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July 17, 2019

Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via Email to rule-comments@sec.gov

Re: File Number S7-06-19

Amendments to the Accelerated Filer and Large Accelerated Filer Definitions

Dear Office of the Secretary:

Grant Thornton LLP appreciates the opportunity to comment on the Securities and Exchange Commission's (SEC or Commission) May 9, 2019 Proposed Rule Amendments to the Accelerated Filer and Large Accelerated Filer Definitions (the Proposal). We are providing our firm's perspective gained primarily from serving public companies as independent accountants, including interaction with the SEC staff in this capacity. We encourage the Commission to continue its outreach to investors, registrants, and other stakeholders in future rulemaking activity on this topic.

In preparing our comments, we considered the Proposal's objective to promote capital formation for certain low-revenue companies without significantly affecting the utility of the impacted issuers' financial reporting for investors. As noted¹ in the Proposal, the amendments would result in an estimated 539 issuers transitioning to non-accelerated filer status. As a result, these issuers would no longer be subject to the required auditor attestation on internal control over financial reporting (ICFR) applicable to accelerated filers. Our comments focus on the proposed expansion of the population of issuers that would no longer be subject to the auditor attestation on ICFR.

Benefits of the auditor attestation on ICFR

Effective ICFR fosters investor protection by promoting the reliability of external financial reporting. In our experience, smaller issuers often have reduced access to resources such as accounting personnel and information technology systems, which could lead to a higher likelihood that these companies experience ineffective ICFR. From 2014 to 2018, 40.1 percent of non-accelerated filers on average reported²

¹ Proposed Rule, Amendments to the Accelerated Filer and Large Accelerated Filer Definitions, page 59.

² Proposed Rule, Amendments to the Accelerated Filer and Large Accelerated Filer Definitions, Table 9, "Percentage of issuers reporting ineffective ICFR," page 55.

ineffective ICFR, compared to 8.8 percent and 4.1 percent of accelerated and large accelerated filers, respectively, during that same time period. The percentage of issuers reporting³ consecutive years of ineffective ICFR in management's report is also significantly higher for non-accelerated filers compared to the percentage for accelerated and large accelerated filers. Based on our experiences and the data cited in the Proposal, we believe the low-revenue issuers likely to be impacted by the Proposal are also more likely to experience difficulty in establishing and maintaining effective ICFR.

Further, we believe the auditor attestation on ICFR facilitates the identification and disclosure of material weaknesses by promoting increased management accountability, as well as potentially exposing management to additional expertise regarding methodologies to evaluate the effectiveness of ICFR. Auditor involvement may also lead to more timely identification of deficiencies and significant deficiencies, thus reducing the likelihood of a future material weakness. As the SEC staff has previously noted,⁴ academic studies have indicated that regulations not requiring auditor involvement in control testing may be less effective in promoting accurate disclosure of deficiencies in ICFR than those that require auditor reporting. This increased rigor around ICFR provided by the auditor attestation requirement benefits investors not only by improving the reliability of financial reporting, but also by protecting the company from the potential costs associated with a material financial statement error, such as litigation or restatement efforts.

Restatement rates are also an important indicator of the benefits of the auditor attestation on ICFR. The 2013 Government Accountability Office (GAO) report, "Internal Controls: SEC Should Consider Requiring Companies to Disclose Whether They Obtained an Auditor Attestation," found⁵ lower restatement rates in companies that were not exempt from the auditor attestation on ICFR compared to those that were exempt. This finding is consistent with findings reported by other studies cited⁶ in the GAO report. While we acknowledge that the analysis⁷ by revenue category included in the Proposal indicates that restatement rates are lower in companies with less than \$100 million in revenue, the same analysis also demonstrates that restatements are also less frequent for such companies when an auditor attestation on ICFR is required. For example, Table 14 of the Proposal indicates that among

³ Proposed Rule, Amendments to the Accelerated Filer and Large Accelerated Filer Definitions, Table 10, "Percentage of issuers reporting consecutive years of ineffective ICFR in management report, by 2017 filer status," page 56.

⁴ "Study and Recommendations on Section 404(b) of the Sarbanes-Oxley Act of 2002 For Issuers with Public Float Between \$75 and \$250 Million," page 97.

⁵ "Internal Controls, SEC Should Consider Requiring Companies to Disclose whether They Obtained an Auditor Attestation," Figure 2, "Percentage of Exempt and Nonexempt Companies That Restated Their Financial Statements, 2005-2011."

⁶ "Internal Controls, SEC Should Consider Requiring Companies to Disclose whether They Obtained an Auditor Attestation," footnote 31.

⁷ Proposed Rule, Amendments to the Accelerated Filer and Large Accelerated Filer Definitions, Table 14, "Percentage of issuers issuing restatements by year of restated financials, by revenue category," page 99.

issuers with less than \$100 million in revenue, the average restatement rate for the period from 2014 to 2016 for accelerated filers, excluding emerging growth companies (EGCs), was 6.2 percent compared to 8.2 percent for non-accelerated filers, excluding EGCs.

For the reasons described above, we believe the auditor attestation on ICFR is an important element of investor protection that promotes accurate ICFR disclosures by management, increases the effectiveness of ICFR, and reduces the rate of material misstatements. We believe the proposal would reduce the level of protection afforded to investors in the impacted issuers that would no longer be required to obtain an auditor attestation on ICFR. Accordingly, we do not support the proposed amendments to exclude certain low revenue issuers that qualify to be smaller reporting companies from the definition of accelerated filer and large accelerated filer.

Other considerations

We appreciate the Commission's innovative proposal to introduce a revenue test to the definitions of accelerated filer and large accelerated filer, which would potentially reduce the complexity of SEC requirements by increasing the overlap between the populations of smaller reporting companies and non-accelerated filers. However, we are not certain that revenue is an appropriate measure of investor risk in all cases, as an issuer could have a relatively low amount of revenue but still a large market cap and thus greater investor exposure. While it may be reasonable to evaluate the \$75M public float level to be considered an accelerated filer, simply due to inflation and the passage of time since the criteria was enacted, we encourage the Commission to consider investor feedback regarding the population of issuers for which the auditor attestation on ICFR should be required.

The Proposal notes⁸ an estimated average cost savings of \$210,000 per affected issuer per year if enacted, \$110,000 of which is due to the estimated reduction in external audit fees. We caution that even when an auditor attestation on ICFR is not required, professional standards still require⁹ the auditor to obtain an understanding of ICFR. Further, the balance of audit evidence obtained from control and substantive test work may vary widely from issuer to issuer. In some situations, a reduction in audit evidence from control test work may result in an increase in substantive audit test work. While there likely would be some cost reduction by eliminating the requirement to obtain an auditor attestation on ICFR, we believe it is difficult to quantify that amount consistently across issuers. Therefore, the actual cost impact may vary widely among affected issuers.

Recommendations

Consistent with the first recommendation from the SEC staff's 2011 "Study and Recommendations on Section 404(b) of the Sarbanes-Oxley Act of 2002 For Issuers

⁸ *Proposed Rule, Amendments to the Accelerated Filer and Large Accelerated Filer Definitions*, pages 77-80.

⁹ PCAOB Audit Standard 2110, *Identifying and Assessing Risks of Material Misstatement*, paragraphs .18 to .40.

with Public Float Between \$75 and \$250 Million,” we recommend that the Commission maintain the existing investor protections of Section 404(b) for accelerated filers. We do not support the proposed amendments to exclude certain low revenue issuers that qualify as smaller reporting companies from the definition of accelerated filer and large accelerated filer.

In addition, we believe investors may place undue reliance on management’s report when it is not accompanied by an auditor’s attestation. As described above, auditor involvement may increase the reliability of management’s disclosures about ICFR. While there is a significant number of filing statuses and various scaled disclosures available to each type of issuer, we believe it may be difficult for some investors to easily determine which issuers have, and those that have not, obtained an ICFR audit simply by looking at the filing status listed on the cover page of an annual report. Further, in many situations, SEC rules currently do not require management to clearly disclose in its report on ICFR whether an auditor attestation on ICFR was obtained. In many cases, the financial statement audit report may be the only location in an annual report where the lack of an audit of ICFR is clearly disclosed. In our view, the lack of an audit of ICFR is one of the more impactful reporting accommodations available under U.S. securities laws. Should the Commission proceed with these amendments as proposed, further expanding the population of issuers that are not subject to reporting under Sarbanes-Oxley Section 404(b), we recommend that the Commission require management to clearly disclose that its ICFR is not audited, either through the use of a checkbox on the cover page of the SEC filing and/or in management’s report on ICFR. The checkbox and/or disclosure would apply to both issuers already exempt from the auditor attestation on ICFR, as well as to those newly eligible for the accommodation under any future final rule.

We would be pleased to discuss our comments with you. If you have any questions, please contact Bert Fox, National Managing Partner of Professional Standards, at Bert.Fox@us.gt.com or 312-602-9080.

Sincerely,

/s/ Grant Thornton LLP