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Volume 4, 2007 - [Issue 2](#)

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Convergence between US GAAP and IFRS: Acceptance of IFRS by the US Securities and Exchange Commission (SEC)

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Pages 123-139 | Published online: 19 Dec 2007

 Cite this article  <https://doi.org/10.1080/17449480701727908>

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Abstract

The world's capital markets stand to benefit significantly from widespread acceptance and use of global accounting standards that are high quality, comprehensive and rigorously applied. The US Securities and Exchange Commission (SEC) announced in April 2007 a series of actions it intends to take relating to the acceptance of International Financial Reporting Standards (IFRS). To implement this, the SEC proposed in July 2007 amendments to Form 20-F and conforming changes to SEC Regulation S-X to accept financial statements prepared in accordance with IFRS without reconciliation to US Generally Accepted Accounting Principles (GAAP) when contained in the filings of foreign private issuers with the SEC. This paper analyses the forces driving convergence between US GAAP and IFRS and discusses the most recent activities by the SEC in relation to IFRS and international cooperation, including the SEC vote as of

Notes

1. Europe in the context of this paper refers to the countries constituting the European Union. This paper concentrates on European companies but it is not just a European issue. The items discussed generally are applicable to all foreign private issuers around the world.
2. Foreign private issuer according to SEC Regulation C - Registration Rule 405: US residents do not hold a majority of the shares; or if US residents do hold a majority of the shares, then (a) a majority of its directors and officers are not US citizens or residents, (b) its business is administered from outside the USA and (c) a majority of its assets are located outside the USA.
3. Registration of Securities of Foreign Private Issuers Pursuant to Section 12 (b) or (g) and Annual and Transition Reports Pursuant to Section 13 and 15 (d).
4. Registration Requirements for Securities.
5. <http://www.sec.gov/divisions/corpfin/34act/index1934.shtml>
6. Periodical and Other Reports - reports by issuer of securities.
7. Registration and Regulation of Brokers and Dealers - filing of supplementary and periodic information.
8. Reconciliation requirement.
9. The reporting obligations for foreign private issuers include in addition to the financial statements items required by Part I and II of SEC Form 20-F.
10. <http://www.soxlaw.com/>
11. See New SEC Final Rule issued on 27 March 2007 which is effective 4 June 2007: 'Termination of a Foreign Private Issuer's Registration of a Class of Securities Under

Section 12 (g) and Duty to File Reports Under Section 13 (a) or 15 (d) of the Securities Exchange Act of 1934'.

12. 'Sustaining New York's and the US' Global Financial Services Leadership':

<http://www.senate.gov/>

[~schumer/SchumerWebsite/pressroom/special_reports/2007/NY_REPORT%20_FINAL.pdf](http://www.senate.gov/~schumer/SchumerWebsite/pressroom/special_reports/2007/NY_REPORT%20_FINAL.pdf)

or 'Capital Market Competitiveness Study' headed by Hal Scott:

<http://www.capmksreg.org/>

13. As stipulated in Sections 12, 13 and 15 of the Securities Exchange Act of 1934.

14. See instructions to Item 17 of Form 20-F: <http://www.sec.gov/about/forms/form20-f.pdf>

15. In accordance with SEC Regulation S-X Rule 2-02 public accounting firms need not refer explicitly in their audit reports to the audit of the reconciliation. In practice, there are several instances where public accounting firms refer to the audit of the reconciliation.

16. <http://www.sec.gov/divisions/corpfin/33act/index1933.shtml>

17. SEC Regulation S-X sets forth the form and content of and requirements for financial statements filed with the SEC: <http://www.sec.gov/about/forms/regs-x.pdf>

18. Mission of the IASB: <http://www.iasb.org/Home.htm>

19. Melcher, Konvergenz des internen und externen Rechnungswesens, 2002, p. 83; Pellens, Internationale Rechnungslegung, 2nd edn, 1999, p. 363.

20. An acceptable alternative could be achieved also by other means than having no material reconciling items in situations where different accounting treatments may be regarded as having equivalent quality.

21. EU Directive No. 1606/2002 of the European Union regarding the application of IFRS by public companies in Europe.

22. The European Council held a special meeting on 23-24 March 2000 in Lisbon to agree a new strategic goal for the Union in order to strengthen employment, economic reform and social cohesion as part of a knowledge-based economy.

23. SEC Concept Release No. 34-42430 on International Accounting Standards as of 16 February 2000.
24. 'Norwalk Agreement': <http://www.fasb.org/news/memorandum.pdf>
25. SEC Release 2002-154: <http://www.sec.gov/news/press/2002-154.htm>
26. <http://www.sec.gov/news/speech/spch040605dtn.htm>
27. SEC Release 2006-17: <http://www.sec.gov/news/press/2006-17.htm>
28. See <http://www.sec.gov/news/speech/2007/spch020907klc.htm>
29. See also SEC announcement of 24 April 2007 regarding the plan of a release proposal in 2007 regarding the elimination of the reconciliation.
30. The current timeframe of approximately four months will probably increase to eight months due to the establishment of the new Standards Advice Review Group (SARG) and the involvement of the European Parliament in the EU-adoption process.
31. Speech of SEC Commissioner Roel C. Campos: 'SEC Regulation Outside the United States', 8 March 2007, <http://www.sec.gov/news/speech/2007/spch030807rcc.htm>
32. <http://www.sec.gov/about/offices/oia.htm>
33. EC Release 2006-130: 'SEC and CESR Launch Work Plan Focused on Financial Reporting - Developing Cross Atlantic Financial Markets': <http://www.sec.gov/news/press/2006/2006-130.htm>
34. In conjunction with companies listed in the USA, the European Union and their subsidiaries. 'Worldwide' would otherwise be beyond the powers of the SEC and the CESR.
35. It should be noted that the IASB has its own interpretative body IFRIC. Interpretation in this context refers to situations where IFRIC has not issued pronouncements on the subject matter.
36. SEC Release 2007-80: 'Meeting between SEC Chairman Cox and CESR Chairman Wymeersch and Vice Chair Tavares to Discuss Joint Work' on 27 April 2007.
37. The SEC and the UK Financial Services Authority (FSA) and the UK Financial Reporting Council (FRC) signed a protocol on 25 April 2007 for implementing the work

plan between the SEC and the CESR to share information on application of IFRS by issuers listed in the UK and the USA.

38. Speech by SEC staff: 'The Promise of Transparency - Corporation Finance in 2007', 29th Annual Conference of Securities Regulation and Business Law, Dallas, Texas on 23 February 2007.

39. 'SEC Staff Observations in the Review of IFRS Financial Statements' as of 2 July 2007.

40. SEC Release 2005-72: 'SEC Staff to Begin Publicly Releasing Comment Letters and Responses': <http://www.sec.gov/news/press/2005-72.htm>

41. 'Staff Comments on Annual Reports Containing Financial Statements Prepared for the First Time on the Basis of IFRS':
www.sec.gov/divisions/corpfin/ifrs_staffobservations.htm

42. Speech by SEC staff: 'Remarks before 2006 AICPA National Conference on Current SEC and PCAOB Developments' by Julie A. Erhardt on 12 December 2006 in Washington, DC.

43. Instruction G to Form 20-F: First-Time Application of IFRS.

44. As required by IAS 36.134-135.

45. As required by IAS 27.40-42 and IAS 28.37-40.

46. Agenda of the IFRS round table:
<http://www.sec.gov/spotlight/ifrsroadmap/ifrsroadmap-agenda.htm>

47. SEC Press Release Panelists obtainable at
<http://www.sec.gov/news/digest/2007/dig030507.txt>. Standards obtainable at
<http://www.sec.gov/news/speech/2007/spch030607cc.htm>

48. See complete list of panelists:
<http://www.sec.gov/spotlight/ifrsroadmap/ifrsroadmap-agenda.htm>

49. Speech by SEC Chairman: Chairman's Address to the SEC Round Table on International Financial Reporting.

50. See <http://www.sec.gov/spotlight/ifrsroadmap/ifrsroadmap-agenda.htm>

51. SEC Accounting Disclosure Rules and Practices Topic Six 'Foreign Private Issuer' II.C.
52. Requirements of the SEC Practice Section of the AICPA Division for CPA Firms as set forth in Appendix K to the SEC Practice Section membership requirements.
53. SEC Release Nos. 33-8818; 34-55998; International Series Release No. 1302; File No. S7-13-07 (17 CFR Parts 210, 230, 239 and 249).
54. Foreign private issuers that report on a periodic basis under Section 13(a) or 15(d) of the Securities Exchange Act 1934.
55. Amendments to Form 20-F under the Securities Exchange Act of 1934, Rules 3-10 and 4-01 of Regulation S-X, Forms F-4 and S-4 and Rule 701 under the Securities Act of 1933.
56. Well-known seasoned issuer as defined in Rule 405 under the Securities Act of 1933.
57. Large accelerated filer as defined in Rule 12b-2 under the Securities Exchange Act 1934.
58. Instruction 8 to Item 10 of Schedule TO contains a reference to reconciliation to US GAAP in accordance with Item 17 of Form 20-F; Instruction 2 to Item 13 of Schedule 13E-3, the transaction statement under Section 13(e) of the Exchange Act, also contains a reference to US GAAP reconciliation under Item 17.
59. Other steps include for example the new SEC rule on Termination of a Foreign Private Issuer's Registration of a Class of Securities under Section 12 (g) and Duty To File Reports Under Sections 13 (a) or 15 (d) of the Securities Exchange Act of 1934 (SEC Final Rule No. 34-55540) or the contemplated mutual recognition in conjunction with the cross-border regulatory conversations.

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