Public Statement

Statement on Amendments to Reduce Unnecessary Burdens on Smaller Issuers by More Appropriately Tailoring the Accelerated and Large Accelerated Filer Definitions

Commissioner Hester M. Peirce

March 12, 2020

I am happy to support the amendments to the accelerated filer and large accelerated filer definitions, which exempt certain low-revenue smaller reporting companies (SRCs) from the requirements of Section 404(b). The final amendments also exclude certain business development companies (BDCs) from the definitions, which furthers our worthwhile efforts to provide BDCs parity with operating companies. I am grateful to the Chairman, Director Bill Hinman, and the staff in the Divisions of Corporation Finance, Economic and Risk Analysis, and Investment Management, the Offices of Chief Accountant and General Counsel, and others throughout the building for their efforts on this release.

In my ideal regulatory regime, the Section 404(b) requirement to obtain an auditor attestation to management's assessment of its internal controls over financial reporting (ICFR) would be optional for every company. If concerned or in need of additional comfort about the companies' internal controls, investors could demand that management secure an ICFR auditor attestation. If management refused, then investors would demand compensation for bearing increased risk or sell their holdings. The market is a powerful regulator, one that we are often too quick to dismiss.[1]

My ideal regime, however, is not consistent with the directive that we received from Congress when it enacted Section 404(b) or amended Section 404(b) in the JOBS Act to exempt emerging growth companies. Accepting the statutory framework within which we may amend our rules to tailor appropriately the types of issuers subject to Section 404(b), I support today's amendments. I nevertheless continue to be disappointed that we have not fully re-aligned the SRC and non-accelerated filer definitions. Candidly, however, the comment file is not replete with support for my preferred approach.[2]

Nevertheless, the amendments provide welcome relief for SRCs that had annual revenues of less than $100 million in the most recent fiscal year and BDCs in analogous circumstances. To make our public markets more attractive for companies that have their most vibrant years of growth ahead of them, we need to eliminate unnecessary costs of being public. The Section 404(b) compliance costs saved by these SRCs and BDCs now will be available for uses that are more productive. I am encouraged by indications in the comment file that the amendments will enable, for example, biotech companies to invest more in research and development and

community banks to make more loans to local businesses.[3] A company trying to develop a vaccine for a fast-spreading virus, something that is now on all of our minds, will be able to pour resources and—importantly—management's time and attention into that effort rather than into obtaining an internal controls audit. For some companies, of course, an external audit of internal controls might be the best use of resources. Our rule—which includes a check box on the front page of annual reports to indicate whether there is an ICFR auditor attestation—makes it easy for investors to decide whether they want to invest in companies that have chosen not to devote resources to internal controls audits.

Issuers newly exempt from Section 404(b) compliance will remain subject to a financial statement audit by an independent auditor. The release notes a number of areas where a financial statement audit involves assessments similar to or overlapping with those required by an internal controls audit. I am concerned that auditors accustomed to being compensated handsomely for internal controls audits may have a financial incentive to increase certain assessments under the financial statement audit for these newly exempt issuers. One can imagine a scenario in which cost savings resulting from the rule merely shift to increased costs associated with the financial statement audit, and management's time and attention are re-directed to new evaluations in connection with the financial statement audit. The Public Company Accounting Oversight Board (PCAOB), through its inspection process, will continue to have the ability to affect the way that auditors conduct financial statement audits and internal controls audits. Moving forward, the PCAOB may need to consider whether auditors of financial statements for companies that take advantage of today's exemption are folding a back-door internal controls audit into their financial statement audit.

In sum, today's rule is a balanced one. It does not achieve all I would have liked it to accomplish, but it also is one step in our efforts to ensure that investors have the information they need and the opportunities they want to participate in the growth of promising companies.

Thank you to all parties that took the time to comment on the proposal. Engagement from the public on our rulemakings is critical to ensuring that we strike the right balance and reach an appropriate outcome, even when we fall short of the ideal outcome.

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[1] For a discussion of an example of how these market dynamics can work effectively, *see* comments of Charles Crain, Transcript for SEC Small Business Capital Formation Advisory Committee Meeting (Aug. 13, 2019), at page 141 (noting that the JOBS Act permitted EGCs flexibility with respect to accounting standards, but market forces have caused EGCs typically not to take advantage of this flexibility), *available at* https://www.sec.gov/info/smallbus/acsec/sbcfac-transcript-081319.pdf ("Transcript").

[2] Some commenters, however, did favor re-aligning the two definitions. *See e.g.,* Letter from Christopher Iacovella, Chief Executive Officer, American Securities Association to File No. S7-06-19 (July 29, 2019), https://www.sec.gov/comments/s7-06-19/s70619-5886362-188810.pdf; Letter from Shaun A. Burke, President and Chief Executive Officer, Guaranty Federal Bancshares, Inc., to File No. S7-06-19 (July 23, 2019), https://www.sec.gov/comments/s7-06-19/s70619-5866301-188648.pdf ("Guaranty Letter"); Letter from Chris Netram, Vice President, Tax & Domestic Economic Policy, National Association of Manufacturers, to File No. S7-06-19 (July 26, 2019), https://www.sec.gov/comments/s7-06-19/s70619-5876908-188689.pdf; *and* Letter from John A. Zecca, Senior Vice President, General Counsel North America, Nasdaq Inc., to File No. S7-06-19 (July 29, 2019), https://www.sec.gov/comments/s7-06-19/s70619-5884617-188791.pdf. Moreover, although the Small Business Advisory Committee did support the approach we are adopting today, there was some interest in exploring the broader approach of re-aligning the SRC and non-accelerated filer definitions. *See* discussion in Transcript *supra* note 1 at 181-200.

[3] *See* Letter from Cameron Arterton, Vice President, Biotechnology Innovation Organization, to File No. S7-06-19 (July 29, 2019), https://www.sec.gov/comments/s7-06-19/s70619-5881309-188765.pdf *and* Guaranty Letter, *supra* note 2.