

# LEGAL UPDATE

August 2007

## SEC PROPOSES RULES TO SIMPLIFY DISCLOSURE OBLIGATIONS OF SMALL PUBLIC COMPANIES

The Securities and Exchange Commission (SEC) recently proposed new rules which, if adopted, would simplify the reporting and disclosure obligations for smaller public companies under the Securities Act of 1933 and the Securities Exchange Act of 1934. The proposed rules seek to make a larger number of companies eligible to use the less stringent reporting requirements currently available to “small business issuers” under Regulation S-B and to eliminate Regulation S-B (and its special “SB” forms) in favor of integrating its rules into Regulation S-K.

Currently, companies with public float of less than \$25 million are eligible to take advantage of Regulation S-B and its less stringent reporting and financial disclosure requirements. Under the proposed rules, companies with public float of less than \$75 million or, if no public float exists, revenues below \$50 million, would be eligible to use the less stringent reporting requirements currently available under Regulation S-B, which will be integrated with Regulation S-K. An increase in the public float threshold to \$75 million would also allow companies currently designated as “non-accelerated” filers to be eligible for the more lenient reporting requirements. This expanded category of public companies, called “smaller reporting companies,” would initially consist of nearly 5,000 public companies, or 42% of all reporting companies. Foreign private issuers

would also be eligible for the scaled back reporting requirements. Asset-backed issuers and investment companies, however, would still be excluded from the category.

In making these proposed changes, one of the SEC’s goals is to ease reporting obligations for more companies by making a larger number of reporting companies eligible for scaled back reporting requirements which are considered to be easier and cheaper for smaller companies to comply with. Under the proposed rules, smaller reporting companies would use the same filing forms as larger public companies (e.g., Forms 10-K, 10-Q) and separate S-B forms (e.g., Forms 10-KSB, 10-QSB and SB-2) would no longer be used.

While the new rules may create some confusion as to filing requirements when the rules are initially integrated into Regulation S-K, the SEC has stated that it intends to create “clear and firm” rules during the transition period. The SEC will be accepting comments on this proposal through September 17, 2007.

If you have any questions regarding this legal update or the proposed rules, please contact an attorney in Pryor Cashman’s Securities and Corporate Finance Group.