

SEC ISSUES FINAL RULES TO FURTHER EXTEND COMPLIANCE DATES FOR INTERNAL CONTROL REPORTS FOR NON-ACCELERATED FILERS AND FOR NEW PUBLIC COMPANIES

By Allison C. Bell

On December 15, 2006, the Securities and Exchange Commission (“SEC”) issued final rules to further extend the dates for compliance by “non-accelerated” filers with the internal control requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002, and to provide a transition period for new public companies to comply with the Section 404 internal control requirements. ([Click here to link to the SEC’s release regarding the final rules.](#))

Non-Accelerated Filers

Under the final rules, a non-accelerated filer is not required to provide a management report on internal control over financial reporting until it files an annual report for the fiscal year ending on or after December 15, 2007. The final rules further provide that a non-accelerated filer is not required to provide the auditor’s attestation report on internal control over financial reporting until it files an annual report for the fiscal year ending on or after December 15, 2008. A non-accelerated filer will be required to clearly disclose in management’s report that management’s assessment has not been attested to by the auditor.

The compliance date extension for non-accelerated filers is the fourth such extension granted by the SEC. Most recently, in September 2005, the SEC approved an extension of the Section 404 compliance dates for non-accelerated filers to the fiscal year ending on or after July 15, 2007 for both the management report and the auditor’s attestation report.

In its Release, the SEC explained that in light of the challenges smaller companies will face in complying with the internal control over financial reporting and related requirements, it is necessary to continue to examine ways to make the reporting process more efficient and effective. This delay will allow time for the SEC to review reports and other guidance recently issued on the subject by the Committee of Sponsoring Organization (“COSO”), the SEC Advisory Committee on Smaller Public Companies, and the U.S. Government Accountability Office, among other organizations. The SEC also stated in its Release that if it has not issued additional guidance to management on how to complete its assessment of internal controls

- 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
- 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 AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESTATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES
- WHITE COLLAR CRIME

- 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
- 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 AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESTATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES
- WHITE COLLAR CRIME

over financial reporting in time to be of assistance in connection with annual reports filed for fiscal years ending on or after December 15, 2007, the compliance deadline could be further postponed.

With respect to the auditor's attestation report, the SEC recognized in its Release that because a company will likely only file a management report during its first year of compliance, without an accompanying auditors attestation report, management's assessment may be called into question if the company's auditor comes to a contrary conclusion in its report filed in the subsequent year. To address this concern, the management report included in the company's annual report filed during the first year of compliance will be deemed "furnished" rather than "filed"—thus avoiding potential liabilities under Section 18 of the Exchange Act and incorporation by reference into Securities Act Registration Statements.

New Public Companies

Finally, the rules also provide a transition period for new public companies before becoming subject to the internal control over financial reporting requirements. Under the final rules, a new public company will be required to comply with the Section 404 internal control reporting requirements beginning in the second annual report that it files with the SEC. A new public company will be required to disclose in its first annual report that it has not included either management's report on internal control or the auditor's attestation report.

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
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 AND STATE)
TELECOMMUNICATIONS & UTILITIES
TRUSTS, ESTATES &
PERSONAL PLANNING
VENTURE CAPITAL &
EMERGING COMPANIES
WHITE COLLAR CRIME

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 ATTORNEYS

Allison C. Bell
Sarah B. Belter
Robert B. Bieck, Jr.
John C. Blackman, IV
Robert R. Casey
Monique A. Cenac
Scott D. Chenevert
Leola C. Cormier
Edward B. Crosland
Mark A. Cunningham
Douglas N. Currault II
Cecelia M. Duran
Amy L. Glovinsky
H. Hughes Grehan
Carl C. Hanemann
Curtis R. Hearn
William H. Hines
David M. Hunter
Keith M. Landry
F. Rivers Lelong, Jr.
William B. Masters

Merideth G. Maxwell
L. Richards McMillan, II
Thomas F. Morante
Margaret F. Murphy
Kenneth J. Najder
J. Marshall Page, III
R. Joseph Parkey, Jr.
Thomas K. Potter, III
Rudolph R. Ramelli
Thomas Y. Roberson, Jr.
Joseph P. Roger
Dionne M. Rousseau
Amy G. Scafidel
M. Richard Schroeder
Ansley Seaver
Kelly C. Simoneaux
David P. Sofge
Gita A. Timmerman
Jarred G. Trauth
Richard P. Wolfe
Scott T. Zander

To subscribe to other E*Zines, visit www.joneswalker.com/news/ezine.asp