Simpson Thacher

Memorandum

SEC Proposes to Exclude Certain Smaller Reporting Companies From Accelerated and Large Accelerated Filer Definitions

May 15, 2019

On May 9, 2019, the SEC proposed amendments to the accelerated filer and large accelerated filer definitions to exclude companies that are eligible to be smaller reporting companies under the smaller reporting company revenue test.[1] The proposed rules are intended to provide cost savings to a subset of smaller companies by exempting them from the internal controls auditor attestation requirement. In addition, these companies would not be subject to accelerated or large accelerated filing deadlines for annual and quarterly reports filed with the SEC.

The proposed amendments would:

- Exclude from the accelerated and large accelerated filer definitions companies that are eligible to be smaller reporting companies and had no revenues or annual revenues of less than $100 million in the most recent fiscal year for which audited financial statements are available.
- Increase the transition thresholds for accelerated and large accelerated filers becoming a non-accelerated filer from $50 million to $60 million and for exiting large accelerated filer status from $500 million to $560 million.
- Add a revenue test to the transition thresholds for exiting both accelerated and large accelerated filer status.[2]

[1] *See* Smaller Reporting Company Definition, Release No. 33-10513 (June 28, 2018) [83 FR 31992 (July 10, 2018)].

[2] The smaller reporting company definition states that a company qualifies as a smaller reporting company if its annual revenues are less than $100 million and it has no public float or a public float of less than $700 million. In addition, the definition states, among other things, that a company that initially determines it does not qualify as a smaller reporting company because its annual revenues are $100 million or more cannot become a smaller reporting company until its annual revenues fall below $80 million. Therefore, under the proposed amendments, an accelerated filer would remain an accelerated filer until its public float falls below $60 million or its annual revenues fall below the applicable revenue threshold ($80 million or $100 million), at which point it would become a non-accelerated filer. A large accelerated filer would become an accelerated filer at the end of its fiscal year if its public float fell to $60 million or more but less than $560 million as of the last business day of its most recently completed second fiscal quarter and its annual revenues are not below the applicable revenue threshold ($80 million or $100 million). The large

The SEC is soliciting comments on these proposed amendments, which are due 60 days after publication of the proposal in the Federal Register, which is expected shortly.

If you have any questions or would like additional information, please do not hesitate to contact **Bradley P. Goldberg** at +1-212-455-2064 or bgoldberg@stblaw.com, **Shari A. Ness** at +1-212-455-2383 or shari.ness@stblaw.com, or any other member of the Firm's Public Company Advisory Practice.

accelerated filer would become a non-accelerated filer if its public float fell below $60 million or it meets the revenue test in the smaller reporting company definition. For a large accelerated filer to meet the smaller reporting company revenue test, generally, its public float would need to fall below $560 million as of the last business day of its most recently completed second fiscal quarter and its annual revenues would need to fall below the applicable revenue threshold ($80 million or $100 million).

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