

October 28, 2005

The following comments are submitted by Scientific Learning Corporation with respect to the proposed changes to the definition of "accelerated filer" and periodic filing deadlines (Release No. 33-8617).

Ladies and Gentlemen:

Because a company's accelerated filer status impacts when it becomes required to include in its annual report its management's report and auditor's attestation on internal controls ("Section 404 Compliance"), Scientific Learning urges the SEC to revise an aspect of the accelerated filer definition that is particularly troublesome to small companies - the short time between when a company's public float value is tested to determine accelerated filer status and when Section 404 Compliance is required. As the rules now stand, that time period is only six months long, which is not sufficient time to do the extensive work required to achieve Section 404 Compliance without undue expense and disruption.

Under the proposed rules (and under the current rules), if the market value of a public company's public float is \$75 million or more at June 30, 2006, then it will be an accelerated filer at December 31, 2006. Thus, for a public company with a calendar fiscal year, whether Section 404 Compliance is required for 2006 depends on the company's public float value at June 30, 2006.

For Scientific Learning and other small companies, whether its public float value will exceed \$75 million at June 30, 2006 will depend both on the number of shares held by affiliates and the market price of its common stock. Both factors are outside the company's control and impossible to predict in advance. As a result, calendar-year companies that are currently non-accelerated filers cannot determine whether Section 404 Compliance will be required at December 31, 2006 or at December 31, 2007, as recently provided in Release No. 33-8618. This lack of certainty requires small companies to assume that Section 404 Compliance may be required at December 31, 2006, and seems inconsistent with the policies underlying the SEC's recent extension of the Section 404 Compliance dates for non-accelerated filers.

The SEC has recognized that Section 404 Compliance has placed a greater burden on businesses than was originally envisioned. For a small company with limited resources, this burden is particularly problematic when coupled with the short time between the determination that it will become an accelerated filer and the date as of which Section 404 Compliance is required. Especially with the limited resources of a small company, it is difficult to justify incurring the additional cost and utilizing the additional resources to expedite achieving Section 404 Compliance when compliance may not be required that year. On the other hand, failing to apply this level of resources to the effort early [may / will] make it even more expensive and disruptive to comply if compliance does become required.

For these reasons, Scientific Learning respectfully requests that the proposed amendment be amended to include a change in compliance dates so that either

- 1) A company that has a public float value of \$75 million at the end of its second fiscal quarter becomes required to achieve Section 404 Compliance as of the end of the fiscal year that *follows* the fiscal year when it becomes an accelerated filer; or
- 2) The date at which the public float is measured for purposes of accelerated filer status be changed to fiscal year end and Section 404 Compliance be required for the next fiscal year, so that a company that has a public float value of at least \$75 million as of the end of a fiscal year would be required to achieve Section 404 Compliance as of the end of its next fiscal year.

Alternatively, Scientific Learning respectfully requests that the SEC amend its recent final rules (Release No. 33-8618), which extended the Section 404 Compliance date for a non-accelerated filer to its first fiscal year ending on or after July 15, 2007, to provide that, for companies who are presently not accelerated filers, the Section 404 Compliance date will not be accelerated, even if the company subsequently becomes an accelerated filer prior to that year.

Jane A. Freeman
Sr. Vice President and Chief Financial Officer
Scientific Learning Corporation