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EXTENSION OF COMPLIANCE DATE OF AUDITOR ATTESTATION REQUIREMENT FOR NON-ACCELERATED FILERS

On June 26, 2008, the U.S. Securities and Exchange Commission (the "SEC") extended by one year the compliance date for non-accelerated filers to provide auditor attestation reports on internal control over financial reporting in their annual reports. See Release Nos. 33-8934; 34-58028; http://www.sec.gov/rules/final/2008/33-8934.pdf. Previously, temporary rules of the SEC were to require companies that were non-accelerated filers to include an attestation report of the independent auditors on internal control over financial reporting for fiscal years ending on or after December 15, 2008. Pursuant to the newly released rules, non-accelerated filers now must file the attestation report of the independent auditor for fiscal years ending on or after December 15, 2009, resulting in a one-year extension.

Background

Section 404(b) of the Sarbanes-Oxley Act ("Section 404(b)") requires public companies to include in their annual report on Form 10-K an independent auditor's attestation report on management's assessment of the company's internal control over financial reporting. The compliance dates for the auditor's attestation report have varied depending on whether the company is a large accelerated filer, an accelerated filer or a non-accelerated filer. Non-accelerated filers are the last to be required to comply with Section 404(b). The SEC stated that the extension for non-accelerated filers was proposed because (i) the SEC and the Public Company Accounting Oversight Board have additional actions they intend to take related to Section 404 requirements, including a cost-benefit study of Section 404 implementation, and (ii) concerns were expressed regarding the orderly and efficient implementation of the internal control over financial reporting requirements. The extension helps eliminate unnecessary compliance costs before the effectiveness of internal control over financial reporting requirements are analyzed fully for non-accelerated filers.

Non-Accelerated Filers

Non-accelerated filers are not defined in SEC rules, but generally include reporting companies that have an unaffiliated market capital under $75 million. The extension applies to non-accelerated filers, including smaller reporting companies and foreign private issuers that are non-accelerated filers.

Effectiveness

Non-accelerated filers will be required to comply with Section 404(b) for fiscal years ending on or after December 15, 2009. For example, the first filing that will be required to include the auditor's attestation report on management's report on internal control over financial reporting will be the Form 10-K filed in 2010 for a calendar-year non-accelerated filer. Until then, non-accelerated filers will still state in the management report on internal control over financial reporting that the annual report does not include the auditor's attestation report. The management report will continue to be "furnished" rather than "filed" and thus not subject to liability under Section 18 of the Securities Exchange Act until compliance with Section 404(b) is required. The amended rules will be effective September 2, 2008.

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