BPM

Are You Monitoring Your SEC Filing Status?

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As public companies grow, they may move from one filing status or issuer category to another, which can trigger accelerated filing requirements, additional disclosures and an audit of internal controls over financial reporting. It's critical, therefore, for companies to be prepared to meet these new obligations when they arise.

SEC filing categories

Public companies generally fall into the following four filing categories:

1. Large accelerated filers have a public "float" (the amount of shares available to the public for trading) of more than $700 million and meet certain other requirements.
2. Accelerated filers have a public float between $75 million and $700 million and meet other requirements.
3. Non-accelerated filers have a public float of less than $75 million and aren't otherwise required to accelerate their filing deadlines.
4. Smaller reporting companies (SRCs) are non-accelerated filers that meet certain other requirements, including annual revenues under $50 million if their public float is zero.

The SEC measures public float as of the last business day of a company's second fiscal quarter and bases it on nonaffiliated ownership only. (Note: The SEC is considering increasing the public float threshold for SRCs and non-accelerated filers.)

Effect of changing status

A public company should evaluate its filing status each fiscal year. If, for example, a non-accelerated filer becomes an accelerated or large accelerated filer, the deadline for its SEC Form 10-K (which provides a comprehensive overview of the company's business and financial condition, including audited financial statements) for that fiscal year will be accelerated. In addition, it will become subject to Section 404(b) of the Sarbanes-Oxley Act (SOX), which requires independent auditor attestation regarding the effectiveness of the company's internal controls over financial reporting.

SRCs, in addition to having deferred filing deadlines, are entitled to take advantage of scaled-back disclosures. When an SRC becomes an accelerated or large accelerated filer, there's a grace period before it must comply with "larger reporting company" (LRC) disclosures, but the SOX Sec. 404(b) requirement kicks in right away.

Emerging growth companies

The Jumpstart Our Business Startups (JOBS) Act of 2012 created the emerging growth company (EGC), a new issuer category. Generally, an EGC is a new public company that has gross revenues under $1 billion in its most recent fiscal year and meets certain other requirements. EGCs enjoy a variety of benefits during their first five years of existence, including scaled-back disclosures and exemption from SOX Sec. 404(b). A company can lose EGC status earlier, however, if:

1. Its gross revenues grow beyond $1 billion,
2. It issues more than $1 billion in nonconvertible debt securities over a rolling three-year period, or
3. It becomes a large accelerated filer.

A company that ceases to be an EGC must begin complying with SOX Sec. 404(b), except for non-accelerated filers, which are exempt from that requirement unless they become accelerated or large accelerated filers. (The SEC is considering extending the exemption for certain companies.)

Be prepared

It's a good idea to re-evaluate your company's status well before the end of each fiscal year, and ideally shortly after your second quarter close. If you anticipate a change in status, you'll have ample time to prepare for new filing, disclosure and audit requirements.