

PUBLICATION

Disclosure Simplified for Smaller Reporting Companies

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On December 19, 2007, the SEC adopted rules to modernize and improve reporting and disclosure requirements for "smaller reporting companies," seeking to establish reporting requirements on a more simplified scale, better matching the size of these companies. This new category includes companies with a public float of less than \$75 million (up from \$25 million) and companies with annual revenues of less than \$50 million in cases where the companies do not have or are unable to calculate a public float. At the same time, the SEC is eliminating Regulation S-B, with a phase-in period allowing S-B (small business) issuers to transition to the "smaller reporting company" category. More specifically, smaller reporting companies with a fiscal year ending on or after December 15, 2007 will have the option to file their next annual report on either Form 10-K or Form 10-KSB; however, following that filing, smaller reporting companies will no longer be able to file on S-B forms.

With the elimination of Regulation S-B, some of its simplified disclosure requirements will be integrated into Regulation S-K. Companies that meet the definition of a smaller reporting company may choose, on an item-by-item or "a la carte" basis, to comply either with the disclosure requirements for smaller reporting companies or the comparable requirements for larger public companies. Furthermore, with the exception of financial reporting disclosure, companies will be permitted to switch back and forth between scaled smaller company and the larger company disclosure from one filing to the next. As a result of the increased dollar limits, an additional 1,500 companies will now be permitted, though not required, to take advantage of the scaled disclosure requirements available to smaller public companies.

Along with the deletion of Regulation S-B, the SEC has also eliminated all "S-B" forms. This further integrates smaller reporting companies into the Regulation S-K framework and simplifies disclosure by moving to a single set of forms. Smaller reporting companies will be required to check a box on the cover page of their filings indicating the registrant's status as a smaller business issuer. Due to the elimination of the "S-B" forms, most smaller reporting companies, in connection with a public offering, now will use Securities Act Form S-1, which will enable them to incorporate by reference their previously filed Exchange Act reports while maintaining the benefit of simplified disclosure.