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SEC Amends Rules On Stock Resales, Smaller Company Disclosures And Stock Options

The U.S. Securities and Exchange Commission approved significant changes this month aimed at updating and improving certain methods of raising capital and various disclosure and reporting requirements for smaller companies. Specifically, the SEC approved amendments to Rules 144 and 145 under the Securities Act of 1933 (including shortening the holding periods required for the resale of restricted securities), modified certain reporting and disclosure requirements for smaller companies that were previously included in Regulation S-B, and created two new exemptions for compensatory employee stock options, all as further described below.

Rule 144

Below are key changes to Rule 144 for U.S. public companies:

- The minimum holding period has been decreased from one year to six months for resales of restricted securities;
- After satisfying a six-month holding period, non-affiliates may freely resell restricted securities if the issuer satisfies the Rule 144(c) current public information requirement and may freely resell restricted securities after a one-year holding period without satisfying that requirement;
- After a six-month holding period, affiliates of the issuer may resell their restricted securities if the Rule 144 conditions relating to current public information, volume limitation, manner of sale (for equity securities only) and the filing of a Form 144 are satisfied;
- For affiliates' sales, the SEC amended the manner of sale requirements for equity securities, while eliminating the requirements for debt securities (and decreased the volume limitations for debt securities);

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- For affiliates' sales, the thresholds that trigger a Form 144 filing requirement have been raised from 500 shares or \$10,000 to 5,000 shares or \$50,000. The Form 144 notice requirement has been eliminated for non-affiliates.
- The SEC also streamlined the Preliminary Note and other parts of Rule 144 and codified certain staff interpretations relating to the Rule.

Rule 145

The amendments to Rule 145 include:

- Elimination of the “presumed underwriter” provisions except with regards to transactions involving “blank check” or “shell” companies. Under the amendment, affiliates of a target in a business combination may more readily resell the issuer securities received as consideration; and
- Changes to Rule 145 resale restrictions to conform to the amendments to Rule 144 discussed above.

Reporting and Disclosure Requirements for Smaller Companies

The SEC has adopted new rules under both the Securities Act of 1933 and the Securities Exchange Act of 1934 that will increase the number of companies eligible to comply with the reporting and disclosure requirements currently in place for “small business issuers” and to simplify the reporting process. The new rules include:

- Creation of a new category of issuers called “smaller reporting companies,” which includes most companies with a public float below \$75 million or, if a company does not have a calculable public equity float, having revenues less than \$50 million in the last fiscal year;
- Expansion of eligibility for reduced reporting and disclosure requirements for smaller companies by allowing the newly defined category to use the scaled-down disclosure requirements;
- Elimination of Regulation S-B and integration of those provisions into Regulation S-K and Regulation S-X. Current S-B filers would have the option to continue using the S-B forms for periodic reports until they file their next annual report on Form 10-KSB or Form 10-K;
- Permitting smaller public companies to elect to comply with scaled-down financial disclosure and non-financial disclosure on an item-by-item or “a la carte” basis; and
- Permitting all foreign companies to qualify as “smaller reporting companies” if they choose to file on domestic company forms and provide financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles.



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New Exemptions to Section 12(g) under the Exchange Act

The new exemptions to the Exchange Act provide that:

- Private issuers are exempt from Exchange Act Section 12(g) registration for compensatory employee stock options issued under employee stock option plans, subject to the issuer furnishing certain risk factor and financial information to the option holders; and
- Issuers that are required to file reports under the Exchange Act pursuant to Exchange Act Section 13 or Section 15(d) are exempt from Section 12(g) registration for compensatory employee stock options, as option holders will have access to risk factor and financial information in the issuer's SEC filings.

Effectiveness

The above changes will become effective 60 days after publication in the Federal Register in the case of Rules 144 and 145, 30 days after publication in the Federal Register for the reporting and disclosure requirements for smaller companies, and as soon as published in the Federal Register for the new exemptions under Section 12(g) described above. The amendments approved by the SEC represent significant changes and should be of particular assistance to companies engaged in private placements, smaller public companies, and pre-IPO issuers of stock options.

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