



If you have any questions regarding this Alert, please contact any of the Venable lawyers listed below.

## Authors

**Beth Hughes**  
[erhughes@Venable.com](mailto:erhughes@Venable.com)  
703.760.1649

**Jimmy Dvorak**  
[jdvorak@Venable.com](mailto:jdvorak@Venable.com)  
703.760.1671

**Julia Karwowski**  
[jakarwowski@Venable.com](mailto:jakarwowski@Venable.com)  
703.760.1671

## SEC Proposes Roadmap for Potential Use of IFRS By U.S. Issuers

On November 14, 2008, the United States Securities and Exchange Commission (the "SEC") issued a proposed "roadmap" for potentially requiring U.S. issuers to prepare their financial statements in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board (the "IASB") for purposes of their filings with the SEC (the "Proposed Roadmap"). [\[1\]](#)

In describing the process to be undertaken by the SEC in determining whether to mandate the use of IFRS by U.S. issuers in their SEC filings, the Proposed Roadmap sets forth certain general criteria that the SEC expects to consider in making its determination, including seven (7) specific "milestones" that, if achieved, could lead to the SEC requiring the mandatory use of IFRS as early as 2014. Under the Proposed Roadmap, the SEC will determine whether to proceed with rulemaking to require the mandatory use of IFRS in 2011. The SEC has solicited comments to the Proposed Roadmap, which must be submitted no later than February 19, 2009.

### IFRS and U.S. GAAP

Currently, all U.S. issuers required to file financial statements with the SEC are required by the SEC to prepare their financial statements for purposes of their SEC filings in accordance with U.S. generally accepted accounting principals ("U.S. GAAP") [\[2\]](#) as established by the Financial Accounting Standards Board ("FASB"). Other accounting standards, however, are utilized outside of the U.S. As noted in the Proposed Roadmap, IFRS has been increasingly accepted and used in major capital markets over the past several years, with over 100 countries currently requiring or permitting IFRS reporting for their domestic listed companies, including the member states of the European Union. The Proposed Roadmap suggests that this increasing global acceptance and use of IFRS could lead to IFRS becoming the accounting standard best able to provide a basis for financial reporting that will allow investors to compare more effectively financial information of U.S. issuers and non-U.S. issuers.

### Milestones

The seven (7) specific milestones to be considered by the SEC in determining whether to mandate the use of IFRS, as described in the Proposed Roadmap, are as follows:

- **Improvements in accounting standards.** As noted in the Proposed Roadmap, the SEC has recently acted to encourage the development of a single set of high-quality, globally-accepted accounting standards which it believes will reduce the differences in financial reporting between U.S. issuers and foreign issuers. In particular, the SEC has encouraged the "convergence" of the standards represented by IFRS and U.S. GAAP. As a Proposed Roadmap milestone, the SEC will consider the degree of progress made by the FASB and the IASB towards their recently announced mutual goal of developing high-quality, compatible accounting standards that could be used for both domestic and cross-border financial reporting. With respect to IFRS, the SEC will consider whether the developed accounting standards are of high quality and sufficiently comprehensive. The SEC will also assess whether it believes the IASB continues to develop its standards through a robust, independent and prompt process, the goal of which is to develop accounting standards capable of improving the accuracy, effectiveness and quality of financial reporting.
- **Accountability and funding of the IASC Foundation.** The SEC will consider the security and stability of the funding mechanism of the London-based International Accounting Standards Committee Foundation (the "IASC Foundation"), which is the overseeing body of the IASB and is governed by 22 geographically diverse trustees, as well as the degree to which this mechanism permits the IASC Foundation to function independently and enhances the standard setting process. The SEC will also evaluate the presence and effectiveness of an oversight mechanism over the IASC Foundation. [\[3\]](#)
- **Improvement in the ability to use interactive data for IFRS reporting.** The SEC has recently announced that it will require companies to provide their financial statements to the SEC in an interactive data format using the eXtensible Business Reporting Language, or "XBRL." The XBRL format utilizes identifiers that are used to "tag" financial information so that it may be retrieved and used by investors in various ways which the SEC believes will be useful to investors. For example, as noted in the Proposed Roadmap, the XBRL format will allow investors to download financial information directly into spreadsheets, analyze the information using commercial off-the-shelf software, or use the information within investment models in any of a number of other software formats. The SEC will consider the state of development of IFRS tags for use in interactive data reporting of IFRS financial statements and the IASC Foundation's progress in developing lists of IFRS tags, or "taxonomies," all of which would be necessary in order to provide IFRS financial statements to the SEC in interactive data format.

- **Education and training.** Given the differences between U.S. GAAP and IFRS, the SEC will consider its staff's familiarity with IFRS and will consider the then-current status of the overall education and training with respect to IFRS, and readiness with respect to IFRS adoption, of investors, preparers, auditors and other parties involved in the preparation of financial statements.
- **Limited early use of IFRS where this would enhance comparability for U.S. investors.** Prior to any required use of IFRS in SEC filings, the SEC proposes to allow the limited early use of IFRS by certain U.S. issuers, which the SEC believes may help inform its decision about whether to mandate the use of IFRS for U.S. public issuers. As indicated in the Proposed Roadmap, the SEC proposes to allow early use of IFRS by U.S. issuers only where doing so would enhance the comparability of financial reporting to U.S. investors for purposes of comparing the largest U.S. issuers with the largest non-U.S. companies in the same industry. The specific criteria that the SEC currently proposes to use in determining whether to permit a company to use IFRS early are discussed below.
- **Anticipated timing of future rulemaking by the SEC.** As stated in the SEC's release with respect to the Proposed Roadmap, after reviewing the status of the milestones in 2011, the SEC would determine whether to proceed with rules requiring U.S. public companies to file financial statements prepared in accordance with IFRS as early as 2014. Such a decision by the SEC would potentially require issuers to begin using IFRS in their internal accounting in 2012, as the SEC currently expects that it would require three years of audited annual IFRS financial statements in the first year of IFRS reporting. The Office of the Chief Accountant will, as noted in the Proposed Roadmap, study and report to the SEC the implications for investors and other market participants of the implementation of IFRS on U.S. issuers. Such study will be taken into account by the SEC in its final decision as to whether or not to mandate the use of IFRS by U.S. issuers.
- **Implementation of the mandatory use of IFRS.** The SEC is currently considering a "staged" transition in which IFRS filings would begin for fiscal years ending on or after December 15, 2014 for large accelerated filers; on or after December 15, 2015 for accelerated filers; and on or after December 15, 2016 for non-accelerated filers. [4] The SEC is also currently considering transition rules to expand the eligibility criteria of those U.S. issuers which could elect to use IFRS prior to a mandatory transition date.

## Other Considerations

The Proposed Roadmap also discusses various other areas of consideration related to the use of IFRS in the United States if the SEC were to mandate IFRS reporting, including the effects that such a requirement would have on financial reporting in other U.S. regulatory contexts, accounting systems, and controls and procedures.

## Limited Early Use of IFRS

In connection with the Proposed Roadmap, the SEC is proposing amendments to certain regulations, rules and forms that would permit early use of IFRS by a limited number of U.S. issuers where the SEC believes this would enhance the comparability of financial information for investors. The SEC release regarding the Proposed Roadmap proposes that only issuers in certain qualified industries would be eligible. As proposed, a qualified industry would be one in which that industry's twenty largest listed companies worldwide, as measured by market capitalization, use IFRS as the basis of financial reporting more often than any other basis of financial reporting. To be able to use IFRS financial statements in SEC filings, a U.S. issuer in a qualified industry would need to obtain a "letter of no objection" from the SEC. Finally, an issuer in a qualified industry would be eligible to elect to use IFRS beginning with filings for fiscal years ending on or after December 15, 2009.

\*\*\*\*\*

## What You Should Do

The SEC has requested comments to its Proposed Roadmap and the proposed changes to its regulations, rules and forms contemplated thereby. If you have any questions about the Proposed Roadmap, please contact any of the following members of Venable's Corporate Finance & Securities practice group:

Beth Hughes  
[erhughes@Venable.com](mailto:erhughes@Venable.com)  
 703.760.1649

Jimmy Dvorak  
[jdvorak@Venable.com](mailto:jdvorak@Venable.com)  
 703.760.1601

Julia Karwowski  
[jakarwowski@Venable.com](mailto:jakarwowski@Venable.com)  
 703.760.1671

[1] The Proposed Roadmap relates solely to U.S. issuers with respect to their periodic reporting requirements under Sections 13 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), proxy and information statements under Section 14 of the Exchange Act, and registration statements under Section 12 of the Exchange Act and Section 7 of the Securities Act of 1933, as amended. Investment companies and other types of financial reports filed or furnished to the SEC by other regulated entities are specifically excluded from the coverage of the Proposed Roadmap.

[2] At its most basic level, IFRS might be characterized as principles-based standards, while U.S. GAAP might be characterized as a rules-based standards offering more detailed guidance. Moreover, there are certain specific differences between these two sets of standards. For example, as noted in the Proposed Roadmap, certain aspects of IFRS are not as well-developed as comparable features of U.S. GAAP, and there is generally less IFRS literature than U.S. GAAP literature.

[3] The Proposed Roadmap notes that while the FASB's parent (the Financial Accounting Foundation) is overseen by the SEC, the IASC Foundation has not in the past had a similar relationship with any national or international regulatory body, although the IASC Foundation is currently working to develop such a relationship.

[4] Generally, an "accelerated filer" is an issuer after it first meets the following conditions as of the end of its fiscal year: (i) the issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of no less than \$75 million, and no more than \$700 million, as of the last business day of the issuer's most recently completed second fiscal quarter; (ii) the issuer has been subject to the requirements of section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; (iii) the issuer has filed at least one annual report pursuant to section 13(a) or 15(d) of the Exchange Act; and (iv) the issuer is not eligible to use the requirements for "smaller reporting companies" for its annual and quarterly SEC reports. An entity having an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter, and meeting the other requirements listed above for an accelerated filer, is generally deemed a "large accelerated filer" after it first meets all of those conditions. Finally, although "non-accelerated filer" is not defined in the SEC's rules, this term generally refers to an Exchange Act reporting company that does not meet the Exchange Act Rule 12b-2 definition of either "accelerated filer" or "large accelerated filer," as noted in the Proposed Roadmap.

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | [www.Venable.com](http://www.Venable.com)

©2009 Venable LLP. This alert is published by the Business Transactions Practice Group of Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address.