

SEC UPDATE

SEC Adopts Revisions to Periodic Report Filing Deadlines and to the Definition of an Accelerated Filer

Next year, larger public companies will be subject to the final phase-in of accelerated periodic report filing deadlines. The SEC voted to adopt amendments to the periodic report filing deadlines and the 1934 Act Rule 12b-2 definition of an accelerated filer. The amendments:

- create a new category of companies called “large accelerated filers”;
- redefine the category of “accelerated filers”;
- establish longer Form 10-K annual report and Form 10-Q quarterly report deadlines for accelerated filers,
- provide that only large accelerated filers will be subject to a final phase-in of the 60-day Form 10-K annual report deadline beginning with fiscal years ending on or after December 15, 2006;
- modify the requirements for exiting out of accelerated filer status; and
- establish requirements for exiting out of large accelerated filer status.

Background

In 2002, the SEC adopted rules that subjected companies with \$75 million or more in public float to accelerated deadlines for their annual reports on Form 10-K and quarterly reports on Form 10-Q. The accelerated deadlines were to be phased-in gradually over a three-year period. In 2004, the SEC postponed the final phase-in of the accelerated deadlines. Currently, an accelerated filer’s annual report on Form 10-K is due within 75 days after fiscal year-end and its quarterly reports on Form 10-Q are due within 40 days after fiscal quarter-end. Beginning with the annual reports for the fiscal years ending on or after Dec. 15, 2005, an accelerated filer’s annual report on Form 10-K would have been due within 60 days after fiscal year-end and its quarterly reports on Form 10-Q would have been due within 35 days after fiscal quarter-end.

Large Accelerated Filers and Accelerated Filers

The SEC has created a new category of large accelerated filers that include companies with a public float of \$700 million or more. The amendments also redefine “accelerated filers” as companies that have at least \$75 million, but less than \$700 million, in public float.

Amendments to Filing Deadlines

The deadlines are changed in the following manner:

- large accelerated filers will be subject to a 60-day Form 10-K annual report deadline starting in fiscal years ending on or after December 15, 2006 (meaning the new deadline is pushed back one year), and to a 75-day deadline until then;
- large accelerated filers will be subject to a 40-day Form 10-Q quarterly report deadline;
- the redefined accelerated filers will be subject to a 75-day Form 10-K annual report deadline; and
- the redefined accelerated filers will be subject to a 40-day Form 10-Q quarterly report deadline.

The periodic report filing deadlines for the other reporting companies will not be changed. Non-accelerated filers will continue to file their annual reports on Form 10-K or 10-KSB under the 90-day deadline and quarterly reports on Form 10-Q or 10-QSB under the 45-day deadline. The amendments also do not impact Form 20-F or Form 40-F filing deadlines applicable to foreign private issuers.

Amendments to the Accelerated Filer Definition

The amendments modify the exit requirements out of accelerated filer status by permitting an accelerated filer whose public float has dropped below \$50 million to file an annual report on a non-accelerated basis for the same fiscal year that the determination of public float is made. The amendments also provide for similar requirements for exiting out of large accelerated filer status, permitting a large accelerated filer to exit promptly out of large accelerated filer status once its public float has dropped below \$500 million.

This memorandum is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this memorandum should be directed to any member of the Paul, Weiss Securities Group, including:

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