

# 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.

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## SEC EXTENDS DEADLINE FOR SECTION 404 COMPLIANCE BY NON-ACCELERATED FILERS TO 2007; PROPOSES AMENDMENTS TO ACCELERATED FILING SCHEDULE

Yesterday, at the first open meeting of the Commissioners chaired by Christopher Cox, the SEC:

- extended the Sarbanes-Oxley Section 404 internal controls compliance dates for non-accelerated filers (generally, those companies with a public float of less than \$75 million or which have been reporting under the Exchange Act for less than one year);
- proposed amendments that would maintain the current annual and quarterly reporting timetable (75 days and 40 days after fiscal year-end and quarter-end, respectively) for certain smaller accelerated filers (generally, those with a public float of less than \$700 million); and
- proposed a new category of “large accelerated filers” (generally, those with a public float of \$700 million or more) that would be required to file annual reports within 60 days after the end of their fiscal years ending on or after December 15, 2005, but would not be required to further accelerate the reporting of subsequent quarterly reports.

***Extension of Section 404 Deadline.*** The SEC extended the Section 404 compliance dates for non-accelerated filers. Section 404 requires that public companies, other than registered investment companies, include in their annual reports filed with the SEC a report of management on the company’s internal control over financial reporting and an accompanying auditor’s attestation. Additionally, such companies’ senior management must evaluate and disclose, as of the end of each fiscal period, any change in the company’s internal control over financial reporting that occurred during the period that materially affected, or is reasonably likely to materially affect, the company’s internal control over financial reporting.

As a result of the SEC’s action, non-accelerated filers need not comply with the Section 404 internal control reporting requirements until their first fiscal year ending on or after July 15, 2007. This is a one-year extension of the previous deadline of July 15, 2006, and follows two earlier extensions. Similarly, for these filers, the deadline for compliance with the requirement to evaluate and disclose changes to internal control over financial reporting has been extended until the company’s first periodic report due after its first Section 404 compliant Form 10-K annual report.

***Proposed Amendments to Accelerated Filing Deadlines.*** Currently, accelerated filers are scheduled to become subject to a 60-day filing deadline for their Form 10-K annual reports filed for fiscal years ending on or

after December 15, 2005 (calendar year 2005 Forms 10-K would be due March 1, 2006), and a 35-day deadline for the subsequently filed quarterly reports on Form 10-Q. The SEC's proposals would amend these deadlines as follows:

- For “large accelerated filers,” meaning filers with a public float of \$700 million or more, the proposed amendments would implement, as scheduled, the 60-day filing deadline for Form 10-K but retain the current 40-day filing deadline for Form 10-Q. Thus, as proposed, a “large accelerated filer” with a December 31 fiscal year-end would file its Form 10-K annual report for 2005 within the scheduled accelerated 60-day deadline, or by March 1, 2006, but could continue to file its subsequent Form 10-Q periodic reports within the current 40-day deadline after quarter-end.
- For all accelerated filers with a public float of less than \$700 million, the current 75-day deadline for Form 10-K annual reports and the 40-day deadline for Form 10-Q periodic reports after quarter-end would remain in place under the proposed amendments. Thus, an accelerated filer having a public float of less than \$700 million with a December 31 fiscal year-end may file its Form 10-K annual report for 2005 within the current 75-day deadline, or by March 16, 2006, and file its Form 10-Q periodic reports for 2006 within the current 40-day deadline after quarter-end.

Lastly, in a related action, the Commission also proposed amendments that would relax some of the present restrictions on exiting out of accelerated filer status. The amendments to the accelerated filing schedule are subject to a 30-day public comment period expected to expire in late October.

Please direct any questions regarding this SEC announcement and other aspects of Sarbanes-Oxley compliance to John Blatchford (312/609-7605), Tom Desmond (312/609-7647), 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.

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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 the executive editor, Thomas P. Desmond, at 312/609-7647 or at [tdesmond@vedderprice.com](mailto:tdesmond@vedderprice.com).

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