



Babirak, Vangellow & Carr, P.C.
1920 L Street, N.W.
Suite 525
Washington, D.C. 20036
Tel: (202) 467-0920
Fax: (202) 318-4486
Web site: www.bvcpc.com

Babirak, Vangellow & Carr, P.C.

CORPORATE ADVISOR

SEC Modifies Periodic Report Filing Deadlines and Creates New Category of Filer

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Overview

On December 14, 2005, the SEC adopted new rules modifying the periodic report filing deadlines under the Securities Exchange Act of 1934, as amended (Exchange Act), for accelerated filers and created a new category of filer to be known as a "Large Accelerated Filer."

The new rules:

- Create a new category of filer known as a **Large Accelerated Filer** (i.e., a filer with a worldwide market value of outstanding voting and non-voting equity held by non-affiliates (public float) of \$700 million or more).
- Provide that only **Large Accelerated Filers** become subject to the final phase in of the accelerated schedule requiring Annual Reports on Form 10-K to be filed within 60 days of fiscal year end commencing with fiscal years ending on or after December 15, 2006.
- Provide that **Small Accelerated Filers** (i.e., filers with more than \$75 million but less than \$700 million in public float) will continue to file under the current deadlines; so that, for fiscal years ending on or after December 15, 2005, a **Small Accelerated Filer's** Form 10-K will be due within 75 days of the fiscal year end and subsequent Forms 10-Q will be due 40 days after the fiscal quarter end.
- Provide that **Non-Accelerated Filers** (i.e., filers with less than \$75 million in public float) will continue to file their Forms 10-K within 90 days of the fiscal year end and Forms 10-Q within 45 days of the fiscal quarter end.
- Provide that an Accelerated Filer that has less than \$50 million in public float may exit the accelerated filer status promptly and begin filing reports as a Non-Accelerated Filer.
- Provide that a Large Accelerated Filer that has a public float of less than \$500 million may promptly exit Large Accelerated Filer status.

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We have summarized in a table below the filing deadlines that will take effect for the fiscal years ending on or after December 15, 2005, under the new rules.

New Category of Filer - the Large Accelerated Filer

The new rules create a new category of filer under the Exchange Act – the Large Accelerated Filer. Under the new rules an issuer would become a Large Accelerated Filer if the issuer:

- Had a public float of \$700 million or more as of the last business day of the issuer's most recently completed second fiscal quarter.
- Has been subject to the reporting requirements of Exchange Act Section 13(a) or 15(d) for at least 12 calendar months.
- Has filed at least one annual report pursuant to Section 13(a) or 15(d).
- Is not eligible to use Forms 10-KSB and 10-QSB.

An issuer is a **Small Accelerated Filer** if the issuer:

- Has a public float of \$75 million or more as of the last business day of the issuer's most recently completed second fiscal quarter.
- Has been subject to the reporting requirements of Exchange Act Section 13(a) or 15(d) for at least 12 calendar months.
- Has filed at least one annual report pursuant to Section 13(a) or 15(d).
- Is not eligible to use Forms 10-KSB and 10-QSB.

Filing Deadlines Under New Rules

The new rules would modify the filing deadlines for Forms 10-K and 10-Q. The new deadlines would depend on whether the issuer is a Large Accelerated Filer, Small Accelerated Filer or Non-Accelerated Filer.

Large Accelerated Filers - For fiscal years ending before December 15, 2006, **Large Accelerated Filers** are required to file annual reports on Form 10-K within 75 days after the fiscal year end and subsequently filed quarterly reports on Form 10-Q within 40 days of the quarter end. For fiscal years ending on or after December 15, 2006, **Large Accelerated Filers** are required to file annual reports on Form 10-K within 60 days after the fiscal year end and subsequently filed quarterly reports on Form 10-Q within 40 days of the quarter end.

Small Accelerated Filers – For fiscal years ending on or after December 15, 2005, **Small Accelerated Filers** are required to file annual reports on Form 10-K within 75 days after the fiscal year end and subsequently filed quarterly reports on Form 10-Q within 40 days of the quarter end

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Non-Accelerated Filers (including Small Business Issuers) – For fiscal years ending on or after December 15, 2005, a **Non-Accelerated Filer** is required to file annual reports on Form 10-K within 90 days after the fiscal year end and quarterly reports on Form 10-Q within 40 days of the quarter end.

The following table sets forth the filing deadlines for fiscal years ending on or after December 15, 2005, as a result of the new rules:

| Category of Filer | Deadlines for Filing Reports under New Rules | |
|--|---|---------|
| | Form 10-K Deadline | Form |
| Large Accelerated Filer (\$700m. or more) | 75 days for fiscal years ending before December 15, 2006, and 60 days for fiscal years ending on or after December 15, 2006 | 40 days |
| Accelerated Filer (between \$75m. and \$700m.) | 75 days | 40 days |
| Non-accelerated Filer (less than \$75m.) | 90 days | 45 days |

Exiting Accelerated Filer and Large Accelerated Filer Status

The new rules will also make it easier to exit accelerated filer status. Under the old rules, an issuer that became an accelerated filer would remain one unless and until the issuer subsequently became eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports. Accordingly, a reporting issuer that first met the “small business issuer” definition at the end of a fiscal year was required to wait two years from that point before it could begin filing its annual report on a non-accelerated filer basis.

The new rules permit an **Accelerated Filer** to exit such status at the end of the fiscal year if the issuer’s public float falls below \$50 million as of the last business day of the issuer’s second fiscal quarter. Accordingly, an issuer will be able to exit Accelerated Filer status in the same year that the public float measurement reflects the requisite reduction. Also, an issuer that has lost its public float but was required, under existing rules, to continue to file reports on an accelerated basis because of a reporting obligation with regard to a different class of securities will no longer need to do so.

The new rules also provide that once a **Large Accelerated Filer’s** public float falls below \$500 million, as of the last business day of the issuer’s most recently completed second fiscal quarter, it is eligible to exit **Large Accelerated Filer** status as of the end of that fiscal year and to file its annual report as an **Accelerated Filer** or **Non-Accelerated Filer**, as the case may be. So that, if the issuer’s public float is less than \$500 million but \$50 million or more, as of the last business day of its most recently completed second fiscal quarter, the issuer can begin to file under the deadlines for an Accelerated Filer. If the issuer’s public float drops below \$50 million as of such date, it may file its reports as a Non-Accelerated Filer.

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Advisor or regarding any corporate finance or related matter, please feel free to contact one of the following:

*Neil R.E. Carr, Esq.
(202) 467-0916
ncarr@bvcpc.com*

*B. Henry Pérez, Esq.
(202) 467-0917
hperez@bvcpc.com*