

THE SEC ANNOUNCES SMALL COMPANY INITIATIVES

by Robert Brighton

In response to criticism that its regulatory efforts have adversely affected small public companies, the SEC announced interpretive guidance for compliance with its internal controls requirements at its May 23 Open Meeting. (See <http://www.sec.gov/news/press/2007/2007-101.htm> for more information.)

In addition, at the meeting, the SEC proposed:

- Amendments to increase the number of companies eligible for scaled disclosure and reporting requirements for "smaller public companies" (i.e., a company with an equity public float of less than \$75 million) by combining Regulation SB (the regulations applicable to "small business issuers") with Regulation S-K (the regulations applicable to all other public companies) and eliminating all "SB" forms substituting a "check the box" procedure;
- An exemption from Exchange Act registration for grants of compensatory stock options by non-reporting companies;
- Revisions to Regulation D (which provides safe harbors from the registration requirements of the Securities Act) to (i) add a new Regulation D safe harbor (Rule 507) for offers and sales of securities to "qualified purchasers" in which limited advertising would be permitted, (ii) shorten the integration safe-harbor from 6 months to 90 days, (iii) add the disqualification provisions (for "bad boy" acts) of Rule 505 to each of the other safe harbors from registration under the Securities Act and (iv) revise the definition of "accredited investor" to account for inflation;
- Revisions to Form D and mandated electronic filing of Form D;
- Amendments to Rule 144 (which provides an exemption for resales of securities from the registration requirements of the Securities Act) to shorten the holding period for restricted securities to decrease the general holding period from one year to 6 months (non-reporting companies would still have a one-year holding period) and permit non-affiliates of public companies to freely sell after six months (non-reporting companies after one year), as well as certain other changes including requesting comment on the possibility of combining Form 144 (the form required to disclose an intent to sell under Rule 144) and Form 4 (the form required to disclose purchases or sales of securities by certain insiders of a public company) filings; and
- Relaxation of eligibility requirements for use of shelf registration for primary offerings by companies with a public float below \$75 million.

For additional information visit <http://www.sec.gov/news/press/2007/2007-102.htm> or contact Rob Brighton Securities Law partner in the Corporate Law Practice Group.