

Client Alert

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SEC POSTPONES AUDITOR'S ASSESSMENT OF INTERNAL CONTROL FOR NON-ACCELERATED FILERS

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On October 2, 2009, the Securities and Exchange Commission announced it will further postpone the requirement for non-accelerated filers and smaller reporting companies to provide a report of their independent auditor regarding management's assessment of the effectiveness of the issuer's internal control over financial reporting. These companies will not be required to file a report of their independent auditors until their annual report for a fiscal year ending on or after June 15, 2010.

Prior to the Commission's announcement, the auditor's report was to be filed with annual reports for fiscal years ending on or after December 15, 2009. This extension only applies to non-accelerated filers and smaller reporting companies, which are generally issuers that have a public float of less than \$75 million.

The SEC has not yet announced whether it will also permit the report of management to continue to be "furnished" as opposed to "filed" until the auditor's attestation is required, but such related extension seems likely.

The report of the independent auditor is a key provision of the corporate governance reforms established in July 2002 by the Public Company Accounting Reform and Investor Protection Act, otherwise known as the Sarbanes-Oxley Act. Among other things, these enactments require reporting companies to include in their annual reports filed with the Commission:

- A report of management assessing the effectiveness of internal control over financial reporting, and
- An attestation of an independent auditor to management's assessment of the effectiveness of the internal control

Large accelerated filers and accelerated filers are currently required to comply with both requirements, and have been subject to such requirements for annual reports for fiscal years ending on or after November 15, 2004. Smaller reporting companies have had to conduct and report management's assessment of the effectiveness of internal control over financial reporting for annual reports for fiscal years on or after December 15, 2007.

Newly public companies are not required to comply with the reporting requirements of management or the independent auditor until the filing of their second annual report.

While the requirement for an auditor's attestation has been delayed several times in the past, SEC Chairman Mary L. Schapiro stated in the announcement that there will be no further Commission extensions.