

Dodd-Frank Act Permanently Exempts Non-Accelerated Filers From SOX Section 404(b)'s Auditor Attestation Requirement

Section 404(a) of the Sarbanes-Oxley Act of 2002 ("SOX") requires that each annual report required to be filed by a company pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") contain its management's assessment of the effectiveness of the company's internal control structure and procedures for financial reporting. SOX Section 404(b) requires that the company's public accounting firm attest to, and report on, management's assessment of the company's internal controls. Because of the financial burden to smaller companies, the Securities and Exchange Commission (the "SEC") repeatedly extended the time by when smaller reporting companies would have to comply with Section 404(b). In its most recent extension, the SEC deferred compliance with Section 404(b) until the filing of an annual report for a fiscal year ending on or after June 15, 2010.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") permanently exempts from Section 404(b) any company that is neither an accelerated filer (a public company with a public float of at least \$75 million and less than \$700 million) nor a large accelerated filer (a public company with a public float of at least \$700 million). A company's "public float" is the aggregate market value of the company's common equity held by non-affiliates. Thus, non-accelerated filers, including, among others, smaller reporting companies (as defined in Rule 12b-2 of the Exchange Act), will not be required to provide an auditor attestation in their annual reports. Non-accelerated filers are still required to comply with Section 404(a).

The Dodd-Frank Act also requires that the SEC conduct a study to determine (i) how it could reduce the burden of compliance with Section 404(b) for companies with market capitalizations between \$75 million and \$250 million and (ii) whether any methods of reducing the compliance burden, or providing a complete exemption for such companies, would encourage companies to list on exchanges in the United States in their initial public offerings. The SEC is required to deliver the results of such study to Congress by April 2011.

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