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SEC ISSUES FINAL RULES POSTPONING FINAL PHASE-IN OF ACCELERATED 10-K/10-Q FILING DEADLINES

By Amos J. Oelking III

On November 17, 2004, the SEC issued its final rules providing for a one-year postponement of the final phase-in period of the accelerated Forms 10-K/10-Q filing deadlines applicable to “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). The final rules were adopted as proposed in August 2004.

Under existing rules, the current filing deadlines for accelerated filers are 75 days after fiscal year-end for Form 10-K and 40 days after quarter-end for subsequent Forms 10-Q. For fiscal years ending on or after December 15, 2004, the filing deadlines were to be accelerated to 60 days after fiscal year-end for Form 10-K and to 35 days after quarter-end for subsequent Forms 10-Q. ([Click here to link to our September 2002 E*Zine discussing the SEC’s adoption of the accelerated 10-K/10-Q filing deadlines for accelerated filers.](#))

The SEC’s final rules, however, postpone this acceleration for one year, such that the filing deadline will remain at 75 days after fiscal year-end for Forms 10-K for fiscal years ending on or after December 15, 2004, and at 40 days after quarter-end for subsequent Forms 10-Q. For fiscal years ending on or after December 15, 2005, the filing deadline for Form 10-K will be accelerated to 60 days after fiscal year-end and, for subsequent Forms 10-Q, to 35 days after quarter-end. This will complete the phase-in of the accelerated filing deadlines, and these deadlines will remain in place for all subsequent fiscal years. ([Click here to link to the full text of the SEC’s final rules.](#))

The purpose of the postponement is to give accelerated filers and their auditors additional time to comply with the SEC’s new requirements regarding internal control over financial reporting. ([Click here to link to our July 2003 E*Zine discussing the SEC’s final rules regarding the management internal control report and auditor attestation report requirements.](#)) Accelerated filers must include both management’s internal control report and the related auditor’s attestation report in their 10-Ks, beginning with their 10-K for their first fiscal year ending on or after

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November 15, 2004. The one-year postponement thus gives accelerated filers and their auditors an additional 15 days with which to comply with the new requirements.

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:

Curtis R. Hearn
Jones Walker
201 St. Charles Ave., 51st Fl.
New Orleans, LA 70170-5100
ph. 504.582.8308
email chearn@joneswalker.com

Corporate and Securities Practice Group

ALLISON C. BELL
LISA MANGET BUCHANAN
MONIQUE A. CENAC
IZABELA M. CHABINSKA
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