

September 27, 2005

SEC Extends Section 404 Compliance Dates for Non-Accelerated Filers

The SEC has extended for the second time the Section 404 internal control over financial reporting compliance dates for non-accelerated filers. Under the most recent extension, non-accelerated filers must:

- begin to comply with the Section 404 internal control over financial reporting requirements for fiscal years ending on or after July 15, 2007;
- include the language relating to the maintenance of internal control over financial reporting in the certifications required by Exchange Act Rules 13a-14(a) and 15d-14(a) in the first annual report required to contain management's internal control report and all periodic reports filed thereafter; and
- begin to comply with the provisions requiring an evaluation of changes to internal control over financial reporting with respect to the company's first periodic report due after the first annual report that must include management's report on internal control over financial reporting.

The compliance dates relating to accelerated filers and registered investment companies are not affected by this extension.

Background

In 2003, the SEC adopted amendments to its rules and forms implementing Section 404 of the Sarbanes-Oxley Act. Section 404 and the related SEC rules require SEC reporting companies, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over financial reporting and an accompanying auditor's report, and to evaluate, as of the end of each fiscal quarter, or year in the case of a foreign private issuer filing its annual report on Form 20-F or Form 40-F, any change in the company's internal control over financial reporting that occurred during the period that has materially affected, or is reasonably likely to affect, the company's internal control over financial reporting.

The SEC extended the Section 404 compliance dates in February 2004 for all filers to allow companies to properly implement PCAOB Auditing Standard No. 2. In March 2005, the SEC approved a further one-year extension of the Section 404

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compliance dates for non-accelerated filers and for all foreign private issuers to July 15, 2006.

The Extension

The most recent one-year extension applies to all non-accelerated filers. As a result of recent changes to the definition of accelerated filer (Rule 12b-2), foreign private issuers that file annual reports on Form 20-F or 40-F and are accelerated filers will not be entitled to the most recent one-year extension; their internal control reports will be required to be included for reports for fiscal years ending on or after July 15, 2006. A foreign private issuer that is not an accelerated filer must begin to comply in its annual report for its fiscal year ending on or after July 15, 2007.

Request for Comment

In addition extending the compliance dates, the SEC is soliciting comments relating to the impact of Section 404 on smaller public companies, including:

- Should there be a different set of internal control over financial reporting requirements that applies to smaller companies than applies to larger companies?
- Would a public float threshold that is higher or lower than the \$75.0 million threshold that is used to distinguish accelerated filers from non-accelerated be more appropriate?
- Should the independent auditor attestation requirement be different for smaller public companies?
- Should the same standards for auditing internal control over financial reporting apply to auditors of all public companies, or should there be different standards based on the size of the public company whose internal control is being audited?
- How can the SEC assure that the costs of internal control over financial reporting requirements imposed on smaller public companies are commensurate with the benefits?

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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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