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July 26, 2019

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-06-19: *Amendments to the Accelerated Filer and Large Accelerated Filer Definitions*

Dear Ms. Countryman:

The National Association of Manufacturers – the largest manufacturing trade association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states – appreciates the opportunity to provide comment to the Securities and Exchange Commission on File No. S7-06-19, the Commission's proposed amendments to the accelerated filer and large accelerated filer definitions.

Manufacturing is a capital-intensive industry, requiring significant investments for equipment purchases and research and development. Manufacturers often turn to the capital markets to finance these pro-growth activities, which set the stage for economic expansion, innovation, and job creation. By offering shares to the public, manufacturers provide every American with the opportunity to participate in the industry's success, often through shares held by mutual funds, 401(k) accounts, and pension plans.

The NAM applauds the SEC for proposing reforms to the non-accelerated filer definition that would enable the public markets to better support the growth of small businesses. By seeking to right-size the regulatory burdens faced by these emerging companies, while continuing to provide appropriate protections for investors, the proposed rule would enhance the capital formation potential of the public market and ensure that lower-revenue manufacturers can focus their capital on growing their business.

However, the NAM encourages the SEC to go further and fully align the non-accelerated filer definition with the smaller reporting company (SRC) definition rather than limiting the scope of the proposed rule just to a subset of SRCs. Aligning the two definitions – as had been the case prior to the Commission's 2018 SRC reforms – would provide regulatory certainty to small businesses and reduce the burden on all SRCs.

1.) SOX Section 404(b) is costly for smaller companies while providing limited benefits to investors in SRCs.

Sarbanes-Oxley (SOX) Section 404, enacted in the wake of the accounting scandals of the early 2000s, provides for investor protection via a requirement that public companies adopt a set of internal financial controls designed to reduce the likelihood of fraud and malfeasance. Manufacturers strongly support the requirement in Section 404(a) that all publicly traded companies establish and maintain these internal controls, which must be assessed for effectiveness by management each

year. It is important to note that no exemption from Section 404(b) would amend Section 404(a) in any way nor exempt any company, regardless of size, from the obligation to maintain effective internal controls.

SOX Section 404(b) requires an external audit of a company's internal controls over financial reporting, which represents a significant cost burden for small public companies. For a small manufacturer with few employees and one product line – even if that product generates significant revenue – investors are unlikely to see a substantial benefit from the SOX 404(b) audit given the limited risk that the company poses to its investors.

Congress has recognized Section 404(b)'s nature as a cost-driver by providing exemptions from the audit requirement for certain small companies that would benefit from a reduced regulatory burden and pose limited risk to investors. For example, the Dodd-Frank Act[1] created the exemption for non-accelerated filers, and the JOBS Act exempted companies below $1 billion in revenue for their first five years on the market.[2] Amendments to the exemption from the Section 404(b) audit requirement have also been recommended by the SEC Advisory Committee on Small and Emerging Companies[3] and the SEC Government-Business Forum on Small Business Capital Formation[4] numerous times over the last several years.

Striking the balance between capital formation and investor protection is a key test for any requirement that would fall on small public companies. Capital spent on compliance burdens is diverted from R&D and job creation; absent a corresponding investor benefit, these funds are not being well used to grow the company and increase investor returns. The status quo for Section 404(b) compliance does not strike this balance as effectively as it could, given that only companies with a public float below $75 million are exempt from the external audit requirement. As such, the NAM applauds the SEC for proposing expansions to the non-accelerated filer definition that governs the exemption from Section 404(b). Further, we are encouraged that the SEC is looking to the recently expanded SRC definition to guide its proposed non-accelerated filer reforms.

2.) The NAM supports the proposed rule's expansion of the non-accelerated filer definition to include low-revenue SRCs.

The proposed rule would broaden the definition of non-accelerated filer (currently limited to companies with a public float below $75 million) to include any company with annual revenues below $100 million, provided the company does not become a large accelerated filer by exceeding $700 million in public float. In response to the SEC's 2016 SRC proposal, the NAM encouraged the Commission to adopt an expanded Section 404(b) exemption "in order to relieve small companies of a costly compliance burden and to harmonize the non-accelerated filer and SRC definitions." As such, we applaud the SEC for taking steps to expand the non-accelerated filer definition and thus increase the universe of small businesses exempt from the costly external audit requirement in SOX Section 404(b). This change, once finalized, will preserve capital for low-revenue businesses and allow them to focus on growth rather than compliance. However, the SEC still has further to go to fully harmonize the non-accelerated filer and SRC definitions.

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[1] P.L. 111-203, the Dodd–Frank Wall Street Reform and Consumer Protection Act.

[2] P.L. 112-106, the Jumpstart Our Business Startups Act.

[3] The Advisory Committee recommended in both 2013 (https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-smaller-public-co-ltr.pdf) and 2015 (https://www.sec.gov/info/smallbus/acsec/acsec-recommendations-expanding-simplified-disclosure-for-smaller-issuers.pdf) that companies with public float up to $250 million qualify for the SOX 404(b) exemption.

[4] The Small Business Forum has recommended each year since 2009 that the public float ceiling for the SOX 404(b) exemption be raised to either $250 million (2009-2010; 2013-2018) or $500 million (2011-2012). https://www.sec.gov/info/smallbus/sbforumreps.htm.

3.) The NAM urges the SEC to broaden the proposed rule and include all SRCs in the non-accelerated filer definition.

In 2018's final rule implementing an expansion of the SRC definition, the SEC noted that any regulation with a fixed compliance cost "typically burdens smaller registrants disproportionately" and thus that the cost savings created by the amendments included in the rule would be "particularly helpful for those registrants." The SRC rule applied two distinct approaches to identify "smaller registrants" newly eligible for reduced compliance costs: public float and revenue. The new SRC definition, no longer limited to just companies below $75 million in public float, now encompasses A.) any company below $250 million in public float, as well as B.) any company with annual revenues below $100 million, provided it does not become a large accelerated filer by exceeding $700 million in public float.

The proposed non-accelerated filer rule, meanwhile, only looks to the SRC definition's revenue component to identify smaller registrants. The proposing release solicits comment on this point, asking whether the SEC should "instead exclude all SRCs from the accelerated and large accelerated filer definitions." The NAM strongly believes that *all* SRCs – including those that qualify solely via public float – should be considered non-accelerated filers.

Regulatory consistency

As we noted in our 2016 comment letter, consistency between the SRC and non-accelerated filer definitions is key to reducing confusion and increasing predictability for small public companies. Prior to the 2018 reforms to the SRC definition, the two definitions were identical, with each being capped at $75 million in public float. This level of harmonization often led the two definitions to be used interchangeably; indeed, a 2015 recommendation from the SEC's Advisory Committee on Small and Emerging Companies erroneously calls for revisions to the *SRC* definition in order to exempt more companies from SOX 404(b)'s auditor attestation requirement.

Under the proposed rule, some SRCs would qualify as non-accelerated filers (and thus be exempt from SOX 404(b)), and some would not. The SEC has historically sought to avoid such confusing and overlapping standards. Prior to the 2018 SRC rule taking effect, in fact, Rule 12b-2 specifically forbade SRCs from qualifying as accelerated filers (thus ensuring that the universe of SRCs would perfectly match the universe of non-accelerated filers). The NAM believes that uniformity in and of itself is a compelling justification to align the two definitions. Reducing confusion for both investors and issuers is vital, so manufacturers urge the Commission to pursue a parallel approach to both of its small business definitions.

Impact on small businesses

Beyond consistency, however, it remains the case that SRCs that only meet the public float test in the SRC definition (i.e., those with a public float below $250 million, irrespective of their revenues) are truly small businesses. Like their lower-revenue SRC brethren, they are adversely impacted by costly regulatory burdens, and they pose limited risk of fraud for their investors.[5] In justifying the new public float test in the SRC definition, the SEC wrote that the increase to $250 million "will promote capital formation through a modest reduction in compliance costs for newly eligible SRCs while maintaining appropriate investor protections." The same reasoning should apply to a potential

[5] As discussed above, the Advisory Committee on Small and Emerging Companies and the Government-Business Forum on Small Business Capital Formation have consistently recognized this reality by recommending an expanded SOX 404(b) exemption that includes any company with a public float below $250 million.

increase in the non-accelerated filer public float test, especially given that such an increase would apply to the exact same universe of companies as did the SRC increase.

In the manufacturing industry, 90 percent of SRCs that do not qualify for the proposing release's revenue test have revenues less than $1 billion. Their median revenue is $288 million – higher than the proposed $100 million, yes, but not so excessive as to specifically exclude them from non-accelerated filer status.

The final SRC rule from 2018 focuses on these companies, noting that "a lower disclosure burden could spur growth in the registrants that will newly qualify for SRC status to the extent that the compliance cost savings and other resources (e.g., managerial effort) otherwise devoted to disclosure and compliance are productively deployed in alternative ways." The 2018 rule also notes that the amended SRC definition "could encourage capital formation because companies that may have been hesitant to go public may choose to do so if they face reduced disclosure requirements." The NAM encourages the Commission to re-visit this reasoning – even more relevant when considering the significant cost burden of SOX 404(b) – and classify all SRCs as non-accelerated filers.

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Manufacturers are supportive of the SEC's efforts to make targeted changes to the non-accelerated filer definition in order to reduce compliance costs and move toward harmonization with the SRC definition. As you work to finalize the proposed rule, we respectfully urge you to broaden its scope to include all SRCs, achieving important regulatory alignment and further enhancing the capital formation potential of the public market for these growing companies.

On behalf of the NAM and the 13 million men and women that make things in America, thank you for your attention to these concerns.

Sincerely,

Chris Netram
Vice President, Tax & Domestic Economic Policy