

L·B·B BRIEFS

FOR SMALLER REPORTING COMPANIES

Status of Exemption from 404 B for Smaller Reporting Companies. On June 30, 2010, the U.S. House of Representatives adopted the Dodd-Frank Wall Street Reform and Consumer Protection Act. The finalized bill is expected to be approved by the U.S. Senate after its Fourth of July recess and delivered to President Obama for signature by mid-July. The new law includes a number of important provisions relating to corporate governance and executive compensation affecting companies publicly traded in the United States, including the exemption of smaller reporting companies (market cap less than \$75,000,000) from the requirements of Section 404 b of SOX. The requirement for smaller reporting companies to comply with 404 b has been deferred numerous times prior to this impending permanent exemption. As of this newsletter, the Senate has not voted on this bill, and the exemption remains in limbo.

UPDATE: EFFECTIVE JULY 15, 2010, THE SENATE PASSED THIS BILL. SMALLER REPORTING COMPANIES ARE EXEMPT FROM 404B REQUIREMENTS.

So, what do smaller reporting companies do now? Per Michael Ussery, an SEC Reporting and GAAP Advisory Consultant with Pt. Platinum Consulting, LLC (www.ptplatinum.net) in Dallas, Texas, he offers the following:

It is my understanding that the Senate will vote this week <week of July 12> to permanently exempt small public company filers from the 404b requirement- barring any unforeseen, last minute negotiations. If the vote is not forthcoming this week, then I fully expect another temporary deferral by the SEC. The temporary deferral would give Congress time to fully consider and vote on the exemption and to consider the opposing views. However, neither of these scenarios is a certainty. Unfortunately, the uncertainty and timing of a potential exemption puts smaller public filers with a June 15th or later year-end in limbo for the current annual report.

IFRS Convergence. As discussed in the article entitled “FAF Chair Won't Sacrifice FASB's Independence for Convergence” in the June 17, 2010, issue of *Accounting & Compliance Alert (Thompson Reuters)*, John Brennan, chairman of the Financial Accounting Foundation, defended the FASB's independence from outside pressure. “Neither the constituents nor the standard-setters should take independence for granted,” Brennan said during a July 16 speech before the Exchequer Club in Washington. “The constituents should cherish it. The standard-setters should understand that it's a privilege they must earn continually.”

Brennan's speech came a few weeks after the FASB, which the FAF oversees, and the board's partner on international convergence, the IASB, said they would need more time to complete the work in their Memorandum of Understanding (MOU). His remarks were largely devoted to explaining why the delay was necessary to ensure that the convergence effort produced high quality standards and how the convergence effort fit within the FASB's overall mission. In short, convergence is at best the FASB's third-highest priority, falling behind the board's independence and its work to improve U.S. GAAP. Converging the accounting literature in this country with IFRS may over time lead to capital markets that are deeper and more efficient. But Brennan said, “We must be able to meet the first two tests of independence and improvement for the benefit of American capital markets and American companies.”

LBB & Associates Ltd., LLP is an AICPA, PCAOB, and CPAB registered public accounting firm with a concentration in audits of smaller reporting companies. LBB is also active in SEC reporting consulting and acquisition due diligence efforts with smaller reporting companies. Past issues of our newsletter can be found at www.LBBCPA.com. Feel free to direct any inquiries to Briefs@LBBCPA.com, or contact any of our partners at 713-877-9944.