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SEC Proposes XBRL Tagging of Filings

The Staff of the Securities and Exchange Commission (the “SEC”) recently proposed new rules that would require domestic and foreign issuers that use US GAAP (and eventually those that use IFRS) to submit their financial statements in XBRL format. “XBRL” stands for eXtensible Business Reporting Language, a set of extensions that allow data to be tagged and retrieved easily across documents. This memorandum provides a brief summary of what XBRL is, how it works and the new rules requiring the use of XBRL that the SEC has proposed.

XBRL

XBRL was developed and continues to be supported by XBRL International, a collaborative consortium of approximately 550 organizations representing many elements of the financial reporting community worldwide in more than 20 jurisdictions, national and regional. In 2006, the SEC contracted with XBRL U.S., the international organization’s U.S. jurisdiction representative, to develop the standard list of tags necessary for financial reporting in XBRL format.

XBRL tags individual items in a company’s financial statements with a coded identifier so that information can be more efficiently searched on the Internet, downloaded into spreadsheets, reorganized in databases and manipulated for comparative and analytical use.

The process of tagging information is dependent on getting the right tag associated with each piece of data, so as to create a uniform system for searching the data. These tags are similar to definitions in an ordinary financial dictionary, and they cover a variety of financial concepts that can be read and understood by software applications. Applying data tags to financial statements is accomplished using commercially available software that guides a preparer in mapping information in financial statements to the appropriate tags in the standard list. For example, in a spreadsheet with the following figures:

At December 31, 2007:

Accounts receivable	\$500,000
Inventory	\$1,000,000
Other	\$100,000
Current Assets	\$1,600,000

Inventory would be tagged as
<inventory>1,000,000</inventory>.
Once tagged, software can easily find “inventory” and know that inventory was 1,000,000. Add tags to the date and currency, and the software will know that inventory at December 31, 2007 was 1,000,000 US dollars.

If a company uses a non-standard financial statement line item that is not included in the standard list of tags, the company would create a company-specific element, called an extension.

Companies and Filings Covered by the Proposed Rules and Phase-In

The proposed rules would supplement, and not replace, current filing requirements and would cover all companies, whether reporting in US GAAP or IFRS. Domestic and foreign large accelerated filers (as defined in Rule 12b-2 of the Securities Exchange Act of 1934 (the “Exchange Act”)) that report in US GAAP and have a worldwide common equity float of greater than \$5 billion would be required to make their initial XBRL filings for all quarterly and annual periods ending on or after December 15, 2008. All other US GAAP filers that meet the definition of large accelerated filer would be required to provide their initial XBRL filings for all quarterly and annual periods ending on or after December 15, 2009. All remaining US GAAP filers would be required to provide their initial XBRL filings for all quarterly and annual periods ending on or after December 15, 2010. Foreign filers that report in IFRS would be required to provide their initial XBRL filings for all annual periods ending on or after December 15, 2010. The XBRL filing obligations described above also apply to registration statements that contain financial statements for the above periods.

The proposed rules would require interactive data tagging of a filer’s complete financial statements and any required financial statement schedules. Tagging of the footnote disclosures would be required using four different levels of detail: (a) each complete footnote tagged as a single block of text; (b) each significant accounting policy within the significant accounting policies footnote

tagged as a single block of text; (c) each table within each footnote tagged as a separate block of text; and (d) within each footnote, each amount separately tagged and each narrative disclosure required to be disclosed by US GAAP (or IFRS, if applicable) and SEC regulations separately tagged. However, only the tagging contemplated in (a) above would be required for during the first year of a company’s XBRL reporting.

XBRL filings would be required at the same time as the rest of the filing to which it relates. Each company’s initial XBRL filing, however, would be permitted as an amendment to a registration statement within 30 days of the date of filing or as an amendment to its annual or quarterly report within 30 days of the due date for filing of the rest of the related report. In addition, for the first XBRL filing of its second year of XBRL reporting (for which all of the footnote tagging described above would be required), a company would be given an additional 30 days beyond the due date or filing date of its report or registration statement to make its XBRL filing.

In addition to making the XBRL filings with the SEC, each filing company would also be required to post the XBRL data on its website (if it has one) on the earlier of the day it filed or was required to file the related registration statement or report.

Potential Liability Associated with XBRL and Consequences of Noncompliance

The SEC has proposed two standards of liability regarding XBRL data: one for “interactive data” – the machine-readable

computer code to be provided by a company to the SEC – and one for “viewable interactive data” – the human-readable text converted from the interactive data that can be downloaded and viewed from the SEC’s website or the company’s website.

According to the SEC, “interactive data” will be:

- subject to proposed Rule 405 under Regulation S-T which will set out the requirements for the process of tagging and formatting the content of the financial statements for the interactive data file to be provided to the SEC;
- deemed not filed and not subject to liability for purposes of Sections 11 and 12 of the Securities Act of 1933 (the “Securities Act”), Section 18 of the Exchange Act and Section 34(b) of the Investment Company Act of 1940;
- excluded from the officer certification requirements of Rules 13a-14 and 15d-14 under the Exchange Act;
- protected from liability for failure to comply with the proposed tagging and related requirements under proposed Rule 405 if the failure occurred despite a company’s good faith and reasonable effort where the company corrected the failure as soon as reasonably practicable after becoming aware of it; and
- deemed filed for purposes of Rule 103 under Regulation S-T and, as a result, would not be subject to liability for electronic transmission errors beyond its control if the company corrects the problem through an amendment as soon as reasonably practicable after the company becomes aware of the problem.

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None of the proposed liability-related provisions for interactive data submitted to the SEC, however, would affect the application of the anti-fraud provisions under the federal securities laws, whether the interactive data is submitted to the SEC or posted on a company's website.

The substantive content of the financial disclosures – i.e., the numerical values in the financial statements or footnotes and the statements in the footnotes – would still be subject to liability in the same way and to the same extent as traditional format part of the related official filing. In addition, the liability provisions of the federal securities laws also would apply to the viewable interactive data. Therefore, in complying with the requirements of proposed Rule 405, companies must ensure that the viewable interactive data is identical to the corresponding data in the traditional format filing.

Under the SEC's proposal, a company that fails to file the required interactive data submission with the SEC or fails to post the interactive data on the company website by the required due date would not be able to use short form registration statements on Forms S-3, F-3 or S-8. In addition, because such a company would not be deemed to have available adequate current public information, it would not be eligible for the resale exemption safe harbor provided by Rule 144 under the Securities Act. Once the company complied with the interactive data submission and posting requirements—

provided it previously filed its financial statement information in traditional format on a timely basis—it would be deemed to have timely filed all of its periodic reports. The SEC has proposed amending Rule 201 under Regulation S-T to provide a company with a temporary hardship exemption if the company experiences unanticipated technical difficulties that prevent the timely preparation and electronic submission of the interactive data. The exemption would apply without SEC action and would deem the company current in its periodic reports for up to six business days from the date the interactive data were required to be submitted. The SEC has also proposed amending Rule 202 under Regulation S-T to permit a company to apply in writing for a continuing hardship exemption if the timely preparation and electronic submission of the interactive data cannot be made without undue burden or expense.

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