

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 240 and 249

[Release Nos. 33-8477; 34-50254; 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: Proposed rule.

SUMMARY: We propose 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” 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.

DATES: Comments should be received on or before October 1, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-32-04 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number S7-32-04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission’s Public Reference Room, 450 Fifth Street, NW.,

Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

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 proposing amendments to Rules 3-01,¹ 3-09² and 3-12³ of Regulation S-X,⁴ 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;
- 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. Proposed Postponement of Phase-In Period for Accelerated Filing

We propose to postpone for one year the completion of the final phase-in of the accelerated filing deadlines 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.¹⁴ The proposed change would avoid subjecting accelerated filers at the same time to a further compression of filing deadlines. 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

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. 33-8238 (June 5, 2003) [68 FR 36636]. See also Release No. 33-8392 (Feb. 24, 2004) [69 FR 9722] in which we subsequently extended the compliance dates for inclusion of management reports in an accelerated filer’s annual report from June 15, 2004 to November 15, 2004. The compliance date for non-accelerated filers also was extended from April 15, 2005 to July 15, 2005.

after November 15, 2004.¹⁵ The rules as currently drafted will result in most accelerated filers having to comply for the first time with the internal control reporting requirements within the same timeframe that their annual report deadlines are scheduled to change from 75 to 60 days for fiscal years ending on or after December 15, 2004.

We believe very strongly that it is critical that all Exchange Act reporting companies implement the internal control requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002 completely and carefully; these requirements are central to the Act's objectives of improving the accuracy and reliability of financial reporting. We and members of the staff therefore view the successful implementation of the internal control requirements as a Commission priority and have exhorted companies to conduct high-quality, thorough assessments of their internal control over financial reporting.¹⁶ The PCAOB has similarly adopted its Audit Standard No. 2 to provide for an audit of internal control and management's assessment.¹⁷ We believe that it is also critical that financial management, external auditors and audit committees are appropriately and carefully consulted regarding the audit.

In recent months, several companies and auditors have expressed concern over their ability to perform the work necessary to comply with the new internal control requirements at the same time that the periodic report deadlines are being further accelerated.¹⁸ We think that the proposed postponement for one year would address concerns that the final step in acceleration of the periodic report deadlines may impede some accelerated filers' initial efforts to implement the internal control requirements with the care and attention we believe is desirable.

Moreover, we believe that a temporary postponement of the filing deadlines would benefit investors by affording accelerated filers additional time to

resolve difficult analytical issues that may arise in determining whether a problem discovered in the course of management's internal control assessment constitutes a significant deficiency or material weakness.¹⁹ Similarly, the proposed postponement should provide greater opportunity for an accelerated filer's management, financial reporting staff and audit committee members to coordinate with the filer's independent auditor regarding its internal control audit.²⁰

We propose to postpone the accelerated filing phase-in period by one year so that the deadline for annual reports filed for fiscal years ending on or after December 15, 2004 would remain at 75 days after fiscal year end. Similarly, the quarterly report deadline for the three subsequently filed quarterly reports would remain at 40 days after quarter end. The current year two deadlines therefore would remain in place for one additional year. For a company that meets the definition of an accelerated filer under Exchange Act Rule 12b-2²¹ as of the end of its fiscal year ending on or after December 15, 2004, the annual report deadline would be 75 days after fiscal year end. Under the proposed amendments, the phase-in period would resume in year four, during which an accelerated filer would have to file its annual report within 60 days after its fiscal year ending on or after December 15, 2005. The company

would 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 would be complete, with the 60-day and 35-day deadlines remaining in place for accelerated filers for all subsequent periods.

We also propose to make 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.²² Updated interim financial information would continue to be required within 130 days after the end of the registrant's fiscal year for fiscal years ending on or after December 15, 2004 and before December 15, 2005. The proposal would postpone the final phase-in period to year four during which updated interim financial information would be required within 125 days after the end of the registrant's fiscal year for fiscal years ending on or after December 15, 2005.

We are not suggesting in any way that the proposed one year postponement should cause companies and auditors to slow their efforts to comply with the new internal control requirements or to relax their implementation efforts. Rather, we expect that accelerated filers already are committing substantial resources to comply with our internal control requirements. We believe that concerns have been raised by a sufficient number of companies and auditors to warrant the proposed one-year postponement. However, we remain committed to the concept of filing on a more timely basis by accelerated filers and therefore to the completion of the final phase-in period after the proposed one year postponement.

Request for Comment

- Is it appropriate to postpone the final phase-in period of the accelerated filing deadlines? If so, is the length of the proposed postponement appropriate, or should it be shorter or longer?

- Would a postponed phase-in period benefit investors by helping to ensure the quality and accuracy of the information included by companies in their periodic reports? Would it

¹⁵ Item 308 of Regulations S-B and S-K [17 CFR 228.308 and 229.308].

¹⁶ See e.g., William H. Donaldson, Testimony Concerning Implementation of the Sarbanes-Oxley Act of 2002 (September 9, 2003); Scott A. Taub, The SEC's Internal Control Report Rules and Thoughts on the Sarbanes-Oxley Act (May 29, 2003).

¹⁷ See Release No. 34-49884; File No. PCAOB 2004-03 (Jun. 17, 2004) [69 FR 35083].

¹⁸ See, e.g., Letter from James H. Quigley, Chief Executive Officer of Deloitte & Touche USA to Donald Nicolaisen, Chief Accountant for the Commission (Jul. 28, 2004); 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). These letters are included in Comment Letter File No. S7-32-04.

¹⁹ See Letter from Deloitte & Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP to Donald T. Nicolaisen, Chief Accountant for the Commission, supra note 18 ("The premise underlying our view that a delay is necessary and appropriate for one year only relates to the potential unintended consequences that two regulatory requirements could have on the quality of financial reporting: the timeline for filing the Form 10-K is accelerating while many registrants and auditors are finding that the processes surrounding readiness for reporting under Section 404 have been underestimated. Completion of that process by many registrants likely will be either hurried or postponed, a potential outcome that will not serve investors well.")

²⁰ See Letter from Deloitte & Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP to Donald T. Nicolaisen, Chief Accountant for the Commission, supra note 18 ("The impact on the capital markets and the marketplace implications of disclosure of material weaknesses under the Section 404 framework is unknown, and additional due care and prudence by registrants in making such judgments about the quality of internal control is critical. This will involve discussions with senior management, the audit committee, legal counsel and auditors on the potentially controversial and judgmental issues. We expect that the most difficult decisions, where there is legitimate room for judgment, will include discussions among a number of constituents to gather views. This process will be very time consuming, but will be time well spent to get to the right answer.")

²¹ See Rule 12b-2(1) of the Exchange Act [17 CFR 240.12b-2(1)].

²² 15 U.S.C. 78n.

disadvantage investors in any significant respect?

- Should we postpone the final phase-in of the accelerated filing deadlines for both annual and quarterly reports or only for annual reports given that management's internal control report must appear only in the annual report? Does the required disclosure about material changes to a company's internal control over financial reporting that must appear in the quarterly report warrant a postponement of the accelerated filing deadlines for quarterly reports?

- Should we provide for an extension of the filing deadlines only for accelerated filers that request an extension, for example, by providing for an extension upon the filing of a Form 12b-25 under the Exchange Act? Should we only provide an extension of the filing deadlines only to certain companies such as those that demonstrate a need for the extension? If so, what would be the best method for companies to communicate their request for an extension?

III. General Request for Comment

We request and encourage any interested person to submit comments on the proposal and any other matters that might have an impact on the proposal. We request comment from the point of view of companies, auditors and investors, as well as other users of Exchange Act information. With respect to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Paperwork Reduction Act

The proposed postponement affects existing "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").²³ The titles for the affected collections of information are "Form 10-K" and "Form 10-Q." Form 10-K (OMB Control No. 3235-0063) prescribes information that a registrant must disclose annually to the market about its business. Form 10-Q (OMB Control No. 3235-0070) prescribes information that a registrant must disclose quarterly to the market about its business. Both forms were adopted pursuant to Sections 13 and 15(d) of the Exchange Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of

information unless it displays a currently valid OMB control number.

The proposal, if adopted, would postpone the final phase-in of compliance dates to accelerate the deadlines of quarterly reports on Form 10-Q and annual reports on Form 10-K filed by companies that are "accelerated filers," as defined in Exchange Act Rule 12b-2.²⁴ We believe that the proposed one year postponement in further acceleration of the Form 10-K and 10-Q filing deadlines would allow companies and their auditors to focus their time and resources on preparing high-quality, thorough evaluations of the effectiveness of internal control over financial reporting. Accelerated filers will be required for the first time to include a management report based on these internal control evaluations in their Form 10-K reports filed for fiscal years ending on or after November 15, 2004.²⁵ This compliance date nearly coincides with the currently scheduled date for further acceleration of the Form 10-K filing deadline.²⁶ Accelerated filers also would have to file their quarterly reports under further compressed deadlines.²⁷

Our proposal to postpone the final compliance dates would not change the information required to be included in accelerated filers' annual and quarterly reports; it only affects the forms' due dates. Companies would have a longer period to adjust their systems to prepare for a further acceleration of the reporting deadlines, which may slightly ease the overall burden for some companies. We do not believe that the Form 10-K and 10-Q information collection burdens would not be affected by this proposal in any quantifiable manner.

V. Cost-Benefit Analysis

The proposal, if adopted, would postpone the phase-in period for acceleration of the filing deadlines of quarterly and annual reports filed by "accelerated filers," as defined in Exchange Act Rule 12b-2. 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. Under the proposal, 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. In this section, we examine the benefits and costs of our proposal. We request that commenters provide views along with supporting data as to the benefits and costs associated with the proposal.

A. Benefits

The proposal would afford an accelerated filer's management additional time after the end of the fiscal period ending on or after December 15, 2004 to carefully analyze management's evaluation of the effectiveness of the company's internal control over financial reporting and to prepare a report assessing such effectiveness. The proposal also would 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 that investors also would benefit if we allow accelerated filers and their auditors additional time to prepare meaningful disclosure about their internal control reviews.

In addition, the proposal may reduce the costs incurred by accelerated filers to comply with the new internal control requirements. As an accelerated filer must include both a management report and auditor report on the effectiveness of its internal control over financial reporting for the first time in its annual report for the fiscal year ending on or after November 15, 2004, it likely will face the highest compliance burden in that year. The proposed postponement of the accelerated filing phase-in period may help to ameliorate some of the burden associated with implementing the internal control requirements by allowing companies 15 additional days to file their annual reports. These benefits are difficult to quantify.

B. Costs

If we adopt the proposed one-year postponement of the phase-in period for accelerated deadlines, investors will not have access to the information included in accelerated filers' quarterly and annual reports as quickly as they would have if we adhered to the original phase-in schedule. However, the potential delay of information would be temporary and limited to 15 days with

²⁴ 17 CFR 240.12b-2.

²⁵ 17 CFR 228.308 and 229.308.

²⁶ The Form 10-K deadline is scheduled to change from 75 to 60 days for fiscal years ending on or after December 15, 2004.

²⁷ The Form 10-Q deadline is scheduled to move from 40 to 35 days after the end of a quarter.

²³ 44 U.S.C. 3501 *et seq.*

respect to annual reports and five days with respect to quarterly reports.

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

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),²⁸ a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposal on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 23(a)(2) of the Exchange Act²⁹ 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 2(b) of the Securities Act³⁰ and Section 3(f) of the Exchange Act³¹ require 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.

The proposal would minimize the cost and disruption of implementing the accelerated final phase-in period at the same time companies and their external auditors must comply with our new internal control over financial reporting requirements. The proposed postponement would provide additional time for affected companies and their auditors to conduct high-quality and thorough assessments and audits of the effectiveness of the companies' internal control over financial reporting. This, in turn, would 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 may encourage more efficient capital formation.

The proposal could have certain negative effects. The proposed postponement of compliance dates would 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 would be limited to 15 days with respect to annual reports and five days with respect to quarterly reports; these negative effects would be temporary and would be eliminated once the final phase-in period is completed next year. Furthermore, we believe that the proposal would not have any additional competitive effect between accelerated and non-accelerated filers other than the incremental costs imposed by accelerated deadlines.

We request comment on whether the proposal, if adopted, would promote efficiency, competition, and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Regulatory Flexibility Analysis Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the proposal contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposal would postpone the compliance deadlines for certain amendments to our rules and forms that accelerate the filing of quarterly and annual reports required under the Exchange Act by reporting companies that meet the definition of an "accelerated filer" as defined in Exchange Act Rule 12b-2. Exchange Act Rule 0-10(a)³² defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of \$5 million or less on the last day of its most recent fiscal year. Because the impact would be to simply delay for one year the obligation of a small percentage of small businesses to comply with further accelerated filing deadlines for their periodic reports, we do not believe that the proposal, if adopted, would have a

significant economic impact on a substantial number of small entities.

We solicit written comments regarding this certification. We specifically request comment on whether the proposal could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

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 in 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 proposed to be 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, 7207 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) * * *

²⁸ Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁹ 15 U.S.C. 78w(a)(2).

³⁰ 15 U.S.C. 77b(b).

³¹ 15 U.S.C. 78c(f).

³² 17 CFR 240.0-10(a).

(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

(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

(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 and 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;

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

(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;

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

(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
* * * * *

Dated: August 25, 2004.

By the Commission.

Jill M. Peterson,*Assistant Secretary.*

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