

Another potential step to ease burdens on smaller companies: SEC proposes relaxed audit rule for companies with revenue below \$100 million

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On May 9, the SEC issued a [proposal](#) to change the “accelerated filer” and “large accelerated filer” definitions under section 404(b) of the Sarbanes-Oxley Act of 2002 (SOX) to ease the financial reporting burdens on smaller companies. If the rule change is adopted, companies with less than \$100 million in revenues would not be required to have their auditors attest to management’s assessment of the effectiveness of their internal control over financial reporting (ICFR).

Under current law, emerging growth companies (EGCs) are exempt from the ICFR attestation requirement, but become subject to it when they cease to qualify as an EGC, which can occur when they achieve a market cap of \$700 million or five years following their initial public offering. The SEC noted that companies with less than \$100 million in revenues generally have less complex financials and therefore are at reduced risk for potential misstatements, the issue addressed by ICFR attestation. Chairman Clayton noted in particular that medical and biotech companies with little or no revenue could better use their resources for research and human capital rather than on the SOX attestation requirement.

The proposed amendments would not change key SOX protections, such as the requirement for independent audit committees, for the CEO and CFO to certify the financial reports or for management to establish, maintain and assess the effectiveness of the company’s ICFR.

Comments on the proposal are due in mid-July, 60 days after the proposal is published in the Federal Register.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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