

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 210, 229, 240 AND 249

[RELEASE NOS. 33-8617; 34-52491; 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: Proposed rule.

SUMMARY: We are proposing to modify the periodic report filing deadlines so that only the largest accelerated filers (those with a market value of outstanding voting and non-voting common equity held by non-affiliates of \$700 million or more) become subject to the final phase-in of the accelerated filing transition schedule that will require annual reports on Form 10-K to be filed within 60 days after fiscal year end. Under our proposed amendments, however, these companies would continue to file their quarterly reports on Form 10-Q under the current 40-day deadline, rather than the 35-day deadline that was scheduled to apply to quarterly reports filed next year. Other accelerated filers would continue to file both their annual and quarterly reports under current deadlines – 75 days after fiscal year end for annual reports on Form 10-K and 40 days after quarter end for quarterly reports on Form 10-Q. We also are proposing to 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 \$25 million to exit accelerated filer status promptly and begin filing its annual and quarterly reports on a non-accelerated filer basis. Finally, the proposed amendments would permit a large accelerated filer that has

voting and non-voting common equity held by non-affiliates of less than \$75 million to promptly exit large accelerated filer status.

DATES: Comments should be received on or before [insert date 30 days after publication in the Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form <http://www.sec.gov/rules/proposed.shtml>; or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-08-05 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number S7-08-05. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments will also be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. All comments received will be posted without change; we do

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

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

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rules 3-01,¹ 3-09² and 3-12³ of Regulation S-X,⁴ Item 101⁵ of Regulation S-K,⁶ Forms 10-Q, 10-K and 20-F⁷ under the Securities Exchange Act of 1934 (“Exchange Act”)⁸ and Exchange Act Rules 12b-2,⁹ 13a-10¹⁰ and 15d-10.¹¹

I. Background

A. Initial Adoption of Accelerated Filing Requirements

On September 5, 2002, we adopted new rules requiring larger public companies filing annual reports on Form 10-K and quarterly reports on Form 10-Q to file these reports on an accelerated basis.¹² We adopted the accelerated filing requirements as part of a series of steps to modernize and improve the usefulness of the periodic reporting

¹ 17 CFR 210.3-01.

² 17 CFR 210.3-09.

³ 17 CFR 210.3-12.

⁴ 17 CFR 210.1-01 et seq.

⁵ 17 CFR 229.101.

⁶ 17 CFR 229.10 et seq.

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

⁸ 15 U.S.C. 78a et seq.

⁹ 17 CFR 240.12b-2.

¹⁰ 17 CFR 240.13a-10.

¹¹ 17 CFR 240.15d-10.

¹² See Release No. 33-8128 (Sept. 5, 2002) [67 FR 58480].

system. The term “accelerated filer,” which is used to describe these issuers, is defined in Exchange Act Rule 12b-2 and applies to an issuer once it first meets all of the following conditions as of the end of its fiscal year:

- The issuer has 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,¹³ as of the last business day of the issuer’s most recently completed second fiscal quarter;¹⁴
- the issuer has been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act¹⁵ 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-KSB¹⁶ and 10-QSB¹⁷ for its annual and quarterly reports.

The definition of an accelerated filer also contains specific requirements concerning the entry into, and exit from, accelerated filer status. These requirements provide that the determination of whether a non-accelerated filer becomes an accelerated filer as of the end of its fiscal year governs the filing deadlines for the annual report on Form 10-K to be filed for that fiscal year, for the quarterly reports on Form 10-Q to be

¹³ The \$75 million public float threshold in the accelerated filer definition, though not the date of determination, is the same as the public float eligibility requirement for registration of a primary offering for cash on Form S-3 or Form F-3.

¹⁴ For purposes of the accelerated filer definition, the issuer must compute the aggregate 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.

¹⁵ 15 U.S.C. 78m(a) or 78o(d).

¹⁶ 17 CFR 249.310b.

¹⁷ 17 CFR 249.308b.

filed for the subsequent fiscal year and for all such annual and quarterly reports to be filed thereafter.¹⁸ Currently, once a company becomes an accelerated filer, it remains an accelerated filer unless and until it subsequently becomes eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports.¹⁹

We originally determined to phase-in the accelerated filing deadlines over a three-year period in an effort to balance the market's demand for more timely information with the time that issuers need to prepare accurate information without undue burden.²⁰ In the accelerated filer adopting release, we anticipated that a gradual transition period would allow issuers to adjust their reporting schedules and develop efficiencies to ensure that the quality and accuracy of their reported information would not be compromised.²¹

Year one of the phase-in period began for accelerated filers with fiscal years ending on or after December 15, 2002. During year one, the Form 10-K annual report deadline remained at 90 days after fiscal year end, and the Form 10-Q quarterly report deadline remained at 45 days after quarter end, but accelerated filers became subject to

¹⁸ 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 another action that the Commission takes today to defer the compliance date for our rules implementing application of Section 404 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7262] for an additional year for certain issuers, until fiscal years commencing on or after July 15, 2007, the deferral would extend to foreign private issuers that are not accelerated filers.

¹⁹ See Exchange Act Rule 12b-2. See also Item 10(a)(2) of Regulation S-B [17 CFR 228.10(a)(2)] for the conditions for entering and exiting the small business reporting system. A reporting company that is not a small business issuer must meet the definition of a small business issuer at the end of two consecutive fiscal years before it becomes eligible to file Forms 10-KSB and 10-QSB. The term "small business issuer" is defined in Rule 12b-2 as a U.S. or Canadian issuer that is not an investment company and that has less than \$25 million in revenues and public float. If the issuer is a majority-owned subsidiary, it meets the definition of a small business issuer only if the parent corporation is also a small business issuer.

²⁰ See Release No. 33-8128.

²¹ Id.

new disclosure requirements concerning Web site access to their Exchange Act reports.²² In year two, the deadline for annual reports on Form 10-K filed for fiscal years ending on or after December 15, 2003 was accelerated to 75 days and the deadline for the three subsequently filed quarterly reports on Form 10-Q was accelerated to 40 days.

In year three, the Form 10-K annual report deadline was to become further accelerated to 60 days for reports filed for fiscal years ending on or after December 15, 2004, and the deadline for the three subsequently filed quarterly reports on Form 10-Q was to accelerate to 35 days. This would have completed the phase-in for all accelerated filers, with the 60-day and 35-day deadlines remaining in place for Form 10-K and Form 10-Q, respectively, for all subsequent periods.

B. One-Year Postponement of the Final Phase-In Period for the Accelerated Periodic Report Deadlines

However, in year two of the phase-in period, several issuers and auditors expressed concern over their ability to perform the work necessary to file reports timely and, in particular, to comply with the Commission's new internal control over financial reporting requirements²³ mandated by Section 404 of the Sarbanes-Oxley Act of 2002 at the same time that periodic report deadlines were scheduled to be further accelerated.²⁴ The Commission acted in response to the concerns voiced by issuers and auditors by providing additional time and opportunity for accelerated filers and their auditors to focus

²² Id. Accelerated filers are required to disclose in their annual reports where investors can obtain access to their filings, including whether the company provides access to its Form 10-K, 10-Q and 8-K reports on its Internet Web site, free of charge, as soon as reasonably practicable after those reports are electronically filed with, or furnished to, the Commission. See Item 101(e)(4) of Regulation S-K [17 CFR 229.101(e)(4)].

²³ See Exchange Act Rules 13a-15 and 15d-15 [17 CFR 240.13a-15 and 15d-15] and Item 308 of Regulations S-K and S-B [17 CFR 229.308 and 228.308], as adopted in Release No. 33-8238 (June 5, 2003) [68 FR 36636].

²⁴ See note 18 in Release No. 33-8477 (Aug. 25, 2004) [69 FR 53550].

on complying with the new internal control reporting requirements. First, in February 2004, we extended the Section 404 rule compliance dates so that an accelerated filer had to begin complying with the internal control 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, 2004.²⁵

In November 2004, we postponed for one year the final phase-in period for acceleration of the annual and quarterly report filing deadlines on Forms 10-K and 10-Q. The amendments permitted an accelerated filer's annual report on Form 10-K for a fiscal year ending on or after December 15, 2004, but before December 15, 2005, to be filed within 75 days, rather than 60 days, after fiscal year end and the three subsequently filed quarterly reports on Form 10-Q to be filed within 40 days, rather than 35 days, after the end of a fiscal quarter. Under the amended accelerated phase-in schedule that currently governs the periodic report filing deadlines, annual reports on Form 10-K filed by accelerated filers for fiscal years ending on or after December 15, 2005 will be due within 60 days after fiscal year end and quarterly reports on Form 10-Q will be due within 35 days after fiscal quarter end, thereby completing the final phase-in period.

II. Discussion of Proposed Amendments

Based on various comments from issuers and auditors, and a recent recommendation from the SEC Advisory Committee on Smaller Public Companies regarding the accelerated filing deadlines,²⁶ we are proposing to amend the definition of

²⁵ Release No. 33-8392 (Feb. 24, 2004) [69 FR 9722].

²⁶ The Commission organized the Advisory Committee on March 23, 2005 to examine the impact of the Sarbanes-Oxley Act and other federal securities laws on smaller public companies.

accelerated filer and to further amend the accelerated filing deadlines. We are proposing to amend the accelerated filer rules to:

- create a new category of accelerated filer, the “large accelerated filer,” for issuers with an aggregate worldwide²⁷ market value 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;²⁸
- amend the accelerated filing deadlines so that the 60-day Form 10-K annual report deadline would apply only to the proposed new large accelerated filers. The Form 10-Q quarterly report filing deadline for large accelerated filers would remain at 40 days with no further reduction provided in our rules. Periodic report deadlines for other accelerated filers would remain at 75 days for annual reports on Form 10-K and 40 days for quarterly reports on Form 10-Q, again with no further reduction provided in our rules;²⁹
- allow an accelerated filer with less than a \$25 million aggregate worldwide market value of voting and non-voting common equity held by non-affiliates of the issuer, as of the last business day of the issuer’s most recently completed second fiscal quarter, to exit accelerated filer status without a second year’s determination or other delay;³⁰ and

²⁷ As discussed in Section II.D of this release, we are proposing to modify the existing Rule 12b-2 definition of “accelerated filer” to refer to the company’s “aggregate worldwide market value” rather than “aggregate market value.”

²⁸ See paragraph 2 of the proposed Exchange Act Rule 12b-2 definition of “accelerated filer and large accelerated filer.”

²⁹ See proposed amendments to Exchange Act Forms 10-K [17 CFR 249.310] and 10-Q [17 CFR 249.308a].

³⁰ See paragraph 3(ii) of the proposed Exchange Act Rule 12b-2 definition of “accelerated filer and large accelerated filer.”

- allow a large accelerated filer with less than a \$75 million aggregate worldwide market value of voting and non-voting common equity held by non-affiliates of the issuer, as of the last business day of the issuer’s most recently completed second fiscal quarter, to exit large accelerated filer status.³¹

We believe that the proposed deadlines would strike the appropriate balance between the timeliness and accessibility of Exchange Act reports to investors and to the financial markets and the need of companies and their auditors to conduct, without undue cost, high-quality and thorough assessments and audits of the financial statements contained in the reports.

The deadline for filing an annual report on Form 20-F has not been accelerated and we are not proposing to do so in this release. However, the current definition of accelerated filer and the proposed definitions 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, must comply with the applicable deadlines. A foreign private issuer that loses its status as such and is therefore required to file reports on Forms 10-K and 10-Q must do likewise.

³¹ See paragraph 3(iii) of the proposed Exchange Act Rule 12b-2 definition of “accelerated filer and large accelerated filer.”

A. Large Accelerated Filers

We are proposing amendments to the Exchange Act Rule 12b-2 definition of “accelerated filer” to create a new category of accelerated filers to be designated as “large accelerated filers.”³² Under the proposed amendments, an issuer would become a large accelerated filer once it meets the following 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;³³
- the issuer has been subject to the reporting requirements of Exchange Act Section 13(a) or 15(d) 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-QSB for its annual and quarterly reports.

The proposed \$700 million public float threshold in the large accelerated filer definition, though not the time of determination, is the same as the public float eligibility requirement that we used in our recently adopted Securities Offering Reform final rules³⁴

³² See paragraph 2 of the proposed Exchange Act Rule 12b-2 of “accelerated filer and large accelerated filer.”

³³ As a related change, we propose to re-define an accelerated filer as an issuer with an aggregate market value of voting and non-voting common equity held by non-affiliates of \$75 million or more and less than \$700 million. See paragraph (1)(i) of the proposed Exchange Act Rule 12b-2 definition of “accelerated filer and large accelerated filer.”

³⁴ Release No. 33-8591 (July 19, 2005) [70 FR 44722].

to establish a new category of issuer defined as a “well-known seasoned issuer.”³⁵

We believe that Exchange Act reporting companies with a public float of \$700 million or more are more closely followed by the markets and securities analysts than other issuers. They accounted for approximately 95% of U.S. equity market capitalization in 2004.³⁶ By virtue of their size, the proposed large accelerated filers also are more likely than smaller companies to have a well-developed infrastructure and financial reporting resources to support further acceleration of the annual report deadline.³⁷ Under the proposed amendments, large accelerated filers would become

³⁵ In addition to having different dates of determination, the “large accelerated filer” and “well-known seasoned issuer” definitions are different in other respects. In particular, Securities Act Rule 405 [17 CFR 230.405] defines a well-known seasoned issuer as one that meets the following requirements:

- the registrant requirements of Form S-3 [17 CFR 239.13] or F-3 [17 CFR 239.33];
- the issuer either must have outstanding a worldwide market value of its outstanding voting and non-voting common equity held by non-affiliates of \$700 million or more, or must have issued at least \$1 billion aggregate principal amount of non-convertible securities, other than common equity, in registered offerings during the past three years and register only non-convertible securities; and
- the issuer cannot be a registered investment company, asset-backed issuer or a type of issuer that falls within the Rule 405 definition of an “ineligible issuer.”

As a result, for example, some debt-only issuers may become well-known seasoned issuers while only issuers that have registered a class of equity security under Section 12 of the Exchange Act could become subject to the large accelerated filer definition. In addition, there could be some large accelerated filers that are ineligible issuers and therefore cannot become well-known seasoned issuers. 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 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.

³⁶ See the discussion in Section II.A.1 in Release No. 33-8591. We previously used the \$700 million cut-off as the threshold differentiating the largest companies with the most active market following in our order granting an exemption under Section 36 of the Exchange Act [15 U.S.C. 78mm(a)] to accelerated filers with less than \$700 million from filing their management’s annual report on internal control over financial reporting and the related attestation report of the registered public accounting firm and providing them an additional 45 days to timely file. Release No. 34-50754 (Nov. 30, 2004) [69 FR 70291].

³⁷ See, e.g., letters from the American Institute of Certified Public Accountants, BDO Seidman LLP, Ernst & Young LLP, and KPMG LLP in response to Release No. 33-8501.

subject to Form 10-K annual report deadlines that are more accelerated than the deadlines that would apply to all other filers, as explained in Section II.B. below.

Currently, every company filing annual reports on Form 10-K and quarterly reports on Form 10-Q is required to check a box on the cover page of these reports to indicate whether or not it is an accelerated filer. As a conforming amendment, we propose to add a new check box to the cover page of Forms 10-K, 10-Q and 20-F so that a reporting company can indicate on these forms whether it is a large accelerated filer, an accelerated filer, or a non-accelerated filer. We also are proposing a conforming amendment to Item 101(c) of Regulation S-K which requires accelerated filers to disclose in their annual reports where investors can obtain access to their filings, including whether the company provides access to its Forms 10-K, 10-Q and 8-K reports on its Internet Web site, free of charge. The proposed amendment to this item references both accelerated filers and large accelerated filers.

Request for Comment

- Is it appropriate to create a new category of accelerated filers known as “large accelerated filers?” Should we modify the proposed definition of “large accelerated filer” in any way?
- Are differences between the Securities Act Rule 405 definition of “well-known seasoned issuer” and the proposed Exchange Act Rule 12b-2 definition of “large accelerated filer” appropriate? Would any problems be created by differences between the two definitions?
- As proposed, an issuer would determine whether it must enter large accelerated filer status based on the aggregate worldwide market value of its outstanding

voting and non-voting common equity as of the last business day of the issuer's most recently completed second fiscal quarter. Is it appropriate to tie the determination of large accelerated filer status and accelerated filer status to the last business day of the issuer's most recently completed second fiscal quarter? Should the determination be made over a longer period of time?

B. Proposed Amendments to the Accelerated Filing Deadlines

Under the current phase-in schedule and absent today's proposed amendments, all accelerated filers would become subject to the final phase-in period that requires 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 and subsequently filed quarterly reports on Form 10-Q to be filed within 35 days after quarter end. After evaluating the discussions and comments provided at the Commission's roundtable on internal control over financial reporting,³⁸ and public comments on our initial accelerated filer release,³⁹ temporary postponement release⁴⁰ and securities offering reform release,⁴¹ we are proposing to maintain the accelerated filing deadlines at the current 75 days for annual reports on

³⁸ See SEC Press Release Nos. 2005-20 (Feb. 22, 2005) and 2005-50 (Apr. 7, 2005). The roundtable was held April 13, 2005. See, e.g., testimony from Bob Miles of Washington Mutual and letters from Ernst & Young LLP April 4, 2005, Glass Lewis & Co. April 12, 2005 and Crowe Chizek and Company LLC, March 28, 2005. Materials related to the roundtable, including an archived broadcast of the roundtable are available on-line at <http://www.sec.gov/spotlight/soxcomp.htm>.

³⁹ See, e.g., letters from the American Institute of Certified Public Accountants, American Bankers Association, Arris Group, Inc., Baldwin & Lyons, Inc., Berry, Dunn, McNeil & Parker, R.G. Associates, Inc., Ernst & Young LLP, HealthSouth Corporation, Jones & Keller, P.C., KPMG LLP, Helen W. Melman, National Association of Real Estate Companies, New York State Bar Association, Perkins Coie LLP, Thacher Proffitt & Wood, Triarc Companies, Inc., and Troutman Sanders LLP in response to Release No. 33-8089 (Apr. 12, 2002) [67 FR 19896].

⁴⁰ See, e.g., letters from the American Institute of Certified Public Accountants, Becker & Poliakoff, P.A., BDO Seidman, LLP, The Chubb Corporation, Deloitte & Touche LLP, Ernst & Young LLP, First Federal Bancshares of Arkansas, Federal Signal Corporation, Franklin Financial Services Corporation, MBNA Corporation, Pfizer Inc., Protective Life Corporation, and Spectrum Organic Products in response to Release No. 33-8477 (Aug. 25, 2004) [69 FR 67392].

Form 10-K for accelerated filers that are not large accelerated filers and to maintain the accelerated filer deadlines for all accelerated filers at the current 40 days for quarterly reports on Form 10-Q. While we are mindful of the incremental benefit that more timely accessibility to periodic reports would provide to investors, we believe that the burdens associated with an increased acceleration of the deadlines justify our proposal to subject only certain companies to the further acceleration. This proposal also is consistent with a recommendation adopted on August 10, 2005 by the SEC Advisory Committee on Smaller Public Companies that smaller public companies not be subject to any further acceleration of due dates for annual and quarterly reports.⁴² If the proposed deadlines are adopted, we intend to begin applying the revised deadlines with respect to Form 10-K annual reports for fiscal years ending on or after December 15, 2005.

We continue to believe that the public float test is an appropriate measure of size and market interest, and that there is a significant difference between companies with a public float of \$700 million or more and other public companies.⁴³ Based on the public comments that we have received and our staff's analysis of the available data in connection with the Securities Offering Reform, we believe other accelerated filers with a

⁴¹ See, e.g., letters from the American Institute of Certified Public Accountants, BDO Seidman LLP, Ernst & Young LLP, and KPMG LLP in response to Release No. 33-8501.

⁴² The Advisory Committee advocated that in implementing this recommendation, the Commission look to the Committee's guidance in defining "smaller public company." Materials related to the August 10, 2005 meeting held by the Commission's Advisory Committee on Smaller Public Companies are available on-line at <http://www.sec.gov/info/smallbus/acspc.shtml>. The Advisory Committee also recommended deferring compliance with the internal control over financial reporting requirements by companies that are not accelerated filers.

⁴³ According to the Office of Economic Analysis, in the period from 1997 to 2004, issuers with a market capitalization in excess of \$700 million that conducted offerings typically had an average of 12 analysts following them prior to the offering and issuers with a market capitalization of between \$75 million and \$200 million, in most cases, have between zero to five analysts following them with approximately 50% having zero to two analysts following them. Further analysis showed that issuers with a market capitalization in excess of \$700 million had significantly higher average daily

public float below \$700 million generally are not followed as closely by investors and analysts and have fewer resources to devote to regulatory compliance and financial reporting. We note, however, that most accelerated filers have been able to meet the current accelerated deadlines, although we are aware of the additional cost that meeting these deadlines has imposed on companies. In order to provide reporting companies with a public float between \$75 million and \$700 million with adequate time to prepare accurate and complete reports without imposing undue burden and expense, we propose to maintain the Form 10-K annual report deadline at 75 days after fiscal year end and the Form 10-Q quarterly report deadline at 40 days after the quarter end for these companies.

The proposed amendments also would allow large accelerated filers to continue filing their quarterly reports on Form 10-Q within 40 days after quarter end. Based on comments that we have received indicating that most accelerated filers find it significantly more difficult to comply with the accelerated quarterly report deadline than with the accelerated annual report deadline,⁴⁴ we propose to maintain the Form 10-Q quarterly report deadline at 40 days even for large accelerated filers. We are also proposing technical corrections to the codification of financial reporting policies to reflect these amendments.

Therefore, the proposed periodic report filing deadlines would relate to the following three separate tiers of issuers and be of different lengths depending on the type of issuer:

- Large accelerated filers would be required to file their annual reports on Form

trading volumes. In addition, the data shows that issuers with a market capitalization in excess of \$700 million accounted for over 90% of the proceeds from securities offerings over that period.

⁴⁴ See, e.g., letters from The Committee on Corporate Reporting of Financial Executives International (July 20, 2005) and Stewart Information Services Corp (June 23, 2005).

10-K within 60 days after the end of the fiscal year and quarterly reports on Form 10-Q within 40 days after the end of the fiscal quarter;

- Accelerated filers that are not large accelerated filers would be required to file their annual reports on Form 10-K within 75 days after the end of the fiscal year and quarterly reports on Form 10-Q within 40 days after the end of the fiscal quarter; and
- All issuers that are not accelerated filers would continue to be required to file their annual reports on Form 10-K within 90 days after the end of the fiscal year and quarterly reports on Form 10-Q within 45 days after the end of the fiscal quarter.

The following table compares the periodic reporting deadlines under the current rules with the deadlines under our proposed amendments:

Category of Filer	Deadlines For Reports Beginning with the Annual Report For Fiscal Year Ending On or After December 15, 2005 Under the Current Rules		Category of Filer	Deadlines For Reports Beginning with the Annual Report For Fiscal Year Ending On or After December 15, 2005 Under the Proposed Rules	
	10-K Deadline	10-Q Deadline		10-K Deadline	10-Q Deadline
Accelerated Filer (\$75MM or more)	60 days	35 days	Large Accelerated Filer (\$700MM or more)	60 days	40 days
			Accelerated Filer (between \$75MM and \$700MM)	75 days	40 days
Non-accelerated Filer (less than \$75MM)	90 days	45 days	Non-accelerated Filer (less than \$75MM)	90 days	45 days

Request for Comment

- Do the proposed three tiers of filing deadlines provide appropriate balance and structure within the periodic reporting system? Would an alternate structure for reporting deadlines be preferable? If so, what criteria should we use to determine the appropriate deadlines?
- Should we change any of the filing deadlines for any category of issuer?
- Would three tiers of filing deadlines cause confusion among investors regarding the due dates for companies' periodic reports? Is it necessary to distinguish large accelerated filers from smaller accelerated filers if the only effect of the distinction is to require large accelerated filers to file their annual reports 15 days earlier than smaller accelerated filers? If there should be a uniform set of deadlines that would apply to all accelerated filers, what should those deadlines be?
- Should we require large accelerated filers to file their quarterly reports within 35 days after quarter end, consistent with the deadline that is currently scheduled to be phased-in under existing requirements?
- Is it appropriate to maintain the current 75 and 40-day filing deadlines for accelerated filers that are not large accelerated filers? Do the current deadlines achieve our goal of providing detailed reports to the public as quickly as possible without compromising the reliability and accuracy of the reports?
- Would deadlines for accelerated filers and non-accelerated filers that are longer than the deadlines for large accelerated filers unduly disadvantage investors in companies that are not large accelerated filers?

C. Exiting Accelerated Filer and Large Accelerated Filer Status

We propose to amend the accelerated filer definition to allow an issuer to exit accelerated filer status at the end of the fiscal year if the issuer's aggregate market value of voting and non-voting common equity held by non-affiliates of the issuer falls below \$25 million, as of the last day of the issuer's second fiscal quarter. Under the current definition, an issuer that has become an accelerated filer remains one unless and until the issuer becomes eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports.

Under requirements set forth in Item 10(a)(2) of Regulation S-B, a reporting issuer that is not a small business issuer must meet the small business issuer definition at the end of two consecutive years before becoming eligible to use Forms 10-KSB and 10-QSB. The determination made by a reporting company at the end of the second consecutive fiscal year that it has become eligible to file on Forms 10-KSB and 10-QSB governs reports relating to the next fiscal year only. This requires a reporting issuer that first meets the small business issuer definition at the end of a fiscal year to wait two years from that point before it can begin to file its annual report on a non-accelerated filer basis.⁴⁵

Thus, a previously reporting issuer will always enter the small business reporting system with a quarterly report filed on Form 10-QSB and must still file its annual report on Form 10-K for the fiscal year in which it first met the small business definition.⁴⁶ This

⁴⁵ For example, if an issuer meets the definition of accelerated filer at the end of its 2004 fiscal year, the issuer will file its 2004 annual report on an accelerated filer basis. However, in order to exit accelerated filer status, an accelerated filer must meet the definition of small business issuer and file on an accelerated filer basis at the end of its 2004 and 2005 fiscal years, before being allowed to file on a non-accelerated filer basis beginning with its first quarter Form 10-QSB in fiscal 2006.

⁴⁶ See Item 10(a)(2)(v) of Regulation S-B [17 CFR 228.10(a)(2)(v)].

differs from the accelerated filer reporting system which requires new accelerated filers to always enter the system with the filing of an annual report rather than a quarterly report.

In addition, there have been circumstances under the current accelerated filer definition where a company that no longer has common equity securities outstanding and therefore no longer has a duty to file periodic reports with respect to these securities, but continues to have a reporting obligation for another security, is required to remain an accelerated filer for two years. While the instances in which a company no longer would have publicly held common equity but still be subject to an Exchange Act reporting obligation with respect to another class of non-common equity security are likely to occur infrequently, the circumstance may occasionally occur in connection with a stock merger or leveraged buyout structured as a cash merger or recapitalization.⁴⁷ These companies remain 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.

In the initial accelerated filer adopting release, we expressed the view that, once a company meets the accelerated filer threshold, it is reasonable to minimize a company's

⁴⁷ 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.

fluctuation in and out of accelerated filer status.⁴⁸ We are proposing to allow an accelerated filer to exit accelerated filer status promptly if the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of the issuer has fallen to less than \$25 million as of the last business day of the issuer's most recently completed second fiscal quarter.⁴⁹ While the proposed amendments would permit additional companies to exit accelerated filer status, our research indicates that the proposed amendments would not significantly increase fluctuations out of accelerated filer status.⁵⁰

Considering the substantial loss in public float required for an accelerated filer to reach the \$25 million threshold and the limited following and reporting resources of a public issuer with less than \$25 million in public float, we believe that it is appropriate to allow these issuers to exit accelerated filer status promptly. The types of companies that would benefit from this proposed relief also would include those that no longer have any voting or non-voting common equity held by non-affiliates but continue to be subject to the reporting requirements of Exchange Act Section 13(a) or 15(d) with respect to a class of securities that are not common equity securities.⁵¹

Under the proposed amendments, the issuer's determination that it has less than \$25 million in public float, as of the last business day of the issuer's most recently

⁴⁸ See Release No. 33-8128. Stability of status helps avoid investor confusion and assures that issuers have sufficient notice to prepare their periodic disclosure on a timely basis.

⁴⁹ See paragraph 3(ii) of the proposed Exchange Act Rule 12b-2 definition of "accelerated filer and large accelerated filer."

⁵⁰ Based on data from the Thomson Worldscope Global Database, we estimate that only 25 companies had a public float of \$75 million in 2003, but less than \$25 million in 2004.

⁵¹ The proposed amendment would allow reporting issuers that have lost their public float to be treated similarly to other Exchange Act reporting issuers that have never had a public float, such as issuer of publicly held debt securities.

completed second fiscal quarter would permit it to file its annual report on a non-accelerated filer basis for the fiscal year in which that determination is made. For example, if a December 31, 2005 fiscal year-end accelerated filer had less than \$25 million in public float on June 30, 2005, the end of its second fiscal quarter, it could exit accelerated filer status on December 31, 2005, and would not have to file its Form 10-K for fiscal year 2005 on an accelerated filer basis. The issuer could then continue to file all subsequent annual and quarterly reports on a non-accelerated filer basis unless and until the issuer again meets the accelerated filer definition.

The proposed amendments also permit large accelerated filers to exit from large accelerated filer status. Once its public float has fallen to less than \$75 million, also as of the last business day of the company's most recently completed second fiscal quarter, a large accelerated filer could exit large accelerated filer status as of the end of the fiscal year and file its annual report as an accelerated filer or non-accelerated filer in the same year that the determination of public float was made. If the company's public float was \$25 million or more, but less than \$700 million, as of the last day of its second fiscal quarter, the company would begin filing its reports as an accelerated filer. If the company's public float was less than \$25 million as of that date, it no longer would be required to file its periodic reports on an accelerated basis.⁵² We have chosen the \$75 million threshold for the exit of a large accelerated filer, as it parallels the amount of public float that characterizes an accelerated filer.

⁵² See paragraph (3)(iii) of the proposed Exchange Act Rule 12b-2 definition of "accelerated filer and large accelerated filer."

Request for Comment

- Should we revise the accelerated filer definition to allow issuers that fall below the \$25 million public float threshold to exit accelerated filer status, as proposed? Would the proposal adversely impact investor protection in any material respect?
- Is \$25 million public float an appropriate threshold point at which an accelerated filer should be permitted to exit accelerated filer status? For example, should an accelerated filer instead be permitted to exit when its public float drops below \$50 million? If not, what would be a more appropriate point and why?
- Is \$75 million public float an appropriate threshold point at which a large accelerated filer should be permitted to exit large accelerated filer status? Should a large accelerated filer instead be allowed to exit when its public float has dropped to \$250 million, \$500 million, or some other threshold?
- As proposed, an issuer would determine whether it can exit accelerated filer status at the end of the fiscal year and for its upcoming annual report based on the aggregate worldwide market value of the issuer's outstanding voting and non-voting common equity as of the last business day of the issuer's most recently completed second fiscal quarter. Is this an appropriate date upon which to determine whether an issuer should be able to exit accelerated filer status? Should the determination instead be tied to the end of the fiscal year? Is tying the determination to a specific date appropriate, or should the determination be made over a longer period of time based on an average aggregate worldwide market value? How could we improve the timing and method of determination?

- Is it appropriate to allow such an issuer to exit accelerated filer status only at the end of a fiscal year, or should the issuer be able to begin filing on a non-accelerated filer basis with respect to quarterly reports when the issuer is no longer subject to Exchange Act reporting with respect to its common equity securities during one of its first three quarters? Would the proposal, if adopted, adversely impact investor protection in any material respect?
- Should we, as proposed, allow an issuer to exit accelerated filer status if it has no voting or non-voting common equity held by non-affiliates and no duty to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act with respect to any common equity securities, but still has a duty to file such reports with respect to its debt securities?
- Should an issuer be required to file a notice with the Commission, such as on Form 8-K, announcing that there has been a change in its periodic report filing deadline status (i.e., the issuer has moved from one tier in the proposed three-tier accelerated filing system to a different tier)? If so, when should that issuer be required to file the notice?

D. Other Amendments

We also are proposing other amendments to our rules. First, we are proposing 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 2002.⁵³ In the interest of creating uniform requirements, our conforming amendments would require financial information that must be included in Commission filings other than periodic

⁵³ See Release No. 33-8128.

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.⁵⁴ Second, we are proposing to make similar changes to the transition reports that a company must make when it changes its fiscal year.⁵⁵

Finally, we are proposing to revise the public float condition in the existing Exchange Act Rule 12b-2 definition of “accelerated filer” to indicate that it would 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, and to clarify that the public float term in this definition means the “aggregate worldwide market value of the company’s voting and non-voting common equity held by non-affiliates.”⁵⁶ This is also clarified in the note to the proposed definition of “accelerated filer and large accelerated filer” that discusses how to calculate public float. The addition of the word, “worldwide,” would codify staff interpretation of the term⁵⁷ and is consistent with the public float condition in the recently adopted Securities Act Rule 405 definition of a “well-known seasoned issuer.” The determination of public float would be premised on the existence of a public trading market for the company’s equity securities.⁵⁸

⁵⁴ 17 CFR 210.3-01, 210.3-09 and 210.3-12.

⁵⁵ See the proposed amendments to paragraph (j)(1) of Exchange Act Rules 13a-10 and 15d-10.

⁵⁶ See the proposed amendment to paragraph (1)(i) of Exchange Act Rule 12b-2.

⁵⁷ This interpretation is consistent with the longstanding staff interpretation of the public float determination for Form S-3 and Form F-3 eligibility requirements.

⁵⁸ 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.

Request for Comment

- Should we make the proposed conforming revisions to Regulation S-X and the transition reports required by Rules 13a-10 and 15d-10?
- Is there any reason why we should not amend the aggregate market value condition in the accelerated filer definition, as proposed, to refer to a company's aggregate worldwide market value?

III. General Request for Comments

We request and encourage any interested person to submit comments on the proposal and any other matters that might have an impact on the proposal. We request comment from investors, as well as issuers and other users of Exchange Act information that may be affected by the proposal. With respect to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Paperwork Reduction Act

The proposed amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995, or PRA.⁵⁹ 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.

⁵⁹ 44 U.S.C. 3501 et seq.

The proposed amendments to the Exchange Act Rule 12b-2 definition of “accelerated filer” and to the periodic reporting deadlines applicable to accelerated filers, if adopted, would:

- 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 an “accelerated filer” as 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 the 60-day Form 10-K annual report deadline would apply only to the proposed large accelerated filers. The Form 10-Q quarterly report deadline for large accelerated filers would remain at 40 days. Periodic report deadlines for accelerated filers would remain at 75 days for annual reports on Form 10-K and 40 days for quarterly reports on Form 10-Q;
- Amend the accelerated filer definition to allow accelerated filers with less than \$25 million in public float to exit accelerated filer status without a two-year delay; and
- Amend the accelerated filer definition to allow large accelerated filers with less than \$75 million in public float to exit large accelerated filer status.

Our proposed amendments would not change the amount of information required to be included in Exchange Act reports. Therefore, they would 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 analysis is consistent with the PRA analysis included in the original accelerated filing proposing and adopting releases.⁶⁰ We reached the same conclusion in our proposing and adopting releases postponing the final phase-in period for acceleration of periodic filing.⁶¹ In that release, we stated that the amendments changing the due dates for a temporary period did not increase the information collection burden in a quantifiable manner, and commenters did not address this position.

V. Cost-Benefit Analysis

The proposed 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, requiring issuers with a public float of \$75 million or more and meeting three other conditions specified in Exchange Act Rule 12b-2⁶² to accelerate the filing of 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 propose to:

- create a new category of accelerated filer – the “large accelerated filer” – that would be defined in the same manner as accelerated filers and include issuers with \$700 million or more in public float;
- change the accelerated filing deadlines currently scheduled to be phased-in; and

⁶⁰ See Release No. 33-8089 and Release No. 33-8128. In the initial accelerated filing proposing release, we acknowledged the possibility that accelerating the filing deadline could result in respondents investing more resources in technology, relying more on outside advisers, higher average charges by outside advisers or increased efficiencies in preparing periodic reports.

⁶¹ See Release No. 33-8507 and Release No. 33-8477.

⁶² Also, as of the end of the fiscal year, the issuer must have been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; must have filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and must not be eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports.

- amend the provisions governing issuers' ability to exit accelerated filer status.

In this section, we examine the costs and benefits of our proposal. These costs and benefits are difficult to quantify. We request comment on the type, amount and duration of any costs or benefits from the proposed revisions to the accelerated filer definition. We request commenters to provide their views along with supporting data as to the benefits and costs associated with the proposals.

A. Benefits

Our proposed amendments may afford various benefits. Our proposed amendments contemplate a three-tier system governing accelerated filing deadlines that would continue to exclude smaller companies that may have fewer financial resources or less well-developed financial reporting systems in place to support the Form 10-K and 10-Q accelerated filing deadlines. Our proposals also would allow accelerated filers that are not large accelerated filers to continue filing both their annual reports on Form 10-K and quarterly reports on Form 10-Q under the currently scheduled 75-day and 40-day deadlines without further modification. These accelerated filers would not be subject to the final phase-in of deadlines that would result in a further acceleration of deadlines. Under the proposals, even the larger companies, defined as "large accelerated filers," which would include companies with a public float of \$700 million or more, would be able to continue to file their quarterly reports on Form 10-Q within 40 days after fiscal quarter end. They are the only companies that would be required to file their annual reports within 60 days after fiscal year end, beginning with reports filed for fiscal years ending on or after December 15, 2005.

In the initial adopting release for the accelerated filing deadlines, we acknowledged several possible costs and risks to affected reporting companies.⁶³ Since the adoption of the deadlines, we have received several comments expressing concern over the ability of companies to meet the accelerated filing deadlines, 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. Our proposals maintain the current periodic report filing deadlines for accelerated filers and the current quarterly report filing deadlines for both accelerated filers and large accelerated filers. We are proposing to provide these companies with additional time to prepare their annual and quarterly reports and to update their financial statements included in a registration statement, proxy or information statement. It is difficult to quantify the benefits that the extra time would afford these companies, however, as noted in the cost-benefit analysis included in our initial accelerated filing release,⁶⁴ additional time to prepare the financial reports may lower preparation costs and limit the internal resources that must be committed to filing periodic reports. Companies may therefore direct those resources towards other projects. Also, companies may take into account this possible lower cost of entry when considering whether to become a public reporting company.

The longer deadlines would also allow additional time for companies' management, external auditors, boards of directors and audit committees to review the disclosure included in the periodic reports. Thus, as an indirect benefit for the markets and investors, the proposed amendments may lead to higher quality and more accurate

⁶³ See Release No. 33-8128.

reports. As another indirect benefit, as companies are provided with more time to file their periodic reports, it may be less likely that companies become subject to the collateral consequences of the late filing of reports (e.g., losing the ability to use short-form registration).

We propose to continue to subject large accelerated filers to the final phase-in of the deadlines for annual reports on Form 10-K. We continue to believe, at this stage, that larger issuers possess the infrastructure and resources to support further acceleration of filing deadlines for annual reports, and that they have a greater market following than smaller companies. We also continue to believe that our accelerated filing deadlines promote investor protection by providing investors with timely access to important information. In creating the proposed category of large accelerated filers, which would continue to file annual reports under accelerated deadlines, we have proposed a system that accelerates the delivery of material information to investors and capital markets for those issuers that we believe are not only more capable of meeting the deadlines, but also for which we believe the benefits to investors justify the possible increased costs.

The proposed conforming amendments that relate to the timeliness requirements for the inclusion of financial information in Securities Act and Exchange Act registration statements, proxy or information statements, and transition reports, promote consistency among our rules. These proposed amendments also may promote capital formation, by providing companies with a longer window before financial statements in registration statements become stale.

⁶⁴ See Release 33-8089.

Our proposals covering the exit from accelerated filer status offer similar benefits. While we continue to believe that it is important to minimize fluctuation in and out of accelerated filer status, we have identified some situations with respect to which we believe the current rules have been 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. Under the current requirements, this company must still 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 our proposed amendment permitting filers to exit based on a public float measurement would be a more balanced and fair approach than the current rules that govern the exit from accelerated filer status.

B. 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.⁶⁵ For quarterly reports on Form 10-Q filed by both large accelerated filers and accelerated filers and for annual reports on Form 10-K filed by accelerated filers with less than \$700 million in public float, the proposed amendments have the incremental effect of delaying access to periodic report information to investors and to the capital markets. Information required by Exchange Act reports provides a verification function against other unofficial statements made by issuers. Investors can judge these informal statements against the more extensive formal disclosure provided in the reports, including financial statements

⁶⁵ For example, see Qi, Wu and Haw, “The Incremental Information Content of SEC 10-K Reports Filed under the EDGAR System,” in the *Journal of Accounting, Auditing and Finance*.

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 deadlines were completed. Thus, the amendments which propose longer deadlines of periodic reports than those currently scheduled, will delay investors in making informed 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.

Moreover, smaller companies generally are followed by fewer analysts and have less institutional ownership. One study shows that smaller companies experience a larger price impact on the filing date than larger companies, indicating that filings contain more valuable information for smaller companies than larger companies.⁶⁶ The delay of filing deadlines for smaller companies may be costly to the market, perhaps even more costly to the market than the delay of filing deadlines for larger companies. Nevertheless, we recognize inherent difficulties in the ability to quantify the effect that, for example, the proposed 15-day delay in the filing of the annual report by accelerated filers would have on the market.

The Office of Economic Analysis 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 would be affected

⁶⁶ See Griffin, "Got Information? Investor Response to Form 10-K and Form 10-Q EDGAR Filings," in the Review of Accounting Studies.

by these proposals. For the most part, the data is based on a public float definition which is highly correlated to the Commission's definition of public float.⁶⁷ 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 the exchanges and 4.3% of the total public float of these companies on the exchanges. The companies with a public float of over \$700 million represent approximately 18% of the total number of companies on these exchanges and approximately 95% of the total public float on these exchanges.⁶⁸

The proposed amendments may produce costs as a result of requiring companies and their investors to regularly monitor public float levels to determine companies' filing deadlines. It is difficult to quantify the number of companies that would be affected by our proposed amendments relating to the exit of issuers from accelerated filer status or large accelerated filer status, however, we have reason to believe that this number is small. Using 2003 data, we estimate that the amendment which relates to the exit of

⁶⁷ 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.

⁶⁸ In our Securities Offering Reform release, we noted that in 2004, the issuers that met the thresholds for well-known seasoned issuers represented about 95% of U.S. equity market capitalization. See Release No. 33-8591. 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.

issuers from accelerated filing status, if adopted, would allow four respondents 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.⁶⁹ In addition, our research indicates that only 25 companies with \$75 million or more in public float in 2003 had their public float drop to less than \$25 million in 2004.⁷⁰

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

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or “SBREFA,”⁷¹ we solicit data to determine whether the proposed amendments constitute “major” rules. Under SBREFA, a rule is considered “major” where, if adopted, it results or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

⁶⁹ 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.

⁷⁰ In deriving these estimates, we used common equity data as an approximation for public float data from the Thomson Worldscope Global Database.

⁷¹ Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

Section 23(a)(2) of the Exchange Act⁷² 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 Act. In addition, Section 2(b) of the Securities Act⁷³ and Section 3(f) of the Exchange Act⁷⁴ 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 proposed amendments balance the timeliness and accessibility of Exchange Act reports to investors and the financial markets 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 creation of the category of large accelerated filers and the requirement that large accelerated filers file their annual reports within 60 days after fiscal year end are proposed to preserve the timeliness and accessibility of issuer information so that investors can more easily make informed investment and voting decisions. We believe it is appropriate to fully implement the 60-day accelerated deadline for annual reports for large accelerated filers, given their internal reporting resources and the greater market interest that they generate. Similarly, we are seeking to retain the 40-day deadline for the

⁷² 15 U.S.C. 78w(a)(2).

⁷³ 15 U.S.C. 77b(b).

⁷⁴ 15 U.S.C. 78c(f).

quarterly reports on Form 10-Q for large accelerated filers and the 75 and 40-day deadlines for the annual and quarterly reports of accelerated filers that are not large accelerated filers. We have proposed that issuers with a public float that has dropped below \$25 million be allowed to exit accelerated filer status, without the current two-year delay.

Informed investor decisions generally promote market efficiency and capital formation. The proposals would affect accelerated filers differently depending on their public float. Some accelerated filers would be required to further accelerate their filing deadlines, while others would remain subject to current filing deadlines. A few would be able to exit accelerated filer status more quickly. This 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 the later filers. We have also heard concerns from some issuers that accelerated filing deadlines may affect their ability to provide accurate and reliable information. We have sought to minimize these concerns by limiting further acceleration of annual reports to only the largest public issuers that are likely to have the greatest internal reporting resources. In contrast, allowing issuers to retain their current filing deadlines or to exit accelerated filer status 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. These amendments may further promote capital formation by diminishing the risk that companies would not be able to utilize 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.

The possibility of these effects and their magnitude if they were to occur are difficult to quantify. We request comment on whether the proposal, if adopted, would promote efficiency, competition and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis, or IRFA, has been prepared in accordance with the Regulatory Flexibility Act.⁷⁵ This IRFA involves proposed amendments to the rules and forms under the Securities Act and the Exchange Act to:

- Create a new category of accelerated filer – the “large accelerated filer” – for issuers with a public float of \$700 million or more;
- Re-define an “accelerated filer” as 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 the 60-day Form 10-K annual report deadline would apply only to the proposed large accelerated filers. The Form 10-Q quarterly report deadline for large accelerated filers would remain at

⁷⁵ 5 U.S.C. 603.

40 days. Periodic report deadlines for other accelerated filers would remain at 75 days for annual reports on Form 10-K and 40 days for quarterly reports on Form 10-Q;

- Amend the accelerated filer definition to allow accelerated filers with less than \$25 million in public float to exit accelerated filer status without the current two-year delay; and
- Amend the accelerated filer definition to allow large accelerated filers with less than \$75 million in public float to exit large accelerated filer status.

A. Reasons for, and Objectives of, Proposed Amendments

The proposed amendments seek to balance the interests of investors and 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 proposed amendments relate to the acceleration of filing deadlines for annual reports on Form 10-K and quarterly report on Form 10-Q for accelerated filers. We propose to change the current rules and forms to:

- Create a new category of accelerated filer – the “large accelerated filer” -- that would be defined in the same manner as an accelerated filer and include issuers with \$700 million or more of public float;
- Amend the periodic report deadlines so that only the large accelerated filer become subject to the final phase-in of the accelerated Form 10-K deadlines; and

- Amend the definition of accelerated filer to facilitate the speedier exit by accelerated filers from accelerated filer status.

While we continue to 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 the concern expressed by several companies regarding the currently imposed deadlines. These comments have led to our proposals today which would subject only large accelerated filers to the shortest annual report accelerated filing deadlines, which we believe is achievable by issuers without undue cost. In doing so, we acknowledge the relative ability of different issuers to support the accelerated report deadlines. In proposing new rules governing the exit from accelerated filer status, we seek to eliminate unnecessary restrictions and delays, and attempt to achieve a more streamlined set of rules.

B. Legal Basis

We are proposing the amendments to the forms and rules 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.

C. Small Entities Subject to the Proposed Amendments

For purposes of the Regulatory Flexibility Act, Exchange Act Rule 0-10(a)⁷⁶ 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 day of its most recent fiscal year.

⁷⁶ 17 CFR 240.0-10(a).

The proposed amendments would affect only the Exchange Act reporting companies that would be defined as “accelerated filers” or “large accelerated filers.” Under the current rules, an issuer becomes an accelerated filer once it first meets the following conditions as of the end of its fiscal year:

- The issuer has 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;⁷⁷
- 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 becomes a large accelerated filer in much the same way, except that a large accelerated filer has an aggregate market value of voting and non-voting common equity held by non-affiliates of the issuer (referred to as “public float”) of \$700 million or more, as of the last business day of the issuer’s most recently completed second fiscal quarter.

⁷⁷ For purposes of the accelerated filer definition, the issuer must compute the aggregate 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.

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.⁷⁸ Based on our research, we do not expect these proposals to affect a substantial number of small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

Changes to Form 10-K annual report and Form 10-Q quarterly report filing deadlines should not affect smaller entities. Our proposals would subject large accelerated filers with \$700 million or more in public float to the currently scheduled final phase-in of the accelerated Form 10-K annual report deadline of 60 days, but they would continue to file their quarterly reports on Form 10-Q under the current 40-day deadline. 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 day of the second fiscal quarter, would continue filing their annual reports and quarterly reports on Forms 10-K and 10-Q under the current 75-day and 40-day deadlines, respectively.⁷⁹

Our other proposed amendments governing the exit from accelerated filer status could have an impact on a company that becomes a small entity after its public float threshold has dropped below \$25 million. However, we do not expect the impact of the proposed amendments on small entities to be significant, because we expect that only a

⁷⁸ 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.

⁷⁹ We also noted that the accelerated filer deadlines have little, if any, effect on smaller entities. See Release No. 33-8129.

few accelerated filers would become small entities each year.⁸⁰ For those that do, the proposed amendments would streamline their exit from accelerated filer status, and make it easier for such issuers to begin filing their reports under longer deadlines. Specifically, under the proposed amendments, issuers no longer would have to wait for two years before they could start filing under longer deadlines. We seek comment on whether any of our proposals affect the reporting burden of smaller entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap or conflict with the proposed amendments.

F. Significant Alternatives

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 our proposals, we 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 from 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.

⁸⁰ Based on data from the Thomson Worldscope Global Database, we estimate that only 25 companies had a public float of \$75 million in 2003, but less than \$25 million in 2004.

We have considered different 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. Our proposed amendments likely would have a favorable impact on smaller entities as they now permit more companies to exit from accelerated status and permit companies to exit from accelerated status without the current two-year delay. Therefore, as a result of our amendments, it is less likely that smaller entities would be subject to accelerated deadlines of their periodic reports.

G. General Request for Comments

We solicit written comments regarding this analysis. We request comment on whether the proposals could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VIII. Update to Codification of Financial Reporting Policies

The Commission proposes to amend 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 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 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, 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 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 of the end of its fiscal year if the registrant is a large accelerated filer (i.e., February 16 to March 1 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 125 days, if the registrant is a large accelerated filer, or 130 days, if the registrant is 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 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 Proposed Amendments

The amendments contained in this document are being proposed 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 PROPOSED 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 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 if the registrant is a large accelerated filer;
- (ii) 75 days if the registrant is an accelerated filer; and
- (ii) 90 days for all other registrants.

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

- (i) 60 days 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 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 revising paragraph (e) to read as follows:

§ 229.101 (Item 101) Description of business.

* * * * *

(e) Available information. Disclose the information in paragraphs (e)(1), (e)(2)
and (e)(3) of this section in any registration statement you file under the Securities Act
(15 U.S.C. 77a et seq.), and disclose the information in paragraphs (e)(3) and (e)(4) of
this section if you are filing an annual report on Form 10-K (§ 249.310 of this chapter)
and are an accelerated filer or a large accelerated filer (as defined in § 240.12b-2 of this
chapter):

(1) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the SEC.

(2) That the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>).

(3) You are encouraged to give your Internet address, if available, except that if you are filing your annual report on Form 10-K and are an accelerated filer or a large accelerated filer, you must disclose your Internet address, if you have one.

(4)(i) Whether you make available free of charge on or through your Internet Web site, if you have one, your annual report on Form 10-K, quarterly reports on Form 10-Q (§ 249.308a of this chapter), current reports on Form 8-K (§ 249.308 of this chapter), and amendments to those reports filed or furnished pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) as soon as reasonably practicable after you electronically file such material with, or furnish it to, the SEC;

(ii) If you do not make your filings available in this manner, the reasons you do not do so (including, where applicable, that you do not have an Internet Web site); and

(iii) If you do not make your filings available in this manner, whether you voluntarily will provide electronic or paper copies of your filings free of charge upon request.

* * * * *

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 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 \$25 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 \$75 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 \$25 million or more, but less than \$75 million, as of the determination date, the issuer becomes an accelerated filer. If the issuer's aggregate worldwide market value was less than \$25 million as of the determination date, 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 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 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 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 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

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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 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.

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

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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

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PART I

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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

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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

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PART 1

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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.

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By the Commission.

Jonathan G. Katz
Secretary

Dated: September 22, 2005