

## SEC ADOPTS RULE AMENDMENTS MANDATING EDGAR FILING FOR FOREIGN ISSUERS

On May 8, 2002, the SEC adopted rule amendments that will require foreign companies and foreign governments to file their Securities Act and Exchange Act documents electronically through the SEC's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system. Currently, the SEC's rules only permit, but do not require, foreign issuers to file their securities documents on EDGAR. The final rules will become effective on November 4, 2002, but foreign issuers are encouraged to submit test filings or to begin electronic filing on a voluntary basis before then.

The amendments will require, among other things, the electronic filing of:

- Foreign private issuers' Securities Act registration statements (e.g., Forms F-1, F-3 and F-4) and Exchange Act registration statements and reports (e.g., Forms 6-K and 20-F), subject to certain exceptions discussed below
- Multi-jurisdictional Disclosure System (MJDS) forms filed by Canadian issuers
- Statements of beneficial ownership on Schedules 13D and 13G and tender offer schedules that pertain to the securities of a foreign issuer, whether filed by a foreign or domestic person
- Form CB, the form used for cross-border rights offers, exchange offers and business combinations that are exempt from the tender offer rules or Securities Act registration, if the filer is an Exchange Act reporting company
- Most Trust Indenture Act forms.

The amendments will further:

- Continue to permit the use of an English language summary of a foreign language exhibit or attachment to a filing (with exceptions codified for specified, significant documents) and provide better guidance than the current rules regarding what constitutes an adequate summary
- Except the following Form 6-K reports from the new EDGAR requirements (in which case, submissions would continue to be made in paper form):

- Submissions of a foreign company's "glossy" annual report to security holders
- Submissions, the content of which has not been distributed to the press or the company's security holders and does not contain new material information
- Eliminate the current requirement that electronic filings include a written representation regarding the fairness and accuracy of any English language translation
- Continue to require documents submitted under the "information supplying" exemption under Exchange Act Rule 12g3-2(b) (e.g., submissions by companies with Level I ADR programs) to be in paper only
- Eliminate the requirement that a first-time EDGAR filer provide a paper copy of its electronic filing to the SEC.

After the new rules become effective, if a foreign issuer is already public in the United States by virtue of having either registered a transaction under the Securities Act or registered securities under the Exchange Act, it will be required to file its registration statements through EDGAR because the SEC no longer reviews or screens registration statements of such issuers on a confidential basis. However, a foreign issuer that has neither registered a transaction under the Securities Act nor registered securities under the Exchange Act (e.g., in connection with an IPO) may submit its initial registration statement to the SEC in paper form on a confidential basis.

The new EDGAR rules do not affect filings of Form 144 (notices filed in connection with proposed sales to be made pursuant to Rule 144 of the Securities Act) and confidential treatment requests for certain exhibits to registration statements. These filings and requests will continue to be made

in paper form by foreign issuers once the new rules become effective.

*If you have any questions or would like to learn more about this topic, please contact the partner who normally represents you or any of the securities lawyers listed below:*

<b>Seth Molay</b> 214-969-4780	<b>Dallas</b> smolay@akingump.com
<b>J.Vincent Kendrick</b> 713-220-5839	<b>Houston</b> vkendrick@akingump.com
<b>Richard J. Wilkie</b> 713-220-5819	<b>Houston</b> rwilkie@akingump.com
<b>Daniel G. Walsh</b> 011-44-20-7726-9600	<b>London/Moscow</b> dwalsh@akingump.com
<b>C.N. Franklin Reddick III</b> 310-728-3204	<b>Los Angeles</b> freddick@akingump.com
<b>Julie M. Kaufer</b> 310-728-3313	<b>Los Angeles</b> jkaufer@akingump.com
<b>Stephen E. Older</b> 212-872-1068	<b>New York</b> solder@akingump.com
<b>Ronald R. Adee</b> 212-872-1069	<b>New York</b> radee@akingump.com
<b>Marc E. Gold</b> 212-872-1053	<b>New York</b> mgold@akingump.com
<b>Stephen Mount</b> 210-281-7296	<b>San Antonio</b> smount@akingump.com
<b>Bruce S. Mendelsohn</b> 202-887-4446	<b>Washington, D.C.</b> bmendelsohn@akingump.com
<b>Paul A. Belvin</b> 202-887-4021	<b>Washington, D.C.</b> pbelvin@akingump.com
<b>Sam Wolff</b> 202-887-4462	<b>Washington, D.C.</b> swolff@akingump.com

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