

## SEC ADOPTS AMENDMENTS TO UPDATE AND SIMPLIFY ITS DISCLOSURE REQUIREMENTS – A GUIDE FOR FOREIGN PRIVATE ISSUERS

The U.S. Securities and Exchange Commission (SEC) adopted a voluminous set of rule and form amendments in August 2018 to update and simplify certain of its disclosure requirements. These amendments will become effective 30 days after the final rules are published in the Federal Register. The adopting release for these amendments is available [here](#) and a “demonstration version” of the amendments (with added text underlined and deleted text struck out) is available [here](#). While the SEC intends for these amendments to simplify disclosure compliance, it does not expect they will significantly alter the total mix of information provided to investors.

This briefing identifies the amendments that we expect will impact forms filed with the SEC by foreign private issuers that report their financial results in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS), such as annual reports on Form 20-F, long-form registration statements on Form F-1 as well as short-form registration statements Form F-3. Annex I to this briefing provides a chart that summarizes key amendments to SEC disclosure requirements relevant to foreign private issuers.

### Background

These recently adopted disclosure amendments address requirements that have become duplicative, overlapping, or outdated in light of other SEC disclosure requirements, accounting principles, or changes in the information environment. By adopting these amendments, the SEC is complying with a directive in the

Fixing America's Surface Transportation Act of 2015 to amend Regulation S-K to eliminate provisions that are duplicative, overlapping, outdated or unnecessary. In addition, many of these amendments are the result of an initiative by the SEC's Division of Corporation Finance to improve the disclosure requirements in ways that benefit investors and issuers.

## **Elimination of Currency Exchange Rate Disclosure**

Item 3.A.3 of Form 20-F required foreign private issuers to provide exchange rate data when financial statements are prepared in a currency other than the U.S. dollar. Since exchange rate information is readily available free on a number of websites, the SEC is eliminating this disclosure requirement. This change impacts not only annual reports on Form 20-F, but also registration statements on Form F-1 and F-4 as they refer to the disclosure requirements of Part I of Form 20-F.

## **Elimination of the requirement to disclose certain financial ratios**

Prior to these amendments, paragraph (d) of Item 503 of Regulation S-K required companies to disclose:

- the ratio of earnings to fixed charges when registering debt securities; and
- the ratio of combined fixed charges and preference dividends to earnings when registering preferred equity securities.

The SEC is deleting paragraph (d) of Item 503 because a variety of analytical tools and alternative ratios are available to investors, causing this disclosure requirement to be unnecessary. This change means that companies registering these types of securities using Form F-3 or Form F-4 will no longer be required to disclose either historical or pro forma ratios. In addition, the SEC is eliminating the related requirement to file exhibits indicating the calculation of these ratios.

In connection with these amendments, the SEC is also deleting Instruction 7 to "Instructions as to Exhibits" of Form 20-F which has required foreign private issuers to disclose how any ratio of earnings to fixed charges presented in the filing was calculated.

For issuers registering offerings of debt securities or preferred shares, the elimination of this disclosure requirement is likely to represent the largest burden reduction to result from this set of amendments. The SEC estimates that companies have typically expended an average of four hours preparing disclosure related to these ratios for inclusion in their registration statements.

## **New requirement to disclose changes in stockholders' equity for interim periods**

As part of the disclosure update and simplification, the SEC is eliminating a Regulation S-K requirement to disclose frequency and amount of cash dividends that did not directly apply to foreign private issuers. In lieu of the eliminated disclosure requirement, the SEC has amended Rule 10-01 of Regulation S-X to require disclosure regarding changes in stockholder's equity, including dividend related information, for interim periods to be provided in the notes to any required interim financial statements. Specifically, this rule change will require disclosure of dividends per share for each class of shares, rather than only for common stock,

and disclosure of changes in stockholders' equity for relevant interim periods. This new disclosure requirement is expected to impact foreign private issuers as this requirement of Regulation S-X applies to Forms F-1 and F-4. The SEC has indicated that it expects additional burdens created by this particular amendment to be minimal, as the required information would already be available from the preparation of other aspects of the interim financial information.

### **Elimination of need to file a waiver request regarding age of financial statements for IPOs**

Item 8.A.4 of Form 20-F, which provides a disclosure requirement used in Form F-1, requires financial statements filed in connection with an initial public offering by a nonpublic foreign private issuer to be no older than 12 months at the date of filing. In the past, the SEC has permitted these companies to request waivers requests that permitted compliance with a 15-month requirement for the age of financial statements. The SEC is amending Instruction 2 to Item 8.A.4 to eliminate the requirement to apply for such a waiver. So long as a foreign private issuer is able to represent that it is not required to comply with the 12-month requirement in any jurisdiction outside the United States and that complying with the 12-month requirements is impracticable or involves undue hardship, it may comply with the 15-month requirement. The SEC will continue to require a foreign private issuer to file this representation as an exhibit to its registration statement.

### **Elimination of market price disclosures**

Prior to these disclosure amendments, Item 9.A.4 of Form 20-F required foreign private issuers to provide price history of the stock to be offered and listed. The SEC estimates that companies typically have expended an average of two hours each year preparing the market price disclosure for inclusion in annual reports on Form 20-F, as well as registration statements on Forms F-1 and F-4. This disclosure requirement has been eliminated because even more robust market price information can easily be derived from alternative sources.

### **New requirement to specify trading markets and symbols**

In replacement of the eliminated market price disclosures, Item 9.A.4 of Form 20-F will require foreign private issuers to disclose the principal U.S. markets and principal markets outside the United States where the issuer's common equity trades and the trading symbols assigned to such common equity.

### **Integration of duplicative or overlapping financial disclosure requirements**

**Dividend restrictions.** Prior to this set of disclosure amendments, foreign private issuers were instructed to report any dividend restrictions pursuant to Items 10.F and 14.B of Form 20-F. The SEC is eliminating both of these requirements because foreign private issuers are already required to disclose dividend restrictions in the notes to their financial statements pursuant to U.S. GAAP or IFRS. This change to Item 10.F of Form 20-F impacts Form F-1 because it cross-refers to this disclosure requirement.

**Calculation of earnings per share.** Prior to the recent amendments, the exhibit instructions of Form 20-F required foreign private issuers to file as an exhibit to

their annual report a statement explaining how earnings per share information was calculated. The SEC is eliminating this exhibit filing requirement because foreign private issuers are already required to make such disclosures pursuant to U.S. GAAP or IFRS.

### **Selected financial data disclosures for issuers switching to IFRS**

The SEC is amending General Instruction G(c) to Form 20-F, which relates to first-time application of IFRS, to delete the requirement to present selected financial data in accordance with U.S. GAAP. In addition, the SEC is amending Instruction 2 to Item 3.A of Form 20-F to explicitly state that an issuer that adopted IFRS during the past three years is only required to provide selected financial data for the periods that it has prepared audited financial statements in accordance with IFRS (instead of five years).

### **Updated SEC contact information and elimination of references to the SEC's Public Reference Room**

The SEC is amending references in Forms 20-F, F-1, F-3, F-4 and F-6 to SEC telephone numbers and offices to provide currently accurate information. For example, General Instruction D of Form 20-F will indicate only one, rather than two, telephone numbers to call with questions regarding EDGAR.

The SEC is amending Forms F-1, F-3 and F-4 to eliminate the requirement to identify the SEC's Public Reference Room and disclose its physical address and phone number. The SEC's Public Reference Room is nowadays only rarely used by the public to obtain or review issuer filings, as paper filings are now only permitted (and sometimes required) in very limited circumstances.

The SEC is retaining the requirement in Forms F-3 and F-4 to disclose the SEC's Internet address and a statement that electronic SEC filings are available there. In addition, the SEC is extending this disclosure requirement to Forms 20-F and F-1. In connection with this aspect of the SEC's disclosure reform, issuers using any of Forms 20-F, F-1, F-3 or F-4 will also be required to disclose their internet address, if they have one.

### **Conclusion**

The SEC's recently adopted amendments update and simplify a number of disclosure requirements applicable to foreign private issuers filing registration statements or annual reports with the SEC. The SEC intends for these amendments to simplify disclosure compliance for issuers without significantly altering the total mix of information provided to investors.

## ANNEX I

### SUMMARY OF KEY DISCLOSURE UPDATE AND SIMPLIFICATION AMENDMENTS RELEVANT TO FOREIGN PRIVATE ISSUERS

Amended Provision	Effect of Amendment	Forms that cross-refer to the amended provision
<b>Form 20-F</b>		
General Instruction G(c)	Eliminates requirement for companies that use IFRS to present any selected financial data in accordance with U.S. GAAP.	-
Instruction 2 to Item 3.A	Explicitly states that an issuer that adopted IFRS during the past three years is only required to provide selected financial data for the periods that it prepared audited financial statements in accordance with IFRS (instead of five years).	Forms F-1 & F-4
Item 3.A.3	Eliminates requirement to provide exchange rate data when financial statements are prepared in a currency other than the U.S. dollar	Forms F-1 & F-4
Item 4.A.8	Requires disclosure of the SEC's internet address (www.sec.gov) and a statement that electronic SEC filings are available there  Requires disclosure of the company's internet address, if available	Form F-1
Instruction 2 to Item 8.A.4	Eliminate requirement for IPO companies to apply for a waiver of the 12-month age of financial statements requirement  Explicitly identifies conditions for complying with a 15-month age of financial statement requirement instead	Form F-1
Item 9.A.4	Eliminates requirement to disclose market price history for listed shares  Requires identification of certain trading markets and ticker symbols for listed shares	Forms F-1 & F-4
Item 10.F	Eliminates requirement to disclose any dividend restrictions	Form F-1
Instruction to Item 14.B	Eliminates instruction to report any working capital restrictions or other limitations on the payment of dividends	-

Amended Provision	Effect of Amendment	Forms that cross-refer to the amended provision
Instruction 6 of the Instructions as to Exhibits	Eliminates requirement to file a statement explaining how earnings per share information was calculated as an exhibit	-
Instruction 7 of the Instructions as to Exhibits	Eliminates requirement to file as an exhibit a statement explaining how any ratio of earnings to fixed charges, any ratio of earnings to combined fixed charges and preferred stock dividends, or any other ratios were calculated	-
<b>Form F-1</b>		
Item 4(e)	Requires disclosure of the SEC's internet address (www.sec.gov) and a statement that electronic SEC filings are available there  Requires disclosure of the company's internet address, if available	
Item 5(b)	Eliminates requirement to identify the SEC's Public Reference Room and disclose its physical address and phone number	
<b>Form F-3</b>		
Item 6(e)	Eliminates requirement to identify the SEC's Public Reference Room and disclose its physical address and phone number  Requires disclosure of the company's internet address, if available	
<b>Form F-4</b>		
Item 13(c)	Eliminates requirement to identify the SEC's Public Reference Room and disclose its physical address and phone number  Requires disclosure of the company's internet address, if available	
<b>Regulation S-K</b>		
Item 503(d)	Eliminates requirement to disclose ratio of earnings to fixed charges if debt securities are registered  Eliminates requirement to disclose ratio of combined fixed charges and preference dividends to earnings if preferred equity securities are registered	Forms F-1, F-3 & F-4

Amended Provision	Effect of Amendment	Forms that cross-refer to the amended provision
Item 601(b)(11)	Eliminates requirement to file as an exhibit a statement explaining how earnings per share information was calculated	Forms F-1 & F-4
Item 601(b)(12)	Eliminates requirement to file as an exhibit a statement explaining how any ratio of earnings to fixed charges, any ratio of earnings to combined fixed charges and preferred stock dividends, or any other ratios were calculated	Forms F-1 & F-4
<b>Regulation S-X</b>		
Rule 10-01	Adds a requirement to provide disclosures regarding changes in stockholders' equity in notes to financial statements for interim periods pursuant to Rule 3-04 of Regulation S-X, including dividend related disclosures	Forms F-1 & F-4

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