

SECURITIES ALERT

SEC REVISES PERIODIC REPORT DEADLINES AND ACCELERATED FILER DEFINITION



On December 21, 2005, the Securities and Exchange Commission (SEC) adopted rules to amend the filing deadlines for periodic reports and the definition of an “accelerated filer” in Rule 12b-2 under the Securities Act of 1934. The following summary is based on SEC Release Nos. 33-8644; 34-52989, which is available at <http://sec.gov/rules/final/33-8644.pdf>.

REVISED PERIODIC REPORT DEADLINES FOR ACCELERATED FILERS

The new rules adopted by the SEC governing periodic report deadlines provide some relief for companies that are subject to accelerated filing requirements. The new rules make the following modifications:

- create a new category of accelerated filers called “large accelerated filers” for companies that have an aggregate worldwide public float of \$700 million or more, as of the last business day of the most recently completed second fiscal quarter.¹
- amend the definition of “accelerated filer” to include only those companies that have at least \$75 million but less than \$700 million in aggregate worldwide public float, as of the last business day of the most recently completed second fiscal quarter.²
- require large accelerated filers to be subject to an accelerated 60-day Form 10-K annual report filing deadline for fiscal years ending on or after December 15, 2006. For fiscal years ending before December 15, 2006, large accelerated filers will remain subject to the current 75-day annual report filing deadline.

¹ A “large accelerated filer” is defined as an issuer that meets the following conditions for the first time at the end of its fiscal year: (i) has an aggregate worldwide market value of voting and non-voting common equity held by non-affiliates of \$700 million or more, as of the end of the issuer’s most recently completed second fiscal quarter, (ii) has been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act for at least 12 calendar months, (iii) has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act and (iv) is not eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports.

² An “accelerated filer” is an issuer that has an aggregate worldwide market value of voting and non-voting common equity held by its non-affiliates of \$75 million or more, but less than \$700 million, as of the end of the issuer’s most recently completed second quarter and otherwise satisfies items (ii) through (iv) in the definition of “large accelerated filer” above.

The new rules eliminate the scheduled phase-in of the 60-day and 35-day deadlines applicable to accelerated filers under the previously existing SEC rules. Accelerated filers will continue to file Form 10-K annual reports on a 75-day basis and Form 10-Q quarterly reports on a 40-day basis.

The new rules do not affect the filing deadlines for non-accelerated filers. Companies that are categorized as non-accelerated filers will continue to file Form 10-K annual reports on a 90-day basis and Form 10-Q quarterly reports on a 45-day basis.

The revised deadlines became effective on December 27, 2005. Accordingly, for issuers with a December 31, 2005, fiscal year end, the new deadlines will apply to the filing of those issuers' Form 10-K annual reports for 2005.

The following table summarizes the periodic report deadlines for each of three categories of filers under the new rules:

Category of Filer	Revised Deadlines for Filing Periodic Reports	
	Form 10-K Deadline	Form 10-Q Deadline
Large Accelerated Filer (\$700 million or more)	75 days for fiscal years ending before December 15, 2006, and 60 days for fiscal years ending on or after December 15, 2006	40 days
Accelerated Filer (\$75 million or more but less than \$700 million)	75 days	40 days
Non-Accelerated Filer (less than \$75 million)	90 days	45 days

REQUIREMENTS FOR EXITING ACCELERATED FILER STATUS

The new rules ease restrictions on the process for exiting accelerated filer status. The new rules permit an accelerated filer whose aggregate worldwide public float has dropped below \$50 million as of the last business day of its most recently completed second quarter to exit accelerated filer status at the end of that fiscal year.

The new rules similarly permit a large accelerated filer with less than \$500 million aggregate worldwide public float as of the last business day of its most recently completed second quarter to exit large accelerated filer status at the end of that fiscal year. Such a company will be subject to accelerated filer status if its public float is less than \$500 million, but \$50 million or greater when the public float determination is made.

CONTACT INFORMATION

If you have questions or would like to learn more about this topic, please contact the partner who represents you, or:

Ambika Kuckreja
akuckreja@akingump.com
1.866.AKIN LAW

Austin Brussels Dallas Dubai Houston London Los Angeles Moscow
New York Philadelphia San Antonio San Francisco Silicon Valley Taipei Washington, D.C.