

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 210, 240 and 249

[RELEASE NOS. 33-8507; 34-50684; File No. S7-32-04]

RIN 3235-AJ30

TEMPORARY POSTPONEMENT OF THE FINAL PHASE-IN PERIOD FOR ACCELERATION OF PERIODIC REPORT FILING DATES

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to postpone for one year the final phase-in period for acceleration of the due dates of quarterly and annual reports required to be filed under the Securities Exchange Act of 1934 by certain reporting companies known as “accelerated filers,” which are issuers that have a public float of at least \$75 million, that have been subject to the Exchange Act’s reporting requirements for at least 12 calendar months, that previously have filed at least one annual report, and that are not eligible to file their quarterly and annual reports on Forms 10-QSB and 10-KSB.

EFFECTIVE DATE: December 23, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer G. Williams, Attorney-Advisor, Office of Rulemaking, Division of Corporation Finance, at (202) 942-2910, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rules 3-01,¹ 3-09² and

3-12³ of Regulation S-X,⁴ and Forms 10-Q⁵ and 10-K,⁶ as well as Rules 13a-10⁷ and 15d-10,⁸ under the Securities Exchange Act of 1934.⁹

I. Introduction

On September 5, 2002, we adopted amendments to certain rules and forms to accelerate the filing of quarterly, annual and transition reports under the Securities Exchange Act of 1934¹⁰ by reporting companies that are “accelerated filers.”¹¹ Exchange Act Rule 12b-2¹² defines an “accelerated filer” to mean an issuer after it first meets the following conditions as of the end of its fiscal year:

- The issuer has a public float of \$75 million or more as computed on the last business day of the issuer's most recently completed second fiscal quarter;
- The issuer has been subject to Exchange Act reporting requirements for at least 12 calendar months;
- The issuer has filed at least one annual report; and
- The issuer is not eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports.

We also adopted changes to related rules governing the timeliness of financial information in Commission filings, such as Securities Act registration statements and proxy statements and information statements under Section 14 of the Exchange Act.

We originally determined to phase-in the accelerated filing deadlines over a three-year period in an effort to balance the market’s need for information with the time companies need to prepare that information without undue burden. In our September 2002 adopting release, we stated that a phase-in period would allow a greater transition period for companies to adjust their reporting schedules and to develop efficiencies to ensure that the quality and accuracy of reported information would not be compromised.

Year one of the phase-in period began for accelerated filers with fiscal years ending on or after December 15, 2002. During year one, the annual report deadline remained at 90 days after fiscal year end, and the quarterly report deadline remained at 45 days after the end of a quarter, but accelerated filers became subject to new disclosure requirements concerning website access to their Exchange Act reports.¹³ In year two, the deadline for annual reports filed for fiscal years ending on or after December 15, 2003 was accelerated to 75 days and the deadline for the three subsequently filed quarterly reports was accelerated to 40 days. We currently are in year two of the phase-in period.

In year three, the annual report deadline was to become further accelerated to 60 days with respect to annual reports filed for fiscal years ending on or after December 15, 2004, and the deadline for the three subsequently filed quarterly reports was to change to 35 days. This would have completed the phase-in, with the 60-day and 35-day deadlines remaining in place for all subsequent periods.

II. Proposing Release

On August 25, 2004, we published for comment a proposal to postpone for one year the final phase-in period for acceleration of the filing deadlines of annual and quarterly reports filed by “accelerated filers,” as defined in Exchange Act Rule 12b-2.¹⁴ Specifically, the annual report deadline would remain at 75 days and the quarterly report deadline would remain at 40 days for annual reports filed for fiscal years ending on or after December 15, 2004, and the three subsequently filed quarterly reports. The accelerated filing phase-in period would resume for reports filed for fiscal years ending on or after December 15, 2005, during which an accelerated filer would have to file its annual report within 60 days after year end and file its next three quarterly reports within 35 days. These filing deadlines would then remain in place for all annual and quarterly reports filed thereafter. We proposed the one year postponement to allow additional time and opportunity for accelerated filers and their auditors to focus their efforts on complying with our new requirements regarding internal control over financial reporting.¹⁵ An accelerated filer must begin to include both a management report and auditor report on the effectiveness of its internal control over financial reporting in its annual report filed for its first fiscal year ending on or after November 15, 2004.¹⁶

We received forty-one comment letters on the proposal¹⁷ from companies, accounting firms, individual accountants, business associations and law firms.¹⁸ An overwhelming majority of the commenters supported the proposed postponement.¹⁹ They agreed that a postponement of the final phase-in period for acceleration of the annual report would provide additional time for companies and auditors to focus their efforts and resources on complying with the internal control requirements.²⁰ A few of these commenters noted the proposed postponement would afford accelerated filers more time to address difficult analytical issues that may arise in the course of management's internal control assessment.²¹ Several commenters agreed that the additional time would allow companies to improve the accuracy and reliability of financial reports available to investors.²²

All commenters remarking on the issue suggested that the final phase-in of the accelerated filing deadlines should be postponed for both annual and quarterly reports. Some of these commenters stated that the additional time to file quarterly reports would assist management in improving and refining companies' ongoing evaluation and testing of internal control over financial reporting.²³ Other commenters noted that applying the postponement to the annual and quarterly reports would simplify companies' efforts to plan and implement the

acceleration of the filing deadlines with respect to both types of reports in year four.²⁴

In the Proposing Release, we requested comment on possible alternatives to the proposed postponement, such as whether we should extend the filing deadlines only for accelerated filers requesting an extension by filing Form 12b-25 under the Exchange Act. All of those commenting on this alternative rejected it on grounds that companies would have to incur additional time and cost to file Form 12b-25 and that public filing of the form could raise unnecessary concerns about the registrant in the capital markets.²⁵ They favored the proposed approach and expressed the view that the one year postponement would more uniformly assist companies in their efforts to thoroughly implement the internal control requirements.²⁶

III. Final Rule Amendments

Based on the public comments, we are adopting the amendments to postpone for one year the completion of the final phase-in of the accelerated filing deadlines for annual and quarterly reports, as proposed. We also are adopting the proposed conforming changes to the deadlines for transition reports to ensure the deadlines are similar to the deadlines for periodic reports.

Under the amended rules, the deadline for an accelerated filer to file its annual report for its fiscal year ending on or after December 15, 2004 will remain at 75 days after fiscal year end. Similarly, the quarterly report deadlines for the three subsequently filed quarterly reports will remain at 40 days after quarter end. The current year two deadlines therefore will remain in place for one additional year, which is year three of the phase-in period. The phase-in schedule will resume in year four, during which an accelerated filer will have to file its annual report within 60 days after its fiscal year ending on or after December 15, 2005. The company will then have to file its next three quarterly reports within 35 days after quarter end. At the end of year four, the accelerated filing phase-in period will be complete, with the 60-day and 35-day deadlines remaining in place for accelerated filers for all subsequent periods.

We are also adopting conforming amendments to Regulation S-X to apply the postponed phase-in period to the financial information updating requirements in other Commission filings, such as Securities Act and Exchange Act registration statements and proxy statements and information statements under Section 14 of the Exchange Act, as these updating requirements also are tied to periodic report due dates under the Exchange Act.²⁷ Updated interim financial information will continue to be required within 130 days after the end of the registrant's fiscal year for a fiscal year ending on or after December 15, 2004 and before December 15, 2005. The phase-in schedule will resume in year four, during which updated interim financial information will be required within 125 days after the end of the registrant's fiscal year for fiscal years ending on or after December 15, 2005.

In the Proposing Release, we requested comment on whether the length of the proposed postponement was appropriate. Several of the commenters agreed that the one-year postponement was appropriate.²⁸

A number of commenters offered suggestions outside the scope of the proposal. For example, nine commenters recommended that the Commission postpone the implementation of the internal control requirements by one year or some other period to improve managements' initial assessments of internal controls and accountants' internal control audits.²⁹ Four commenters requested that we increase the public float threshold in the Rule 12b-2 definition of an "accelerated filer."³⁰ Finally, four commenters asserted that we should reconsider whether further acceleration of the current periodic report filing deadlines may have potential adverse consequences on the quality and accuracy of information provided to investors.³¹

The limited purpose of the amendments that we are adopting is to address concerns that were raised that the final step in acceleration of the periodic reports could impede some accelerated filers' initial efforts to implement the internal control requirements carefully and completely. While we will continue to closely monitor the quality of financial reporting, we remain committed to the completion of the final phase-in period of the accelerated filing deadlines after the one year postponement.

IV. Paperwork Reduction Act

The amendments that we are adopting postpone the final phase-in of accelerating filing deadlines of quarterly reports on Form 10-Q and annual reports on Form 10-K for companies that are "accelerated filers," as defined in Exchange Act Rule 12b-2.³² Our amendments to postpone the final compliance dates will not change the information required to be included in accelerated filers' annual and quarterly reports; they affect only the forms' due dates. We did not receive any comments on the Paperwork Reduction Act analysis contained in the Proposing Release.

V. Cost-Benefit Analysis

The amendments that we are adopting postpone the final phase-in of accelerated filing deadlines of quarterly and annual reports filed by "accelerated filers," as defined in Exchange Act Rule 12b-2. Specifically, the annual report deadline will remain at 75 days for annual reports filed for the fiscal year ending on or after December 15, 2004, and the quarterly report deadline will remain at 40 days for the three subsequently filed quarterly reports. The accelerated filing phase-in period will resume for reports filed for fiscal years ending on or after December 15, 2005, during which an accelerated filer will have to file its annual report within 60 days after year end and file its next three quarterly reports within 35 days. These filing deadlines will then remain in place for all annual and quarterly reports filed thereafter. In this section, we examine the benefits and costs of our amendments.

A. Benefits

The amendments will afford an accelerated filer's management an additional 15 days after the end of the filer's fiscal year ending on or after November 15, 2004 to carefully evaluate the effectiveness of the company's internal control over financial reporting and to prepare a report assessing such effectiveness. The amendments also will allow the accelerated filer's independent auditor additional time to prepare its report on the effectiveness of the filer's internal control over financial reporting in sufficient time for inclusion in the company's annual report. We expect investors to benefit from the additional time that we are affording companies and their auditors to prepare meaningful disclosure about their internal control reviews in this period of initial compliance with the internal control requirements during which we expect companies and auditors to incur the highest compliance burdens.

Many commenters representing companies, accounting firms, individual accountants, business associations and law firms concurred with our assessment of the benefits of the proposal. They believed that postponing the final phase-in period for acceleration of the filing deadlines of periodic reports will afford accelerated filers and their auditors greater opportunity to focus their efforts and resources on successfully completing their first assessment and documentation of internal control over financial reporting with care and accuracy. These commenters concurred with our view that investors will benefit from the more thoughtful and meaningful disclosure that companies will be able to provide if the postponement is adopted. They also thought that adoption of the proposed postponement strikes an appropriate balance between the quality and integrity of financial reporting and the market's need for timely information.

B. Costs

The amendments will result in investors not having access to the information included in accelerated filers' quarterly and annual reports as quickly as they would have if we adhered to the original accelerated filing phase-in schedule. However, the delay of information will be temporary and limited to 15 days with respect to annual reports and five days with respect to quarterly reports.

None of the commenters believed that investors would be significantly disadvantaged by the proposal. Commenters emphasized that the benefits from the postponement substantially outweighed any minor impact on the delay of information to investors.³³ Some of the commenters thought that the recent Form 8-K requirements,³⁴ which expanded the number of reportable events, should help to provide investors with timely information regarding any significant events in the interim.³⁵

VI. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act³⁶ requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 3(f) of the Exchange Act³⁷ requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. We have considered the amendments in light of standards in these provisions.

The amendments will minimize the cost and disruption of implementing the accelerated final phase-in period at the same time companies and their external auditors must comply for the first time with our new internal control over financial reporting requirements. The amendments will provide additional time for affected companies and their auditors to conduct a high-quality and thorough initial assessment and audit of the effectiveness of the companies' internal control over financial reporting. This, in turn, will increase the reliability and integrity of the company's financial reporting to investors. Enhanced investor confidence leads to increased efficiency and competitiveness of the U.S. capital markets. Increased market efficiency and investor confidence also should encourage more efficient capital formation.

The amendments may have certain negative effects. The adopted postponement of compliance dates will delay the timeliness and accessibility of Exchange Act reports to investors and the financial markets. The delay of information to investors may hinder an investor's ability to make informed decisions, and as a result, may impede market efficiency and delay capital formation. However, the delay will be limited to 15 days with respect to annual reports and five days with respect to quarterly reports; these negative effects are temporary and will be eliminated once the final phase-in period is completed next year. Furthermore, we believe that the proposal will not have any additional competitive effect between accelerated and non-accelerated filers other than the incremental costs imposed by accelerated deadlines.

We did not receive any comment on any anti-competitive effects of the proposal or how the proposal would affect efficiency, competition and capital formation. Many commenters concurred that the combination of the internal control requirements and further acceleration of the reporting deadlines at the same time will diminish the quality of financial reports available to investors as well as increase the cost of financial reporting requirements. A few commenters believed that a disproportionate number of accelerated filers rely on Rule 12b-25 to obtain filing extensions if the proposal was not adopted, and asserted that such action could raise unnecessary concerns about these filers in the capital markets.³⁸

VII. Regulatory Flexibility Analysis Certification

Under Section 605(b) of the Regulatory Flexibility Act,³⁹ we certified that, when adopted, the proposal would not have a significant economic impact on a substantial number of small entities. We included this certification in Part VII of the Proposing Release. While we solicited written comment regarding this certification, none of the commenters responded to this request.

VIII. Statutory Authority and Text of Rule Amendments

The amendments contained in this document are being adopted under the authority set forth in Sections 3(b) and 19(a) of the Securities Act and Sections 13, 15(d) and 23(a) of the Exchange Act.

TEXT OF RULE AMENDMENTS

List of Subjects

17 CFR Parts 210, 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 210 - FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w(a), 78ll, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, unless otherwise noted.

2. Section 210.3-01 is amended by revising paragraphs (e)(1)(ii) and (iii), (i)(1)(i)(B) and (C), (i)(2)(i)(B) and (C) and (i)(2)(ii) to read as follows:

§ 210.3-01 Consolidated balance sheets.

* * * * *

(e) * * *

(1) * * *

(ii) 130 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(iii) 125 days for fiscal years ending on or after December 15, 2005; and

* * * * *

(i)(1) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

(2) * * *

(i) * * *

(B) 129 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 124 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2005; and

3. Section 210.3-09 is amended by revising paragraph (b)(3)(i)(B) and (C) and (b)(4)(i)(B) and (C) to read as follows:

§210.3-09 Separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

(b)***

(3)***

(i)***

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

(ii)***

(4)***

(i)***

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

4. Section 210.3-12 is amended by revising paragraph (g)(1)(i)(B) and (C) and (g)(2)(i)(B) and (C) to read as follows:

§210.3-12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

(g)(1)***

(i)***

(B) 130 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 125 days for fiscal years ending on or after December 15, 2005; and

(ii)***

(2)***

(i)***

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et. seq.*; and 18 U.S.C. 1350, unless otherwise noted.

6. Section 240.13a-10 is amended by revising paragraph (j)(1)(i)(B) and (C) and (j)(2)(i)(B) and (C) to read as follows:

§240.13a-10 Transition reports.

(j)(1)***

(i)***

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

(ii)***

(2) * * *

(i) * * *

(B) 40 days for fiscal years ending on or after December 15, 2004 and before December 15, 2006; and

(C) 35 days for fiscal years ending on or after December 15, 2006; and

* * * * *

7. Section 240.15d-10 is amended by revising paragraph (j)(1)(i)(B) and (C) and (j)(2)(i)(B) and (C) to read as follows:

§240.15d-10 Transition reports.

* * * * *

(j)(1) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

(ii) * * *

(2) * * *

(i) * * *

(B) 40 days for fiscal years ending on or after December 15, 2004 and before December 15, 2006; and

(C) 35 days for fiscal years ending on or after December 15, 2006; and

* * * * *

PART 249 - FORMS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

9. Section 249.308a is amended by revising paragraph (a)(1)(ii) and (iii) to read as follows:

§249.308a Form 10-Q, for quarterly and transition reports under sections 13 or 15(d) of the Securities Exchange Act of 1934.

(a) * * *

(1) * * *

(ii) 40 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2004 and before December 15, 2006; and

(iii) 35 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2006; and

* * * * *

10. Form 10-Q (referenced in § 249.308a) is amended by revising paragraph a.(ii) and (iii) of General Instruction A.1. to read as follows:

Note: The text of Form 10-Q does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10-Q

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 10-Q.

1. * * *

a. * * *

(ii) 40 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2004 and before December 15, 2006; and

(iii) 35 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2006; and

* * * * *

11. Section 249.310 is amended by revising paragraph (b)(1)(ii) and (iii) to read as follows:

§249.310 Form 10-K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

(b) * * *

(1) * * *

(ii) 75 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2003 and before December 15, 2005;

(iii) 60 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2005; and

* * * * *

12. Form 10-K (referenced in § 249.310) is amended by revising paragraph (2)(a)(ii) and (iii) of General Instruction A, to read as follows:

Note: The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10-K

* * * * *

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 10-K.

(2) * * *

(a) * * *

(ii) 75 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(iii) 60 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2005; and

* * * * *

By the Commission.

Jill M. Peterson
Assistant Secretary

Dated: November 17, 2004

¹ 17 CFR 210.3-01.

² 17 CFR 210.3-09.

³ 17 CFR 210.3-12.

⁴ 17 CFR 210.1-01 *et seq.*

⁵ 17 CFR 249.308a.

⁶ 17 CFR 249.310.

⁷ 17 CFR 240.13a-10.

⁸ 17 CFR 240.15d-10.

⁹ 15 U.S.C. 78a *et seq.*

¹⁰ *Id.*

¹¹ Release No. 33-8128 (Sept. 5, 2002)[67 FR 58480]. On April 8, 2003, we published technical amendments to these final rules in Release No. 33-8128A [67 FR 17880].

¹² 17 CFR 240.12b-2.

¹³ See Item 101(e) of Regulation S-K [17 CFR 229.101(e)].

¹⁴ See Release No. 33-8477 (Aug. 25, 2004) [69 FR 53550] (the "Proposing Release").

¹⁵ See Release No. 33-8238 (June 5, 2003) [68 FR 36636]. See also Release No. 33-8392 (Feb. 24, 2004) [69 FR 9722].

¹⁶ Item 308 of Regulations S-B and S-K [17 CFR 228.308 and 229.308].

¹⁷ See letters from Addison, American Bar Association ("ABA"), American Institute of Certified Public Accountants ("AICPA"), American Society of Corporate Secretaries ("ASCS"), America's Community Bankers ("ACB"), AmSouth Bancorporation ("AmSouth"), Astoria Financial Corporation ("Astoria"), BDO Seidman ("BDO"), Becker & Poliakoff ("Becker"), Bierce & Kenerson ("Bierce"), BMC Software ("BMC"), Business Roundtable ("BR"), Central Vermont Public Service Corporation ("CVPSC"); Computer Sciences Corp. ("CSC"), Deloitte & Touche ("Deloitte2"), Eli Lilly and Company ("Eli Lilly"), Enterprise Products ("EP"), Ernst & Young ("E&Y"), Federal Signal Corporation ("FSC"), FFLC Bancorp ("FFLC"), First Federal Bancshares of Arkansas ("FFBA"), FirstBank Northwest ("FirstBank"), Franklin Financial Services Corporation ("FFSC"), Gary Bilello, CPA ("Bilello"), Horizon Organic Dairy ("Horizon"), ICU Medical ("ICU"), KPMG, MAXXAM, MBNA, National Association of Real Estate Investment Trusts ("NAREIT"), New York State Bar Association ("NYSBA"), Paul Allen, CPA ("Allen"), Pfizer, PricewaterhouseCoopers ("PWC"), Protective Life Corporation ("PLC"), Red Robin Gourmet Burgers ("Red Robin"), Spectrum Organic Products ("Spectrum"), The Chubb Corporation ("Chubb"), Troutman Sanders ("Troutman"), Valero Energy Corporation ("VEC") and Vineyard National Bancorp ("Vineyard"). The public comments that we received and a summary of the comments prepared by our staff (the "Comment Summary") are

available for inspection in our Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549 in File No. S7-32-04, or may be viewed at <http://www.sec.gov/rules/proposed/33-8477.htm>.

¹⁸ Prior to publishing the proposed amendments, we received a letter from James H. Quigley, Chief Executive Officer of Deloitte & Touche USA to Donald Nicolaisen, Chief Accountant for the Commission (Jul. 28, 2004) ("Deloitte1") and a letter from Deloitte & Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP to Donald T. Nicolaisen, Chief Accountant for the Commission (Aug. 3, 2004) ("Four Firms"). These two letters and transmittal memorandum are included in File No. S7-32-04.

¹⁹ See, for example, letters from AICPA, BR, Eli Lilly and MBNA.

²⁰ Some commenters confirmed that compliance with the internal control requirements is placing substantial demands on the same personnel and systems are key to preparing and filing periodic reports. See, for example, letters from the ASCS, BMC and FSC.

²¹ See, for example, letters from the ABA, Eli Lilly and E&Y.

²² See, for example, letters from Astoria, NYSBA, and PWC.

²³ See, for example, letters from Astoria, AICPA and E&Y.

²⁴ See, for example, letters from ABA, BR and NYSBA.

²⁵ See, for example, letters from BMC, ICU and Pfizer.

²⁶ See, for example, letters from AmSouth, Eli Lilly and FSC.

²⁷ 15 U.S.C. 78n.

²⁸ See the letters from ABA, AICPA, AmSouth, Astoria, BMC, BR, Pfizer and PWC.

²⁹ See the letters from ACB, Allen, Becker, Bierce, Bilello, FFLC, FFSC, Red Robin and Troutman.

³⁰ See the letters from Becker, BDO, FFSC and Spectrum.

³¹ See the letters from BDO, Chubb, Pfizer and PLC. We considered this issue when the accelerated filing requirements initially were proposed.

³² 17 CFR 240.12b-2.

³³ See, for example, letters from ASCS, Eli Lilly, Enterprise, E&Y, and PWC.

³⁴ See Release No. 333-8400 (March 16, 2004) [69 FR 48370].

³⁵ See, for example, letters from ASCS, E&Y, and Pfizer.

³⁶ 15 U.S.C. 78w(a)(2).

³⁷ 15 U.S.C. 78c(f).

³⁸ See, for example, the letter from the Four Firms.

³⁹ 5 U.S.C. 605(b).

<http://www.sec.gov/rules/final/34-8507.htm>