposing to amend Form 20–F by adding an Item 16F that would elicit the same types of change of accountant disclosures obtained in Item 4.01 (Changes in Registrant's Certifying Accountant) of Form 8–K,[100] including the disclosure requirements of Item 304(a) of Regulation S–K,[101] 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,[102] which refers to the disclosure

provide financial statements that comply with Item 18 for primary offerings.

[85] 17 CFR part 210.1–01 *et seq.*

[86] Under Item 17, an issuer is not required to provide the extensive footnote disclosures required by U.S. GAAP and Regulation S–X, unless these disclosures are otherwise required under its home country GAAP. For example, the footnote disclosures related to pension assets, obligations and assumptions, lease commitments, business segments, tax attributes, stock compensation awards, financial instruments and derivatives, among many others, are not required under Item 17 unless they are otherwise required by the issuer's home country GAAP.

[87] 17 CFR 210.3–05.

[88] 17 CFR 210.3–09.

[89] 17 CFR 210.3–16.

[90] 17 CFR 210.3–10(i).

[91] 17 CFR 249.210.

[92] In their annual reports on Form 10–K, domestic issuers do not provide the same type of change of accountant disclosure, since they should have reported this information on a more current basis on Form 8–K. However, they do provide the disclosures required by Item 304(b) of Regulation S–K [17 CFR 229.304(b)]. *See* text *infra* for a discussion of Item 304(b).

[93] 17 CFR 239.11.

[94] 17 CFR 239.25.

[95] *See* Release No. 33–6766 (Apr. 7, 1988) (adopting amendments to Form 8–K, Regulation S–K and Schedule 14A [17 CFR 240.14a–101] related to disclosure concerning a change in a registrant's certifying accountant).

[96] Release No. 34–14128 (Nov. 2, 1977) [42 FR 58684] (contained in proposed Item 24).

[97] Form 20–F Adopting Release, *supra* note 13.

[98] Section 204.03 of the NYSE Listed Company Manual.

[99] *See supra* note 36 for a discussion of the differences between Forms 6–K and 8–K.

[100] Item 4.01 of Form 8–K.

[101] 17 CFR 229.304(a).

[102] Item 9 of Form 10–K.

requirements of Item 304(b) of Regulation S–K. 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. 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. Because foreign private issuers do not file Forms 8–K and 10–K and are not otherwise subject to Item 304 of Regulation S–K, we are proposing that they provide disclosure about changes in and disagreements with their certifying accountants in their annual reports on Form 20–F, as well as in their initial registration statements filed on Forms 20–F, F–1 and F–4.

We are also proposing to amend Forms F–1 and F–4, which are used to register public offerings of securities by foreign private issuers under the Securities Act, to require the new Item 16F disclosure requirement about the issuer's changes in and disagreements with their certifying accountant for first-time registrants with the Commission. We are not proposing to require Item 16F disclosure for repeat registrants because this information would be included in annual reports on Form 20–F filed by repeat registrants. Although we do not make this distinction in Forms S–1 and S–4, domestic issuers are subject to a Form 8–K current report requirement for change of accountant disclosure. Requiring this disclosure for repeat filers using S–1 and S–4 does not create an additional disclosure burden for them.

As proposed, Item 16F is virtually identical to Item 304 of Regulation S–K. However, we have eliminated or modified some of the due dates described in Item 304(a)(3) of Regulation S–K because the disclosure is being made on an annual basis, rather than on a current basis. For example, although Item 16F would require the issuer to provide a copy of the disclosures that it is making in response to Item 16F to the former accountant, it would not require the issuer to provide the disclosures no later than the day that the disclosures are filed with the Commission, as is required by Item 304(a)(3) of Regulation S–K. In addition, we expect that the former accountant would be able to furnish the issuer with a letter stating whether it agrees with the statements made by the issuer in response to Item 16F and, if not, stating the respects in which it does not agree, and that the issuer would be able to file the former accountant's letter as an exhibit to the annual report that contains this disclosure at the time that the annual report is due. Item 304(a)(3) provides that if the former accountant's letter is not available at the time that the report or registration statement is filed, then the issuer can file the letter with the Commission within ten business days after the filing of the report or registration statement. Because foreign private issuers would be permitted to provide the proposed disclosure in their annual reports, we believe that this accommodation would not be necessary for annual reports unless the change in accountant occurred less than 30 days prior to the filing of the annual report.[103] As proposed, Item 16F would permit a delayed filing of the former accountant's letter in an annual report only if the change in accountant occurred within this 30-day timeframe.

Comments Solicited

27. Should foreign private issuers be required to provide information about changes in and disagreements with their certifying accountant? Would this disclosure be useful to investors? If so, should foreign private issuers be subject to the same disclosure requirements that apply to domestic issuers, or would a different disclosure requirement be more appropriate?

28. Should foreign private issuers be permitted to provide the letter from the former accountant in their annual reports on a delayed basis for a change of accountants that occurs less than 30 days before the annual report is filed, as proposed? Is 30 days an appropriate parameter? Alternatively, should foreign private issuers be permitted to provide the letter from the former accountant on a delayed basis for a change in accountant that occurs up to 45 days or 60 days before the annual report is filed, or only if the change in accountant occurs less than 15 days before the annual report is filed? Because foreign private issuers provide this disclosure on a delayed basis compared to domestic issuers, is this accommodation necessary?

29. Are there restrictions under a foreign issuer's home country law or regulations that would prohibit an auditor from reporting to a foreign regulator about disagreements with the issuer? If so, how should we address such restrictions?

30. Should the proposed change of accountant disclosure requirements contained in Item 16F be extended to registration statements filed by all foreign private issuers under the Securities Act, not just first-time registrants? Would this impose an undue burden on foreign private issuers that may not be subject to such a disclosure requirement in their home jurisdictions?

C. Annual Disclosure About ADR Fees and Payments

The Commission has long been interested in improving the disclosure provided to investors about the fees and other charges paid in connection with ADR facilities.[104] We continue to believe that ADR holders can benefit from enhanced disclosure in this area, especially in light of new depositary fees that are being charged to ADR holders in connection with sponsored ADR facilities. For example, many depositaries are now charging an annual fee for general depositary services, a fee that was formerly prohibited by some exchanges.[105]

Currently, disclosures about fees and other payments made by ADR holders to the depositary are provided in the Form 20–F that is filed to register the deposited securities under the Exchange

[103] Under General Instruction C.(b) of Form 20–F, the information provided in a Form 20–F annual report should be as of the latest practicable date, unless a disclosure item in the Form explicitly directs otherwise. As a result, changes in the foreign private issuer's certifying accountant that occur after the issuer's fiscal year-end, but before the Form 20–F is filed, would be disclosed in the issuer's Form 20–F annual report.

[104] We noted the importance of transparency in fee disclosures in our 1991 ADR concept release, Release No. 33–6894 (May 23, 1991) [56 FR 24420].

[105] *See* Release No. 34–53978 (June 13, 2006) [71 FR 35474] (notice of NYSE rule change to eliminate the requirement that certain services be provided without charge to ADR holders).

Act,[106] but are not disclosed in the annual report. The information provided is also generic, providing maximums paid on the deposit and withdrawal of the securities underlying the ADRs. Although ADR fees are disclosed in the ADR itself,[107] ADR holders frequently purchase their ADRs in book-entry form and do not see the disclosures provided in the physical certificate. We are proposing to amend Form 20–F by revising Item 12.D.3. and the Instructions to Item 12 to solicit disclosure of these fees on an annual basis, including the annual fee for general depositary services. In addition, some depositaries may make certain payments to the foreign issuers whose securities underlie the ADRs. These types of payments should also be disclosed because the cost of these payments may be passed on to ADR holders through the fees and other charges that they pay to the depositary. The proposed amendments to Item 12.D.3. and the Instructions to Item 12 of Form 20–F would require disclosure of these payments in the registration statement on Form 20–F that is filed for the deposited securities, as well as in the annual report, for sponsored ADR facilities.

Comments Solicited

31. Would it be useful to investors to receive information about ADR fees and payments made by depositaries on an annual basis? Is there other information relating to ADRs that would be useful to investors on an annual basis, such as the number of ADRs outstanding? Are there other methods by which investors can readily obtain this information? Should foreign private issuers be required to disclose the information in their Form 20–F annual reports only if the information is not disclosed on their websites?

32. Should Item 12 be amended to also explicitly solicit a brief discussion of the reasons why the depositary is making payments to the foreign private issuer, or is disclosure of the amount paid to the issuer sufficient?

33. Should depositaries be required to disclose payments that they make to third parties? Are these payments necessarily passed on to ADR holders?

34. Should Regulation S–K and Form 10–K be amended to elicit similar disclosure from foreign issuers that are not foreign private issuers and that file annual reports on Form 10–K, but that have securities traded in ADR form?

D. Disclosure About Differences in Corporate Governance Practices

Foreign private issuers are subject to different legal and regulatory requirements in their home jurisdictions, and as a result frequently follow different corporate governance practices from domestic companies. In recognition of this, many U.S. securities exchanges exempt listed foreign private issuers from many of their corporate governance requirements.[108] However, these exchanges require these issuers to disclose the significant ways in which their corporate governance practices differ from those followed by domestic companies under the relevant exchange's listing standards. Foreign private issuers may provide this disclosure either in their annual reports, and/or on their Websites.[109] Although disclosure of differences in corporate governance practices does not imply a preference for any particular type of corporate governance regime, this disclosure is useful to investors because it facilitates their ability to monitor the issuer's corporate governance practices.

Foreign private issuers frequently opt to provide this disclosure on their websites, rather than in their annual reports. We are proposing to require disclosure of this information in the Form 20–F annual reports filed by all foreign private issuers whose securities are listed on a U.S. exchange. This would consolidate all of the relevant corporate governance disclosure about a listed company in one central location. Currently, foreign private issuers are required to provide in their annual reports the disclosure required by Exchange Act Rule 10A–3(d)[110] regarding an exemption from the listing standards for audit committees.[111]

We propose to add a new Item 16G in Form 20–F that would require foreign private issuers to provide a concise summary in their annual reports of the significant ways in which the foreign private issuer's corporate governance practices differ from the corporate governance practices of domestic companies listed on the same exchange. We expect that the disclosure provided in response to the proposed Item 16G would be similar to the disclosure that foreign private issuers currently provide in response to the corporate governance disclosure requirements of the exchange on which their securities are listed.

Comments Solicited

35. Would disclosure of significant differences in the corporate governance practices of foreign private issuers in their annual reports enable investors to better monitor the corporate governance practices of the issuers in which they are investing?

36. Instead of the narrative discussion that is proposed, is there an alternative format, such as a tabular presentation of the differences in corporate governance practices, that would make the information provided in the annual report easier to understand and thus more useful to investors?

37. Is it sufficiently clear what differences in corporate governance should be disclosed? Are there important elements of corporate governance that investors should be informed of and that should be specifically addressed in a company's disclosure under this proposed requirement?

E. Financial Information for Significant, Completed Acquisitions

We propose to amend Item 17(a) of Form 20–F to require foreign private issuers to provide, in additional circumstances, the financial information required by Rule 3–05 and Article 11[112] of Regulation S–X, which pertain, respectively, to the financial statements that must be provided for significant, completed acquisitions and the preparation of pro forma financial statements. Although domestic companies must present the financial statements of significant acquired businesses and pro forma financial information in their registration statements under both the Securities Act and the Exchange Act, as well as in a Form 8–K, foreign private issuers only provide this information in the

[106] Rule 12a–8 [17 CFR 240.12a–8] exempts depositary shares registered on Form F–6 [17 CFR 239.36] under the Securities Act, but not the underlying deposited securities, from the operation of Section 12(a) of the Exchange Act [15 U.S.C. 78*l*(a)].

[107] As a technical matter, an ADR is the physical certificate that evidences American Depositary Shares (ADS), and an ADS is the security that represents an ownership interest in deposited securities. However, the terms are often used interchangeably by market participants.

[108] *See* Section 303A.00 of the NYSE Listed Company Manual (noting that foreign private issuers are permitted to follow home country practice instead of the applicable corporate governance provisions of the NYSE Listed Company Manual, except for the requirements pertaining to audit committees, certain certifications, and certain corporate governance disclosures); Section 4350(a)(1) of the Nasdaq Manual (noting that requirements pertaining to audit committees and audit opinions apply, among other things); Section 110 of the Amex Company Guide (stating that in evaluating the listing application of a foreign private issuer, ''the Exchange will consider the laws, customs and practices of the applicant's country of domicile, to the extent not contrary to the federal securities laws'').

[109] *See* Section 303A.11 of the NYSE Listed Company Manual; Section 4350(a)(1) of the Nasdaq Manual; Section 110 of the Amex Company Guide.

[110] 17 CFR 240.10A–3(d).

[111] *See* Item 16D of Form 20–F.

[112] 17 CFR 210.11 *et seq.*

registration statements that they file under the Securities Act and the Exchange Act.

Item 2.01 of Form 8–K [113] requires domestic issuers to disclose certain information when they or one of their majority-owned subsidiaries complete an acquisition or disposition of a significant amount of assets, other than in the ordinary course of business. The Form 8–K filed to report this acquisition or disposition must be filed within four business days after the event has occurred.[114] For a business acquisition significant at the 20% or greater level that must be disclosed pursuant to Item 2.01, Item 9.01 of Form 8–K requires the financial statements of the acquired business to be filed with the initial report of the acquisition on Form 8–K, or by amendment no later than 71 calendar days after the date that the initial report on Form 8–K is due.[115] The financial information must be presented in accordance with Rule 3–05 of Regulation S–X, and the pro forma financial information must be presented pursuant to Article 11 of Regulation S–X.[116]

Foreign private issuers have not been required to present financial information about significant, completed acquisitions in their annual reports under the Exchange Act. When we first proposed Form 20–F, we proposed a disclosure requirement that would have solicited substantially similar information about the acquisition or disposition of assets that is required by Item 2.01 of Form 8–K.[117] This proposal was not adopted,[118] and the corresponding Rule 3–05 and Article 11 financial statement disclosures were also not implemented as a disclosure requirement for foreign private issuers.

We are now proposing to require 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. Because foreign private issuers do not file current reports on Form 8–K, we are not proposing to impose a requirement that this financial information be presented on a more current basis than annually. As proposed, foreign private issuers would provide financial information in their annual report on Form 20–F about highly significant acquisitions completed during the most recent fiscal year covered by their annual report on that Form. We are aware that imposing a disclosure requirement in annual reports would incrementally increase compliance costs for foreign private issuers, but we believe that if a single business acquisition is significant at the 50% or greater level, this information is particularly useful to investors and should be disclosed. As proposed, the disclosure requirement would be triggered at the 50% or greater level,[119] and would require the provision of financial statements for three fiscal years as prescribed by Rule 3–05(b)(2)(iv) of Regulation S–X.

We are not proposing to require annual reports filed on Form 20–F to contain the information required by Rule 3–05 and Article 11 of Regulation S–K if the information has already been provided previously in a registration statement. In addition, we are not proposing to require financial information about probable acquisitions, or financial information for the aggregation of individually insignificant acquisitions.

Comments Solicited

38. If the information about significant, completed acquisitions is disclosed on an annual, as opposed to current, basis, would the information still be useful to investors? Would investors find the information useful even though the disclosure would be provided at least several months after the acquisition was completed?

39. What types of burdens, if any, would be placed on foreign private issuers if they are required to provide financial information disclosure about highly significant, completed acquisitions annually on Form 20–F?

40. As proposed, a foreign private issuer would be required to provide information about a highly significant, completed acquisition in its annual report on Form 20–F. In light of the proposal to accelerate the reporting deadline for annual reports filed on Form 20–F, should foreign private issuers be provided additional time to disclose information about a highly significant, completed acquisition on an amended annual report? If so, should the due date for the filing of this information be based upon the time that the acquisition was consummated? For example, information about a significant acquisition that was consummated early in the calendar year would be due with the annual report filed on Form 20–F, whereas financial information for a highly significant acquisition that occurred late in the calendar year could be provided on a delayed basis beyond the reporting deadline for the annual report filed on Form 20–F.

41. Should foreign private issuers be required to provide financial information for business acquisitions that are significant at the 50% or greater level, or should the test of significance be at the 20% or greater level, as for domestic issuers? Would another significance level between 20% and 50% be more appropriate? To ensure that only very large transactions are required to be presented, should the test of significance be limited to the comparison of the purchase price to the issuer's assets? Alternatively, should a new test be developed for this purpose in which the comparison for significance is based on the size of the issuer's public float?

42. Would it be useful to investors to require annual reports filed on Form 20–F to disclose the information required by Rule 3–05 and Article 11 of Regulation S–K even if the information has been provided previously in a registration statement? What kind of benefits would investors derive from disclosure in the annual reports?

IV. General Request for Comments

We request and encourage any interested person to submit comments on any aspect of our proposals and any of the matters that might have an impact on the proposed amendments. We request comment from investors, issuers, and other users of the information that may be affected by the proposals. We also request comment from service professionals, such as law and accounting firms. With respect to any comments, we note that they are of greatest assistance to our rulemaking initiatives if accompanied by supporting data and analysis of the issues addressed in those comments.

V. Paperwork Reduction Act

A. Background

The proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995

[113] Item 2.01 of Form 8–K.

[114] General Instruction B.1. of Form 8–K.

[115] Item 9.01(a) of Form 8–K. A domestic issuer or a foreign private issuer that is a shell company, however, must report the acquisition within 4 business days on Form 8–K or Form 20–F, respectively. *See* Release No. 33–8587 (July 15, 2005) [70 FR 42234].

[116] Item 9.01(b) of Form 8–K.

[117] Release No. 34–14128, *supra* note 96 (proposing this as Item 23 to the Form).

[118] See Form 20–F Adopting Release, *supra* note 13.

[119] The significance of an acquired business is measured by the comparison of: (1) *The* registrant's investment in the acquired business (acquisition price) to the registrant's total assets, (2) the acquired business's total assets to the total assets of the registrant, or (3) the acquired business's pre-tax income to the pre-tax income of the registrant. *See* Rule 1–02(w) [17 CFR 210.1–02] of Regulation S–X.

(''PRA'').[120] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[121] The titles for the affected collections of information are:

(1) ''Form 20–F'' (OMB Control No. 3235–0288);

(2) ''Form F–1'' (OMB Control No. 3235–0258);

(3) ''Form F–3'' (OMB Control No. 3235–0256); and

(4) ''Form F–4'' (OMB Control No. 3235–0325).

Form 20–F sets forth the disclosure requirements for annual reports and registration statements filed by foreign private issuers under the Exchange Act, as well as many of the disclosure requirements for registration statements filed by foreign private issuers under the Securities Act. Forms F–1, F–3 and F–4 were adopted pursuant to the Securities Act, and set forth the disclosure requirements for registration statements filed by foreign private issuers to offer securities to the public.

The hours and costs associated with preparing, filing and sending these forms and complying with these rules constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection requirements related to Forms 20–F, F–1, F–3 and F–4 are mandatory. There is no mandatory retention period for the information disclosed, and the information disclosed would be made publicly available on the EDGAR filing system. We have based our estimates of the effect that the proposed rule and form amendments would have on those collections of information primarily on our review of the most recently completed PRA submissions for the affected rules and forms.

The proposed amendments, if adopted, would: (1) Amend Rule 405 of Regulation C under the Securities Act and Exchange Act Rule 3b–4 to 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) Amend Form 20–F to accelerate the filing deadline for annual reports filed by foreign private issuers on Form 20–F, subject to a two-year transition period, and amend Exchange Act Rules 13a–10 and 15d–10 to conform the deadline for transition reports filed by foreign private issuers on Form 20–F with the deadline for annual reports filed on that Form; (3) Amend Form 20–F by eliminating an instruction to Item 17 of that Form, which permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements; (4) Amend Rule 13e–3, which pertains to going private transactions by reporting issuers or their affiliate, to reflect the recently adopted rules pertaining to the ability of foreign private issuers to terminate their Exchange Act registration and reporting obligations; (5) Amend Form 20–F and Forms F–1, F–3 and F–4 to 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, Forms F–1 and F–4 to require foreign private issuers to disclose information about a change in the issuer's certifying accountant; (7) Amend Form 20–F to require foreign private issuers to disclose the fees and charges paid by ADR holders, the payments made by the depositary to the foreign issuer whose securities underlie the ADRs, 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 (8) Amend Form 20–F to require foreign private issuers to provide certain financial information in their annual reports on Form 20–F about a significant, completed acquisition that is significant at the 50% or greater level when that acquisition is completed after the issuer's first fiscal quarter.

We have based the annual burden and cost estimates of the proposed amendments on the following estimates and assumptions:

- A foreign private issuer incurs or will incur 25% of the annual burden required to produce each Form 20–F, Form F–1, Form F–3, or Form F–4; and
- Outside firms, including legal counsel, accountants and other advisors, incur or will incur 75% of the burden required to produce each Form 20–F, Form F–1, Form F–3, or Form F–4 at an average cost of $400 per hour.[122]

We estimated the average number of hours each entity spends completing the forms and the average hourly rate for outside professionals. That estimate includes the time and the cost of in-house preparers, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee.

B. Burden and Cost Estimates Related to the Proposed Amendments

1. Form 20–F

We estimate that currently foreign private issuers file 942 Form 20–Fs each year. We assume that 25% of the burden required to produce the Form 20–Fs is borne internally by foreign private issuers, resulting in 614,891 annual burden hours borne by foreign private issuers out of a total of 2,459,564 annual burden hours. Thus, we estimate that 2,611 total burden hours per response are currently required to prepare the Form 20–F. We further assume that 75% of the burden to produce the Form 20–Fs is carried by outside professionals retained by foreign private issuers at an average cost of $400 per hour, for a total cost of $737,868,600.

The proposed amendment to amend Form 20–F to accelerate the filing deadline for annual reports and transitions reports filed on that Form would not change the amount of information required to be included in Exchange Act reports. In connection with this proposal, we are also proposing to amend Exchange Act Rules 13a–10 and 15d–10, which pertain to transition reports filed on Form 20–F. Our proposed amendments would conform the deadline for transition reports filed on Form 20–F with the proposed deadline for annual reports filed on Form 20–F. These amendments also would not change the amount of information required to be included in Exchange Act reports. Therefore, these proposed amendments would neither increase nor decrease the amount of burden hours necessary to prepare annual reports on Form 20–F for the purposes of the PRA.

With respect to our proposed amendment to 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, we estimate that approximately 200 companies that file Form 20–F will be impacted by the proposal. We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the proposal, there would occur an increase of 2% (52.22 hours) in the number of burden hours required to prepare their Form 20–F, for a total increase of 10,444 hours

[120] 44 U.S.C. 3501 *et seq.*

[121] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[122] In connection with other recent rulemakings, we have had discussions with several law firms to estimate an hourly rate of $400 as the cost to companies for the services of outside professional retained to assist in the preparation of these disclosures. For Securities Act registration statements, we also consider additional reviews of the disclosure by underwriter's counsel and underwriters.

as a result of this proposal. We expect that 25% of those increased burden hours (2,611 hours) will be incurred by foreign private issuers. We further expect that 75% of these increased burden hours (7,833 hours) will be incurred by outside firms, at an average cost of $400 per hour, for a total of $3,133,200 in increased costs to the respondents of the information collection as a result of this proposal.

With respect to our proposed amendment to require disclosure about a change in the issuer's certifying accountant in annual reports and registration statements filed on Form 20–F, we estimate that approximately 90 companies that file Form 20–F will be impacted by the proposal. We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the proposal, there would occur an increase of .75% (19.58 hours) in the number of burden hours required to prepare their Form 20–F, for a total increase of 1,762.2 hours. We expect that 25% of those increased burden hours (440.55 hours) will be incurred by foreign private issuers. We further expect that 75% of these increased burden hours (1,321.65 hours) will be incurred by outside firms, at an average cost of $400 per hour, for a total of $528,660 in increased costs to the respondents of the information collection as a result of the proposal.

With respect to our proposed amendment to require disclosure about ADR fees and payments on an annual basis, we estimate that approximately 442 companies that file Form 20–F will be impacted by the proposal. We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the proposal, there would occur an increase of .25% (6.53 hours) in the number of burden hours required to prepare their Form 20–F, for a total increase of 2,886.26 hours. We expect that 25% of those increased burden hours (721.57 hours) will be incurred by foreign private issuers. We further expect that 75% of these increased burden hours (2,164.71 hours) will be incurred by outside firms, at an average cost of $400 per hour, for a total of $865,884 in increased costs to the respondents of the information collection as a result of these proposal.

With respect to our proposed amendment to require annual disclosure about differences in a listed foreign private issuer's corporate practices and those applicable to domestic companies under the relevant exchange's listing rule, we estimate that approximately 783 companies that file Form 20–F will be impacted by the proposal. We expect that, if adopted, the proposed amendment would not cause a significant change in the burden hours for those foreign private issuers because they already prepare this information for the exchanges on which they are listed.

With respect to our proposed amendment to eliminate an instruction to Item 17 of Form 20–F, which permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements, we estimate that approximately 5 companies that file Form 20–F will be currently impacted by the proposal. We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the proposal, there would occur an increase of 2% (52.22 hours) in the number of burden hours required to prepare their Form 20–F, for a total increase of 261.1 hours. We expect that 25% of those increased burden hours (65.3 hours) will be incurred by foreign private issuers. We further expect that 75% of these increased burden hours (195.83 hours) will be incurred by outside firms, at an average cost of $400 per hour, for a total of $78,332 in increased costs to the respondents of the information collection as a result of the proposal.

With respect to our proposed amendment to amend Form 20–F to require foreign private issuers to provide certain financial information in their annual reports on that Form about a significant, completed acquisition that is significant at the 50% or greater level when that acquisition is completed after the issuer's first fiscal quarter, we estimate that approximately 45 companies that file Form 20–F will be currently impacted by the proposal. We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the proposal, there would occur an increase of 20% (522.2 hours) in the number of burden hours required to prepare their Form 20–F, for a total increase of 23,499 hours. We expect that 25% of those increased burden hours (5,874.75 hours) will be incurred by foreign private issuers. We further expect that 75% of these increased burden hours (17,624.25 hours) will be incurred by outside firms, at an average cost of $400 per hour, for a total of $7,049,700 in increased costs to the respondents of the information collection as a result of this proposal.

Thus, we estimate that the proposed amendments to Form 20–F would increase the annual burden borne by foreign private issuers in the preparation of Form 20–F from 614,891 hours to 624,604 hours. We further estimate that the proposed amendments would increase the total annual burden associated with Form 20–F preparation to 2,498,417 burden hours, which would increase the average number of burden hours per response to 2652. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form 20–F by outside firms to $749,524,376.

2. Form F–1

We estimate that currently foreign private issuers file 42 registration statements on Form F–1 each year. We assume that 25% of the burden required to produce a Form F–1 is borne by foreign private issuers, resulting in 18,890 annual burden hours incurred by foreign private issuers out of a total of 75,560 annual burden hours. Thus, we estimate that 1,799 total burden hours per response are currently required to prepare a registration statement on Form F–1. We further assume that 75% of the burden to produce a Form F–1 is carried by outside professionals retained by foreign private issuers at an average cost of $400 per hour, for a total cost of $22,667,400.

We estimate that currently approximately 4 companies that file registration statements on Form F–1 will be impacted by the proposal to require foreign private issuers to provide disclosure about a change in their certifying accountant in their initial registration statements. We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have more burden hours. We estimate that each company affected by the proposal would have a .75% increase (13.49 hours) in the number of burden hours required to prepare their registration statements on Form F–1, for a total increase of 54 hours. We expect that 25% of these increased burden hours (13.5 hours) will be incurred by foreign private issuers. We further expect that 75% of the increased burden hours (40.5 hours) will be incurred by outside firms, at an average cost of $400 per hour, for a total of $16,200 in increased costs to the respondents of the information collection as a result of the proposal.

We estimate that none of the companies that file registration statements on Form F–1 will be impacted by the proposal to 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. In our experience, the companies that use Form F–1 are engaging in capital raising transactions, so that all registrants have been providing financial information according to Item 18. The proposed amendment would be a technical change to the Form without any expected impact on the companies using that Form.

Thus, we estimate that the proposed amendments to Form F–1 would increase the annual burden incurred by foreign private issuers in the preparation of Form F–1 from 18,890 hours to 18,904 hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form F–1 preparation to 75,614 burden hours, which would increase the average number of burden hours per response to 1800. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form F–1 by outside firms to $22,683,600.

3. Form F–3

We estimate that currently foreign private issuers file 106 registration statements on Form F–3 each year. We assume that 25% of the burden required to produce a Form F–3 is borne by foreign private issuers, resulting in 4,399 annual burden hours incurred by foreign private issuers out of a total of 17,596 annual burden hours. Thus, we estimate that 166 total burden hours per response are currently required to prepare a registration statement on Form F–3. We further assume that 75% of the burden to produce a Form F–3 is carried by outside professionals retained by foreign private issuers at an average cost of $400 per hour, for a total cost of $5,278,800.

We estimate that currently approximately 20 companies that file registration statements on Form F–3 will be impacted by the proposal to 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. We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have more burden hours. We estimate that each company affected by the proposal would have a 2% increase (3.32 hours) in the number of burden hours required to prepare their registration statements on Form F–3, for a total increase of 66.4 hours. We expect that 25% of these increased burden hours (16.6 hours) will be incurred by foreign private issuers. We further expect that 75% of the increased burden hours (49.8 hours) will be incurred by outside firms, at an average cost of $400 per hour, for a total of $19,920 in increased costs to the respondents of the information collection as a result of the proposal.

Thus, we estimate that the proposed amendment to Form F–3 would increase the annual burden incurred by foreign private issuers in the preparation of Form F–3 from 4,399 hours to 4,416 hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form F–3 preparation to 17,663 burden hours, which would increase the average number of burden hours per response to 167. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form F–3 by outside firms to $5,298,720.

4. Form F–4

We estimate that currently foreign private issuers file 68 registration statements on Form F–4 each year. We assume that 25% of the burden required to produce a Form F–4 is borne internally by foreign private issuers, resulting in 24,497 annual burden hours incurred by foreign private issuers out of a total of 97,988 annual burden hours. Thus, we estimate that 1,441 total burden hours per response are currently required to prepare a registration statement on Form F–4. We further assume that 75% of the burden to produce a Form F–4 is carried by outside professionals retained by foreign private issuers at an average cost of $400 per hour, for a total cost of $29,396,400.

We estimate that currently approximately none of the companies that file registration statements on Form F–4 will be impacted by the proposal to 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. In our experience, the companies that use Form F–4 have all been providing financial information according to Item 18 because of the types of transactions that are registered on that Form, so the proposed amendment would be a technical change to the Form without any expected impact on the companies using it.

We estimate that currently approximately 5 companies that file registration statements on Form F–4 will be impacted by the proposal to require foreign private issuers to provide disclosure about a change in their certifying accountant in their initial registration statements. We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have more burden hours. We estimate that each company affected by the proposal would have a .75% increase (10.81 hours) in the number of burden hours required to prepare their registration statements on Form F–1, for a total increase of 54 hours. We expect that 25% of these increased burden hours (13.5 hours) will be incurred by foreign private issuers. We further expect that 75% of the increased burden hours (40.5 hours) will be incurred by outside firms, at an average cost of $400 per hour, for a total of $16,200 in increased costs to the respondents of the information collection as a result of the proposal.

Thus, we estimate that the proposed amendments to Form F–4 would increase the annual burden incurred by foreign private issuers in the preparation of Form F–4 from 24,497 hours to 24,511 hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form F–4 preparation to 98,042 burden hours, which would decrease the average number of burden hours per response to 1,442. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form F–4 by outside firms to $29,412,600.

5. Other Proposed Amendments

The proposed amendments to Securities Act Rule 405 and Exchange Act Rule 3b–4 would revise the definition of ''foreign private issuer'' to permit foreign issuers to test their status as ''foreign private issuers'' on the last business day of their second fiscal quarter, rather than continuously, as is currently the case. Our proposed amendments would not change the amount of information required to be included in Securities Act registration statements or Exchange Act reports. Therefore, they would neither increase nor decrease the amount of burden hours necessary to prepare documents under either of those Acts for the purposes of the PRA.

In addition, we also expect the proposed amendment to Exchange Act Rule 13e–3 to have a neutral effect on foreign private issuers. We do not expect a change in the number of foreign private issuers who would be required to comply with Rule 13e–3, or the burden hours required to prepare a Schedule 13E–3.

C. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

• Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including

whether the information will have practical utility;

- Evaluate the accuracy of our estimates of the burden of the proposed collections of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–05–08. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–05–08 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

VI. Cost-Benefit Analysis

We are proposing amendments to our rules and forms 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. The Commission has considered the costs and benefits as described below and encourages commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs or benefits. Specifically, the Commission requests data to quantify the costs and the value of each of the benefits identified. The Commission also seeks estimates and views regarding the identified costs and benefits of the proposals for particular types of market participants and any other costs or benefits that may result from the adoption of the proposed rule.

1. Annual Test for Foreign Private Issuer Status

A. Expected Benefits

The proposed amendments to the definition of ''foreign private issuer'' contained in Securities Act Rule 405 and Exchange Act Rule 3b–4 would permit reporting foreign issuers to assess their eligibility to use the special forms and rules available to foreign private issuers once a year on the last business day of their second fiscal quarter, rather than continuously, as is currently the case. This is the same date used to determine accelerated filer status under Exchange Act Rule 12b–2 and smaller reporting company status in Item 10(f)(2)(i) of Regulation S–K. As a result, these proposed amendments should simplify compliance with the Commission's regulations by establishing one date that is used to ascertain an issuer's status. Foreign issuers should benefit as a result of this simplification of their compliance requirements, which could make the U.S. markets more attractive to them as a source of capital and thereby enhance the competitiveness of the U.S. markets compared to other markets. The proposed amendments are expected to reduce the cost for foreign issuers of monitoring whether they qualify as foreign private issuers, including the time spent by management in tracking this information. If more foreign issuers are encouraged to remain in the U.S. markets and to make public offerings, investors should also benefit because this will enhance their ability to invest in the securities of foreign issuers that have been registered with the Commission, and that are thus subject to the disclosure requirements and investor protections provided by the federal securities laws.

Once a foreign issuer determines that it no longer qualifies as a foreign private issuer, the proposed amendments would provide the issuer with at least six months' advance notice that it must comply with the domestic issuer forms and rules. This would provide these issuers with more time to comply with the reporting requirements applicable to domestic issuers under the Exchange Act, and to modify their information and processing systems to comply with the domestic reporting and registration regime. This includes the requirements to comply with the more extensive executive compensation disclosure requirements that apply to domestic issuers, as well as the proxy rules and Section 16 reporting requirements under the Exchange Act, which do not apply to foreign private issuers. Because the proposed amendments would provide foreign issuers with advance notice when their status changes, more foreign issuers may be encouraged to remain in the U.S. markets, and investors should benefit from the increased opportunities to invest in foreign securities in the United States.

The proposed amendments should mitigate a burden on foreign issuers by reducing the amount of time and the resources they expend to determine their status pursuant to the four-factor test set forth in the definition of ''foreign private issuer.'' In this respect, the proposed amendments would be most beneficial to reporting foreign private issuers that have close to 50% of their outstanding voting securities held of record by U.S. residents, since they are most at risk of no longer qualifying as foreign private issuers. The current requirement that foreign issuers continuously test their status can result in confusion for investors if a foreign issuer needs to move between foreign and domestic reporting forms in the same fiscal year. For example, investors may be confused if a foreign issuer determines that it no longer qualifies as a foreign private issuer, and then switches from the foreign private issuer forms (Form 6–K and Form 20–F) to the domestic forms (*e.g.*, quarterly reports on Form 10–Q) in the same fiscal year. The proposed amendments would benefit U.S. investors by eliminating this confusion. However, the proposed amendments may not be as helpful in reducing investor confusion with respect to foreign private issuers that have been reporting under the domestic regime and that would now be permitted to switch immediately to the foreign private issuer reporting regime upon the determination of their eligibility to do so.

At the same time, foreign issuers that previously did not qualify as foreign private issuers, but that determine that they would qualify as foreign private issuers, would be able to use the foreign private issuer rules and forms immediately under the proposed amendments. This accommodation could encourage more foreign issuers to enter the U.S. markets and to make public offerings, and should benefit investors by enhancing their ability to invest in foreign securities that have been registered with the Commission.

B. Expected Costs

Investors could incur costs from the proposed amendments if foreign issuers that have been reporting under the domestic reporting regime immediately switch over to the foreign private issuer forms once they qualify as foreign private issuers. Because foreign private issuers have different Exchange Act reporting obligations than domestic issuers and file on different forms, some investors may find it confusing if a foreign issuer that had been reporting under the domestic reporting regime switches reporting regimes mid-year. In addition, once a foreign issuer switches status from a domestic issuer to a foreign private issuer, investors will no longer have the benefit of the disclosures that were once provided by the foreign issuer on the domestic forms.

Currently, when a foreign issuer no longer qualifies as a foreign private issuer, it must immediately file quarterly reports on Form 10–Q and current reports on Form 8–K. It must also comply with the Commission's proxy rules and the Section 16 insider stock trading and short-swing profit recovery provisions. Under the proposed amendments, when a foreign issuer determines that it no longer qualifies as a foreign issuer, for the six months following the test date, the foreign issuer would be permitted to continue relying on the rules applicable to foreign private issuers, such as the exemption from the proxy rules and Section 16. The foreign issuer would also be allowed to use the forms reserved for foreign private issuers, and to provide current reports on Form 6–K, rather than Exchange Act reports on Forms 10–Q and 8–K. During that period, investors would not have the benefit of the additional disclosures that the foreign issuer would otherwise be required to provide.

2. Proposed Amendments to Form 20–F

The proposed amendments would make several changes to annual reports filed on Form 20–F. We are proposing to accelerate the deadline for annual reports filed on Form 20–F by foreign private issuers. We are also proposing to amend Form 20–F to require certain additional disclosures in annual reports on that Form. The proposed amendments would require issuers to disclose any changes in and disagreements with the registrant's certifying accountant in their Form 20–F annual reports, as well as in the Securities Act registration statements filed by first-time registrants with the Commission. The proposed amendments would also require disclosure of the fees and other charges paid by ADR holders to depositaries, and any payments made by depositaries to the foreign issuers whose securities underlie the ADRs. In addition, we are proposing to amend Form 20–F to require disclosure in the annual report about the significant differences in the corporate governance practices of listed foreign private issuers compared to the corporate governance practices applicable to domestic companies under the relevant exchange's listing standards. Another proposed amendment would eliminate an instruction to Item 17 of Form 20–F that permits certain foreign private issuers to omit segment data from the U.S. GAAP financial statements. The proposed amendments to Form 20–F would also amend that Form to require foreign private issuers to present information about a significant, completed acquisition that is significant at the 50% or greater level, calculated based on assets or income from continuing operations, in their annual reports on that Form.

In addition to these amendments, we are proposing to eliminate the availability of the limited U.S. GAAP reconciliation option that is 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 only registering a class of equity securities under Section 12(g) of the Exchange Act, and not conducting a public offering. The proposed amendments would apply not only to registration statements filed on Form 20–F in the circumstances described above, but also to annual reports filed on that Form. Related to this proposed amendment, we are proposing to eliminate the Item 17 limited reconciliation option for certain non-capital raising offerings, such as offerings pursuant to dividend reinvestment plans, offerings upon the conversion of securities, or offerings of investment grade securities. The Securities Act registration statement forms available to foreign private issuers (Form F–1, F–3 and F–4) would be amended accordingly.

A. Expected Benefits

We anticipate that the proposed amendments to Form 20–F and the related amendments to the Securities Act registration statement forms available to foreign private issuers would provide a significant benefit to U.S. investors by providing them with enhanced disclosure that is more similar to the disclosures provided by domestic issuers, as well as disclosure on an accelerated basis that is more comparable to the timeframe within which domestic issuers file annual reports. Because of the Commission's integrated disclosure system, in which approximately the same information is provided in both the primary and secondary markets, the disclosure requirements contained in Form 20–F are often more comprehensive than the disclosures required by foreign securities regulators. For example, although many foreign regulators require audited financial statements and a form of management's report in annual reports, they do not require disclosure about executive compensation, description about the issuer's business, or a Management's Discussion and Analysis (MD&A). These additional disclosures are required in the Form 20–F annual reports that foreign private issuers file with the Commission.

Based on our analysis of a sample of Form 20–F annual reports filed with the Commission in the past few years, we estimate that approximately one-third of all such filers currently file Form 20–F annual reports with us within 120 days after their fiscal year-end. The proposed amendment to accelerate the due date for Form 20–F annual reports would thus affect a majority of the foreign private issuers that file on Form 20–F. As a result of the accelerated deadline, investors may be better able to compare the performance of foreign and domestic issuers, since information about both will be provided on a more contemporaneous basis.

The proposed amendments to require additional disclosure in Form 20–F annual reports should help investors better compare foreign and domestic issuers. Currently, domestic issuers provide disclosure about changes in and disagreements with their certifying accountant on a Form 8–K current report. Listed domestic issuers are also required to comply with the corporate governance requirements of the U.S. exchange on which their securities are listed, although foreign private issuers whose securities are listed on the same exchange are exempt. The proposed amendments would provide investors with more comparable information about foreign private issuers regarding possible audit opinion shopping and corporate governance practices.

The proposed amendments to require disclosure about ADR fees and payments made by depositaries to the foreign issuers whose securities underlie the ADRs will make this information more readily available to investors. The placement of this disclosure in annual reports and Form 20–F registration statements should

assist investors in determining the fees related to their investments in ADRs, including indirect costs that may be imposed on them if the depositary bank passes along the cost of its payments to foreign issuers to ADR holders. This should better enable investors to determine the value of investing in the ADRs of foreign issuers.

Several of the proposed amendments to Item 17 of Form 20–F may also help ensure that all foreign private issuers provide the same level of financial information, thereby facilitating a readier comparison across all issuers. This could, as a consequence, increase the attractiveness of these companies to investors. For example, the proposed amendments would eliminate the availability of the limited U.S. GAAP reconciliation option in Item 17 of Form 20–F for annual reports, registration statements on Form 20-F that do not involve a public offering, and Securities Act registration statements for certain non-capital raising transactions. Currently, most foreign private issuers that provide U.S. GAAP reconciliation disclose financial information according to Item 18 of Form 20–F. The proposed amendment would ensure that all foreign private issuers provide this level of disclosure. Another proposed amendment would eliminate the 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. Although we estimate that less than 10 foreign private issuers use this instruction, the instruction creates an anomaly whereby an issuer is permitted to provide a qualified U.S. GAAP audit report.

Investors are also expected to benefit from the proposed amendment to require foreign private issuers to present information about a highly significant, completed acquisition in their annual reports filed on Form 20–F. Currently, foreign private issuers are not required to provide any information about such transactions in their periodic reports. The proposed amendment would enable investors to receive historical financial information about the acquired company, information they currently receive from domestic registrants, but not from foreign issuers that are acquirers. This information may help investors to assess the past performance of the acquired entity and its possible effect on the valuation of the acquiring company.

B. Expected Costs

Foreign private issuers could incur costs from the proposed amendments to Form 20–F, and the related amendments to the Securities Act registration statements available to foreign private issuers. In order to comply with the proposed accelerated due dates, many foreign private issuers would likely have to implement new systems for preparing information during the transition period to the new rules. They could be required to prepare annual reports on a dual track, one for the annual report filed with their home country regulator and the Form 20–F annual report. According to our analysis of a sample of Form 20–F annual reports filed with us, approximately one-fifth of all such filers file their Form 20–F annual reports within 90 days of their fiscal year-end, and approximately one-third file their Form 20–F annual reports within 120 days of their fiscal year-end. The cost of preparing filings on an accelerated basis may therefore vary among issuers. In addition, because of the Commission's integrated disclosure system, in which issuers provide approximately the same disclosures to both the primary and secondary markets, the disclosures required in Form 20–F are more substantial than the information required for annual reports in many foreign jurisdictions. The proposed amendments could thus result in increased costs for foreign private issuers.

The proposed amendments to provide additional disclosures in Form 20–F may also impose additional costs on foreign private issuers. With respect to the proposed disclosure regarding ADR fees and payments made by depositaries, we note that the information about ADR fees is provided in the deposit agreement and form of receipt that are attached as exhibits to the Form F–6 used to register the ADRs under the Securities Act, as well as in the Securities Act registration statement related to the offering of the securities underlying the ADRs. Because the information is already required by the Commission, albeit in filings that most retail investors are not familiar with, we do not believe that the requirement to include this information in the foreign private issuer's annual report on Form 20–F would involve significant compliance costs.

In addition, the information about the payments made by depositaries to foreign private issuers would provide important new information to investors about incentives used by depositaries that may encourage foreign private issuers to sell their securities in ADR form and with a particular depositary bank. If foreign issuers are reluctant to disclose this information, they could be discouraged from entering the U.S. markets, or, if they already have established ADR facilities in the United States, from maintaining their ADR facilities. This would reduce the opportunities for investors to invest in foreign securities in the United States.

Foreign private issuers could incur some costs related to the proposal to include information about differences in corporate governance practices for listed foreign private issuers. However, the U.S. exchanges already require that this information be prepared. For foreign private issuers that are listed on U.S. exchanges, the proposed amendment would not involve the collection of new information or preparation of new disclosure, but would simply require that the information also be made available in the annual report, where many investors may expect to see it. As a result, we believe the compliance costs of this proposed amendment would be relatively small. Under the proposed amendments, corporate governance information would not be required for issuers that are not listed on a U.S. exchange.

The proposed amendments to eliminate the availability of the limited U.S. GAAP reconciliation contained in Item 17 of Form 20–F, and to require segment data in U.S. GAAP financial statements could result in costs for the affected foreign private issuers because they would now need to collect this information and to prepare additional disclosure in their Form 20–F annual reports. However, based on our review of Form 20–F annual report filings made with us for fiscal year 2006, we estimate that most foreign private issuers already provide financial information according to Item 18 of Form 20–F, and that less than 10 foreign private issuers would be affected by the requirement to provide segment data.

Foreign private issuers would also incur costs in connection with the proposal to require disclosure about any changes in and disagreements with the registrant's certifying accountant in Form 20–F annual reports and in Securities Act registration statements filed by first-time registrants. In addition to the preparation costs of including this information in the Form 20–F, the foreign private issuer could also incur certain costs associated with the proposed requirement to obtain a letter from its former accountant stating whether it agrees with the disclosure provided by the issuer in the document filed with the Commission.

Foreign private issuers could also incur compliance costs in connection with the proposal to require information about a highly significant, completed acquisition in annual reports filed on Form 20–F. These costs would include,

for example, costs related to the preparation of this information. In some cases, this requirement could deter and potentially discourage issuers from effectuating certain transactions because of the difficulty of obtaining financial information to comply with this requirement.

Investors may incur costs to the extent that the amendments to Form 20–F discourage foreign private issuers from registering or maintaining their registration with the Commission. If foreign private issuers deregister or do not register their securities under the Securities Act or the Exchange Act, there may be reduced opportunities for investment by U.S. investors in the securities of foreign issuers. Although each of the proposed amendments would affect a different number of foreign private issuers, for purposes of the Paperwork Reduction Act, we estimate that these new disclosures would result in an increased paperwork burden of 34 hours for all respondents and $9,516,990 for Form 20–F.

3. Exchange Act Rule 13e–3

A. Expected Benefits

We believe that the proposal to amend Exchange Act Rule 13e–3, which pertains to going private transactions by reporting issuers or their affiliates, to reflect the recently adopted rules pertaining to the ability of foreign private issuers to terminate their Exchange Act registration and reporting obligations would benefit investors. The proposed amendment would help ensure that Rule 13e–3 covered the types of transactions that were intended when the Commission first adopted the Rule. Investors would benefit because more foreign private issuers are expected to be able to terminate their registration and reporting obligations under the Exchange Act as a result of these recently adopted amendments. If more foreign private issuers decide to conduct going private transactions to terminate their registration or reporting obligations, the proposed amendment to Rule 13e–3 would require more foreign private issuers to comply with that Rule and to file a Schedule 13E–3, as required by that Rule. Investors would benefit from the additional disclosures that would be provided.

B. Expected Costs

Foreign private issuers may incur additional costs in connection with the proposed amendment to Rule 13e–3(a)(3)(ii)(A) if Rule 13e–3 is more easily triggered because of the reference to the new termination of registration and reporting requirements that apply to foreign private issuers. These costs would include, for example, the cost of preparing, filing and disseminating a Schedule 13E–3, as well as any required amendments to that Schedule, with the Commission.

Comments Solicited

We solicit comment on the costs and benefits to U.S. and other investors, foreign private issuers and others who may be affected by the proposed amendments. We request your views on the costs and benefits described above, as well as on any other costs and benefits that could result from adoption of the proposed amendments. We also request data to quantify the costs and value of the benefits identified. In particular, we solicit comment on:

- The number of current foreign private issuers that are expected to be affected by the proposed amendments;
- The estimated U.S dollar cost to foreign issuers as a result of the proposed amendment to accelerate the due date for filing Form 20–F annual reports;
- The number of current foreign issuers who do not already provide financial information according to Item 18 of Form 20–F; and
- How investors would be affected both directly and indirectly from the proposed amendments, as discussed in this section.

VII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[123] we solicit data to determine whether the proposals constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in: an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); a major increase in costs or prices for consumers or individual industries; or significant adverse effects on competition, investment or innovation. We request comment on the potential impact of the proposals on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) of the Securities Act[124] and Section 3(f) of the Exchange Act[125] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act[126] requires us to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The purpose of the proposed amendments to Securities Act Rule 405 and Exchange Act Rule 3b–4, which would permit foreign issuers to assess their eligibility to use the special forms and rules available to foreign private issuers once a year, are expected to facilitate capital formation by foreign issuers in the U.S. capital markets. The proposed amendments should reduce regulatory compliance burdens for foreign private issuers that rely on the proposed amendments because of the reduction in monitoring costs. Reduced compliance burdens are expected to lower the cost of raising capital in the Unites States for those issuers. In addition, the competitiveness of the U.S. markets may be enhanced because the reduced monitoring costs may make the markets more attractive to them. The reduction in compliance burdens may also promote efficiency because foreign issuers would no longer need to continuously test their qualification as foreign private issuers.

The proposed amendments to Form 20–F would accelerate the reporting deadline for annual reports on Form 20–F. The proposed amendments to Exchange Act Rules 13a–10 and 15d–10 would conform the due dates for transition reports filed on Form 20–F with the proposed due dates for annual reports on Form 20–F. Several of the proposed amendments to Form 20–F would require more disclosure in the annual reports filed by foreign private issuers. The disclosures required would include information about any changes in and disagreements with the registrant's certifying accountant, ADR fees and payments made by depositaries to the foreign issuers whose securities underlie the ADR, information about corporate governance, and information about highly significant, completed acquisitions. In addition, the proposed amendments would eliminate the availability of the limited U.S. GAAP reconciliation option contained in Item 17 of Form 20–F, and would eliminate

[123] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[124] 15 U.S.C. 77b(b).

[125] 15 U.S.C. 78c(f).

[126] 15 U.S.C. 78w(a)(2).

an instruction to Item 17 of that Form, which permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements.

These proposed amendments would create a more level playing field between foreign private issuers and U.S. issuers because they would require disclosures from foreign private issuers that are currently required of domestic issuers. Foreign private issuers that file annual reports on Form 20–F would also be required to provide these annual reports in a timeframe that is closer to the annual report due dates imposed on domestic issuers. As a result, the proposed amendments should put foreign private issuers and domestic issuers in a more similar position with respect to their compliance obligations under the Commission's regulations, although the incremental costs of complying with these proposed amendments may also create a disincentive for some foreign private issuers to enter the U.S. capital markets.

The proposed amendments may also facilitate capital formation by foreign companies in the U.S. capital markets by enabling investors to obtain more information about these companies in a timeframe that would make the information useful to them and in a manner that would allow for greater comparability to domestic issuers. This could affect the allocation of capital between foreign private issuers and domestic issuers.

The proposed amendments to Exchange Act Rule 13e–3, which reflect the newly adopted rules pertaining to the termination and deregistration of the reporting obligations of foreign private issuers, could require more foreign private issuers to comply with that Rule and to file a Schedule 13E–3 as a result if more foreign private issuers decide to conduct going private transactions to terminate their registration and reporting obligations. This additional compliance obligation could create a disincentive for foreign private issuers to enter the U.S. markets.

We solicit comment on whether the proposed rules would impose a burden on competition or whether they would promote efficiency, competition and capital formation. For example, would the proposals have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act? Would the proposals create an adverse competitive effect on U.S. issuers or on foreign issuers? Commenters are requested to provide empirical data and other factual support for their views if possible.

VIII. Regulatory Flexibility Act Certification

The Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the amendments to Rule 405 of Regulation C, Form F–1, Form F–3, and Form F–4 under the Securities Act, and Form 20–F, Rule 3b–4, Rule 13a–10, Rule 13e–3 and Rule 15d–10 under the Exchange Act contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed amendments would: (1) Amend Rule 405 of Regulation C under the Securities Act to 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) Amend Form 20–F to accelerate the filing deadline for annual reports filed by foreign private issuers on Form 20–F, subject to a two-year transition period, and amend Exchange Act Rules 13a-10 and 15d–10 so that the deadline for transition reports filed by foreign private issuers on Form 20–F is the same as the deadline for annual reports filed on Form 20–F; (3) Amend Form 20–F by eliminating an instruction to Item 17 of that Form, which permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements; (4) Amend Rule 13e–3, which pertains to going private transactions by reporting issuers or their affiliate, to reflect the recently adopted rules pertaining to the ability of foreign private issuers to terminate their Exchange Act registration and reporting obligations; (5) Amend Form 20–F and Forms F–1, F–3 and F–4 to 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 a change in the issuer's certifying accountant, the fees and charges paid by ADR holders, the payments made by the depositary to the foreign issuer whose securities underlie the ADRs, 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) Amend Form 20–F to require foreign private issuers to provide certain financial information in their annual reports on Form 20–F about a significant, completed acquisition that is significant at the 50% or greater level when that acquisition is completed after the issuer's first fiscal quarter.

Based on an analysis of the language and legislative history of the Regulatory Flexibility Act, Congress does not appear to have intended the Act to apply to foreign issuers. The entities directly affected by the proposed amendments will fall outside the scope of the Act. For this reason, the proposed amendments should not have a significant economic impact on a substantial number of small entities.

We solicit written comments regarding this certification. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

IX. Statutory Authority and Text of the Proposed Amendments

We are proposing amendments to the rules and forms pursuant to the authority set forth in Sections 6, 7, 10 and 19 of the Securities Act, as amended, and Sections 3, 12, 13, 15, 23 and 36 of the Exchange Act, as amended.

List of Subjects in 17 CFR Parts 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.405 is amended by revising the definition of ''foreign private issuer'' to read as follows:

§ 230.405 Definition of terms.

* * * * *

Foreign private issuer. (1) The term *foreign private issuer* means any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter:

(i) More than 50 percent of the outstanding voting securities of such issuer 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.

(2) In the case of a new registrant with the Commission, the determination of whether an issuer is a foreign private issuer shall be made as of a date within 30 days prior to the issuer's filing of an initial registration statement under either the Act or the Securities Exchange Act of 1934.

(3) Once an issuer qualifies as a foreign private issuer, it will immediately be able to use the forms and rules designated for foreign private issuers until it fails to qualify for this status at the end of its most recently completed second fiscal quarter. An issuer's determination that it fails to qualify as a foreign private issuer governs its eligibility to use the forms and rules designated for foreign private issuers beginning on the first day of the fiscal year following the determination date. Once an issuer fails to qualify for foreign private issuer status, it will remain unqualified unless it meets the requirements for foreign private issuer status as of the last business day of its second fiscal quarter.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

4. Form F–1 (referenced in § 239.31) is amended by revising paragraph (c) and Instruction 2 to Item 4 of Part I and removing the Instruction to Item 4A of Part I. The revisions read as follows:

Note: The text of Form F–1 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form F–1—Registration Statement Under the Securities Act of 1933

* * * * *

Part I

* * * * *

Item 4. Information With Respect to the Registrant and the Offering

Furnish the following information with respect to the Registrant.

* * * * *

(c) Information required by Item 16F of Form 20–F.

* * * * *

Instructions

* * * * *

2. You do not have to provide the information required by Item 4(c) if you are required to file reports under sections 13(a) or 15(d) of the Exchange Act.

* * * * *

5. Form F–3 (referenced in § 239.33) is amended by:

a. In General Instruction I.B.2., removing the phrase ''may comply with Item 17 or 18'' in the last sentence and adding in its place ''must comply with Item 18'';

b. In General Instruction I.B.3., removing the phrase ''may comply with Item 17 or 18'' in the first sentence and adding in its place ''must comply with Item 18'';

c. In General Instruction I.B.4., removing the phrase ''may comply with Item 17 or 18'' in the second sentence and adding in its place '' must comply with Item 18''; and

d. Revising the Instruction to Item 5 to read as follows:

Note: The text of Form F–3 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form F–3—Registration Statement Under the Securities Act of 1933

* * * * *

Item 5. Material Changes

* * * * *

Instruction. Financial statements or information required to be furnished by this Item shall be reconciled pursuant to Item 18 of Form 20–F.

* * * * *

6. Form F–4 (referenced in § 239.34) is amended by:

a. Revising Instruction 1 to Item 11;

b. Revising Item 12(b)(2) introductory text and Item 12(b)(3)(vii);

c. In Item 12(b)(3)(viii), removing the period and adding in its place ''; and'' and adding Item 12(b)(3)(ix);

d. Adding an Instruction to Item 12;

e. Revising Instruction 1 to Item 13;

f. Revising Item 14(h);

g. In Item 14(i), removing the period and adding in its place ''; and'';

h. Adding Item 14(j);

i. Adding ''1'' before the existing instruction for Instructions to Item 14 and adding an Instruction 2; and

j. In Item 17(b)(5)(ii), removing the period and adding in its place ''; and'' and adding Item 17(b)(6).

The revisions and additions read as follows:

Note: The text of Form F–4 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form F–4—Registration Statement Under the Securities Act of 1933

* * * * *

Item 11. Incorporation of Certain Information by Reference

* * * * *

Instructions

1. All annual reports or registration statements incorporated by reference pursuant to Item 11 of this Form shall contain financial statements that comply with Item 18 of Form 20–F.

* * * * *

Item 12. Information With Respect to F–3 Registrants

* * * * *

(b) * * *

(2) Include financial statements and information as required by Item 18 of Form 20–F. In addition, provide:

(3) * * *

(vii) Financial statements required by Item 18 of Form 20–F, and financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued. (Schedules required under Regulation S–X shall be filed as ''Financial Statement Schedules'' pursuant to Item 21 of this Form, but need not be provided with respect to the company being acquired if information is being furnished pursuant to Item 17(a) of this Form);

* * * * *

(ix) Item 16F of Form 20–F, change in registrant's certifying accountant.

Instruction

You do not have to provide the information required by Item 12(b)(3)(ix) if you are required to file reports under sections 13(a) or 15(d) of the Exchange Act.

* * * * *

Item 13. Incorporation of Certain Information by Reference

* * * * *

Instructions

1. All annual reports incorporated by reference pursuant to Item 13 of this Form shall contain financial statements

that comply with Item 18 of Form 20–F.

* * * * *

Item 14. Information With Respect to Foreign Registrants Other Than F–3 Registrants

* * * * *

(a) * * *

(h) Financial statements required by Item 18 of Form 20–F, as well as financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued. (Schedules required by Regulation S–X shall be filed as ''Financial Statement Schedules'' pursuant to Item 21 of this Form);

* * * * *

(j) Item 16F of Form 20–F, change in registrant's certifying accountant.

Instructions

1. * * *

2. You do not have to provide the information required by Item 14(j) if you are required to file reports under sections 13(a) or 15(d) of the Exchange Act.

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F–3 Companies

* * * * *

(b) * * *

(6) Item 16F(b) of Form 20–F, change in registrant's certifying accountant.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*, and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

8. Section 240.3b–4 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 240.3b–4 Definition of ''foreign government'', ''foreign issuer'' and ''foreign private issuer''.

* * * * *

(c) The term ''*foreign private issuer*'' means any foreign issuer other than a foreign government except for an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter:

* * * * *

(d) Notwithstanding paragraph (c) of this part, in the case of a new registrant with the Commission, the determination of whether an issuer is a foreign private issuer will be made as of a date within 30 days prior to the issuer's filing of an initial registration statement under either the Act or the Securities Act of 1933.

(e) Once an issuer qualifies as a foreign private issuer, it will immediately be able to use the forms and rules designated for foreign private issuers until it fails to qualify for this status at the end of its most recently completed second fiscal quarter. An issuer's determination that it fails to qualify as a foreign private issuer governs its eligibility to use the forms and rules designated for foreign private issuers beginning on the first day of the fiscal year following the determination date. Once an issuer fails to qualify for foreign private issuer status, it will remain unqualified unless it meets the requirements for foreign private issuer status as of the last business day of its second fiscal quarter.

9. Section 240.13a–10 is amended by revising paragraph (g)(3) to read as follows:

§ 240.13a–10 Transition reports.

* * * * *

(g) * * *

(3) The report for the transition period shall be filed on Form 20–F responding to all items to which such issuer is required to respond when Form 20–F is used as an annual report. The financial statements for the transition period filed therewith shall be audited. The transition report shall be filed as follows:

(i) For large accelerated filers and accelerated filers (as defined in § 240.12b–2), within 90 days after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later, for fiscal years ending on or after December 15, 2010; and

(ii) For all other issuers, within 120 days after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later, for fiscal years ending on or after December 15, 2010.

* * * * *

10. Section 240.13e–3 is amended by revising paragraph (a)(3)(ii)(A) to read as follows:

§ 240.13e–3 Going private transactions by certain issuers or their affiliates.

(a) * * *

(3) * * *

(ii) * * *

(A) Causing any class of equity securities of the issuer which is subject to section 12(b) or section 15(d) of the Act to become eligible for termination of registration under Rule 12g–4 [§ 240.12g–4] or Rule 12h–6 [§ 240.12h–6], or causing the reporting obligations with respect to such class to become eligible for termination under Rule 12h–6 [§ 240.12h–6]; or

* * * * *

11. Section 240.15d–10 is amended by revising paragraph (g)(3) to read as follows:

§ 240.15d–10 Transition reports.

* * * * *

(g) * * *

(3) The report for the transition period shall be filed on Form 20–F responding to all items to which such issuer is required to respond when Form 20–F is used as an annual report. The financial statements for the transition period filed therewith shall be audited. The transition report shall be filed as follows:

(i) For large accelerated filers and accelerated filers (as defined in § 240.12b–2), within 90 days after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later, for fiscal years ending on or after December 15, 2010; and

(ii) For all other issuers, within 120 days after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later, for fiscal years ending on or after December 15, 2010.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

12. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.*, 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

13. Form 20–F (referenced in § 249.220f) is amended by:

a. Revising General Instructions A.(b) and E.(c);

b. Revising Items 12.D and 12.D.3, and Instruction 1 to Item 12;

c. Adding Item 16F and Instructions to Item 16F;

d. Adding Item 16G and an Instruction to Item 16G;

e. Revising Item 17(a);

f. Removing Instruction 3 to Item 17, and redesignating Instructions 4, 5 and 6 as 3, 4 and 5; and

g. Revising the Instruction to Item 18.

The additions and revisions read as follows:

Note: The text of Form 20–F does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

General Instructions

A. Who May Use Form 20–F and When It Must Be Filed

* * * * *

(b) A foreign private issuer must file its annual report on this Form within the following period:

(1) For large accelerated filers and accelerated filers (as defined in § 240.12b–2), within 90 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2010; and

(2) For all other issuers, within 120 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2010.

* * * * *

E. Which Items To Respond to in Registration Statements and Annual Reports

(a) * * *

(c) *Financial Statements.* An Exchange Act registration statement or annual report filed on this Form must contain the financial statements and related information specified in Item 18 of this Form. Note that Items 17 and 18 may require you to file the financial statements of other entities in certain circumstances. These circumstances are described in Regulation S–X.

* * * * *

Item 12. Description of Securities Other Than Equity Securities

* * * * *

D. American Depositary Shares. If you are registering securities represented by American depositary receipts in a sponsored facility, provide the following information.

* * * * *

3. Describe all fees and charges that a holder of American depositary receipts may have to pay, either directly or indirectly. Indicate the type of service, the amount of the fees or charges and to whom the fees or charges are paid. In particular, provide information about any fees or charges in connection with (a) depositing or substituting the underlying shares; (b) receiving or distributing dividends; (c) selling or exercising rights; (d) withdrawing an underlying security; (e) transferring, splitting or grouping receipts; and (f) general depositary services, particularly those charged on an annual basis.

In addition, describe all fees and other direct and indirect payments made by the depositary to the foreign issuer of the deposited securities.

Instructions to Item 12:

1. *Except for Item 12.D.3., you do not need to provide the information called for by this item if you are using this form as an annual report.*

* * * * *

Item 16F. Change in Registrant's Certifying Accountant

(a)(1) If during the registrant's two most recent fiscal years or any subsequent interim period, an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant who was previously engaged to audit a significant subsidiary and on whom the principal accountant expressed reliance in its report, has resigned (or indicated it has declined to stand for re-election after the completion of the current audit) or was dismissed, then the registrant shall:

(i) State whether the former accountant resigned, declined to stand for re-election or was dismissed and the date thereof.

(ii) State whether the principal accountant's report on the financial statements for either of the past two years contained an adverse opinion or a disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope, or accounting principles; and also describe the nature of each such adverse opinion, disclaimer of opinion, modification, or qualification.

(iii) State whether the decision to change accountants was recommended or approved by:

(A) Any audit or similar committee of the board of directors, if the issuer has such a committee; or

(B) The board of directors, if the issuer has no such committee.

(iv) State whether during the registrant's two most recent fiscal years and any subsequent interim period preceding such resignation, declination or dismissal there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement(s), if not resolved to the satisfaction of the former accountant, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report. Also,

(A) describe each such disagreement;

(B) state whether any audit or similar committee of the board of directors, or the board of directors, discussed the subject matter of each of such disagreements with the former accountant; and

(C) state whether the registrant has authorized the former accountant to respond fully to the inquiries of the successor accountant concerning the subject matter of each of such disagreements and, if not, describe the nature of any limitation thereon and the reason therefore.

The disagreements required to be reported in response to this Item include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this Item are those that occur at the decision-making level, *i.e.*, between personnel of the registrant responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(v) Provide the information required by paragraph (a)(1)(iv) of this Item for each of the kinds of events (even though the registrant and the former accountant did not express a difference of opinion regarding the event) listed in paragraphs (a)(1)(v)(A) through (D) of this section, that occurred within the registrant's two most recent fiscal years and any subsequent interim period preceding the former accountant's resignation, declination to stand for re-election, or dismissal (''reportable events''). If the event led to a disagreement or difference of opinion, then the event should be reported as a disagreement under paragraph (a)(1)(iv) and need not be repeated under this paragraph.

(A) The accountant's having advised the registrant that the internal controls necessary for the registrant to develop reliable financial statements do not exist;

(B) The accountant's having advised the registrant that information has come to the accountant's attention that has led it to no longer be able to rely on management's representations, or that has made it unwilling to be associated with the financial statements prepared by management;

(C)(*1*) The accountant's having advised the registrant of the need to expand significantly the scope of its audit, or that information has come to the accountant's attention during the time period covered by Item

16F(a)(1)(iv), that if further investigated may:

(*i*) Materially impact the fairness or reliability of either: a previously issued audit report or the underlying financial statements; or the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report (including information that may prevent it from rendering an unqualified audit report on those financial statements); or

(*ii*) Cause it to be unwilling to rely on management's representations or be associated with the registrant's financial statements; and

(*2*) Due to the accountant's resignation (due to audit scope limitations or otherwise) or dismissal, or for any other reason, the accountant did not so expand the scope of its audit or conduct such further investigation; or

(D)(*1*) The accountant's having advised the registrant that information has come to the accountant's attention that it has concluded materially impacts the fairness or reliability of either (i) a previously issued audit report or the underlying financial statements, or (ii) the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report (including information that, unless resolved to the accountant's satisfaction, would prevent it from rendering an unqualified audit report on those financial statements); and

(*2*) Due to the accountant's resignation, dismissal or declination to stand for re-election, or for any other reason, the issue has not been resolved to the accountant's satisfaction prior to its resignation, dismissal or declination to stand for re-election.

(2) If during the registrant's two most recent fiscal years or any subsequent interim period, a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements, or as an independent accountant to audit a significant subsidiary and on whom the principal accountant is expected to express reliance in its report, then the registrant shall identify the newly engaged accountant and indicate the date of such accountant's engagement. In addition, if during the registrant's two most recent fiscal years, and any subsequent interim period prior to engaging that accountant, the registrant (or someone on its behalf) consulted the newly engaged accountant regarding:

(i) Either: The application of accounting principles to a specified transaction, either completed or proposed; or the type of audit opinion that might be rendered on the registrant's financial statements, and either a written report was provided to the registrant or oral advice was provided that the new accountant concluded was an important factor considered by the registrant in reaching a decision as to the accounting, auditing or financial reporting issue; or

(ii) Any matter that was either the subject of a disagreement (as defined in Item 16F(a)(1)(iv) and the related instructions to this Item) or a reportable event (as described in Item 16F(a)(1)(v), then the registrant shall:

(A) So state and identify the issues that were the subjects of those consultations;

(B) Briefly describe the views of the newly engaged accountant as expressed orally or in writing to the registrant on each such issue and, if written views were received by the registrant, file them as an exhibit to the annual report requiring compliance with this Item 16F(a);

(C) State whether the former accountant was consulted by the registrant regarding any such issues, and if so, provide a summary of the former accountant's views; and

(D) Request the newly engaged accountant to review the disclosure required by this Item 16F(a) before it is filed with the Commission and provide the new accountant the opportunity to furnish the registrant with a letter addressed to the Commission containing any new information, clarification of the registrant's expression of its views, or the respects in which it does not agree with the statements made by the registrant in response to Item 16F(a). The registrant shall file any such letter as an exhibit to the annual report containing the disclosure required by this Item.

(3) The registrant shall provide the former accountant with a copy of the disclosures it is making in response to this Item 16F(a). The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant in response to this Item 16F(a) and, if not, stating the respects in which it does not agree. The registrant shall file the former accountant's letter as an exhibit to the annual report or registration statement containing this disclosure. If the former accountant's letter is unavailable at the time that the registration statement is filed, then the registrant shall request the former accountant to provide the letter as promptly as possible so that the registrant can file the letter with the Commission within ten business days after the filing of the registration statement. If the change in accountants occurred less than 30 days prior to the filing of the annual report and the former accountant's letter is unavailable at the time that the annual report is filed, then the registrant shall request the former accountant to provide the letter as promptly as possible so that the registrant can file the letter with the Commission within ten business days after the filing of the annual report. In either case, the former accountant may provide the registrant with an interim letter highlighting specific areas of concern and indicating that a more detailed letter will be forthcoming. If not filed with the annual report or registration statement containing the registrant's disclosure under this Item 16F(a), then the interim letter, if any, shall be filed by the registrant by amendment promptly.

(b) If: (1) In connection with a change in accountants subject to paragraph (a) of this Item 16F, there was any disagreement of the type described in paragraph (a)(1)(iv) or any reportable event as described in paragraph (a)(1)(v) of this Item;

(2) During the fiscal year in which the change in accountants took place or during the subsequent fiscal year, there have been any transactions or events similar to those which involved such disagreement or reportable event; and

(3) Such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, the registrant shall state the existence and nature of the disagreement or reportable event and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required.

These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

Instructions to Item 16F:

1. If you are filing Form 20–F as a registration statement under the Exchange Act, you do not have to provide the information required by Item 16F if you are already required to file reports under sections 13(a) or 15(d) of the Exchange Act. Item 16F applies to all annual reports filed on Form 20–F.

2. The disclosure called for by paragraph (a) of this Item need not be provided if it has been previously reported, as that term is defined in Rule

12b–2 under the Exchange Act (§ 240.12b–2 of this chapter). The disclosure called for by paragraph (b) of this Item must be furnished, where required, notwithstanding any prior disclosure about accountant changes or disagreements.

3. The information required by paragraph (a) of this Item need not be provided for a company being acquired by the registrant in a transaction being registered on Form F–4 that is not subject to the filing requirements of either section 13(a) or 15(d) of the Exchange Act.

4. The term ''disagreements'' as used in this Item shall be interpreted broadly to include any difference of opinion concerning any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which (if not resolved to the satisfaction of the former accountant) would have caused it to make reference to the subject matter of the disagreement in connection with its report. It is not necessary for there to have been an argument to have had a disagreement, merely a difference of opinion. For purposes of this Item, however, the term ''disagreements'' does not include initial differences of opinion based on incomplete facts or preliminary information that were later resolved to the former accountant's satisfaction by, and providing the registrant and the accountant do not continue to have a difference of opinion upon, obtaining additional relevant facts or information.

5. In determining whether any disagreement or reportable event has occurred, an oral communication from the engagement partner or another person responsible for rendering the accounting firm's opinion (or his/her designee) will generally suffice as the accountant advising the registrant of a reportable event or as a statement of a disagreement at the ''decision-making level'' within the accounting firm and require disclosure under this Item.

6. The term ''board of directors'' as used in this Item 16F has the meaning set forth in § 240.10A–3(e)(2).

Item 16G. Corporate Governance

If the registrant's securities are listed on a national securities exchange, provide a concise summary of any significant ways in which its corporate governance practices differ from those followed by domestic companies under the corporate governance standards of that exchange.

Instruction to Item 16G:

Item 16G only applies to annual reports, and not to registration statements on Form 20–F. Registrants should provide a brief and general discussion, rather than a detailed, item-by-item analysis.

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Item 17. Financial Statements

(a) The registrant shall furnish financial statements for the same fiscal years and accountants' certificates that would be required to be furnished if the registration statement were on Form 10 or the annual report on Form 10–K. In addition, in an annual report the registrant shall furnish the information required by Rule 3–05, for the periods required by Rule 3–05(b)(2)(iv), and Article 11 of Regulation S–X (§ 210.3–05 and § 210.11 *et seq.* of this chapter) for any acquisition completed during the most recent fiscal year covered by the Form 20–F that is significant under the definition in Rule 1–02(w) of Regulation S–X (§ 210.1–02(w) of this chapter), substituting 50 percent for 10 percent. However, the information required by Rule 3–05 and Article 11 of Regulation S–X is not required in an annual report filed on Form 20–F if the information has already been provided previously in a registration statement. In an annual report, the registrant does not need to provide Rule 3–05 and Article 11 of Regulation S–X information for probable acquisitions, and does not need to provide Rule 3–05 and Article 11 of Regulation S–X information for the aggregation of individually insignificant acquisitions. Schedules designated by §§ 210.12–04, 210.12–09, 210.12–15, 210.12–16, 210.12–17, 210.12–18, 210.12–28, and 210.12–29 of this chapter shall also be furnished if applicable to the registrant.

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Item 18. Financial Statements

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Instruction to Item 18:

All of the instructions to Item 17 also apply to this Item.

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Dated: February 29, 2008.

By the Commission.

Nancy M. Morris,

Secretary.

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