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By email rule-comments@sec.gov

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

Re: Temporary Postponement of the Final Phase-In Period for
Acceleration of Periodic Report Filing Dates (File Number S7-32-04)

Members of the Commission:

On behalf of the Committee on Federal Regulation of Securities of the Section of Business Law of the American Bar Association (the "Committee"), we are writing to express our views with respect to the Securities and Exchange Commission's proposal to postpone the final phase-in period for acceleration of periodic report filing deadlines.¹ This letter was drafted by a task force composed of members of the Committee whose names are set forth below, and the members are available to discuss the matters discussed herein with the Commission and its staff. The comments expressed in this letter represent the views of the Committee only and have not been approved by the American Bar Association's House of Delegates or Board of Governors and therefore do not represent the official position of the ABA. In addition, they do not represent the position of the ABA Section of Business Law, nor do they necessarily reflect the views of all members of the Committee.

As discussed below in more detail in response to the specific questions to which the Commission requested comment, we support the Commission's proposal to postpone the final phase-in period for acceleration of periodic report filing deadlines.

¹ Securities Act Release No. 8477; Exchange Act Release No. 50,254 (August 25, 2004), 69 Fed. Reg. 53550 (September 1, 2004) ("Proposing Release").

Is it appropriate to postpone the final phase-in period of the accelerated filing deadlines? If so, is the length of the proposed postponement appropriate, or should it be shorter or longer?

We believe that it is appropriate to postpone the final phase-in period of the accelerated filing deadlines for one year. We do not believe a longer postponement is necessary at this time.

Public companies that are accelerated filers are currently confronting the dual challenge of complying for the first time with the new requirements regarding internal control over financial reporting while at the same time preparing for the further compression of filing deadlines from 75 to 60 days after year end for Form 10-Ks and from 40 to 35 days after quarter end for Form 10-Qs. While our experience has been that companies are working diligently and in good faith to simultaneously achieve both requirements, many companies are finding that the two requirements create competing demands on the same resources (including internal financial and accounting staff time and attention, management time and attention, internal IT resources, outside professional time and attention and audit committee time and attention) and we believe that for some companies implementing both requirements at the same time will require undesirable tradeoffs.

As recognized in the Proposing Release, postponing the final phase-in period of the accelerated filing deadline for one year would produce several benefits, including:

- Allowing additional opportunity for accelerated filers and their auditors to focus their efforts on complying with the new requirements regarding internal control over financial reporting.
- Facilitating the involvement and coordination of financial management, external auditors and audit committees in the internal control audit process by removing a competing demand for their time and attention.
- Affording accelerated filers with additional time to resolve difficult analytical issues that may arise in determining whether an issue discovered in the course of management's internal control assessment constitutes a significant deficiency or a material weakness.

The Commission states in the Proposing Release “that it is critical that all Exchange Act reporting companies implement the internal control requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002 completely and carefully” since these requirements are central to the Act's objectives of improving the accuracy and reliability of financial reporting. We believe that the one-year postponement of the final phase-in period of the accelerated filing deadline will help some companies to “completely and carefully” implement the internal control requirements mandated by Section 404.

Finally, we note in support of the proposed postponement that, when the accelerated filing rules and phase-in schedule were originally established, the time, effort and resources required to successfully complete the Section 404 process was not known and therefore could not have been fully taken into account. We also note that companies are currently working to address a significant number of other new or proposed regulations and requirements including implementation of the new 8-K reporting rules, proposed changes to NYSE listing standards and the likely adoption by the FASB of new rules governing the accounting for stock options.

Would a postponed phase-in period benefit investors by helping to ensure the quality and accuracy of the information included by companies in their periodic reports? Would it disadvantage investors in any significant respect?

As discussed more fully in response to the previous question, postponing the final phase-in period of the accelerated filing deadline for one year would enhance the opportunity for accelerated filers to focus their attention and efforts on successfully completing the implementation of the Section 404 requirements. The deferred phase-in period will also provide companies with a greater opportunity to thoughtfully draft meaningful disclosure describing problems with their internal controls that are identified during the Section 404 process and to review and improve that disclosure based on input from the company's audit committee, the company's independent auditors and legal counsel. Investors will benefit from the more thoughtful and meaningful disclosure that companies will be able to provide if given the benefit of extra time. Any disadvantage to investors would be minor, since the Commission's proposal would only result in Form 10-K disclosure being made up to 15 days after it otherwise would and Form 10-Q disclosure being made up to 5 days after it otherwise would. Moreover, even with the postponement of the final phase-in period of the accelerated filing deadlines for one year, 10-K disclosure will still be made at least 15 days earlier than it historically was and Form 10-Q disclosure will still be made at least 5 days earlier than it historically was.

Should we postpone the final phase-in of the accelerated filing deadlines for both annual and quarterly reports or only for annual reports given that management's internal control report must appear only in the annual report? Does the required disclosure about material changes to a company's internal control over financial reporting that must appear in the quarterly report warrant a postponement of the accelerated filing deadlines for quarterly reports?

We believe the final phase-in of the accelerated filing deadline should be postponed for both 10-Ks and 10-Qs.

As stated in the Proposing Release, one benefit of a temporary postponement of the further acceleration of filing deadlines is that it would benefit investors by affording accelerated filers additional time to resolve difficult analytical issues that may arise in determining whether an identified internal control issue is a significant deficiency or a material weakness. These difficult analytical issues also arise in the course of preparing the required quarterly disclosure about material changes to a company's internal control over financial reporting and the related principal officer certifications. In our experience,

companies have already been struggling with this issue, and we expect this issue will continue to present a challenge throughout the year as companies work to fully apply the definitions of these terms adopted as part of Auditing Standard No. 2 (“AS2”), recently issued PCAOB and SEC guidance, any future guidance the PCAOB or the SEC may issue and industry practices that evolve as accounting firms and public companies work through the new standards for the first time. We believe that it will be helpful, during this transition year, for companies to have an extra five days each quarter to properly analyze, and craft high-quality disclosure regarding, internal control issues.

We are also concerned that only postponing the final phase-in of the accelerated filing deadline for 10-Ks, while proceeding with the final phase-in of the accelerated filing deadline for 10-Qs, will deprive issuers and investors of the intended benefit of the delayed 10-K phase-in. As adopted, the accelerated filing rules were structured so that the shortening of 10-Q deadlines followed the shortening of 10-K deadlines. In planning for system and process improvements that are needed to meet the accelerated deadlines, issuers therefore had an expectation that the reduction in the 10-Q deadline to 35 days would only occur after the reduction in the 10-K deadline to 60 days. We believe that companies took this into account in scheduling the implementation of system and process changes. For example, a company may have been planning to use the 60 day 10-K filing period as a test period for verifying that proposed process changes would enable it to complete aspects of its 10-Q reporting in the required 35 day period. If the pattern for accelerating 10-K and 10-Q deadlines is now changed, companies will need to rethink their plans for when certain system and process improvements were to be implemented and tested -- giving management one more thing to do when the goal is to free up management time and attention so that it can fully focus on Section 404.

Moreover, since some of the system and process changes that would need to be implemented in order to meet an accelerated 10-Q deadline of 35 days after quarter end may need to be put in place prior to the beginning of the quarter, meeting the accelerated 10-Q deadlines could require companies to take actions prior to the end of the current fiscal year, which is precisely the time that companies will be busiest with finalizing their Section 404 readiness.

Accordingly, in order to provide the intended benefits to investors and issuers that underlay the Commission’s proposal, the final phase-in of the accelerated filing deadline should be postponed for both 10-Ks and 10-Qs.

Should we provide for an extension of the filing deadlines only for accelerated filers that request an extension, for example, by providing for an extension upon the filing of a Form 12b-25 under the Exchange Act? Should we only provide an extension of the filing deadlines only to certain companies such as those that demonstrate a need for the extension? If so, what would be the best method for companies to communicate their request for an extension?

We do not believe that providing relief on a case-by case basis will achieve the benefits that the Commission’s proposal is intended to provide because the availability of relief will be uncertain. Unless relief is provided up-front, on a uniform basis, companies will

not be able to adjust their schedules to take the relief into account. If relief will only be available on a case-by-case basis, companies will need to continue to prepare for accelerated reporting, with the resulting undesirable tradeoffs in time, attention and resources that jeopardize the successful implementation of the new Section 404 requirements.

In addition, investors may be harmed by unnecessary market overreaction to the filing of the Form 12b-25 (i.e., there may be a tendency for the market to assume the filing of the 12b-25 signals a problem with the company's internal controls and procedures, rather than a mere need for a few more days in order to complete the Form 10-K).

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Thank you for this opportunity to comment on the Commission's proposal to postpone the final phase-in period for acceleration of periodic report filing deadlines. Members of the Committee are available to discuss these comments. If you believe that such discussions would be helpful, please contact the undersigned.

Respectfully submitted,

Committee on Federal Regulation of Securities

/s/ Dixie L. Johnson
Committee Chair

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