

23 May 2008

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**RE: File No. S7-05-08**  
***Proposed Rule: Foreign Issuer Reporting Enhancements***

Dear Ms. Morris:

The CFA Institute Centre for Financial Market Integrity (the CFA Institute Centre)<sup>1</sup> in consultation with its Corporate Disclosure Policy Council (CDPC)<sup>2</sup> appreciates the opportunity to comment on the Proposed Rule issued by the U.S. Securities and Exchange Commission (SEC or Commission).

The CFA Institute Centre represents the views of investment professionals, including portfolio managers, investment analysts and advisors located in over 130 countries worldwide. Central tenets of the CFA Institute Centre mission are to promote fair and transparent global capital markets, and to advocate for investor protections. An integral part of our efforts toward meeting those goals is ensuring that the quality of corporate financial reporting and disclosures provided to investors and other end users remains of high quality. The CFA Institute Centre also develops, promulgates, and maintains guidelines encouraging the highest ethical standards for the global investment community through works such as the *CFA Institute Code of Ethics and Standards of Professional Conduct*.

### General Comments

Today, two-thirds of America's investors own securities in non-U.S. companies, representing a 30 percent increase over levels five years ago<sup>3</sup>. Investors increasingly make their investment decisions in a global context of comparing investments in companies located in many countries

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<sup>1</sup> The CFA Institute Centre for Financial Market Integrity is part of CFA Institute. With offices in Charlottesville, VA, New York, Hong Kong, and London, CFA Institute is a global, not-for-profit professional association of more than 95,400 investment analysts, portfolio managers, investment advisors, and other investment professionals in 134 countries, of whom more than 82,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 135 member societies in 56 countries and territories.

<sup>2</sup> The objective of the CDPC is to foster the integrity of financial markets through its efforts to address issues affecting the quality of financial reporting and disclosure worldwide. The CDPC comprises individuals who are investment professionals with extensive experience in the global capital markets, some of whom are also CFA Institute member volunteers. In this capacity, the CDPC provides the practitioner perspective in the promotion of high-quality financial reporting and disclosures that meet the needs of investors.

<sup>3</sup> U.S. Securities and Exchange Commission 2007 Performance and Accountability Report. <http://sec.gov/about/secpar/secpar2007.pdf>

that use different accounting, auditing, and other business practices. Making such comparisons is difficult, time-consuming, complex, and risky, even for seasoned professionals.

CFA Institute and its members have long supported, and actively engaged in, the development of global accounting standards.<sup>4</sup> Our objective has always been to encourage the International Accounting Standards Board (IASB) in developing financial reporting standards that meet the needs of investors, investment professionals, and other users. We also support the memorandum of understanding between the IASB and the Financial Accounting Standards Board (FASB) to work together on converging International Financial Reporting Standards (IFRS) and U.S. GAAP. This effort is moving forward and building momentum, however a substantial amount of work remains to be completed.

We support most of the Commission's proposals to amend forms and rules in response to advances in technology and changes related to the global convergence of accounting standards. Efforts by the SEC to enhance the information relating to foreign private issuers (FPI) that is available to the U.S. public capital markets is in keeping with the overall movement toward global convergence.

In the proposed rule, the Commission states:

*'As the nature of the global capital markets have evolved, and because of marked advancements in technology with respect to the gathering and processing of information, some of the disclosure accommodations that we provided to foreign private issuers almost 30 years ago may no longer be appropriate. As a result, we are proposing today amendments to rules and forms that should enhance the reporting of information by foreign private issuers, as well as the timeframe within which investors can have access to this information.'*

As we consistently have stated in prior comment letters to the Commission, we believe that foreign issuers generally should provide information that is comparable to what is required of other market participants. Foreign and domestic issuers compete for investor capital and investors should have access to the same underlying data in both cases in order to make fair comparisons and well-informed investment decisions. It is our belief that, as the Commission facilitates access to the U.S. capital markets by FPIs, it should move toward a level playing field in financial reporting.

We elaborate on our views in response to selected questions in the remainder of this letter.

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<sup>4</sup> Beginning in 1991, CFA Institute analyst/investor delegates participated directly in the standard-setting activities of the International Accounting Standards Committee (IASC). When the IASC was restructured to form the International Accounting Standards Board (IASB), we continued our support in a variety of ways. A member of CFA Institute, Anthony Cope, CFA, served as a founding member of the IASB. In addition, the CFA Institute Corporate Disclosure Policy Council responds to many IASB proposals, participates (through its members) in advisory committees, and meets with members of the IASB and its staff periodically, including most recently in April 2008.

## RESPONSES TO SELECTED QUESTIONS

### Question 3.

**If a foreign issuer that has been filing on domestic issuer forms qualifies as a foreign private issuer on the last business day of its second fiscal quarter, should it be allowed to switch over immediately to the foreign private issuer forms, such as Forms 20-F and 6-K? In some cases, an event may trigger the filing of a Form 8-K, but a Form 6-K might not be required because the foreign issuer's home jurisdiction or stock exchange does not require the publication of information about the event. If a foreign issuer would have been required to file a Form 8-K shortly after the end of its second fiscal quarter, but qualifies as a foreign private issuer on the last business day of the second quarter, should it be allowed to forgo the filing of the Form 8-K even if a Form 6-K would not be required? Should the foreign issuer be required to file the Form 8-K and make all the filings it would otherwise be required to make on the domestic forms until it files a Form 20-F or furnishes its first Form 6-K? Even if a foreign issuer is permitted to switch to the foreign private issuer forms immediately, should the foreign issuer be required to file a Form 8-K in the scenario described above because the event that triggered the filing occurred during its second fiscal quarter?**

Corporate financial statements are the primary source of the information used in financial analysis, and we support efforts to achieve the highest quality of financial reporting principles and standards. Our goal is to ensure that financial statements and their accompanying disclosures provide all the information needed in a readily accessible and useful form. Investors require timeliness, transparency, comparability, and consistency in financial reporting for their analysis. Forms used by FPIs, such as 20-F and 6-K, provide accommodations that limit disclosures considered important to investors. We therefore prefer the disclosures provided by filers using the domestic forms such as the 10-K and 8-K, as they provide more detail.

We do not believe that foreign issuers who have been filing on domestic issuer forms should be allowed to switch over immediately to FPI forms. As noted above, filings on domestic forms provide detailed disclosure considered important to investors, hence our preference that these forms be used for the balance of the fiscal year. We believe that a foreign issuer should submit a Form 8-K when its status has changed—thereby providing investors with notice of the change—so that investors may consider how or if the FPI's status change will affect their investment.

### Question 5.

**If we adopt the proposed amendment, to avoid confusion by investors, should a foreign issuer be required to notify the market when it has determined that it has switched its status from domestic issuer to foreign private issuer, or vice versa? If so, how should this notification be made, e.g., press release, notice on its website?**

If the Commission adopts the proposed amendment, a foreign issuer should be required to notify the market when there has been a change in its filing status. Filing a Form 8-K is an essential first step in ensuring that the market receives this significant information. Ideally, in order to reach as many investors as possible in a timely manner, the change should also be provided in

the form of a press release, prominent website presentation, and/or direct management contact with large investors, among other outreach efforts.

**Question 7.**

**Should MJDS filers be required to test their foreign private issuer status on the last business day of their most recent second fiscal quarter, as well as at the end of the fiscal year? Would it be reasonable to require MJDS filers to assess their status twice a year because they must test their qualification to use the Form 40-F at the end of the fiscal year in any case? Would such a testing requirement be reasonable in light of the accommodations made for MJDS filers, e.g., they comply with the disclosure requirements of their home jurisdiction?**

We believe that eligibility testing twice a year is appropriate for MJDS filers and that it would not be an unreasonable burden. Accommodations provided to MJDS filers should become less important as Canadian companies adopt IFRS (as issued by the IASB for fiscal years beginning January 1, 2011). At some point the Commission should consider whether there is any need to treat Canadian filers differently from other FPIs.

**Question 9.**

**Would accelerating the due date for Form 20-F annual reports be beneficial for investors? Given the differences in the reporting requirements that exist among the various foreign reporting regimes, would accelerating the due date for Form 20-F annual reports have different impacts on foreign private issuers or investors depending on the particular country or the nature of the issuer's business? Would any of these differences affect the usefulness of the information to investors? If you believe that the due date should be accelerated, are the proposed due dates appropriate? Should different due dates be applied to foreign private issuers depending on the worldwide market value of their common equity held by non-affiliates, similar to the different annual report filing deadlines that are applied to domestic issuers? Should foreign private issuers with a larger worldwide market value be required to provide reports on a faster basis than other foreign private issuers because they presumably have additional resources and a better developed infrastructure that would enable them to comply with an accelerated due date?**

The value of information in financial statements decreases as the gap between the date of the financial statements and the date of their release increases. Events following the financial statement date, such as changes in business conditions or commodity prices, make the historical information less useful. We have supported the Commission's actions to shorten that gap for domestic issuers and believe that the same principle applies to FPIs.

For that reason, we strongly support accelerating the due date for Form 20-F annual reports to within 90 days after the FPI's fiscal year-end in the case of large accelerated and accelerated filers, and to within 120 days after the issuer's fiscal year-end for all other filers. The longer filing due dates for Form 20-F, initially established 29 years ago, are outdated. With advances in technology, many companies are now gathering and analyzing information in a more expeditious manner. As noted by the Commission, FPIs in many jurisdictions are expected to file annual reports with their home securities regulator on a faster timetable, so that a significant amount of

the information required on Form 20-F should be readily available. Many foreign issuers prepare and release financial statements as promptly as comparable domestic issuers.

As we indicated in our comment letter to the Commission dated April 8, 1999, in response to “*Rule Proposal to Amend Form 20-F Disclosure Requirements and Revise the Definition of Foreign Private Issuer,*”<sup>5</sup> given the increasingly rapid changes in today’s business world, investors need timely financial statements in order to assess an enterprise’s actual, current financial condition and make appropriate investment decisions. We continue to see enterprises whose financial position has deteriorated significantly over relatively short periods of time. If information is outdated, then investors are likely to misjudge both the viability of the issuer and the value of its securities, frequently resulting in inappropriate investment decisions. As properly noted by the Commission, technological advances have made it easier for companies to process and disseminate information more quickly. At the same time, investors evaluate and react to information in a shorter timeframe, and many now expect information on a faster basis.

If foreign issuers want access to particular capital markets, we believe that they must conform to what those markets demand. The U.S. market has consistently shown that it wants transparent, comparable, and timely financial information. Therefore, we strongly urge the Commission to move toward the same filing requirements for foreign private issuers as for domestic issuers. Accelerating the due dates for filing Form 20-F is a move in the right direction.

We see no reason to make filing dates dependent on the issuer’s market value. FPIs tend to be large companies with sufficient resources and expertise to provide financial statements on a timely basis.

We agree with the Commission’s statement in the proposed rule:

*‘Annual reports that are filed on an expedited basis would provide investors with more timely access to these filings, and would improve the delivery and flow of reliable information to investors and the capital markets, thereby helping to improve the efficiency of the markets’*

#### **Question 10.**

**Would accelerating the due date for filing annual reports on Form 20-F impose any unreasonable burdens on foreign private issuers, who may have to collect and provide more information in that Form than may be required in their home jurisdictions, and may also have to translate the information into English? Would the proposed accelerated due dates impose any burdens on foreign private issuers that may be required to file annual reports on Form 20-F with the Commission before they are required to provide annual reports in their home jurisdictions? Should the due date be accelerated to within 120 days of the foreign private issuer’s fiscal year-end for all foreign private issuers, including large accelerated and accelerated filers?**

We believe that accelerating the filing deadline to within 90 days after an FPI’s fiscal year-end for large accelerated and accelerated filers and to within 120 days for all other issuers will not

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<sup>5</sup> <http://cfainstitute.org/centre/topics/comment/1999/99form20-f.html>

impose an unreasonable burden. The Commission notes that many FPIs already file their annual reports well in advance of the current six-month deadline. For reasons previously expressed, we reiterate the need for investors to have access to timely financial information for their investment decisions. FPIs should have ample time to modify their financial reporting data collection systems and procedures during the transition period to meet the revised filing deadlines.

Furthermore, the proposed dates already provide an accommodation to FPIs since large domestic accelerated and accelerated filers are required to file annual reports on Form 10-K within 60 days and 75 days, respectively, of their fiscal year-ends. The recent ruling to exempt FPIs from the reconciliation requirement if they prepare their financial statements according to IFRS as issued by the IASB will reduce the time required to prepare the filing.

#### **Question 11.**

**Should different due dates be imposed on foreign private issuers depending on whether they file financial statements using U.S. GAAP, IFRS as issued by the IASB, or another GAAP with a reconciliation to U.S. GAAP? Should different due dates be imposed on foreign private issuers depending on whether their disclosure was originally prepared in a foreign language and needs to be translated into English?**

Due dates should be consistent regardless of the basis of GAAP used to prepare the financial statements. As noted previously, receiving timely financial information is critical for investors to make informed and reasoned investment decisions. Furthermore, the recent action by the Commission to accept financial statements prepared in accordance with IFRS without reconciliation to U.S. GAAP should reduce the overall time to complete the filings. As FPIs already produce financial statements in English, translation should not be used as an excuse to delay filing.

#### **Question 12.**

**Should the deadline for filing Form 20-F annual reports be linked to the issuer's home country requirements for filing annual reports? If so, should the deadline be the same as the one in the issuer's home country, or should it be on a delayed basis, such as one or two months later? If you believe that the deadline for filing Form 20-F should be linked to the issuer's home country requirements, should the foreign private issuer be responsible for submitting supporting materials that indicate when annual reports are due in its home jurisdiction, such as the applicable legislation or regulation, to the Commission at the time of its Form 20-F submission? Would varying deadlines according to home country requirements cause confusion for investors?**

The proposed filing deadlines for Form 20-F should be tied to the FPI's fiscal year-end and not be based on the home country requirements. As of December 31, 2006, there were 1,145 international registered and reporting companies from 53 countries.<sup>6</sup> Tracking fiscal year-ends and also the home country annual filing due dates for these companies would cause confusion for

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<sup>6</sup> U.S. Securities and Exchange Commission, *Market Summary Data (December 31, 2006)*  
<http://sec.gov/divisions/corpfin/internatl/companies.shtml>

investors. As stated above, FPIs tend to be large companies with ample resources and there should be no hardship resulting from the acceleration of the filing deadline.

**Question 13.**

**Would a different transition period be more appropriate for implementation of the accelerated deadline? For example, should foreign private issuers be subject to the accelerated deadline after a longer or shorter transition period instead?**

We prefer a one-year transition period rather than the Commission’s proposed two-year period. As previously noted, the accelerated deadline will put the annual filings into the hands of investors on a timelier basis. This is a reasonable amount of time for foreign issuers to modify their financial systems and processes to comply with the new proposals.

**Question 16.**

**Should we provide an exemption for foreign private issuers that are currently preparing financial statements under U.S. GAAP that omit segment data pursuant to Instruction 3 of Item 17? If we adopt the proposed amendment, should we provide a “grandfather” provision or an exemptive order to permit the small number of foreign private issuers to continue to not report segment data?**

We agree with the Commission’s proposal to amend Item 17 by removing Instruction 3 to that Form, which currently permits the omission of segment data from U.S. GAAP financial statements. Fully transparent segment disclosures are critical to an investor’s understanding of the company. Investors face major challenges when analyzing companies with multiple lines of business or that operate in multiple countries, given the consequent differences in legal, regulatory, and tax regimes to be considered. Consolidated financial statements aggregate the financial data of subsidiaries and/or divisions not only with different economic fundamentals—financial structures, line of business, and risk attributes—but also with potentially different reporting policies and practices. Respondents to surveys conducted by CFA Institute in 1999, 2003, and 2007 consistently ranked segment disclosures as high in importance to their analysis and comparison of financial statements.<sup>7</sup>

In November, 2006, the IASB published IFRS 8 “*Operating Segments*” which is effective for annual periods beginning on or after January 1, 2009. IFRS 8 is substantially the same as the requirements of U.S. GAAP so this should not place any additional burden on IFRS filers.

Given the importance of segment disclosures to investors, and our goal of a level playing field for all issuers, we oppose grandfathering of the fewer than ten FPIs currently using this accommodation.

**Question 21.**

**Would the proposed amendment to eliminate the availability of the Item 17 option benefit investors?**

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<sup>7</sup> Importance scale: 1=Not important to 5=Very important, the average weighted mean reported was 4.2, 4.2 and 4.3 in 2007, 2003 and 1999 respectively.

We support the proposal to eliminate the Item 17 option extended to FPIs. Requiring Item 18 information for FPIs filing on Form 20-F ensures that investors in such companies will receive the same complete financial information required by U.S. GAAP and Regulation S-X. Investors require transparent disclosure in order to understand and properly evaluate changes in the equity of the company, the quality of reported earnings and other financial statement metrics, and to make forecasts about the future prospects of the company.

As the Commission notes, the majority of FPIs who do not prepare financial statements in accordance with U.S. GAAP elect to provide financial information pursuant to Item 18, rather than Item 17, of Form 20-F. Under Item 17, certain key footnote disclosures could be eliminated, including those related to pension assets, obligation and assumptions, lease commitments, business segments, tax attributes, stock compensation awards, financial instruments and derivatives, and many others. These disclosures are important for investors to make informed and reasoned investment decisions.

**Question 22.**

**Is it appropriate to provide a transition period for foreign private issuers that are currently preparing financial statements in accordance with Item 17 of Form 20-F? Is a compliance date that provides a transition period in the best interests of investors? If so, is the suggested transition period appropriate in length, or should it be shorter or longer than proposed?**

We believe that it is appropriate to provide a one-year transition period as proposed by the Commission to allow FPIs to comply with Item 18 requirements when filing Form 20-F. Obtaining the enhanced disclosures in a timely manner is a key benefit of this new proposal. A longer transition period simply delays when investors receive this information.

**Question 25.**

**To what extent are the benefits to investors from the additional Item 18 financial disclosure linked to more timely filing of Form 20-F? If we decide not to accelerate the deadline for filing Form 20-F as proposed, should we still require the additional Item 18 financial disclosure?**

While timeliness enhances usefulness, investors would be better off having the Item 18(b) disclosures than not. Even when disclosures are stale, investors use them to evaluate the quality of earnings, and draw inferences about future corporate performance.

Additional disclosures provided by Item 18(b) and those that may have been omitted unless otherwise required under a home country GAAP under current Item 17, (e.g., pension assets, obligations and assumptions, lease commitments, business segments, tax attributes, stock compensation awards, financial instruments and derivatives, etc.) are beneficial to investors and should be required even if the Commission does not accelerate the deadline for filing Form 20-F (reasons stated in our response to question 21). We prefer that the Form 20-F filing deadline be accelerated. However, even if it is not we still urge the Commission to require Item 18 disclosures.



**Question 26.**

**Should we provide an exemption for foreign private issuers that are currently preparing financial statements pursuant to Item 17? If we adopt the proposed amendment, should we provide a “grandfather” provision or an exemptive order to permit these foreign private issuers to continue to provide financial information pursuant to Item 17?**

An exemption should not be provided to FPIs currently preparing financial statements pursuant to Item 17. We strongly prefer that all filers prepare the financial statements in accordance with Item 18 since this will provide investors in all filers with the same disclosures necessary for their analysis of financial statements.

We also do not believe that the Commission should provide a “grandfather” provision or an exemptive order to FPIs to continue to report pursuant to Item 17. Preparation of the financial statements in accordance with the enhanced disclosures required by Item 18 is preferable.

**Question 27.**

**Should foreign private issuers be required to provide information about changes in and disagreements with their certifying accountant? Would this disclosure be useful to investors? If so, should foreign private issuers be subject to the same disclosure requirements that apply to domestic issuers, or would a different disclosure requirement be more appropriate?**

Investors rely on the auditor to ensure that financial statements are complete and that appropriate accounting policies are followed (this is especially important given the principles-based nature of IFRS). Any indication that the auditor disagrees with management (or has lost trust in management) is extremely important to investors.

For this reason, FPIs should be required to provide information about changes in or disagreements with their certifying accountants as soon as possible. In particular, it will be useful for investors to find disclosures about whether there were any disagreements with the former accountant, whether or not resolved, on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which if not resolved to the former accountant’s satisfaction, would have caused it to make reference to the subject matter of the disagreement in its report are useful to investors.

The Commission notes that approximately 90 companies that file Form 20-F will be impacted by the proposal. Reporting changes in or disagreements with certifying accountants should be a relatively infrequent and non-recurring event and therefore should not impose an undue burden.

**Question 28.**

**Should foreign private issuers be permitted to provide the letter from the former accountant in their annual reports on a delayed basis for a change of accountants that occurs less than 30 days before the annual report is filed, as proposed? Is 30 days an appropriate parameter? Alternatively, should foreign private issuers be permitted to provide the letter from the former accountant on a delayed basis for a change in accountant that occurs up to 45 days or 60 days before the annual report is filed, or only if the change in accountant occurs less than 15 days before the annual report is filed?**

**Because foreign private issuers provide this disclosure on a delayed basis compared to domestic issuers, is this accommodation necessary?**

Because of the importance of this issue to investors, we do not think that FPIs should be permitted to provide the letter from the former accountant in their annual reports on a delayed basis. The letter should be filed as an exhibit to the annual report as proposed by the Commission, and if it is unavailable at the time of the filing then the letter should be filed within ten business days after the filing.

**Question 30.**

**Should the proposed change of accountant disclosure requirements contained in Item 16F be extended to registration statements filed by all foreign private issuers under the Securities Act, not just first-time registrants? Would this impose an undue burden on foreign private issuers that may not be subject to such a disclosure requirement in their home jurisdictions?**

Changes of accountant disclosures are important to investors for the reasons cited in our response to question 27 and should be extended to registration statements filed by all FPIs, not just first-time registrants. Item 16F provides reasonable and necessary disclosures that are important to investors.

**Question 31.**

**Would it be useful to investors to receive information about ADR fees and payments made by depositaries on an annual basis? Is there other information relating to ADRs that would be useful to investors on an annual basis, such as the number of ADRs outstanding? Are there other methods by which investors can readily obtain this information? Should foreign private issuers be required to disclose the information in their Form 20-F annual reports only if the information is not disclosed on their websites?**

Investors would benefit from disclosures regarding ADR fees and payments on an annual basis since these would be an important consideration for the potential ADR investor. Without knowing full disclosure of these fees, an investor may make decisions based on incomplete information.

As for additional information that should be provided, one item would be disclosure of the ADR holders' voting rights and whether the holders have any preemptive rights that protect them against dilution. In addition, disclosure about whether the depositary is allowed to vote the shares as they wish, or whether the vote of the depositary must reflect the vote of the majority of the ADR holders.

**Question 32.**

**Should Item 12 be amended to also explicitly solicit a brief discussion of the reasons why the depositary is making payments to the foreign private issuer, or is disclosure of the amount paid to the issuer sufficient?**

We feel that Item 12 should be amended to indicate the purpose of the payments from the depositary to the issuer. There may be a conflict of interest that the ADR holders need to understand prior to investing.

**Question 33.**

**Should depositaries be required to disclose payments that they make to third parties? Are these payments necessarily passed on to ADR holders?**

If all fees are disclosed to ADR investors in accordance with question 31, then it should be unnecessary to make such disclosures again in this instance as it may confuse investors as to the magnitude of all such payments. In particular, disclosing the payments made to third parties may cause investors to double count the payments as additional fees, when in fact any pass-through payments will have already been disclosed as part of the total fees.

**Question 34.**

**Should Regulation S-K and Form 10-K be amended to elicit similar disclosure from foreign issuers that are not foreign private issuers and that file annual reports on Form 10-K, but that have securities traded in ADR form?**

Regulation S-K and Form 10-K should be amended to require disclosure of payments made to third parties since this information is important for the investor to make reasoned and informed decisions.

**Question 35.**

**Would disclosure of significant differences in the corporate governance practices of foreign private issuers in their annual reports enable investors to better monitor the corporate governance practices of the issuers in which they are investing?**

In surveys conducted by CFA Institute in 2007 and 2003, respondents ranked disclosures about corporate governance practices and policies of high importance to their analysis and comparison of companies.<sup>8</sup> Having this information in the annual report provides investors with a better mechanism for tracking such information. For this reason, disclosures of significant differences in corporate governance practices of FPIs should be included in annual reports.

**Question 36.**

**Instead of the narrative discussion that is proposed, is there an alternative format, such as a tabular presentation of the differences in corporate governance practices, that would make the information provided in the annual report easier to understand and thus more useful to investors?**

Generally, investors prefer information to be presented in a tabular format, provided that the table contains sufficient and transparent information. A tabular presentation of this information would be more concise and allow investors to more easily compare practice differences.

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<sup>8</sup> Importance scale: 1=Not important to 5=Very important, the average weighted mean reported was 3.5 and 3.6 in 2007 and 2003, respectively.

**Question 37.**

**Is it sufficiently clear what differences in corporate governance should be disclosed? Are there important elements of corporate governance that investors should be informed of and that should be specifically addressed in a company's disclosure under this proposed requirement?**

Good corporate governance seeks to ensure that the following practices are in place:

- Board Members act in the best interests of all Shareowners, not favoring any particular shareholder;
- The Company acts in a lawful and ethical manner in their dealings with all stakeholders and their representatives;
- All Shareowners have the same right to participate in the governance of the company and receive fair treatment from the Board and management, and all rights of Shareowners and other stakeholders are clearly delineated and communicated;
- The Board and its committees are structured to act independently from management, individuals or entities that have control over management, and other non-shareowner groups;
- Appropriate controls and procedure are in place covering management's activities in running the day-to-day operations of the company; and
- The Company's operating and financial activities, as well as its governance activities, are consistently reported to Shareowners in a fair, accurate, timely, reliable, relevant, complete and verifiable manner.

**Question 38.**

**If the information about significant, completed acquisitions is disclosed on an annual, as opposed to current, basis, would the information still be useful to investors? Would investors find the information useful even though the disclosure would be provided at least several months after the acquisition was completed?**

Acquisitions sometimes radically change the nature of an enterprise, by altering its financial structure (including debt), business mix, and risk factors. For that reason information about significant, completed acquisitions should be disclosed on a current rather than on an annual basis. The more promptly the information is available, the more useful it is for investors in making sound investment decisions. Also, more timely disclosure of significant transactions reduces information asymmetry, preventing insiders the benefit of having information that investors do not.

Providing the information several months after the acquisition is completed, while still very useful, is not as beneficial to the investor as receiving information in a more timely fashion.

**Question 40.**

**As proposed, a foreign private issuer would be required to provide information about a highly significant, completed acquisition in its annual report on Form 20-F. In light of the proposal to accelerate the reporting deadline for annual reports filed on Form 20-F, should foreign private issuers be provided additional time to disclose information about a highly significant, completed acquisition on an amended annual report? If so, should the due date**

**for the filing of this information be based upon the time that the acquisition was consummated? For example, information about a significant acquisition that was consummated early in the calendar year would be due with the annual report filed on Form 20-F, whereas financial information for a highly significant acquisition that occurred late in the calendar year could be provided on a delayed basis beyond the reporting deadline for the annual report filed on Form 20-F.**

The preparation of financial statements must incorporate the impact of all acquisitions made during the period. Thus we see no reason why a filer should be unable to include information about such acquisitions at the same time. As noted in our response to question 38, investors prefer information about highly significant, completed transactions to be disclosed on a current rather than on an annual basis. Information regarding acquisitions which would normally occur during the course of the fiscal year should be readily available for disclosure concurrent with the filing of Form 20-F, therefore extensions for filing should be unnecessary.

**Question 41.**

**Should foreign private issuers be required to provide financial information for business acquisitions that are significant at the 50% or greater level, or should the test of significance be at the 20% or greater level, as for domestic issuers? Would another significance level between 20% and 50% be more appropriate? To ensure that only very large transactions are required to be presented, should the test of significance be limited to the comparison of the purchase price to the issuer's assets? Alternatively, should a new test be developed for this purpose in which the comparison for significance is based on the size of the issuer's public float?**

We support the 20 percent test of significance for both FPIs and domestic issuers; however, this should only be one component in determining a materiality threshold for disclosure. The threshold should consider both qualitative as well as quantitative factors. Twenty percent may be considered material to an issuer's financial position based on either: 1) acquisition price to the issuer's total assets; 2) the acquired business' total assets to the total assets of the issuer; or 3) the acquired business' pre-tax income to the pre-tax income of the issuer. A complementary qualitative assessment should be made based on whether the disclosure would make a difference to an informed investor. Whether a business is acquired by an FPI or by a domestic issuer should not make a difference in the level of materiality assessment for disclosing the financial information for the acquisition.

The significance test should not be limited to the comparison of the purchase price to the issuer's assets. Tests for significance should be based on all three measures noted above. Alternatively, we are open to considering a new test based on the size of the issuer's public float, however we would have to reserve judgment regarding appropriateness of this until it is developed and studied.

**Question 42.**

**Would it be useful to investors to require annual reports filed on Form 20-F to disclose the information required by Rule 3-05 and Article 11 of Regulation S-X even if the information has been provided previously in a registration statement? What kind of benefits would investors derive from disclosure in the annual reports?**

Disclosures of information required by Rule 3-05 and Article 11 of Regulation S-X should be included on Form 20-F even if it has been provided in a registration statement. Including the financial statements of businesses acquired or to be acquired in addition to the pro-forma is important to an investor's understanding of the impact of the acquisition on the financial results of the company. Since most of this information should be readily available it should not impose an undue burden on the issuer. Investors would benefit by having all of the information within a single document rather than having to assemble it from multiple filings.

### **Concluding Remarks**

We appreciate the opportunity to provide comments to the Commission and its staff regarding the proposed rule, "*Foreign Issuer Reporting Enhancements*." If the Commissioners or their staff have questions or seek further elaboration of our views please contact Matthew Waldron, Senior Policy Analyst at [matthew.waldron@cfainstitute.org](mailto:matthew.waldron@cfainstitute.org) or (434) 951-5321.

Sincerely,

/s/ Kurt N. Schacht

Kurt N. Schacht, JD, CFA  
Managing Director

/s/ Gerald I. White

Gerald I. White, CFA  
Chairman, Corporate Disclosure Policy  
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cc: Jeffrey J. Diermeier, CFA, President and Chief Executive Officer, CFA Institute  
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