

# SEC Advisor

December 2007



## SEC Proposes Relief for Smaller Public Companies

The SEC has announced two proposed actions which are very significant to smaller public companies.

### ***Proposed Delay of Implementation of Audit of Internal Control Over Financial Reporting for Non-accelerated Filers***

On December 12, 2007, Securities and Exchange Commission Chairman Christopher Cox told a House committee that he will propose giving small businesses and their auditors an extra year to comply with Section 404(b) of the Sarbanes-Oxley Act of 2002.

The delay is necessary, Cox testified before the House Small Business Committee, because the SEC staff is only now studying the effect its new Section 404 guidance will have on compliance costs. The agency does not expect to have the results of this study until June 2008 at the earliest. Without the results, regulators won't be able to determine the full cost on small company issuers.

Cox told the Committee, "The Commission's decision to proceed cautiously in deference to smaller public companies and their investors is due in significant part to the fact that the cost of regulation falls heaviest on smaller companies. Smaller firms spend far more per employee than larger firms to comply with federal regulations, including those of the SEC. It would be impossible to succeed in our mission of promoting capital formation if we did not focus directly on the needs of small business."

### ***Proposed Combination of Small Business Issuer and Non-accelerated Filer Categories, and Integration of Regulation S-B into Regulation S-K***

The Securities and Exchange Commission ("SEC") is proposing rule amendments relating to disclosure and reporting requirements for smaller companies under the Securities Act of 1933 and the Securities Exchange Act of 1934. The SEC is proposing to extend the benefits of the current optional disclosure and reporting requirements for smaller companies to a much larger group of companies. The proposals would allow companies with a public float of less than \$75 million to qualify for the smaller company requirements, up from \$25 million for most companies today. The proposals also would combine for most purposes the "small business issuer" and "non-accelerated filer" categories of smaller companies into a single category of "smaller reporting companies." In addition, the proposals would maintain the current disclosure requirements for smaller companies contained in Regulation S-B, but integrate them into Regulation S-K.

The SEC's rules currently include two major categories of smaller companies—"small business issuers" and "non-accelerated filers"—for purposes of scaling disclosure and reporting requirements to the needs of smaller companies and their investors. These two categories of smaller companies are defined as follows:

"Small business issuers" essentially are companies with both a public float and revenues of less than \$25 million. Of the 11,898 companies that filed annual reports under the Exchange Act in 2006, 3,749 had a public float of less than \$25 million.

"Non-accelerated filers" are companies that do not qualify as "large accelerated filers" or "accelerated filers" under our rules. Non-accelerated filers essentially are companies with a public float of less



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than \$75 million. Of the 11,898 companies that filed annual reports under the Exchange Act in 2006, 4,976 had a public float of less than \$75 million.

The scaled disclosure and reporting requirements available to these smaller companies apply to companies filing registration statements covering offerings of securities under the Securities Act and companies required to file annual and other reports under Exchange Act Sections 13 and 15(d).

“Small business issuers” are eligible to make required disclosures based on the requirements in Regulation S–B, which sets forth disclosure standards for small business issuers that must file documents with the Commission under the Securities Act, Exchange Act, or Trust Indenture Act. In most cases, small business issuers may make disclosures based on Regulation S–B only if they use one of the forms we have designated with the letters “SB”— Form 10–SB, Form 10–QSB, Form 10–KSB, Form SB–1, and Form SB–2.

One of the most important provisions of Regulation S–B is Item 310, which governs the form, content, and preparation of financial statements for companies that provide disclosure pursuant to Regulation S–B. The requirements in Item 310 of Regulation S–B are less detailed than the requirements in Regulation S–X, the regulation that governs the financial statements of most companies that do not rely on Regulation S–B. Regulation S–B also contains a number of disclosure requirements that are scaled to the characteristics of smaller companies, including requirements on executive compensation, related person transactions, and management’s discussion and analysis of financial condition and results or plan of operation.

### SEC Filing Requirements

	Non-accelerated filers	Accelerated filers	Large accelerated filers
Annual reports must be filed no later than:	90 days after fiscal year end	60 days after fiscal year end	75 days after fiscal year end
Quarterly reports must be filed no later than:	45 days after the end of each fiscal quarter	40 days after the end of each fiscal quarter	40 days after the end of each fiscal quarter

Non-accelerated filers also are treated differently with regard to the compliance dates applicable to the internal control over financial reporting provisions in Section 404 of the Sarbanes-Oxley Act of 2002.

The SEC’s proposals have three primary objectives, each of which is consistent with investor protection:

1. Expanding eligibility for our scaled disclosure and reporting requirements for smaller companies by making those requirements available to most companies with a public float of less than \$75 million;
2. Simplifying our rules for smaller companies by combining the two categories of small business issuers and non-accelerated filers into one category called “smaller reporting companies;” and
3. Simplifying and improving our disclosure and reporting rules for smaller companies by maintaining the Regulation S–B disclosure requirements for smaller companies but integrating them into the disclosure requirements in Regulation S–K.

The comment period for the SEC’s proposed changes ended on September 17, 2007, and is awaiting final approval by the SEC. For further details, please contact Joseph W. Beach, CPA.

## Asher Successfully Completes PCAOB Review

On November 6, 2007, the Public Company Accounting Oversight Board (PCAOB) submitted its inspection findings of Asher & Company, Ltd. We are proud to report that the PCAOB and its inspection team did not identify any audit performance issues in reviewing our audits of the financial statements of five issuers that warranted discussion in the draft report. Asher fully supports the mission of the PCAOB and its inspection process.

A copy of the inspection is available at [www.asherco.com](http://www.asherco.com).

