

SEC PROPOSES CHANGES TO REGISTRATION, REPORTING, AND EXEMPTIVE RULES FOR SMALLER COMPANIES

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At its meeting held on May 23, 2007, the Securities and Exchange Commission proposed rule changes under the Securities Act of 1933 and the Securities Exchange Act of 1934. The proposals would enlarge the number of smaller companies eligible to use reduced disclosure standards and short-form registration and would liberalize certain exemptions from registration, including significant revisions to Rule 144. The SEC is expected to publish six separate proposing releases with respect to the following topics.

Securities Act Rules 144 and 145

Rule 144 would be amended to shorten the holding period applicable to sales of restricted securities by non-affiliates from one year to six months. At the same time, holding periods would be tolled for persons engaging in hedging activities. The proposals would provide other liberalizations for sales by unaffiliated persons, including elimination of the volume, manner of sale, and notice requirements for sales of securities of reporting issuers and impose only a 12-month holding period for securities of non-reporting issuers with no other requirements.

The proposals would also eliminate the manner of sale limitations in the case of sales of debt securities by affiliates, raise the thresholds at which Form 144 would be required to be filed by affiliates, and codify certain staff positions under Rule 144.

The proposals would eliminate the presumptive underwriter provisions imposed by Rule 145 and the resale provisions of Rule 145(d) would be revised to conform to the amendments to Rule 144. The SEC also solicited comment on combining the reporting obligations under Rule 144 with those under Form 4 for certain affiliated persons.

Exemption of Compensatory Employee Stock Options from Registration Under Section 12(g) of the Exchange Act

The proposals include two exemptions from registration requirements for employee stock options. The first, applicable to non-reporting companies, would exempt compensatory options subject to transfer restrictions and, if more than \$5 million in options are issued in a 12-month period, the company must provide certain risk and financial disclosures to participating employees.

The second exemption would exempt compensatory stock options where the underlying securities are registered under Section 12 of the Exchange Act.

Revisions to Regulation D Limited Offering Exemptions

Proposed new Rule 507 under Regulation D would permit exempt sales of securities by means of limited public advertising to "Rule 507 qualified investors" (wealthy natural persons and institutional investors). This is a significant departure from current

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Regulation D, which prohibits general solicitation or media advertisement, except in the case of very small offerings that are registered under state law.

Other revisions to the regulation would include the addition of an investments-owned standard for qualification as an accredited investor. Adjustments to the definition of accredited investor would take inflation into account in five years. The integration safe harbor of the regulation would be reduced from six months to 90 days.

Electronic Filing and Simplification of Form D

Form D, the notice filing under Regulation D, would become subject to mandatory electronic filing and simplification of the form itself.

Smaller Reporting Company Relief and Simplification

Companies with a public float up to \$75 million would be eligible to use reduced disclosure standards in registration statements and periodic reports. Such companies, along with voluntary filers, would be called “smaller reporting companies.” These issuers would be eligible to provide the more limited disclosure currently permitted for small business issuers. The proposal would also eliminate both Regulation S-B and the S-B forms by merging them into Regulation S-K and the S forms.

Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3

The proposals would amend the Form S-3 and Rule 415 to allow companies with smaller market capitalization to make shelf offerings. Form S-3 would be made available to companies with a public float up to \$75 million for shelf offerings of up to 20 percent of the company’s public float in a one-year period, as long as the company was otherwise eligible to use the form.

The comment period will be 60 days from publication of the proposed rule amendments in the Federal Register. The SEC’s press release describing the proposals can be viewed at <http://www.sec.gov/news/press/2007/2007-102.htm>.

Please remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues you may contact the head of our Corporate and Securities practice group:

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