

Capital Markets and Securities

A bulletin prepared by the Capital Markets Group at Vedder Price designed to keep corporate executives and investment banking professionals informed of major developments in the securities industry.

March 4, 2005

SEC DELAYS DEADLINE FOR SECTION 404 COMPLIANCE BY NON-ACCELERATED FILERS AND FOREIGN PRIVATE ISSUERS

On March 2, 2005, the SEC extended the compliance dates for non-accelerated filers and foreign private issuers that required such companies to include (1) in their annual reports a management report on the effectiveness of the company's internal controls over financial reporting, and (2) in their periodic reports, management certification of its evaluation of internal controls. Non-accelerated filers and foreign private issuers filing their annual reports on Form 20-F or Form 40-F may now defer compliance with these requirements until their first fiscal year ending on or after July 15, 2006. This is a one-year extension of the previous deadline of July 15, 2005. Similarly, for these filers, the deadline for compliance with the applicable Exchange Act provisions requiring an evaluation of changes to internal control over financial reporting requirements has been extended until the company's first periodic report due after the new deadline for annual reports.

Rules promulgated under Section 404 of the Sarbanes-Oxley Act of 2002 require that an issuer include in its annual report management's evaluation of the effectiveness of its internal control over financial reporting. These rules also require domestic companies to evaluate, as of the end of each fiscal quarter, any change in the company's internal control over financial reporting that occurred during the period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting. Section 302 requires that each issuer include with each periodic report management's certification that management has disclosed to the issuer's auditors and the audit committee of the board of directors all significant deficiencies in the design or operation of these internal controls, and state in the report whether there has been any change in the issuer's internal control over financial reporting that occurred during the most recent fiscal quarter and if so, whether such change has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

As a practical matter, in order to fully comply with the Section 404 requirements under the earlier deadline, an issuer would have had to complete their Section 404 evaluation by the end of the first fiscal quarter of 2005. Affected issuers who are not accelerated filers and do not anticipate becoming accelerated filers this year now have until 2006 to complete the evaluation and perform the necessary testing before a Section 404 report will be due. Notwithstanding the extension, issuers should continue to monitor whether they are likely to become accelerated filers for fiscal 2005, and if so, they will be required to comply with Section 404 for fiscal 2005.

The extension should not be viewed as a reprieve, but rather as an opportunity to fully implement a timely compliance program. Issuers would be well-advised to start the internal review process during this year in order to be assured of timely compliance. Companies that have completed the internal controls review have noted the benefits achieved from the early implementation of the changes to internal controls and processes resulting from such review.

Please direct any questions regarding this SEC announcement and other aspects of Sarbanes-Oxley compliance to Tom Desmond (312/609-7647), John Blatchford (312/609-7605) or Ernest Torain, Jr. (312/609-7558) at Vedder Price in Chicago; or Steven Berger (212/407-7714) or Dan Goldwasser (212/407-7710) at Vedder Price in New York.

Capital Markets and Securities bulletin is published by the law firm of Vedder, Price, Kaufman & Kammholz, P.C. It is intended to keep our clients and other interested parties informed of developments in corporate finance and securities matters. It is not a substitute for professional advice.

© 2005 Vedder, Price, Kaufman & Kammholz, P.C. Reproduction of this bulletin is permitted only with credit to Vedder, Price, Kaufman & Kammholz, P.C.

If you have any questions regarding material in this issue of *Capital Markets and Securities*, or suggestions for a specific topic you would like addressed in a future issue, please contact any member of the Capital Markets Group.

Contributing Authors: Thomas P. Desmond, John T. Blatchford, Ernest W. Torain, Jr., Steven R. Berger and Dan L. Goldwasser.

VEDDER, PRICE, KAUFMAN & KAMMHOLZ, P.C.

About Vedder Price

Vedder, Price, Kaufman & Kammholz, P.C. is a national, full-service law firm with more than 210 attorneys in Chicago, New York City and Roseland, New Jersey. The attorneys in the firm's Capital Markets Group regularly represent corporations and investment bankers, both foreign and domestic, in a wide variety of matters, including:

- debt and equity offerings, including initial public offerings, structured debt financings, aircraft securitizations, dual-class equity structures, and sophisticated preferred stock instruments;
- capital formation for initial capitalization, financing ongoing operations, and acquisitions;
- corporate disclosure, periodic reporting, proxy solicitations, and insider trading and beneficial ownership compliance matters;
- private placement of securities, including Rule 144A and Regulation S transactions;
- tender offers, mergers and acquisitions, and recapitalizations and restructurings;
- international offerings of securities and compliance by foreign issuers with U.S. securities laws;
- litigation and administrative and arbitration proceedings involving various securities fraud claims, disclosure issues, and regulatory enforcement matters; and
- municipal bond financings.

Chicago

222 North LaSalle Street
Chicago, Illinois 60601
312/609-7500
Fax: 312/609-5005
Contact: Robert J. Stucker

New York

805 Third Avenue
New York, New York 10022
212/407-7700
Fax: 212/407-7799
Contact: Neal I. Korval

New Jersey

Five Becker Farm Road
Roseland, New Jersey 07068-1023
973/597-1100
Fax: 973/597-9607
Contact: John E. Bradley

Members of the Capital Markets Group:

Thomas P. Desmond (<i>co-chair</i>)	312/609-7647
John T. Blatchford (<i>co-chair</i>)	312/609-7605
Christopher G. Barrett	312/609-7557
Steven R. Berger (<i>New York</i>)	212/407-7714
Robyn B. Goldman	312/609-7662
Jennifer Durham King	312/609-7835
James W. Morrissey	312/609-7717
Meeghan O'Donnell	312/609-7529
Stewart Reifler (<i>New York</i>)	212/407-7742
Ernest W. Torain, Jr.	312/609-7558
Richard L. Williams III	312/609-7588
Jason K. Zachary	312/609-7757
Dana S. Armagno	312/609-7543
James A. Arpaia	312/609-7618
William J. Bettman	312/609-7776
David C. Blum	312/609-7811
Deborah B. Eades	312/609-7661
Karin Jagel Flynn	312/609-7805
Dean N. Gerber	312/609-7638
Dan L. Goldwasser (<i>New York</i>)	212/407-7710
Douglas M. Hambleton	312/609-7684
Paul R. Hoffman	312/609-7733
John T. McEnroe	312/609-7885
Daniel C. McKay II	312/609-7762
Maureen A. Miller	312/609-7699
Robert J. Moran	312/609-7517
Lane R. Moyer	312/609-7586
Michael A. Nemeroff	312/609-7858
Timothy W. O'Donnell	312/609-7683
Cathy G. O'Kelly	312/609-7657
Daniel O'Rourke	312/609-7669
John R. Obiala	312/609-7522
Ronald Scheinberg (<i>New York</i>)	212/407-7730
Thomas E. Schnur	312/609-7715
Daniel T. Sherlock	312/609-7551
Guy E. Snyder	312/609-7656
Robert J. Stucker	312/609-7606
David A. Sturms	312/609-7589
Dalius F. Vasys	312/609-7623
Donald A. Wassall (<i>New York</i>)	212/407-7707