



## U.S. Securities and Exchange Commission

### **SEC Votes to Propose Changes in Filing Deadlines and Accelerated Filer Definition; Postpone 404 Compliance Date for Nonaccelerated Filers; Propose Issuing Section 28(e) Interpretive Guidance**

#### **FOR IMMEDIATE RELEASE 2005-134**

*Washington, D.C., Sept. 21, 2005* — Today the Securities and Exchange Commission voted to propose for comment amendments to filing deadlines for periodic reports required by rules under the Securities Exchange Act of 1934 and changes in accelerated filer definitions; decided to postpone for an additional year the compliance date for filing internal control reports by companies not designated as accelerated filers; and voted to publish for comment proposed interpretive guidance concerning Section 28(e) of the Securities Exchange Act of 1934.

#### **1. Periodic Report Filing Deadlines and the Definition of an Accelerated Filer**

The Commission voted to propose amendments to the periodic report filing deadlines and the Exchange Act Rule 12b-2 definition of an accelerated filer. The proposals would

- create a new category of companies called "large accelerated filers";
- adjust the definition of "accelerated filers";
- cause large accelerated filers to become subject to a 60-day Form 10-K annual report deadline and a 40-day Form 10-Q quarterly report deadline next year and in subsequent years;
- maintain the current 75-day Form 10-K annual report deadline and 40-day Form 10-Q quarterly report deadline for accelerated filers next year and in subsequent years; and
- amend the definition of accelerated filer to ease restrictions on the process for exiting accelerated filer status.

#### **Large Accelerated Filers and Accelerated Filers**

The proposed amendments would create a new category of filers, "large accelerated filers," for companies that have a public float of \$700 million or more and meet the same other conditions that apply to accelerated filers. The proposed amendments also would redefine "accelerated filers" as companies that have at least \$75 million but less than \$700 million in public float.

### **Amendments to the Accelerated Filer Definition**

The proposed amendments would modify the procedures by which accelerated filers can exit accelerated filer status by permitting an accelerated filer whose public float has dropped below \$25 million to file an annual report on a non-accelerated basis for the same fiscal year that the determination of public float is made. The proposed amendments similarly would permit a large accelerated filer to exit large accelerated filer status once its public float has dropped below \$75 million.

Comments on the proposed amendments should be received by the Commission within thirty days of their publication in the Federal Register.

### **2. Extension of Compliance Date of Internal Control Reporting Requirements for Companies that are Not Accelerated Filers**

The Commission voted to extend for an additional one year the compliance dates regarding its internal control reporting requirements rules for companies that are not accelerated filers. The amendments require a public company subject to the reporting requirements under the Securities Exchange Act of 1934 to include in its annual report a report by management on the effectiveness of the company's internal control over financial reporting and an accompanying auditor's report.

Under the new compliance schedule, a company that is not an accelerated filer, including a foreign private issuer that is not an accelerated filer, will begin to be required to comply with the Section 404 requirements for its first fiscal year ending on or after July 15, 2007. A foreign private issuer that is an accelerated filer and that files its annual reports on Form 20-F or Form 40-F, must begin to comply with the internal control over financial reporting and related requirements in the annual report for its first fiscal year ending on or after July 15, 2006.

Ongoing efforts by the Committee of Sponsoring Organizations of the Treadway Commission to develop an enhanced COSO Framework for smaller public companies, and the continuing evaluation of the impact of the internal control over financial reporting requirements on smaller public companies by the SEC Advisory Committee on Smaller Public Companies warrant the deferral of the compliance dates for non-accelerated filers. The extension is consistent with a recent Advisory Committee recommendation.

The Commission also is soliciting public comment on several questions about the application of the internal control reporting requirements including questions regarding the amount of time and expense that companies that are not accelerated filers have incurred to date to prepare for compliance with the internal control reporting requirements. Comments should be received by the Commission within thirty days of their publication in the Federal Register.

### **3. Proposed Interpretive Guidance Regarding Client Commissions**

The Commission voted to publish for comment interpretive guidance on money managers' use of client commissions to pay for brokerage and research services under Section 28(e) of the Securities Exchange Act of

1934. Section 28(e) creates a "safe harbor" by providing that a person who exercises investment discretion with respect to an account shall not be deemed to have acted unlawfully or to have breached a fiduciary duty under state or federal law solely by reason of having caused an account to pay more than the lowest available commission if that person determines in good faith that the amount of the commission is reasonable in relation to the value of the "brokerage and research services" received.

The proposed interpretive guidance would clarify that the scope of the Section 28(e) safe harbor is limited to brokerage and research services that

- satisfy the eligibility criteria in the statute;
- provide lawful and appropriate assistance to the money manager in carrying out his decision-making responsibilities; and
- satisfy the requirement that the money manager make a good faith determination that commissions paid are reasonable in relation to the value of the products and services provided by broker-dealers in connection with his responsibilities to the advisory accounts for which he exercises investment discretion.

The Commission also voted to publish for comment guidance on commission-sharing arrangements.

Comments on the proposal should be received by the Commission within thirty days of their publication in the Federal Register.

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The full text of detailed releases concerning each of these items will be posted to the SEC Web site as soon as possible.

<http://www.sec.gov/news/press/2005-134.htm>

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