



Client Alert

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SEC GIVES SMALL COMPANIES ACCESS TO FORM S-3

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Also, Electronic Filing of Form D To Become Mandatory

The SEC has approved significant changes this week that will give smaller companies faster and easier access to capital when they need it or market conditions are favorable. Specifically, the Commission adopted amendments to the eligibility requirements of Form S-3 of the Securities Act to allow companies that do not meet the current \$75 million public float requirement of the form to nevertheless obtain the advantages of shelf registration, subject to the following restrictions:

- Companies falling under the \$75 million threshold may sell no more than the equivalent of one-third of their public float in primary offerings pursuant to the new instructions in any period of 12 calendar months;
- an Issuer can not be a shell company and must not have been a shell company for at least 12 calendar months before filing the registration statement;
- an Issuer must have a class of common equity securities listed and registered on a national securities exchange; and
- an Issuer is subject to the other registrant eligibility conditions for use of Form S-3.

The expansion of eligibility for use of Form S-3 will provide smaller companies with an alternative to private placements, which are often made at a discount, when seeking new capital. The Form S-3 amendments will become effective thirty days after publication in the Federal Register.

In a separate action, the SEC adopted provisions that will mandate electronic filing of Form D information after a phase-in period during which electronic filing will be voluntary. The phase in period for Form D electronic filing will begin on September 15, 2008 and electronic filing will become mandatory on March 16, 2009. Finally, the Commission adopted several amendments to revise and update the information requirements of Form D that will become effective on September 15, 2008. Please contact us if you would like further details on the information requirement revisions to Form D.

If we can be of any assistance to you in this or any other matter, please feel free to contact any member of the securities team at Arnall Golden Gregory LLP.



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