On May 30, 2008, the Securities and Exchange Commission (SEC) published a proposal that, if adopted in its current form, would require most domestic and foreign companies that file periodic reports or registration statements with the SEC to include in such filings financial statements in interactive data format using “eXtensible Business Reporting Language” (XBRL). The proposed rules would apply to domestic and foreign companies that prepare their financial statements in accordance with U.S. generally accepted accounting principles (U.S. GAAP), and foreign private issuers that prepare their financial statements in accordance with International Financial Reporting Standards (IFRS), as promulgated by the International Accounting Standards Board (IASB). The interactive data would be filed as an exhibit to a company’s periodic report or registration statement and also would be required to be posted on the company’s website. Under the proposed rules, mandatory filing of an exhibit containing financial statements in XBRL format would apply to filings for fiscal periods ending on or after December 15, 2008, by “large accelerated filers” that prepare financial statements in accordance with U.S. GAAP and that have a worldwide public common equity float in excess of $5 billion as of the end of their most recently completed second fiscal quarter. Most other companies would be required to comply with the proposed rules regarding XBRL over the course of a phase-in period that is expected to extend for the subsequent two-year period.

**Why Mandate XBRL?**

The SEC’s proposal to mandate the filing of financial information in XBRL format builds on the voluntary XBRL program that the SEC adopted in 2005. The SEC believes that mandating the presentation of financial statements in XBRL format would create new ways for investors, analysts, and others to retrieve and use financial information in documents filed with the SEC. Users of financial information filed in XBRL format would be able to download such information directly into spreadsheets, analyze the information using commercially available off-the-shelf software, and use the information within investment models in other software formats. The SEC expects that the ability of users to readily retrieve and analyze financial information that is prepared in XBRL format will facilitate the comparison of financial and business performance across companies and industries and over different reporting periods.

**What Is XBRL?**

At its most basic level, XBRL is a computer language designed to allow software to recognize, select, and analyze data and present it to users in a variety of formats. XBRL is comprised of a collection of standardized, computer-readable “tags” for financial statements. The tags cover a variety of financial and accounting concepts that can be read and understood by software applications, such as databases, financial reporting systems, and spreadsheets. XBRL is used to encode, or tag, financial statements so that the information in those statements can be read automatically by XBRL-enabled software and more easily accessed, sorted, and compared. However, in order for XBRL to function as intended, companies need to tag each item of financial information with a code that defines the item for the computer. The data then can be identified and extracted by computer software for use by investors, analysts, and others, including the SEC, for an array of functions, such as detailed company-specific analysis, comparative analysis with other companies, and for generating charts and spreadsheets.

XBRL was developed by XBRL International, a collaborative consortium of approximately 550 organizations representing many participants in the financial reporting community worldwide. Under the SEC’s proposal, companies that file financial statements prepared in accordance with U.S. GAAP would use the list of tags established by XBRL U.S., XBRL International’s U.S. jurisdiction representative. This list of tags contains descriptive labels, definitions, authoritative references to U.S. GAAP, SEC regulations, and other guidance, which provides contextual information necessary for the XBRL data to be recognized and processed by computer software. In addition, under the proposal, companies that file financial statements prepared in accordance with IFRS as issued by the IASB would use the list of tags established.
by the International Accounting Standards Committee Foundation. The tags released by XBRL U.S. and the International Accounting Standards Committee Foundation are set forth in the latest version of the SEC’s EDGAR Filer Manual, and are expected to be updated periodically.

If a company’s financial statements contain items that do not correspond to a tag on the standard list, the company may extend a standard tag to create a customized tag or create an entirely new tag. This is known as creating an “extension.” For example, a company may change the label of a standard tag, which affects the viewable description (such as if a company changes the standard tag of “net revenues” to a tag of “operating revenues”), but does not change the underlying accounting definition of the item or affect comparability across companies for user analysis purposes. If necessary, a company also may create entirely new tags, with their own accounting definitions. These types of extensions are not comparable across companies.

The SEC has indicated in the proposing release that extensions should be required only occasionally, and has cautioned companies not to create customized tags where one of the standardized tags would be appropriate. The SEC has stated that such inappropriate creation of extensions would be a violation of the proposed XBRL rules.

Mechanics of Compliance

The proposed XBRL rules do not supersede current financial statement filing requirements, and companies must continue to make filings with the SEC via EDGAR in HTML or ASCII format. Companies would comply with the proposed XBRL rules by filing an additional exhibit that contains financial statements in XBRL format (the XBRL exhibit). The XBRL exhibit would be filed as Exhibit 101 under Item 601 of Regulation S-K or under Form 20-F, and it would be required to be included with:

- all registration statements containing financial statements that are filed by a company pursuant to the Securities Act of 1933, as amended (the Securities Act);
- all periodic reports on Form 10-K, Form 10-Q, and Form 20-F filed by a company pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act); and
- all transition reports filed by a company pursuant to the Exchange Act that include financial statements.

Under the proposed rules, the new XBRL exhibit would not be required to be filed with registration statements that incorporate financial statements by reference from other filings, nor would such an exhibit be required for financial statements that are filed or furnished on Form 8-K, including when financial statements are filed on Form 8-K in connection with an acquisition.

The XBRL tagging requirement would apply to all periods appearing on the face of the financial statements (e.g., the balance sheet, income statement, cash flows statement, and statement of stockholders’ equity, as applicable), to any required financial statement schedules, and to financial statement footnotes. However, in an effort to reduce the burdens imposed by the initial adoption of XBRL, the SEC has proposed that in the first year that a company is required to comply with the new XBRL rules, the company only would be required to label the face of the financial statements with detailed XBRL tags, and that the financial statement schedules and footnotes could be tagged only as “block text,” which essentially means that each note to the financial statements could be identified with one tag. Thereafter, the company would be required to tag in detail all relevant information in schedules and footnotes with XBRL tags.

Website Posting

As proposed, when companies become subject to the new rules, in addition to filing the XBRL exhibit with the SEC, they would be required to post the financial statements in XBRL format on their websites on the same day they are filed, or required to be filed, with the SEC. Companies would not be able to satisfy this requirement by linking to documents available on the SEC’s website.

Schedule for Compliance

In the proposing release, the SEC proposed a three-year phase-in period for mandatory XBRL filing compliance. The schedule is particularly compressed for the largest companies.

The following table summarizes the phase-in schedule for the new XBRL exhibit.
As noted previously, during its first year of mandatory XBRL filing, a company would be required to tag each individual amount on the face of its financial statements, but would be required to tag each footnote and financial statement schedule only as a block of text. Starting with its second year under the mandatory XBRL rules, the issuer would be required to tag each individual amount in the footnotes and schedules, as well as each significant accounting policy in the footnote describing those policies and each individual footnote narrative disclosure required by U.S. GAAP, IFRS, or SEC rules.

**Grace Periods**

As proposed, the new rules regarding mandatory XBRL compliance provide that the first time a company is required to file a periodic report or registration statement that includes an XBRL exhibit, the exhibit would be due within 30 days after:

- the due date of the related periodic report, or
- the filing date of the related registration statement, as the case may be.

In addition, as noted above, for the first year that a company is required to file an exhibit in XBRL format, the financial statement schedules and footnotes included with such filings would be tagged individually as a block of text. However, once a company has been providing exhibits in XBRL format for at least one year, in the second year of providing such exhibits the company would be required to provide detailed tagging of the disclosures within the financial statement schedules and footnotes. The first report requiring detailed tagging of the disclosures within the financial statement schedules and footnotes also would be due within 30 days after:

- the due date of the related periodic report, or
- the filing date of the related registration statement, as the case may be.

The XBRL exhibits for all other filings would be required at the same time as the rest of the filings.

### Table: Initial Compliance Deadline

<table>
<thead>
<tr>
<th>Type of Company</th>
<th>Initial Compliance Deadline</th>
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<tbody>
<tr>
<td>Domestic and foreign companies that:</td>
<td>Registration statements that contain financial statements for periods ending on or after December 15, 2008.</td>
</tr>
<tr>
<td>• are “large accelerated filers”;</td>
<td>Periodic reports for periods ending on or after December 15, 2008.</td>
</tr>
<tr>
<td>• have a worldwide public common equity float in excess of $5 billion as of the end of the most recently completed second fiscal quarter; and</td>
<td>Transition reports that contain financial statements for periods ending on or after December 15, 2008.</td>
</tr>
<tr>
<td>• prepare financial statements in accordance with U.S. GAAP.</td>
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<tr>
<td>All other domestic and foreign companies that:</td>
<td>Registration statements that contain financial statements for periods ending on or after December 15, 2009.</td>
</tr>
<tr>
<td>• are “large accelerated filers”; and</td>
<td>Periodic reports for periods ending on or after December 15, 2009.</td>
</tr>
<tr>
<td>• prepare financial statements in accordance with U.S. GAAP.</td>
<td>Transition reports that contain financial statements for periods ending on or after December 15, 2009.</td>
</tr>
<tr>
<td>All remaining companies that prepare financial statements in accordance with U.S. GAAP and all foreign private issuers that prepare financial statements in accordance with IFRS issued by the IASB.</td>
<td>Registration statements that contain financial statements for periods ending on or after December 15, 2010.</td>
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<tr>
<td></td>
<td>Periodic reports for periods ending on or after December 15, 2010.</td>
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<tr>
<td></td>
<td>Transition reports that contain financial statements for periods ending on or after December 15, 2010.</td>
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<tr>
<td></td>
<td>Registration statements in connection with initial public offerings of securities of a company would be in this final phase-in group.</td>
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</tbody>
</table>
Consequences of Non-Compliance

A company that fails to file its XBRL exhibit or post the XBRL data on its website when required would be deemed not to be current with its Exchange Act reporting obligations, and therefore would not be eligible to use short-form registration statements under Form S-3, Form F-3, and Form S-8, or to incorporate periodic reports by reference into Form S-4 or Form F-4. In addition, a company that was delinquent in filing its XBRL exhibit or posting the XBRL data on its website would be deemed not to have available adequate current public information for the purposes of the resale exemption safe harbor provided by Rule 144 under the Securities Act. However, unlike a late periodic report filing, which causes a company to be ineligible to use Form S-3 or Form F-3 for 12 months, once a company files the required XBRL exhibit and posts the required XBRL data on its website, it would be deemed current and timely in its Exchange Act reporting obligations (assuming that there is no other reason for the loss of such status). As such, upon becoming current and timely, a company would be once again eligible to use short-form registration statements and incorporate information by reference into registration statements, and would have adequate current public information available to allow security holders to utilize Rule 144.

Temporary Exemptions

In the proposing release, the SEC has indicated that it is mindful of the technical difficulties that, in certain circumstances, could hinder the ability of a company to comply with its obligations to provide XBRL data. In addition to the grace periods described above, the SEC also has proposed two exemptions that may be available to companies in extenuating circumstances.

The SEC has proposed a temporary hardship exemption from electronic submission of the XBRL exhibit when a company experiences “unanticipated technical difficulties” that prevent the timely preparation and submission of the XBRL data. Under the exemption, the company would be deemed current for the purposes of eligibility to use short-form registration statements and incorporate information by reference into registration statements, and would be deemed to have adequate current public information available to allow security holders to utilize Rule 144, for up to six business days from the due date for the submission of the XBRL exhibit. This exemption is self-executing, and requires the substitution of a legend claiming the exemption in place of the required XBRL exhibit. If the XBRL exhibit is not filed by the sixth business day following the due date, then starting on the seventh business day, the company would be deemed not to be current and timely in its Exchange Act reporting obligations, and would suffer the consequences of non-compliance discussed above.

The SEC also has proposed a rule that would allow a company to apply in writing to the SEC for a continuing hardship exemption if information otherwise required to be submitted in the XBRL exhibit cannot be filed without undue burden or expense. The continuing hardship exemption would require action by the SEC in order to become effective, and the SEC may limit the exemption to a specified period of time.

Liability Provisions

In the proposed rules, the SEC also has sought to address the significant concerns of companies regarding the legal liability associated with XBRL exhibits. The SEC has proposed two standards of liability regarding XBRL data:

- one liability standard for “interactive data,” which is the raw XBRL data that is only readable by computer; and
- a separate liability standard for “viewable interactive data,” which is the XBRL data that can be viewed by a person from the SEC’s website or a company’s website using commercial software.

Interactive data would be deemed “furnished,” and would be:

- excluded from the officer certifications filed pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (the Sarbanes-Oxley Act);
- considered not to have been “filed” for the purposes of liability under Section 11 and Section 12 of the Securities Act and Section 18 of the Exchange Act; and
- excluded from liability for failure to comply with the proposed tagging and related requirements if the interactive data file failed to meet the requirements, but the failure occurred despite the company’s good faith and reasonable effort, and the company corrected the failure as soon as reasonably practicable after becoming aware of it.

Notwithstanding the aforementioned limitations to liability for interactive data, such data still would subject a company to liability under the anti-fraud provisions of the federal securities laws in the same manner as traditionally filed financial statements and other documents.

The viewable interactive data displayed through software available on the SEC’s website, to the extent identical in all material respects to the corresponding portion of the traditional format filings, would be deemed “filed” and therefore subject to the same liability provisions of the Securities Act and the Exchange Act as the traditional financial statements included in the filing, including liability that may arise pursuant to the officer certifications filed pursuant to Section 302 of the Sarbanes-Oxley Act.

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Practical Suggestions

The SEC’s proposal regarding mandatory XBRL compliance was an expected extension of the SEC’s voluntary XBRL program that has been in place since 2005. As such, although the SEC’s proposal has not formally been adopted, companies should expect that this proposal will be adopted later this year, and that their obligations to file documents in XBRL format would commence shortly thereafter. In the proposing release, the SEC estimated that companies would need to expend approximately 125 internal hours to tag the financial statements for the initial filing of the XBRL exhibit (which would exclude complete tagging of financial statement schedules and footnotes), and that the first filing of the XBRL exhibit that includes complete tagging of financial statement schedules and footnotes would require an additional 100 hours. It is important to note that these estimates assume that a company already has completed the preparations necessary to implement the proposed XBRL rules, including acquiring appropriate software, training employees, and making decisions regarding how the XBRL data will be prepared and processed. Accordingly, companies that would be subject to the proposed XBRL rules should begin preparations for compliance as soon as possible.

To be prepared to comply with the new XBRL rules, companies should consider promptly undertaking the following actions:

• familiarize the finance and accounting staff on the requirements of the proposed XBRL rules;
• study the process for preparing filings in XBRL format;
• consider whether the company will tag data itself, or whether that activity will be outsourced;
• if the company will be tagging data itself, it should begin the process of reviewing available software alternatives and training employees to undertake the tagging of data;
• if the company will not be tagging data itself, it should evaluate third-party vendors of XBRL compliance services and begin training employees to review the work done by third-party vendors;
• begin reviewing the list of tags established by XBRL U.S. or the International Accounting Standards Committee Foundation, as appropriate, and determine whether the company will have any non-standard financial statement line items that are not included in the standard list of tags so that it will be able to create appropriate “extensions” for such line items; and
• consult with the company’s independent registered public accounting firm and outside counsel regarding the company’s plan for compliance with the SEC’s proposed XBRL rules.

For additional information or assistance regarding the topics covered in this alert, please contact a member of Wilson Sonsini Goodrich & Rosati’s corporate practice.