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July 24, 2019

Ms. Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090.

Re: Amendments to the Accelerated Filer and Large Accelerated Filer Definitions (Release No. 34–85814; File No. S7–06–19; RIN 3235–AM41)

Dear Ms. Countryman:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment to the Securities and Exchange Commission (SEC) on proposing amendments to the accelerated filer and large accelerated filer definitions. The SEC is proposing the changes to "tailor" the types of issuers that are included in the categories of "accelerated" and "large accelerated" filers. The proposed amendments would exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be a smaller reporting company and had annual revenues of less than $100 million in the most recent fiscal year for which audited financial statements are available**. If implemented, this rule would have a significant positive impact on publicly held community banks and bank holding companies that are SEC filers, since most of these institutions qualify as smaller reporting companies and have annual revenues of less than $100 million. Under the proposal, these companies would become exempt from the internal control over financial reporting (ICFR) auditor attestation requirements of Section 404(b) of the Sarbanes Oxley Act ("SOX 404(b)").**

Background

Currently, only SEC filers that have a market cap of less than $75 million qualify as "non-accelerated filers" under SEC rules and are exempted from the ICFR auditor attestation requirements of SOX 404(b). In 2018, the SEC expanded the definition of "smaller reporting

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than $4.9 trillion in assets, $3.9 trillion in deposits, and $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

company" (or "SRC") to those issuers that have a market cap of less than $250 million regardless of income and those that have a market cap of between $250 million and $700 million provided their revenue did not exceed $100 million. Although SRCs could take advantage of scaled disclosure requirements, the SEC did not increase the threshold for accelerated filer status which created an overlap among the filer categories. Many issuers qualified as both SRCs and accelerated filers meaning that they enjoyed relief in the form of scaled disclosure but remained subject to the ICFR auditor attestation requirements. Realizing that this caused a great deal of confusion and was costly for many small companies to comply with, the new SEC Chairman Jay Clayton directed the staff to make recommendations to reduce the number of issuers that would qualify as accelerated filers.

Under the proposed amendments, those community banks and bank holding companies that are eligible to be an SRC (i.e., that have a public float of less than $700 million) would become non-accelerated filers if they had annual revenues of less than $100 million in the most recently completed fiscal year. These institutions would not only be exempt from the accelerated reporting deadlines under SEC rules but also the ICFR auditor attestation requirements of SOX 404(b). However, they would still be required to comply with other SOX mandates, including audit committee independence requirements, CEO and CFO certifications, and the requirement to establish and maintain ICFR and have management assess its effectiveness. Also, if they have assets of $1 billion or more, they would still be subject to the Federal Deposit Insurance Corporation Improvement Act ("FDICIA") requirements of 12 CFR Part 363 which require an auditor attestation of a bank's internal controls.

ICBA's Comments

ICBA commends the SEC for revising the accelerated and large accelerated filer definitions to exclude from those definitions issuers that are eligible to be an SRC under the SRC revenue test, (i.e., those issuers whose public float is less than $700 million but whose revenue does not exceed $100 million). We agree that permitting these issuers to avoid the burdens of an accelerated or large accelerated filer will enhance their ability to preserve capital without significantly affecting the ability of investors to make informed investment decisions based on the financial reporting of those issuers. Additionally, the benefits of having those issuers comply with the accelerated and large accelerated filer requirements are, in our opinion, not worth the high compliance costs.

The proposal would increase the number of issuers that are exempt from the ICFR auditor attestation requirement by increasing the number of "non-accelerated filers."[2] **In general, we are not concerned that investors might receive less disclosures about material weaknesses in ICFR if the proposal is implemented since non-accelerated filers will remain subject to all the other requirements of accelerated and large accelerated filers including the requirements for establishing, maintaining, and assessing the effectiveness of ICFR and for management to assess internal controls.** Further, the proposed amendments are targeted at issuers whose representation in public markets has decreased over the years, and we agree with

[2] The SEC does not define a "non-accelerated filer" in its regulations but assumes that an SEC reporting company that is not an accelerated or large accelerated filer is a non-accelerated filer.

the SEC that this proposal will encourage more companies to register their securities under the Securities Exchange Act of 1934 ("Exchange Act") which would provide an increased level of transparency and investor protection with respect to those companies. As cited in the proposal, the number of issuers listed on major exchanges with market capitalizations below $700 million decreased by about 65%, and the number of listed issuers with less than $100 million in revenue decreased by about 60% from 1998 to 2017. We believe these reductions are the direct result of increased SEC compliance costs and, in particular, the audit costs associated with SOX 404(b).

In 2012 when the Jumpstart Our Business Startups Act (the JOBS Act) became effective, more than 100 community banks and bank holding companies deregistered as SEC reporting companies when the threshold for deregistration was raised from 300 shareholders to 1,200 shareholders.[3] In most instances, community banks and bank holding companies wanted to deregister under the Exchange Act because of the high compliance costs involved with being an SEC reporting company.

ICBA applauds the thorough and comprehensive Economic Analysis that the SEC included with its proposal. The SEC estimates that the audit costs involved in an audit with ICFR attestation runs about $110,000 per year for accelerated filers with revenues less than $100 million. Furthermore, an ICFR auditor attestation requirement is also associated with additional costs, and the SEC estimates that these non-audit costs would average approximately $100,000 per year for accelerated filers. The SEC proposal would therefore eliminate approximately $210,000 in audit related expenses each year, which would be very significant for these smaller reporting companies. Furthermore, there is plenty of evidence to suggests that the compliance costs disproportionately impact the smaller reporting companies.

However, while ICBA strongly supports the SEC proposal and believes it should be implemented, we do not believe it goes far enough for community banking institutions. Because community banks and bank holding companies are subject to extensive supervision and regulation by the federal and state banking agencies (including regular safety and soundness exams which include a thorough review of a banking institution's internal controls), more community banking institutions should be exempted from the ICFR attestation requirements of SOX 404(b) and FDICIA. ICBA strongly supports the Community Bank Access to Capital Act of 2019 (S. 1233) sponsored by Senator Mike Rounds (R-SD) which would provide relief from redundant regulation and enhance access to capital for community banks. Under that legislation, any SEC-registered community bank and bank holding company with assets less $5 billion would be exempt from SOX 404(b) as well as from the FDICIA requirements that require them to file an annual report containing management's assessment of the bank's internal controls.

In conclusion, while we fully support the SEC proposal and agree that this will encourage more smaller companies to go public and become SEC reporting companies, we believe it does not go

[3] The JOBS Act increased the holders of record threshold at and above which a bank or a bank holding company would become subject to registration and periodic reporting requirements under the Exchange Act from 500 persons to 2,000 persons and increased the holders of record threshold below which a bank or bank holding company may suspend its duty to file reports and terminate the registration of its securities under the Exchange Act from 300 to 1,200 persons.

far enough for community banks and bank holding companies since they are subject to so much regulation and supervision and their internal controls are evaluated regularly as part of their safety and soundness exams.

ICBA appreciates the opportunity to comment on this proposal. If you have any questions or would like additional information, please do not hesitate to contact me at (202) 659-8111 or Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel