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Mr. Jonathan G. Katz, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-9303

**File No. S7-08-05**  
**Proposed Rule: Revisions to Accelerated Filer Definition and Accelerated**  
**Deadlines for Filing Periodic Reports**  
**Release Nos. 33-8617; 34-52491**

Dear Mr. Katz:

This letter is KPMG LLP's response to the request of the Securities and Exchange Commission (the Commission) for comment on its proposed rule for revisions to the accelerated filer definition and accelerated deadlines for filing periodic reports (the Proposed Rule or Release).

Since the adoption of the initial rule in September 2002 to accelerate periodic reporting filing dates, improvements have been made to companies' financial reporting and disclosure processes. The transition period to phase in accelerated filing deadlines, including the one year postponement in 2004, have allowed companies and their auditors to adjust their reporting and audit and review schedules and develop efficiencies to facilitate accurate and complete reported information. Finding the balance between timely and high-quality information has been challenging for some companies and placed pressure on the corresponding audit process, as companies encountered initial compliance with the requirements for reporting on internal control over financial reporting mandated by Section 404 of the Sarbanes-Oxley Act of 2002 (Section 404) coupled with the continued release of new accounting pronouncements. The largest accelerated filers have largely been



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successful in significantly reducing time to file notwithstanding these increased reporting obligations.

We support the Commission's proposed rule to modify the periodic report filing deadlines and to facilitate prompt exit from accelerated filing status upon certain circumstances, with some recommended enhancements. We believe the Proposed Rule appropriately furthers the Commission's goal of timely reporting and furthering investor protection.

Our comments on the Proposed Rule are summarized as follows:

- We support accelerating the filing of annual reports on Form 10-K to 60 days following fiscal year end for those accelerated filers with a public float of \$700 million or more. We believe these issuers generally have the necessary resources to comply with this accelerated filing deadline, and that auditing firms have adequately planned for and adjusted their resource allocations to work with these issuers in meeting this deadline.
- We agree that accelerated filers with public float below \$700 million should be permitted to continue to file annual reports on Form 10-K within 75 days of fiscal year end. These issuers are more likely to face resource constraints that affect their ability to further contract their reporting schedule and thereby threaten the quality of our audit process and financial reporting.
- We agree that all accelerated filers should be permitted to continue to file quarterly reports on Form 10-Q within 40 days of quarter end in order to preserve filing quality.
- If the determination of issuers subject to reporting on internal control over financial reporting continues to be tied to the definition of an accelerated filer, the Commission should consider alternatives to the "point in time" measurement of public float as of the end of the second fiscal quarter for the determination of accelerated filer status to allow those companies sufficient time for implementation.
- The Commission should allow for exit from accelerated or large accelerated filer status immediately upon a major decline in an issuer's public float or an event causing an issuer to no longer have a reporting obligation with respect to its common equity securities.

Our comments primarily are based on our assessment of the Proposed Rule's effect on our ability to fulfill our professional obligations under the standards of the Public Company





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Accounting Oversight Board (United States). The extent to which we are affected is largely dependent on how the Proposed Rule will affect the reporting companies that we audit, primarily the larger companies impacted by the final phase-in of the accelerated filing deadline for annual reports.

### **Definition of Large Accelerated Filer and Deadline for Annual Report on Form 10-K**

The Proposed Rule seeks to add a new category of accelerated filer, the "large accelerated filer." This category would include issuers with an aggregate worldwide market value of voting and non-voting common equity held by non-affiliates ("public float") of \$700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter. Under the Proposed Rule, only these companies would be subject to the 60-day Form 10-K annual report deadline under the final phase-in of the accelerated filing deadlines. We support the Commission's proposal to amend the definition of an accelerated filer to create a "large accelerated filer" for companies with \$700 million or more in public float and support the Commission's proposal that only these companies be subject to the 60-day deadline for filing annual reports on Form 10-K. We continue to believe, as stated in our letter of January 31, 2005 to the Commission regarding the proposed rulemaking on securities offering reform, that those issuers with a public float of \$700 million or more generally have the appropriate internal expertise and resources to comply with accelerated filing deadlines. In addition, these companies account for approximately 95% of the U.S. equity market capitalization, suggesting that an appropriate balance between cost and benefit appears to have been struck. Auditing firms have adequately planned for and adjusted their resource allocations to work with these issuers in meeting this deadline

In our May 22, 2002 comment letter regarding the Commission's proposed rulemaking on accelerated filing, we included a table illustrating the typical timelines from year end to filing on Form 10-K for a large (Fortune 500) and a smaller (\$100 million market capitalization) registrant based on our experience. We have updated these typical timelines based on our most recent experience with the fiscal 2004 annual reporting period, as illustrated in the table below. The following is based on an informal survey only.





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	Days After Period-End			
	Example Fortune 500 Registrant		Example Smaller Registrant	
	2004	2002	2004	2002
	Form 10-K	Form 10-K	Form 10-K	Form 10-K
Period ended raw data available	7-10	7-10	25-40	25-40
Auditor begins audit final fieldwork (integrated audit for 2004)	7-10	7-10	25-40	25-40
Consolidation, analysis, & issue resolution (including ICOFR for 2004)	8-29	8-29	30-60	30-60
Audit Committee, Senior Management and Auditor review of draft earnings announcement	16-25	16-27	33-58	33-58
Earnings announcement	18-29	18-29	45-60	45-60
Complete drafting of MD&A, notes, other sections of filing	25-50	30-50	60-70	60-70
Senior Management reviews Auditors, outside lawyers, investor relations reviews	45-60	50-60	60-70	70-80
CEO reviews	50-75	60-75	60-75	70-90
Audit Committee/Board reviews/Audit Committee meeting	50-75	75-90	60-75	70-90
File Exchange Act report, EDGAR	50-75	80-90	60-75	85-90

The primary change from the information included in our May 22, 2002 letter is in the period after the earnings announcement. While we are aware anecdotally that some companies have delayed earnings releases to coincide with substantial completion of integrated audit fieldwork, we generally have not seen a decrease in the number of days required to produce an earnings announcement. Instead, the changes in the timeline reflect acceleration in the drafting of the financial statements, finalization of issues identified in evaluation and reporting on internal control over financial reporting, and review by senior management, auditors, audit committees and others. As demonstrated in these timelines, significant activity occurs subsequent to the earnings announcement, including the auditors' reading of the draft financial statements with accompanying notes and review of





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management's discussion and analysis. We also analyzed the number of days from year end to filing date for the annual report on Form 10-K for all accelerated filers with a public float of \$700 million or more for fiscal years ended from August 31, 2004 through July 31, 2005. There were 855 companies in this population of which 18% filed within 60 days, 74% filed within 61 to 75 days, and 8% filed after 75 days of their fiscal year end, respectively. On average, these companies filed their Forms 10-K within 70 days. Included within this group were almost 90 issuers that had not yet implemented Section 404 reporting. The filing dates for those issuers were similar to those of the larger group, but with an average filing date of 75 days. While most of the large accelerated filers did not file their Forms 10-K within 60 days for fiscal year 2004, we note that more of these companies filed their Forms 10-K within 60 days than did for fiscal year 2002 (before accelerated filing and Section 404 reporting was implemented) and these companies filed, on average, within 10 days of the proposed 60-day filing deadline. The large accelerated filers accomplished these filing deadlines notwithstanding that those issuers and their auditors satisfied Section 404 reporting requirements for the first time. We believe that experience gained from first year implementation and further integration of the audit process (including disclosure and auditing guidance issued May 16, 2005 by the Commission and the PCAOB) will permit further acceleration of filing Form 10-K to within 60 days of fiscal year end.

Issuers with public float below \$700 million will continue to be challenged by resource constraints, such as internal reporting systems as well as the volume and complexity of new accounting and disclosure requirements in the new financial reporting environment. For 2004 annual reports, over 300 companies took advantage of the SEC's Exemptive Order for an additional 45 days to file management's and the auditors' reports on internal control over financial reporting. These issuers will continue to have a higher degree of reliance on outside advisors than the large accelerated filers. As auditors, we must be accorded sufficient time to carry out our responsibilities and communications with audit committees to provide a meaningful review of the financial reporting process. We believe these challenges will continue well beyond the current year for the issuers with public float of less than \$700 million. Investor needs are best met with an appropriate balance of timely and high-quality reporting. For these reasons, we support the Commission's proposal that Form 10-K filing deadlines for smaller accelerated filers remain at 75 days following fiscal year end.





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**Deadline for Quarterly Reports on Form 10-Q**

Under the Proposed Rule, all accelerated filers would continue to file their quarterly reports on Form 10-Q under the current 40-day deadline, rather than the 35-day deadline that was scheduled to apply to quarterly reports filed next year. We support the Commission’s proposal.

In our May 22, 2002 comment letter regarding the Commission’s proposed rulemaking on accelerated filing, we included a table illustrating the typical timelines from quarter end to filing on Form 10-Q for a large (Fortune 500) and a smaller (\$100 million market capitalization) registrant based on our experience. We have updated these typical timelines based on our most recent experience over the past year to date, as illustrated in the table below. The following is based on an informal survey only.

	Days After Period-End			
	Example Fortune 500 Registrant		Example Smaller Registrant	
	2004/2005 Form 10-Q	2002 Form 10-Q	2004/2005 Form 10-Q	2002 Form 10-Q
Period ended raw data available	7-10	7-10	25-35	25-35
Auditor begins final fieldwork	7-10	7-10	25-30	25-30
Consolidation and analysis	8-29	8-29	25-45	25-45
Audit Committee, Senior Management and Auditor review of draft earnings announcement	16-25	16-27	33-43	33-43
Earnings announcement	18-29	18-29	35-45	35-45
Complete drafting of MD&A, notes, other sections of filing	25-33	25-35	35-40	35-40
Senior Management reviews	30-40	30-40	30-40	40-45
Auditors, outside lawyers, investor relations reviews	30-40	30-40	30-40	40-45
CEO reviews	30-40	35-40	30-40	40-45
Audit Committee/Board reviews/Audit Committee meeting	20-40	35-40	32-40	40-45
File Exchange Act report, EDGAR	30-40	40-45	32-40	43-45





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As noted in the above, companies have adjusted their quarterly financial reporting process to file within 40 days. Compliance with Item 308 of Regulation S-K has a less dramatic impact on the level of work during the quarterly reporting period as compared to the year-end reporting period. However, the financial statement closing and consolidation process is not significantly different from that at year end.

We also analyzed the number of days from quarter end to filing date for quarterly reports on Forms 10-Q for all accelerated filers with a public float of \$700 million or more for the Form 10-Qs filed over the past year to date. For companies in this population, 33% of Forms 10-Q were filed within 35 days, 56% filed within 36 to 40 days, and 11% filed after 40 days of their quarter ends, respectively. On average, these companies filed their Forms 10-Q within 38 days. The large accelerated filers, on average, utilized the majority of the current time allowed to complete their quarterly financial reporting process.

Acceleration to a 35-day deadline would significantly compress an already tight preparation, review and filing schedule, particularly as it relates to those activities that occur after release of earnings, including the auditor's review. With respect to quarterly reviews, we have adjusted our review process to comply with the current 40-day deadline. We believe a further acceleration to a 35-day deadline could hinder the quality of management's review and analysis of the financial statements and disclosures and reduce active dialogue with the audit committee, thereby affecting the quality of information subject to auditor review. In addition, the auditors may need to perform additional review work based upon information that comes to light during our review of a company's management's discussion and analysis, the financial statements and footnote disclosures for which a day or two is required, at a minimum, to perform. We therefore support the Commission's proposal that all accelerated filers continue to file their quarterly reports under the current 40-day deadline.

### **Determination Date for Accelerated Filer Status**

The Proposed Rule seeks to maintain the determination of accelerated filer status and large accelerated filer status based on the public float as of the last business day of the issuer's most recently completed second fiscal quarter. We have noted that some companies have become accelerated filers by temporarily surpassing the \$75 million threshold. We do not believe it was the intent of the SEC for these types of issuers to become subject to accelerated filing and Section 404 reporting. For example, an individual reportable event





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or unusual market events occurring within the second quarter could cause a short-term increase in public float at the end of that quarter which is not sustained.

While the requirement to meet accelerated filing deadlines for periodic reports is an additional burden on both companies and auditors, the more significant impact on a company entering accelerated filer status is the requirement to initially comply with the requirements set forth in Item 308 of Regulation S-K regarding reporting on internal control over financial reporting. The Commission currently is considering possible modifications to the requirements to be imposed on smaller issuers with respect to reporting on internal control over financial reporting (Release No. 33-8618, *Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports of Companies That Are Not Accelerated Filers*). The Commission may want to consider whether or not the determination of which entities must comply with Item 308 of Regulation S-K should be separated from the definition of an "accelerated filer," particularly in light of the current deferrals in place.

Due to these increased burdens on both companies and auditors, we would recommend that the Commission consider alternatives to the "point in time" measurement of public float as of the end of the second fiscal quarter. While we have not had sufficient time during this comment period to thoroughly analyze alternatives, we propose consideration of the following, either individually or in some combination:

- Using a measurement of public float based on an average of more than one quarter – An average-based measurement could help prevent the entering of accelerated filer status based on a point in time "blip" in a company's public float that is not consistently maintained over a period of time. Based on our experience, companies that have a public float on the border of the accelerated filer threshold are already challenged by resource constraints to produce timely financial information for the auditor's review, in addition to the volume and complexity of new accounting and disclosure requirements. The additional requirements associated with being an accelerated filer would represent a significant burden for this population of companies.
- Using a measurement of public float based on a date earlier in the year – If compliance with Rule 308 of Regulation S-K continues to be tied to the definition of accelerated filer, an earlier date for measurement would provide companies entering accelerated filer status with more time to prepare for reporting on internal control over financial reporting and accelerated filing deadlines. Although non-accelerated filers have the ability to monitor their public float throughout the year to anticipate meeting the public





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float threshold at the end of their second quarter, these companies are already challenged with limited resources and thus, do not have the depth of resources to allocate towards a possible implementation of Section 404 reporting.

- Defer the requirement to comply with Item 308 of Regulation S-K for one year after meeting the definition of accelerated filer - On November 30, 2004, the SEC issued the Exemptive Order that provided smaller accelerated filers with an additional 45 days to file management's first report on internal control over financial reporting and the related report of their auditors under Item 308 of Regulation S-K. With the Exemptive Order the Commission recognized the difficulties encountered by smaller companies in implementing reporting on internal control over financial reporting. While auditors will have gained efficiencies over the audit process, a new accelerated filer will not have the benefit of prior experience with the mandates of Section 404. If compliance with Item 308 of Regulation S-K continues to be tied to the definition of accelerated filer, a potential relief for these companies would be to allow for a one-time, one-year deferral of compliance with Item 308 of Regulation S-K to allow these new accelerated filers the additional time to undertake the corresponding implementation and provide for a well-planned and efficient audit process. These new accelerated filers would still be subject to the accelerated filing deadlines as currently required.

As these are only alternatives articulated at a high level, we would encourage the Commission to thoughtfully consider all potential alternatives to the current point in time measurement.

#### **Exiting Accelerated Filer Status**

The Proposed Rule revises the definition of the term “accelerated filer” to permit an accelerated filer that has a public float of less than \$25 million to exit accelerated filer status promptly and begin filing its annual and quarterly reports on a non-accelerated filer basis. Additionally, the proposed amendments would permit a large accelerated filer that has a public float of less than \$75 million to promptly exit large accelerated filer status. Under the current definition, a company that has become an accelerated filer remains one until it meets the small business issuer definition at the end of two consecutive years. Due to the increased burdens placed on companies who are accelerated filers and the increased challenges associated with the proposed accelerated annual reporting deadline of 60 days for large accelerated filers, we support the Commission’s proposal to allow for a prompt exit from accelerated filer and large accelerated filer status.





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While we support the Commission's proposal to allow for a prompt exit, we would propose consideration of the following enhancements:

- The significant decrease in public float required to exit large accelerated filer status - The decrease in public float required to exit accelerated filer status is consistent with the thresholds for small business issuer filings and supports the Commission's goal of providing relief for a company that has had a dramatic negative change in its business and market following. However, the exit threshold of \$75 million for a large accelerated filer appears unnecessarily low to identify an issuer that has had a significant permanent decrease in its resources (i.e. bankruptcy, sell-off of operations) such that it would experience difficulty with complying with a 60-day Form 10-K filing deadline. Issuers that experience a catastrophic change in business will most likely be facing other challenges and priorities and should be allowed to exit large accelerated filer status at a level of public float in excess of \$75 million. We suggest a threshold of \$350 million, which is 50% of the large accelerated filer threshold and would be suggestive of a lasting decrease in public float below \$700 million.
- The date at which a company determines if it can exit accelerated or large accelerated filer status and when exit is first reflected in periodic reports- As proposed, an issuer would determine whether it can exit accelerated filer status at the end of its fiscal year based on its public float as of the last business day of its most recently completed second fiscal quarter. The change in accelerated filer status would be effective with the annual report filed for that fiscal year. Quarterly reports would not reflect the change in accelerated filer status until the first Form 10-Q in the next fiscal year. Due to significant decreases in public float required in order to exit accelerated or large accelerated filer status, as currently proposed, we would expect a corresponding significant change in a company's business. These companies most likely would be consumed with addressing other challenges, including a potential decrease in resources available for financial reporting. The ability to immediately exit accelerated or large accelerated filer status upon the first periodic filing date in which the company meets the lower threshold would alleviate some of the associated burdens. Further, the decreases in public float required to exit accelerated or large accelerated filer status, as currently proposed, are so significant that we believe a company would not regularly enter and exit accelerated or larger accelerated filer status as such decreases would most likely be associated with a dramatic change in business. We believe an immediate change in the filing status would not adversely impact investor protection. Similarly, an event causing an issuer to no longer have a reporting obligation with respect to its common equity securities should enable an issuer to exit accelerated filing status





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immediately, even if it has a continuing reporting obligation due to outstanding public debt.

We support the Commission's proposal to allow for a prompt exit from accelerated filer or large accelerated filer status. However, we propose that the Commission re-consider the current thresholds to allow for such exit, the date at which exit is determined, and the timing of the first filing when non-accelerated or accelerated filer deadlines apply. While we have not had sufficient time during this comment period to thoroughly analyze alternatives, we propose that the Commission, including the Office of Economic Analysis, consider these points.

We appreciate the opportunity to comment on the Proposed Rule. If you have any questions about our comments please contact Teresa Iannaconi at (212) 909-5426 or via email at [tiannaconi@kpmg.com](mailto:tiannaconi@kpmg.com) or Melanie Dolan at (202) 533-4934 or via email at [mdolan@kpmg.com](mailto:mdolan@kpmg.com).

Very truly yours,

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