

Client Alert.

September 17, 2010

SEC Eliminates Auditor Attestation Report from Internal Control Over Financial Reporting Requirements for Newly Public Companies and Smaller Public Companies

By Celeste Ferber

On September 15, 2010, the Securities and Exchange Commission issued a final rulemaking release that eliminates the requirement for newly public companies and smaller public companies (i.e., non-accelerated filers)¹ to include auditor attestation reports with respect to internal control over financial reporting in their annual reports. These amendments provide newly public companies and smaller public companies relief from the significant burden and expense of auditor attestation on their internal control over financial reporting.

The amendments conform certain SEC rules and regulations to amendments to the Sarbanes-Oxley Act that were effected by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”). Prior to the enactment of the Dodd-Frank Act, non-accelerated filers would have been required to include auditor attestation reports on internal control over financial reporting in annual reports filed with the SEC for fiscal years ending on or after June 15, 2010. The SEC also adopted conforming changes to its rules concerning management’s report on internal control over financial reporting, and concerning audit reports, to reflect the fact that attestation reports will not be required for non-accelerated filers. Non-accelerated filers will remain subject to the requirements of Section 404(a) of Sarbanes Oxley and related rules that require a management report on internal control over financial reporting in annual reports filed with the SEC. The new rules will take effect upon publication in the Federal Register.

The Rulemaking Release is available at: <http://www.sec.gov/rules/final/2010/33-9142.pdf>

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¹ “Non-accelerated filer” is not defined by SEC rules, but is used in the rule release to refer to a reporting company that does not meet the definition of either an “accelerated filer” or a “large accelerated filer.” Generally, “accelerated filers” are issuers with a public float of \$75 million or more, but less than \$700 million; “large accelerated filers” are issuers with a public float of greater than \$700 million. In addition, to qualify as either an “accelerated filer” or “large accelerated filer” an issuer must have been a reporting company for at least 12 months and have filed at least one annual report.

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