

ALERTS AND UPDATES

SEC Provides Relief for Non-Accelerated Filers from Auditor Attestation Report on Internal Control over Financial Reporting

September 22, 2010

In response to the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)¹ – which among other things, added a new section 404(c) to the Sarbanes-Oxley Act of 2002 (SOX)² – the U.S. Securities and Exchange Commission (SEC) has amended various of its rules and forms to conform them with section 404(c) of SOX, providing that section 404(b) of SOX does not apply to non-accelerated filers. These filers are neither "accelerated filers" nor "large accelerated filers," as those terms are defined in Rule 12b-2 under the Securities Exchange Act of 1934.

Section 404(c) essentially provides that a non-accelerated filer will not be required to include in the annual reports it files with the SEC an attestation report from its registered public-accounting firm on internal control over financial reporting. Prior to the enactment of the Dodd-Frank Act, a non-accelerated filer would have been required under section 404(b) of SOX to include such an attestation report, beginning with its first annual report filed for a fiscal year ending on or after June 15, 2010.

In addition to dispensing with the auditor attestation requirement for non-accelerated filers, the SEC has adopted new Item 308(a)(4) of Regulation S-K, which provides that disclosure of an attestation report is required only if an attestation report is included in the annual report. Finally, the SEC has amended Rule 2-02(f) of Regulation S-X to clarify that an auditor of a non-accelerated filer is not required to include in its audit report an assessment of the filer's internal control over financial reporting.

It is important to note, however, that all issuers, including non-accelerated filers, remain subject to section 404(a) of SOX and the corresponding rules of the SEC, which require an issuer's annual report to include a report by management – as opposed to an attestation report of the auditor – on the issuer's internal control over financial reporting, including an assessment by management on the effectiveness of such internal control.

About Duane Morris

Duane Morris has an online **Financial Services Reform Center** – www.duanemorris.com/FinancialReform – which includes videos and the firm's comprehensive series of *Alerts* analyzing the provisions of the Dodd-Frank Act and emerging policies, as well as links to relevant government websites. Duane Morris' attorneys are monitoring the rules and regulations released under the Dodd-Frank Act, as well as the regulatory agencies' interpretive guidance. For [additional Alerts](#) on these and other topics, please revisit www.duanemorris.com/FinancialReform.

For Further Information

If you have any questions on the new relief for non-accelerated filers from the requirement that auditor attestation reports be included in their annual reports on Form 10-K, discussed above, please contact any [member](#) of the [Securities Law Practice Group](#) or the lawyer in the firm with whom you are regularly in contact.

Notes

1. Section 989(G) of the Dodd-Frank Act, Pub. L. No. 111-203 (July 21, 2010).
2. 15 U.S.C. §§ 7201 et seq.