

SEC UPDATE

SEC Proposes New Filing Deadlines for Accelerated Filers

In response to concerns that the accelerated filer dates that are scheduled to come into effect next year do not give SEC reporting companies sufficient time to prepare their periodic reports, the SEC has proposed the following:

- A new class of registrants, to be known as “large accelerated filers,” would be required to file their annual reports on Form 10-K for fiscal years beginning on or after December 15, 2005 within 60 days after year-end but would continue to file quarterly reports within 40 days after the quarter-end (instead of 35 days, as was scheduled to apply next year).
- Other accelerated filers would continue to follow the current annual filing requirement of 75 days (instead of 60 days, as was scheduled to apply next year) and quarterly filing requirement of 40 days (instead of 35 days, as was scheduled to apply next year).
- An accelerated filer that has voting or non-voting common equity held by non-affiliates of less than \$25 million (based on a second quarter-end measurement date) would be able to exit accelerated filer status promptly at year-end and begin filing annual reports (beginning with the year then ended) and thereafter quarterly reports on a non-accelerated filer basis.
- A large accelerated filer that has voting or non-voting common equity held by non-affiliates of less than \$75 million (based on a second quarter-end measurement date) would be able to exit large accelerated filer status promptly at year-end and begin filing annual reports (beginning with the year then ended) and thereafter quarterly reports as an accelerated filer or, if below \$25 million, as a non-accelerated filer.

Large Accelerated Filer Status

The SEC proposes to add a new definition of “large accelerated filer.” These filers would meet the same public float test (aggregate worldwide market value of voting and non-voting common equity held by non-affiliates of \$700 million as of the last business day of the registrant’s second quarter) as a “well-known seasoned issuer,” though the determination date would be different, and the same reporting history as accelerated filers (subject to 13(a) or 15(d) reporting for 12 months and filing of one annual report thereunder). Not all well-known seasoned issuers would be large accelerated filers (e.g., debt-only issuers) and not all large accelerated filers would be well-known seasoned issuers (e.g., ineligible issuers).

The cover pages of Forms 10-K, 10-Q and 20-F would be amended to provide disclosure of large accelerated filer, accelerated filer or non-accelerated filer status.

Revised Deadlines

The SEC proposes to maintain the current accelerated filer deadlines in place, namely 75 days for annual reports and 40 days for quarterly reports.

Large accelerated filers would file their annual reports within 60 days after year-end and file their quarterly reports within 40 days after quarter-end.

All other 10-K filers that are not accelerated filers would continue to file their annual reports within 90 days after year-end and file their quarterly reports within 45 days after quarter-end.

No filer would be required to file quarterly reports within 35 days after quarter-end.

Ability to Exit the System

Under current rules, an accelerated filer can exit the accelerated filer regime only if it becomes eligible to use Forms 10-KSB and 10-QSB, which in effect requires such filers to wait two years to begin filing as a non-accelerated filer. The proposed rules would allow accelerated and large accelerated filers to exit more easily. The date of determination would remain year-end, and the measurement date would remain the end of the filer's second quarter.

An accelerated filer whose public float falls below \$25 million would become a non-accelerated filer, and a large accelerated filer whose public float falls below \$75 million would become an accelerated filer, and if its public float falls below \$25 million would become a non-accelerated filer. This would benefit, for example, a company that ceases to have any common stock held by non-affiliates but continues to be subject to Exchange Act reporting by virtue of public debt. A filer that ceases as of the end of its fiscal year to meet the test as of the end of its second quarter would file its annual report for the year then ended on the schedule applicable to its new status.

Foreign Private Issuers

The SEC did not propose modifying the six-month deadline for foreign private issuers to file their annual reports on Form 20-F. Foreign private issuers that voluntarily file Forms 10-K and 10-Qs must determine whether they are accelerated filers and would, under the proposal rule change, be required to determine whether they are accelerated or large accelerated filers, and comply with the applicable deadlines. Foreign issuers that have lost their foreign private issuer status would be required to do the same.

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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