

Client Alert

SEC Proposes New Accelerated Filer Category and Revised Filing Deadlines and Extends Internal Control Compliance Deadline for Smaller Companies

Proposed New Accelerated Filer Category and Revised Periodic Report Filing Deadlines

On September 22, 2005, the SEC proposed rules¹ creating a new category of “large accelerated filers” and amending Exchange Act periodic report filing deadlines so that:

- only large accelerated filers would be required to file annual reports on Form 10-K within 60 days after fiscal year end; and
- both large accelerated filers and accelerated filers would be required to file quarterly reports on Form 10-Q within 40 days after quarter end.

Large accelerated filers are “accelerated filers” that have a “public float”² of \$700 million or more as of the last business day of the issuer’s most recently completed second fiscal quarter. Under current rules, an accelerated filer is an issuer that meets the following conditions at its fiscal year end:

- has a public float of \$75 million or more;
- has been subject to Exchange Act reporting requirements for at least 12 calendar months;
- has filed at least one annual report on Form 10-K; and
- is not eligible to use Forms 10-KSB and 10-QSB (for small business issuers).

With the addition of the large accelerated filer category, reporting companies would be divided into three categories:

- **Non-accelerated filers** - filers with a public float of less than \$75 million or unseasoned issuers;
- **Accelerated filers** - filers that meet the accelerated filer conditions with a public float of at least \$75 million but less than \$700 million; and
- **Large accelerated filers** - filers that meet the accelerated filer conditions with a public float of at least \$700 million.

¹ See SEC Release Nos. 33-8617; 34-52491; File No. S7-08-05. A copy of the Release is available on the SEC’s website at www.sec.gov/rules/proposed/33-8617.pdf.

² Public float is the aggregate worldwide market value of an issuer’s voting and non-voting common equity held by its non-affiliates.

The following table compares the periodic reporting deadlines under the current rules with the deadlines under the proposed rules:

<u>Current Rules</u>			<u>Proposed Rules</u>		
Category of Filer	Deadlines for Reports Beginning with Annual Report for First Fiscal Year Ending On or After December 15, 2005		Category of Filer	Deadlines for Reports Beginning with Annual Report for First Fiscal Year Ending On or After December 15, 2005	
	10-K Deadline	10-Q Deadline		10-K Deadline	10-Q Deadline
Accelerated Filer (\$75MM or more)	60 days	35 days	Large Accelerated Filer (\$700MM or more)	60 days	40 days
			Accelerated Filer (between \$75MM and \$700MM)	75 days	40 days
Non-accelerated Filer (less than \$75MM)	90 days	45 days	Non-accelerated Filer (less than \$75MM)	90 days	45 days

In addition, the proposed rules would make it easier for accelerated filers and large accelerated filers to exit accelerated filer and large accelerated filer statuses promptly. An accelerated filer could begin filing annual and quarterly reports on a non-accelerated filer basis beginning with the annual report for the fiscal year in which its public float drops below \$25 million, and a large accelerated filer could begin filing annual and quarterly reports on an accelerated filer basis beginning with the annual report for the fiscal year in which its public float drops below \$75 million. Note that although the public float test is determined as of the last business day of the most recently completed second fiscal quarter, an issuer's status as a large accelerated filer, accelerated filer or non-accelerated filer is determined at the end of the issuer's fiscal year.

Extension of Internal Control Compliance Deadline for Smaller Companies

On September 22, 2005, the SEC issued a final rule³ extending the compliance dates of internal control reporting requirements for non-accelerated filers (companies with a public float of less than \$75 million). Under the new compliance schedule, non-accelerated filers, including foreign private issuers that are non-accelerated filers, have an additional year before they must comply with the internal control reporting requirements of Section 404 of the Sarbanes-Oxley Act. For these filers, Section 404 will apply beginning with the first fiscal year ending on or after July 15, 2007. A foreign private issuer that is an accelerated filer and that files its annual reports on Form 20-F or Form 40-F will not be affected by

³ See SEC Release Nos. 33-8618; 34-52492; File Nos. S7-40-02; S7-06-03. A copy of the Release is available on the SEC's website at www.sec.gov/rules/final/33-8618.pdf.

the new rules and must begin to comply with the Section 404 internal control reporting requirements for its first fiscal year ending on or after July 15, 2006.

Companies must now include the required management internal control report and auditor attestation in their annual reports commencing as follows:

<u>Category of Filer</u>	<u>Deadlines</u>
Accelerated Filers (other than Foreign Private Issuers)	First fiscal year ending on or after November 15, 2004
Foreign Private Issuers that are Accelerated Filers	First fiscal year ending on or after July 15, 2006
Non-Accelerated Filers (including Foreign Private Issuers that are Non-Accelerated Filers)	First fiscal year ending on or after July 15, 2007

The SEC decided to extend the deadline for complying with internal control compliance because (1) the Committee of Sponsoring Organizations of the Treadway Commission is still developing an enhanced COSO Framework for smaller public companies; and (2) the SEC Advisory Committee on Smaller Public Companies is continuing to study the internal control over financial reporting requirements for smaller public companies, and in the interim, has recommended that the Commission extend the internal control compliance deadline for non-accelerated filers.

Comments Sought

Comments with regard to the proposed rules on revisions to the accelerated filer definition and deadlines for filing periodic reports and the final rule on the internal control compliance deadlines for smaller companies are due by October 29, 2005.

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September 30, 2005

For Additional Information

This client alert can be found, together with other recent Chadbourne & Parke LLP client alerts, on our website at www.chadbourne.com/publications/. Our client alerts are for general informational purposes and should not be regarded as legal advice. If you have any questions regarding the proposed new accelerated filer category and filing deadlines for periodic reports and/or the extension of the internal control compliance deadline for smaller companies, please contact any of the following:

New York

Marc A. Alpert	+1 (212) 408-5491	malpert@chadbourne.com
Philip L. Colbran	+1 (212) 408-1122	pcolbran@chadbourne.com
A. Robert Colby	+1 (212) 408-5571	rcolby@chadbourne.com
Dennis R. Dumas	+1 (212) 408-1184	ddumas@chadbourne.com
Barry S. Eisler	+1 (212) 408-1073	beisler@chadbourne.com
William Greason	+1 (212) 408-5527	wgreason@chadbourne.com
Morton E. Grosz	+1 (212) 408-5592	mgrosz@chadbourne.com
Charles E. Hord, III	+1 (212) 408-5353	chord@chadbourne.com
Peter K. Ingerman	+1 (212) 408-5422	pingerman@chadbourne.com
Peter R. Kolyer	+1 (212) 408-5564	pkolyer@chadbourne.com
Sey-Hyo Lee	+1 (212) 408-5122	shlee@chadbourne.com
J. Allen Miller	+1 (212) 408-5454	amiller@chadbourne.com
Beth Rogers	+1 (212) 408-2317	brogers@chadbourne.com
Alejandro R. San Miguel	+1 (212) 408-8009	asanmiguel@chadbourne.com
Edward P. Smith	+1 (212) 408-5371	esmith@chadbourne.com
Kevin C. Smith	+1 (212) 408-1092	ksmith@chadbourne.com

Washington, D.C.

Thomas V. Sjoblom	+1 (202) 974-5636	tsjoblom@chadbourne.com
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London

David Levin	+44 (20) 7337-8048	dlevin@chadbourne.com
Claude S. Serfilippi	+44 (20) 7337-8030	cserfilippi@chadbourne.com

Chadbourne & Parke LLP

New York

30 Rockefeller Plaza
New York, NY 10112
Telephone: +1 (212) 408-5100
Facsimile: +1 (212) 541-5369

Los Angeles

350 South Grand Avenue, Suite 3300
Los Angeles, CA 90071
Telephone: +1 (213) 892-1000
Facsimile: +1 (213) 622-9865

London

Chadbourne & Parke (a multinational partnership)
Regis House
45 King William Street
London EC4R 9AN
UK
Telephone: +44 (20) 7337-8000
Facsimile: +44 (20) 7337-8001

Warsaw

(through a Polish partnership)
ul. Emilii Plater 53
00-113 Warsaw
Poland
Telephone: +48 (22) 520-5000
Facsimile: +48 (22) 520-5001

Almaty

90 Shevchenko Street, 3rd Floor
Almaty 050022
Kazakhstan
Telephone: +7 (3272) 585-088
Facsimile: +7 (3272) 588-084

Washington, D.C.

1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Telephone: +1 (202) 974-5600
Facsimile: +1 (202) 974-5602

Houston

1100 Louisiana, Suite 3500
Houston, TX 77002
Telephone: +1 (713) 571-5900
Facsimile: +1 (713) 571-5970

Moscow

52/5 Kosmodamianskaya Naberezhnaya
Moscow 115054
Russian Federation
Telephone: +7 (095) 974-2424
Facsimile: +7 (095) 974-2425

Kyiv

11 Mykhailivska Street, 4th Floor
Kyiv 01001
Ukraine
Telephone: +380 (44) 230-2534
Facsimile: +380 (44) 230-2535

Beijing

Room 902, Tower A, Beijing Fortune Centre
7 Dongsanhuan Zhonglu
Chaoyang District
Beijing 100020
China
Telephone: +86 (10) 6530-8846
Facsimile: +86 (10) 6530-8849

If you would like additional copies of this client alert, please contact Phillipa Yule, Director of Marketing and Creative Services, at +1 (212) 408-5240 or e-mail: pyule@chadbourne.com.