

- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- APPELLATE LITIGATION
- AVIATION
- BANKRUPTCY, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- CLASS ACTION DEFENSE
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- CORPORATE COMPLIANCE & WHITE COLLAR DEFENSE
- ECONOMIC DEVELOPMENT
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE
- INSURANCE, BANKING & FINANCIAL SERVICES
- INTELLECTUAL PROPERTY
- INTERNATIONAL
- LABOR & EMPLOYMENT
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL, STATE & LOCAL)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESTATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES

SEC Approves Another Extension for Auditor Attestation Reports by Non-Accelerated Filers

By: *Scott D. Chenevert and Justin D. DesHotel*

On June 20, 2008, the Securities and Exchange Commission (“SEC”) announced that it has again adopted a one-year extension to the compliance date for non-accelerated filers to include an auditor attestation report in their annual reports. Such attestation reports are required by Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC’s rules thereunder¹ and call for the filer’s internal auditors to attest to the effectiveness of the company’s internal controls over financial reporting.

Prior to this extension, non-accelerated filers would have been required to provide an auditor attestation report beginning with their annual report for fiscal years ending on or after December 15, 2008. With this extension, a non-accelerated filer will be allowed to delay providing such a report until it files its annual report for a fiscal year ending on or after December 15, 2009.

Until that time when auditor attestation reports are required to be filed by non-accelerated filers, their management reports on internal controls² will continue to be deemed “furnished” rather than “filed.” This distinction means that management reports can be furnished to the SEC without being subject to liability under Section 18 of the Securities Act of 1933.³

The SEC also announced that it has received approval from the Office of Management and Budget to conduct a study on the costs of complying with Section 404 reporting requirements. The study will pay special attention to the costs imposed on smaller reporting companies.

Click [here](#) to view the final SEC release or [here](#) to view the press release.

¹ Specifically, Item 308(b) of Regulation S-K.

² Management reports on internal controls are required by Item 308T(a) of Regulation S-K.

³ The report, however, will still be subject to liability under Section 10(b) and Rule 10b-5 of the Securities Act of 1933.

Please remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues you may contact the head of our Corporate and Securities Practice Group:

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