

Client Alert

SEC Proposes One-Year Postponement of Accelerated Filing Deadlines

The SEC has proposed a one-year postponement of the final phase-in of the accelerated periodic report filing deadlines.¹ The accelerated periodic report filing deadlines apply to "accelerated filers", which are domestic reporting companies:

- with a public float of at least \$75 million;
- that have been subject to the Exchange Act reporting requirements for at least one year; and
- that have previously filed at least one annual report.

The SEC proposed the postponement in response to concerns raised by companies and auditors about simultaneously meeting the new internal control requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002 in connection with annual reports on Form 10-K for fiscal years ending on or after November 15, 2004 and the accelerated Form 10-K deadlines imposed by the current three-year phase-in period.

Under the SEC proposed rule, the acceleration of the Form 10-K filing deadline from 75 to 60 days after the fiscal year end for fiscal years ending on or after December 15, 2004 would be postponed for one year and the current 75-day deadline would remain in effect during that time.

Correspondingly, the SEC proposes that the acceleration of the Form 10-Q filing deadline from 40 to 35 days after the fiscal quarter end for fiscal years ending on or after December 15, 2004 would also be delayed for one year and the current 40-day deadline would remain in effect during that time. The proposed postponement would most significantly impact accelerated filers with December 31 fiscal year ends that would otherwise be subject to the shorter 60-day Form 10-K deadline beginning with the 2004 fiscal year. The postponement would not impact the filing deadlines for the 2004 fiscal year for accelerated filers with fiscal years ending prior to December 15.

¹ Securities and Exchange Commission Release Nos. 33-8477; 34-50254; File No. S7-32-04. A copy of the Release is available on the SEC website at www.sec.gov/rules/proposed/33-8477.pdf.

The following table sets forth the filing deadlines required under the current phase-in period and the SEC's proposed revised phase-in period:

Required Deadlines in Phase-In Period

For Fiscal Year Ending On or After	Current Phase-In		Proposed Phase-In	
	Form 10-Q Deadline	Form 10-K Deadline	Form 10-Q Deadline	Form 10-K Deadline
December 15, 2003	45 days	75 days	45 days	75 days
December 15, 2004	40 days	60 days	40 days	75 days
December 15, 2005	35 days	60 days	40 days	60 days
December 15, 2006	35 days	60 days	35 days	60 days

Among the questions raised by the SEC are:

- Whether it is appropriate to postpone the accelerated filing deadline for quarterly reports on Form 10-Q given that the management internal control report under Sarbanes-Oxley Act Section 404 is only required in annual reports on Form 10-K.
- Whether instead of postponing the accelerated filing deadlines for all accelerated filers, the SEC should provide for extensions of the filing deadlines only for companies that request extensions or only for those companies that demonstrate a need for the extension.

The SEC requests that comments on the proposed rules be received no later than October 1, 2004. Comments may be submitted electronically:

- On the SEC's Internet comment form (www.sec.gov/rules/proposed.shtml);
- By e-mail to rule-comments@sec.gov; or
- Through the Federal eRulemaking Portal (www.regulations.gov).

All comments should refer to File No. S7-32-04 (in the subject line if sent by e-mail).

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For Additional Information

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