



Securities Offerings and Regulations Alert!

News Concerning Recent Securities Issues

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SEC PROVIDES SMALLER COMPANIES AND NEWLY PUBLIC COMPANIES FURTHER RELIEF FROM SECTION 404 REQUIREMENTS

By: *Ralph V. De Martino, Esq. and Jessica N. Garvin, Esq.*

The Army Navy Building, 1627 I Street, NW, Suite 1100, Washington DC, 20006

Phone: (202) 912-4825 • Toll Free: (800) 540-1355 • Fax: (202) 912-4830

On December 15, 2006 the U.S. Securities and Exchange Commission (the “SEC”) issued a release in which it adopted an extension proposed in August to further postpone the date by which smaller public companies and newly public companies must comply with Section 404 of the Sarbanes-Oxley Act of 2002 (“SOX”).¹ The SEC believes that the extensions reflect its understanding of the special burdens that Section 404 may pose for these two types of issuers.

Smaller Public Companies

Prior to the extension, non-accelerated filers² were required to include management’s assessment and an auditor’s attestation to the assessment on the effectiveness of the filers’ internal control over financial reporting in their annual reports for fiscal years ending on or after July 15, 2007. Under the new rules, non-accelerated filers do not have to include management’s assessment regarding internal control over financial reporting until their annual report for fiscal years ending on or after December 15, 2007. In addition, non-accelerated filers have until their annual report for fiscal years ending on or after December 15, 2008 to comply with the auditor attestation requirement. The SEC believes the additional time to comply with the auditor’s attestation requirement is necessary to provide issuers and their auditors time to consider the

¹SEC Release No. 33-8760.

²A non-accelerated filer is a reporting company under the Securities Exchange Act of 1934 (the “Exchange Act”) which does not meet the “Exchange Act Rule 12b-2 definitions of either an “accelerated filer” or a “large accelerated filer.” Thus, any issuer with less than \$75 million in public float is considered a non-accelerated filer.

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anticipated revisions to Auditing Standard No. 2, as well as any implementation guidance the Public Company Accounting Oversight Board (the "PCAOB") may issue. Furthermore, the SEC believes that by staggering the compliance deadlines, it will allow issuers to focus on fully satisfying the internal assessment requirement.

Newly Public Companies

The SEC also adopted a rule that provides relief to newly public companies. The rule provides newly public companies with a transition period for Section 404 compliance by not requiring a management assessment or an auditor attestation report until the companies have previously filed one annual report with the SEC. The transition period applies to any company that has become public through an initial public offering or registered exchange offer, that otherwise becomes subject to Exchange Act reporting requirements, or is a foreign private issuer listing on a U.S. exchange for the first time.

Summary of Section 404 Compliance Dates

Filer		Compliance Dates	
		<u>Section 404(a): Management's Report</u>	<u>Section 404(b): Auditor's Attestation</u>
U.S. Issuer	Large Accelerated Filer or Accelerated Filer	Currently complying	Currently complying
	Non-accelerated Filer	FY ending on or after 12/15/2007	FY ending on or after 12/15/2008
Foreign Issuer	Large Accelerated Filer	FY ending on or after 7/15/2006	FY ending on or after 7/15/2006
	Accelerated Filer	FY ending on or after 7/15/2006	FY ending on or after 7/15/2007
	Non-accelerated Filer	FY ending on or after 12/15/2008	FY ending on or after 12/15/2007
U.S. or Foreign Issuer	Newly Public Company	Second annual report	Second annual report



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This summary does not constitute legal advice or a solicitation of any particular prospective client. If you have questions or require advice please call your regular contact at Cozen O'Connor or Ralph V. De Martino by telephone at (202) 912-4800 or by e-mail at rdemartino@cozen.com.