

New York State Bar Association

One Elk Street
Albany, NY 12207
518-463-3200

**Business Law Section
Committee on Securities Regulation**

October 1, 2004

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

E-mail address: rule-comments@sec.gov

Attention: Jonathan G. Katz, Secretary

Re: File No. S7-32-04
Temporary Postponement of the Final Phase-in Period for
Acceleration of Periodic Report Filing Dates
Release Nos. 33-8477; 34-50254

Ladies and Gentlemen:

The Committee on Securities Regulation (the "Committee") of the Business Law Section of the New York State Bar Association appreciates the invitation in Release No. 33-8477 (the "Release") to comment on proposed rule amendments regarding the filing due dates for quarterly and annual reports required to be filed under the Securities Exchange Act of 1934.

The Committee is composed of members of the New York Bar, a principal part of whose practice is in securities regulation. The Committee includes lawyers in private practice and in corporation law departments. A draft of this letter was reviewed by certain members of the Committee, and the views expressed in this letter are generally consistent with those of the majority of members who reviewed and commented on the letter in draft form. The views set forth in this letter, however, are those of the Committee and do not necessarily reflect the views of the organizations with which its members are associated, the New York State Bar Association, or its Business Law Section.

The Release proposes amendments to the Commission's Rules and Regulations and the General Instructions to Form 10-Q and Form 10-K which would postpone for one year the final phase-in period for acceleration of the due dates for filing Form 10-Q and Form 10-K under the Exchange Act for reporting companies defined as "accelerated filers."

Summary

The Committee supports the Commission's proposal for the one-year postponement of the final phase of the accelerated filing dates, and commends the Commission for its responsiveness to the challenges and difficulties in meeting scheduled filing dates faced at this time by accelerated filers and their accounting and other supporting professionals. The proposed postponement can only further the public interest and work to the benefit of the both the investing public and issuers.

Discussion

The major concern expressed by the Commission in the Release for the need for the proposed amendments is to allow additional time and opportunity for accelerated filers and their auditors to focus their efforts on complying with the Commission's new requirements under Section 404 of the Sarbanes-Oxley Act ("SOX") regarding internal control over financial reporting, which becomes effective for accelerated filers beginning with annual reports for fiscal years ending on or after December 15, 2004. Accelerated filers who are calendar year companies thus will become subject to the new requirements for the first time in the upcoming annual report for the year ended December 31, 2004

The Committee agrees with the Commission's assessment, based in part on reports from auditing firms, of the enormous challenges faced by issuers and their auditors in successfully implementing the new 404 requirements. Failure could lead to serious disruptions in the trading markets for affected companies, which will be all the more harmful where unjustified and due to factors resulting from lack of sufficient resources, focus and time. Under these circumstances, it will serve the interest of neither investors nor issuers to overlay new accelerated filing deadlines.

Other considerations that support the proposed postponement are the new demands placed on issuers by the additional Form 8-K disclosure requirements and acceleration of the filing date for Form 8-Ks, which became effective August 23, 2004, and the prospect of having to expense equity-based compensation in the financial statements, proposed by the Financial Accounting Standards Board to be effective for fiscal years beginning after December, 24, 2004, essentially in the same time frame as the current schedule for accelerated filing of Form 10-K.

Although it has been reported that FASB is considering delaying a rule that would require expensing of stock options and other equity compensation, we believe that only reinforces the rationale for postponement of the accelerated filing dates for Form 10-Q and Form 10-K. A primary reason for delaying expensing equity compensation is the pressure

on issuers and accountants due to the year-end requirements under Section 404, which also argues for delaying the accelerated filing dates.

In addition, the Release requests comment on four specific questions. The following sets forth our views on those four questions.

1. We believe that the final phase-in period of the accelerated filing deadlines should be postponed. One year would permit issuers to go through a complete disclosure and reporting cycle under the new Section 404 requirements. The question of the accelerated filing dates could then be re-examined in light of that experience by accelerated filers.

2. The proposed postponement of the final phase-in period should tend to improve the quality and accuracy of information provided by issuers in their periodic reports, including information with respect to internal controls, which would be of benefit to investors. We do not see any significant disadvantage to investors from the one-year postponement.

3. We believe that the postponement should apply to Form 10-Q as well as to Form 10-K. We would expect that some of the same types of issues that reporting companies would face in implementing the new Section 404 requirements for Form 10-K may be present for Form 10-Q, and that planning and procedures for Form 10-K and Form 10-Q often are done in parallel.

4. We believe that relying on the availability of Form 12b-25 and thereby requiring individual issuers to request extensions would not be an appropriate way to address the concerns discussed in the Release.

We hope the Commission finds these comments helpful. We would be happy to meet with the Staff to discuss these comments further.

Respectfully submitted,

COMMITTEE ON SECURITIES REGULATION

By Michael J. Holliday
MICHAEL J. HOLLIDAY
CHAIR OF THE COMMITTEE

Copy to:

The Honorable William H. Donaldson, Chairman
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
The Honorable Cynthia A. Glassman, Commissioner
The Honorable Harvey J. Goldschmid, Commissioner
Alan L. Beller, Esq., Director of Division of Corporation Finance