



Holme Roberts
& Owen LLP

Attorneys at Law

HRO CONTACTS

Harold S. Bloomenthal
Of Counsel
bloomeh@hro.com
303-866-0353

Stephen E. Brilz
Special Counsel
brilzs@hro.com
303-866-0594

Ola L. Clinton
Special Counsel
clintoo@hro.com
415-217-8832

Jennifer A. D'Alessandro
Senior Counsel
dalessj@hro.com
303-866-0635

Kevin M. Galligan
Senior Associate
galligk@hro.com
303-417-8510

J. Gregory Holloway
Partner
hollowg@hro.com
719-381-8462

Garth B. Jensen
Partner
jenseng@hro.com
303-866-0368

Dominic A. Lloyd
Partner
lloyddo@hro.com
303-866-0474

Mashenka Lundberg
Partner
lundbem@hro.com
303-866-0616

Charles D. Maguire, Jr.
Partner
maguirc@hro.com
303-866-0550

Gino Maurelli
Associate
maurelg@hro.com
303-866-0649

Nick Nimmo
Partner
nimmon@hro.com
303-866-0216

Thomas A. Richardson
Partner
richart@hro.com
303-866-0413

W. Dean Salter
Partner
salterw@hro.com
303-866-0245

HRO Alert

The Sarbanes-Oxley Act of 2002

ACCELERATED FILING DEADLINES FOR PERIODIC REPORTS

On September 5, 2002, the SEC adopted final rules relating to the acceleration of filing deadlines for annual and quarterly reports on Forms 10-K and 10-Q. Although the new rules will be phased in over a period of three years, ultimately they will dramatically decrease the time period that larger public companies have to file their annual and quarterly reports.

ACCELERATION OF FILING DEADLINES

Filing Deadlines

Under the new rules, each public company that satisfies the definition of “accelerated filer” will be subject to the following filing deadlines:

FILING DEADLINES		
FOR FISCAL YEAR ENDING ON OR AFTER:	FORM OF FILING	
	Form 10-K (Annual Report)	Form 10-Q (Quarterly Report)
December 15, 2002	90 days after fiscal year end	45 days after fiscal quarter end
December 15, 2003	75 days after fiscal year end	45 days after fiscal quarter end
December 15, 2004	60 days after fiscal year end	40 days after fiscal quarter end
December 15, 2005	60 days after fiscal year end	35 days after fiscal quarter end

Accelerated Filers

The new filing deadlines only apply to public companies that are “accelerated filers.” The current 90 and 45 day annual and quarterly filing deadlines will continue to apply for companies that are not accelerated filers. A company becomes an “accelerated filer” if:

- Its common equity public float is \$75 million or more;
- It has been subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), for a period of 12 calendar months;
- It has previously filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and
- It is not a small business issuer (i.e. if it is not eligible to use Forms 10-KSB and 10-QSB).

Under these new rules, a company measures its common equity public float (voting and non-voting common equity held by non-affiliates) as of the last business day of its most recently completed second fiscal quarter. If the company’s common equity public float is \$75 million or greater at that time and at the conclusion of its fiscal year the other conditions

listed above are satisfied, the company is subject to the accelerated filing deadlines. Under the transition rules, a company becomes subject to the then-applicable filing deadlines in the year it becomes an accelerated filer. For example, if a company first becomes an accelerated filer during the fiscal year ending December 31, 2004, its next annual report on Form 10-K is due 60 days after the end of that fiscal year and its quarterly reports on Form 10-Q will be due 35 days after the end of each fiscal quarter in 2005.

Once a company becomes an accelerated filer, it will remain an accelerated filer unless and until it is subsequently eligible to use Forms 10-KSB and 10-QSB as a small business issuer.

Note that a company will not be an accelerated filer if its only publicly traded securities are debt rather than equity.

Foreign Private Issuers

The new rules do not alter the filing deadlines for annual reports filed by foreign private issuers on Form 20-F. The SEC did advise, however, that it will continue to review comments on this issue and evaluate whether corresponding revisions to the filing deadlines for annual reports filed by foreign private issuers are appropriate.

Definitive Proxy and Information Statements

Existing rules allow a company's annual reports on Form 10-K to incorporate Part III information from a proxy statement or information statement. Under the new rules, the SEC did not shorten the period of time (120 days after the end of the fiscal year) that companies have to file definitive proxy statements or information statements in order to incorporate the Part III information by reference. As is currently the case, if a definitive proxy statement or information statement is not filed within 120 days of the end of the fiscal year, the company must amend the Form 10-K to include Part III information not included in the initial Form 10-K filing.

Financial Statements of Unconsolidated Subsidiaries

These new rules do not accelerate the filing deadline for inclusion in an accelerated filer's Form 10-K of financial statements of unconsolidated subsidiaries and 50% or less owned persons. Instead, the accelerated filer may file its annual report on Form 10-K and file by amendment the financial statements of the unconsolidated subsidiary or 50% or less owned person within the existing time period applicable to filings by the unconsolidated subsidiary or 50% or less owned person. The SEC recognized that it might be impracticable for an accelerated filer to obtain financial statements from an unconsolidated subsidiary or 50% or less owned person that is not an accelerated filer in the reduced time frame, and that accelerated filers might be forced to divest their equity interests in such entities rather than risk the possibility of a late filing.

Updating Financial Information

In addition to establishing new filing deadlines for periodic reports, the new rules address the period of time after which financial statements included in, or incorporated by reference into, registration statements filed with the SEC become "stale" and must be updated with interim financial information. Generally, under the new rules, if the company is an accelerated filer, its registration statement financial statements become "stale" if they are not updated on or before the applicable Form 10-K or Form 10-Q deadline.

DISCLOSURE RELATING TO WEBSITE ACCESS TO COMPANY REPORTS

The SEC also adopted rules requiring an accelerated filer to make certain disclosures regarding investors' ability to access its periodic and current reports on the company's website. With respect to annual reports filed on Form 10-K for fiscal years ending on or after December 15, 2002, an accelerated filer must disclose:

- Its website address (if it has one);
- Whether it makes available free of charge on or through its website its annual report, quarterly reports, and current reports on Form 8-K (including all amendments to such reports), as soon as reasonably practicable after such material is electronically filed with the SEC;
- If it does not make its filings available in this manner, the reasons why it does not do so; and
- Whether it will provide electronic or paper copies of its filing free of charge upon request, if it does not make its filing available on or through its website.

Companies should note that, under the new disclosure rules relating to website access to company reports, the SEC stated that hyperlinking to a third-party service is permissible, provided, (i) the reports are accessible in a short time frame after filing with the SEC, (ii) access to the reports is free of charge to users, and (iii) any hyperlink takes the user directly to the respective report or a list of that company's reports and not to a general search page of the third-party service. Additionally, hyperlinking to the EDGAR database on the SEC's website also is permissible, as EDGAR now displays filings in real time.

As with the new filing deadlines, the new disclosure requirements relating to website access to company reports currently only applies to companies that are accelerated filers. However, the SEC has stated that it intends to reevaluate this rule and consider extending these disclosure requirements to all public companies.

HOW HRO CAN HELP

Although the SEC elected to phase in the newly adopted filing deadlines for annual and quarterly reports, eventually many public companies will face a 33% and 22% decrease in the amount of time they have to prepare annual and quarterly reports, respectively. This decrease will intensify the already stressful experience of gathering and analyzing information in preparation of periodic reports. A heightened planning process for information gathering and analysis prior to disclosure would be wise for any company facing the new filing deadlines. HRO can assist with this adjustment by providing companies with advice relating to the preparation of periodic reports, so when the time comes for your company to prepare its periodic reports in a substantially reduced time frame, you will be ready.

This summary of the rules recently adopted by the SEC does not address all of the provisions of the new rules, and is not intended to address specific securities law compliance and disclosure issues that may arise in particular circumstances; nor does it constitute legal advice with respect to any specific situation. Clients in need of such advice are encouraged to contact any of the attorneys listed in the margin of the first page of this summary.