

SEC POSTPONES FINAL PHASE-IN OF ACCELERATED REPORTING DEADLINES

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On November 17, 2004, the Securities and Exchange Commission approved a postponement of the final phase-in of the rules that shorten the deadlines for filing annual reports on Form 10-K and quarterly reports on Form 10-Q applicable to "accelerated filers". As a result of this action, annual reports of accelerated filers for the 2004 fiscal year will generally be due 75 days after year-end instead of 60 days after year-end. In addition, quarterly reports filed during 2005 will generally be due 40 days after the end of each quarter instead of 35 days after the quarter-end.

Background. In September 2002, the SEC adopted rules shortening certain filing deadlines for periodic reports filed pursuant to the Securities Exchange Act of 1934. The rules changed the deadlines for Form 10-K and Form 10-Q reports filed by companies qualifying as "accelerated filers."¹ An accelerated filer is a reporting company that, as of the end of its fiscal year,

- has aggregate market value of voting and non-voting common stock held by non-affiliates ("public float") of at least \$75 million (computed as of the last business day of the company's most recently completed second fiscal quarter);
- has been a reporting company for at least 12 months; and
- has previously filed at least one annual report.

The accelerated filing deadlines were to be phased-in over a three-year period with the reporting deadlines being gradually shortened from 90 days to 60 days for annual reports and from 45 days to 35 days for quarterly reports. The final phase-in was scheduled to apply with respect to annual reports filed for fiscal years ending on or after December 15, 2004 and subsequently filed quarterly reports.

Postponement of Phase-in. To date, most accelerated filers have been able to adjust their reporting regimens to accommodate the shortened filing deadlines. However, the further compression of the time available to prepare annual reports this year was challenging many

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The filing deadlines for issuers that are not accelerated filers were unchanged by this rulemaking. Annual reports on Form 10-K for issuers that are not accelerated filers are required to be filed within 90 days after the end of their fiscal years and their quarterly reports on Form 10-Q are required to be filed within 45 days after the end of each fiscal quarter.

companies because of the additional work required to comply for the first time with the evaluation and attestation requirements of Section 404 of the Sarbanes-Oxley Act.

The delay of the final phase-in will generally provide accelerated filers with an extra fifteen days in which to prepare their annual reports in respect of the 2004 fiscal year. As a result of the deferral of the final phase-in, annual reports for accelerated filers reporting on a calendar year basis will be due on March 16, 2005 rather than March 1, 2005. In addition, during 2005, quarterly reports on Form 10-Q for accelerated filers will be due 40 days after the end of the relevant quarter.

The phase-in of the accelerated filing deadlines will resume next year. Annual reports filed for fiscal years ending on or after December 15, 2005 will need to be filed within 60 days of year-end and quarterly reports for subsequent periods will be due 35 days after quarter-end.

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