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Management's Report on Internal Control
Over Financial Reporting and
Certification of Disclosure in Exchange
Act Periodic Reports of Non-Accelerated
Filers and Foreign Private Issuers; Final
Rule**

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 240 and 249

[Release Nos. 33-8545; 34-51293; File Nos. S7-40-02; S7-06-03]

RIN 3235-AI66 and 3235-AI79

Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports of Non-Accelerated Filers and Foreign Private Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance dates.

SUMMARY: We are extending the compliance dates for non-accelerated filers and foreign private issuers that were published on March 1, 2004, in Release No. 33-8392 [69 FR 9722] for certain amendments to Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934, Items 308(a) and (b) of Regulations S-K and S-B, and the corresponding provisions in Forms 20-F and 40-F, that require 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 to evaluate, as of the end of each fiscal period, 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 materially affect, the company's internal control over financial reporting. We are also extending the compliance dates for non-accelerated filers and foreign private issuers for amendments to certain representations that must be included in the certifications required by Exchange Act Rules 13a-14 and 15d-14 regarding a company's internal control over financial reporting.

DATES: *Effective Date:* The effective date published on June 18, 2003, in Release No. 33-8238 [68 FR 36636] remains August 14, 2003.

Compliance Dates: The compliance dates are extended as follows: A company that is a non-accelerated filer, or foreign private issuer that files its annual reports on Form 20-F or Form 40-F, must begin to comply with these requirements for its first fiscal year ending on or after July 15, 2006.

These filers must begin to comply with the provisions of Exchange Act Rule 13a-15(d) or 15d-15(d), whichever

applies, requiring an evaluation of changes to internal control over financial reporting requirements 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.

In addition, we are applying the extended compliance period for these filers to the amended portion of the introductory language in paragraph 4 of the certification required by Exchange Act Rules 13a-14(a) and 15d-14(a) that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting for the company, as well as paragraph 4(b). The amended language must be provided in the first annual report required to contain management's internal control report and in all periodic reports filed thereafter. The extended compliance dates also apply to the amendments of Exchange Act Rules 13a-15(a) and 15d-15(a) relating to the maintenance of internal control over financial reporting. The remainder of the compliance dates relating to accelerated filers and registered investment companies published in Release No. 33-8392 [69 FR 9722] are not affected by this release.

The extended compliance period for non-accelerated filers and foreign private issuers does not in any way alter requirements regarding internal control that are in effect, including, without limitation, Section 13(b)(2) of the Exchange Act or the rules thereunder.

FOR FURTHER INFORMATION CONTACT: Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 942-2910, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0509.

SUPPLEMENTARY INFORMATION: On June 5, 2003,¹ the Commission adopted several amendments to its rules and forms implementing Section 404 of the Sarbanes-Oxley Act of 2002.² Among other things, these amendments require 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,³ 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 materially affect, the company's internal control over financial reporting.

On February 24, 2004, we approved an extension of the original compliance dates for the amendments related to internal control reporting.⁴ Specifically, we extended the compliance dates for companies that are "accelerated filers," as defined in Exchange Act Rule 12b-2,⁵ to fiscal years ending on or after November 15, 2004, and for non-accelerated filers and foreign private issuers, to fiscal years ending on or after July 15, 2005.⁶ We believed that providing additional time for compliance was appropriate in light of both the substantial time and resources needed to properly implement the rules and to provide additional time for companies and their auditors to implement Auditing Standard No. 2, which set forth new attestation standards.⁷

Recent events have caused us to examine the need for additional relief for foreign companies and non-accelerated filers. Foreign companies have faced particular challenges in complying with the internal control over financial reporting and related requirements, which include language, culture and organization structures that are far different from what is typical in the United States. In addition, on January 1, 2005, companies incorporated under the laws of a European Union ("EU") member country, and whose securities are publicly traded within the EU, began to be required to prepare their consolidated financial statements under International Financial Reporting Standards ("IFRS").⁸ It has been estimated that these requirements will affect more than 7,000 companies within the EU.⁹ While we fully support

⁴ See Release No. 33-8392 (February 24, 2004) [69 FR 9722].

⁵ 17 CFR 240.12b-2.

⁶ We also extended the compliance dates for registered investment companies to comply with certain amendments to fiscal years ending on or after November 15, 2004. See Release No. 33-8392.

⁷ See Release No. 34-49884, File No. PCAOB 2004-03 (June 17, 2004) [69 FR 35083]. Auditing Standard No. 2 provides the professional standards and related performance guidance for independent auditors to attest to, and report on, management's assessment of the effectiveness of internal control over financial reporting.

⁸ See Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, Official Journal L 243, 11/09/2002 P. 0001-0004.

⁹ See Committee of European Securities Regulators, "European Regulation and Application of IFRS in 2005: Recommendation for Additional Guidance Regarding Transition to IFRS" (December 2003).

¹ See Release No. 33-8238 (June 5, 2003) [68 FR 36636].

² 15 U.S.C. 7262.

³ 17 CFR 249.20f and 249.40f.

conversion to IFRS, we are mindful that this change will require significant resources, people, and time.¹⁰ The new standards are fundamental changes that will change how affected foreign companies use and report financial information. We understand that the successful conversion to IFRS is currently the primary focus of these foreign companies.

In December 2004, we announced that we were establishing the Securities and Exchange Commission Advisory Committee on Smaller Public Companies to assist the Commission in evaluating the current securities regulatory system relating to smaller public companies, including the rules relating to internal control reporting.¹¹ In addition to this initiative, we announced on February 22, 2005, that we will host a roundtable discussion on April 13, 2005, and are soliciting written feedback regarding registrants' and accounting firms' experiences implementing the new internal control reporting requirements.¹² We believe it is important to provide the Advisory Committee with time to consider the framework for internal control over financial reporting applicable to smaller public companies, methods for management's assessment of such internal control, and standards for

auditing the internal controls of these companies.

In addition, at the request of Commission staff, a task force of the Committee of Sponsoring Organizations ("COSO") has been established to expand the existing COSO Framework¹³ to provide more guidance on how the framework can be applied to small companies.¹⁴ Under the Commission's internal control requirements, a reporting company is required to use a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, such as the COSO Framework, to assess the effectiveness of the company's internal control over financial reporting.¹⁵ We understand that COSO intends to publish the additional guidance for small companies during the summer of 2005.

We believe that it is appropriate under these circumstances to extend for an additional year the compliance dates for the internal control over financial reporting and related requirements for non-accelerated filers and foreign private issuers. An extension will avoid certain foreign companies having to prepare for, and initially comply with, two different sets of significant new financial reporting requirements within the same approximate time period. The extension also will afford smaller issuers that are subject to Exchange Act reporting time to consider the new guidance in the COSO Framework. The

extension should make implementation of the internal control reporting requirements more effective for non-accelerated filers and all foreign private issuers. Consequently, this will benefit investors and improve confidence in the reliability of the disclosure made by these companies about their internal control over financial reporting.

However, we wish to emphasize that this extension should not be viewed as a basis for smaller companies and foreign private issuers to slow down or delay their Section 404 compliance efforts. Smaller companies or foreign private issuers may find that they need all the time available, including the time afforded by this extension, to comply fully with the internal control reporting requirements.

We for good cause find that, based on the reasons cited above, notice and solicitation of comment regarding extension of the compliance dates is impracticable, unnecessary, and contrary to the public interest.¹⁶ In addition, for good cause and because the extension will relieve a restriction, the extension will be effective on March 8, 2005.

By the Commission.

Dated: March 2, 2005.

Margaret H. McFarland,

Deputy Secretary.

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¹⁰ In March 2004, we proposed amendments to Form 20-F under the Exchange Act that would provide foreign private issuers a one-time accommodation relating to financial statements prepared under IFRS. See Release No. 34-49403 (March 11, 2004) [69 FR 12904].

¹¹ See Release No. 33-8514 (December 16, 2004) [69 FR 76498].

¹² See SEC Press Release No. 2005-20 (February 22, 2005), see also SEC Press Release 2005-13 (February 7, 2005).

¹³ See COSO, *Internal Control—Integrated Framework*.

¹⁴ See COSO News Release (January 11, 2005).

¹⁵ See Exchange Act Rules 13a-15(c) and 15d-15(c) [17 CFR 240.13a-15(c) and 240.15d-15(c)].

¹⁶ See Section 553(b)(3)(B) of the Administrative Procedure Act [5 U.S.C. 553(b)(3)(B)] (stating that an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are "impracticable, unnecessary, or contrary to the public interest").