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August 29, 2016

Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

**Re: File No. S7-12-16  
Release No. 33-10107  
Proposed Rule: Amendments to Smaller Reporting Company Definition**

Dear Office of the Secretary:

This letter is the response of BDO USA, LLP to your request for comments on the proposal referred to above.

We provide our comments based on our experience working with smaller registrants. Overall, we support expanding the number of registrants that qualify as smaller reporting companies and thereby benefit from scaled disclosure requirements. We believe that doing so is consistent with the Commission's goals of promoting capital formation and reducing compliance costs for smaller registrants while maintaining investor protections. We also believe that the proposed public float and revenue thresholds are reasonable. However, while we agree with the Commission that the threshold for requiring audits of internal control over financial reporting should not be changed, we would like to see the Commission go further by providing more time for these same smaller registrants to file their periodic reports. We also have comments about transition and a related threshold in Rule 3-05 of Regulation S-X.

### **Smaller Reporting Company Definition**

The Commission has indicated that it believes investor interest in accelerated filing is likely to be highest for companies followed by analysts and institutional investors.<sup>1</sup> The Commission has also stated its belief that "Exchange Act reporting companies with a public float of \$700 million or more are more closely followed by the markets and securities analysts than other issuers."<sup>2</sup> We also note that the recommendations of the SEC's Advisory Committee on Small and Emerging Companies (ACSEC) from 2013 and 2015 included a recommendation that the Commission revise the accelerated filer definition to include companies with a public float of \$250 million or more, but less than \$700 million. We believe that these factors are also relevant in identifying companies

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<sup>1</sup> Release No. 33-8128, *Acceleration of Periodic Reporting Filing Dates and Disclosure Concerning Website Access to Reports*

<sup>2</sup> Release No. 33-8617, *Revisions to the Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports*



for which scaled disclosures are appropriate. Therefore, we believe that the proposed public float and revenue thresholds are reasonable.

### **Accelerated Filer Definition**

Historically, the Commission's objectives as it has reconsidered the due dates for periodic reports have been to (1) accelerate the time by which information is provided when the level of investor interest warrants it, (2) avoid inflicting the burden of accelerated reporting on companies when the level of investor interest does not warrant it, and (3) not jeopardize the reliability of information companies report. We agree with these objectives. To best achieve these objectives, we agree with ACSEC that it would be desirable for the Commission to not require periodic reports to be filed as quickly for the companies that would become smaller reporting companies under the proposal. Instead, we believe it would be better for the Commission to require these companies to file their annual and quarterly reports within 90 days and 45 days of period end, respectively.

Over the next several years, all registrants must implement major changes in U.S. GAAP (i.e., the new accounting standards on revenue, leases, and financial instruments). We anticipate that the effort required to implement these new standards will be significant. This effort adds to the already immense amount of work the staffs of smaller public companies must do when addressing the complexity of today's accounting standards, the volume of disclosure requirements, and the requirement to report on internal control over financial reporting. Completing all of this work within 75 days after year-end and 40 days after quarter-end can be difficult for smaller companies. Although the exercise of internal control reporting has caused companies to enhance their controls, our sense is that the contribution this has made to reliable reporting tends to be somewhat diluted by accelerated reporting. No matter how automated and well controlled a company's systems are, closing the books and thoughtfully preparing and reviewing financial reports are still people-dependent processes at many levels. The 75/40 days due dates put pressure on people and increase the risk of error or at least make it difficult to maintain quality. Our sense is that compressing this work into shorter periods has also increased costs to smaller public companies by (a) forcing them to increase their staffs and (b) limiting the time their financial management can devote to "running the business" during the periods before periodic reports are due.

For these reasons, we believe it would be desirable for the Commission to amend its rules so that all filers with a public float of less than \$250 million are able to file annual and quarterly reports within 90/45 days. We believe the benefits of allowing these small companies the extra time to file periodic reports would outweigh the benefit of disseminating the information 15/5 days earlier.

Unfortunately, achieving such a change in the filing deadlines is not just a matter of changing the definition of an accelerated filer. This is because the rule specifying which registrants must have their internal controls audited (Item 308(b) of Regulation S-K) bases the audit requirement on whether a registrant is an accelerated filer, and we believe that the threshold for requiring audits of internal control over financial reporting should not be changed.



Our recommendation above relates solely to the due dates of the periodic reports for these small companies, and not the size of companies subject to audits of internal control over financial reporting. Based on our experience and the research the Commission cited in the proposing release, we agree with the Commission's intent to not increase the public float threshold that determines which companies are subject to audits of their internal controls.

Accordingly, to implement our recommendation, we suggest the Commission also amend Item 308(b) so it requires an internal control audit if a registrant has a public float of \$75 million or more as of the end of its most recently completed second fiscal quarter, rather than requiring an internal control audit if a registrant "is an accelerated filer or a large accelerated filer." The combined effect of amending both the accelerated filer definition and the language in Item 308(b) would be to permit these smaller companies more time to file their periodic reports but not change the threshold or benefits to investors associated with audits of internal controls.

We understand that Section 989G of the Dodd-Frank Act might limit the Commission's authority to revise Item 308(b) in this manner. The Dodd-Frank Act added Section 404(c) to the Sarbanes-Oxley Act, which states:

EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is neither a 'large accelerated filer' nor an 'accelerated filer' as those terms are defined in Rule 12b-2 of the Commission.

If the references to large accelerated filer and accelerated filer in Section 404(c) were meant to be shorthand for 'issuers whose public float does not exceed \$700 million or \$75 million,' then revising Item 308(b) in the manner described above would seem to be permitted. If these references were meant to be read literally so that the size of a company not required to have an audit of its internal controls would automatically change if the size of a company not required to file on an accelerated basis changed, then revising Item 308(b) in the manner described above would not seem to be permitted. We suspect that the appropriate interpretation is debatable, and we don't know whether there is a practical way to implement our suggested change to Item 308(b) without undue controversy.

If not, then we suggest as an alternative that the Commission consider revising only the time by which companies with a public float of \$75 - \$250 million must file their interim financial statements, from 40 days to 45 days after quarter-end. We believe that this would help companies in this size range avoid some of the costs described above and that it would be particularly helpful in the quarters in which these companies must first apply the major new accounting standards referred to above.

### Transition Rules

Additionally, the transition rules related to a registrant's change in filing status (i.e., change from smaller reporting company to non-smaller reporting company and from non-



accelerated filer to accelerated filer) are not consistent and seem to be more complex than necessary. As highlighted in our comment letter on the Concept Release on Regulation S-K,<sup>3</sup> we recommend changing the transition rules to make them more consistent, particularly the rules covering when a new filing status take effect.

#### Rule 3-05 Threshold

Separately, if the Commission raises the revenue threshold in the smaller reporting company definition as proposed, we believe the Commission should also amend the revenue threshold in Rule 3-05(b)(2)(iv) of Regulation S-X to permit an acquirer to omit the earliest of the three fiscal years of audited financial statements if the target's revenues are less than \$100 million. As noted in the proposal, the current \$50 million threshold was based on the revenue threshold in the smaller reporting company definition. It appears logical that the threshold would change if the definition of a smaller reporting company definition changes. Left unchanged, the target financial statement requirements (i.e., three years) could exceed those of a registrant of similar size. This outcome is counter-intuitive and it seems more logical that this threshold would change if the definition of a smaller reporting company is changed.

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We appreciate this opportunity to express our views to the Commission. We would be pleased to answer any questions the Commission or its staff might have about our comments. Please contact Jeff Lenz, National Director - SEC Practice, at [REDACTED] or via email at [REDACTED], or Paula Hamric, Partner - National SEC Department, at [REDACTED] or via email at [REDACTED].

Very truly yours,

BDO USA, LLP

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<sup>3</sup> Our comment letter is available at: [www.bdo.com/getattachment/a6e3ea7f-f27a-4db5-b599-400bbaf616bf/attachment.aspx?S7-06-16-BDO-USA.pdf](http://www.bdo.com/getattachment/a6e3ea7f-f27a-4db5-b599-400bbaf616bf/attachment.aspx?S7-06-16-BDO-USA.pdf)