

SECURITIES PRACTICE

## SEC ADOPTS CHANGES TO ACCELERATED FILING RULES

On December 21, 2005, the Securities and Exchange Commission (SEC) adopted final rules amending the accelerated filing deadlines for 10-Ks and 10-Qs and creating a new category of companies called “large accelerated filers.” The rules also modify the requirements for exiting out of accelerated filer and large accelerated filer status.

### LARGE ACCELERATED FILERS AND ACCELERATED FILERS

In connection with creating the new category of large accelerated filers, the SEC redefined “accelerated filer.” An accelerated filer is a company that:

- has at least \$75 million, but less than \$700 million, in public float (aggregate market value of outstanding voting and non-voting common stock equity held by non-affiliates) as of the last business day of its most recently completed second fiscal quarter;
- has been subject to the periodic reporting requirements for at least 12 months and has filed at least one annual report; and
- is not eligible to file “Small Business” forms.

A large accelerated filer is a company meeting all of the conditions for accelerated filer status with a public float of at least \$700 million.

### NEW 10-K AND 10-Q FILING DEADLINES

Large accelerated filers will now be required to file their annual reports on Form 10-K within 60 days of their fiscal years ending on or after December 15, 2006. Until then, large accelerated filers are subject to a 75-day Form 10-K deadline. Accelerated filers, as redefined, will remain subject to a 75-day Form 10-K deadline.

Under the new rules, both large accelerated filers and accelerated filers are required to file their quarterly reports on Form 10-Q within 40 days after the end of each fiscal quarter.

The deadlines for other reporting companies will not be changed. Non-accelerated filers will continue to file their Form 10-Ks or Form 10-KSBs under the 90-day deadline and Form 10-Qs or Form 10-QSBs under the 45-day deadline.

A company completing an IPO will be considered a non-accelerated filer during the first year following the IPO, regardless of its public float. Therefore, its Form 10-K will be due 90 days after its fiscal year-end.

The following table provides a quick reference for the new accelerated filing deadlines:

	Deadline for Reports for Fiscal Years Ending Before December 15, 2006		Deadline for Reports for Fiscal Years Ending On or After December 15, 2006	
	Form 10-K	Form 10-Q	Form 10-K	Form 10-Q
<b>Large Accelerated Filers</b>	75 days after fiscal year-end	40 days after quarter-end	60 days after fiscal year-end	40 days after quarter-end
<b>Accelerated Filers</b>	75 days after fiscal year-end	40 days after quarter-end	75 days after fiscal year-end	40 days after quarter-end
<b>Non-accelerated Filers</b>	90 days after fiscal year-end	45 days after quarter-end	90 days after fiscal year-end	45 days after quarter-end

**LARGE ACCELERATED FILER AND ACCELERATED FILER EXIT REQUIREMENTS**

The final rules also modify the criteria for exiting from large accelerated filer and accelerated filer status. Large accelerated filers with a public float falling below \$500 million as of the last business day of the most recently completed second fiscal quarter for the

same fiscal year in which the public float decreased may file reports on an accelerated basis. Similarly, accelerated filers with a public float falling below \$50 million as of the last business day of the most recently completed second fiscal quarter for the same fiscal year in which the public float decreased may file reports on a non-accelerated basis.

The final rules adopted by the SEC can be found at <http://www.sec.gov/rules/final/33-8644.pdf>. If you have any questions, you are encouraged to contact David Braswell or Jill Newbold.

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