

SEC Amendments Regarding “Smaller Reporting Company” Relief

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The Securities and Exchange Commission (“SEC”) recently adopted amendments to the disclosure and reporting requirements under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, which went into effect on February 4, 2008. Among other things, the amendments make the scaled disclosure requirements more widely available to smaller companies that meet the definition of a “smaller reporting company.”

Previously, the scaled disclosure requirements were found in Regulation S-B and were available to companies that met the definition of a “small business issuer.” The amendments moved the scaled disclosure requirements to Regulation S-K and replaced the “small business issuer” category with the new “smaller reporting company” category for scaled disclosure. Issuers that meet this new definition of a “smaller reporting company” have the option of following either the scaled disclosure requirements or the requirements applicable to larger reporting companies on an item-by-item basis. In addition, following a short phase-out period, the amendments will eliminate Form 10-QSB and Form 10-KSB, and all issuers will eventually be required to use Form 10-Q and Form 10-K to file their periodic reports. Registration statement forms SB-1 and SB-2 were eliminated as of February 4, 2008, the effective date of the amendments.

To qualify as a “smaller reporting company,” an issuer must have a public float¹ of less than \$75 million as of the last business day of the issuer’s most recently completed second fiscal quarter. There generally is no revenue requirement. However, if an issuer is unable to calculate its public float,² the issuer can still qualify as a “smaller reporting company” if it had an annual revenue of less than \$50 million during its most recently completed fiscal year.

The SEC also adopted rules for the transition of issuers to and from smaller reporting company status. An issuer that is newly eligible to be a smaller reporting company is permitted to begin using the scaled disclosure requirements on the issuer’s first quarterly report on Form 10-Q following the determination.³ Conversely, if an issuer fails to qualify as a smaller reporting company at the end of its most recently completed second fiscal quarter, the issuer will be required to transition back to the larger reporting system beginning with its first quarterly report in the following year. Furthermore, an issuer that previously filed as a smaller reporting company but that subsequently failed to qualify as such is not permitted to return to smaller reporting company status until its public float is less than \$50 million on the last day of its most recently completed second fiscal quarter.

An issuer that is currently an accelerated filer may simultaneously qualify as a smaller reporting company. An issuer is required to file as an accelerated filer if its public float is \$75 million or more at the end of its second fiscal quarter. Once an issuer becomes an accelerated filer, it will retain this status until the issuer's public float is less than \$50 million at the end of its second fiscal quarter. However, an accelerated filer with a public float of less than \$75 million but at least \$50 million on the last business day of its most recently completed second fiscal quarter will also qualify as a smaller reporting company. According to a Compliance and Disclosure Interpretation of the smaller reporting company amendments published on the SEC's website, an issuer that is both an accelerated filer and a smaller reporting company may avail itself of the scaled disclosure rules for smaller reporting companies, but is still bound by the requirements applicable to accelerated filers with regard to the timing of its filings.

If you have any questions on the reporting and disclosure requirements applicable to smaller reporting companies, or if you would like to discuss any of these issues in greater detail, please do not hesitate to contact Giordano Halleran & Ciesla's Securities Practice Group at 732-741-3900.

¹ Public float is generally determined by multiplying the aggregate number of shares of the issuer's common equity held by non-affiliated parties by the last price at which the common equity was sold.

² For example, an issuer may be unable to calculate its public float if the issuer has no public common equity outstanding, or if there is no market price for its common equity.

³ An issuer will be *required* to reflect its eligibility as a smaller reporting company on its quarterly report on Form 10-Q for the first fiscal quarter of the following year.