The new year brought with it sweeping changes from the Securities and Exchange Commission that should give many smaller public companies some welcome relief. Under SEC rules, all public companies are required to provide a great deal of information about their operations and financial results to the investing public. Compiling, reviewing and reporting the information is time consuming and expensive. As a result, the SEC has always considered the added burden that such requirements lay upon smaller public companies. Thus, over the years, the SEC has streamlined some of the reporting requirements by making them less burdensome for smaller public companies.

The SEC continued this effort in 2008 by adopting rule changes that make it easier for smaller public companies to meet both disclosure and capital raising requirements. First, the SEC increased the dollar threshold applicable to the definition of smaller companies so that more public companies can take advantage of scaled-down disclosure requirements. Second, the SEC broadened eligibility requirements for "short-form" registration of public offerings, which will allow more small companies to have easier access to the public securities markets.

Finally, the SEC has proposed to delay for an additional year the requirement for a non-accelerated filer to include an attestation report of the independent auditor regarding the filer's system of internal controls in their annual reports. Filing of an attestation report on internal controls in an annual report has been a requirement for larger companies for several years. Because of the effort and expense incurred to comply with this requirement, the SEC has been providing some relief to smaller companies by delaying the implementation date for non-accelerated filers. With the new proposal, the SEC believes that a deferral would be appropriate to prevent certain filers from incurring unnecessary compliance costs before the SEC is able to conduct a cost-benefit analysis of this requirement. All of these rules changes, amendments and proposals demonstrate the SEC's commitment to reducing regulatory burdens imposed upon smaller companies.
Scaled-Down Disclosure and Reporting Requirements

The disclosure requirement that all public companies report information regarding the business operations, performance and financial position in quarterly and annual reports as well as current reports - those reports that disclose significant changes occurring between the quarterly and annual reports - can be extensive and sometimes onerous. Historically, the SEC has tried to alleviate the heavy disclosure burdens for smaller public companies. In 1992, the SEC first adopted an integrated scaled-down disclosure system for "small business issuers" in Regulation S-B of the Securities Exchange Act of 1934, as amended (the Exchange Act). To be a small business issuer, a company had to be a U.S. or Canadian issuer and have (1) less than $25 million in public float and (2) less than $25 million in annual revenue.

Much has changed since 1992 including an increase in the number of public companies and a change in the size of such companies. This year's rule changes were adopted to reflect the current market landscape. In SEC Release No. 33-8876, the SEC adopted rule changes that extend the benefits of the former scaled-down disclosure and reporting requirements for "small business issuers" to "smaller reporting companies," while streamlining the rules applicable to these smaller companies. The rule changes acknowledge the current need of smaller companies and their investors to reduce compliance costs.

A company is now considered a "smaller reporting company" if it has less than $75 million in public float. Public float is the portion of a company's outstanding shares that public investors hold, as opposed to officers or directors of the company. When a company is unable to calculate public float, the standard is less than $50 million in revenue in the previous year. With the rule changes, the SEC estimates that 1,400 additional companies will now qualify for scaled-down disclosure and reporting.

Under the rule changes, Regulation S-B has been subsumed into Regulation S-K of the Exchange Act. Smaller reporting companies may take an "a la carte" approach to their disclosure requirements under the integrated Regulation S-K. In other words, a smaller reporting company may choose on an item-by-item basis whether to comply with the scaled-down disclosure requirements or to comply with the more rigorous disclosure requirements applicable to larger companies. However, where the smaller reporting company requirement is more stringent, the smaller reporting company must adhere to the stricter standard. This "a la carte" approach allows great flexibility for smaller reporting companies without disadvantaging investors.

The following is a list of items under Regulation S-K available for scaled-down disclosure:

Item 101 - Description of business.

Item 201 - Market price of and dividends on registrant's common equity and related stockholder matters.

Item 301 - Selected financial data.

Item 302 - Supplementary financial information.
Item 303 - Management's discussion and analysis of financial condition and results of operations.

Item 305 - Quantitative and qualitative disclosures about market risk.

Item 402 - Executive compensation.

Item 404 - Transactions with related persons, promoters and certain control persons.

Item 407 - Corporate governance.

Item 503 - Prospectus summary, risk factors, and ratio of earnings to fixed charges.

Item 504 - Use of proceeds.

Item 601 - Exhibits.

Under the rule changes, the "small business" or "S-B" forms will be phased out in a transition period throughout 2008. Smaller reporting companies have the choice to file their next annual report for the fiscal year ending after Dec. 15, 2007, on Form 10-KSB or the standard Form 10-K. Quarterly reports filed before the annual report may be filed on either Form 10-QSB or Form 10-Q. After the next annual report, however, only the standard forms - Form 10-K and Form 10-Q - may be used.

Revised Eligibility Requirements

In SEC Release No. 33-8878, the SEC adopted amendments to the eligibility requirements for primary offerings on Form S-3. The purpose of the amendments is to allow a larger number of public companies to take advantage of the greater flexibility and efficiency in accessing the public securities markets that registration on Form S-3 provides in order to take advantage of desirable market conditions.

Form S-3 is the "short-form" registration statement that eligible public companies may use to register securities offerings under the Securities Act of 1933, as amended (the Securities Act). Form S-3 allows issuers to incorporate the reports - Forms 10-K, 10-Q and 8-K - they filed, or will file, with the SEC to satisfy certain disclosure requirements. The incorporation of reports to be filed with the SEC in the future is referred to as "forward incorporation," which permits automatic updating of the registration statement. Form S-3 eligibility also enables companies to conduct primary offerings "off the shelf" under Rule 415 of the Securities Act which provides for the continuous offering of securities.

Previously, a company could only register securities offerings on Form S-3 made by or on its behalf if its public float was $75 million or more. If a company could not meet this requirement, it had to register its securities offerings on Form S-1 or Form SB-2 which does not provide for incorporation of reports and therefore requires a great deal of business and financial information and possible updating of financial statement and other information throughout the offering.
period. The amendments to Form S-3 modify the eligibility requirements to allow reporting companies with less than $75 million in public float to register primary offerings on Form S-3 if such companies:

meet the other eligibility conditions to use Form S-3;

have a class of common equity securities that is listed and registered on a national exchange;

are not "shell companies" and have not been one for at least 12 calendar months before filing the registration statement; and

do not sell more than the equivalent of one-third of their public float in primary offerings under certain conditions over the previous of 12 calendar months.

The amendments also allow certain private issuers to use the form regardless of the size of their public float or the rating of debt they are offering, so long as above requirements are met.

The shelf eligibility that results from Form S-3 eligibility and the ability of forward incorporation of information on Form S-3 allow smaller companies to potentially eliminate the costs related to preparing and filing post-effective amendments to the registration statement and therefore avoid unnecessary delays in the offering process. The SEC believes this expansion of Form S-3 short-form registration to additional issuers will improve their access to the public securities markets with far less burden and cost.

**Further Delay of Auditor Attestation Requirement**

In 2003, the SEC first adopted its rules regarding internal control of financial reporting (ICFR). The rules required all companies subject to the reporting requirements of the Exchange Act to include in their annual reports a report by management on internal controls and an auditor's attestation regarding the adequacy of such internal controls. Since then, there have been multiple deferrals as the rule relates to smaller companies.

In SEC Release No. 33-8889, the SEC proposed to defer for one additional year the deadline for non-accelerated filers (as defined under the SEC rules) to provide in their annual reports an attestation report from an independent auditor on ICFR. Presently, a non-accelerated filer is required to provide an auditor attestation report in its annual report filed for fiscal years ending on or after Dec. 15, 2008. The proposed rule change would require the auditor attestation report to be provided in the annual report filed for fiscal years ending on or after Dec. 15, 2009. It should be noted that the proposed rule change did not affect the deadline for non-accelerated filers to include management's report on ICFR in annual reports for fiscal years ending on or after Dec. 15, 2007. The proposed rule change also provides that the management report that does not contain the auditor's attestation would be considered "furnished" rather than "filed," and not be subject to liability under Section 18 of the Exchange Act.

The SEC has proposed this further delay in order to conduct a cost-benefit analysis of the auditor attestation requirement for smaller companies and consider the Public Company Accounting
Oversight Board's issuance of final staff guidance on auditing ICFR of smaller public companies. The SEC believes that the delay will prevent non-accelerated filers from incurring unnecessary compliance costs before analysis of the effectiveness of the ICFR requirements is complete.

Where We Stand Today

As a result of the rule changes, the SEC has allowed more companies to take advantage of scaled-down disclosure and reporting requirements, thereby easing the regulatory burden of smaller companies without disadvantaging investors. The SEC has also given smaller companies greater access to the public capital markets by relaxing eligibility requirements for "short-form" registration. With these changes and the proposal to delay the auditor attestation requirement for non-accelerated filers for an additional year, the SEC is furthering its goal of easing the regulatory and capital formation burdens that have long plagued smaller companies.