

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR PARTS 210, 228, 229 and 249**

**[RELEASE NOS. 33-8934; 34-58028; File No. S7-06-03]**

**RIN 3235-AJ64**

**INTERNAL CONTROL OVER FINANCIAL REPORTING IN EXCHANGE ACT  
PERIODIC REPORTS OF NON-ACCELERATED FILERS**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** We are adopting amendments to temporary rules that were published on December 21, 2006, in Release No. 33-8760 [71 FR 76580]. Those temporary rules require companies that are non-accelerated filers to include in their annual reports, pursuant to rules implementing Section 404(b) of the Sarbanes-Oxley Act of 2002, an attestation report of their independent auditors on internal control over financial reporting for fiscal years ending on or after December 15, 2008. Under the amendments, a non-accelerated filer will be required to file the auditor's attestation report on internal control over financial reporting when it files an annual report for a fiscal year ending on or after December 15, 2009.

**EFFECTIVE DATES:** The amendments are effective [insert date 60 days after publication in the Federal Register], except Form 10-QSB will be effective from [insert date 60 days after publication in the Federal Register] to October 31, 2008; §228.308T and Form 10-KSB will be effective from [insert date 60 days after publication in the Federal Register] to March 15, 2009; and §§ 210.2-02T and 229.308T, Form 20-F, Form 40-F, Form 10-Q, and Form 10-K will be effective from [insert date 60 days after publication in the Federal Register] to June 30, 2010.

**FOR FURTHER INFORMATION CONTACT:** Sean Harrison, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551-3430, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments to the following forms and temporary rules: Rule 2-02T of Regulation S-X,<sup>1</sup> Item 308T of Regulations S-K<sup>2</sup> and S-B,<sup>3</sup> Item 4T of Form 10-Q,<sup>4</sup> Item 3A(T) of Form 10-QSB,<sup>5</sup> Item 9A(T) of Form 10-K,<sup>6</sup> Item 8A(T) of Form 10-KSB,<sup>7</sup> Item 15T of Form 20-F,<sup>8</sup> and Instruction 3T of General Instruction B.(6) of Form 40-F.<sup>9</sup>

## **I. BACKGROUND**

In February 2008,<sup>10</sup> we proposed an extension of the Section 404(b) auditor attestation requirement for non-accelerated filers.<sup>11</sup> This proposal followed an action we took in December 2006<sup>12</sup> to extend the dates by which non-accelerated filers must begin to comply with the internal

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<sup>1</sup> 17 CFR 210-2.02T.

<sup>2</sup> 17 CFR 229.308T.

<sup>3</sup> 17 CFR 228.310T.

<sup>4</sup> 17 CFR 249.308a.

<sup>5</sup> 17 CFR 249.308b.

<sup>6</sup> 17 CFR 249.310.

<sup>7</sup> 17 CFR 249.310b.

<sup>8</sup> 17 CFR 249.220f.

<sup>9</sup> 17 CFR 249.240f.

<sup>10</sup> See Release No. 33-8889 (February 1, 2008) [73 FR 7450].

<sup>11</sup> Although the term “non-accelerated filer” is not defined in our rules, we use it throughout this release to refer to an Exchange Act reporting company that does not meet the Rule 12b-2 definition of either an “accelerated filer” or a “large accelerated filer.”

<sup>12</sup> See Release No. 33-8760 (December 15, 2006) [71 FR 76580] (the “2006 Release”).

control over financial reporting (“ICFR”) requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002.<sup>13</sup> Specifically, we postponed for five months, from fiscal years ending on or after July 15, 2007, to fiscal years ending on or after December 15, 2007, the date by which non-accelerated filers must begin to comply with the management report requirement in Item 308(a) of Regulation S-K.<sup>14</sup> We also postponed to fiscal years ending on or after December 15, 2008, the date by which non-accelerated filers must begin to comply with the auditor attestation report requirement in Item 308(b) of Regulation S-K.<sup>15</sup> We indicated that we would consider further postponing the auditor attestation report compliance date after considering the anticipated revisions to the Public Company Accounting Oversight Board’s (“PCAOB”) Auditing Standard No. 2 (“AS No. 2”).

In the 2006 Release, we cited two primary reasons for deferring implementation of the auditor attestation report requirement for an additional year after implementation of the management report requirement. First, we stated that the deferred implementation would afford non-accelerated filers and their auditors the benefit of anticipated changes by the PCAOB to AS No. 2, subject to Commission approval, as well as any implementation guidance that the PCAOB issued for auditors of smaller public companies.

Second, we expected a deferred implementation of the auditor attestation requirement to save non-accelerated filers the full potential costs associated with the auditor’s initial attestation to, and report on, management’s assessment of ICFR during the period that changes to AS No. 2

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<sup>13</sup> 15 U.S.C. 7262.

<sup>14</sup> 17 CFR 229.308(a). We effected the postponement, in part, by adding temporary Item 308T to Regulation S-K. We similarly added temporary Item 308T to Regulation S-B, but the Commission recently adopted amendments that will eliminate Regulation S-B effective March 15, 2009. See Release No. 33-8876 (December 19, 2007) [73 FR 934].

<sup>15</sup> 17 CFR 229.308(b).

were being considered and implemented, and the PCAOB was formulating guidance specifically for auditors of smaller public companies. Public commenters previously have asserted that the ICFR compliance costs are likely to be disproportionately higher for smaller public companies than larger ones, and that the auditor's fee represents a large percentage of those costs.<sup>16</sup>

On June 20, 2007, we approved the issuance of interpretive guidance regarding management's report on ICFR<sup>17</sup> and adopted rule amendments<sup>18</sup> to help public companies strengthen their ICFR evaluations while reducing unnecessary costs. The interpretive release provided guidance for management on how to conduct an evaluation of the effectiveness of a company's ICFR. The guidance sets forth an approach by which management can conduct a top-down, risk-based evaluation of ICFR.

In addition, on July 25, 2007, we approved the PCAOB's Auditing Standard No. 5 ("AS No. 5"), which replaced AS No. 2. The new standard sets forth the professional standards and related performance guidance for independent auditors to attest to, and report on, management's assessment of the effectiveness of ICFR. Our management guidance, in combination with AS No. 5, is intended to make evaluations of ICFR and ICFR audits more effective and efficient by being risk-based and scalable to a company's size and complexity.

On February 1, 2008, we proposed a one-year extension of the Section 404(b) auditor attestation requirement for non-accelerated filers in view of the fact that there were still some additional actions that the Commission and PCAOB intended to take with respect to

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<sup>16</sup> See, for example, letters of American Electronics Association, International Association of Small Broker-Dealers and Advisers, Small Business Entrepreneurship Council, and the Silicon Valley Leadership Group, Committee on Capital Markets Regulation on Release No. 33-8762 (December 20, 2006) [71 FR 77635], File No. S7-24-06.

<sup>17</sup> Release No. 33-8810 (Jun. 20, 2007) [72 FR 35324].

<sup>18</sup> Release No. 33-8809 (Jun. 20, 2007) [72 FR 35310]. The rule amendments, among other things, provided that an evaluation that complies with our interpretive guidance is one way to satisfy the annual ICFR evaluation requirement in Exchange Act Rules 13a-15(c) and 15d-15(c) [17 CFR 240.13a-15(c) and 240.15d-15(c)].

implementation of the Section 404 requirements, and of concerns expressed by some about the orderly and efficient implementation of the ICFR requirements.<sup>19</sup>

One of these actions is the PCAOB's issuance of final staff guidance on auditing ICFR of smaller public companies. On October 17, 2007, the PCAOB published preliminary staff guidance that demonstrates how auditors can apply the principles described in AS No. 5 and provides examples of approaches to particular issues that might arise in the audits of smaller, less complex public companies.<sup>20</sup> Topics discussed in the PCAOB's guidance include: entity-level controls, risk of management override, segregation of duties and alternative controls, information technology controls, financial reporting competencies, and testing controls with less formal documentation. The comment period on the PCAOB's guidance ended on December 17, 2007, and the PCAOB is working on the final guidance.

Another action involves a study that we are undertaking to help determine whether our new management guidance on evaluating ICFR and AS No. 5 are having the intended effect of facilitating more cost-effective ICFR evaluations and audits for smaller reporting companies. Our study plan includes gathering new data from a broad array of companies about the costs and benefits of compliance with the ICFR requirements. The study will pay special attention to those smaller companies that are complying with the ICFR requirements for the first time.

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<sup>19</sup> See, for example, the May 8, 2007, letter to Chairman Christopher Cox and Chairman Mark Olson from Senator John Kerry, Chairman, Senate Committee on Small Business and Entrepreneurship, and Senator Olympia Snowe, Ranking Member, Senate Committee on Small Business and Entrepreneurship, available at <http://sbc.senate.gov/lettersout/070508-SEC-PCAOB-HearingFollowUp.pdf>; hearing on "Sarbanes-Oxley Section 404: New Evidence on the Costs for Small Businesses," House Committee on Small Business (December 12, 2007); and the July 12, 2007, letter from Sharon Haeger, America's Community Bankers, on Release No. 34-55876 [72 FR 32340], File No. PCAOB 2007-02, available at <http://www.sec.gov/comments/pcaob-2007-02/pcaob200702.shtml>.

<sup>20</sup> See "An Audit of Internal Control that is Integrated with an Audit of the Financial Statements: Guidance for Auditors of Smaller Companies," (October 17, 2007), available at [www.pcaobus.org](http://www.pcaobus.org).







































