

## When Acronyms Collide: 20 FAQs for FPIs as IFRS Meets XBRL

### *The SEC will require IFRS filers to use XBRL starting in 2018*

#### Key Points

#### **FPIs using IFRS are subject to XBRL starting in 2018:**

- XBRL filing is voluntary in 2017, and will be required for filings beginning in 2018.
- The biggest impact will be on Annual Reports on Forms 20-F or 40-F.
- Many Form 6-Ks, even those with IFRS interim financial statements, will not require XBRL.

On March 1, 2017, the US Securities and Exchange Commission took action that permits, and will eventually require, foreign private issuers (FPIs) registered with the SEC that prepare their financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS) to file financial statements in eXtensible Business Reporting Language (XBRL).

## How will this all work for FPIs that report in IFRS?

### 1. What is XBRL and why does it matter?

XBRL is the machine-readable interactive data format that allows users to more easily access and analyze financial statement data. The SEC first adopted the XBRL requirements in 2009 and, since then, has gradually phased in the requirements. Since 2011, the SEC has required all filers — US domestic registrants and FPIs — to comply with XBRL reporting requirements if they report financial statements in accordance with US GAAP. Now, IFRS filers are brought into the fold. Prior experience has shown that XBRL implementation merits close attention.

### 2. When must I file my IFRS financial statements in XBRL format?

An IFRS filer must include XBRL information in certain filings beginning with fiscal periods ending on or after December 15, 2017. For example, an FPI with a calendar fiscal year would be required to include XBRL financial statements with its Annual Report on Form 20-F or 40-F filed in 2018.

### 3. Can I voluntarily file XBRL financial statements before 2018?

Yes. Up until the SEC's action, IFRS filers were prohibited from filing XBRL information. Now, they have the option to do so, until being required to do so in 2018.

#### 4. What filings are subject to the XBRL requirement?

An IFRS filer must include XBRL financials with all of the following filings:

- Annual Reports on Forms 20-F or 40-F for fiscal years ending on or after December 15, 2017
- Some (but not all) submissions on Form 6-K containing interim financial statements that are incorporated into an FPI's shelf registration statement on Form F-3 (about which more below)
- Certain registration statements under the Securities Act *other than the ones described in the next FAQ* if the registration statements (1) are filed after the FPI makes its first XBRL filing; (2) contain financial statements; and (3) contain a price or price range

#### 5. What filings are not subject to the XBRL requirement?

An IFRS filer need not include XBRL financials with any of the following filings:

- An IPO registration statement on Form F-1 for an FPI that is not currently an SEC reporting company
- An Exchange Act registration statement on Form 20-F or 40-F for an initial listing on a US stock exchange
- A new shelf registration statement on Form F-3, unless it is a "long-form" Form F-3 that physically includes financial statements
- A new registration statement for employee equity compensation on Form S-8
- A Form 6-K submission for FPIs that *do not* have an F-3 shelf registration statement

#### 6. How does the new requirement apply to 6-Ks?

Unless an issuer has a Form F-3 shelf registration that it wants to keep current, there is no requirement for quarterly or semi-annual financial statements or earnings press releases that are submitted to the SEC on Form 6-K to include the information in XBRL format.

If an issuer has an effective Form F-3 shelf registration statement, it has the following two options:

- Prepare and submit the XBRL information covering the six-month interim period prior to the nine-month updating requirement under Item 8.A.5 of Form 20-F, in which case the issuer can proceed with a takedown at any time.
- Wait to prepare and submit such information until such time as a takedown appears likely, in which case the issuer may be delayed in doing a takedown while it prepares the XBRL information, but would be spared the expense of doing so if it did not do a takedown.

In either case, the XBRL information could be included as an exhibit to a Form 6-K and the cover page of the Form 6-K would state that it is incorporated by reference into the Form F-3.

Note that this same approach would apply to Form F-4 filings in which the issuer's financial statements are incorporated by reference from a Form 6-K.

#### 7. I'm doing a shelf takedown late in the fiscal year. I have already provided interim financial statements in XBRL format covering the first six months of the year, so I am good to go as far as Item 8.A.5 is concerned. But what if I publish interim financial statements covering nine months before I do my takedown – do I need to provide those in XBRL format?

In our view, no. The six-month interim financial statements, prepared in accordance with IAS 34 and submitted in XBRL format, will be sufficient to satisfy the updating requirement of Item 8.A.5. Accordingly, while the nine-month financial information would need to be added to the shelf registration disclosure

(either directly or by a Form 6-K that is incorporated by reference), the disclosure would not need to be accompanied by an XBRL submission.

**8. Conversely, if I choose to address Item 8.A.5 updating by providing nine-month interim financial statements in XBRL format, do I need to go back and provide XBRL information covering the six-month interim period?**

In our view, no. The updating requirement is satisfied by the IAS 34 nine-month financial statements and XBRL information.

**9. I'm doing a follow-on offering on Form F-1. Do I need to include XBRL financials?**

If you have already filed an Annual Report on Form 20-F or 40-F containing XBRL financial statements, yes; presumably the initial filing of the Form F-1 will include the current market price of the shares and therefore XBRL financials are required on the initial filing. Otherwise, no.

**10. I'm making a significant acquisition for which target financials are required under Regulation S-X Rule 3-05 or Form F-4. Do I need to include XBRL financials for the target?**

No, and Article 11 pro forma financial statements are also exempt from the XBRL requirement.

**11. How about for separate financials of significant equity investees under Regulation S-X Rule 3-09?**

No.

**12. I'm restating prior financial statements. Do I need to include XBRL financials?**

Only if the original financial statements being restated themselves were in XBRL format; this is true whether the restatement is done in an Annual Report or in a Form 6-K.

**13. Can I do a takedown off my Form F-3 shelf if I am late with my XBRL financials in the Annual Report on Form 20-F or 40-F?**

You won't be able to do a takedown until you get the XBRL financials on file, because you will not be considered "current" in your Exchange Act filing until you provide XBRL financials. However, the late filing will not be considered untimely so once the XBRL financials are filed you can proceed with a takedown.

**14. How do I make a late XBRL filing — is Rule 12b-25 the proper path?**

No. You should follow the relatively easy process under Rule 201 of Regulation S-T. This provides a temporary hardship exemption, under which you must make the XBRL filing within six business days of the original due date. The SEC also provides a process for you to seek a continuing hardship exemption from XBRL filing under Rule 202, although you must apply for this exemption at least 10 business days prior to the due date of your filing.

**15. Is there any phase-in?**

No. When the SEC first adopted XBRL filing requirements in 2009 for US GAAP filers, there was a three-year phase-in, which provided smaller companies extra time before they were required to start XBRL filing. There is no similar phase-in for IFRS filers. Accordingly, an Annual Report on Form 20-F or 40-F for a fiscal year ending on or after December 15, 2017 must include XBRL information regardless of the size of the issuer.

## **16. Does the SEC expect full compliance in the first year?**

Yes. Although when US GAAP filers were first mandated to file XBRL financials the SEC permitted easier XBRL “block tagging” in the first year, followed by more comprehensive “detailed tagging” in the second year, there appears to be no similar accommodation for IFRS filers. Accordingly, full detail-tagged XBRL financials will be required in the first year. There is a limited accommodation for first-time XBRL filers; in the first year of submitting mandated XBRL filings, the XBRL information can be filed with an amendment to the Annual Report on Form 20-F or 40-F up to 30 days after the filing of the Annual Report or the due date for the Annual Report, whichever is earlier.

## **17. There were accommodations in terms of liability under the US federal securities laws associated with XBRL filings. Are they still applicable?**

No. These accommodations were designed to facilitate registrants’ transition to XBRL filing and expired in 2014. All XBRL filers, whether first-timers or seasoned veterans, and whether under US GAAP or IFRS, are now subject to all applicable liability provisions with respect to their XBRL information.

## **18. In 2017, should I check the box on the cover page of my Form 20-F or 40-F that indicates that I have provided all XBRL information?**

No, IFRS filers should wait until 2018 when the XBRL requirement kicks in. Even if an IFRS filer voluntarily provides XBRL information in 2017, the SEC Staff has indicated that the box indicating compliance should not be checked.

## **19. Other than my SEC filing on EDGAR, do I need to post my XBRL financials anywhere else?**

Yes. Issuers are required to post their XBRL information on their corporate websites on the same day as their SEC filing and are required to maintain the posting for 12 months. Simply including a hyperlink to the SEC website for this purpose is not sufficient. The SEC has proposed to eliminate this requirement.

## **20. What lies ahead for XBRL?**

Two matters worth mentioning:

- A provision of the proposed Financial CHOICE Act [HR 5983], under consideration in the US Congress, would exempt “emerging growth companies” (generally, newly public issuers with less than \$1 billion in annual revenues) and all issuers with less than \$250 million in annual revenues from the XBRL filing requirement. The exemption would run for at least three years (and possibly five years) after enactment.
- For years, the only way to provide XBRL information in an SEC document was to file the information as a separate exhibit. The technology for XBRL has improved so that the XBRL information can be embedded as part of the financial statements included in the main part of a filing, avoiding the need for a separate exhibit. This technology is referred to as Inline XBRL. The SEC permits issuers to voluntarily use Inline XBRL and has recently proposed to mandate the use of Inline XBRL.

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