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October 27, 2005

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

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

Dear Mr. Katz:

We respectfully submit our comments regarding the Securities and Exchange Commission's (the "Commission") proposal to modify the periodic report filing deadlines so that only the largest accelerated filers become subject to the final phase-in of the accelerated filing transition schedule that will require annual reports on Form 10-K to be filed within 60 days after fiscal year end (the "Proposed Rule").

We understand that the Commission must determine the proper balance between the timely dissemination of information and an adequate opportunity for public companies to produce complete and reliable reports under the Securities Exchange Act of 1934 ("Exchange Act"). However, we believe that the Proposed Rule will not give large accelerated filers sufficient time to develop their reports with the depth of information and level of analysis needed by investors. Moreover, the requirements of the Sarbanes-Oxley Act of 2002 ("SOX") have significantly increased the time required for auditing the financial data and drafting the textual information required in annual reports, as well as heightening the demands on company management in the development of these reports, and have magnified the role of the Audit Committee and the Board of Directors. Rules requiring faster reporting of significant corporate events on Form 8-K have served to increase the demands on reporting companies as well. Accordingly, we recommend that the Commission should act at this time to extend the relief already afforded to other classes of public companies and not to shorten the filing dates for annual reports on Form 10-K for large accelerated filers.

Applicable Proposed Disclosure Requirements Will Make Proposed Deadlines Difficult to Achieve

The depth and breadth of disclosure requirements have increased substantially in recent years. When the Commission established periodic filing deadlines over 30 years ago, periodic reports were relatively streamlined documents. Over time, these reports have grown into voluminous documents of increasing complexity. In our experience, preparing complete and accurate periodic disclosures requires careful consideration of changes in the issuer's business, industry conditions and macroeconomic factors, coupled with an analysis of the latest period's financial results. Although technology has increased companies' ability to capture and process raw data, these advances have been, in many instances, outpaced by the changes in accounting and disclosure standards that require extensive analysis and the presentation of increasingly detailed information.

SOX in particular has significantly increased the compliance costs of reporting companies and requires meaningful involvement of company executives in the development of annual reports. The safeguards imposed by SOX serve an important function in assuring accurate financial reporting. However, these benefits are not without costs – one recent survey of large corporation board members has shown that for companies with $4 billion or more in publicly traded securities, compliance with SOX costs on average $35 million per year. Shortening the time for auditors and management to work on the annual report is certain to increase compliance costs. These additional costs will ultimately be borne by public shareholders.

In this regard, the Commission should recognize the compounding effect of § 404 compliance. The Commission extended the compliance date of Section 404 for all foreign issuers twice and extended it three times for all non-accelerated filers "due to the increasingly loud and frustrated reactions of . . . domestic companies, that the implementation of Section 404 requires significant resources, people and time." See SEC Commissioner Cynthia A. Glasssman, Remarks before the Center for the Study of International Business Law Breakfast Roundtable Series (October 7, 2005) (transcript available at http://www.sec.gov/news/speech/spch100705cag.htm). Domestic large accelerated filers are already devoting the additional time and resources required to comply with Section 404. To impose upon these same issuers new, tighter 10-K deadlines is likely to prove counterproductive to the objective of full and fair disclosure because it may, based on our experiences, stretch the staff of conscientious larger issuers to the breaking point. In addition, SOX seeks to increase the involvement that audit committee members and Boards of Directors, as well as lawyers, auditors and other outside experts, have in evaluating a company's accounting and corporate governance. By shortening the 10-K reporting deadline, the ability to obtain the intended benefits of such involvement could be meaningfully reduced.

We know from experience that many issuers are challenged to meet the current deadlines for periodic reports, and LIVEDGAR shows that over 2,000 notices of late filings on Form 12b-25 for delayed 10-Ks were filed in 2004. According to the Wall Street Journal on April 11, 2005, more than twice as many companies listed on the NASDAQ and New York Stock Exchange have been identified as "late filers" as compared to a year earlier. These statistics show that meeting even the current deadline for annual reports is a challenge. Although many such late filings were caused by difficulties in complying with SOX §404, there is no evidence that those difficulties will end anytime soon. If the Proposed Rule is enacted, it is highly likely that the number of late filings will only increase further. This would not be without consequence, as late filings have a significant impact on both issuers and investors. For example, a late filing could result in a company losing the use of Form S-3 and also losing many of the benefits of the Commission's new offering rules. At the same time, investors could lose the ability to resell securities under Rule 144 as a result of a company's late filing. Such results would be particularly harsh on a reporting company that is making a good faith effort to comply with the accelerated 10-K reporting régime under the Proposed Rule as well as the new requirements under SOX.

The clear Congressional policy in enacting the SOX provisions related to internal controls was to improve the accuracy and quality of information reported to the Commission. We submit that further reduction in the time allowed for the preparation of annual reports on Form 10-K by large accelerated filers runs counter to this policy. Assuring the reliability of information available to the securities markets is the paramount purpose of the Exchange Act provisions applicable to public companies. Further reduction in the time allowed to prepare annual reports will increase the already significant stress on those company personnel charged with compiling and analyzing company data, thereby increasing the chances of errors in judgment, which will thus jeopardize the reliability of disclosures to the public markets. We also submit that there would be no demonstrable public benefit produced by a requirement that large accelerated filers produce their annual reports fifteen days earlier than now allowed. In the absence of such a benefit to the public, the increased risk of unreliable information being reported to the public is unjustifiable. In view of the policies embodied in the disclosure and financial control provisions of SOX, a rule of the Commission diminishing the reliability of annual reports on Form 10-K would be especially incongruous.

Accelerated Filing Deadlines will be Particularly Difficult for Large Accelerated Filers

The Commission has wisely chosen not to reduce the timeline for the filing of Form 10-K for small and medium-sized companies. However, we believe that large accelerated filers have even greater need for such treatment. The Commission has emphasized the need for clarity and "plain English" in corporate disclosure information. Large accelerated filers, those targeted by the Proposed Rule, are the filers for which this need is the most difficult to satisfy because of their more diversified nature, more complex structures and more numerous accounting issues that require concentrated efforts by many different parties to achieve a fair presentation. By shortening the time allowed to file, the Commission will adversely affect the ability of large

filers to condense the wealth of complex information about the company into a form that is both accurate and digestible by the investing public.

Large companies, just like smaller ones, must have the time that is necessary to develop fair presentations of their financial data and to investigate potential disclosure issues. While larger companies may have greater resources, they invariably have more complex and more widely dispersed organizations, which require additional time to ferret out problems, analyze information and produce accurate and informative disclosure. Moreover, even in such larger companies the ultimate decisions about disclosures can only be made by the relatively small number of people at the center of the organization who are equipped to judge what is material to the company. These are also the same people who are at the same time occupied with monitoring the company's activities to determine the need for a current report on Form 8-K, preparing the increasingly burdensome annual proxy statement and, most importantly, managing the business of the company.

The MD&A may be the first area of disclosure affected by a shortened timeline for a large issuer's Form 10-K. As the Commission has stated, the MD&A is an issuer's opportunity to explain the key factors and assumptions driving earnings, capital and liquidity and to highlight the risks inherent in its business model. The Commission has stressed that the MD&A is meant to be a "fresh look" at the company and the subject of serious thought and significant analysis. By reducing the time allowed for this reflection, particularly for those filers for whom "getting the big picture" is the most difficult, the usefulness of this section of the report may be sacrificed for speed. It is our experience that, under the current system, the development of the MD&A often occurs concurrently with the recognition of business trends and the development of responsive business strategies. But if the deadlines are shortened for large accelerated 10-K filers, instead of developing disclosure language to identify and describe such trends and strategies, these issuers will have increased incentive to simply recast old language or limit analysis to hasten the preparation of the material in order to meet an unnecessarily rigid deadline. As a result, investors will get information earlier, but we fear it will not be of the same quality as the information that could be prepared and disseminated under the current time limits.

Admittedly, as pointed out in the Commission's release, large accelerated filers do have more economic resources than other issuers. But large companies, just like small filers, still have a single CEO and a small group of senior management who must personally bear severe liability under SOX and who must commit significant time to the preparation and review of annual reports. The 10-Ks of these filers are much more difficult to prepare because of the challenging task of obtaining and presenting an accurate global view of the issuer and all its various segments. Because of these greater difficulties, and the need for investors to have accurate and informative disclosure, we believe that large accelerated filers need the benefit of the full 75 days to complete their reports.

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In conclusion, although we certainly agree that investors need to have current information about the companies in which they invest, we believe that by not allowing larger issuers to have the full 75 days to file their annual reports, the Commission may sacrifice the ability of issuers to provide quality and completeness in their disclosures. Although Congressional and Commission actions have been taken to increase the extent and robustness of the disclosure in issuers' current and periodic reports, we believe that the failure to allow the largest accelerated filers to continue to file their Form 10-Ks under the current deadlines would reduce the impact those actions were intended to provide without any offsetting benefit to the investing public.

We are grateful for the opportunity to provide our comments on the important issues raised by the Proposed Rule.

Very truly yours,

Sidley Austin Brown & Wood LLP

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