

LEGAL UPDATE

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SEC ADOPTS AMENDMENTS TO RULE 144 AND NEW RULES TO SIMPLIFY DISCLOSURE BY SMALL PUBLIC COMPANIES

On November 15, 2007, the Securities and Exchange Commission (the "SEC") adopted amendments to Rule 144 and new rules intended to simplify the reporting and disclosure obligations for smaller public companies.

RULE 144

The amendments to Rule 144, a "safe harbor" exemption from the registration of securities under the Securities Act of 1933 for sales of restricted securities, shorten the holding period of restricted securities of reporting companies held by non-affiliates and affiliates. For non-affiliates, the holding period is reduced from one year to six months, after which the non-affiliate may make unlimited resales provided that, until the securities have been held for one year, the reporting company continues to file reports under the Exchange Act of 1934. The holding period for affiliates of reporting companies is reduced from one year to six months for limited resales of restricted securities.

Under the amendments to Rule 144, the holding period of restricted securities of companies that are not subject to Exchange Act reporting requirements will continue to be one year for both non-affiliates and affiliates. Non-affiliates of non-reporting companies can freely sell after the one year holding period; affiliates remain subject to certain volume limitations.

Among other changes, the amendments raise the thresholds that trigger Form 144 filing requirements for affiliates' sales from 500 shares or \$10,000 to 5,000 shares or \$50,000. Holders who are non-affiliates of the issuer are no longer required to file a Form 144. The new rules become effective February 15, 2008.

SIMPLIFIED DISCLOSURE

The new disclosure rules are intended to simplify the reporting and disclosure obligations for smaller public companies under the Securities Act of 1933 and the Exchange Act of 1934. The new rules make a larger number of companies eligible to use the less stringent reporting requirements previously available to "small business issuers" under

regulation S-B and eliminate Regulation S-B, and its special "SB" forms, in favor of integrating its rules into Regulation S-K.

Previously, companies with a public float of less than \$25 million were eligible to take advantage of Regulation S-B and its less stringent reporting and financial disclosure requirements. Under the new rules, companies with a public float of less than \$75 million or, if no public float exists, revenues below \$50 million, are eligible to use the less stringent reporting requirements previously available under Regulation S-B, which is now integrated with Regulation S-K. An increase in the public float threshold to \$75 million also allows 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," will initially consist of nearly 5,000 public companies, or 42% of all reporting companies, according to the SEC. Foreign private issuers are also eligible for the scaled back reporting requirements, however, asset-backed issuers and investment companies are still excluded from the category.

In making these changes, one of the SEC's goals is to ease reporting obligations for more companies by increasing the 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 new rules, smaller reporting companies will 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) will no longer be used.

While the new rules may create some confusion as to filing requirements as the rules are initially integrated into Regulations S-K, the SEC has stated that it intends to create "clear and firm" rules during the transition period. These new rules become effective 30 days after they are published in the Federal Register.

If you have any questions regarding the proposed rules, please contact an attorney with Pryor Cashman's Securities and Corporate Finance Group.

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The foregoing is merely a discussion of the new SEC rules and is not intended to provide legal advice. If you would like to learn more about this topic or about how Pryor Cashman can serve your legal needs, please contact us.