

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 210, 229, 240 AND 249

[RELEASE NOS. 33-8644; 34-52989; File No. S7-08-05]

RIN 3235-AJ29

REVISIONS TO ACCELERATED FILER DEFINITION AND ACCELERATED DEADLINES FOR FILING PERIODIC REPORTS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to the accelerated filing deadlines that apply to periodic reports so that a “large accelerated filer” (an Exchange Act reporting company with a worldwide market value of outstanding voting and non-voting common equity held by non-affiliates of \$700 million or more) will become subject to a 60-day Form 10-K annual report filing deadline, beginning with the annual report filed for its first fiscal year ending on or after December 15, 2006. Until then, large accelerated filers will remain subject to a 75-day annual report deadline. Accelerated filers will continue to file their Form 10-K annual reports under a 75-day deadline, with no further reduction scheduled to occur under the revised rules. Accelerated filers and large accelerated filers will continue to file their Form 10-Q quarterly reports under a 40-day deadline, rather than the 35-day deadline that was scheduled to apply next year under the previously existing rules. Further, the amendments revise the definition of the term “accelerated filer” to permit an accelerated filer that has voting and non-voting common equity held by non-affiliates of less than \$50 million to exit accelerated filer status at the end of the fiscal year in which its equity falls below \$50 million and to file its annual report for that year and subsequent periodic reports on a non-accelerated basis. Finally, the

amendments permit a large accelerated filer that has voting and non-voting common equity held by non-affiliates of less than \$500 million to exit large accelerated filer status at the end of the fiscal year in which its equity falls below \$500 million and to file its annual report for that year and subsequent periodic reports as an accelerated filer, or a non-accelerated filer, as appropriate.

DATES: Effective Date: December 27, 2005.

Compliance Dates: See Section III.D.

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SUPPLEMENTARY INFORMATION: We are adopting amendments to Rules 3-01, 3-09 and 3-12¹ of Regulation S-X,² Item 101³ of Regulation S-K,⁴ Forms 10-Q, 10-K and 20-F⁵ under the Securities Exchange Act of 1934 (“Exchange Act”)⁶ and Exchange Act Rules 12b-2, 13a-10 and 15d-10.⁷

¹ 17 CFR 210.3-01; 17 CFR 210.3-09; and 17 CFR 210.3-12.

² 17 CFR 210.1-01 et seq.

³ 17 CFR 229.101.

⁴ 17 CFR 229.10 et seq.

⁵ 17 CFR 249.308a; 17 CFR 249.310; and 17 CFR 249.220f.

⁶ 15 U.S.C. 78a et seq.

⁷ 17 CFR 240.12b-2; 17 CFR 240.13a-10; and 17 CFR 240.15d-10.

Table of Contents

- I. Background
- II. Proposed Amendments
- III. Discussion of Final Amendments We Are Adopting Today
 - A. Amended Accelerated Filing Deadlines for Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q
 - 1. Deadlines for Accelerated Filers that Are Not Large Accelerated Filers
 - 2. Large Accelerated Filers
 - 3. Form 10-K Deadline for Large Accelerated Filers
 - 4. Form 10-Q Deadline for Large Accelerated Filers
 - 5. Other Comments on the Amended Filing Deadlines
 - B. Exit Requirements from Accelerated Filer and Large Accelerated Filer Status
 - C. Other Amendments
 - D. Effective Date and Compliance Dates
- IV. Paperwork Reduction Act
- V. Cost-Benefit Analysis
 - A. Accelerated Filing Deadlines
 - 1. Benefits
 - 2. Costs
 - B. Exiting Accelerated Filer or Large Accelerated Filer Status
- VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation
- VII. Final Regulatory Flexibility Analysis
 - A. Need for the Amendments
 - B. Significant Issues Raised by Public Comment
 - C. Small Entities Subject to the Final Amendments
 - D. Projected Reporting, Recordkeeping, and Other Compliance Requirements
 - E. Agency Action to Minimize Effect on Small Entities
- VIII. Update to Codification of Financial Reporting Policies
- IX. Statutory Authority and Text of Amendments

I. Background

The Commission first established the accelerated filing deadlines for periodic reports filed by larger public companies in September 2002.⁸ The rules provided for a system of filing deadlines that required companies meeting the accelerated filer definition in Rule 12b-2 of the Exchange Act to file their Form 10-K annual reports and Form 10-Q quarterly reports under deadlines that were shorter than the 90-day Form 10-K and 45-day Form 10-Q deadlines that previously applied to all companies filing these forms. Accelerated filers generally included companies with an aggregate market value of voting and non-voting common equity held by non-affiliates of the issuer (referred to as “public float”) of \$75 million or more, as of the last business day of the issuer’s most recently completed second fiscal quarter.⁹ The definition of an accelerated filer was based, in part, on the requirements for registration of primary offerings for cash on Form S-3.¹⁰

The 2002 rules provided for a gradual three-year phase-in period in order to transition accelerated filers into filing under shortened deadlines and to afford companies and their auditors more time to make the requisite adjustments to their schedules to

⁸ Release No. 33-8128 (Sept. 5, 2002) [67 FR 58480].

⁹ Under the accelerated filer rules, before today’s adoption of the amendments, a company was an accelerated filer once it met all of the following conditions as of the end of its fiscal year:

- the issuer had an aggregate market value of voting and non-voting common equity held by non-affiliates of the issuer of \$75 million or more, as of the last business day of the issuer’s most recently completed second fiscal quarter;
- the issuer had been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act [15 U.S.C. 78m(a) or 78o(d)] for a period of at least 12 calendar months;
- the issuer previously had filed at least one annual report; and
- the issuer was not eligible to use Forms 10-KSB and 10-QSB [17 CFR 249.310b and 17 CFR 249.308b] for its annual and quarterly reports.

¹⁰ 17 CFR 239.13. See Section II.B.3 in Release No. 33-8128.

prepare for the new deadlines.¹¹ The rules ultimately would have shortened the Form 10-K annual report deadline to 60 days after fiscal year end, and the Form 10-Q quarterly report deadline to 35 days after fiscal quarter end, for all accelerated filers. Companies that did not meet the Exchange Act definition of an accelerated filer were permitted to continue filing annual reports under a 90-day deadline and quarterly reports under a 45-day deadline.

In the 2002 adopting release, we stated our belief that periodic reports filed under the Exchange Act contain valuable information for investors, and expressed concern that an undue delay in making available the periodic report information may cause the information to be less valuable to investors.¹² We also acknowledged the need to balance the demand for timely information to investors with the time companies need to prepare their reports without undue burden. We further emphasized that the amended filing deadlines should speed the flow of information to investors without sacrificing accuracy or completeness or imposing undue burden and expense on registrants.¹³

During the three-year phase-in period, the accelerated filing deadlines have remained a topic of discussion. In particular, in year two of the phase-in period, issuers and their auditors expressed concern over their ability to make the necessary preparations to file reports on a timely basis, especially given our adoption of new reporting and

¹¹ The phase-in schedule adopted in 2002 provided for a 75-day annual report deadline for accelerated filers beginning with the annual report filed for fiscal years ending on or after December 15, 2003 and before December 15, 2004, and a 40-day quarterly report deadline for subsequently filed quarterly reports. Under the 2002 schedule, a 60-day annual report deadline was scheduled to be implemented for annual reports filed for fiscal years ending on or after December 15, 2004 and a 35-day quarterly report deadline was to apply to subsequently filed quarterly reports.

¹² Section II.A.1 in Release No. 33-8128.

¹³ Id.

attestation requirements regarding the effectiveness of internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act of 2002.¹⁴ Our rules implementing Section 404 require companies to include in their annual reports a report of management on the company's effectiveness of internal control over financial reporting and an accompanying auditor's report, and to evaluate, as of the end of each fiscal quarter,¹⁵ any change in the company's internal control over financial reporting.¹⁶

We first acted in response to these concerns in February 2004 when we extended the Section 404 compliance dates to require an accelerated filer to begin complying with the internal control over financial reporting requirements for its first fiscal year ending on or after November 15, 2004, rather than its first fiscal year ending on or after June 15, 2004.¹⁷ Then, in November 2004, we postponed the final phase-in of the accelerated filing deadlines for one year.¹⁸ As a result of the postponement, prior to our action today, the final phase-in of the accelerated filing deadlines was scheduled to occur beginning with periodic filings made in 2006. Specifically, accelerated filers were to become subject to the 60-day deadline beginning with their annual reports on Form 10-K filed for fiscal years ending on or after December 15, 2005, and to the 35-day deadline for their subsequently filed quarterly reports on Form 10-Q.

¹⁴ 15 U.S.C. 7262.

¹⁵ In the case of a foreign private issuer filing on Forms 20-F and 40-F [17 CFR 249.20f and 249.40f], this evaluation is conducted as of the end of each fiscal year.

¹⁶ Exchange Act Rules 13a-15 and 15d-15 [17 CFR 240.13a-15 and 17 CFR 240.15d-15] and Item 308 of Regulations S-K and S-B [17 CFR 229.308 and 17 CFR 228.308], as adopted in Release No. 33-8238 (June 5, 2003) [68 FR 36636].

¹⁷ Release No. 33-8392 (Feb. 24, 2004) [69 FR 9722]. The compliance date for a company that is not an accelerated filer has been extended until the company files an annual report for its first fiscal year ending on or after July 15, 2007. Release No. 33-8618 (Sept. 22, 2005) [70 FR 56825].

¹⁸ Release No. 33-8507 (Nov. 17, 2004) [69 FR 68232].

II. Proposed Amendments

On September 22, 2005, we proposed rule and form changes to the periodic report filing deadlines and to the Exchange Act Rule 12b-2 “accelerated filer” definition.¹⁹ As noted in the proposing release, the proposed deadlines were consistent with a recommendation adopted by the SEC Advisory Committee on Smaller Public Companies on August 10, 2005 that smaller public companies not be made subject to any further acceleration of due dates for annual and quarterly reports.²⁰ The proposals also were prompted by discussions and comments provided at the Commission’s roundtable on internal control over financial reporting,²¹ comments related to our release on the temporary postponement of the final phase-in of the accelerated filing deadlines,²² and comments on our release proposing the Securities Offering Reform rules.²³

The proposals that we issued in September of this year called for the establishment of three, rather than two, tiers of periodic report filing deadlines. The proposals contemplated the creation of a new “large accelerated filer” category of Exchange Act reporting companies to be comprised of issuers having \$700 million or

¹⁹ Release No. 33-8617 (Sept. 22, 2005) [70 FR 56862].

²⁰ Materials related to the August 10, 2005 meeting held by the SEC Advisory Committee on Smaller Public Companies are available on-line at <http://www.sec.gov/info/smallbus/acspc.shtml>.

²¹ See, e.g., testimony from Bob Miles of Washington Mutual and letters from Ernst & Young LLP (“E&Y”) (Apr. 4, 2005); Glass Lewis & Co. (Apr. 12, 2005); and Crowe Chizek & Co. LLC (Mar. 28, 2005). Materials related to the roundtable, including an archived broadcast and a transcript of the roundtable are available on-line at <http://www.sec.gov/spotlight/soxcomp.htm>. The roundtable was held on April 13, 2005. See SEC Press Release Nos. 2005-20 (Feb. 22, 2005) and 2005-50 (Apr. 7, 2005).

²² See, e.g., letters from the AICPA; Becker & Poliakoff; P.A.; BDO Seidman, LLP (“BDO Seidman”); The Chubb Corporation, Deloitte & Touche LLP (“Deloitte”); E&Y; First Federal Bancshares of Arkansas; Federal Signal Corporation; Franklin Financial Services Corporation; MBNA Corporation; Pfizer Inc.; Protective Life Corporation; and Spectrum Organic Products, submitted in response to Release No. 33-8477 (Aug. 25, 2004) [69 FR 67392].

²³ See, e.g., letters from the AICPA; BDO Seidman; E&Y; and KPMG, submitted in response to Release No. 33-8501 (Nov. 3, 2004) [69 FR 71126].

more in public float. As a related change, the proposals would have revised the “accelerated filer” definition to include issuers having \$75 million or more, but less than \$700 million, in public float.

Under the proposals, the contemplated large accelerated filers were to be the only companies to remain subject to the previously adopted final phase-in of the accelerated filing transition schedule requiring annual reports on Form 10-K for fiscal years ending on or after December 15, 2005 to be filed within 60 days after fiscal year end. The proposed revisions would have permitted large accelerated filers to continue to file their quarterly reports on Form 10-Q within the same 40-day deadline under which accelerated filers have been filing these reports for the last two years.

Under the proposals, the final phase-in of accelerated deadlines would not have applied to the middle tier of companies, the accelerated filers. We proposed to permit those companies to continue to file their Form 10-K annual reports within a 75-day deadline and their Form 10-Q quarterly reports within a 40-day deadline. The 75-day and 40-day deadlines are the same deadlines under which accelerated filers have been filing their periodic reports for the last two years.

The proposed revisions would not have affected the filing deadlines of non-accelerated filers. The proposing release also confirmed that the deadlines for foreign private issuers that file annual reports on Form 20-F would not be affected by the proposed revisions.²⁴

²⁴ While the accelerated filer definition does not by its terms exclude foreign private issuers, to date, the filing deadlines for accelerated filers have had application only with respect to foreign private issuers that file annual reports on Form 10-K and quarterly reports on Form 10-Q.

In addition, the proposals sought to amend the requirements for exiting accelerated filer status to permit an accelerated filer that has a public float of less than \$25 million, as of the last business day of its most recently completed second fiscal quarter, to exit accelerated filer status beginning with the annual report for the fiscal year in which the company's public float dropped below \$25 million. We proposed to permit a company to exit large accelerated filer status if its public float fell below \$75 million, as of the last business day of its most recently completed second fiscal quarter.

We received 46 comment letters on the proposed revisions.²⁵ More than half of the comment letters were submitted by companies. Other commenters included professional and trade associations, accounting firms, law firms, a sole practitioner, one institutional investor organization, the Nasdaq stock market, and one individual. A large majority of the commenters supported the proposed revisions to provide relief from the previously adopted filing deadlines and to maintain the Form 10-K annual report deadline at 75 days and the Form 10-Q quarterly report deadline at 40 days for accelerated filers. A majority of the commenters, however, urged the Commission to consider revising the rules further so that even the large accelerated filers would not become subject to the previously adopted 60-day deadline for annual reports on Form 10-K.

Some of the 46 comment letters also discussed our proposed requirements for exiting accelerated filer or large accelerated filer status. Most of these commenters

²⁵ The public comments we received are available for inspection in the Commission's Public Reference Room at 100 F Street, NE, Washington, DC 20549 in File No. S7-08-05. They are also available on-line at <http://www.sec.gov/rules/proposed/s70805.shtml>.

supported our efforts to make it easier for accelerated filers to exit accelerated filer status, but many offered recommendations for modifications that would ease exit restrictions further than proposed. These comments are described in detail below.

III. Discussion of Final Amendments We Are Adopting Today

After consideration of the public comments that were received, we are adopting the rules substantially as proposed, but with two significant modifications, which 1) provide large accelerated filers with an additional year before they are required to comply with the 60-day Form 10-K deadline and 2) relax the exit requirements from accelerated filer or large accelerated filer status further than proposed. We are amending the periodic report filing deadlines to:

- Create a new category of accelerated filer, the “large accelerated filer,” that encompasses an issuer after it first has an aggregate worldwide market value²⁶ of voting and non-voting common equity held by non-affiliates of the issuer of \$700 million or more, as of the last business day of the issuer’s most recently completed second fiscal quarter;²⁷
- Re-define an “accelerated filer” as an issuer after it first has an aggregate worldwide market value of voting and non-voting common equity held by non-affiliates of the issuer of \$75 million or more, but less than \$700 million, as of the last business day of the issuer’s most recently completed second fiscal quarter;

²⁶ As discussed later in this release, we are modifying the Exchange Act Rule 12b-2 definition of “accelerated filer” to refer to the issuer’s “aggregate worldwide market value” rather than “aggregate market value.” We also refer to this term in the definition of “large accelerated filer.”

²⁷ See paragraph 2 of the Exchange Act Rule 12b-2 definition of “accelerated filer and large accelerated filer.”

- Amend the Form 10-K annual report deadline for the newly established category of large accelerated filers so that they will be required to file their annual reports under the 60-day deadline beginning with the first annual report filed for a fiscal year ending on or after December 15, 2006 (until then, they will remain subject to the 75-day deadline);
- Eliminate the final phase-in of the Form 10-Q quarterly report deadline for large accelerated filers and thus continue to apply a 40-day deadline to the quarterly reports; and
- Eliminate the final phase-in of the Form 10-K annual report deadline and Form 10-Q quarterly report deadline for the accelerated filers that are not large accelerated filers and thus continue to apply a 75-day and 40-day deadline to the annual and quarterly reports, respectively.

Further, we are amending the requirements for exiting accelerated filer or large accelerated filer status to:

- Permit an accelerated filer with less than \$50 million aggregate worldwide market value of voting and non-voting common equity held by its non-affiliates, as of the last business day of its most recently completed second fiscal quarter, to exit accelerated filer status without a second year's determination or other delay;²⁸ and
- Permit a large accelerated filer with less than \$500 million aggregate worldwide market value of voting and non-voting common equity held by its non-affiliates, as of the last business day of its most recently completed second fiscal quarter, to

²⁸ See paragraph 3(ii) of the Exchange Act Rule 12b-2 definition of "accelerated filer and large accelerated filer."

exit large accelerated filer status.²⁹ This filer would have to comply with accelerated filer or non-accelerated filer requirements depending on whether its public float was \$50 million or more, or less than \$50 million, as of the last business day of its most recently completed second fiscal quarter.

A. Amended Accelerated Filing Deadlines for Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q

1. Deadlines for Accelerated Filers that Are Not Large Accelerated Filers

An overwhelming majority of commenters supported our proposal to amend the filing deadlines so that accelerated filers with a public float of \$75 million or more but less than \$700 million, could continue to file their annual reports on Form 10-K within 75 days after fiscal year end.³⁰ Most commenters also supported the proposed amendments to maintain the 40-day deadline for quarterly reports on Form 10-Q for accelerated filers and large accelerated filers.³¹

²⁹ See paragraph 3(iii) of the Exchange Act Rule 12b-2 definition of “accelerated filer and large accelerated filer.”

³⁰ See, e.g., letters from American Bar Association (“ABA”); America’s Community Bankers (“ACB”); Central Pacific Financial Corporation (“Central Pacific”); The Chubb Corporation (“Chubb”); Cogent Communications Group, Inc. (“Cogent”); Commercial Metals Company (“CMC”); Cytokinetics, Inc. (“Cytokinetics”); Deloitte (Oct. 31, 2005); Sean Dempsey; Emerson; E&Y; Ferrellgas Partners, LP (“Ferrellgas”); Forest City Enterprises (“Forest City”); Gander Mountain Company (“Gander”); Glacier Bancorp, Inc. (“Glacier”); General Motors Corporation (“GM”); Hercules Incorporated (“Hercules”); Independent Community Bankers of America (“ICBA”); J.C. Penney Company, Inc. (“JC Penney”); KPMG; LNR Property Holdings Ltd. (“LNR Property”); The Nasdaq Stock Market, Inc. (“Nasdaq”); National Retail Federation (“NRF”); Association of the Bar of the City of New York (“NYCBA”); PwC; Safeway, Inc. (“Safeway”); Sidley Austin Brown & Wood LLP (“Sidley Austin”); Southwest Gas Corporation (“Southwest Gas”); Greg Swalwell; Torchmark Corporation (“Torchmark”); UnionBanCal Corporation (“UnionBanCal”); URS Corporation (“URS”); Vitria Technology, Inc. (“Vitria”); Von Briesen & Roper, s.c.; Whole Foods Markets, Inc. (“Whole Foods”); Williams-Sonoma, Inc. (“Williams-Sonoma”); and Wilmington Trust Company (“Wilmington Trust”).

³¹ See, e.g., letters from ABA; ACB; American Bankers; The Business Roundtable; Central Pacific; Chubb; CMC; Cytokinetics; Deloitte (Sept. 16, 2005 and Oct. 31, 2005); E&Y; Emerson; Financial Executives International (“FEI”); Ferrellgas; Financial Reporting Advisors, LLP (“FinRA”); Gander; GM; Hercules; ICBA; KPMG; Southwest Gas; Greg Swalwell; URS; Whole Foods; Williams-Sonoma; and Wilmington Trust.

We are adopting these amendments to the accelerated filing deadlines as proposed so that accelerated filers that are not large accelerated filers will become permanently subject to the 75-day and 40-day deadlines, the deadlines to which all accelerated filers have been subject since their annual reports filed for fiscal years ending on or after December 15, 2003. After considering the comments on this proposal, we believe that it is appropriate to provide relief to these smaller companies, given the costs that might be incurred as a result of the further acceleration of the periodic report deadlines for these companies. We have reason to believe that the costs for these companies to comply with the further acceleration of their filing deadlines would be greater than the compliance costs for larger companies.³² The companies that comprise the redefined category of “accelerated filers” comprise less than 5% of the total U.S. equity market capitalization.³³ We do not believe that these costs would be justified by the benefits that investors would obtain from earlier access to the reports.

2. Large Accelerated Filers

We did not propose to alter the previously adopted 60-day Form 10-K deadline for the largest accelerated filers; instead, we proposed to create a new group of accelerated filers called “large accelerated filers,” to which that deadline would apply. We proposed to define an issuer as a “large accelerated filer” once it meets the following

³² See Section V.A below on the cost-benefit analysis of the filing deadline amendments.

³³ See Section II.A.1 of Release No. 33-8591 (July 19, 2005) [70 FR 44722]. See also Section V of this release. The Office of Economic Analysis provided data indicating that the public float of companies possessing between \$75 and \$700 million of public float represented 4.3% of the total public float of companies on NYSE, Amex, Nasdaq, the Over the Counter Bulletin Board, and Pink Sheets, LLC. These calculations were based on public float and market capitalization measurements from 2004 and 2005.

conditions for the first time at its fiscal year end:

- The issuer had an aggregate worldwide market value of voting and non-voting common equity held by its non-affiliates of \$700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter;
- The issuer has been subject to the reporting requirements of Exchange Act Section 13(a) or 15(d)³⁴ for a period of at least 12 calendar months;
- The issuer has filed at least one annual report pursuant to Section 13(a) or 15(d); and
- The issuer is not eligible to use Forms 10-KSB and 10-QSB³⁵ for its annual and quarterly reports.

The comments that we received on the proposed definition were mixed and focused on the 60-day Form 10-K deadline for these companies. Some commenters supported the establishment of this separate category of companies and agreed with our assertion that larger companies tend to have access to additional resources and a well-developed infrastructure, which makes them better able to support the further acceleration of the annual report deadline.³⁶ Many commenters, however, disagreed that larger companies are better able to comply with accelerated filing deadlines and pointed out that larger companies frequently have more complex business systems than smaller companies, involving more complicated transactions, and often have operations that are

³⁴ 15 U.S.C. 78m(a) or 78o(d).

³⁵ 17 CFR 249.310b and 17 CFR 249.308b.

³⁶ See, e.g., letters from American Bankers; ACB; Cogent; ICBA; and KPMG.

geographically widespread.³⁷ A few commenters discouraged the use of “market float” or “size-based differentiated requirements” among issuers to determine filing deadlines.³⁸

A few commenters, despite disagreeing with the application of the previously adopted 60-day Form 10-K filing deadline for large accelerated filers, said that they would support a distinction between large accelerated filers and other accelerated filers if the Commission determined not to revise the previously adopted 60-day deadline.³⁹ They agreed that the 60-day Form 10-K annual report deadline should not apply to issuers other than large accelerated filers.

Some commenters suggested a different public float threshold than the proposed \$700 million threshold.⁴⁰ These commenters recommended that we raise the threshold to some higher amount (e.g., to \$1 billion⁴¹ or “to a significantly higher level” than \$700 million⁴²). One commenter who supported the \$700 million threshold stated that, alternatively, we could establish a threshold that would fluctuate and be designed to capture issuers representing 94% of total U.S. market capitalization, given that issuers that currently have a public float of \$700 million or more represent 94% of the total U.S. market capitalization.⁴³ None of these commenters provided empirical data to support a different public float threshold.

³⁷ See, e.g., letters from Chubb; Emerson; Forest City; Glacier; JC Penney; Safeway; Sidley Austin; UnionBanCal; URS; and Whole Foods.

³⁸ See, e.g., letters from NYCBA and Council of Institutional Investors (“CII”).

³⁹ See, e.g., letters from ABA; Deloitte (Oct. 31, 2005); and PricewaterhouseCoopers LLP (“PwC”).

⁴⁰ See, e.g., letters from Cytokinetics; Deloitte (Oct. 31, 2005); and Gander.

⁴¹ See letters from Cytokinetics and Gander.

⁴² See letter from Deloitte (Oct. 31, 2005).

⁴³ See letter from American Bankers.

One commenter was of the view that we should not align the large accelerated filer definition with that of a well-known seasoned issuer, as proposed, if we chose to create the large accelerated filer category.⁴⁴ This commenter noted that, while many of the Securities Offering Reform final rules apply to both equity and debt-only issuers, the accelerated filing deadlines do not apply to issuers that have registered only a class of debt securities under the Exchange Act. On the other hand, another commenter supported the \$700 million threshold and favored consistency between the definition of a well-known seasoned issuer and the definition of a large accelerated filer.⁴⁵ Another commenter suggested that we consider further our initial decision not to include debt-only issuers in the accelerated filing system.⁴⁶ This commenter, along with others,⁴⁷ thought that debt-only issuers should only be allowed to file their periodic reports on a non-accelerated basis if they were willing to forgo the automatic shelf registration benefits that they may qualify for as well-known seasoned issuers.

Although commenters raised several issues and concerns that we considered, we continue to believe that the establishment of the new category of large accelerated filers is appropriate. While we acknowledge the concerns of some commenters that larger issuers may have more complex business systems than smaller issuers that could potentially cause them to experience difficulties in meeting the most accelerated Form 10-K deadline, we do not believe that these observations warrant granting larger issuers

⁴⁴ See letter from PwC.

⁴⁵ See letter from American Bankers.

⁴⁶ See letter from AICPA.

⁴⁷ Two other commenters requested that the Commission consider an “opt-in” or “opt-out” approach whereby large accelerated filers who could qualify as a well-known seasoned issuer could choose to opt-out of the benefits of automatic shelf registration and instead file their annual reports under a 75-day deadline. See letters from ABA and E&Y.

permanent relief from the additional 15-day acceleration of the Form 10-K deadline. We believe that it is appropriate to establish the large accelerated filer category, noting that companies with a public float of \$700 million or more represent nearly 95% of the U.S. equity market capitalization and are more closely followed by the markets and by securities analysts than other issuers.⁴⁸ Based on our experience with the accelerated filing deadlines, we continue to believe that larger issuers generally have sufficient financial reporting resources and sufficiently robust infrastructures to comply with the 60-day deadlines, when they take effect for annual reports filed for fiscal years ending on or after December 15, 2006.⁴⁹ In addition, the \$700 million public float threshold that is an element of the large accelerated filer definition mirrors the public float eligibility requirement used in the new Securities Act of 1933 (“Securities Act”)⁵⁰ definition of “well-known seasoned issuer.”⁵¹

In using the same public float threshold in both definitions, however, we are not equating large accelerated filer status with well-known seasoned issuer status. As we noted in the proposing release, the timing for measuring an issuer’s public float for the purpose of determining accelerated filer or large accelerated filer status is different from the timing for measuring public float for the purpose of determining well-known

⁴⁸ See Section V.A below and Section II.A.1 in Release No. 33-8591.

⁴⁹ In addition, internal data suggests that companies with a market capitalization of \$700 million or more may currently be filing their annual reports on Form 10-K on an average of 70 days after fiscal year end. Our data was derived from Audit Analytics. Market capitalization was used as an approximation for public float data.

⁵⁰ 15 U.S.C. 77a *et seq.*

⁵¹ See Release No. 33-8591. The definition of a well-known seasoned issuer is set forth in Securities Act Rule 405 [17 CFR 230.405]. We chose to incorporate the \$700 million public float threshold in connection with the extensive research conducted by our Office of Economic Analysis during the development of the Securities Offering Reform rules and demonstrable differences between companies with this threshold and those with a lower public float threshold.

seasoned issuer status. Moreover, debt-only issuers are excluded from the category of both accelerated filers and large accelerated filers. In addition, unlike with the large accelerated filer definition, certain issuers known as “ineligible issuers” are excluded from well-known seasoned issuer status, but not from large accelerated filer status.⁵²

An accelerated filer’s public float threshold is to be measured as of the last business day of the issuer’s most recently completed second fiscal quarter. We received some comments recommending that the public float measurement be tied to a longer period of time or based on an average of multiple dates instead of being tied to a single point in time.⁵³ These commenters reasoned that measurements required to be made at a single point in time could cause companies that are experiencing only temporary swings in stock price at the time that the public float is measured to be pulled into the accelerated filer or large accelerated filer definition.⁵⁴ Commenters did not provide empirical evidence that this is other than an isolated occurrence.

We have considered the comments, but continue to believe that the proposed measurement, which is consistent with the measurement that has been in place since 2002, is an appropriate method for the purpose of accelerated filing. Further, our revisions to the rules regarding exiting accelerated filer status should address commenters’ concerns to some extent. As we stated in the 2002 adopting release, when we developed a fixed determination date in advance of year-end in response to

⁵² For example, a large accelerated filer that is not current with respect to its periodic report filing obligations, or that was a blank check, shell company (other than a business combination related shell company) or an issuer of penny stock as defined in Exchange Act Rule 3a51-1 [17 CFR 240.3a51-1] during the three years before the determination date specified in the ineligible issuer definition, would not be eligible to become a well-known seasoned issuer.

⁵³ See, e.g., letters from ACB; BDO Seidman; Deloitte (Oct. 31, 2005); PwC; and Greg Swalwell.

⁵⁴ See, e.g., letter from ACB; BDO Seidman; and Deloitte (Oct. 31, 2005).

comments, determining public float on the last day of the company's second fiscal quarter provides a company with six months advance notice as to whether or not it will be subject to accelerated filing at the end of its fiscal year so it can begin making the appropriate preparations.⁵⁵ We have required companies to disclose this computation on the Form 10-K cover page. We are not sufficiently persuaded that we should change the method of computing public float that was included in the original accelerated filer definition that we adopted in consideration of comments in 2002.

In connection with our establishment of the large accelerated filer category, we also are amending the definition of the term "accelerated filer" to include only those companies that have a public float of \$75 million or more, but less than \$700 million, as of the last business day of the issuer's most recently completed second fiscal quarter.

3. Form 10-K Deadline for Large Accelerated Filers

A majority of commenters, mostly companies and their auditors or advisers or groups representing these interests, urged the Commission to consider revising the rules to eliminate the final phase-in to the 60-day Form 10-K filing deadline for even the large accelerated filers.⁵⁶ These commenters provided various reasons as to why the Commission should revise this deadline. First, several commenters argued that the 60-day deadline would negatively affect the quality of annual reports.⁵⁷ They suggested, for

⁵⁵ See Section II.B.3 of Release No. 33-8128.

⁵⁶ See, e.g., letters from ABA; AICPA; Central Pacific; Chubb; CMC; Cytokinetics; Deloitte (Sept. 16, 2005 and Oct. 31, 2005); 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; and Wilmington Trust.

⁵⁷ See, e.g., letters from ABA; AICPA; Central Pacific; Chubb; CMC; Cytokinetics; Deloitte (Sept. 16, 2005 and Oct. 31, 2005); 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; and Wilmington Trust.

example, that involvement of the audit committee, board of directors, lawyers, auditors, and outside experts in the annual report review process could be meaningfully reduced under the 60-day deadline.⁵⁸ Some commenters cautioned that a shortened deadline may increase the chance of error.⁵⁹ One commenter noted that issuers may have an increased incentive to use recasted language or limited analysis in the Management's Discussion and Analysis section of the reports when pressured to meet a rigid deadline.⁶⁰ Second, some commenters reasoned that companies' more frequent filing of current reports on Form 8-K,⁶¹ as well as the shortened Form 8-K filing deadline, has reduced the need for further acceleration of the Form 10-K deadline.⁶² Third, a number of commenters pointed out the difficulties in meeting the accelerated deadline given the time and costs involved in complying with various regulatory demands, including the requirements regarding internal control over financial reporting mandated by Section 404 of the Sarbanes-Oxley Act of 2002.⁶³ In addition, commenters claimed that the accelerated deadline will increase costs without incremental benefit,⁶⁴ and some commenters claimed that the deadline will impose stress and strain on those responsible for preparing the

⁵⁸ See, e.g., letters from GM and Sidley Austin.

⁵⁹ See, e.g., letters from Whole Foods and Wilmington Trust.

⁶⁰ See letter from Sidley Austin.

⁶¹ 17 CFR 249.308.

⁶² See, e.g., letters from ABA; CMC; Cytokinetics; Deloitte (Sept. 16, 2005 and Oct. 31, 2005); JC Penney; GM; NRF; PwC; Safeway; Sidley Austin; and Whole Foods.

⁶³ See, e.g., letters from ABA; AICPA; BDO Seidman; CMC; Deloitte (Sept. 16, 2005); Ferrellgas; Forest City; Glacier; GM; Hercules; JC Penney; NRF; Safeway; Sidley Austin; Greg Swalwell; UnionBanCal; and Williams-Sonoma.

⁶⁴ See, e.g., letters from BDO Seidman; CMC; Deloitte (Sept. 16, 2005); Emerson; E&Y; Gander; JC Penney; LNR Property; NRF; PwC; and Safeway.

annual report.⁶⁵ Some companies provided timelines of the tasks needed to be completed in preparing the annual report in order to show that they had little time to spare.⁶⁶

A minority of commenters supported the application of the final phase-in to the 60-day Form 10-K filing deadline to large accelerated filers.⁶⁷ One commenter provided empirical data supporting its position. It analyzed 855 companies and noted that, while most of the companies did not currently file their Form 10-K within 60 days after fiscal year end, more issuers filed them within 60 days for their fiscal year 2004 than for their fiscal year 2002 and these companies filed, on average, within 70 days after fiscal year end.⁶⁸

Despite the comments requesting that we consider adopting a permanent 75-day annual report deadline for even the large accelerated filers, we do not think it is appropriate to do so. While the information filed on Form 8-K current reports clearly is important, we do not believe that it is an adequate substitute for the timely availability of the information included in annual reports. While we are mindful of the potential costs that may be incurred by large accelerated filers in complying with the 60-day Form 10-K filing deadline, for the reasons discussed in 2002 at the time of its original adoption, we believe that the 60-day deadline continues to appropriately balance, for these issuers, the time necessary to prepare annual reports on Form 10-K with the need of the markets to receive important information in a timely manner.

⁶⁵ See, e.g., letters from AICPA; Central Pacific; Chubb; Sean Dempsey; GM; JC Penney; LNR Property; PwC; Safeway; Sidley Austin; and UnionBanCal.

⁶⁶ See, e.g., letters from Chubb; Ferrellgas; GM; and Southwest Gas.

⁶⁷ See, e.g., letters from CII; FinRA; ICBA; KPMG; and Nasdaq.

⁶⁸ See letter from KPMG.

However, in acknowledgement of the recent responsibilities assumed by even the largest companies, especially those associated with Section 404 of the Sarbanes-Oxley Act and regarding internal control over financial reporting, we are postponing the implementation of the 60-day Form 10-K deadline for the large accelerated filers for an additional year. Under the amendments we are adopting, large accelerated filers will be subject to the current 75-day Form 10-K deadline for fiscal years ending before December 15, 2006. With respect to annual reports filed for fiscal years ending on or after December 15, 2006, large accelerated filers will become permanently subject to the 60-day Form 10-K deadline.

4. Form 10-Q Deadline for Large Accelerated Filers

A majority of the commenters supported our proposal not to subject even large accelerated filers to the final phase-in for quarterly reports to 35 days so that they could continue to file their quarterly reports on Form 10-Q within 40 days after fiscal quarter end.⁶⁹ One association noted that this topic met with the most concern among the accelerated filers in its membership.⁷⁰ Another commenter who supported the 60-day deadline for the Form 10-K for large accelerated filers provided some empirical data to show that a 35-day deadline could hinder the quality of management's review as well as reduce dialogue with the audit committee.⁷¹ Although we requested comment on whether large accelerated filers should be required to file their reports within 35 days, none of the commenters responded affirmatively.

⁶⁹ See, e.g., letters from ABA; ACB; American Bankers; The Business Roundtable; Central Pacific; Chubb; CMC; Cytokinetics; Deloitte (Sept. 16, 2005 and Oct. 31, 2005); E&Y; Emerson; FEI; Ferrellgas; FinRA; Gander; GM; Hercules; ICBA; KPMG; Southwest Gas; Greg Swalwell; URS Corporation; Whole Foods; Williams-Sonoma; and Wilmington Trust.

⁷⁰ See letter from American Bankers.

⁷¹ See letter from KPMG.

We are adopting the amendments as proposed so that even large accelerated filers will be subject to a 40-day Form 10-Q quarterly report deadline, instead of the previously adopted 35-day deadline. We proposed these amendments based on comments that we have received from the public about the difficulties of meeting the 35-day deadline. Consistent with the comments that we have received on the proposal, we believe that these amendments appropriately relieve companies from the further acceleration of the Form 10-Q quarterly report deadline. Also, we do not perceive a net benefit from continuing to accelerate the Form 10-Q for large accelerated filers, given the size of the decrease in the number of filing days (from 40 days to 35 days).⁷² We believe that these amendments appropriately balance the time needed to prepare quarterly reports on Form 10-Q with the need of the markets to receive the information in a timely manner.

5. Other Comments on the Amended Filing Deadlines

In the proposing release, we also requested comment on whether:

- alternate structures for filing deadlines would be preferable;
- the filing deadlines should be changed for any category of issuer;
- the filing deadlines would cause confusion among investors; and
- the filing deadlines for accelerated filers and non-accelerated filers that are longer than the deadlines for large accelerated filers would unduly disadvantage investors in companies that are not large accelerated filers.

Some commenters believed that the three tiers of filing deadlines were too complex and may be confusing to investors.⁷³ One commenter, however, indicated that,

⁷² See also Section V.A below on the cost-benefit analysis of the filing deadline amendments.

⁷³ See, e.g., letters from ACB; AICPA; CII; Ferrellgas; FRA; and NRF.

while it thought that three filer categories and sets of deadlines were not necessary, it suspected that the investor community would adjust quickly to the deadlines.⁷⁴ Another commenter requested that we reconsider the longer deadlines for companies that are not large accelerated filers in the next two years, during which time, technologies and competency should improve allowing shorter deadlines for all companies.⁷⁵ Some commenters offered recommendations for alternate deadlines – for example, that non-accelerated filers should be subject to 90-day annual report and 45-day quarterly report deadlines while all accelerated filers, even the larger ones, should be subject to 75-day annual report and 40-day quarterly report deadlines.⁷⁶ A few commenters recommended that the Commission uniformly apply 75-day annual report and 40-day quarterly report deadlines to all reporting companies, including those with a public float below \$75 million.⁷⁷ One commenter noted in response to our request for comment asking whether the proposed deadlines would unduly disadvantage investors in smaller companies, that although it believed that investors in smaller companies would benefit from the earlier availability of reports, such benefits are not significant enough to justify the costs associated with further acceleration.⁷⁸ A few commenters suggested that the Commission conduct further study on the appropriate deadlines for companies.⁷⁹

After considering all of these comments, we continue to believe that the three-tier structure, combined with the provision of an additional year before the phase-in of the

⁷⁴ See letter from PwC.

⁷⁵ See letter from CII.

⁷⁶ See letters from BDO Seidman and E&Y.

⁷⁷ See, e.g., letters from Emerson; LNR Property; NYCBA; and Whole Foods.

⁷⁸ See letter from PwC.

⁷⁹ See, e.g., letters from Deloitte (Oct. 31, 2005) and Forest City.

60-day deadline for large accelerated filers, appropriately balances differing resources and needs of companies with investor protection interests. Any potential confusion that may be caused initially by the changing deadlines should be mitigated by the requirement that a company check a box on the cover pages of its Form 10-K and Form 10-Q reports indicating whether it is a large accelerated filer, an accelerated filer, or a non-accelerated filer.

The following chart depicts the three tiers of filing deadlines that will take effect for the fiscal years ending on or after December 15, 2005⁸⁰ as a result of the amendments:

Category of Filer	Revised Deadlines For Filing Periodic Reports	
	Form 10-K Deadline	Form 10-Q Deadline
Large Accelerated Filer (\$700MM or more)	75 days for fiscal years ending before December 15, 2006 and 60 days for fiscal years ending on or after December 15, 2006	40 days
Accelerated Filer (\$75MM or more and less than \$700MM)	75 days	40 days
Non-accelerated Filer (less than \$75MM)	90 days	45 days

Also, as noted in the proposing release, we do not intend to change the deadlines for filing an annual report on Form 20-F. However, the definition of accelerated filer and large accelerated filer do not exclude companies that qualify as foreign private issuers. As a result, a foreign private issuer that voluntarily files on Forms 10-K and 10-Q is required to determine whether it is an accelerated filer or large accelerated filer and, if so,

⁸⁰ See Section III.D below.

must comply with the applicable deadlines for filing these forms. A foreign private issuer that loses its status as a foreign private issuer and is, therefore, required to file reports on Forms 10-K and 10-Q also must comply with the applicable deadlines for filing those forms.

B. Exit Requirements from Accelerated Filer and Large Accelerated Filer Status

In addition to amending the filing deadlines, we also are amending the requirements for exiting accelerated filer status and establishing requirements for exiting large accelerated filer status. Under the rules prior to the amendments, an issuer that became an accelerated filer would remain one unless and until the issuer subsequently became eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports. Thus, a reporting issuer that first met the “small business issuer” definition at the end of a fiscal year was required to wait two years from that point before it could begin to file its annual report on a non-accelerated filer basis.⁸¹

The proposed rules would have amended the accelerated filer definition to allow an issuer to exit accelerated filer status at the end of the fiscal year if its public float fell below \$25 million, as of the last business day of the most recently completed second fiscal quarter. The proposed amendments also would have permitted a large accelerated filer to exit large accelerated filer status if its public float fell below \$75 million, as of the

⁸¹ For example, prior to these amendments, if an issuer had met the accelerated filer definition at the end of its 2004 fiscal year, the issuer would file its 2004 annual report on an accelerated filer basis. However, in order to exit accelerated filer status, an accelerated filer must have met the definition of small business issuer and file on an accelerated filer basis at the end of its 2004 and 2005 fiscal years, before the prior rules would have allowed the company to file on a non-accelerated filer basis beginning with its first quarter Form 10-QSB in fiscal 2006.

last business day of the most recently completed second fiscal quarter. Under the proposals, an exiting large accelerated filer would become a non-accelerated filer if its public float had fallen below \$25 million, as of the determination date.

In the proposing release, we noted that there were circumstances under the existing accelerated filer definition where a company that no longer had common equity securities outstanding, and therefore no longer had a duty to file periodic reports with respect to these securities, but continued to have a reporting obligation for another security, was required to remain an accelerated filer for two years. While the instances in which a company no longer would have publicly held common equity securities but still would be subject to an Exchange Act reporting obligation with respect to another class of non-common equity security appeared to be uncommon, they may have occurred occasionally in connection with a stock merger or leveraged buyout structured as a cash merger or recapitalization.⁸² These companies remained subject to the requirement to file their periodic reports on an accelerated filer basis despite the fact that they would not have been required to initially become an accelerated filer if they had only a class of debt securities registered under the Exchange Act. The proposed revisions sought to rectify this inequitable result.

⁸² Based on data from the Center for Research in Securities Prices Database obtained by the Office of Economic Analysis, we estimate that 142 companies met the accelerated filer definition on or after their fiscal years ended December 15, 2002 and then subsequently delisted their common stock or other common equity from a national securities exchange or Nasdaq during the 2003 calendar year. Of the 142 companies, we estimate that only four companies continued to have an Exchange Act reporting obligation with respect to another class of debt or non-common equity securities. It is our understanding that the data in CRSP does not include a complete list of common equity traded through the OTC Bulletin Board or Pink Sheets LLC, so our estimate may understate the actual number of companies that would be affected by our proposed revision to the accelerated filer definition.

Most of the commenters who remarked on this proposal supported removal of unnecessary impediments preventing issuers from promptly exiting out of accelerated filer status. Many of these commenters, however, offered recommendations for modifying the proposals. These recommendations included:

- Raising the public float threshold that a company needs to meet before exiting accelerated filer status;⁸³
- Raising the public float threshold so that the threshold for exiting accelerated filer status is the same as the threshold for entering the status;⁸⁴
- Tying the public float measurement to a period of time (e.g., 30 days) or requiring the measurement to be based on an average public float as measured on multiple days (e.g., the average of multiple quarter ends);⁸⁵ and
- Requiring companies to provide notice, such as by filing a Form 8-K, of a change in filing deadline status.⁸⁶

A few commenters who acknowledged the importance of maintaining filing stability believed that the objective could be achieved by tying the measurement to a period of time instead of to a single point in time, even if the public float threshold were raised higher than the proposed threshold.⁸⁷

⁸³ See, e.g., letters from ABA and ACB.

⁸⁴ See, e.g., letters from AICPA; Deloitte (Oct. 31, 2005); E&Y; FinRA; and PwC.

⁸⁵ See, e.g., letters from BDO Seidman; Deloitte (Oct. 31, 2005); FinRA; PwC; and Greg Swalwell.

⁸⁶ See, e.g., letters from ACB; AICPA; E&Y; FinRA; Nasdaq; and PwC.

⁸⁷ See, e.g., letters from Deloitte (Oct. 31, 2005) and PwC.

We are adopting the exit requirements for accelerated filers and large accelerated filers substantially as proposed, except that we are raising the public float thresholds below which a large accelerated filer must fall before it becomes eligible to exit that status from the proposed \$75 million to \$500 million, and below which an accelerated filer must fall before it becomes eligible to exit that status from the proposed \$25 million public float to a \$50 million float. We are not amending the method of computing public float for the reasons set forth in Section III.A.2 of this release. While we considered the comments regarding the filing of a Form 8-K announcing a change in filing deadline status, and while we considered whether to require disclosure in a company's Form 10-Q for its second fiscal quarter to provide investors with advance notice that a company would be exiting accelerated filer or large accelerated filer status, we have decided that a mandated disclosure requirement is not justified, given the infrequency of such an occurrence.⁸⁸ As noted in Section III.C above, we also believe that the cover page notations on the Form 10-K and Form 10-Q should mitigate any potential initial investor confusion regarding when a company's reports are due. Some companies may choose, on their own, to disclose a change in filing deadline status in a Form 8-K or Form 10-Q.

The revisions that we are adopting allow an issuer to exit accelerated filer status at the end of the fiscal year if its aggregate worldwide market value of voting and non-voting common equity held by non-affiliates has fallen below \$50 million, as of the last business day of its second fiscal quarter. As a result, companies will be permitted to exit accelerated filer status in the same year that the public float measurement reflects the requisite reduction. In addition, companies that have lost their public float but were

⁸⁸ See text accompanying n.89 below.

required, under the previously existing rules, to continue to file reports on an accelerated basis because of a reporting obligation with respect to a different class of security will no longer need to do so.

The proposals would have set the requirement for exiting accelerated filer status at \$25 million due to the limited following and reporting resources of a public issuer with less than \$25 million in public float. After evaluating comments, we are persuaded that similar considerations apply upon a reduction in a company's public float to below \$50 million and therefore conclude that it is appropriate to allow these issuers to exit accelerated filer status promptly. Also, available data regarding the number of companies whose market capitalization fell from \$75 million or more in 2004 to below \$50 million in 2005 suggests that only a very limited number of companies would move out of accelerated filer status if the amendments that we are adopting were in place at that time.⁸⁹ We believe that this addresses our concern that fluctuations in and out of accelerated filer status may cause confusion among investors about a company's filing deadlines.

As adopted, the rules provide that once a large accelerated filer's public float falls below \$500 million, as of the last business day of the company's most recently completed second fiscal quarter, it is eligible to exit large accelerated filer status at the end of that fiscal year and to file its annual report as an accelerated filer or a non-accelerated filer, as appropriate. If the company's public float is less than \$500 million, but \$50 million or

⁸⁹ We used market capitalization data as an approximation for public float from the Thomson Worldscope Global Database. The data shows that only 11 companies with a market capitalization of \$700 million or more in 2004 had in 2005, its market capitalization drop below \$500 million, and only 42 companies with a market capitalization of \$75 million or more in 2004 had in 2005, its market capitalization drop below \$50 million.

more, as of the last business day of its most recently completed second fiscal quarter, the company can begin to file under the deadlines for an accelerated filer that is not a large accelerated filer. If the company's public float drops below \$50 million, as of the determination date, it no longer will be required to file its reports on an accelerated basis.

C. Other Amendments

We also are adopting other related amendments. In the proposing release, we proposed to make the same types of conforming changes to Rules 3-01, 3-09 and 3-12 of Regulation S-X that we made when we first adopted the accelerated filing deadlines in 2002.⁹⁰ In the interest of creating uniform requirements, our conforming amendments require financial information that must be included in Commission filings other than periodic reports filed on Forms 10-K and 10-Q, such as Securities Act and Exchange Act registration statements and proxy or information statements, to be at least as current as the financial information included in these periodic reports.⁹¹ Second, we proposed to make similar changes to the transition reports that a company must make when it changes its fiscal year.⁹² We are adopting those changes as proposed.

We also proposed to clarify that the public float term in both the accelerated filer and large accelerated filer definitions refers to the "aggregate worldwide market value of the company's voting and non-voting common equity held by non-affiliates."⁹³ We are adopting this change as proposed. This reference also is made in the note to the definition of "accelerated filer and large accelerated filer" discussing how to calculate

⁹⁰ See Release No. 33-8128.

⁹¹ 17 CFR 210.3-01; 17 CFR 210.3-09; and 17 CFR 210.3-12.

⁹² See paragraph (j)(1) of Exchange Act Rules 13a-10 and 15d-10.

⁹³ See paragraph (1)(i) and paragraph (2)(i) of the Exchange Act Rule 12b-2 definition of "accelerated filer and large accelerated filer."

public float. The amendment codifies staff interpretation and is consistent with the public float condition in the recently adopted Securities Act Rule 405 definition of a “well-known seasoned issuer,” as well as the public float measurement for determining eligibility to file a registration statement on Form F-3.⁹⁴ The determination of public float is premised on the existence of a public trading market for the company’s equity securities.⁹⁵

D. Effective Date and Compliance Dates

The revised accelerated filing deadlines begin to apply to an accelerated filer’s first annual report for a fiscal year ending on or after December 15, 2005, except that the final phase-in of the 60-day Form 10-K deadline for large accelerated filers is postponed until the large accelerated filer files its first annual report for its fiscal year ending on or after December 15, 2006. The Commission finds good cause to make the rule effective prior to 30 days after publication to enable accelerated filers that satisfy the revised requirements for exiting accelerated filer status to file their Form 10-K annual reports for fiscal year 2005, as discussed below, on a non-accelerated basis. The revised exit requirements are less stringent than the requirements for exiting accelerated filer status that had been in place prior to revision. In addition, because the revised deadlines and

⁹⁴ Securities Act Rule 405 definition of “well-known seasoned issuer” refers to “worldwide market value.” Notwithstanding the addition of “worldwide,” an issuer with common equity securities publicly traded in foreign markets but not subject to a requirement to file reports under Section 13(a) or 15(d) of the Exchange Act related to such securities (for example, an issuer with common equity publicly traded in a foreign market but not only required to report as a result of registration or public issuance of one or more classes of debt securities) will not be an accelerated filer or a large accelerated filer. In addition, regardless of their status, foreign private issuers that file their annual reports on Form 20-F or 40-F are of course not subject to the accelerated reporting requirements that we adopt today.

⁹⁵ This is consistent with the requirement in General Instruction I.B.1 of Form S-3 and Form F-3 that a registrant have a \$75 million market value. Therefore, an entity with \$75 million of common equity securities outstanding but not trading in any public trading market would not be an accelerated filer or a large accelerated filer.

revisions to the definition of an accelerated filer relieve restrictions on companies, we believe that it is appropriate that the effective date of the release is December 27, 2005.

Under the amendments, a company that meets the Exchange Act definition of a “large accelerated filer” at the end of its fiscal year ending on or after December 15, 2006 must comply with the 60-day Form 10-K deadline beginning with its annual report on Form 10-K filed for that fiscal year. With regard to the amended requirements for exiting accelerated filer status, a company that filed its last quarterly report as an accelerated filer and had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of less than \$50 million, as of the last business day of its most recently completed second fiscal quarter, will no longer be considered an accelerated filer, as of the end of its fiscal year, and may begin to file reports on a non-accelerated basis, beginning with Form 10-K annual reports for fiscal years ending on or after December 15, 2005.

IV. Paperwork Reduction Act

The amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995, or PRA.⁹⁶ Form 10-K (OMB Control No. 3235-0063) and Form 10-Q (OMB Control No. 3235-0070) were adopted pursuant to Sections 13 and 15(d) of the Exchange Act. They prescribe information that a registrant must disclose annually and quarterly to the market about its business. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

⁹⁶ 44 U.S.C. 3501 et seq.

The amendments to the Exchange Act Rule 12b-2 definition of “accelerated filer” and to the periodic reporting deadlines will:

- Amend the Exchange Act Rule 12b-2 definition of an “accelerated filer” to create a new category of accelerated filer, the “large accelerated filer,” for 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;
- Re-define the term “accelerated filer” to include an issuer with an aggregate worldwide market value of voting and non-voting common equity held by non-affiliates of \$75 million or more, but less than \$700 million;
- Amend the accelerated filing deadlines so that accelerated filers that are not large accelerated filers can continue to file their Form 10-K annual reports within 75 days after fiscal year end, with no further reduction scheduled, while large accelerated filers will be subject to the 60-day Form 10-K annual report deadline beginning with the fiscal years ending on or after December 15, 2006. The final 35-day Form 10-Q quarterly report phase-in deadline will not be applied even to large accelerated filers, and thus, the quarterly report deadline for all accelerated filers will remain at 40 days; and
- Amend the accelerated filer definition to allow accelerated filers with less than \$50 million in public float to exit accelerated filer status without a two-year delay and to allow large accelerated filers with less than \$500 million public float to exit that status.

The amendments do not change the amount of information required to be included in Exchange Act reports. Therefore, they neither increase nor decrease the amount of

burden hours necessary to prepare Forms 10-K and 10-Q, for the purposes of the PRA. This Paperwork Reduction Act analysis was contained in the proposing release, and we received no comments addressing this analysis.

V. Cost-Benefit Analysis

The amendments are part of our continuing initiative to improve the regulatory system for periodic disclosure under the Exchange Act. We first adopted rules regarding accelerated filing deadlines in September 2002. As adopted, these rules generally required issuers with a public float of \$75 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter,⁹⁷ to meet shortened filing deadlines for their Exchange Act periodic reports on Form 10-K and Form 10-Q. We are sensitive to the costs and benefits that result from our rulemaking. Based on concerns expressed by the public, we are adopting rule and form amendments that:

- Create a new “large accelerated filer” category that includes issuers with \$700 million or more in public float, as of the last business day of the issuer's most recently completed second fiscal quarter;
- Redefine the term “accelerated filer” to include an issuer with \$75 million or more, but less than \$700 million in public float, as of the last business day of the issuer's most recently completed second fiscal quarter;⁹⁸
- Amend the accelerated filing deadlines;

⁹⁷ In addition, an issuer will not be an accelerated filer unless it meets three other additional conditions. A company will be deemed an accelerated filer if, as of the end of its fiscal year, the issuer had been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 12 calendar months; had filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and is not eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports.

⁹⁸ Other than the public float amount, the conditions for the accelerated filer definition remain the same.

- Amend the requirements for exiting accelerated filer status; and
- Establish similar requirements for exiting large accelerated filer status.

In this section, we examine the costs and benefits of the amendments. We received 46 comment letters on the proposed amendments. Some of these comment letters discussed the costs and benefits of the proposals. These comments are described further below.

A. Accelerated Filing Deadlines

The previously adopted accelerated filing transition schedule provided for a final phase-in that would have required all accelerated filers to file their Form 10-K annual reports within 60 days after fiscal year end, with respect to a fiscal year ending on or after December 15, 2005, and to file their subsequent Form 10-Q quarterly reports within 35 days after quarter end. We are adopting amendments to the accelerated filing deadlines, substantially as proposed, to:

- Amend the Form 10-K deadline so that accelerated filers that are not large accelerated filers will be subject to a 75-day Form 10-K deadline, rather than the 60-day deadline scheduled to take effect next year, while large accelerated filers will be subject to final phase-in of the 60-day Form 10-K deadline, beginning with fiscal years ending on or after December 15, 2006, and to a 75-day Form 10-K deadline until then; and
- Eliminate the final phase-in of the 35-day Form 10-Q deadline for all accelerated filers so that both large accelerated filers and accelerated filers will be permanently subject to a 40-day Form 10-Q deadline.

1. Benefits

These amendments may afford various benefits to companies and their investors. Since the 2002 adoption of the accelerated filing deadlines, we received several comments expressing concern over the ability of companies to meet the accelerated filing deadlines, especially in light of the new requirements adopted in 2003 by the Commission requiring companies to include a report by management, and accompanying auditor's report, on the effectiveness of the company's internal control over financial reporting in their annual reports. We interpret these comments on companies' limited ability to meet more stringent deadlines as an expression of concern about the costs to companies of complying with the shortened deadlines.

The primary benefit of the amendments is the expected cost-savings to companies that as a result of the amendments will no longer be subject to the final phase-in of the accelerated Form 10-K or Form 10-Q filing deadlines. In order to comply with the final phase-in of the most accelerated deadlines, companies may devote or expend additional resources to generate information more quickly and provide the information to the market. Smaller companies appear to have access to fewer financial resources and less well-developed infrastructure to support the further acceleration of the reporting deadlines. For a given disclosure, diseconomies of scale may cause smaller companies to face greater costs of acceleration than larger companies. The amendments may thus confer benefits to smaller companies by relieving them from the higher costs of having to meet the final phase-in of deadlines.

As noted in the cost-benefit analysis included in our initial accelerated filing release,⁹⁹ additional time to prepare the financial reports may lower preparation costs and limit the internal resources that must be committed to filing periodic reports. As a result of our amendments, smaller companies may therefore allocate those resources towards other projects.

In addition, not subjecting accelerated filers to the final phase-in of the accelerated filing deadlines may reduce the cost of capital of these companies. Smaller companies may take this into account when considering whether to become a public reporting company.

There have been a number of academic papers that have shown that smaller companies face higher costs of compliance per dollar of asset value than do larger companies. For example, after the implementation of Section 404, the cost of completing the auditing process rose dramatically.¹⁰⁰ This rise in audit fees is related to the size of the company. When audit fees are scaled by assets, there is a negative relationship between the change in audit fees and company size, indicating that smaller companies have a higher cost of compliance than larger companies.¹⁰¹ We believe that the elimination of the final phase-in of the current deadlines will likely result in a reduction in compliance costs for smaller companies.

We also are adopting conforming amendments relating to the timeliness requirements for the inclusion of financial information in Securities Act and Exchange

⁹⁹ See Section IV.A of Release No. 33-8128.

¹⁰⁰ For example, see Susan Eldridge & Burch Kealey, SOX Costs: Auditor attestation under Section 404 (University of Nebraska at Omaha Working Paper, 2005) and Paul Griffin & David Long, An analysis of audit fees following the passage of Sarbanes-Oxley (UC-Davis Working Paper, 2005).

¹⁰¹ Id.

Act registration statements, proxy or information statements, and transition reports. The conforming amendments provide additional time for affected companies to update the financial statements that must be included in their registration statements and proxy or information statements and promote consistency among our rules. These conforming amendments may indirectly promote capital formation, because accelerated filers will have more time before the financial information in registration statements become stale.

2. Costs

We believe, and academic studies indicate, that the information required to be contained in the Exchange Act periodic reports is valuable to investors and the markets.¹⁰² With regard to the deadline for Form 10-Q quarterly reports filed by both large accelerated filers and accelerated filers, and the deadline for Form 10-K annual reports filed by accelerated filers, our amendments have the effect of delaying access to periodic report information to investors and to the capital markets relative to the originally established phase-in schedule. Information required by Exchange Act reports may provide a verification function against other unofficial statements that companies may have made. Investors can judge these informal statements against the more extensive formal disclosure provided in the reports, including financial statements prepared in accordance with generally accepted accounting principles. Accelerated filing shortens the delay before this verification can occur and speeds the timing for comparative financial analyses of information in those reports. Delaying access to this information may thereby hinder an investor's ability to make informed decisions on as timely a basis as would have been possible if the final phase-in of accelerated filing

¹⁰² See, e.g., I. Qi, D. Wu & W. Haw, The Incremental Information Content of SEC 10-K Reports Filed under the EDGAR System, 15 J. of Acctg., Auditing and Fin. 25-45 (2000).

deadlines were completed. Thus, the amendments will delay access to information for making investment and valuation decisions, and may increase capital market inefficiencies in stock valuation and pricing. Likewise, the delay may cause Exchange Act reports to have less relevance to investors.

The Office of Economic Analysis (“OEA”) has provided us with data for companies listed on NYSE, Amex, NASDAQ, the Over the Counter Bulletin Board (“OTCBB”) and Pink Sheets LLC from which we can estimate the number of companies that are affected by these proposals. For the most part, the data is based on a public float definition which is highly correlated to our definition of public float.¹⁰³ The data indicates that 2,307 of the companies that are listed on NYSE, Amex, NASDAQ, OTCBB or the Pink Sheets have a public float of between \$75 million and \$700 million, while 1,678 of the companies have a public float over \$700 million. The companies possessing between \$75 million and \$700 million in public float represent 23% of the total number of companies on these markets and 4.3% of the total public float of these companies on these markets. The companies with a public float of over \$700 million represent approximately 18% of the total number of companies on these markets and

¹⁰³ Bloomberg was the source of the public float data. Bloomberg defines public float as the number of shares outstanding less shares held by insiders and those deemed to be “stagnant shareholders.” “Stagnant shareholders” include ESOP’s, ESOT’s, QUEST’s employee benefit trusts, corporations not actively engaged in managing money, venture capital companies, and shares held by governments. When terms for public float were missing from Bloomberg, market capitalization was used as a proxy for public float which likely overstates the number of firms in certain categories. However, given the low number of companies where market capitalization was used, the difference should not be large.

nearly 95% of the total public float on these markets.¹⁰⁴

We have used this information in analyzing the cost of delaying the information contained in periodic reports which we expect to be higher on a per share basis for investors in smaller companies, and therefore the cost to investors on a per share basis of eliminating the final phase-in for smaller companies may be greater than the cost of such a step would be for larger companies. A study shows that smaller companies experience a larger price impact on a per share basis on the filing date than larger companies.¹⁰⁵ However, because of the much smaller overall market size of smaller companies (i.e., large accelerated filers in the aggregate have roughly 19 times the market capitalization of other filers in the aggregate), the per share impact may overestimate the total dollar market impact of investor reactions to periodic filings. Larger companies are more widely followed and have more information available in the market.¹⁰⁶ However, to the extent that periodic filings for larger companies contain information not theretofore in the available mix of information, any per share price impact has a greater market impact. This consideration of market impact explains our focus on maintaining the final phase-in of the annual report filing deadline at 60 days for large accelerated filers.

While we recognize inherent difficulties in the ability to quantify the effect that, for example, the 15-day delay in the filing of the annual report by accelerated filers has

¹⁰⁴ In our Securities Offering Reform release, Release No. 33-8591, we noted that in 2004, the issuers that met the thresholds for well-known seasoned issuers represented accounted for about 95% of U.S. equity market capitalization. The eligibility requirements for a well-known seasoned issuer and the \$700 million threshold for a large accelerated filer are not the same because, unlike an accelerated filer, a well-known seasoned issuer may also be an issuer of non-convertible securities, other than common equity. Nevertheless, we believe that the numbers in the release for well-known seasoned issuers still provide us with a good approximation for our purposes.

¹⁰⁵ Paul Griffin, Got Information? Investor Response to Form 10-K and Form 10-Q EDGAR Filings, 8 Rev. of Acctg. Stud. 433 (2003).

¹⁰⁶ See also Section II.A.1 of Release No. 33-8591.

on the market, we believe that eliminating the final phase-in of deadlines incorporates new information on the balance between the magnitude of the cost-savings for smaller companies engaging in regulatory compliance and the potential cost of less timely information. Further, we do not perceive a net benefit of continuing to accelerate the Form 10-Q quarterly report deadline for large accelerated filers given the size of the decrease in the number of filing days (i.e., from 40 days to 35 days). We did not receive comments quantifying the impact that the delay would have to the market.

Some commenters suggested that the impact of a 15-day delay would not be significant, given that the enhanced Form 8-K requirements have greatly improved the timeliness and access of information about Exchange Act reporting companies to investors and the markets.¹⁰⁷ While we believe, however, that the access to the information in the current reports on Form 8-K is an important method for obtaining specified unquestionably or presumptively material information about these companies, that information is not an adequate substitute for the information provided in Exchange Act periodic reports.

We received some comments cautioning that a system of filing deadlines composed of three-tiers and based on size-based differentiations was too complex and may confuse investors.¹⁰⁸ We have also received comments that suggested that we require companies to provide notice, such as by filing a Form 8-K, of a change in filing deadline status.¹⁰⁹ Similarly, we acknowledge the concern that the amendments may

¹⁰⁷ See, e.g., letters from ABA; CMC; Cytokinetics; Deloitte (Sept. 16, 2005 and Oct. 31, 2005); GM; JC Penney; NRF; PwC; Safeway; Sidley Austin; and Whole Foods.

¹⁰⁸ See, e.g., letters from ACB; AICPA; CII; Ferrellgas; FRA; and NRF.

¹⁰⁹ See, e.g., letters from ACB; AICPA; E&Y; FinRA; Nasdaq; and PwC.

produce costs as a result of requiring companies and their investors to regularly monitor public float levels to determine companies' filing deadlines.

We believe that these concerns are addressed by the requirement that companies indicate on the Form 10-K or Form 10-Q cover page whether they are a large accelerated filer, accelerated filer or non-accelerated filer. We recognize that investors may be confused as to the delay in the filing of information when a company exits out of accelerated filer or large accelerated filer status, because disclosure about the change in status is not available until the time of filing. We have not required the filing of a Form 8-K, because we believe that the requirement would be overly burdensome, and our research indicates that the number of companies exiting filing deadline status in any given year would be limited.¹¹⁰ Companies, however, may choose to mitigate investor confusion by voluntarily disclosing changes in filing deadline status in a Form 8-K current report or Form 10-Q quarterly report. They may have an incentive to provide this disclosure if they are concerned that the market may infer that the delay in filing is due to a potential problem.

A number of commenters requested that we consider revising the rules to maintain the Form 10-K deadline at 75 days after fiscal year end, eliminating the final phase-in of the most accelerated 60-day deadline for even large accelerated filers.¹¹¹ After careful consideration of these comments and based, in large part, on information indicating that larger issuers generally possess the infrastructure and resources to support further acceleration of the annual report filing deadline, we have decided not to eliminate

¹¹⁰ See Section V.B below.

¹¹¹ See n.56 above.

the final phase-in of the most accelerated annual report deadline for large accelerated filers. We expect that that the accelerated annual report deadline for larger companies meeting the definition of a large accelerated filer promotes investor protection by providing investors in these companies with timely access to important information.

However, the proposed rules have been modified to defer the 60-day Form 10-K deadline for an additional year for large accelerated filers. We are aiming to provide companies and their auditors more time to refine their processes, and we believe that this may help diffuse the costs that companies may be facing because of the recent regulatory demands combined with a further accelerated annual report deadline. This change should alleviate the impact in compliance costs on companies caused by the further accelerated annual report deadline.

In sum, by establishing three tiers of filing deadlines in which the largest companies are subject to the shortest annual report deadline, the amended rules hasten the delivery of material information to investors and capital markets about those issuers that we believe are more capable of meeting the accelerated annual report deadline. At the same time, we are incorporating an additional one-year period before the accelerated annual report deadline is phased-in in order to address the potential costs of complying with this deadline.

B. Exiting Accelerated Filer or Large Accelerated Filer Status

We have also examined the costs and benefits of the other amendments that we

are adopting today. Our amendments to the requirements for exiting accelerated filer status and large accelerated filer status offer benefits similar to our amendments lengthening the accelerated filing deadlines. While we continue to believe that it is important to minimize fluctuation in and out of accelerated filer status, we identified some situations with respect to which we believe the current rules are unnecessarily restrictive. One such situation involves a company that has de-registered all of its common equity but still has an Exchange Act reporting obligation with respect to another class of securities. Prior to the adoption of these amendments, this company would still be required to file reports on an accelerated basis, despite the fact that it would not have been required to become an accelerated filer initially if it only had a class of debt securities registered under the Exchange Act. We believe that the amendment permitting companies to exit accelerated filer status based on a public float measurement presents a more balanced approach than what the current rules present.

It is difficult to quantify the number of companies that will be affected by our amendments relating to the exit of issuers from accelerated filer status or large accelerated filer status. However, data available to us suggests that this number will be very limited. The amendments to the requirements on exiting accelerated filing status, using 2003 data, could allow an estimated four companies who have delisted their stock or other common equity from a national securities exchange or Nasdaq, but have a reporting obligation with regards to a different class of security, to no longer be subject to the accelerated filer definition and to be able to file their Exchange Act reports up to 15

days later than currently required.¹¹² In addition, using 2004 and 2005 data, our research indicates that only 42 companies with \$75 million or more market capitalization in 2004 had their market capitalization drop to less than \$50 million in 2005 and therefore would have been eligible to exit accelerated filer status if the amendment requirements had been in place.¹¹³ With regard to our provisions for exiting large accelerated status, we also believe that the number of companies exiting that status would be few. Our research indicates that only 11 companies with \$700 million or more market capitalization in 2004 had their market capitalization drop to below \$500 million in 2005 and would have been eligible to exit large accelerated filer status if the amended requirements had been in place.

VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act¹¹⁴ requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange

¹¹² OEA provided us with a list of companies that delisted their common stock or other common equity from a national securities exchange or Nasdaq during the 2003 calendar year from the CRSP Database. From this list, we identified the companies that met the accelerated filer definition for fiscal years ending on or after December 15, 2002. Then, we confirmed whether or not the accelerated filer continued to have an Exchange Act reporting obligation with respect to a class of debt or equity securities on the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR"). It is our understanding that the data in CRSP does not include a complete list of common equity traded on the OTC Bulletin Board, so our estimate may understate the actual number of companies that would be affected by our proposed revision to the accelerated filer definition.

¹¹³ In deriving these estimates, we used market capitalization as an approximation for public float from the Thomson Worldscope Global Database.

¹¹⁴ 15 U.S.C. 78w(a)(2).

Act. In addition, Section 2(b) of the Securities Act¹¹⁵ and Section 3(f) of the Exchange Act¹¹⁶ require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The amendments are designed to balance the interest of providing timely access of the information contained in Exchange Act reports to investors and to markets against the need of companies along with their auditors to conduct, without undue cost, high-quality and thorough assessments and audits of the companies' financial information, so as to increase the likelihood that more complete, reliable, and timely information contained in Exchange Act reports is available to the market. Our amendment that incorporates the 60-day deadline for large accelerated filers after fiscal years ending on or after December 15, 2006 preserves the timeliness and accessibility of issuer information so that investors have more ready access to information for investment and voting decisions regarding these companies. We believe that the 60-day deadline for annual reports for large accelerated filers, when it takes effect, is appropriate, given the internal reporting resources of large accelerated filers and the greater market interest that they generate. We are eliminating the previously adopted final phase-in to the 35-day Form 10-Q quarterly report deadline for both accelerated filers and large accelerated filers and eliminating the final phase-in to the 60-day Form 10-K annual report deadline for accelerated filers that are not large accelerated filers. Under the amended rules, issuers

¹¹⁵ 15 U.S.C. 77b(b).

¹¹⁶ 15 U.S.C. 78c(f).

with a public float that has dropped below \$50 million will be allowed to exit accelerated filer status promptly.

Informed investor decisions generally promote market efficiency and capital formation. Depending on a company's public float, the accelerated filer rules, as amended, require different filing deadlines. Companies that are large accelerated filers will be required to file under a further accelerated annual report filing deadline beginning with the fiscal years ending on or after December 15, 2006, while the other accelerated filers remain subject to the same filing deadlines under which they currently file their periodic reports. Also, under the amended rules, some companies will be permitted to exit accelerated filer status more quickly and easily than the current rules. These results may enhance competition by avoiding the imposition of onerous burdens on smaller competitors who are least able to bear them. This may also have the effect of allowing some competitors to file their Exchange Act reports later than others, potentially providing some competitive advantage to those that can file later.

Some issuers have expressed concern that accelerated periodic report filing deadlines may affect their ability to provide accurate and reliable information and that it is increasingly difficult to comply with accelerated deadlines given various regulatory demands, including requirements associated with Section 404 of the Sarbanes-Oxley Act.¹¹⁷ We have sought to minimize these concerns by amending the deadlines so that the previously adopted final phase-in of the annual report deadline will apply beginning with the fiscal years ending on or after December 15, 2006 to the largest public issuers, which are likely to have the greatest internal reporting resources to support the deadline.

¹¹⁷ See text accompanying n.21-23.

Although many commenters urged that we revise the rules even further to maintain a permanent 75-day annual report deadline for even the large accelerated filers,¹¹⁸ we believe that these rules, as we are adopting them, appropriately balance the concerns of these issuers with the interest in providing investors with timely access to important information.

On the other hand, permitting issuers to file under the extended deadline requirements would have the effect of delaying the receipt of information by investors, and the delay may affect an investor's ability to make informed decisions in as timely a fashion. Permitting a company to exit accelerated filer status may do likewise. Nevertheless, these provisions could also promote capital formation, because they diminish the risk that companies would not be eligible for short-form registration because of the untimely filing of reports.

Our conforming amendments to Regulation S-X which cover the timeliness of financial information in registration statements and proxy or information statements may affect capital formation. This may promote capital formation by providing companies with a longer window to access capital markets before financial information becomes stale.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis, or FRFA, has been prepared in accordance with the Regulatory Flexibility Act.¹¹⁹ This FRFA involves amendments to the rules and forms under the Securities Act and the Exchange Act that:

¹¹⁸ See n.56 above.

¹¹⁹ 5 U.S.C. 603.

- Create a new “large accelerated filer” category defined in the same manner as the term accelerated filer but includes an issuer with \$700 million or more in public float, as of the last business day of the issuer’s most recently completed second fiscal quarter;
- Re-define the term “accelerated filer” to include an issuer with an aggregate worldwide market value of voting and non-voting common equity held by non-affiliates of \$75 million or more, but less than \$700 million, as of the last business day of the issuer’s most recently completed second fiscal quarter;
- Amend the accelerated filing deadlines so that accelerated filers that are not large accelerated filers will be subject to a 75-day Form 10-K deadline and a 40-day Form 10-Q deadline with no further reductions scheduled. Large accelerated filers will be subject to a 60-day Form 10-K annual report deadline beginning with the fiscal years ending on or after December 15, 2006. The Form 10-Q quarterly report deadline for large accelerated filers will remain at 40 days;
- Amend the accelerated filer definition to allow an accelerated filer with less than \$50 million in public float to exit accelerated filer status at the end of its fiscal year; and
- Amend the accelerated filer definition to allow a large accelerated filer with less than \$500 million in public float to exit large accelerated filer status.

A. Need for the Amendments

The amendments seek to balance the interests of investors and of the market to have timely access to important information contained in periodic reports against the need of companies and their auditors to conduct, without undue cost, high-quality and

thorough assessments and audits of the companies financial information, so as to increase the likelihood that more complete, reliable, and timely information contained in Exchange Act reports is available to the market. The amendments relate to the acceleration of deadlines for filing annual reports on Form 10-K and quarterly report on Form 10-Q.

While we believe that periodic reports contain information that is essential to conduct comparative financial analysis, and that timely access to these reports can greatly benefit investors and the market, we share in some of the concerns expressed by several companies regarding the further acceleration of filing deadlines. As a result, we adopt amendments that subject only large accelerated filers to the shortest annual report accelerated filing deadline, which we believe is achievable by these issuers without undue cost and burden. In doing so, we acknowledge the relative ability of different issuers to support the accelerated report deadlines. We also are providing large accelerated filers with an additional year to make the necessary adjustments to prepare for the further accelerated annual report deadline. In adopting new rules governing the exit from accelerated filer status, we seek to achieve a more streamlined, fair, and balanced set of rules.

B. Significant Issues Raised by Public Comment

In the proposing release, we requested comment on whether the proposed amendments could have an effect that we have not considered. We also requested that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact. We did not receive any comments specifically responding to that request.

C. Small Entities Subject to the Final Amendments

For purposes of the Regulatory Flexibility Act, Exchange Act Rule 0-10(a)¹²⁰ defines an issuer, other than an investment company, to be a “small business” or “small organization” if it had total assets of \$5 million or less on the last business day of its most recent fiscal year.

The amendments affect only the Exchange Act reporting companies that are defined by Exchange Act Rule 12b-2, as amended, as “accelerated filers” or “large accelerated filers.” An issuer becomes an accelerated filer once it first meets the following conditions as of the end of its fiscal year:

- The issuer has a public float of \$75 million or more, but less than \$700 million, as of the last business day of the issuer’s most recently completed second fiscal quarter;¹²¹
- The issuer has been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 12 calendar months;
- The issuer previously has filed at least one annual report; and
- The issuer is not eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports.

An issuer is defined as a large accelerated filer in much the same way, except that a large accelerated filer has a public float of \$700 million or more, as of the last business day of the issuer’s most recently completed second fiscal quarter.

¹²⁰ 17 CFR 240.0-10(a).

¹²¹ For purposes of the accelerated filer definition, the issuer must compute the aggregate worldwide market value of its outstanding voting and non-voting common equity by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity, as of the last business day of its most recently completed second fiscal quarter.

As we noted in the proposing release, according to the Standard & Poors Research Insight Compustat Database, as of a recent date, of the 990 reporting companies listed with assets of \$5 million or less, 28, or 2.8%, had a market capitalization greater than \$75 million and three had a market capitalization greater than \$700 million.¹²² Based on our research, we did not expect the proposed amendments to affect a substantial number of small entities. We did not receive comments addressing this analysis, and we continue to believe that the amendments do not substantially affect small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Our amendments to the filing deadlines for the Form 10-K annual report and Form 10-Q quarterly reports should not significantly affect smaller entities. The amended rules affect the deadlines of only (1) large accelerated filers, which includes issuers with \$700 million or more in public float, as of the last business day of the most recently completed second fiscal quarter, and (2) accelerated filers that are not large accelerated filers, or those with at least \$75 million in public float, but less than \$700 million, as of the last business day of the most recently completed second fiscal quarter.¹²³

Our amendments to the exit requirements from accelerated filer status could have an impact on a company that becomes a small entity after its public float has dropped below \$50 million. However, we do not expect the impact of the amendments on small

¹²² It is our understanding that the data in the Compustat Database is derived principally from larger issuers, so our estimate could understate the actual number of issuers that would be affected by the proposals. This sample was taken in September 2005. Assuming that this sample is representative of small entities, the accelerated filer public float requirement has the effect of excluding almost all small entities from the definition.

¹²³ We have noted before that the accelerated filer deadlines have little, if any, effect on smaller entities. See Release No. 33-8128.

entities to be significant, because we expect that only a few accelerated filers would become small entities each year.¹²⁴ For those that do, the amendments streamline their exit from accelerated filer status and make it easier for them to begin filing their reports under longer deadlines. Specifically, under the amendments, issuers no longer have to wait for two years before they could start filing under longer deadlines.

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we have considered the following alternatives:

1. Establishing different compliance or reporting requirements for smaller entities that take into account the resources available to smaller entities;
2. Setting different thresholds upon which companies can exit accelerated filer status; and
3. Using different standards by which companies are measured to determine whether they should be subject to different regulatory burdens, taking into account the needs of smaller entities.

We have considered other changes to our rules and forms to achieve our regulatory objectives, and where possible, have taken steps to minimize the effect of the rules on smaller entities. The amendments likely will have a favorable impact on smaller entities as they permit more companies to exit from accelerated status and permit companies to exit from accelerated status without the two-year delay that the current

¹²⁴ Based on data from the Thomson Worldscope Global Database, we estimate that only 42 companies had a public float of \$75 million in 2004, but less than \$50 million in 2005.

rules require. We have stated that the accelerated deadlines will have little, if any, effect on smaller entities.¹²⁵ As a result of our amendments, the effect on smaller entities will likely be even further reduced.

VIII. Update to Codification of Financial Reporting Policies

The Commission amends the “Codification of Financial Reporting Policies” announced in Financial Reporting Release No. 1 (April 15, 1982) as follows:

1. By amending Section 102.05.(2) to read as follows:

(2) Conforming the Filing Requirements of Transition Reports to the Current Requirements for Forms 10-Q and 10-K

To conform to the current filing periods for reports on Forms 10-K and 10-Q, the filing period for transition reports on Form 10-K is 60 days for large accelerated filers (75 days for fiscal years ending before December 15, 2006), 75 days for accelerated filers, and 90 days for other issuers after the close of the transition period or the date of the determination to change the fiscal year, whichever is later, and for transition reports on Form 10-Q, the filing period is 40 days for large accelerated filers and accelerated filers or 45 days for other issuers after the later of these two events.

2. By amending Section 102.05. to revise the preliminary note to the “Appendix” to Section 102.05. to read as follows:

Preliminary Note: The following examples are applicable if the issuer is neither a large accelerated filer nor an accelerated filer. If the issuer is a large accelerated filer, substitute 60 days (75 days for fiscal years ending before December 15, 2006) for 90 days in the examples for transition reports on Form 10-K, and substitute 40 days for 45 days in the examples for transition reports on Form 10-Q. If the issuer is an accelerated filer,

¹²⁵ See Release No. 33-8128.

substitute 75 days for 90 days in the examples for transition reports on Form 10-K, and substitute 40 days for 45 days in the examples for transition reports on Form 10-Q.

3. By amending Section 302.01.a. to:

a. Replace the phrase “after 45 days but within 90, 75 or 60 days of the end of the registrant’s fiscal year for accelerated filers, as applicable depending on the registrant’s fiscal year (or after 45 days but within 90 days of the end of the registrant’s fiscal year for other registrants)” with the phrase “after 45 days but within 60 days of the end of the registrant’s fiscal year (75 days for fiscal years ending before December 15, 2006) for large accelerated filers or after 45 days but within 75 days of the end of the registrant’s fiscal year for accelerated filers (or after 45 days but within 90 days of the end of the registrant’s fiscal year for other registrants)” in the second paragraph of Section 302.01.a.; and

b. Replace the phrase “after 45 days but within 90, 75 or 60 days of the end of its fiscal year if the registrant is an accelerated filer, as applicable depending on the registrant’s fiscal year (i.e., February 16 to March 31, 15, or 1 for calendar year companies) (or after 45 days but within 90 days of the end of its fiscal year for other registrants (i.e., February 16 to March 31 for calendar year companies))” with the phrase “after 45 days but within 60 days (75 days for fiscal years ending before December 15, 2006) of the end of its fiscal year if the registrant is a large accelerated filer (i.e., February 16 to March 1 (or March 15 for fiscal years ending before December 15, 2006) for calendar year companies), after 45 days but within 75 days of the end of its fiscal year if the registrant is an accelerated filer (i.e., February 16 to March 15 for calendar year companies), or after 45 days but within 90 days of the end of its fiscal year for other

registrants (i.e., February 16 to March 31 for calendar year companies)” in the first sentence of the fourth paragraph of Section 302.01.a.

4. By amending Section 302.01.b. to:

a. Replace the phrase “134, 129 or 124 days subsequent to the end of a registrant’s fiscal year if the registrant is an accelerated filer, as applicable depending on the registrant’s fiscal year (or 134 days subsequent to the end of a registrant’s fiscal year for other registrants)” with the phrase “129 days subsequent to the end of a registrant’s fiscal year if the registrant is a large accelerated filer or an accelerated filer (or 134 days subsequent to the end of a registrant’s fiscal year for other registrants)” in the first sentence of Section 302.01.b.; and

b. Replace the phrase “135, 130 or 125 days of the date of the filing if the registrant is an accelerated filer, as applicable depending on the registrant’s fiscal year (or 135 days of the date of the filing for other registrants)” with the phrase “130 days of the date of the filing if the registrant is a large accelerated filer or an accelerated filer (or 135 days of the date of the filing for other registrants)” in the second sentence of Section 302.01.b.

5. By amending Section 302.01.c. to:

a. Replace the phrase “135, 130 or 125 days or more, if the registrant is an accelerated filer, as applicable depending on the registrant’s fiscal year (or 135 days or more for other registrants)” with the phrase “130 days or more, if the registrant is a large accelerated filer or an accelerated filer (or 135 days or more for other registrants)” in the first paragraph of Section 302.01.c.;

b. Replace the phrase “as of an interim date within 135, 130 or 125 days, if the registrant is an accelerated filer, as applicable depending on the registrant’s fiscal year (or 135 days for other registrants)” with the phrase “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)” in the first paragraph of Section 302.01.c.; and

c. Replace the phrase “after 45 days but within 90, 75 or 60 days of the end of the fiscal year if the registrant is an accelerated filer, as applicable depending on the registrant’s fiscal year (or after 45 days but within 90 days of the end of the fiscal year for other registrants)” with the phrase “after 45 days but within 60 days (75 days for fiscal years ending before December 15, 2006) of the end of the fiscal year if the registrant is a large accelerated filer, after 45 days but within 75 days if the registrant is an accelerated filer (or after 45 days but within 90 days of the end of the fiscal year for other registrants)” in the second and third sentences of the second paragraph of Section 302.01.c.

Note: The Codification is a separate publication of the Commission. It will not appear in the Code of Federal Regulations.

IX. Statutory Authority and Text of Amendments

The amendments contained in this document are being adopted under the authority set forth in Sections 3(b) and 19(a) of the Securities Act and Sections 12, 13, 15(d) and 23(a) of the Exchange Act.

TEXT OF AMENDMENTS

List of Subjects in 17 CFR Parts 210, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 210 – FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w(a), 78ll, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, unless otherwise noted.

2. Section 210.3-01 is amended by revising paragraphs (e) and (i) to read as follows:

§210.3-01 Consolidated balance sheets.

* * * * *

(e) For filings made after the number of days specified in paragraph (i)(2) of this section, the filing shall also include a balance sheet as of an interim date within the following number of days of the date of filing:

(1) 130 days for large accelerated filers and accelerated filers (as defined in §240.12b-2 of this chapter); and

(2) 135 days for all other registrants.

* * * * *

(i)(1) For purposes of paragraphs (c) and (d) of this section, the number of days shall be:

(i) 60 days (75 days for fiscal years ending before December 15, 2006) for large accelerated filers (as defined in §240.12b-2 of this chapter);

(ii) 75 days for accelerated filers (as defined in §240.12b-2 of this chapter);
and

(iii) 90 days for all other registrants.

(2) For purposes of paragraph (e) of this section, the number of days shall be:

(i) 129 days subsequent to the end of the registrant's most recent fiscal year for large accelerated filers and accelerated filers (as defined in §240.12b-2 of this chapter); and

(ii) 134 days subsequent to the end of the registrant's most recent fiscal year for all other registrants.

3. Section 210.3-09 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§210.3-09 Separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

* * * * *

(b) * * *

(3) The term registrant's number of filing days means:

(i) 60 days (75 days for fiscal years ending before December 15, 2006) if the registrant is a large accelerated filer;

(ii) 75 days if the registrant is an accelerated filer; and

(iii) 90 days for all other registrants.

(4) The term subsidiary's number of filing days means:

- (i) 60 days (75 days for fiscal years ending before December 15, 2006) if the 50 percent or less owned person is a large accelerated filer;
- (ii) 75 days if the 50 percent or less owned person is an accelerated filer; and
- (iii) 90 days for all other 50 percent or less owned persons.

* * * * *

4. Section 210.3-12 is amended by revising paragraph (g) to read as follows:

§210.3-12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

* * * * *

- (g)(1) For purposes of paragraph (a) of this section, the number of days shall be:
 - (i) 130 days for large accelerated filers and accelerated filers (as defined in §240.12b-2 of this chapter); and
 - (ii) 135 days for all other registrants.
 - (2) For purposes of paragraph (b) of this section, the number of days shall be:
 - (i) 60 days (75 days for fiscal years ending before December 15, 2006) for large accelerated filers (as defined in §240.12b-2 of this chapter);
 - (ii) 75 days for accelerated filers (as defined in §240.12b-2 of this chapter);
- and
- (iii) 90 days for all other registrants.

PART 229 - STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975-REGULATION S-K

5. The authority citation for Part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 79e, 79j, 79n, 79t, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

6. Section 229.101 is amended by:

a. Revising the phrase “an accelerated filer” in the introductory text of paragraph (e) and in paragraph (e)(3) to read “an accelerated filer or a large accelerated filer”; and

b. Revising the phrase “450 Fifth Street, NW” in paragraph (e)(2) to read “100 F Street, NE”.

PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

8. Section 240.12b-2 is amended by revising the definition of “Accelerated filer” to read as follows:

§240.12b-2 Definitions.

* * * * *

Accelerated filer and large accelerated filer. (1) Accelerated filer. The term accelerated filer means an issuer after it first meets the following conditions as of the end of its fiscal year:

(i) The issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$75 million or more, but less than \$700 million, as of the last business day of the issuer's most recently completed second fiscal quarter;

(ii) The issuer has been subject to the requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) for a period of at least twelve calendar months;

(iii) The issuer has filed at least one annual report pursuant to section 13(a) or 15(d) of the Act; and

(iv) The issuer is not eligible to use Forms 10-KSB and 10-QSB (§249.310b and §249.308b of this chapter) for its annual and quarterly reports.

(2) Large accelerated filer. The term large accelerated filer means an issuer after it first meets the following conditions as of the end of its fiscal year:

(i) The issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter;

(ii) The issuer has been subject to the requirements of section 13(a) or 15(d) of the Act for a period of at least twelve calendar months;

(iii) The issuer has filed at least one annual report pursuant to section 13(a) or 15(d) of the Act; and

(iv) The issuer is not eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports.

(3) Entering and exiting accelerated filer and large accelerated filer status.

(i) The determination at the end of the issuer's fiscal year for whether a non-accelerated filer becomes an accelerated filer, or whether a non-accelerated filer or accelerated filer becomes a large accelerated filer, governs the deadlines for the annual report to be filed for that fiscal year, the quarterly and annual reports to be filed for the subsequent fiscal year and all annual and quarterly reports to be filed thereafter while the issuer remains an accelerated filer or large accelerated filer.

(ii) Once an issuer becomes an accelerated filer, it will remain an accelerated filer unless the issuer determines at the end of a fiscal year that the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of the issuer was less than \$50 million, as of the last business day of the issuer's most recently completed second fiscal quarter. An issuer making this determination becomes a non-accelerated filer. The issuer will not become an accelerated filer again unless it subsequently meets the conditions in paragraph (1) of this definition.

(iii) Once an issuer becomes a large accelerated filer, it will remain a large accelerated filer unless the issuer determines at the end of a fiscal year that the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of the issuer was less than \$500 million, as of the last business day of the issuer's most recently completed second fiscal quarter. If the issuer's aggregate worldwide market value was \$50 million or more, but less than \$500 million, as of the last business day of the issuer's most recently completed second fiscal quarter, the issuer

becomes an accelerated filer. If the issuer's aggregate worldwide market value was less than \$50 million, as of the last business day of the issuer's most recently completed second fiscal quarter, the issuer becomes a non-accelerated filer. An issuer will not become a large accelerated filer again unless it subsequently meets the conditions in paragraph (2) of this definition.

(iv) The determination at the end of the issuer's fiscal year for whether an accelerated filer becomes a non-accelerated filer, or a large accelerated filer becomes an accelerated filer or a non-accelerated filer, governs the deadlines for the annual report to be filed for that fiscal year, the quarterly and annual reports to be filed for the subsequent fiscal year and all annual and quarterly reports to be filed thereafter while the issuer remains an accelerated filer or non-accelerated filer.

NOTE to paragraphs (1), (2) and (3): The aggregate worldwide market value of the issuer's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity.

* * * * *

9. Section 240.13a-10 is amended by revising paragraph (j) to read as follows:

§240.13a-10 Transition reports.

* * * * *

(j)(1) For transition reports to be filed on the form appropriate for annual reports of the issuer, the number of days shall be:

(i) 60 days (75 days for fiscal years ending before December 15, 2006) for large accelerated filers (as defined in §240.12b-2);

(ii) 75 days for accelerated filers (as defined in §240.12b-2); and

(iii) 90 days for all other issuers; and

(2) For transition reports to be filed on Form 10-Q or Form 10-QSB

(§249.308a or §249.308b of this chapter), the number of days shall be:

(i) 40 days for large accelerated filers and accelerated filers (as defined in

§240.12b-2); and

(ii) 45 days for all other issuers.

* * * * *

10. Section 240.15d-10 is amended by revising paragraph (j) to read as follows:

§240.15d-10 Transition reports.

* * * * *

(j)(1) For transition reports to be filed on the form appropriate for annual reports of the issuer, the number of days shall be:

(i) 60 days (75 days for fiscal years ending before December 15, 2006) for

large accelerated filers (as defined in §240.12b-2);

(ii) 75 days for accelerated filers (as defined in §240.12b-2); and

(iii) 90 days for all other issuers; and

(2) For transition reports to be filed on Form 10-Q or Form 10-QSB

(§249.308a or §249.308b of this chapter), the number of days shall be:

(i) 40 days for large accelerated filers and accelerated filers (as defined in

§240.12b-2); and

(ii) 45 days for all other issuers.

* * * * *

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

12. Section 249.308a is amended by revising paragraph (a) to read as follows:

§249.308a Form 10-Q, for quarterly and transition reports under sections 13 or 15(d) of the Securities Exchange Act of 1934.

(a) Form 10-Q shall be used for quarterly reports under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), required to be filed pursuant to §240.13a-13 or §240.15d-13 of this chapter. A quarterly report on this form pursuant to §240.13a-13 or §240.15d-13 of this chapter shall be filed within the following period after the end of the first three fiscal quarters of each fiscal year, but no quarterly report need be filed for the fourth quarter of any fiscal year:

- (1) 40 days after the end of the fiscal quarter for large accelerated filers and accelerated filers (as defined in §240.12b-2 of this chapter); and
- (2) 45 days after the end of the fiscal quarter for all other registrants.

* * * * *

13. Form 10-Q (referenced in §249.308a) is amended by:

- a. Revising General Instruction A.1.; and
- b. Revising the check box on the cover page that starts “Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act.)”

The revisions read as follows:

Note: The text of Form 10-Q does not, and this amendment will not, appear in the Code of Federal Regulations.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q
GENERAL INSTRUCTIONS**

A. Rule as to Use of Form 10-Q.

1. Form 10-Q shall be used for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), filed pursuant to Rule 13a-13 (17 CFR 240.13a-13) or Rule 15d-13 (17 CFR 240.15d-13). A quarterly report on this form pursuant to Rule 13a-13 or Rule 15d-13 shall be filed within the following period after the end of each of the first three fiscal quarters of each fiscal year, but no report need be filed for the fourth quarter of any fiscal year:

a. 40 days after the end of the fiscal quarter for large accelerated filers and accelerated filers (as defined in 17 CFR 240.12b-2); and

b. 45 days after the end of the fiscal quarter for all other registrants.

* * * * *

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of “accelerated filer and large accelerated filer” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer

* * * * *

14. Section 249.310 is revised to read as follows:

§249.310 Form 10-K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

(a) This form shall be used for annual reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) for which no other form is prescribed. This form also shall be used for transition reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

(b) Annual reports on this form shall be filed within the following period:

(1) 60 days after the end of the fiscal year covered by the report (75 days for fiscal years ending before December 15, 2006) for large accelerated filers (as defined in §240.12b-2 of this chapter);

(2) 75 days after the end of the fiscal year covered by the report for accelerated filers (as defined in §240.12b-2 of this chapter); and

(3) 90 days after the end of the fiscal year covered by the report for all other registrants.

(c) Transition reports on this form shall be filed in accordance with the requirements set forth in §240.13a-10 or §240.15d-10 of this chapter applicable when the registrant changes its fiscal year end.

(d) Notwithstanding paragraphs (b) and (c) of this section, all schedules required by Article 12 of Regulation S-X (§§210.12-01 – 210.12-29 of this chapter) may, at the option of the registrant, be filed as an amendment to the report not later than 30 days after the applicable due date of the report.

15. Form 10-K (referenced in §249.310) is amended by:

a. Revising General Instruction A.;

b. Revising the check box on the cover page that starts “Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). . . .;” and

c. Revising Item 1B. of Part I.

The revisions read as follows:

Note: The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

* * * * *

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 10-K.

(1) This Form shall be used for annual reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) (the “Act”) for which

no other form is prescribed. This Form also shall be used for transition reports filed pursuant to Section 13 or 15(d) of the Act.

(2) Annual reports on this Form shall be filed within the following period:

(a) 60 days after the end of the fiscal year covered by the report (75 days for fiscal years ending before December 15, 2006) for large accelerated filers (as defined in 17 CFR 240.12b-2):

(b) 75 days after the end of the fiscal year covered by the report for accelerated filers (as defined in 17 CFR 240.12b-2); and

(c) 90 days after the end of the fiscal year covered by the report for all other registrants.

(3) Transition reports on this Form shall be filed in accordance with the requirements set forth in Rule 13a-10 (17 CFR 240.13a-10) or Rule 15d-10 (17 CFR 240.15d-10) applicable when the registrant changes its fiscal year end.

(4) Notwithstanding paragraphs (2) and (3) of this General Instruction A., all schedules required by Article 12 of Regulation S-X (17 CFR 210.12-01 – 210.12-29) may, at the option of the registrant, be filed as an amendment to the report not later than 30 days after the applicable due date of the report.

* * * * *

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of “accelerated filer and large accelerated filer” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer

* * * * *

PART I

* * * * *

Item 1. ***

Item 1B. Unresolved Staff Comments.

If the registrant is an accelerated filer or a large accelerated filer, as defined in Rule 12b-2 of the Exchange Act (§240.12b-2 of this chapter), or is a well-known seasoned issuer as defined in Rule 405 of the Securities Act (§230.405 of this chapter) and has received written comments from the Commission staff regarding its periodic or current reports under the Act not less than 180 days before the end of its fiscal year to which the annual report relates, and such comments remain unresolved, disclose the substance of any such unresolved comments that the registrant believes are material. Such disclosure may provide other information including the position of the registrant with respect to any such comment.

* * * * *

16. Form 20-F (referenced in §249.220f) is amended by:

- a. Adding a check box to the cover page before the paragraph that starts “Indicate by check mark which financial statement item the registrant has elected to follow;” and

b. Revising Item 4A. to Part I.

The addition and revision read as follows:

Note: The text of Form 20-F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 20-F

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of “accelerated filer and large accelerated filer” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer

* * * * *

PART 1

* * * * *

Item 4. ***

Item 4A. Unresolved Staff Comments

If the registrant is an accelerated filer or a large accelerated filer, as defined in Rule 12b-2 of the Exchange Act (§240.12b-2 of this chapter), or is a well-known seasoned issuer as defined in Rule 405 of the Securities Act (§230.405 of this chapter) and has received written comments from the Commission staff regarding its periodic reports under the Exchange Act not less than 180 days before the end of its fiscal year to

which the annual report relates, and such comments remain unresolved, disclose the substance of any such unresolved comments that the registrant believes are material. Such disclosure may provide other information including the position of the registrant with respect to any such comment.

* * * * *

By the Commission.

Jonathan G. Katz
Secretary

Dated: December 21, 2005