

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR PART 210

[RELEASE NOS. 33-8128A; 34-46464A; FR-63A; File No. S7-08-02]

RIN 3235-AI33

### ACCELERATION OF PERIODIC REPORT FILING DATES AND DISCLOSURE CONCERNING WEBSITE ACCESS TO REPORTS; CORRECTION

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; technical amendments

**SUMMARY:** This document contains corrections to final rules which were published in the Federal Register on Monday, September 16, 2002 (67 FR 58480). The rules relate to the acceleration of the filing of quarterly and annual reports under the Securities Exchange Act of 1934 by certain accelerated filers.

**EFFECTIVE DATE:** April 14, 2003

**FOR FURTHER INFORMATION CONTACT:** Jeffrey J. Minton, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942-2910, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0312.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On September 5, 2002, the Commission adopted,<sup>1</sup> among other things, changes to Rules 3-01<sup>2</sup> and 3-12<sup>3</sup> of Regulation S-X<sup>4</sup> under the Securities Act of 1933 (the "Securities Act").<sup>5</sup> These rules relate to the timeliness of financial information in Commission filings, such as Securities Act registration statements and proxy statements and information statements under Section 14<sup>6</sup> of the Securities Exchange Act of 1934 (the "Exchange Act").<sup>7</sup> The changes were made to conform the timeliness requirements for these filings made by accelerated filers to changes adopted to the deadlines for Forms 10-K<sup>8</sup> and 10-Q<sup>9</sup> for accelerated filers, as defined in Exchange Act Rule 12b-2.<sup>10</sup> The new deadlines will be phased-in over three years. After we adopted the amendments to Rules 3-01 and 3-12 of Regulation S-X, questions arose regarding the appropriate phase-in period for an accelerated filer required to update interim financial information in registration statements filed or that become effective 134 days after the end of the filer's fiscal year. This is the period after audited financial statements for the most recently completed fiscal year are already required to be filed on Form 10-K and on or after the date most registrants are required to have filed interim financial statements for the first quarter on Form 10-Q. Concerns arose that the phase-in periods in the conforming amendments to Rules 3-01 and 3-12 of Regulation S-X do not match the phase-in periods described in the adopting release. Accordingly, the amendments set forth in this document clarify that the phase-in periods applicable to accelerated filers who need to update interim information in accordance with amended Rules 3-01 and 3-12 of Regulation S-X match the phase-in periods for filing quarterly information on Form 10-Q. The corrections clarify that updated interim information is required within 130 days after the end of the registrant's fiscal year for fiscal years ending on or after December 15, 2003 and before December 15, 2004, and within 125 days after the end of the registrant's fiscal year for fiscal years ending on or after December 15, 2004. The changes are

technical corrections to clarify the rules as described in the original adopting release, and do not alter the phase-in periods for these requirements as described in the original adopting release.

## II. Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

### TEXT OF AMENDMENTS

List of Subjects in 17 CFR Part 210

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Commission amends Title 17, chapter II of the Code of Federal Regulations as follows:

#### **PART 210 - FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975**

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77aa(25), 77aa(26), 78j-1, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e(b), 79j(a), 79n, 79t(a), 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), unless otherwise noted.

2. Section 210.3-01 is amended by revising paragraphs (e)(1) and (i)(2) to read as follows:

#### **§ 210.3-01 Consolidated balance sheets.**

\* \* \* \* \*

(e) \* \* \*

(1) For accelerated filers (as defined in § 240.12b-2 of this chapter):

(i) 135 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(ii) 130 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(iii) 125 days for fiscal years ending on or after December 15, 2004; and

\* \* \* \* \*

(i) \* \* \*

(2) For purposes of paragraph (e) of this section, the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b-2 of this chapter):

(A) 134 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 129 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2003 and before December 15, 2004;

and

(C) 124 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2004; and

(ii) 134 days subsequent to the end of the registrant's most recent fiscal year for all other registrants.

3. Section 210.3-12 is amended by revising paragraph (g)(1) to read as follows:

#### **§ 210.3-12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.**

\* \* \* \* \*

(g)(1) For purposes of paragraph (a) of this section, the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b-2 of this chapter):

(A) 135 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 130 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and  
(C) 125 days for fiscal years ending on or after December 15, 2004; and  
(ii) 135 days for all other registrants.

\* \* \* \* \*

Margaret H. McFarland  
Deputy Secretary

Dated: April 8, 2003

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<sup>1</sup> See Release No. 33-8128 (Sept. 5, 2002) [67 FR 58480].

<sup>2</sup> 17 CFR 210.3-01.

<sup>3</sup> 17 CFR 210.3-12.

<sup>4</sup> 17 CFR 210.1-01 et seq.

<sup>5</sup> 15 U.S.C. 77a et seq.

<sup>6</sup> 15 U.S.C. 78n.

<sup>7</sup> 15 U.S.C. 78a et seq.

<sup>8</sup> 17 CFR 249.310.

<sup>9</sup> 17 CFR 308a.

<sup>10</sup> 17 CFR 240.12b-2.

<http://www.sec.gov/rules/final/33-8128a.htm>