

October 31, 2005

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303

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

Dear Mr. Katz:

Ernst & Young LLP is pleased to respond to the request for comment by the Securities and Exchange Commission (the “Commission” or the “SEC”) on its proposal to create a new class of large accelerated filers and to modify the accelerated periodic report deadlines.

Definitions of Accelerated Filers and Deadlines for Their Periodic Reports

In previous comment letters to the Commission, we have expressed a view that for the purposes of reporting deadlines public common equity float of \$700 million would be an appropriate threshold for an accelerated filer, consistent with the definition of a well-known seasoned issuer. Accordingly, we support the Commission’s proposal to define a new class of “large accelerated filers,” with aggregate worldwide public common equity float (public equity float) of \$700 million or more. In our view, such “large accelerated filers” should be the only issuers subject to annual and quarterly filing deadlines less than 90 days and 45 days, respectively. We have concerns that accelerated filing deadlines for issuers with between \$75 million and \$700 million of public equity float are more likely to adversely affect the quality and reliability of their periodic reports and are uncertain whether the incremental benefits to investors of the more timely filings offset this increased risk. Consistent with our concerns expressed below, the quality of disclosures to investors should not be sacrificed in the interest of speed.

More important, we have been on record with the Commission and have repeatedly discussed with the SEC staff that we clearly support retaining the accelerated filing deadlines of 75 days and 40 days for annual and quarterly reports, respectively, and not proceeding with any further acceleration of periodic reporting deadlines. Accordingly, we support the Commission’s proposal to retain, and not further reduce, the 40 day accelerated filing deadline for quarterly reports on Form 10-Q. However, the Commission has proposed a reduction in the Form 10-K filing

deadline for large accelerated filers from 75 days to 60 days. For the reasons discussed below, we recommend that the Commission retain, and not further reduce, the 75 day accelerated filing deadline for annual reports on Form 10-K.

An acceleration of the flow of annual financial information to investors is beneficial to them, but beneficial only to the extent that the information is reliable and meaningfully described and analyzed by management. The Commission should carefully consider comments that it receives from investors as to the relative benefits anticipated from accelerated disclosures compared to the risk of even a slight decrease in the quality of the annual financial reporting. Similarly, the Commission should carefully consider comments that it receives from issuers meeting the proposed large accelerated filer definition, in addition to input gathered to date from them, as to their ability to produce reliable and relevant financial information, as well as report on internal control over financial reporting, within a 60 day deadline.

We have concerns that a 60 day filing deadline might put too much strain on some large accelerated filers, and more so on the collective capacity of all participants in the financial reporting process. However, we also note that Rule 12b-25 still will provide an extension of 15 days in the event that an annual report cannot be filed on a timely basis for good reason. Should the Commission adopt a 60 day filing deadline for large accelerated filers, we recommend that the SEC subsequently monitor the number and causes of their Form 12b-25 filings, as well as the incidence of amendments to their annual reports on Form 10-K, to assess any adverse effects that shorter filing deadlines may be having on the quality and reliability of annual reports. Further, in light of such a short annual reporting deadline for the largest, most complex public companies, the SEC and other standard setters will need to carefully consider the repercussions of the effective date and transition provisions of new financial and non-financial reporting rules, as well as the timing of informal interpretive guidance.

Currently, once an issuer becomes an accelerated filer, it remains subject to accelerated reporting deadlines unless and until it qualifies as a small business issuer (with both annual revenue and public common equity float of less than \$25 million for two consecutive fiscal years). As proposed, once an issuer becomes a large accelerated filer, it would remain subject to the related accelerated reporting deadlines until its public equity float falls below \$75 million, and once an issuer becomes an accelerated filer, it would remain subject to the related accelerated reporting deadlines until its public equity float falls below \$25 million. We are concerned that the proposed exit provisions are too restrictive. In our view, it would be more equitable if there were symmetry between the criteria to enter and exit accelerated filer status. Our comments and recommendations are discussed in detail below.

Entering Accelerated Reporting

The current calculation of public equity float on the last business day of the second fiscal quarter appears appropriate to allow management, the audit committee, and the independent auditors adequate time to prepare for filing the Form 10-K on an accelerated basis for the first time. The computation as of a single date, rather than an average of public equity float over a period of time, appears preferable for the sake of simplicity.

We believe that the SEC's definition of an accelerated filer should include only issuers that are likely to qualify as well-known seasoned issuers during the next fiscal year and beyond. Accordingly, in our view, an issuer should become an accelerated filer only when its public equity float is more than \$700 million for a sustained period. Said another way, we do not believe that an issuer necessarily should become an accelerated filer when its public equity float is more than \$700 million for the first time, which is a condition that may prove to be only temporary. Accordingly, we suggest that the SEC amend the definition of an accelerated filer to provide that the issuer's public equity float must be more than \$700 million as of the determination date in two consecutive fiscal years. Such an amendment would help assure that the costs of accelerated filing are not imposed unfairly or prematurely.

Exiting Accelerated Reporting

We believe that the current and proposed exit criteria are too onerous. In our view, the proposed criteria would not identify on a sufficiently timely basis those issuers for which accelerated reporting is no longer warranted. Under the proposed framework, issuers with similar market capitalizations could be subject to different reporting deadlines solely as a result of differences in the historical fluctuations of the market prices of their equity securities. In order to reduce the potential disparity in reporting deadlines for similar issuers, we recommend that the SEC amend the definition of an accelerated filer to exclude, on a timely basis, issuers that are unlikely to qualify as well-known seasoned issuers during the next fiscal year.

To limit accelerated reporting to well-known seasoned issuers, we recommend that the SEC adopt symmetrical standards for entering and exiting accelerated filer status. More specifically, we recommend that the SEC amend the definition of an accelerated filer to provide that an issuer would no longer be an accelerated filer if its public equity float is less than \$700 million as of the determination dates in two consecutive fiscal years. Further, we recommend that in this circumstance, the issuer should no longer be subject to the accelerated reporting deadlines effective immediately (i.e., beginning with the next quarterly report on Form 10-Q, which would be due in 45 days). Such a framework would provide for more equitable treatment of issuers with similar characteristics. This alternative also would achieve logical symmetry with the framework that we have suggested for entering accelerated filer status, while requiring an accelerated filer to

follow consistent reporting deadlines if the decline in its public equity float below \$700 million may be only temporary.

In addition, we believe that it remains appropriate to provide relief from the accelerated filing requirements when an issuer has a significant decline in its public equity float, similar to the SEC's proposal. However, we believe that such a condition should be identified timely and that the relief should be effective immediately. Accordingly, we recommend that an accelerated filer with public equity float that falls below \$250 million at any fiscal quarter or year end should exit accelerated filer status immediately (i.e., effective with the next annual or quarterly report due). In our view, the circumstances underlying such a substantial decline in an issuer's public equity float would suggest that accelerated reporting by that issuer is no longer warranted, or even realistic. We have suggested the \$250 million threshold given its relative consistency with the Commission's proposed \$25 million threshold for relief in relation to the \$75 million threshold in the current definition of an accelerated filer.

In order to provide notice to investors that an issuer's periodic reports are no longer due on an accelerated basis, we recommend that the SEC require an issuer to file a report on Form 8-K within four business days of the issuer's conclusion that it is no longer an accelerated filer. However, we also recommend that such Form 8-K report be subject to the limited safe harbor provisions of the Securities Exchange Act of 1934 (the Exchange Act) Rules 13(a)-11(c) and 15(d)-11(c) for failure to file a timely Form 8-K.

Other Matters

In our comment letter on Release No. 33-8501, *Securities Offering Reform*, we remarked that certain well-known seasoned issuers (e.g., a debt-only issuer) would not meet the definition of an accelerated filer. If such issuers avail themselves to the benefits of automatic shelf registration, they also should be required to comply with the proposed large accelerated filer deadlines for periodic Exchange Act reports. This "opt-in" approach to automatic shelf registration and accelerated reporting would ensure a level playing field among issuers that obtain unfettered access to the public capital markets.

The AICPA SEC Regulations Committee has raised a number of interpretive and implementation questions related to the SEC's accelerated filer rules. In connection with any changes to those rules, we believe the Commission should provide clear guidance on these questions, which cover such issues as changes in fiscal years, reverse mergers, former subsidiaries, and Form 15 deregistrations.

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We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Very truly yours,

Ernst + Young LLP