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SEC Requires Companies to Use XBRL

By [Andrew J. Beck](#) and [Daniel P. Raglan](#)

On January 30, 2009, the U.S. Securities and Exchange Commission adopted rules requiring companies to provide their financial statements to the SEC and on their websites in an interactive data format using eXtensible Business Reporting Language (XBRL).

The new rules apply to public companies and foreign private issuers that prepare their financial statements in accordance with U.S. GAAP, and foreign private issuers that prepare their financial statements using IFRS. The new rules do not currently apply to Canadian or other foreign companies that prepare their financial statements using Canadian or other non-U.S. GAAP and reconcile them to U.S. GAAP.

The new rules will be phased in over a three-year period, starting with the periodic reports on Form 10-Q, 20-F or 40-F of domestic and foreign large accelerated filers that use U.S. GAAP.

What Is XBRL?

XBRL is a technology that uses data tags to identify and describe information in a company's financial statements and financial statement schedules. Investors can then download the information directly into spreadsheets, analyze in a variety of ways using commercial off-the-shelf software, and use it within investment models in other software formats.

Filers using U.S. GAAP will be required to tag their financial statements using the most recent list of tags for U.S. financial statement reporting, as released by XBRL U.S. and required by the EDGAR Filer Manual.¹

Similarly, filers using IFRS as issued by the IASB will be required to tag their financial information using the most recent list of tags for international financial reporting, as released by the International Accounting Standards Committee Foundation (IASCF) and specified in the EDGAR Filer Manual.²

To discuss these issues, please contact the authors.

For media calls, please contact [Stuart Wood](#), Director, Marketing & Business Development, 416.865.8205.

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¹ The latest list of data tags for U.S. financial statement reporting was released on April 28, 2008 and is available at <http://xbrl.us/pages/us-gaap.aspx>.

² IASCF has been developing the IFRS financial reporting tag list since 2002. The latest version of the IFRS financial reporting tag list was finalized in June 2008 and is available at <http://www.iasb.org/xbrl/xbrl.htm>.

Information Covered by the New Rules

The new interactive data requirements will not change the disclosure requirements under federal securities laws. The new rules will, however, add a requirement to include financial statements in a new interactive data format as an exhibit.

Companies will be required to tag their financial statements, footnotes and any required financial statement schedules. The rules do not require interactive data for MD&A, executive compensation or other financial, statistical or narrative disclosure. Interactive data will be required for all periods included in the filer's financial statements. The new rules will not, however, require interactive data submissions for other financial statements that may be required of filers, including those provided for acquired companies under Rule 3-05 of Regulation S-X.

Phase-in Timetable

The table below identifies the reports for which a filer would first be required to include interactive data:

Filing Status

Domestic and foreign large accelerated filers³ using U.S. GAAP with a worldwide public common equity float above \$5 billion as of the end of the second fiscal quarter of their most recently completed fiscal year

All other large accelerated filers using U.S. GAAP

All remaining filers using U.S. GAAP

Foreign private issuers with financial statements prepared in accordance with IFRS as issued by the IASB

Phase-in Timetable

Quarterly report on Form 10-Q or annual report on Form 20-F or 40-F containing financial statements for a fiscal period ending on or after June 15, 2009

Quarterly report on Form 10-Q or annual report on Form 20-F or 40-F containing financial statements for a fiscal period ending on or after June 15, 2010

Quarterly report on Form 10-Q or annual report on Form 20-F or 40-F containing financial statements for a fiscal period ending on or after June 15, 2011

Annual reports on Form 20-F or 40-F for fiscal periods ending on or after June 15, 2011

³ Exchange Act Rule 12b-2 generally defines "large accelerated filer" as an issuer that has common equity held by unaffiliated persons with a value of at least \$700 million, has been subject to the Exchange Act's periodic reporting requirements for at least 12 months, has filed at least one annual report and is not eligible to use the disclosure requirements available to smaller reporting companies for its periodic reports.

Filers that first become subject to the requirement to submit interactive data after year three of the phase-in (e.g., companies that consummate their initial public offering after year three) will first be required to submit an interactive data file for their first quarterly report on Form 10-Q or annual report on Form 20-F or 40-F, as applicable.

Finally, filers that are not required to provide interactive data until later may do so earlier if they wish.⁴

Initial Filing Grace Period

Interactive data will be required at the same time as the rest of the filing to which it relates. However, each company's initial submission, regardless of filing type, will have a 30-day grace period, and may therefore be submitted as an amendment to the related report or registration statement.⁵

Failure to Timely File

Companies that fail to file the XBRL data with the SEC or post it on their public website by the date required will lose their eligibility to use Form S-3 or F-3 (as applicable) and will be deemed to not have available adequate current public information for purposes of the resale exemption safe harbor under Rule 144. Companies will regain their eligibility and satisfy the current public information requirement as soon as the XBRL data is filed or posted, as the case may be.

Website Posting

Companies covered by the new rules are required to post the XBRL data on their public websites by the end of the calendar day on which the registration statement or report was filed with the SEC or was required to be so filed (whichever is earlier). Companies are required to keep the XBRL data on their public websites for at least 12 months. This posting requirement cannot be satisfied through a hyperlink to the SEC's website.

Exclusion from Officer Certifications and Two-Year Limited Liability

The new rules exclude XBRL data from the officer certifications that are provided in connection with periodic reports. Companies are also not required to obtain auditor assurance on the XBRL exhibits.

The new rules also limit a company's liability for the XBRL data in the exhibit for the first two years the company is required to provide the data. These limits will be phased out by October 31, 2014.

⁴ Foreign private issuers that prepare their financial statements in accordance with IFRS are encouraged by the SEC to provide financial information in an interactive data format once EDGAR will accept such filings. The SEC will notify such filers through the SEC's website of the ability to file in IFRS.

⁵ The 30-day grace period would begin for a Securities Act registration statement once the price or price range is filed as part of it because at that time the interactive data filing requirement becomes applicable for registration statements.

Preparing for the New Rules

It might take a significant amount of time for a company to complete its first XBRL submission. Subsequent filings should be considerably less time-consuming. As you think about the best way to comply with the new rules, you may wish to consider either upgrading your own internal systems to produce XBRL financial statement information or engaging an external XBRL provider. Either way, we recommend that members of a company's accounting and IT departments, as well as management personnel, review the tags used to confirm that they have been correctly applied. 