



NEW YORK
CITY BAR

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SECURITIES REGULATION**

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Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attention: Nancy M. Morris,
Secretary, Securities and Exchange Commission

Re: Comments on Proposed Amendments to Rules
Relating to Foreign Private Issuer Reporting under the
Securities Exchange Act of 1934 File No. S7-05-08

Ladies and Gentlemen:

This letter is submitted on behalf of the Committee on Securities Regulation of the New York City Bar in response to the proposal of the Securities and Exchange Commission (the “Commission”) to amend the rules relating to foreign private issuer reporting under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The proposal is discussed in Release No. 33-8900; International Series Release No. 1308; File No. S7-05-08 (the “Release”).

Our Committee is composed of lawyers with diverse perspectives on securities issues, including members of law firms, counsel to corporations, investment banks and investors, and academics. Please note that Mr. David Rosenfeld, a member of the Staff of the Commission and a member of our Committee, did not participate in the preparation of this letter or the decision by our Committee to submit this letter to the Commission.

Introduction

Our Committee expresses its appreciation for the substantial efforts of the Commission and its Staff to update and upgrade the rules relating to foreign private issuers. We believe the Commission's proposals are the right response to address the significant changes that have occurred in the global capital markets since the original adoption and amendment of these rules. At the same time, we are concerned that some of the substantive aspects of the Commission's proposals could significantly increase the burden on foreign private issuers without providing material benefits to U.S. investors. Please also see our accompanying letter regarding the proposed amendments to exemption from registration under Section 12(g) of the Securities Exchange Act of 1934 for foreign private issuers File No. S7-04-08 for our comments on those related proposals.

1. The Commission should modify the 90-day Form 20-F filing deadline.

We recognize the Commission has an interest in shortening the deadline for filing annual reports on Form 20-F, from the current six months after the end of the fiscal year. However, we believe the Commission's proposal to require large non-U.S. issuers to file their annual reports within 90 days of the end of their fiscal years and 120 days for all other issuers is unnecessarily burdensome, and undermines the Commission's recent efforts to encourage U.S. reporting and registration by non-U.S. issuers, and modernize and streamline foreign private issuer reporting to the benefit of U.S. investors. If adopted, the Commission's proposal would place a substantial burden on foreign issuers without providing material benefits to U.S. investors. In addition, it would be contrary to the tone of mutual cooperation and collaboration that the Commission has carefully cultivated over the last few years with its non-U.S. counterparts.

The global securities market over the last couple of years has gone through substantial changes. In particular, home country reporting requirements have grown ever more stringent. By shortening the 20-F deadline, the limited resources of non-U.S. companies would be significantly strained under the shortened timeline considering the increased reporting obligations and requirements that companies face in their home jurisdictions. The Commission's proposal would effectively impose an equivalent deadline on companies in their home jurisdictions, as most companies are prohibited under home country rules from publishing information in the United States without simultaneously publishing the same information in their home countries. By effectively accelerating the deadline, the Commission would in substance be adopting an amendment to the home country reporting deadlines of non-U.S. companies and forcing companies to gear their timelines to the U.S. reporting regime. This is particularly burdensome since for most companies the same people work on both home country reporting and U.S. reporting. In addition, it overlooks the significant additional work that goes into 20-F disclosure after a company's home country report is published –internal control evaluation, possibly U.S. GAAP reconciliation and, for many companies, translation. Furthermore the material information contained in Form 20-F is routinely disclosed by many companies on a continuous basis over the course of the year. For example, continuous disclosure is mandatory for European companies under the European Market

Abuse Directive. Many large companies as a matter of their financial communications policy and practices routinely publish annual results announcements well before the 90-day deadline. Consequently, there would be little benefit to accelerating significantly the 20-F deadline, as most investors already have access to equivalent information in a timely fashion.

Our Committee believes that the Commission should continue to develop a cooperative approach among non-U.S. regulators. The current global markets context requires the adoption of coordinated rules across different jurisdictions aimed at serving the interests of worldwide investors, without placing unnecessary burdens on companies. In the spirit of international dialogue and cooperation, we believe it is appropriate for the Commission to link the 20-F deadline with a company's home country reporting calendar. Specifically, we suggest that the deadline be 30 days after a company's home country deadline (including permitted extensions) but no longer than six months after the end of the company's fiscal year. The 30-day period could also start on the date of actual publication of the home country annual report, if that takes place earlier than the date of the deadline. The 30-day period would give companies the time they need to prepare the additional disclosure required under 20-F as well as complete the reconciliation/translation process. This more flexible and coordinated approach is more consistent with the spirit of inter-jurisdictional collaboration and dialogue and would ultimately provide U.S. investors with timely market information without imposing excess burdens on non-U.S. companies.

Additionally, we support the proposal for a transition period before a shortened 20-F deadline would apply, regardless of whether the Commission accepts our recommendation, in order to provide non-U.S. companies time to organize and prepare with an accelerated deadline.

2. The Commission should adopt a flexible approach to the proposal requiring financial disclosure when a company makes an acquisition that is significant at the 50% level.

We understand the Commission's desire to facilitate more accurate and detailed reporting by foreign private issuers. However, we suggest that the Commission provide flexibility in the final rule because the proposed requirement could be burdensome to foreign issuers without providing the market with significant benefits. Requiring a company to obtain historical financials, produce pro forma financials, and possibly go through U.S. GAAP reconciliation is a time-intensive and often times onerous process. In many cases, non-U.S. companies will not have access to the information necessary to prepare pro forma or separate financial statements. In other cases, the acquisition target or seller may be unable to furnish the required information – for example, because the target or its seller were private – or unwilling to do so. In addition, this type of information has greater relevance in the context of reporting by U.S. companies, which are required to disclose it on a continuous and timely basis on Form 8-K. In order to foster coordination among and demonstrate respect for different jurisdictions and their securities laws, non-U.S. issuers are only required to furnish interim reports when they file information under home country disclosure requirements. As a result, the inclusion

of pro forma or target financial information on Form 20-F would not be of much interest to U.S. investors, as such information is likely to have become stale or irrelevant since the time of the acquisition (which could be more than a year prior to filing of the 20-F).

In the spirit of fostering coordination among different jurisdictions, we believe the final rule should provide flexibility to include financial information based on relevant IFRS and local auditing standards, and to omit financial information when it cannot be produced without unreasonable burden or expense. For example, the Commission could require the inclusion in Form 20-F reports of pro forma or historical financial data regarding acquired companies that has been filed in home country reports. In addition, we propose the Commission adopt a transition period so that companies can be prepared to meet the proposed requirements when they negotiate future acquisitions.

Conclusion

The Committee appreciates the Commission's recent efforts to review and modernize the rules relating to foreign private issuers. The Commission must focus on developing rules and regulations that fit the current contours of the global marketplace. U.S. and worldwide investors would significantly benefit from the development of regulatory regimes that strove to eliminate differences between jurisdictions while simultaneously building in flexibility and sensitivity to the competing demands of such jurisdictions.

Our Committee appreciates the opportunity to participate in this process, and we look forward to its successful conclusion.

Respectfully Submitted,

/s/ N. Adele Hogan

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Securities and Exchange Commission
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