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## SEC EXTENDS FILING PERIOD FOR INTERNAL CONTROL REPORTS FOR CERTAIN ACCELERATED FILERS

*By Carl C. Hanemann and Amos J. Oelking III*

On November 30, 2004, the SEC issued an order granting certain “accelerated filers” (companies that have a non-affiliate market capitalization of \$75 million or more, have been subject to Exchange Act reporting requirements for at least one year, have filed at least one 10-K, and are not eligible to use Forms 10-KSB and 10-QSB) an additional 45 days within which to include in their next Form 10-K the internal control report of management required by Item 308(a) of Regulation S-K and the related auditor’s attestation report required by Item 308(b) of Regulation S-K. *(Our July 2003 E\*Zine discussed the SEC’s final rules regarding the management internal control report and auditor attestation report requirements.)*

The extended filing period is available to an accelerated filer that has (i) a fiscal year ending between and including November 15, 2004 and February 28, 2005, and (ii) a non-affiliate market capitalization (*i.e.*, public equity float) of less than \$700 million as of the end of its second fiscal quarter in 2004. Accelerated filers who satisfy these criteria and wish to take advantage of the extended filing period must:

- file an otherwise complete Form 10-K, including audited financial statements, within 75 days after their fiscal year-end as required under current rules applicable to accelerated filers (or within the extended period permitted by Exchange Act Rule 12b-25 if the company satisfies the conditions of the rule);
- identify in their initial 10-K filing the information that the company has not filed as permitted by the SEC’s order; that is, the internal control report of management and the related auditor’s attestation report;
- disclose in the initial 10-K filing any material weakness in the company’s internal control over financial reporting that the company has identified or that the company’s registered public accounting firm has identified and communicated to the company prior to the initial 10-K filing; and
- amend their initial 10-K filing not later than 45 days after the end

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of the 75-day filing period required under current rules (regardless of whether the company has relied on Exchange Act Rule 12b-25 to extend the 75-day filing period) to include management's internal control report and the auditor's attestation report.

Accelerated filers who qualify for the extended filing period may not utilize Exchange Act Rule 12b-25 to extend the 45-day filing period for the filing of the 10-K amendment. Also, for purposes of eligibility to use registration statement Forms S-2 and S-3, an accelerated filer availing itself of the extended filing period will not be considered to have timely filed its Form 10-K until it has filed its 10-K amendment.

All other accelerated filers will be required to include both management's internal control report and the related auditor's attestation report in their next Form 10-K within 75 days after their fiscal year-end as required under current rules (or within the extended period permitted by Exchange Act Rule 12b-25 if the accelerated filer satisfies the conditions of the rule).

*(Click [here](#) to link to the full text of the SEC's November 30, 2004 order.)*

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*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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