



NEW YORK  
CITY BAR

COMMITTEE ON  
FINANCIAL REPORTING

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Jonathan G. Katz, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-9303

**Re: File No. S7-08-05**

Ladies and Gentlemen:

This letter is submitted in response to proposed rules to revise the accelerated filer definition and accelerated deadlines for filing periodic reports under the Securities Exchange Act of 1934 (the “Proposed Rules”).

The Financial Reporting Committee of the Association of the Bar of the City of New York (the “Committee”) consists of lawyers with diverse perspectives on disclosure issues, including counsel to corporations and investment banks, academics and members of law firms. Each of these constituencies shares a common goal – relevant corporate information should be clear, accurate, useful and promptly disseminated to the market place.

The Committee generally supports the Proposed Rules but does not believe that the final rule should include a new category of filer (“large accelerated filer”) nor require that large accelerated filers become subject to the final phase-in of the accelerated filing transition schedule that will require annual reports on Form 10-K to be filed within 60 days after the end of the fiscal year. The Committee believes that any final rule should apply uniformly to all companies with more than \$75 million of common equity held by non-affiliates. If the motivation behind the accelerated filing rules is to provide prompt, meaningful disclosure, a company’s market float should not be relevant.

The release accompanying the Proposed Rules indicates, “[b]y virtue of their size, the proposed large accelerated filers also are more likely than smaller companies to have a well-developed infrastructure and financial reporting resources to support further acceleration of the annual report deadline.” We believe this assumption oversimplifies the year-end reporting process at most companies and does not fully recognize the time required to properly complete the corporate review process.

Today, many reporting companies of all sizes have complex, global businesses with sophisticated products. Disclosure rules prompted by the Sarbanes-Oxley Act have increased the number, depth and breadth of disclosure requirements. In addition, the volume and complexity of accounting pronouncements have increased, affecting accounting review and the related disclosures

required for periodic filings. For many companies, these new disclosure and accounting requirements have increased the length of annual reports and made the entire disclosure process more time consuming. Although technology in many instances has enhanced companies' ability to capture and process information, these advances are outweighed by accounting and disclosure standards that require extensive presentation, analysis and evaluation of detailed information.

For seasoned reporting companies with significant global operations, we note that current efforts to adopt a common set of accounting standards in Europe, and concurrent efforts, which the SEC is supporting, to promote convergence between U.S. GAAP and the proposed International Financial Reporting Standards, could further complicate the preparation of year-end financial statements and disclosure documents. This could be particularly true in the initial fiscal year cycles after adoption of IFRS standards, as companies may need to incorporate these new standards into their existing financial reporting infrastructure. With this looming change, and the attendant uncertainty as to the substance and content of the final standards and their interrelationship with U.S. GAAP and SEC reporting requirements, we believe that this is a particularly inopportune time to accelerate further year-end reporting deadlines for large, multi-national issuers.

Meaningful disclosure requires a careful consideration of changes in business, industry, trends and competitive conditions, coupled with a thoughtful analysis of financial results. In light of the plethora of additional disclosure and accounting requirements since the original accelerated filing rules were adopted in 2002, the Committee believes that it may be difficult for many seasoned companies to obtain, analyze and report all of the required corporate data for the annual report within 60 days. For those companies that do manage to comply with a 60-day deadline, the quality of disclosure may be compromised – general or “boilerplate” disclosure may become more common and voluntary disclosures (forward-looking or otherwise) are less likely as companies struggle to meet the abbreviated deadline.

The Committee also believes that the proposed abbreviated filing deadline fails to take into account recent developments in fiscal year end corporate review process best practices. Disclosure and certification rules under the Sarbanes-Oxley Act prompted many companies to establish disclosure committees and require more disclosure “diligence,” including required internal reviews and sign offs. External advisors, such as outside disclosure counsel, in addition to the outside auditors are more actively involved in the process. As part of increased corporate governance responsibilities, the boards or audit committees of most companies meet to consider annual reports on Form 10-K and proper review requires the delivery of completed drafts well in advance of meeting dates. This corporate review process, which requires careful review and analysis as well as multiple communications within an organization, takes a significant amount of time to complete. Section 404 of the Sarbanes-Oxley Act has added another dimension to the year-end process, as procedures have been implemented to test, confirm and verify internal control over financial reporting. It would be counterproductive and possibly lead to errors if any of these procedures, which have become best practice and are clearly beneficial to companies and investors, were truncated to meet an abbreviated filing deadline.

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In conclusion, although the Committee generally supports the Proposed Rules, we believe that certain revisions are required to the final rule to better accommodate the goal of prompt disclosure of important corporate information without jeopardizing the quality of such disclosure, particularly with respect to the annual report on Form 10-K. The final rule should not include a new category of “large accelerated filers” and all companies should be subject to a 75-day filing deadline for annual reports on Form 10-K.

Please note that this letter does not necessarily reflect the individual views of each member of the Committee, nor does it necessarily reflect the views of institutions with which Committee members are affiliated.

Respectfully submitted,

The Financial Reporting Committee of the  
Association of the Bar of the City of New York

cc: Hon. Christopher Cox, Chairman  
Hon. Paul S. Atkins, Commissioner  
Hon. Roel C. Campos, Commissioner  
Hon. Cynthia A. Glassman, Commissioner  
Hon. Annette L. Nazareth, Commissioner  
Mr. Donald T. Nicolaisen, Chief Accountant  
Mr. Alan L. Beller, Director, Division of Corporation Finance  
(Securities and Exchange Commission)