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SEC rule changes will provide certain smaller issuers relief from auditor attestation requirement

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On March 12, 2020, the SEC adopted rule changes to exempt certain smaller issuers from the auditor attestation requirement under Section 404(b) of the Sarbanes-Oxley Act of 2002. This alert provides an overview of these changes.

Amended definitions for “accelerated filer” and “large accelerated filer”

“Accelerated filers” and “large accelerated filers” as defined in SEC Rule 12b-2 are required to have an outside auditor attest to the adequacy of the issuer’s internal control over financial reporting (ICFR). Under the amended rules, smaller reporting companies with annual revenues of under \$100 million will be excluded from these definitions and will no longer be subject to the auditor attestation requirement. Business development companies will also be excluded from the “accelerated filer” and “large accelerated filer” definitions under analogous circumstances.

Issuers affected by the rule changes will still need to establish and maintain effective ICFR, and their principal executive and financial officers will be required to certify that they are responsible for and have assessed the effectiveness of the issuer’s ICFR. In addition, these issuers will still be subject to a financial statement audit by an independent auditor, and even without the attestation requirement, an independent auditor is required to consider ICFR in the performance of such an audit.

Amended transition thresholds and other changes

The amendments increase the threshold for accelerated and large accelerated filers to become a non-accelerated filer from \$50 million in public float to \$60 million, and they increase the threshold to exit from large accelerated filer status from \$500 million to \$560 million. The amendments also add a revenue test to the transition thresholds for exiting from accelerated and large accelerated filer status. Finally, the amendments add a check box to the cover pages of Forms 10-K, 20-F, and 40-F indicating whether an ICFR auditor attestation is included in the filing.

Looking ahead

The new rules are effective 30 days after they are published in the *Federal Register*, and will apply to annual report filings due on or after the effective date. The SEC has estimated that as a result of the amendments, 527 additional issuers will be classified as non-accelerated filers, a slight majority of which are in the pharmaceutical products and banking industries.

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