

SEC EXTENDS COMPLIANCE DATE FOR INTERNAL CONTROL OVER FINANCIAL REPORTING

The SEC extended the compliance dates for companies that are not accelerated filers to include in their annual reports a report of management and accompanying auditor's report on the company's internal control over financial reporting.

The rules, as now adopted, require that a company that is not an accelerated filer must begin to comply with the internal control over financial reporting requirements for its first fiscal year ending on or after July 15, 2007. These companies must also begin to comply with the rules requiring an evaluation of changes to internal control over financial reporting for the company's first periodic report due after the first annual report that must include management's report on internal control over financial reporting. Finally, a company that is not an accelerated filer may continue to omit during this period the relevant portion of the certifications that refers to the responsibility for establishing and maintaining internal control over financial reporting.

A foreign private issuer, however, that is an accelerated filer must begin to comply with the internal control over financial reporting and related requirements in the annual report for its first fiscal year ending on or after July 15, 2006.

An "accelerated filer" means an issuer after it first meets the following conditions as of the end of its fiscal year:

- the aggregate market value of the common equity held by non-affiliates of the issuer is \$75 million or more;
- the issuer has been an Exchange Act reporting company for a period of at least twelve calendar months;
- the issuer has filed at least one annual report; and
- the issuer is not eligible to use Forms 10-KSB and 10-

QSB for its annual and quarterly rep

The SEC specifically warned issuers of their continuing obligations under the Exchange Act, including Section 13(b)(2), which, among other matters, requires issuers devise and maintain effective internal accounting controls.

The SEC also requested from the public additional comments with respect to internal control over financial reporting. The SEC's questions are:

- Should there be a different set of internal control over financial reporting requirements that applies to smaller companies than applies to larger companies? Would it be appropriate to apply a different set of substantive requirements to non-accelerated filers, or for management of non-accelerated filers to make a different kind of assessment? Why or why not? If you think that there should be a different set of requirements for companies that are not accelerated filers, what should those requirements be? What would be the impact of any such differences in the requirements on investors?
- Would a public float threshold that is higher or lower than the \$75 million threshold that we use to distinguish accelerated filers from non-accelerated filers be more appropriate for this purpose? If so, what should the threshold be and why? Would it be better to use a test other than public float for this purpose, such as annual revenues, number of segments or number of locations or operations? If so, why?
- Should the independent auditor attestation requirement be different for smaller public companies? If so, how should the requirements differ?

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- Should the same standard for auditing internal control over financial reporting apply to auditors of all public companies, or should there be different standards based on the size of the public company whose internal control is being audited? If the latter, how should the standards differ?
- How can we best assure that the costs of the internal control over financial reporting requirements imposed on smaller public companies are commensurate with the benefits?

We solicit comment describing the actions that non-accelerated filers already have taken to prepare for compliance with the internal control over financial reporting requirements. Specific time and cost estimates would be particularly helpful. We also would be interested in receiving additional information about the compliance burdens incurred this year by smaller accelerated filers that included internal control reports in their Form 10-K annual reports.