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Client Alert

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SEC ANNOUNCEMENT OF PROPOSED RULE CHANGES

SEC Votes to Propose Foreign Issuer Reporting Enhancements and Amendments to Rule 12g3-2(b)

At an open meeting held February 13, 2008, the United States Securities and Exchange Commission unanimously voted to propose two sets of amendments of interest to foreign issuers. The two sets of proposals are intended to “modernize the disclosure requirements for foreign companies” and represent some significant practical and substantive changes for foreign issuers. The proposals enhance the ability of foreign issuers to qualify for exemption from the reporting requirements of the Securities Exchange Act of 1934 but for the first time impose a U.S. trading volume limit that could require previously exempt companies to register. The proposal also shortens the deadline for foreign issuers to file annual reports on Form 20-F.

Public Company Reporting Amendments

The SEC announced that the first set of proposed amendments, the Foreign Issuer Reporting Amendments, would include proposals to:

- accelerate the filing deadlines for annual reports filed on Form 20-F to 90 days after fiscal year end for

large accelerated filers and accelerated filers and 120 days after fiscal year end for all other issuers;

- require U.S. GAAP segment disclosure in annual reports in certain instances where it had not been previously required;
- change the determination date for issuers to determine their eligibility to use the various special forms available to foreign private issuers to the last day of their second fiscal quarter as opposed to making this assessment on a continuous basis; and
- amend certain rules relating to “going private” transactions to reconcile them with recent amendments to the deregistration and termination of reporting requirements rules for foreign private issuers.

The implications of changing filing deadlines may be significant for filers in Asia, Europe and Latin America where home country disclosure requirements often contemplate longer deadlines. In addition, to the extent that segment disclosure under home country GAAP and in home country filings is not required, the proposal presents other

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significant issues for filers in terms of home country and SEC disclosure. We anticipate that these issues will be raised during the comment period.

With respect to disclosure in annual reports on Form 20-F, the SEC also announced that it intends to solicit comment on inclusion of disclosure on changes in and disagreements with auditors, fees and other payments relating to ADSs, certain corporate governance matters and certain acquisitions as well as on eliminating the availability of limited U.S. GAAP reconciliation currently available as an option under Item 17 of Form 20-F. We expect this last item to be of particular interest and concern to foreign private issuers.

12g3-2(b) Amendments

The second proposal announced by the SEC relates to amendments to Rule 12g3-2(b), the exemption from the reporting requirements of the Exchange Act available to foreign private issuers. Under the current rule, filings made to obtain and maintain the exemption are required to be made in paper format and there is no limit on U.S. trading volume in the issuer's securities to claim or maintain the exemption.

The SEC has announced proposals that effectively provide for an automatic exemption from SEC registration for foreign private issuers that do not list or publicly offer securities in the United States. To claim the exemption, a foreign private issuer must:

- maintain a listing on one or more exchanges in foreign jurisdictions comprising its primary trading market;
- generally publish specified non- U.S. disclosure

documents in English on its website or in certain other electronic media;

- in most cases, not have U.S. trading volume in excess of 20% of worldwide trading volume in its most recent fiscal year; and
- not have any Exchange Act reporting obligations under Section 13(a) or 15(d) of the Exchange Act.

To maintain the exemption, the proposal would require that the specified non-U.S. disclosures be made on an ongoing basis electronically, that the foreign listing be maintained, that the trading volume thresholds continue to be met and that the issuer not otherwise incur any Exchange Act reporting obligations.

The SEC has announced that it is contemplating a three year transition period to accommodate issuers that are currently exempt under the rule but may not be under the rule as amended. Absent a grandfathering clause, this effectively could cause a foreign private issuer that does not fit within the trading volume exception to become an SEC reporting company.

The comment period on these proposals will be 60 days from the date after publication in the Federal Register.

The SEC's press release announcing the proposals can be viewed at <http://www.sec.gov/news/press/2008/2008-20.htm>.

Please feel free to discuss any aspect of this Client Alert with your regular Milbank contacts or with any of the members of our Global Securities Group, whose names and contact information are provided below.

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