



October 26, 2005

Jonathan G. Katz  
Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549-0609

Re: File No. S7-08-05, Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports; 70 FR 56862 (Sept. 29, 2005)

Dear Mr. Katz:

America's Community Bankers ("ACB")<sup>1</sup> is pleased to comment on the proposed rule of the Securities and Exchange Commission ("SEC") that would, among other things, revise the accelerated filing schedule for periodic reports.<sup>2</sup> The rule would also create a new category of "large accelerated filers."

### **ACB Position**

ACB strongly supports the provisions in the proposal that would stop any further acceleration of the filing schedule of periodic reports for accelerated filers, further accelerate the filing schedule only for the annual report for large accelerated filers, and accelerate the ability of companies to withdraw from large accelerated filer or accelerated filer status.

### **Accelerated Filers**

The proposal would discontinue any further acceleration of the periodic report filing deadlines for accelerated filers, which are those companies with at least \$75 million in public float. We strongly support this action. It is becoming increasingly difficult to file in shorter timeframes in light of continuing changes in regulatory requirements and accounting standards. The section 404 internal control requirements alone have significantly increased the pressure on company management as well as public auditors to meet filing deadlines. It is important to issuers, investors and regulators to achieve the proper balance between quick access to information and

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<sup>1</sup> America's Community Bankers is the member-driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit [www.AmericasCommunityBankers.com](http://www.AmericasCommunityBankers.com).

<sup>2</sup> 70 Fed. Reg. 56862 (Sept. 29, 2005).

making sure that the information is complete and accurate. It is to nobody's benefit to get financial information out quickly if it is inaccurate and may lead to restatements.

The category of accelerated filer includes many smaller public companies that do not have the internal resources to meet shorter filing deadlines. It puts a much greater strain on these companies than those that are much larger in personnel, assets, capital and revenue. We appreciate the SEC recognizing that difference by proposing to create a category of "large accelerated filers" and suggesting quicker filing deadlines only for those companies.

We do request that the SEC re-assess how a company determines its filing status. Currently, a company calculates its public float on a fixed date: the last business day of the company's most recently completed second fiscal quarter. This does not provide for what may be temporary swings in stock price. We suggest an alternative approach would be to take an average of trading prices over a certain period of time. The SEC could use the previous 30 days or even the entire second quarter. If a range of trading days was used, a company would not gain or lose a filing status based on what could be a one-day spurt or slump in stock price.

### **Large Accelerated Filer**

We support the establishment of a category of "large accelerated filers," which would include companies with at least \$700 million in public float. These are the largest of the public companies and those with the financial and internal staff resources to meet some of the more burdensome federal securities law requirements. The SEC's research has indicated that this threshold is the level at which a company becomes widely followed and these larger companies represent about 95 percent of equity market capitalization. There is a great deal of difference between a \$75 million and a \$700 million company in terms of staff and financial resources to meet more rigorous standards. Smaller companies were required to comply with section 404 of Sarbanes-Oxley on the same time frame as much larger companies, even though they did not have the internal resources to comply and had difficulty getting the attention of outside experts and auditors.

While the large accelerated filers are among the companies with the most resources, we agree that it is appropriate to shield them as well from any further acceleration of quarterly report filing deadlines. Shortening that deadline by five additional days may not seem significant, but it can be a huge change when trying to coordinate the collection and analysis of data and getting the proper sign-offs so that executive officers can certify the financial results.

We suggest that the SEC consider maintaining the current annual report deadline for these companies as well. The SEC has expressed a concern that having three tiers of filing deadlines may be confusing to investors. We agree that it could cause confusion, but the deadlines for the other two categories of companies should not be accelerated for the reasons discussed above. The only way to get more uniformity would be to leave the filing deadlines for annual reports at 75 days even for these larger companies. If the SEC does proceed with a three-tiered system of filing deadlines, the cover page notation of status on annual and periodic reports should help alleviate some of the potential investor confusion.

We believe that this category should be used to further differentiate between larger and smaller public companies when it comes to regulatory requirements. For example, we believe that the section 404 burden should be alleviated for companies under \$700 million of public float. We make suggestions for that in a separate set of comment letters being filed today with the SEC. When the level of investor interest is weighed against the cost and burden of compliance, it is clear that the cost/benefit analysis becomes more difficult to justify for a \$200 million company versus a \$700 million company. The same can be said for the accelerated filing schedule for section 16 ownership reports and current reports on Form 8-K. The accelerated deadlines for those reports and forms places a much greater strain on smaller companies that do not have dedicated internal staff to fulfill these requirements. Limited investor interest in many of these companies renders it unnecessary to impose expedited filing deadlines on them. Again, the cost and burden would seem to outweigh any benefit to investors or the company.

We have made additional suggestions for decreasing the burden on smaller public companies that are contained in a letter to the SEC Advisory Committee on Smaller Public Companies. A copy of that letter was submitted with our comment letter filed today in connection with the SEC's final rule on delaying section 404 implementation for non-accelerated filers.

### **Changing Filing Status**

We support the SEC's proposal to allow accelerated filers to withdraw from that filing status more quickly than currently permitted once they fall below a designated threshold. We do not, however, agree with the proposed withdrawal thresholds. Under the proposal, a large accelerated filer could withdraw from that filing status once its public float falls below \$75 million. To leave accelerated filer status, the company's public float would have to fall below \$25 million.

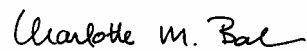
The SEC's reasoning for using the chosen thresholds is that it would like to avoid constant changes in filing status. Also, once a company gears up to meet more stringent filing deadlines, it is assumed that continuing to meet those deadlines is not much of a burden. Raising the withdrawal thresholds substantially should not result in too much fluctuation in a company's filing status. There is a lot of room between the \$700 million and \$75 million threshold. Also, if a company's public float is shrinking from a \$700 million or larger amount, it most likely means that the number of personnel and amount of revenues and profits are shrinking as well. The burden of accelerated filing then becomes much greater for the company, even if it were able to meet the deadlines fairly easily in the past. We think that for the large accelerated filer, a proper withdrawal threshold should be somewhere in the \$500 million to \$600 million range. An accelerated filer should be able to withdraw from that status once it reaches \$50 million or below in public float.

A company undergoing a change in filing status should file a Form 8-K. This will alert the investment community of the change so investors know what to expect in the future. Notice to investors would also be important if, as we request, the SEC reduces the regulatory burden in other ways for companies that are not large accelerated filers. We believe the Form 8-K should

be filed sometime before the end of the fiscal year if the only consequence to the change is a difference in filing deadlines for the annual report. If the SEC revises the proposal to allow companies to immediately meet revised filing deadlines for quarterly reports once there is a change in status, or the SEC makes other regulatory distinctions between the different categories of filers, the Form 8-K should be filed relatively soon after the change in status.

ACB appreciates the opportunity to comment on these important matters. If you have any questions, please contact Diane Koonjy at (202) 857-3144 or via e-mail at [dkoonjy@acbankers.org](mailto:dkoonjy@acbankers.org).

Sincerely,

A handwritten signature in cursive script that reads "Charlotte M. Bahin".

Charlotte M. Bahin  
Senior Vice President, Regulatory Affairs