

new york state society of

NYSSCPA

certified public accountants

530 fifth avenue, new york, ny 10036-5101
www.nysscpa.org

August 19, 2002

Jonathon G. Katz
Secretary, U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

In Re: File No. S7-22-02

By email: rule-comments@sec.gov

Dear Mr. Katz:

The New York State Society of Certified Public Accountants, the nation's oldest state accounting association, represents approximately 30,000 CPAs, many of whom are affected by the SEC's proposed rule, **Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date**. The NYSSCPA is grateful for the opportunity to comment on the proposed rule.

The NYSSCPA Task Force for Public Accountability drafted the attached comments with the assistance of the NYSSCPA SEC Practice Committee. If additional discussion with the task force would be helpful, please contact the task force chair, Vincent J. Love at (212) 338-0600, or NYSSCPA Staff, Robert H. Colson at (212) 719-8350.

Sincerely,

Jo Ann Golden
President

Attachment

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**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

COMMENTS ON

SEC Proposed Rule:

**Additional Form 8-K Disclosure Requirements and Acceleration of
Filing Date**

File No. S7-22-02

Principal Drafters

**Rona Chernob
Vincent Love
Arthur J. Radin
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August 19, 2002

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**NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC
ACCOUNTANTS**

Task Force on Public Accountability Comments On

**Proposed SEC Rule:
Additional Form 8-K Disclosure Requirements and Acceleration of
Filing Date**

File No. S7-22-02

General Comments

The proposed changes to Form 8-K disclosure requirements and the acceleration of the filing date will lead to fuller and more timely information flow into the capital markets. We support the SEC's proposed rules to accomplish these goals with the specific suggestions below and the following two general suggestions:

- Advancing the filing date for Form 8-K from its current five or 15 days after a triggering event to two days may not provide adequate time for registrants to file completely and adequately. While acceleration is desirable, the rush to file within two days may cause unintended inaccuracies and excessive use of the automatic two-day extension after notice on Form 12b-25. Consideration should also be given to whether all the events identified in the proposed rule require the same filing date.
- The proposed rule invokes the concept of materiality extensively and in numerous contexts. Bright-line, quantitative materiality standards could lead to numerous disclosures of insignificant events if set too low and to numerous undisclosed significant events if set too high. Registrants and their auditors would find the final rule easier to implement if benchmark concepts for materiality were discussed qualitatively in each of the specific contexts where materiality is addressed.
- Certain events, such as those described in Items 1.01, 1.02, 1.03, 2.05, and 2.06, occur over time rather than at a specific point in time. Form 8-K filings are best suited for isolated events that occur at a point in time. Events that build over time, and then culminate, could receive more timely disclosure in quarterly and annual filings.

Specific Comments

- *Item 1.01 Entry into a Material Agreement.* Required disclosure should extend to only definitive agreements that are unconditionally binding. Requiring disclosure of non-binding agreements and letters of intent would overly disrupt negotiations.
- *Item 2.01 Completion of Acquisition or Disposition of Assets.* Registrants and auditors are familiar with the dispositions tests used in this item, and the requirement to disclose such events on Form 8-K would improve investors' information.
- *Item 2.02 Bankruptcy or Receivership.* These events should be timely disclosed on Form 8-K.
- *Item 2.03 Creation of a Direct or Contingent Financial Obligation that is a Material to the Registrant.* This item does not adequately distinguish between events that arise as a normal course of business and that are unusual or unexpected. This problem could be mitigated by specifying more completely the meaning of materiality for this item or by specifying more tightly the type of event.
- *Item 2.04 Events Triggering a Direct or Contingent Financial Obligation That Is Material to the Registrant.* The triggering events and the disclosures are sufficient as proposed, if events occurring in the normal course of business are excluded. There should not be disclosure when negotiations for waivers or amendments of triggering events remain in progress.
- *Item 2.05 Exit Activities Including Material Write-offs and Restructuring Charges.* The triggering event is clear and the information requested is appropriate. The decision to exit or restructure is usually made in advance of a firm measurement of the amounts, however, and the procedure for updating the loss estimate should be addressed.
- *Item 2.06 Material Impairments.* Form 8-K should be updated if there is a material change in the expected effect of a previously reported event.
- *Item 301 Rating Agency Decisions.* The proposed disclosure should be required only if there is a contractual relationship between the rating agency and the company.
- *Item 302 Notice of Delisting or Failure to Satisfy Listing Standards; Transfer of Listing.* Both the receipt of the notice and the delisting are significant enough to investors to require Form 8-K disclosure.
- *Item 303 Unregistered Sales of Equity Securities.* The disclosure of unregistered sales of equity securities should continue in quarterly and annual reports. Unregistered sales of equity securities that are clearly inconsequential do not require Form 8-K disclosure. The threshold for triggering Form 8-K disclosure should be sufficiently high to exempt clearly inconsequential events.

- *Item 401 Changes in Registrant’s Certifying Accountant.* The current rule works well and no change is required. Nonetheless, the term “certifying accountant” should be changed to “independent auditor” to conform to current usage.
- *Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report.* The investing public should be informed immediately on Form 8-K if the independent auditor informs the registrant that a report on the financial statements should no longer be relied upon. The auditor should be given the opportunity to respond. The requirement for management to disclose its plans to alleviate the issue should receive consideration independently from the notice, because it will take management more than a few days from its receipt to formulate any meaningful plan.
- *Item 501 Changes in Control of the Registrant.* Registrants should be able to incorporate prior filings.
- *Item 502 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.* The disclosure of such communications as addressed in this item should take place on Form 8-K with no threat of civil liability because of the disclosure. When a director or former director writes the registrant concerning departure, then the registrant should disclose such communications on Form 8-K.
- *Item 504 Material Events Regarding the Registrants Employee Benefit, Retirement and Stock Ownership Plans.* This information is not that important to investors, but it is essential for the employee group in the plan and should be a required disclosure by the Department of Labor. Legislation that requires 30 days notice before any lockout period would preempt the need for this item.
- *Section 3 Questions regarding waivers of corporate codes of conduct.* Waivers of a corporate code of conduct for any corporate executive should be disclosed on Form 8-K.
- *Section 4 Application to Foreign Private Issuers.* Bankruptcy and auditor change should be a required disclosure on Form 6-K.
- *Part B Shortened Filing Deadline.* Two business days are insufficient for many registrants to comply with the disclosure requirements. Five business days are sufficient from most registrants’ perspective for many items, but may not be timely enough for effective capital market information. There should be no exemptions or extended deadlines for small business issuers. Some events, however, such as those described in Items 1.01, 1.02, 1.03, 2.01, 2.03, 2.04, 2.05, 2.06, 5.02, and 5.04, could pose more serious problems for registrants to provide complete information for short filing deadlines.