

October 31, 2005

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

RE: File Number S7-08-05, Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports

Dear Mr. Katz:

We appreciate the opportunity to respond to the Commission's proposed rule, *Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports*. We fully support the Commission's efforts to strike an appropriate balance between the needs of investors and the markets to receive timely Exchange Act reports and the needs of public companies and their auditors to have sufficient time to conduct, without undue cost, high-quality and thorough assessments, reviews and audits of the financial statements contained in those reports.

As we described in our September 2, 2005 letter to the Commission's Advisory Committee on Smaller Public Companies, we do not believe that the final stage of acceleration¹ for periodic report filing deadlines should be required for any issuers. Accordingly, we support the portion of the proposed rules that would eliminate the final stage of acceleration of the Form 10-Q filing deadline for both accelerated filers and large accelerated filers². We also support the portion of the proposed rules that would maintain the current 75-day Form 10-K filing deadline for accelerated filers that are not large accelerated filers. However, we believe that the Commission's rules and forms should also be amended to vacate the final stage of acceleration of the Form 10-K filing deadline for large accelerated filers.

We believe that further acceleration of the filing deadlines for periodic reports would cause issuers to incur costs that are disproportionate to the incremental benefits to be derived by investors and markets from the earlier availability of the periodic reports. In either case, investors will continue to receive periodic reports based on prescribed 90-day intervals. In

¹ Under current rules and form instructions, the Form 10-K filing deadline for companies that meet the existing definition of an accelerated filer is scheduled to change from 75 days after year end to 60 days after year end for fiscal years ending on or after December 15, 2005. The Form 10-Q filing deadline for issuers that meet the existing definition of an accelerated filer is scheduled to change from 40 days after quarter end to 35 days after quarter end for quarters of fiscal years ending on or after December 15, 2006.

² Unless the context indicates otherwise, throughout our response letter we use the terms accelerated filer and large accelerated filer in the same context as they are used in the proposed amendment to Exchange Act Rule 12b-2.



our view, "regular and reliable" reporting with predictable frequency (supplemented by enhanced "current" reporting under the recently revised Form 8-K rules) mitigates the need for "faster" reporting.

From our perspective, the acceleration that has already taken place has created a great deal of stress in the financial reporting system. Any additional acceleration would add to that stress and would further reduce the amount of time that management, audit committees and auditors will have to complete their respective responsibilities. We believe further acceleration would negatively impact the accuracy and reliability of financial reporting and would therefore not be in the best interest of investors or markets.

Consistent with our view that neither accelerated filers nor large accelerated filers should be subjected to the final stage of acceleration of periodic report filing deadlines, we do not believe that there is a need to bifurcate the current population of accelerated filers between those with public float between \$75 million and \$700 million and those with public float equal to or greater than \$700 million.

We also support the Commission's reconsideration of the accelerated filer status exit criteria and we have suggested an alternative framework which we believe the Commission should consider. We believe that the entry and exit criteria should operate in tandem to provide a framework in which issuers with similar levels of public float are treated similarly. As a general matter, we believe that issuers should be permitted to exit accelerated filer status if they no longer exhibit the characteristics that qualified them for that status in the first place. At the same time, we recognize that there are important investor interests in maintaining filing deadline stability. We recommend that the Commission consider permitting issuers whose public float has been below \$75 million for a sustained period of time (e.g., 4 consecutive quarters ending with the last business day of the second quarter) to exit accelerated filer status as of their next year-end. We believe that this approach strikes a balance between maintaining filing deadline stability (to avoid investor/market confusion) while providing that, over time, issuers with similar levels of public float will be treated similarly. We do not believe that an issuer should have to sustain a 67% or more decrease in public float before being able to exit accelerated filer status.

In the pages that follow, we submit for the Commission's consideration our views on some of the specific questions raised in its proposing release.

We would be pleased to discuss our comments and to answer any questions that the SEC staff or the Commission may have. Please do not hesitate to contact Vincent P. Colman (973-236-5390), Jay Hartig (973-236-7248) or Raymond Beier (973-236-7440) regarding our submission.

Sincerely,

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