

SUMMARY OF COMMENTS
Related to Proposed Revisions to Accelerated Filer Definition and Accelerated Filer
Deadlines for Filing Periodic Reports

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I. List of Commenters (45 total)

a) Accounting Firms and Auditors

1. BDO Seidman, LLP (BDO Seidman)
2. Deloitte & Touche LLP (Deloitte 1)
 - a. Letter dated September 16, 2005 (Deloitte 2)
 - b. Letter dated October 31, 2005
3. Ernst & Young LLP (E&Y)
4. KPMG LLP (KPMG)
5. PricewaterhouseCoopers LLP (PwC)

b) Professional and Trade Associations and Organizations

1. American Bankers Association (American Bankers)
2. American Bar Association's Business Law Section (ABA)
3. American Institute of Certified Public Accountants (AICPA)
4. America's Community Bankers (ACB)
5. Association of the Bar of the City of New York (NYCBA)
6. The Business Roundtable (BRT)
7. Financial Executives International (FEI)
8. National Retail Federation (NRF)
9. Independent Community Bankers of America (ICBA)

c) Corporations and Corporate Executives

1. Central Pacific Financial Corp. (Central Pacific)
2. The Chubb Corporation (Chubb)
3. Cogent Communications Group, Inc. (Cogent)
4. Commercial Metals Company (CMC)
5. Cytokinetics, Inc. (Cytokinetics)
6. Emerson (Emerson)
7. Ferrellgas Partners, LP (Ferrellgas)
8. Forest City Enterprises (Forest City)
9. Financial Reporting Advisors, LLC (FinRA)
10. Gander Mountain Company (Gander)
11. General Motors Corporation (GM)
12. Glacier Bancorp, Inc. (Glacier)
13. Hercules Incorporated (Hercules)
14. J.C. Penney Company, Inc. (JC Penney)
15. LNR Property Holdings Ltd. (LNR Property)
16. Safeway, Inc. (Safeway)
17. Scientific Learning Corporation (Scientific Learning)
18. Southwest Gas Corporation (Southwest Gas)
19. Torchmark Corporation (Torchmark)

- | | |
|------------------------------|--------------------|
| 20. UnionBanCal Corporation | (UnionBanCal) |
| 21. URS Corporation | (URS) |
| 22. Vitria Technology, Inc. | (Vitria) |
| 23. Whole Foods Market, Inc. | (Whole Foods) |
| 24. Williams-Sonoma, Inc. | (Williams-Sonoma) |
| 25. Wilmington Trust Company | (Wilmington Trust) |

d) Individuals

- | | |
|------------------|-----------------|
| 1. Greg Swalwell | (Greg Swalwell) |
|------------------|-----------------|

e) Institutional Investor Organizations

- | | |
|---------------------------------------|-------|
| 1. Council of Institutional Investors | (CII) |
|---------------------------------------|-------|

f) Firms and Attorneys

- | | |
|-----------------------------------|-----------------|
| 1. Sean E. Dempsey | (Sean Dempsey) |
| 2. Sidley Austin Brown & Wood LLP | (Sidley Austin) |
| 3. Von Briesen & Roper, s.c. | (Von Briesen) |

g) Stock Markets

- | | |
|----------------------------------|----------|
| 1. The Nasdaq Stock Market, Inc. | (Nasdaq) |
|----------------------------------|----------|

II. Overview

On September 22, 2005, the Commission published for notice and public comment proposed revisions to the accelerated filer deadlines and the Exchange Act Rule 12b-2 definition of an accelerated filer. We have received 46 comment letters. Most of the letters, slightly more than half, were submitted by corporations or their executives. Professional and trade associations and organizations comprised the next highest category of commenters. Five accounting firms also submitted comment letters. The rest of the letters were submitted by two law firms, one institutional investor organization, the Nasdaq stock market, one practitioner and one individual.

A majority of the 46 comment letters urged us to revise the rules so that no company would be subject to the final phase-in of the 60-day Form 10-K annual report deadline. Many commenters believed that companies falling into the proposed category of large accelerated filers should be permitted to file under the current 75-day Form 10-K deadline. These commenters offered several arguments to support their recommendation. The following are the primary arguments presented in the comment letters:

- Further acceleration of the annual report deadline would negatively affect the quality of the reports.
- The rules governing the filing of Form 8-K current reports, including a shortened Form 8-K filing deadline, improves investor access to material or significant information affecting companies. These changes have diminished the need for the further acceleration of the Form 10-K deadline.
- The new regulatory requirements such as accounting pronouncements and in particular, the requirements of Section 404 of the Sarbanes-Oxley Act, make it difficult for companies to complete preparation for filing the Form 10-K within the further accelerated deadline.
- The further acceleration would impose high costs on companies and additional strain on those who prepare the reports without incremental benefit.

Some of these commenters criticized the stated rationale behind the establishment of the proposed category of large accelerated filers – that, for example, larger issuers have more well-developed resources to sustain further acceleration of the annual report deadline. They reasoned, for example, that larger issuers have more complex systems than smaller issuers, and therefore the preparation of reports is just as time-consuming and burdensome for them as it is for smaller issuers. The accounting firms had differing opinions about the proposed revisions to the accelerated filer deadlines and the proposed category of large accelerated filers.

A large majority of commenters supported the revisions that maintain the 75-day annual report deadline and 40-day quarterly report deadline for accelerated filers with less than \$700 million public float.

Also, many commenters supported the revisions that maintain the 40-day quarterly report deadline for both accelerated filers and large accelerated filers. No commenter supported the further acceleration of quarterly report deadlines for any category of filer to 35 days.

The proposed revisions to the requirements for exiting accelerated filer or large accelerated filer status did not receive as many comments as the revisions to the accelerated filer deadlines. Only 11 commenters discussed these revisions.

Most of the commenters who discussed the proposed exit revisions supported the Commission's objective to permit companies to exit accelerated filer status more promptly. However, several offered modifications to the proposals. The primary suggestions included:

- Raising the public float threshold that a company needs to meet before exiting accelerated filer or large accelerated filer status;
- Requiring the public float measurement which determines entry into or exit from any filing deadline status to be made over a period of time (e.g., 30 days) or to be based on the average of the public float as measured on several different days (e.g., average of multiple quarter ends) instead of at a particular point in time; and
- Requiring companies to provide notice, such as by filing a current report on Form 8-K, announcing a change in filing deadline status.

The commenters' responses are discussed in more detail below.

III. Amendments to the Accelerated Filer Deadlines

A. General Observations

- Eight commenters expressed their support for the amendments to the accelerated filer deadlines, as proposed, as well as the underlying rationale.¹
- A majority of the commenters urged the Commission to revise the rules so that even companies with \$700 million or more in public float which, under the proposed rules, would fall into the category of large accelerated filers, would be subject to a 75-day Form 10-K annual report filing deadline.²

B. Proposal: New Category of Large Accelerated Filers

Commenters stating support for the proposed category of large accelerated filers (5):³

- One association supporting the proposed category explained that it believed that reporting companies with a public float of \$700 million or more are more closely followed by securities analysts and by the markets than other issuers and thus warrant earlier disclosure deadlines. This commenter also agreed with the statement in the proposing release that these issuers are more likely to have a well-developed infrastructure and financial reporting resources to support further acceleration of the annual report deadline.⁴
- One trade association agreed with the statement in the proposing release that large accelerated filers have additional financial and internal staff resources to meet the federal securities law requirements.⁵ Smaller companies, in contrast, have difficulty getting the attention of outside experts and auditors. Nevertheless, this commenter expressed concern that the three tiers of filing deadlines would cause confusion, and for that reason only, suggested that we consider maintaining the current 75-day annual report deadline for these companies as well.
- One of the large accounting firms supported the establishment of the large accelerated filer category and stated that these issuers generally have the

¹ BDO Seidman; Cogent; Cytokinetics; ICBA; KPMG; Nasdaq; NYCBA; Von Briesen.

² ABA; AICPA; Central Pacific; Chubb; CMC; Cytokinetics; Deloitte 1; Deloitte 2; E&Y; Ferrellgas; Forest City; Gander; Glacier; GM; Hercules; JC Penney; LNR Property; NRF; PwC; Safeway; Sidley Austin; Southwest Gas; Greg Swalwell; Torchmark; UnionBanCal; URS; Vitria; Williams-Sonoma; Wilmington Trust.

³ ACB; American Bankers; Cogent; ICBA; KPMG.

⁴ ICBA.

⁵ ACB.

“appropriate internal expertise and resources to comply with accelerated filing deadlines.”⁶ The firm said that the research indicating that the companies account for 95% of the U.S. equity market capitalization suggests that the balance between cost and benefit has been achieved by these proposals. Further, the firm stated that auditing firms have “adequately planned for and adjusted their resource allocations to work with these issuers” to meet the deadlines.

- See also comments in Section III.H.

Commenters who would support the category if the final-phase in of deadlines should continue to apply (3):

- Two of the accounting firms did not support the application of the final phase-in of the 60-day Form 10-K deadline to large accelerated filers but stated that they would support the proposed new category of large accelerated filers if the Commission “concludes that further acceleration is required.”⁷ One of the accounting firms stated, “We believe that the Commission’s proposed definition of a ‘large accelerated filer’ is reasonable for that purpose.”⁸
- One commenter recommended that the annual report deadline for large accelerated filers remain at 75 days but said that:

“If the Commission determines to impose a 60-day deadline, we agree that it should be limited to the large accelerated filers. If nothing else, staggering the periodic reports would assist smaller companies that have had difficulty competing with large companies for attention from their auditors prior to the filing deadline, particularly with the implementation of the new internal control over financial reporting requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002.”⁹

⁶ KPMG.

⁷ Deloitte; PwC.

⁸ PwC.

⁹ ABA.

Commenters expressing opposition to the proposed category of large accelerated filers (12):¹⁰

- Ten commenters who opposed the further acceleration of the Form 10-K filing deadline for large accelerated filers asserted that more time was necessary to prepare the reports of larger issuers because larger issuers have more complex systems than smaller issuers that may involve more complicated transactions.¹¹ These commenters provided the following arguments:
 - Four commenters noted that the geographic reach of larger issuers makes it difficult to prepare reports within the shortened time frame.¹² Similarly, one commenter reasoned that larger issuers needed to collect information from “external sources.”¹³
 - One company noted that some of its operations are located in developing countries where information is collected manually.¹⁴
 - One law firm stated that larger issuers could be subject to more numerous accounting issues.¹⁵
- One of the commenters who believed that the 75-day deadline should apply uniformly to all filers noted that the analysts in larger companies have increased coverage in media and regular conference calls.¹⁶ These analysts use this information to value large companies before the Form 10-K is filed for them. Thus, compressing the deadline for the Form 10-K “would not improve the ability of analysts to value the company as they already have sufficient information to do so.”
- Another commenter who opposed the new category of a large accelerated filer disagreed with the stated rationale behind the creation of the category of large accelerated filers. This commenter stated that the assumption that larger companies have a more well-developed infrastructure oversimplified the reporting process and did not fully recognize the time required to properly complete the corporate review process. This

¹⁰ Chubb; CMC; Emerson; Forest City; Glacier; JC Penney; NYCBA; Safeway; Sidley Austin; UnionBanCal; URS; Whole Foods.

¹¹ Chubb; Emerson; Forest City; Glacier; JC Penney; Safeway; Sidley Austin; UnionBanCal; URS; Whole Foods.

¹² Emerson; CMC; Safeway; Sidley Austin; UnionBanCal.

¹³ URS.

¹⁴ CMC.

¹⁵ Sidley Austin.

¹⁶ Emerson.

commenter also stated that market float should not be relevant. The commenter recommended that any final rule should apply uniformly to all companies with more than \$75 million in public float.¹⁷

C. Request for Comment: Definition of Large Accelerated Filer

- Four commenters supported the establishment of the category of large accelerated filers but recommended different public float thresholds for the categories of large accelerated filer and accelerated filer.¹⁸ They offered the following recommendations:
 - \$1 billion for large accelerated filers and \$500 million for accelerated filers;¹⁹
 - More than \$700 million dollars for large accelerated filers -- the exact amount should be the subject of further study (only if the Commission does not “permanently delay the acceleration of the filing deadlines”);²⁰ and
 - \$700 million public float threshold for large accelerated filers but \$110 million in public float for accelerated filers and less than \$110 for non-accelerated filers (which would represent the lowest one percent of market capitalization of all publicly-traded companies).²¹

D. Request for Comment: Public Float Determination

- Five commenters recommended that the measurement of public float for the purposes of determining whether a company can be deemed an accelerated filer or large accelerated filer should not be made as of a specific date, but instead over a period of time.²² They asserted that public float should be measured over the following time periods or based on an average of multiple dates:
 - Over the course of at least one year;²³
 - Over the company’s second fiscal quarter;²⁴
 - Over 30 days;²⁵

¹⁷ NYCBA.

¹⁸ BDO Seidman; Cytokinetics; Deloitte 2; Gander.

¹⁹ Cytokinetics; Gander.

²⁰ Deloitte 2.

²¹ American Bankers.

²² ACB; BDO Seidman; Deloitte 2; PwC; Greg Swalwell.

²³ BDO Seidman.

²⁴ ACB.

²⁵ ACB; Greg Swalwell; PwC.

- Over two consecutive fiscal quarters or for two consecutive fiscal quarters over two consecutive fiscal years;²⁶ and
- The average of multiple quarter end measurements of public float.²⁷

These commenters reasoned that:

- “[The determination date at a single point in time] does not provide for what may be temporary swings in stock price...If a range of trading days was used, a company would not gain or lose a filing status based on what could be a one-day spurt or slump in stock price.”²⁸
- The recommendation that the public float measurement be made over a period of time ensures “that a company moves to a more accelerated filing category only when it has demonstrated a sustained change to a higher level of market following.”²⁹
- “Tying the determination date to a longer period of time [would] eliminate unnecessary classifications into accelerated filer status from temporary, one-time market capitalization changes and minimize fluctuations in and out of accelerated filer status.”³⁰

E. Request for Comment: Differences Between Well-Known Seasoned Issuer and Large Accelerated Filer

- One accounting firm opposed the association of the large accelerated filer category with the newly adopted category of a well-known seasoned issuer.³¹ The firm pointed out that the accelerated filer system was established for a different reason than for the well-known seasoned issuer category of companies -- while well-known seasoned issuers are followed by a number of sophisticated institutional investors, the large accelerated filer designation relates to the level of resources which presumably correlates with the ability to file reports faster. The firm further noted that the ineligible issuer component of the category of well-known seasoned issuers does not harmonize with the purpose of the accelerated filer rules. Finally, the firm discouraged applying the accelerated deadlines to debt-only issuers, since doing so could push debt-only issuers into private financing or other markets.
- Another association stated its support for establishing a \$700 million threshold for the “large accelerated filer” and thereby bringing the definition in line with that of the “well-known seasoned issuer.” Alternatively, the association stated

²⁶ Deloitte 2.

²⁷ KPMG; PwC.

²⁸ ACB.

²⁹ BDO Seidman.

³⁰ Deloitte 2.

³¹ PwC.

that “the Commission could employ a relative threshold set at the lowest 6 percent of total market capitalization.”³²

- One accounting organization requested that “the Commission reconsider whether it is appropriate to include certain debt-only issuers to accelerate the filing of their periodic reports.”³³ This commenter offered a recommendation in which debt-only issuers would have the option to file periodic reports on a non-accelerated basis if they are willing to forgo the benefit of automatic shelf registration that is available to well-known seasoned issuers under the Securities Offering Reform rules.
- Along the same lines, two commenters, one accounting firm and one professional association, suggested that the Commission consider an “opt-in” or “opt-out” approach whereby large accelerated filers could choose to opt-out of the benefits of automatic shelf registration to which well-known seasoned issuers are privy, and instead file annual reports under the 75-day deadline.³⁴ The accounting firm reasoned that this approach would, “ensure a level playing field among issuers that have unfettered access to the public capital markets.”³⁵ This accounting firm recommended that the definition of an accelerated filer be amended to exclude, on a timely basis, issuers that are unlikely to qualify as well-known seasoned issuers during the next fiscal year.

F. Proposal: Amendments to the Accelerated Filing Deadlines

1. 60-Day Form 10-K Deadline for Large Accelerated Filers

Commenters stating their support for the application of the 60-day accelerated deadline for annual reports on Form 10-K for large accelerated filers (5):³⁶

- One accounting firm supported the establishment of the large accelerated filer category and the application of the 60-day deadline to the category.³⁷ The firm set forth a table illustrating typical timelines from year-end to filing on the Form 10-K for Fortune 500 and smaller (\$100 million market capitalization) registrants, based on experience. The firm noted that it had not seen a decrease in the number of days required for the preparation of an earnings announcement, but it had seen a decrease in the number of days required for the drafting of the financial statements, finalization of issues identified in the evaluation and reporting on internal control over

³² American Bankers.

³³ AICPA.

³⁴ ABA; E&Y.

³⁵ E&Y.

³⁶ CII; FinRA; ICBA; KPMG; Nasdaq.

³⁷ KPMG.

financial reporting, and review by senior management, auditors, audit committees, and others. The firm also analyzed the number of days it took companies with \$700 million or more in public float to file the Form 10-K. Out of 855 companies, 18% filed within 60 days, while 74% filed within 61 to 75 days. The firm further noted that while most of these companies did not file their Form 10-Ks within 60 days, more issuers filed them within 60 days for the fiscal year 2004 than for fiscal year 2002, notwithstanding the new requirements for Section 404 of the Sarbanes-Oxley Act (“SOX 404”). The firm reasoned that although such issuers will continue to be challenged by resource constraints, investor needs are best met with an appropriate balance of timely and high-quality reporting.

Commenters discussing the accelerated deadlines who only commented on the proposed Form 10-Q deadline and did not comment on the 60-day Form 10-K deadline for the proposed large accelerated filer category (3):³⁸

- One organization did, however, note that “relative to the filing of Form 10-K, an informal survey of [its] members indicated that the original timetable of 60 days for filing a Form 10-K was still achievable.”³⁹

Commenters requesting that the rules be revised so that a 75-day Form 10-K deadline would be maintained for large accelerated filers (33):⁴⁰

- Almost all of the commenters who opposed the further acceleration of the Form 10-K filing deadline for large accelerated filers discussed the possibility that the further acceleration would negatively affect the quality of annual reports.⁴¹ Some of the commenters offered the following explanations:
 - “We believe that while our internal accounting records will be complete in time to meet accelerated reporting requirements 60 and 35 days for year and quarter end respectively, it will not be possible for our auditors to perform proper due diligence for us and their many other 12/31 accelerated filers. This is especially difficult because the proposal reduces the time the

³⁸ American Bankers; BRT; FEI.

³⁹ FEI.

⁴⁰ ABA; AICPA; Central Pacific; Chubb; CMC; Cytokinetics; Deloitte 1; Deloitte 2; Sean Dempsey; Emerson; E&Y; Ferrellgas; Forest City; Gander; Glacier; GM; Hercules; JC Penney; LNR Property; NRF; NYCBA; PwC; Safeway; Sidley Austin; Southwest Gas; Greg Swalwell; Torchmark; UnionBanCal; URS; Vitria; Whole Foods; Williams-Sonoma; Wilmington Trust.

⁴¹ ABA; AICPA; Central Pacific; Chubb; CMC; Cytokinetics; Deloitte 1; Deloitte 2; E&Y; Ferrellgas; Forest City; Gander; Glacier; GM; Hercules; JC Penney; LNR Property; NRF; PwC; Safeway; Sidley Austin; Southwest Gas; Greg Swalwell; Torchmark; UnionBanCal; URS; Vitria; Williams-Sonoma; Wilmington Trust.

auditors will have to audit all their 12/31 clients by another twenty percent, while requiring them to perform significantly more work under Sarbanes Oxley Section 404.”⁴²

- Shortened deadlines would significantly compromise integrity and accuracy of disclosures, given the necessity for detailed review and approval of the draft report at various levels of management.⁴³
- “...The Commission has stressed that the MD&A is meant to be a ‘fresh look’ at the company and the subject of serious thought and significant analysis. By reducing the time allowed for this reflection, particularly for those filers for whom ‘getting the big picture’ is the most difficult, the usefulness of this section of the report may be sacrificed for speed. It is our experience that, under the system, the development of the MD&A often occurs concurrently with the recognition of business trends and the development of responsive business strategies. But if the deadlines are shortened for large accelerated 10-K filers, instead of developing disclosure language to identify and decrease such trends or strategies, these issuers will have increased incentive to simply recast old language or limit analysis to hasten the preparation of the material in order to meet an unnecessarily rigid deadline. As a result, investors will get information earlier, but we fear it will not be of the same quality as the information that could be prepared and disseminated under the current time limits.”⁴⁴
- The shortened deadline would increase chance of error.⁴⁵
- By shortening the deadline, the additional involvement that SOX has sought to increase from audit committee members, members of the board of directors, lawyers, auditors, and outside experts, could be meaningfully reduced.⁴⁶
- Shortening the deadlines would impair the ability of financial statement or annual report preparers to make crucial judgment calls.⁴⁷
- Technology has not reduced the time required to perform the thoughtful analyses that are necessary to prepare meaningful disclosures.⁴⁸ One commenter went on to say, “[i]t is crucial that companies have adequate time to evaluate their results and

⁴² Vitria.

⁴³ GM; Wilmington Trust.

⁴⁴ Sidley Austin.

⁴⁵ Whole Foods; Wilmington Trust.

⁴⁶ GM; Sidley Austin.

⁴⁷ Wilmington Trust.

⁴⁸ Chubb; Deloitte 1.

to prepare thoughtful, meaningful, and insightful disclosures and for independent auditors to have sufficient time to perform their audit procedures.”⁴⁹

- Twelve commenters argued that our rules regarding the filing of current reports on Form 8-K, including the requirement that the reports be filed only four business days after the occurrence of an event, may obviate, or help to obviate, the need for the further acceleration of annual reports.⁵⁰ One accounting firm noted that the annual average number of current reports on Form 8-Ks per accelerated filer has more than doubled since 2002, from approximately five per accelerated filer to almost 11 in 2004.⁵¹
- Twelve commenters argued that demands of certain regulatory requirements necessitated the delay of accelerated deadlines.⁵² Here are some examples of the arguments that they set forth:
 - “Companies and auditors need time additional time to comply with the requirements for evaluating and reporting on internal controls, as well as other new and proposed regulations of the SEC, stock exchanges and FASB.”⁵³
 - Another company cited the increased technical complexity of the accounting rules over the past several years.⁵⁴
 - Another company stated that the “landscape surrounding financial reporting has changed dramatically since the rules to accelerate the filing of annual reports were adopted in September 2002.” The company cited the additional interpretive guidance for Management’s Discussion and Analysis, the expanded role of the audit committee, and the internal control requirements under SOX 404.
 - Another company cited the expanded disclosure in MD&A, new disclosures about critical accounting policies, off-balance sheet transactions, and segment reporting.⁵⁵
 - Another commenter pointed out that the current efforts to adopt a common set of accounting standards in Europe, and concurrent efforts to promote convergence of U.S. GAAP and

⁴⁹ Chubb.

⁵⁰ ABA; CMC; Cytokinetics; Deloitte 1; Deloitte 2; JC Penney; GM; NRF; PwC; Safeway; Sidley Austin; Whole Foods.

⁵¹ Deloitte 2.

⁵² ABA; AICPA; BDO Seidman; Chubb; CMC; GM; Hercules; Safeway; Sidley Austin; Torchmark; URS; Wilmington Trust.

⁵³ GM.

⁵⁴ CMC.

⁵⁵ Wilmington Trust.

the proposed International Financial Reporting Standards (IFRS) could further complicate the preparation of year-end financial statements and disclosure documents, especially in the initial fiscal year cycles of IFRS standards implementation.⁵⁶

- Seventeen commenters also argued specifically that new requirements imposed by SOX 404 are time intensive or costly processes which also may be compromised by the further acceleration of the Form 10-K deadline.⁵⁷ Some of the commenters made the following arguments:
 - One law firm noted that a recent survey of large corporation board members demonstrated that for companies with \$4 billion or more in publicly traded securities, SOX compliance imposed an average cost of \$35 million per year.⁵⁸
 - Another company stated that as it has implemented SOX 404 compliance, the time needed to prepare financial statements and other disclosure (including Management's Discussion and Analysis) for periodic reports has doubled.⁵⁹ The company explained that reviews must now be formally documented and all supporting information tied out to source documents which requires more time. Also, more detailed information must be prepared in advance for review by the company's audit committee.
- Four companies set forth timelines for preparing the annual report within the required deadlines:⁶⁰
 - One company noted that in order to meet the 75-day annual report deadline, it reduced the number of Form 10-K drafts circulated for review. The modified procedures allowed the company agents to circulate the third and final draft 64 days after the fiscal year-end. The company asserted that if the annual report was accelerated to 60 days, then the company would have to reduce the number of circulated drafts of the Form 10-K to the relevant parties (SEC reporting department, senior management, board of directors, including the audit

⁵⁶ NYCBA.

⁵⁷ ABA; AICPA; BDO Seidman; CMC; Deloitte 1; Ferrellgas; Forest City; Glacier; GM; Hercules; JC Penney; NRF; Safeway; Sidley Austin; Greg Swalwell; UnionBanCal; Williams-Sonoma.

⁵⁸ Sidley Austin.

⁵⁹ CMC.

⁶⁰ Chubb; Ferrellgas; GM; Southwest Gas.

committee, outside SEC counsel and external auditors) from three to two.⁶¹

- One company provided its timeline for when its earnings announcement is released, the initial draft 10-K is available for review, approximately six drafts sent to the various parties, the Disclosure Committee meeting, the Audit Committee meeting, and when the revisions from the meetings are made for the fiscal years ended December 31, 2004 and December 31, 2003. The company noted that the last four of the company's Form 10-Ks have "required from 70 to 75 days to accomplish."⁶²
 - One company stated that over the past several years, the company's year-end earnings announcement has been in the first few days of February, at which time the auditors complete the most critical audit procedures.⁶³ The company stated that it then takes them the next several weeks to formulate and finalize disclosures and to circulate meaningful draft disclosure documents to senior business managers and executive management. Comments are then incorporated and documents circulated and quality control procedures performed. During the entire period, the company completes its assessment of the effectiveness of internal control over financial reporting.
 - The last company set forth its typical year-end schedule.⁶⁴ It performs a preliminary close in 10 business days and then from January 13th through the 22nd, consolidation efforts begin and the company prepares schedules and preliminary reports for external auditors. Through February 10th, audit work and preliminary testing of year-end controls are conducted. The company asserts that this leaves two weeks to draft footnotes, MD&A, text, and schedules, and complete certifications, review, and signoff of documents by the audit committee, internal control testing and conclusions, all internal reviews, outside audit reviews and signoff, along with coordination with the proxy material. Thus, the company asserts that it would be "hard-pressed" to find two more weeks to condense the process. The company notes that it may be able to cut the preliminary close by two days and use weekend days.
- Two commenters cautioned that if the Form 10-K deadline is accelerated, then the number of late filings will increase.⁶⁵ A law firm noted that

⁶¹ Ferrellgas.

⁶² GM.

⁶³ Chubb.

⁶⁴ Southwest Gas.

⁶⁵ Ferrellgas; Sidley Austin.

issuers are challenged to meet the current deadlines, given the amount of late filings in 2004 and 2005, and that the number of late filings will only increase, which would have significant results such as the loss of Form S-3 eligibility.⁶⁶

- Many commenters stated there would be increased cost, or strain on resources, without the necessary incremental benefit if the final phase-in of the most accelerated Form 10-K deadline was retained for large accelerated filers.⁶⁷
- Several commenters noted that the shortened deadlines would impose stress, strain, pressure, or substantial demands on preparers of the reports.⁶⁸ They noted that accelerated deadlines would place additional strain on auditors.⁶⁹ One company noted that the deadlines would place pressure on a key group of individuals, regardless of the number of employees that could be hired. This company also set forth the following list of some of the significant matters the individuals address in preparing the Form 10-K:
 - Close the books at fiscal year end for each of the significant subsidiaries for both the fourth quarter and the year; compile and analyze data from each of those entities and prepare initial results of operations for the fourth quarter and the year for each of those entities;
 - Review new regulations, pronouncements and guidelines that may impact the preparation of financial statements;
 - Prepare consolidated financial statements;
 - Independent auditors audit consolidated financial statements;
 - Implement company-wide disclosure controls and procedures;
 - Consult with experts, including actuaries and valuation experts;
 - Draft Form 10-K and the notes to financial statements;
 - Review of draft Form 10-K by the Disclosure Committee and in-house counsel
 - Review of draft 10-K by outside counsel and independent auditors;
 - Undertake an internal Sarbanes-Oxley certification process which includes over 125 employees across many departments and functional areas;

⁶⁶ Sidley Austin.

⁶⁷ BDO Seidman; CMC; Deloitte 1; Emerson; E&Y; Gander; JC Penney; LNR Property; NRF; PwC; Safeway.

⁶⁸ AICPA; Central Pacific; Chubb; Sean Dempsey; GM; JC Penney; LNR Property; PwC; Safeway; Sidley Austin; UnionBanCal.

⁶⁹ AICPA; Ferrellgas; Forest City.

- Test and document internal controls over financial reporting in preparation of Sarbanes Oxley Section 404 assessment;
 - Assist independent auditors in their review and testing of our internal controls over financial reporting;
 - Thorough review of draft Form 10-K, including financial statements and footnotes, by our Audit Committee; Audit Committee meets with management, the full Board, the independent auditor and the internal auditor in connection with the audit;
 - Prepare Sarbanes-Oxley certifications by each of the Chief Executive Officer and Chief Financial Officer;
 - Review of draft Form 10-K by the full Board of Directors; obtain signature pages from each Board member;
 - Edgarize and proof Form 10-K.⁷⁰
- One company stated that annual disclosure obligations are significantly more detailed and challenging than quarterly disclosure operations.⁷¹
 - One commenter opposed the further acceleration of the Form 10-K for large accelerated filers because of the possibility that unforeseen circumstances would arise (e.g., unforeseen lease accounting issue).⁷²
 - One company reasoned that companies typically release fourth quarter earnings far in advance of filing the Form 10-K and therefore, information in the 10-K is perceived as background information, and does not have the same market impact and questioned whether external auditors would be able to complete their audit of internal controls in time to meet the deadline each year.⁷³

2. Maintaining 75-day Form 10-K Deadline for Accelerated Filers that are not Large Accelerated Filers

- Thirty-seven commenters generally supported the proposal maintaining the 75-day deadline for accelerated filers that are not large accelerated filers.⁷⁴ (Some of these commenters did not specifically comment on this part of our proposed revisions but their support was implicit, as they indicated that the

⁷⁰ Safeway.

⁷¹ Wilmington Trust.

⁷² NRF.

⁷³ Emerson.

⁷⁴ ABA; ACB; Central Pacific; Chubb; Cogent; CMC; Cytokinetics; Deloitte 2; Sean Dempsey; Emerson; E&Y; Ferrellgas; Forest City; Gander; Glacier; GM; Hercules; ICBA; JC Penney; KPMG; LNR Property; Nasdaq; NRF; NYCBA; PwC; Safeway; Sidley Austin; Southwest Gas; Greg Swalwell; Torchmark; UnionBanCal; URS; Vitria; Von Briesen; Whole Foods; Williams-Sonoma; Wilmington Trust.

75-day Form 10-K deadline and 40-day Form 10-Q deadline should remain for all accelerated filers or all filers generally.⁷⁵⁾

3. Maintaining Current 40-Day Deadline for Form 10-Qs for Accelerated Filers and Large Accelerated Filers

- Twenty-six commenters specifically supported the amendments maintaining the current 40-day deadline for Form 10-Q for both accelerated filers and large accelerated filers.⁷⁶ Some of the commenters noted the following:
 - One banking association stated that this topic “met with *the most concern* among all accelerated filers” that were members of the association (emphasis added).⁷⁷ This commenter noted that the additional time to complete the Form 10-Q would, “make a tremendous difference to the usefulness of these reports while keeping shareholders sufficiently informed.”⁷⁸ This commenter argued that any shortening of the reporting deadlines, “inevitably increases the chances of inaccurate or incomplete reports.”
 - One accounting firm included a table illustrating the typical timelines from quarter end to filing on Form 10-Q for a Fortune 500 issuer and smaller registrant (\$100 million market capitalization), based on informal survey.⁷⁹ The research indicated that registrants have adjusted their financial reporting processes to file within 40 days. The firm also analyzed the number of days it took accelerated filers with a public float of \$700 million or more to file their quarterly reports. 33% of the quarterly reports were filed within 35 days, 56% were filed within 36 to 40 days, and 11% were filed after 40 days of their quarter ends. Companies on average filed their quarterly reports within 38 days. The firm then stated that it believed that 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.”
 - One organization provided a list of the additional activity that may now need to be accomplished within the quarterly reporting timeframe.⁸⁰

⁷⁵ ABA; Central Pacific; Chubb; CMC; Emerson; Ferrellgas; Forest City; Glacier; GM; Hercules; LNR Property; Nasdaq; NRF; NYCBA; PwC; Safeway; Southwest Gas; Torchmark; UnionBanCal; URS; Vitria; Von Briesen; Whole Foods; Williams-Sonoma; Wilmington Trust.

⁷⁶ ABA; ACB; American Bankers; BRT; Central Pacific; Chubb; CMC; Cytokinetics; Deloitte 1; Deloitte 2; E&Y; Emerson; FEI; Ferrellgas; FinRA; Gander; GM; Hercules; ICBA; KPMG; Southwest Gas; Greg Swalwell; URS; Whole Foods; Williams-Sonoma; Wilmington Trust.

⁷⁷ American Bankers.

⁷⁸ American Bankers.

⁷⁹ KPMG.

⁸⁰ FEI.

- None of the commenters specifically opposed this proposal by requesting that the proposed revisions apply the 35-day deadline for quarterly reports to any category of filer.

G. Request for Comment: Three Tiers of Filing Deadlines

- One accounting firm stated that even though it did not think the three-tier system was necessary, if the Commission chose to adopt the system, the firm suspected that the investor community would adjust quickly to the three levels of dates.⁸¹
- Six commenters indicated that the system was complex and may lead to confusion among the investors.⁸²
 - One commenter said that the three-tier system should not be implemented in order to avoid confusion over comparability and for companies who find themselves on the border between two categories of filers.⁸³
 - One institutional investor association supported the proposal to limit the final phase-in of the accelerated filing schedule to the largest accelerated filers with equity market value of at least \$700 million. However, the association also stated that it did not support size-based differentiated requirements.⁸⁴ The commenter asserted that doing so is “bad public policy” and “confusing for the investing public” and “a slippery slope that ... could seriously harm the capital markets and investing public.” The association requested the Commission to set a date within the next two years to reconsider the longer deadlines for all other companies. The association went on to say that “times change, technologies change and competency with now ‘new’ requirements (such as Section 404 of the Sarbanes-Oxley Act should improve, so it is appropriate for the Commission to reconsider the longer deadlines for ‘smaller’ companies – which represent 82 percent of all publicly traded companies – in the near future.”

H. Request for Comment: Alternate Structures and Deadlines

- One accounting firm supported the proposal because it was a “much better approach than leaving the rules unchanged” but “to best achieve” the objectives of (1) accelerating the time by which information is provided when the level of investor interest warrants it and (2) avoiding inflicting the burden

⁸¹ PwC.

⁸² ACB; AICPA; CII; Ferrellgas; FRA; NRF.

⁸³ NRF.

⁸⁴ CII.

of accelerated reporting on companies when the level of investor interest does not warrant it, and (3) not jeopardizing the reliability of information companies report, recommended moving the reporting deadlines back to a 90 days for annual reports and 45 days for accelerated filers that are not large accelerated filers, and that 75-day annual report and 40-day quarterly report deadlines apply to large accelerated filers.⁸⁵ Similarly, another accounting firm also recommended that only filers with \$700 million or more in public float should be subject to annual and quarterly report deadlines shorter than 90 days and 45 days, respectively.⁸⁶ The firm recommended that we retain the 75-day annual report deadline for such filers.

- One advisory firm stated that the better approach would be to revise the definition of an accelerated filer so that only larger issuers with \$700 million or more in public float would be considered accelerated filers. These filers would be subject to the 60-day annual report and 40-day quarterly report deadlines.⁸⁷ Other issuers with less public float should be subject to 90-day annual report and 45-day quarterly report deadlines.
- One accounting organization also recommended revisions to the definition of an accelerated filer so that only larger issuers with \$700 million or more in public float would be considered accelerated filers.⁸⁸ These filers would be subject to 75 and 40-day deadlines while the other issuers would be subject to 90 and 45-day deadlines. With regards to accelerated filers with a float of between \$75 million and \$700 million, this organization reasoned that while some may argue that costs of accelerated filing are already behind them, there are on-going costs to maintaining the accelerated processes. In addition, there will be incremental costs to maintaining accelerated reporting as rule changes occur, which will be burdensome to smaller companies.
- Four commenters recommended that there be only one category of filer. They requested that we establish a 75-day Form 10-K filing deadline and 40-day Form 10-Q filing deadline for all filers.⁸⁹

I. Request for Comment: Unduly Disadvantage Investors in Companies That Are Not Accelerated Filers

- One accounting firm noted its belief that investors in smaller companies would benefit from the earlier availability of reports, but that based on belief,

⁸⁵ BDO Seidman.

⁸⁶ E&Y.

⁸⁷ FinRA.

⁸⁸ AICPA.

⁸⁹ Emerson; NYCBA; LNR Property; Whole Foods.

the benefits are not significant enough to justify the costs associated with further acceleration.⁹⁰

J. Other Comments on Accelerated Filer Deadlines

SOX 404 Compliance

- Eight commenters were concerned about the interplay between the accelerated filer rules and SOX 404 requirements.⁹¹ These commenters made the following remarks and recommendations about this topic:
 - Seven commenters requested that we revisit the component of the accelerated filer definition that requires the public float determination to be made on the last day of the most recently completed second fiscal quarter. These commenters felt that the component which provided only six months notice before a company which may become an accelerated filer may be required to begin start complying with SOX 404 requirements.⁹²
 - Some commenters suggested that we allow companies who are not accelerated filers but later become accelerated filers, or “first-time accelerated filers,” to delay compliance for one year.⁹³
 - One commenter provided an alternate suggestion that the date at which public float is measured for the purpose of determining filing deadline status be changed to fiscal year-end and SOX 404 compliance be changed to the next fiscal year.⁹⁴
 - Another commenter provided an alternative suggestion that the final rules provide any company who is not an accelerated filer prior to the adoption of the rules that later becomes an accelerated filer remain subject to the July 15, 2007 deadline for compliance.⁹⁵
 - One accounting association noted in a footnote that it did not believe that increasing the accelerated filer threshold to \$700 million should affect the internal control reporting requirements for companies with public float between \$75 million and \$700 million that have already implemented Item 308 of Regulation S-K.⁹⁶ These companies and their auditors are already fully engaged in this process with the most labor intensive year behind them.

⁹⁰ PwC.

⁹¹ AICPA; Cogent; FinRA; KPMG; Nasdaq; Scientific Learning; Greg Swalwell; Von Briesen.

⁹² AICPA; Cogent; KPMG; Nasdaq; Scientific Learning; Greg Swalwell; Von Briesen.

⁹³ FinRA; KPMG; Nasdaq; Scientific Learning; Greg Swalwell.

⁹⁴ Scientific Learning.

⁹⁵ Nasdaq.

⁹⁶ AICPA.

- Another commenter encouraged us to consider separating the review of internal controls and the annual audit.⁹⁷

Further Research

- Some commenters requested that we conduct further research prior to permitting the further acceleration of the filing deadlines. They noted the following:
 - One accounting firm stated that if we do not delay permanently acceleration of the filing deadlines, then we should defer additional acceleration for one year and during that time, conduct further study whether the deadlines should be accelerated and if so, for issuers of what market size.⁹⁸ This firm reasoned that the additional year will allow companies to complete Year 2 of the SOX 404 compliance and allow time for us to gather the appropriate evidence to determine whether additional acceleration is practical and would not unduly sacrifice quality. The firm suggested that we study how many filers currently file in only 60 days and the market value of these companies as well as the current number of days needed for issuers of different sizes to close accounting records, earnings announcements, preparation of disclosures for periodic reports, and review by senior management, the independent auditor, legal counsel and the audit committee.
 - One institutional investor organization requested that we set a date within the next two years to reconsider whether to accelerate the deadlines for companies with less than \$700 million in public float. The organization suggested that we consider longer deadlines for “smaller companies,” which represent 82 percent of all publicly traded companies.⁹⁹ See also Section III.G.
 - One company said it would be prudent to evaluate the extent of the efficiencies gained in two years prior to shortening the filing deadlines.¹⁰⁰

Guidance

- Another accounting firm stated that in connection with the proposed rules, we should provide clear guidance on questions which cover such issues as changes in fiscal years, reverse mergers, former subsidiaries, and Form 15 deregistrations.¹⁰¹

⁹⁷ Vitria.

⁹⁸ Deloitte 2.

⁹⁹ CII.

¹⁰⁰ Forest City.

¹⁰¹ E&Y.

Miscellaneous

- One company recommended that the adoption of a “safe harbor” that would not impose penalties as long as the Form 10-K is filed within the 60 to 75 days time frame.¹⁰²
- One banking association urged us and banking agencies to streamline reporting requirements and eliminate overlapping disclosure requirements.¹⁰³

IV. Amendments to the Accelerated Filer Definition

A. General Observations

- Eleven commenters discussed the proposed revisions to the exit requirements from large accelerated filer or accelerated filer status.¹⁰⁴
- Most of these commenters supported our effort and stated goal to allow companies to exit out of accelerated filer status promptly but they suggested enhancements or modifications to the proposed amendments.¹⁰⁵
- The following suggestions were the most common:
 - Raising the public float thresholds (in some cases, so that the same level would be required to be met to enter into or exit out of any particular filing deadline status);
 - Amending the rules so that the public float measurement is made over a period of time (e.g., 30 days) or based on an average of different dates (e.g., average of multiple quarter ends), instead of at a particular point in time; and
 - Requiring companies to provide notice, such as by filing a report on Form 8-K, announcing a change in filing deadline status in order to alleviate potential investor confusion.

B. Proposal: Allowing The Exit From Accelerated Filer Status at the End of the Fiscal Year

- Some commenters indicated the proposed revisions provide for an exit that is still not prompt enough:

¹⁰² Emerson.

¹⁰³ ICBA.

¹⁰⁴ ABA; ACB; AICPA; BDO Seidman; Deloitte 2; E&Y; FinRA; KPMG; Nasdaq; PwC; Greg Swalwell.

¹⁰⁵ ACB; AICPA; BDO Seidman; FinRA; KPMG; Nasdaq; PwC.

- Four commenters believed that a company should be allowed to immediately exit accelerated filer or large accelerated filer status.¹⁰⁶
- Similarly, a different commenter generally asked that the Commission consider setting exit thresholds at the end of year in order to allow for a truly prompt exit from the accelerated filer system.¹⁰⁷
- Also along the same line of reasoning, one commenter suggested that if the company has experienced a dramatic decline in its public float, as of a single point in time, then it should be allowed to exit accelerated filer status.¹⁰⁸
- One accounting firm supported the proposed revisions requiring that exit take place at year end, stating that changes in accelerated filer status should take place at year end, because it is in “the best interest of investors not to have changes in status during the year.”¹⁰⁹ Issuers whose entire public float is eliminated, however, should be excepted from this rule.

C. Proposal: Permitting Issuers with Only Duty to File Exchange Act Reports With Respect to Debt Securities To Exit Accelerated Filer Status

- Two commenters specifically voiced their support for this component of the proposed amendments.¹¹⁰ One commenter noted that the AIPCA had raised questions regarding the application of the accelerated filer rules as they relate to a company (1) whose public float is eliminated, but they are either still required to file reports for another security or are filing reports “voluntarily;” (2) who was previously a debt-only issuer but then completes an equity IPO on Form S-1; and (3) that is a subsidiary of an accelerated filer.¹¹¹ The commenter also noted a question regarding reverse mergers.

D. Request for Comment: Appropriate Exit Thresholds

- Five commenters stated that the threshold level for exiting and entering either accelerated filer status or large accelerated filer status should be the same.¹¹² One of these commenters suggested that an issuer be permitted to exit accelerated filer status effective with its next quarterly or annual report if that issuer’s public float (a) remains below \$700 million for a sustained period (e.g. average public float for 180 days) or (b) drops significantly below \$700

¹⁰⁶ AICPA; BDO Seidman; Deloitte 2; KPMG.

¹⁰⁷ ABA.

¹⁰⁸ BDO Seidman.

¹⁰⁹ PwC.

¹¹⁰ KPMG; PwC.

¹¹¹ PwC.

¹¹² AIPCA; Deloitte 2; E&Y; FinRA; PwC.

million at the end of a quarter.¹¹³ One of these commenters recommended that we provide that an issuer would no longer be an accelerated filer if its public float is less than \$700 million as of the determination date in two consecutive years and this would be effective immediately.¹¹⁴ A primary rationale offered for this recommendation is that issuers with similar levels of public float should be treated similarly.¹¹⁵ Two commenters acknowledged the importance of the interest of maintaining filing stability but stated that this interest can be achieved by requiring the public float measurement to be made over a period of time instead of at a single point in time.¹¹⁶

- Three commenters recommended different public float thresholds for exiting large accelerated filer status and accelerated filer status that are different from the proposed thresholds.¹¹⁷ They recommended the following thresholds for exiting large acceleration filer status:
 - \$500 to \$600 million;¹¹⁸
 - \$350 million;¹¹⁹ and
 - \$250 million (Note: the commenter believed that only companies with a public float of \$700 million or more should be deemed accelerated filers, and that the company should be allowed to exit immediately if the public float has dropped below \$250 million in any fiscal quarter or year).¹²⁰

Two commenters recommended a \$50 million threshold for exiting accelerated filer status.¹²¹ One of these commenters reasoned that while it shared “the Commission’s concern that issuers not be permitted to float in and out of a reporting status frequently,” it believed that the proposed thresholds are “too low to provide meaningful relief and would impose rigorous deadlines on companies that have market capitalizations well below other companies that are subject to lesser requirements.”¹²² Another reasoned that raising the threshold would still not result in fluctuation in a company’s filing status.¹²³

¹¹³ FinRA.

¹¹⁴ E&Y.

¹¹⁵ AICPA; E&Y; PwC.

¹¹⁶ Deloitte; PwC.

¹¹⁷ ABA; ACB; E&Y.

¹¹⁸ ABA.

¹¹⁹ ACB; KPMG.

¹²⁰ E&Y.

¹²¹ ACB; ABA.

¹²² ABA.

¹²³ ACB.

- Another commenter recommended that the Commission permit an accelerated filer to exit at the earlier of (a) less than \$75 million of public float for three consecutive quarter ends or (b) less than \$25 million of public float at one quarter end.¹²⁴ (The exit would take place immediately.) Similarly, this commenter recommended that the Commission permit a large accelerated filer to exit at the earlier of (a) less than \$700 million of public float for three consecutive quarter ends or (b) less than \$250 million of public float at one quarter end.

E. Request for Comment: Appropriate Date for Public Float Determination

- One accounting firm acknowledged that the requirement that the public float measurement be made at a single point in time is a “workable model,” even though it offered modifications to the proposed revisions.¹²⁵
- Five commenters stated that the public float measurement should be made over a period of time, instead of at a particular point in time.¹²⁶ Some of the commenters provided the following recommendations:
 - One commenter offered as an example the four consecutive quarters ending with the last business day of the second quarter.¹²⁷
 - Another commenter, also noted above in Section IV.D., suggested that the company be allowed to exit large accelerated filer status if the float drops below \$700 million for a time such as 180 days or drops significantly below \$700 million at the end of a quarter.¹²⁸
- Three commenters also stated that for the sake of symmetry, both the public measurement for the entry into accelerated filer status and for exit should be made over a period of time.¹²⁹ See also Section III.D.

F. Request for Comment: Conforming Amendments

- One accounting organization and one accounting firm recommended that the Commission specifically address whether and how an issuer should assess its accelerated filer status (or large accelerated filer status) when it changes fiscal year end.¹³⁰ The accounting organization said that it was unclear as to whether the determination date would change such that a reassessment (i.e.,

¹²⁴ AIPCA.

¹²⁵ PwC.

¹²⁶ BDO Seidman; Deloitte 2; FinRA; PwC; Greg Swalwell.

¹²⁷ PwC.

¹²⁸ FinRA.

¹²⁹ BDO Seidman; PwC; Greg Swalwell.

¹³⁰ AICPA; PwC.

determining the public float on the date that would have been the end of the second fiscal quarter related to the new fiscal year-end). The commenter noted that in April 2004, it discussed this with the Staff and the Staff noted its belief that a reassessment was required.

G. Request for Comment: Filing Notice to Announce Change in Filing Deadline Status

- Six commenters recommended that the Commission require companies to file a notice announcing a change in filing deadline status.¹³¹ These commenters made the following recommendations:
 - Companies should file a Form 8-K to announce the change.¹³² One commenter, a stock market, reasoned that companies should do so because companies, on occasion, neglect to check the box.¹³³
 - The Form 8-K should be filed within four days of the date that they determined the change in status, but no later than the second fiscal quarter Form 10-Q.¹³⁴
 - Companies should check a box on the relevant forms to indicate a change in filer status, which may alleviate some potential investor confusion.¹³⁵
- One commenter stated that the Commission should not mandate the filing of a Form 8-K filing to announce a change in filing status. The commenter went on to state that if such a requirement was adopted, it should only apply when the issuer will be subject to a longer, not a shorter filing period. In that situation, the Form 8-K should be filed prior to the date the Form 10-K would otherwise be due.¹³⁶

V. Other Amendments

A. Request for Comment: Aggregate Worldwide Market Value

- One audit firm specifically requested the term, “worldwide market value” be defined with appropriate guidance, including examples of how such amount should be calculated.¹³⁷

¹³¹ ACB; AICPA; Nasdaq; E&Y; FinRA; PwC.

¹³² ACB; AIPCA; Nasdaq; E&Y; FinRA; PwC.

¹³³ Nasdaq.

¹³⁴ PwC.

¹³⁵ ACB; Nasdaq.

¹³⁶ ABA.

¹³⁷ Deloitte 2.

VI. Other

- One commenter suggested revisions to the rule text.¹³⁸ In Section VII, Update to the Codification of Financial Reporting Policies, 5(b), the revised wording for the first paragraph of Section 302.01.c should read “as of an interim date within 130 days if the registrant is a large accelerated filer or an accelerated filer (or 135 days for other registrants)” to be consistent with the proposed rule that all accelerated and large accelerated filers maintain the 40 day filing requirement for their Form 10-Qs. In Section 240.12b-2, Definitions, 3(iii), reference to “determination date” should be modified to indicate “last business day of the issuer’s most recently completed second fiscal quarter.”

¹³⁸ PwC.