

December 2006

Extensions In Respect of Section 404 Requirements for Non-Accelerated Filers and Newly Public Companies

On December 15, 2006, the SEC established new compliance dates for certain issuers in respect of meeting the requirements relating to internal control over financial reporting. These new dates provide relief for non-accelerated filers, newly public companies and foreign private issuers listing on a U.S. exchange for the first time. The extended dates are intended to reduce compliance costs, assist smaller companies in developing best practices for compliance and promote greater efficiency in preparing management reports.

In part to reflect concerns that, under the new rules, management's report will appear without an auditor's attestation report, and because the auditor's attestation report which will be issued a year later might conflict with the management's report, the SEC has provided that during the first year of compliance such reports will be deemed "furnished" rather than "filed."

Non-Accelerated Filers

Non-accelerated filers will not be required to provide:

- a management's report on the effectiveness of internal control over financial reporting until the annual report for the first fiscal year ending on or after December 15, 2007 (instead of July 15, 2007) or
- the auditor's attestation report on internal control over financial reporting until the annual report for the first fiscal year ending on or after December 15, 2008 (instead of July 15, 2007).

Under the rule change, non-accelerated filers must complete only the management's portion of the internal control requirements in their first year of compliance with the requirements, and the management report will be deemed "furnished" rather than "filed" for that first year.

Furthermore, until non-accelerated filers become subject to the auditor attestation report requirement, the registered public accounting firm retained by the company to prepare the accountant's report in the company's annual report need not attest to, or report

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on, the assessment by management of the effectiveness of the company's internal control over financial reporting.

Companies that only provide the management's report during their first year of compliance must include a statement in substantially the following form:

This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.

In addition, these filers will not be required to comply with the certification requirements in respect of evaluation of changes to internal control until the first periodic report filed after the annual report containing management's report and the certification requirement in respect of designing, establishing and maintaining internal control may be omitted until the annual report containing the management's report is filed.

The SEC did not amend the definition of accelerated filer; therefore, the point at which accelerated filer status is measured remains unchanged (the calculation is made at the end of the year based on the company's public float as of the end of its second quarter). In addition, if a company becomes an accelerated filer or a large accelerated filer during the extension period, the extension will no longer apply.

If the SEC has not issued additional guidance for management on how to complete its assessment of internal control over financial reporting in time to be of sufficient assistance in connection with annual reports filed for fiscal years ending on or after December 31, 2007, it will consider whether the date should be further postponed. Similarly, the SEC will determine whether to further postpone the deadline for inclusion of an auditor's attestation report after it considers the anticipated revisions to Auditing Standard No. 2.

Non-accelerated filers are those that are neither accelerated filers nor large accelerated filers. Large accelerated filers are issuers that (1) have an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of \$700 million or more, (2) have been subject to SEC reporting requirements for a period of at least twelve months, (3) have filed at least one annual report under the Exchange Act, and (4) not eligible to use Forms 10-KSB and 10-QSB for annual and quarterly reports. Accelerated filers are issuers that, in addition to (2) through (4) above, have an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of \$75 million or more, but less than \$700 million.

Foreign Private Issuers

Section 404 disclosure requirements apply to both domestic issuers and foreign private issuers. Foreign private issuers filing on Form 20-F or 40-F that are non-accelerated filers also benefit from the new compliance dates. In addition, the management's report for

foreign private issuers filing on Form 20-F or 40-F that are accelerated filers (but not large accelerated filers) will be deemed “furnished” rather than “filed” for the year that such issuers are only required to provide management’s report. By reason of action taken by the SEC in August 2006, foreign private issuers filing on Form 20-F or 40-F that are accelerated filers (but not large accelerated filers) are not subject to the auditor attestation requirement until a year after they first begin complying with the management report requirement.

Grace Periods for Newly Public Companies

The SEC has approved a transition period to alleviate reporting burdens imposed on newly public companies. Under the rule, a newly public company does not need to comply with the requirements relating to internal control over financial reporting in its first annual report on Form 10-K, 20-F or 40-F. Rather, the company may begin to comply with these requirements in the second annual report that it files with the SEC. In addition, a newly public company need not evaluate changes to internal control over financial reporting requirements, or comply with the provisions relating to the maintenance of internal control over financial reporting, until the first periodic report due after the first annual report including management’s report. Finally, newly public companies will not be required to comply with the certification requirement in respect of designing, establishing and maintaining internal control until the annual report containing the management’s report is filed.

This relief also applies to foreign companies that become subject to the Exchange Act reporting requirements in connection with a transaction which is not registered under the Securities Act that constitutes an exchange offer for the securities of, or a business combination with, a company that has reporting obligations under the Exchange Act. For example, the relief as adopted would apply to an unregistered foreign company that succeeds to the reporting obligations of a registered foreign company in connection with an acquisition effected under Securities Act Section 3(a)(10).

The transition period is intended to reduce undue burden that may be imposed on a newly public company in the comprehensive process of preparing its first annual report (allowing, among other things, a company to complete its initial public offering in close proximity to its fiscal year-end). In addition, the transition period is expected to alleviate reporting burdens on companies that may become subject to Exchange Act reporting obligations after filing a Securities Act registration statement, but are eligible to terminate their periodic reporting obligations after filing just one report (by reason of having fewer than 300 holders of the securities covered by the registration statement).

A newly public company is required to include a statement in respect of its utilization of these temporary rules in its first annual report in substantially the same form as that set forth above.

Compliance Dates

The compliance dates applicable to all filers in respect of Section 404 of the Sarbanes-Oxley Act can be summarized as follows:

	Accelerated Filer Status	Revised Compliance Dates and Final Rules Regarding the Internal Control over Financial Reporting Requirements	
		Management's Report	Auditor's Attestations
U.S. Issuer	Large Accelerated Filer OR Accelerated Filer (\$75MM or more)	Already complying (Annual reports for fiscal years ending on or after November 15, 2004)	Already complying (Annual reports for fiscal years ending on or after November 15, 2004)
	Non-accelerated Filer (less than \$75MM)	Annual reports for fiscal years ending on or after December 15, 2007	Annual reports for fiscal years ending on or after December 15, 2008
Foreign Issuer	Large Accelerated Filer (\$700MM or more)	Annual reports for fiscal years ending on or after July 15, 2006	Annual reports for fiscal years ending on or after July 15, 2006
	Accelerated Filer (\$75MM or more and less than \$700MM)	Annual reports for fiscal years ending on or after July 15, 2006	Annual reports for fiscal years ending on or after July 15, 2007
	Non-accelerated Filer (less than \$75MM)	Annual reports for fiscal years ending on or after December 15, 2007	Annual reports for fiscal years ending on or after December 15, 2008
U.S. or Foreign Issuer	Newly Public Company	Second Annual Report	Second Annual Report

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