



THE NASDAQ STOCK MARKET
ONE LIBERTY PLAZA, 50TH FLOOR
NEW YORK, NY 10006

November 1, 2005

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

Re: File No. S7-08-05
Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing
Periodic Reports

Dear Mr. Katz:

The Nasdaq Stock Market, Inc. ("Nasdaq") appreciates this opportunity to comment on the recently proposed changes to the definition of an accelerated filer and the deadlines for filing periodic reports.¹ Nasdaq believes that the information contained in periodic reports is critically important to investors. Nasdaq has aggressively enforced the filing requirement on The Nasdaq National Market and The Nasdaq Capital Market, and issuers on those markets are immediately sent a delisting notice if a periodic report is not timely filed. Given our experience with this requirement, Nasdaq supports the goals of the Commission in balancing the need of investors for timely information with the need of companies to have sufficient time to accurately prepare such information and believes that the proposed changes to maintain, rather than accelerate, the current filing deadlines for certain issuers and to ease the restrictions on issuers' exiting accelerated filer status strike an appropriate balance in that regard.

Nasdaq believes, however, that minor modifications would increase the effectiveness of the proposed rules and provide additional transparency to an issuer's status as an accelerated filer, large accelerated filer, or non-accelerated filer. First, Nasdaq's experience with companies entering and exiting accelerated filer status has shown that on occasion companies neglect to check the appropriate box when they change status. Therefore, to facilitate review by Self Regulatory Organizations for compliance with a company's filing obligation, and to increase transparency with regard to such changes, Nasdaq believes, as suggested in the proposing release, that the Commission should require a company to file a Form 8-K when the company becomes aware of a change in its future filing status, i.e., when it determines the market value of public float as of the end of its second quarter. Such notification would bring focus to the determination. In addition, Nasdaq suggests that the Commission add an additional box on the cover of the relevant forms to identify a pending change in status that will take effect with the next annual filing. Given that Nasdaq reviews for timeliness all periodic reports of our listed

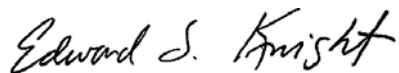
¹ Exchange Act Release No. 52491 (September 22, 2005), 70 FR 56862 (September 29, 2005).

issuers, such a checkbox would be useful to prepare for a filing on a different time frame than previously applicable to the company. Similarly, such a checkbox would help provide increased transparency to investors about a pending change in status and the associated change in the filing timeline.

Second, under the existing and proposed rules, Nasdaq notes that an issuer becoming an accelerated filer for the first time could have insufficient time to prepare for some of the consequences of achieving that status, in particular, compliance with Section 404 of the Sarbanes-Oxley Act. A company that determines at the end of its second quarter that it is going to have to file its Form 10-K on an accelerated basis must comply with the requirements of Section 404 in connection with that Form 10-K filing; whereas, if it remained a non-accelerated filer it would not have to comply with those requirements until the first fiscal year ending after July 15, 2007. Further, because the change in status is based on a market valuation, it is not entirely within the control of the company. If the change in status is unexpected, such as due to an increase in the stock price or the sale of securities by an insider into the public float, the company would have only six months to complete the required assessment of its internal controls. Based on the feedback we've received from Nasdaq-listed companies, this is not sufficient time to properly complete the assessment process. Alternatively, given this uncertainty, companies might determine to undergo the cost and effort of assuring compliance, even if Section 404 is unlikely to apply to them for that year, thus defeating the relief that the Commission has appropriately provided to these smaller companies. As a result, Nasdaq suggests that the final rules address this situation and that the Commission grant additional time for a company first becoming an accelerated filer to comply with the requirements of Section 404. Such relief could provide that any company that was not an accelerated filer on June 5, 2003, when the Commission first adopted rules relating to Section 404 that provided for different compliance deadlines for accelerated and non-accelerated filers, would remain subject to the July 15, 2007 deadline for non-accelerated filers, despite a subsequent change in status. Alternatively, the Commission could provide that a company have at least a full year to comply with the requirements of Section 404 after changing its status.

Thank you again for the opportunity to comment on the proposal. Please feel free to contact me at (301) 978-8480 or Arnold Golub at (301) 978-8075 if you have any additional questions.

Very truly yours,



Edward S. Knight
Executive Vice President and General Counsel