

September 2002

## SEC Adopts Rules that Accelerate Filing Deadlines for Periodic Reports of Large U.S. Issuers

The SEC has enacted rule changes that:

- accelerate filing deadlines for quarterly and annual reports under the Securities Exchange Act of 1934 (the “Exchange Act”) for certain public companies that qualify as “accelerated filers”; and
- require such companies to either provide access to their Exchange Act reports on or through their websites at the same time such reports are filed with the SEC or explain in their annual reports why they do not provide such access.

Foreign issuers who file annual reports on Form 20-F and Canadian issuers who file annual reports on Form 40-F under the Multijurisdictional Disclosure System will not face shortened filing deadlines under the new rules, though they will if they voluntarily file using the domestic reporting regime (or cease to be deemed foreign private issuers).

### Acceleration of Periodic Report Filing Dates

Under the new rules, companies that qualify as accelerated filers would be required to file periodic reports by the dates that fall as follows:

| For Fiscal Years Ending On or After: | Number of Days After FYE for Annual Reports on Form 10-K | Number of Days After FQE for Quarterly Reports on Form 10-Q |
|--------------------------------------|--|---|
| December 15, 2002                    | 90   | 45  |
| December 15, 2003                    | 75   | 45  |
| December 15, 2004                    | 60   | 40  |
| December 15, 2005                    | 60   | 35  |

A company will qualify as an accelerated filer if it meets the following conditions as of the end of its fiscal year:

- its common equity public float is \$75 million or more as of the last business day of its most recently completed second fiscal quarter;
- the company has been subject to the reporting requirements of the Exchange Act for a period of at least 12 calendar months;
- the company has previously filed at least one annual report under the Exchange Act; and

---

1285 Avenue of the Americas  
New York, New York 10019-6064  
(212) 373-3000

1615 L Street, NW  
Washington, DC 20036-5694  
(202) 223-7300

Alder Castle, 10 Noble Street  
London EC2V 7JU England  
(44-20) 7367 1600

2, rue du Faubourg Saint-Honoré  
75008 Paris, France  
(33-1) 53.43.14.14

Fukoku Seimei Building 2<sup>nd</sup> Floor  
2-2, Uchisawaicho 2-chome  
Chiyoda-ku, Tokyo 100, Japan  
(81-3) 3597-8120

2918 China World Tower II  
No. 1, Jianguomenwai Dajie  
Beijing 100004, People's Republic of China  
(86-10) 6505-6822

12<sup>th</sup> Fl., Hong Kong Club Building  
3A Chater Road, Central  
Hong Kong  
(852) 2536-9933

- the company is not a “small business issuer” eligible to use Forms 10-KSB and 10-QSB.

A company that does not fall within the “accelerated filer” definition as of its first fiscal year ending on or after December 15, 2002 will have to re-evaluate its status at the end of each fiscal year. If it determines at the end of a fiscal year that it has triggered the accelerated filer threshold (it will have at least six months notice, as the float test is measured as of the end of its second quarter), the filing of its 10-K for that year, and the subsequent 10-Qs and 10-Ks, would be accelerated. The 12-calendar month provision ensures that companies have at least one year with the standard filing deadlines.

Once a company becomes an accelerated filer, it will remain subject to the shortened deadlines unless and until it becomes eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports.

Currently, each company is required to disclose on the cover of its annual report on Form 10-K its public float as of a specified date within 60 days before filing. To facilitate the implementation of the new rules, the SEC has revised this requirement so that every company, regardless of whether it is an accelerated filer, will disclose its public float as computed on the last business day of the company’s most recently completed second quarter. Furthermore, Forms 10-K and 10-Q have been amended to include a box on the cover to indicate whether a company is an accelerated filer.

Pursuant to phase-in provisions outlined above, deadlines will not be accelerated for at least one year. Thus, for example, public companies that meet the public float and reporting history requirements whose fiscal year coincides with the calendar year, will be required to file their first accelerated report on Form 10-K on March 15, 2004 or 75 days after December 31, 2003.

### Conforming Amendments

The SEC has also adopted conforming changes for the inclusion of financial statements in proxy statement filed pursuant to the Exchange Act and in registration statements filed pursuant to the Securities Act of 1933 for those companies subject to the accelerated reporting requirements. Such statements must be at least as current as the financial statements filed under the Exchange Act. However, the SEC has not made conforming changes to the 120-day period that a domestic reporting company has to file a proxy statement in connection with its annual meeting within which it may incorporate by reference into its Form 10-K information concerning directors and executive officers, relationships and related transactions, executive compensation, and beneficial ownership. The SEC has also not shortened the deadline for filing financial statements in connection with an acquisition reportable on Form 8-K from 60 days after the initial report has been filed.

The conforming amendments result in the following for accelerated filers:

| For Fiscal Years Ending On or After: | Days After FYE for Audited Financials (1) under Reg. S-X Item 3-01(c) and (d) | Days After FYE for Interim Financials / Maximum Age of Balance Sheet under Reg. S-X Item 3-01(e) | Age at Effective/Mailing Date (trigger for updating - maximum age of financials) |
|--------------------------------------|---|--|--|
| December 15, 2002                    | 90  | 134/135  | 135  |
| December 15, 2003                    | 75  | 134/135  | 135  |
| December 15, 2004                    | 60  | 129/130  | 130  |
| December 15, 2005                    | 60  | 124/125  | 125  |

(1) If conditions of Regulation S-X, Item 3-01(c) are not met - 45 days.

Separate financial statements for subsidiaries not consolidated and 50% or less owned persons will not be accelerated in a Form 10-K if such subsidiary or person is not an accelerated filer. The financial statements of the subsidiary or person can be filed by amendment within the existing time periods.

### Disclosure Concerning Website Access to Reports

Under the new rules, companies subject to the accelerated reporting deadlines must explain in their annual reports on Form 10-K for fiscal years ending on or after December 15, 2002 how investors can access company filings, including:

- disclosure of the company's website address, if it has one;
- whether the company makes available free of charge on or through its website, if it has one, its annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with or furnished to the SEC;
- if the company does not make its filing available in this manner, the reasons why; and
- if the company does not make its filings available in this manner, whether the company voluntarily will provide electronic or paper copies of its filings free of charge upon request.

On May 30, 2002, the SEC announced that it would make company filings accessible on its website within minutes after submission rather than after a 24-hour delay. Thus a company that maintains a website can comply with the new rule by providing a hyperlink to the SEC's website ([www.sec.gov](http://www.sec.gov)) or that of a third-party service where access to the report is free of charge to the user. The SEC interprets "as soon as reasonably practicable" to mean that the report would be available, barring unforeseen circumstances, on the same day as filing.

\* \* \*

This memorandum provides only a general overview of the new rules. It is not intended to provide or constitute legal advice, and no legal or business decision should be based on its contents. Any questions concerning the foregoing should be addressed to members of the Paul Weiss Securities Group (see below). In addition, memoranda on related topics may be accessed under Securities Group publications on our web site ([www.paulweiss.com](http://www.paulweiss.com)).

|                     |                   |                  |                  |
|---------------------|-------------------|------------------|------------------|
| Mark S. Bergman     | (44 20) 7367 1601 | Paul D. Ginsberg | (1) 212-373-3131 |
| Richard S. Borisoff | (1) 212-373-3153  | John C. Kennedy  | (1) 212-373-3025 |
| Andrew J. Foley     | (1) 212-373-3078  | Edwin S. Maynard | (1) 212-373-3024 |
| John A. Myer        | (44 20) 7367 1605 |                  |                  |