



SEC Mandates EDGAR Filing for Non-U.S. Issuers

Recently, the Securities and Exchange Commission (the "SEC") adopted a rule requiring all non-U.S. issuers and non-U.S. governments to file their disclosure documents electronically using the SEC's electronic system, known as "EDGAR". The new rule becomes effective November 4, 2002, although the SEC encourages companies to make test filings and begin filing electronically in the interim. The new rule does not change the substance of disclosure required or the forms used. The SEC release, "Final Rule: Mandated Edgar Filing for Foreign Issuers", Release No. 33-8099 (May 14, 2002), is available on the SEC's Web site at <http://www.sec.gov/rules/final/33-8099.htm>.

Required Electronic Filings

EDGAR filing by non-U.S. issuers and non-U.S. governments will be required for most documents filed with the SEC, including reports and registration statements filed under the Securities Exchange Act of 1934 (the "Exchange Act") and registration statements filed under the Securities Act of 1933 (the "Securities Act"). Specifically, the SEC will require the electronic filing of the following:

- Securities Act registration statements on Forms F-1, F-2, F-3, F-4, F-6, S-8, S-11 and S-20 Schedule B;
- Securities Act registration statements filed by Canadian Multijurisdictional Disclosure System ("MJDS") filers on Forms F-7, F-8, F-9, F-10 and F-80;
- Exchange Act registration statements and annual reports on Forms 20-F, 40-F, 18 and 18-K;
- Exchange Act periodic reports on Form 6-K (except as described below);
- Statements of beneficial ownership on Schedules 13D and 13G;
- Schedules 14D-9 when non-U.S. issuers are subject to tender offers, whether by U.S. or non-U.S. companies;

- Schedules TO with respect to the securities of a non-U.S. issuer and MJDS tender offer Schedules 13E-4F, 14D-1F and 14D-9F;
- Forms CB for cross-border rights offers, exchange offers and business combinations that are exempt from the tender offer rules and Securities Act registration if the filer is an Exchange Act reporting company;
- Forms F-X and F-N for designating a U.S. agent for service of process, subject to certain exceptions; and
- Most forms under the Trust Indenture Act of 1939.

The final rule eliminates the requirement that an EDGAR filer submit a paper copy of its first electronic filing with the SEC.

The final rule does not change the current practice of requiring non-U.S. issuers to submit material pursuant to Exchange Act Rule 12g3-2(b) in paper format.

Form 6-K Exceptions

The SEC will make exceptions for the following documents, which may be filed in paper format:

- Glossy annual reports to shareholders if the sole purpose of the Form 6-K is to furnish a copy to the SEC; and
- Materials other than press releases that are being furnished to the SEC on Form 6-K and (i) are not required to be, and have not been, distributed to security holders and (ii) if they contain material information, including disclosure of annual audited or interim consolidated financial results, that have already been filed with the SEC through EDGAR.

The SEC has clarified that offering circulars and prospectuses pertaining solely to non-U.S. offerings are not required to be filed on Form 6-K if the

material information contained in them is otherwise included in a Form 6-K, Form 20-F or other filing.

Confidential Review

Confidential submissions, permitted only for first-time registrants' Securities Act or Exchange Act registration statements, must be in paper format, although later public filings must be electronic. Once the filing becomes public, however, issuers will be required to file on EDGAR any letter responding to SEC staff comments on their draft registration statements.

Exhibits and Incorporation by Reference

If an exhibit has already been filed in paper format, it may be incorporated by reference as an exhibit into an electronic filing. If such an exhibit has been amended and therefore needs to be filed again, then it must be filed electronically. If any part of a document is incorporated by reference into an electronic filing (including any part of a glossy annual report), it must be filed as an exhibit electronically.

Non-English Documents

The final rule requires that all electronic filings and submissions be in English, with the following exception: non-English language documents that are included in a Form 6-K or that constitute an exhibit or attachment to a filing or submission may be *summarized* in English, except for the documents listed below, which are required to be *translated* into English in full:

- Press releases under cover of Form 6-K;
- Forms 6-K for communications with, and other documents distributed or required to be distributed directly to, security holders for each class of securities for which a reporting obligation under the Exchange Act exists, except for offering circulars and prospectuses that relate entirely to non-U.S. offerings;
- Articles of incorporation, memoranda of association, bylaws, and other comparable documents, whether original or restated;
- Instruments defining the rights of security holders, including indentures under the Trust Indenture Act of 1939;
- Voting, and voting trust, agreements;
- Contracts to which directors, officers, promoters, voting trustees or security holders named in a registration statement are parties;

- Contracts upon which a filer's business is substantially dependent;
- Audited annual and interim consolidated financial information; and
- Any document that is or will be the subject of a confidential treatment request.

Any English language summary must fairly and accurately summarize the terms of each material provision of the document and describe the omitted or abridged terms. The final rule allows an issuer to submit, at its option, a paper copy of the unabridged non-English language document under cover of Form SE when electronically submitting an English language summary or English language translation of that document.

Documents containing both English and French text may be filed electronically in HTML by MJDS filers who must comply with Canadian dual-language requirements. MJDS documents may include English translations or English summaries of non-English language exhibits or attachments to the filing, as permitted under Canadian rules.

Non-U.S. governments are required to file an English translation of their annual budget electronically only if one is available. Otherwise, a paper copy under cover of Form SE will suffice.

The final rule does not apply to filings by the following supranational entities, which are permitted but not required to file their documents electronically:

- the International Bank for Reconstruction and Development;
- the Inter-American Development Bank;
- the Asian Development Bank;
- the African Development Bank;
- the International Finance Corporation; and
- the European Bank for Reconstruction and Development.

Hardship Exemptions

The final rule does not affect the availability of hardship exemptions under Regulation S-T. However, the SEC stated that it expects to grant hardship exemptions infrequently.

EDGAR Filing Hours

EDGAR filings are accepted by the SEC between 8 a.m. and 10 p.m. Eastern Time except on weekends and U.S. federal holidays. Filings received after 5:30 p.m. will receive the next business day's date as the official filing date. (The SEC now provides real-time

access to its EDGAR database of corporate filings. Previously, EDGAR filings did not appear on the SEC's Web site for at least 24 hours.)

EDGAR Mechanics

To use EDGAR, companies must (i) apply for various access codes from the SEC by faxing a completed Form ID to the SEC and (ii) have access to software that will convert a document into ASCII or HTML and transmit the converted document to the SEC. Software available from the SEC site called "Edgarlink" only relates to transmittal of documents to the SEC. An additional software package called "EDGAR Ease" converts documents into ASCII or HTML, sets the correct formatting for the document and permits transmittal to the SEC. EDGAR filings typically need to be reviewed and proofread extensively before filing.

Any document to be included as an exhibit to a filing must also be converted into electronic format. Conversion may require scanning and proofreading of documents that are available in paper format only, which can take a significant amount of time.

It should be noted that many U.S. companies use financial printers or other third-party providers rather than develop their own EDGAR capability.

Timing

The time that it takes to "Edgarize" a document depends on its size and complexity and the word processing program that was used to create it. For example, a Form 6-K filing of about 10 pages in length may take only one hour to convert, while a Form 20-F filing with full financials and exhibits may take from one to two days or longer, especially if the task is outsourced and the third party provider is overburdened, as may occur around June 30, when most Forms 20-F are filed. In addition, proofreading of documents, including exhibits converted for filing, can be time-consuming. Consequently, companies should allot sufficient time for conversion, proofreading and transmission.

Effective Date

The final rule becomes effective November 4, 2002. If a registration statement is filed in paper format before November 4, 2002, the SEC will permit pre-effective and post-effective amendments and prospectus supplements to be filed in paper format until December 31, 2002. On or after January 1, 2003, all such filings must be electronic.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. For more information on the topics covered in this issue, please contact:

Ottile L. Jarmel
New York Office
(+1 212) 848-4000
ojarmel@shearman.com

Pamela M. Gibson
London Office
(+44 (0) 20) 7655-5000
pgibson@shearman.com

Michael S. Bosco
Rome Office
(+39) 06 697 679 1
mbosco@shearman.com

Richard J. B. Price
Singapore Office
(+65) 6230-3800
rprice@shearman.com

Abigail Arms
Washington, D.C. Office
(+1 202) 508-8000
aarms@shearman.com

Lee D. Neumann
Paris Office
(+33 (0) 1) 53-89-70-00
lneumann@shearman.com

Lee Edwards
Beijing Office
(+86 10) 6505 3399
ledwards@shearman.com

David D. Deck
Tokyo Office
(+81 3) 5251-1601
ddeck@shearman.com

Brice T. Voran
Toronto Office
(+1 416) 360-8484
bvoran@shearman.com

Stephen Hutter
Frankfurt Office
(+49 (0) 69) 9711 1000
shutter@shearman.com

Matthew D. Bersani
Hong Kong Office
(+852) 2978-8000
mbersani@shearman.com

Internet Address: <http://www.shearman.com>

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599 Lexington Avenue, New York, NY 10022

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