

SEC UPDATE

SEC Proposes Extension of Effective Dates for Section 404 Reporting/Opinions for Non-Accelerated Filers and Newly Public Companies

On August 9, 2006, the SEC announced a proposed rule that would delay the compliance date of the requirements relating to internal control over financial reporting for non-accelerated filers and newly public companies. The proposed rule is intended to provide cost savings and efficiency opportunities to smaller public companies and newly public companies and to assist them as they prepare to comply fully with the requirements relating to internal control over financial reporting.

Under the proposed rule, non-accelerated filers would not be required to provide (1) the management's report on the effectiveness of internal control over financial reporting until the annual report for the first fiscal year ending on or after December 15, 2007 (instead of July 15, 2007), and (2) the auditor's attestation report on internal control over financial reporting until the annual report for the first fiscal year ending on or after December 15, 2008 (instead of July 15, 2007). Under the proposed rule, non-accelerated filers would have to complete only the management's portion of the internal control requirements in their first year of compliance with the requirements, and the management report would be deemed "furnished" rather than "filed" for that first year. Accelerated filers are issuers that (1) have an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of \$75 million or more, but less than \$700 million, (2) have been subject to SEC reporting requirements for a period of at least twelve months, (3) have filed at least one annual report under the Exchange Act, and (4) not eligible to use Forms 10-KSB and 10-QSB for annual and quarterly reports.

In addition, the SEC is proposing a transition period to alleviate reporting burdens imposed on newly public companies. Under the proposed rule, a newly public company would not need to comply with the requirements relating to internal control over financial reporting in its first annual report on Form 10-K, 20-F or 40-F. Rather, the company would begin to comply with these requirements in the second annual report that it files with the SEC. The proposed transition period is intended to reduce undue burden that may be imposed on a newly public company in the comprehensive process of preparing its first annual report (allowing, among other things, a company to complete its initial public offering in close proximity to its fiscal year-end). In addition, the proposed transition period would alleviate reporting burdens on companies that may become subject to Exchange Act reporting obligations after filing a Securities Act registration statement but are eligible to terminate their periodic reporting obligations after filing just one report.

The proposed rule is subject to a 30-day comment period.

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This memorandum is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this memorandum should be directed to any member of the Paul, Weiss Securities Group, including:

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