

The United States Securities and Exchange Commission (“SEC”) has extended the deadline for non-U.S. companies to comply with the amendments to the SEC rules, regulations and forms adopted under Section 404 of the Sarbanes-Oxley Act (“Sarbanes-Oxley”). The amendments require non-U.S. companies to evaluate their internal controls over financial reporting and to include a management report and a corresponding auditors’ report on the subject in their annual reports filed with the SEC. As a result of the extended deadline, non-U.S. companies will need to comply with the evaluation, report and audit requirements as to controls over financial reporting for SEC filings made in respect of fiscal years ending on or after July 15, 2006.² The SEC has similarly extended the date after which non-U.S. companies must comply with the related CEO and CFO certifications regarding internal controls over financial reporting in their annual reports filed with the SEC.

The SEC rules, regulations and forms implementing Section 404 of Sarbanes-Oxley require non-U.S. companies to evaluate their internal controls over financial reporting (and any material changes in such controls) and to include in the annual reports filed with the SEC after July 15, 2006: (i) a report by management about the company’s internal controls with respect to financial reporting; (ii) an auditor’s report discussing the effectiveness of the internal controls; and (iii) CEO and CFO certifications specifically addressing the subject of responsibility for, and adequacy of, the company’s internal controls over financial reporting.

The SEC acknowledged the particular burdens Section 404 compliance imposes on non-U.S. companies and has indicated its belief that extending the deadline strikes the right balance between the value of Section 404 compliance in reports filed with the SEC by non-U.S. companies and the extra burden imposed on such companies. In extending the deadline, the SEC took particular note of the fact that many non-U.S. companies in the European Union will need to address the issues raised by compliance with the new International Financial Reporting Standards for their financial statements in 2005.

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We note, however, that the SEC has emphasized that the extension is not intended to convey a message to non-U.S. companies to “slow down or delay” their Section 404 compliance efforts. This emphasis on the part of the SEC may very well be an indication that further extensions in this area may not be forthcoming.

Should you have any questions concerning this extension, please contact Herman H. Raspe at (212) 336-2301 (hhraspe@pbwt.com) or Karen M. McCarthy at (212) 336-2529 (kmmccarthy@pbwt.com).

Endnotes:

¹ For purposes of this Client Alert the term “non-U.S. company” is intended to mean “Foreign Private Issuer” as such term is defined in the rules adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that are required to comply with the filing requirements of the Exchange Act.

² The previous deadline was July 15, 2005. Non-U.S. companies whose fiscal year corresponds to the calendar year will need to comply under the new deadline for any annual report filed with the SEC in respect of the 2006 fiscal/calendar year (the SEC deadline for which is June 30, 2007).