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November 1, 2005

Mr. Jonathan G. Katz  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-6561

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

Dear Mr. Katz:

Our firm, Financial Reporting Advisors, LLC, provides accounting and SEC reporting advisory services, litigation support services and dispute resolution services. We specialize in applying generally accepted accounting principles to complex business transactions.

We appreciate the opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposal, *Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports* (the "Release"). The Release raises a number of questions. Our comments are limited to those issues that affect financial reporting.

**Summary Comments**

We fully support the Commission's proposal to limit additional acceleration of the current deadlines. We agree that only the largest and most actively followed issuers, defined as issuers with public float of \$700 million or more, should be required to file an annual report on Form 10-K within 60 days of year-end. We believe this widely-followed group of larger issuers is capable of meeting the 60-day deadline and maintaining high-quality reporting without incurring unduly burdensome costs. We also support retaining the Form 10-Q deadline at 40 days for accelerated filers. We do not believe the benefits that investors may derive from shortening the quarterly reporting deadline to 35 days are sufficient to outweigh the costs of achieving that deadline. However, while we agree with the overall objective of the Release, we do not support the specific approach proposed by the Commission. In our view, it is not necessary to create a new, third category of issuer. We believe a better approach would be to revise the definition of an accelerated filer to include only the larger, more widely followed issuers.

We completely agree with the Commission's objective of striking the appropriate balance between the needs of investors for timely high-quality information and the needs of issuers for generating that information in a cost-effective manner. But we believe it is preferable to achieve that balance by redefining the public float threshold for an accelerated filer. This approach obviates the need for a new category of filer. When the Commission established the criteria for accelerated filers in 2002, the intent was to benefit investors by providing accelerated filings for "the most actively followed companies" for whom "investor interest in accelerated filings is likely to be highest;" the cost of complying with these accelerated deadlines was to be limited to those issuers who would be least likely to find the change "overly burdensome."<sup>1</sup> As we explain more fully below, we believe that this cost/benefit balance is better achieved by setting the public float threshold for an accelerated filer at \$700 million or more. For that reason, we question whether the complexity created by adding a third category of filer is warranted.

### Specific Comments

#### *Accelerated Filer Definition and Deadlines*

The Commission proposed and issued its requirements for accelerating the filing dates for annual and quarterly reports in 2002. In evaluating the costs and benefits of acceleration, the Commission was constrained by a lack of information on the process changes and costs issuers would be required to implement in order to achieve those deadlines. Appropriately, the Commission's final rules provided for phased-in acceleration, providing issuers with time to adjust to the more rapid reporting deadlines.

As issuers have implemented the new requirements, we have learned much more about the costs and abilities of issuers to accelerate the reporting process while maintaining (if not improving) the quality of reported information. As a result of Securities Offering Reform, we also have more data about the capital market strata of issuers. This data facilitates a more informed analysis of which issuers are widely followed, which are particularly active in raising capital, and which represent significant dollars of investor funds. In combination, this new information is valuable in determining whether the Commission's original objectives for accelerated filings are being met. For these reasons, prior to the final phase-in of accelerated filing deadlines (scheduled to occur in 2006), we believe it is appropriate for the Commission to reconsider whether the current definition of an accelerated filer strikes the appropriate balance between benefits to investors and costs to issuers.

The Office of Economic Analysis reports that issuers with \$700 million or more of public float represent the most widely followed issuers and comprise approximately 95% of total U.S. equity market capitalization.<sup>2</sup> While these issuers represent less than 20% of total exchange-traded issuers,<sup>3</sup> they clearly represent the vast majority of issuers that are of interest to investors based on dollars of capital raised and traded. Further, based on the information presented by the Commission in its Release and on the number of companies that have already demonstrated an

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<sup>1</sup>Reference should be made to *Acceleration of Periodic Report Filing Dates*, Release No. 33-8128, § II. B. 1 and § II. B. 3.

<sup>2</sup> In *Securities Offering Reform*, Release No. 33-8591, § II. A. 1. and § II. A. 1. a. ('Definition of Well-Known Seasoned Issuer' and 'Market Capitalization Threshold'), the Commission stated that issuers with \$700 million or more of public float accounted for about 95% of U.S. equity market capitalization in 2004 and approximately 90% of total capital raised (based on debt and equity offering proceeds) in the U. S. between 1997 and 2004. Additionally, these issuers are each followed by an average of 12 analysts.

<sup>3</sup> The data in § V. B. ('Costs') of the Release indicate that 18% of the companies listed on NYSE, Amex, NASDAQ, OTCBB or the Pink Sheets have a public float of \$700 million or more.

ability to file annual reports within the 60 day deadline,<sup>4</sup> larger issuers appear to be capable of filing an annual report on Form 10-K within 60 days of year-end. While we recognize that there are costs involved in achieving this final phase of acceleration, we are not aware of any data that would indicate that such costs are prohibitive or unduly burdensome to this group of issuers. Finally, while it is certainly possible that more data and analysis could suggest an even more appropriate public float threshold, we believe that using a public float threshold for accelerated filers that is aligned with the public float requirements of a “well-known seasoned issuer” is consistent with the underpinnings and objectives of Securities Offering Reform<sup>5</sup> as well as being simpler to understand and implement.

We do not support further acceleration of quarterly reports beyond the 40-day deadline currently in place. We note that, in this context, 5 days represent a 12.5% reduction in filing time. That is significant to issuers, even the larger issuers, considering the quality controls, disclosure reviews, audit committee discussions and audit review requirements that need to be met. In addition, we note that many of the larger accelerated filers currently provide summary quarterly data to investors within 35 days after quarter-end. Accordingly, we are not persuaded that a five-day reduction in the “time to market” of the incremental data in a Form 10-Q is sufficiently high to offset the costs of achieving that deadline.

Under this revised definition of accelerated filers, non-accelerated filers would include some issuers that are accelerated filers under today’s definition, i.e. issuers with public float between \$75 million and \$700 million. We believe these issuers should be permitted to file annual reports within 90 days of year-end and quarterly reports within 45 days of quarter-end, similar to other small issuers and micro-cap companies. While more timely reporting would likely be well-received by the market, we do not believe the cost/benefit relationship for issuers with public float in the \$75-\$700 million range is equivalent to that of larger issuers. We believe these smaller companies should be permitted to improve their processes and reporting timelines on a voluntary basis rather than being subject to a regulatory mandate that inequitably sweeps them into a category with substantially larger, less resource-constrained issuers. Given the relatively small market presence of these companies in terms of both dollars of capital and analyst following,<sup>6</sup> providing these smaller issuers with an extra 15/5 days to file their annual/quarterly reports (compared to their current filing deadlines) seems appropriate on a cost/benefit basis.

Some might argue that issuers whose public float is currently between \$75 million and \$700 million have already achieved accelerated reporting and thus the costs and process improvements necessary to comply with those deadlines are therefore “behind them.” We expect that many of these issuers will continue to use their enhanced infrastructure to continue to file well before the 90-day deadline. Market pressures also will encourage voluntary compliance with

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<sup>4</sup> Based on a cursory review of submissions to EDGAR, approximately 400 issuers with year-ends ranging from December 26 to January 2 filed their 2004 annual report on Form 10-K between February 16, 2005 and March 2, 2005.

<sup>5</sup> “The role that a public issuer’s Exchange Act reports play in investment decision making is a key component of the rules we are adopting today... With... our recent rulemaking and interpretive actions, we have enhanced significantly the disclosures included in issuers’ Exchange Act filings and accelerated the filing deadlines for many issuers.” “Overall, the issuers that will meet our thresholds for well-known seasoned issuers are the most active issuers in U.S. public capital markets.” *Securities Offering Reform*, Release No. 33-8591, § I. B. 2. (‘Exchange Act Reporting Standards’) and § I.I A. 1. (‘Definition of Well-Known Seasoned Issuer’)

<sup>6</sup> The data in § V. B. (‘Costs’) of the Release indicate that 23% of the companies listed on NYSE, Amex, NASDAQ, OTCBB or the Pink Sheets have public float of between \$75 million and \$700 million. However, these companies represent 4.3% of the public float and are not widely followed. Footnote 53 in *Securities Offering Reform*, Release No. 33-8591, states that issuers with a market capitalization of between \$75 and \$200 million, in most cases, have between zero to five analysts following them, with approximately 50% having zero to two analysts following them. Other data provided by the SEC’s Small Business Advisory Committee indicate that even companies with public float of between \$200 million and \$700 million are each followed by only two to five analysts.

accelerated deadlines. However, we believe that providing these companies with additional time to file will produce significant benefits to these issuers - and to their investors - in terms of the quality and reliability of information produced. Putting aside the one-time costs that have already been incurred, there are on-going costs to maintaining these accelerated processes. These smaller companies have fewer experienced internal resources and thus are more likely to need additional time to gather, prepare, review and refine the information needed to produce high-quality filings, particularly as key employees turnover or unanticipated events demand their time. Further, there likely will be incremental costs to maintain this accelerated reporting timeframe as new rules are imposed and implemented. Finally, the argument that the cost of acceleration is "water under the bridge" ignores the cost that today's non-accelerated filers will need to incur once they reach \$75 million in public float.

While we believe it is appropriate to increase the public float threshold for purposes of establishing annual and quarterly reporting deadlines, we believe that issuers that have already complied with internal control reporting under Item 308 of Regulation S-K (i.e. current accelerated filers with between \$75 million and \$700 million of public float) should continue to do so. In other words, these smaller issuers should not be made exempt from internal control reporting by virtue of a change in the definition of an accelerated filer. We recognize that other similar-sized companies have not yet implemented these new reporting requirements. However, this is an issue of transition only and we see no reason to backtrack for those companies that have already complied. We recognize that the Commission is currently studying the implementation of internal control reporting requirements for issuers with less than \$75 million of public float and we encourage that effort.

We would like to make one final point with respect to the Commission's proposal to create a third category of filer. Specifically, in our view, a two-tiered structure is simpler to understand and implement and thus is less burdensome to all interested parties. Investors may be confused by three sets of filing deadlines. Some issuers will have to monitor additional public float data. An additional category will require additional rules to address entering and exiting that category. In the future, the Commission will be asked to consider whether or how the adoption of new rules could be stratified along the lines of the various filer categories. Accordingly, although we acknowledge that the proposed three-tiered structure is not an unreasonable approach to balancing investor needs with issuer costs in certain respects, we ask whether the incremental complexity of a three-tiered structure is warranted if the cost/benefit objective can be achieved by retaining a two-tiered structure.

#### *Entering and Exiting Accelerated Filer Categories*

The current requirement to determine accelerated filer status at a single point in time can create anomalies. Faced with a clean sheet of paper, we would have recommended that the criteria for becoming an accelerated filer either would be based on a more sustained determination of public float or on criteria that consider a combination of public float and revenues or assets. However, in the interest of simplicity and consistency with the approach to defining well-known seasoned issuers, we support maintaining the present entry criteria.

Nonetheless, assuming the Commission retains the current definition of an accelerated filer, we ask the Commission to reconsider the current reporting requirements for a first-time accelerated filer. During this period of transition to internal control reporting under Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404"), a first-time accelerated filer must accelerate its annual report on Form 10-K *and* implement the SOX 404 internal control reporting requirements in the same year. Plus, since the determination of accelerated filer status is based on public float at the end of the issuer's second quarter, some issuers may find themselves with relatively little lead time to accomplish both tasks. In light of the Commission's current efforts to address the burden of internal control reporting on issuers with public float of less than \$75 million, we suggest that the SEC stagger the implementation of SOX 404 for a first-time accelerated filer during this transition period. For example, the Commission could require a first-time accelerated filer to

accelerate its Form 10-K in the first year of acceleration and file its first SOX 404 reports in the following year. This would provide a first-time accelerated filer with more lead time to implement SOX 404, while still accelerating the filing of its financial statements.

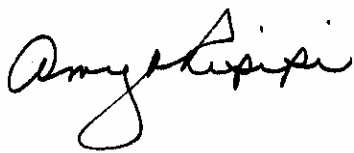
We support the Commission's efforts to redefine and simplify the exit criteria for accelerated filers. In the context of our recommendation to define an accelerated filer as an issuer with public float of \$700 million or more, we suggest that an issuer be permitted to exit accelerated filer status effective with its next quarterly or annual report if that issuer's public float (a) remains below \$700 million for a sustained period (e.g. average public float for 180 days) or (b) drops significantly below \$700 million at the end of a quarter (e.g. a 50% decline to \$350 million). Notification to investors on Form 8-K would be required within 5 business days of an issuer becoming eligible and electing to exit accelerated filer status. In the interest of having like issuers report on a similar timeframe, an issuer whose public float is likely to remain below \$700 million for an extended period should be permitted (but not required) to file on the same basis as other issuers with public float of less than \$700 million.

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To reiterate, we applaud the Commission's decision to reconsider the accelerated filer requirements adopted in 2002 in light of the information that has been gathered during the initial phase-in of these requirements. We support the direction being taken but believe that there is no need to create a third category of filer. We believe that investor needs for timely information and issuer concerns about unnecessary costs can be appropriately met by redefining the threshold for an accelerated filer. Additionally, we would observe that a two-tiered structure that more closely aligns the definition of an accelerated filer with the definition of a "well-known seasoned issuer" is simpler and more easily understood. In short, if the Commission's cost/benefit objective can be better achieved by raising the accelerated filer threshold to \$700 million of public float, we question whether the complexity created by adding a third category of filer is warranted.

We thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Ripepi". The signature is fluid and cursive, with a large initial "A" and "R".

Amy A. Ripepi  
Managing Director