

October 28, 2005

**VIA E-MAIL: rule-comments@sec.gov**

Jonathan G. Katz, Secretary  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609

Re: Comments on Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports

File No. S7-08-05

Dear Mr. Katz:

We are writing this letter to comment on the proposed rule to revise the accelerated filer definition by creating a new “large accelerated filer” category and applying separate reporting deadlines to accelerated filers that do not fit into this category. While we support the proposed rule, we would ask the Commission to grant an extension of the compliance deadline for management reports on internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act for a limited class of smaller accelerated filers.

Specifically, we request that the Commission extend the Section 404 compliance date for companies that were non-accelerated filers when the Section 404 compliance deadline for non-accelerated filers was extended in SEC Release Nos. 33-8392 and 33-8545, but who have subsequently become accelerated filers due to increases in their stock price. Such companies would have established timelines for compliance with Section 404 based on the SEC’s prior releases and their prior non-accelerated filer status. For companies that only recently became accelerated filers, these timelines anticipated that final compliance with Section 404 would not be required until the company’s first fiscal year ending on or after July 15, 2006. However, if such a company becomes an accelerated filer due to a rise in their stock price, they are required under current rules to speed up their compliance efforts, in some cases significantly so.

For example, if a company with a June 30 fiscal year-end had a public float of \$70 million as of December 31, 2004, it would not have met the accelerated filer definition for its fiscal year ended June 30, 2005. Based on SEC Release No. 33-8545, this company would not have been required to prepare its first management report on internal control over financial reporting until the filing of its Form 10-K for the fiscal year ending on June 30, 2007. However, with even a modest increase in the company’s stock price, its public float could exceed \$75 million as of December 31, 2005, making it an accelerated

filer for its current fiscal year. In that event, the company would have to comply with the internal control reporting requirements of Section 404 a year sooner than it had planned, and within a mere six months after becoming an accelerated filer. By accelerating the 404 compliance timeline in this manner, the company would face enormous challenges both in terms of staffing and financial resources. The company may be required to pay premium prices for advisors to assist the company with its expedited compliance efforts. Moreover, the company would likely have to pay more in auditing fees in the current fiscal year than it was planning to pay over the next two fiscal years combined, as it could not rely upon the efficiencies and experience that its auditor gained in auditing the internal controls of other companies with earlier Section 404 compliance deadlines. For example, we are aware of one company in this position whose audit and Section 404 consulting fees are likely to rise from \$300,000 to over \$1.5 million in the upcoming fiscal year because of the need to accelerate its Section 404 compliance efforts.

The Commission could craft an objective and workable rule extending the Section 404 compliance deadline for companies in this position. We suggest that the rule state that any company that becomes an accelerated filer before its first Section 404 compliance date due primarily to a rise in its stock price would not be required to accelerate its timeline for Section 404 compliance, but rather may utilize the deadline that was applicable to non-accelerated filers on the date that it first became an accelerated filer. We believe that this rule would be consistent with the protection of investors, as there are likely only a small percentage of public companies that would fit within this rule, and those companies would still be required to comply with Section 404 (albeit at a later date). In fact, we believe that without this type of rule change, investors in companies that are required to accelerate their Section 404 compliance efforts will be harmed because of the company's need to devote significant and unexpected resources to these efforts.

Thank you very much for your consideration of these comments. If you would like to discuss these matters further, please contact the undersigned.

Very truly yours,

von BRIESEN & ROPER, s.c.

Kenneth A. Hoogstra

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