



September 28, 2004

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

Re: File No. S7-32-04
Release No. 33-8477
Temporary Postponement of the Final Phase-In Period for Acceleration of Periodic Report Filing Dates

Dear Mr. Katz:

This letter is the response of BDO Seidman, LLP to your request for comments regarding the proposal listed above.

We strongly agree with the Commission that accelerated filers and their auditors need additional time to focus their efforts on complying with the Commission's new reporting requirements regarding internal control over financial reporting. Indeed, the Commission's proposal is consistent with suggestions we made in our comment letter regarding PCAOB Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements*.¹ While we believe the relief the Commission has proposed is a far better approach than taking no action, we believe the Commission should go further in providing relief.

Annual Reports Due Date

Our most recent experience in working with registrants on the internal control reporting requirements tells us that registrants have underestimated the time needed to meet these requirements. We believe this problem is most acute for companies that became accelerated filers this year. Further, Auditing Standard No. 2 and the SEC's reporting requirements are still being interpreted. The PCAOB and Commission staffs continue to address implementation questions, and additional questions are likely to arise. In addition, once the evaluation process is complete, companies and auditors will need to carefully evaluate identified weaknesses. Evaluating weaknesses in a consistent manner will be difficult and will require considerable time on the part of all involved, and most of this time will need to be spent during the period between year-end and the filing date.

¹ See our letter dated May 17, 2004 in Commission file no. PCAOB 2004-03.

In view of these conditions, we believe that registrants, particularly smaller accelerated filers, will find it extremely difficult to complete the high quality, thorough and thoughtful assessments of their internal control that the Commission desires within the 75 days timeframe reflected in the Commission's proposal. Therefore, we believe the Commission should instead:

1. Adopt a 90 days after year-end due date for all Form 10-Ks that contain a company's initial management report and auditor attestation on internal control over financial reporting and
2. Allow companies that became accelerated filers for the first time this year to wait until next year to comply with the internal control reporting requirements.

Given the current state of affairs, we believe that providing 90 days in the initial year of reporting on internal control will provide management and auditors with a more realistic time period for completing the significant work required. Adopting this change, coupled with our second recommendation above, would provide needed relief to new accelerated filers by allowing them to defer internal control reporting for a year *and* giving them 90 days to provide their first internal controls reports.

Because of the degree of difficulty we expect many accelerated filers to experience in meeting the Form 10-K deadline this year and the fact that many filers will be reporting on internal control for the first time next year, we also believe the Commission should continue to be sensitive to the Form 10-K due date issue next year. In that regard:

1. If the Commission adopts the deferral approach proposed, then after the calendar 2004 filing season, we recommend that the Commission seek comment regarding accelerated filers' ability to file 2005 Form 10-Ks by the 60 days after year-end date proposed and consider the need for further deferral.
2. If the Commission adopts the 90 days after year-end due date for 2004 that we recommend, we recommend that the Commission also (a) plan to transition to the 60 days due date over the following two years, i.e., by requiring a 75 days due date for 2005 10-Ks and a 60 days due date for 2006 10-Ks and (b) solicit comment regarding further acceleration as discussed above after the 2005 filing season.

Public Float Threshold

We continue to recommend that the Commission evaluate and consider increasing the amount of public equity float that warrants requiring a company to file on an accelerated basis.² We suggest that the Commission:

- Identify the accelerated filers with public equity floats ranging from \$75 million to \$1 billion, divide them into strata, and gather and analyze data that provide evidence regarding how widely companies in each stratum are followed by investors (e.g., number of shareholders, number of institutional investors, trading volume, etc.).
- Determine and consider the typical public equity float of the stocks in the portfolios of mutual funds that specialize in investing in so-called "microcap" companies. Shareholder

² See our May 17, 2004 letter referred to in footnote 1.

communications from such mutual funds sometimes state the view that such companies are not widely followed; therefore an investor with superior research capabilities can take advantage of inefficiencies in this segment of the market.

We expect that the results of such studies would indicate that the level of public equity float at which most companies are widely followed is significantly greater than \$75 million. If so, we believe increasing the amount of public equity float that requires a company to file on an accelerated basis would be appropriate because it would remove an unnecessary burden from these companies without harming investors.

Quarterly Reports Due Date

With regard to quarterly reporting deadlines, we believe the Commission should defer phase-in of the 35 days after quarter-end due date until after the annual report due date is accelerated to 60 days after year-end. Our experience has been that accelerated filers have found meeting the current 40 days after quarter-end deadline to be difficult, and we believe that providing additional time to transition to a 35 days deadline would enhance the chances that companies will be able to do so without significantly impairing the quality of their filings.

Reverse Acquisitions

One of the many implementation issues that have arisen is the application of the internal control reporting requirements after a reverse acquisition. Following the annual reporting concepts we recommended above, we think the Commission should allow the Form 10-K covering a year in which a reverse acquisition occurs to be filed by 90 days after year-end (unless the accounting acquirer was an accelerated filer prior to the transaction). If an accelerated filer acquires a non-accelerated filer or a private company and the legal target is the acquirer for accounting purposes, the Form 10-K covering the year of the transaction should always be due 90 days after year-end, and internal control reporting should not be required until next year. If it is important enough to do so, the parties to a reverse acquisition transaction can usually achieve these objectives by changing the legal form of the transaction to have the accounting acquirer be the legal acquirer. However, the parties may have business reasons for wanting the registrant to be the legal acquirer, and we believe an accelerated Form 10-K due date and internal control reporting in 2004 vs. 2005 should not serve as obstacles to this.

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We believe the Commission's rules and its proposal place excessive importance on timely filing and that this will harm investors because it will diminish the quality of filings. We believe that providing further relief, such as that outlined above, will strike a more appropriate balance between the goals of timeliness and quality and better serve the needs of investors.

We appreciate this opportunity to express our views to the Commission. We would be pleased to answer any questions the Commission or its staff might have about our comments. Please contact Wayne Kolins, National Director – Assurance Practice, at (212) 885-8595 or via electronic mail



at wkolins@bdo.com, or Lee Graul, National Director – SEC Practice, at (312) 616-4667 or via electronic mail at lgraul@bdo.com.

Very truly yours,

BDO Seidman, LLP