



Securities Briefing Vol. 4, No. 1

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Topics in this Securities Briefing:

This Securities Briefing discusses:

- The SEC's final rules extending the date for non-accelerated filers and foreign private issuers to comply with Section 404 of the Sarbanes-Oxley Act;
- The SEC's temporary postponement of the final phase-in period for acceleration of the due dates of periodic reports filed by accelerated filers; and
- The SEC's Division of Corporate Finance release of Frequently Asked Questions on Current Reports on Form 8-K.

This Securities Briefing is intended only as a summary of the SEC rules and releases discussed and you are encouraged to review the full text of the rules and releases.

Final SEC Rules Extending Date to Comply with Section 404

Overview

On March 2, 2005, the SEC adopted final rules extending the date that non-accelerated filers and foreign private issuers must provide the management report on internal control over financial reporting and related attestation report required by Section 404 of the Sarbanes-Oxley Act by one year. Non-accelerated filers and foreign private issuers do not need to comply with such requirements until the first fiscal year ending on or after July 15, 2006 (extended from July 15, 2005).

The SEC indicated that the extension, among other things, will allow smaller public companies additional time to consider new guidance from the Committee of Sponsoring Organizations (COSO) which has been formed to expand the existing COSO Framework as it applies to small companies. COSO is expected to issue the new guidance during the summer of 2005. Alan L. Beller, Director of the Division of Corporation Finance, commented as follows: "Given the burdens in designing and implementing Section 404 compliance for smaller and non-U.S. companies, this extension strikes the right balance. Companies should use the extension not to delay but to improve the quality of their efforts."



Copy of Final SEC Rules Extending Date to Comply with Section 404

A copy of the final SEC rule extending the compliance date is available on the SEC's website at www.sec.gov by selecting Final Rule: Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports of Non-accelerated Filers and Foreign Private Issuers or by going to <http://www.sec.gov/rules/final/33-8545.htm>.

SEC's Temporary Postponement of the Final Phase-in Period for Acceleration of Periodic Report Filing Dates

Overview

Based on public comments, the SEC adopted final rules to postpone for one year the final phase-in of the accelerated filing deadlines for periodic reports filed by accelerated filers. As a result, the deadline for an accelerated filer to file its annual report for its fiscal year ending on or after December 31, 2004 remains at 75 days after fiscal year end and the deadline for filing its quarterly reports remains at 40 days after quarter end. Beginning with fiscal years ending or after December 31, 2005, an accelerated filer will have to file its annual report within 60 days after fiscal year end and file its quarterly reports within 35 days after quarter end.

Definition of Accelerated Filer

An accelerated filer is an issuer that meets the following conditions as of the end of its fiscal year:

has a public float of \$75 million or more as computed on the last business day of the issuer's most recently completed second fiscal quarter;

has been subject to reporting requirements under the Securities and Exchange Act of 1934 for at least 12 calendar months;

has filed at least one annual report; and

is not eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports.

Copy of Final SEC Rules Postponing Final Phase-in Period for Acceleration of Periodic Report Filing Dates

A copy of the final SEC rule postponing the final phase-in period for acceleration of periodic report filing dates is available on the SEC's website at www.sec.gov by selecting Final Rule: Temporary Postponement of the Final Phase-In Period for Acceleration of Periodic Report Filing Dates or by going to <http://www.sec.gov/rules/final/33-8507.htm>.

SEC's Frequently Asked Questions on Current Report on Form 8-K

Overview



The staff at the SEC's Division of Corporation Finance has issued a FAQ relating to the Current Report on Form 8-K. The FAQ contains 30 questions and answers that address various issues raised regarding the implementation and interpretation of the revised Current Report on Form 8-K. Be aware that the FAQ does not constitute a rule, regulation or statement of the SEC, but represents the view of the staff on the various issues discussed.

Among other things, the FAQs address a number of questions relating to disclosure of compensation and employment arrangements with executive officers and directors under Item 1.01 (Entry of a Material Definitive Agreement), including the following:

- A summary sheet given to directors that sets forth the meeting fees and basic compensation information that the company will pay to directors should be disclosed under Item 1.01 if it in fact contains the terms of the agreement between the director and the company regarding the director's compensation.
- An amendment to an employment agreement with a named executive officer or director must be disclosed under Item 1.01.
- A company that enters into an employment agreement with an executive officer that is not a named executive officer but which is material to the company, or enters into an amendment of such an agreement, must disclose such agreement or amendment under Item 1.01.
- Adoption of an equity compensation plan by the company's directors under which named executive officers are eligible to participate when such plan is not subject to shareholder approval must be disclosed under Item 1.01 when adopted by the directors even if no awards have been made under the plan. If such plan is subject to shareholder approval, it need not be disclosed until approved by the shareholders.
- Adoption of a cash bonus plan by the company's directors under which named executive officers are eligible to participate must be disclosed under Item 1.01 even if no specific performance criteria, performance goals or bonus opportunities have been communicated to plan participants. If the plan is adopted subject to shareholder approval, it need not be disclosed until approved by the shareholders.
- If the Form 8-K disclosing the adoption of a cash bonus plan does not disclose the specific performance goals and business criteria for the performance period, the company must file a subsequent Form 8-K disclosing these measures when they are set by the company's directors.
- Cash awards paid out under a previously disclosed cash bonus plan (including performance criteria) based upon a determination that the performance criteria has been satisfied need not be reported in a subsequently filed Form 8-K. However, payment of cash awards must be disclosed under Item 1.01 of a subsequently filed Form 8-K if the company exercised discretion to pay out the cash awards even though the specified performance criteria of the cash bonus plan was not satisfied.

Copy of Frequently Asked Questions on Current Report on Form 8-K

A copy of the SEC's FAQs on the Current Report on Form 8-K is available on the SEC's website at www.sec.gov by selecting Current Report on Form 8-K Frequently Asked Questions or by going to <http://www.sec.gov>



gov/divisions/corpfin/form8kfaq.htm.

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