

SEC Amends “Smaller Reporting Company” Definition

Commission action expands number of companies eligible to provide scaled disclosure.

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TAKEAWAYS

- Amendments are meant to reduce compliance costs for registrants that elect to provide scaled disclosure.
- Absent further action by the SEC, certain smaller reporting companies will need to comply with the accelerated filer timing rules and SOX 404(b) auditor attestation requirements.
- A change to the cover pages of Forms 10-Q and 10-K and registration statement filings affects all public companies.

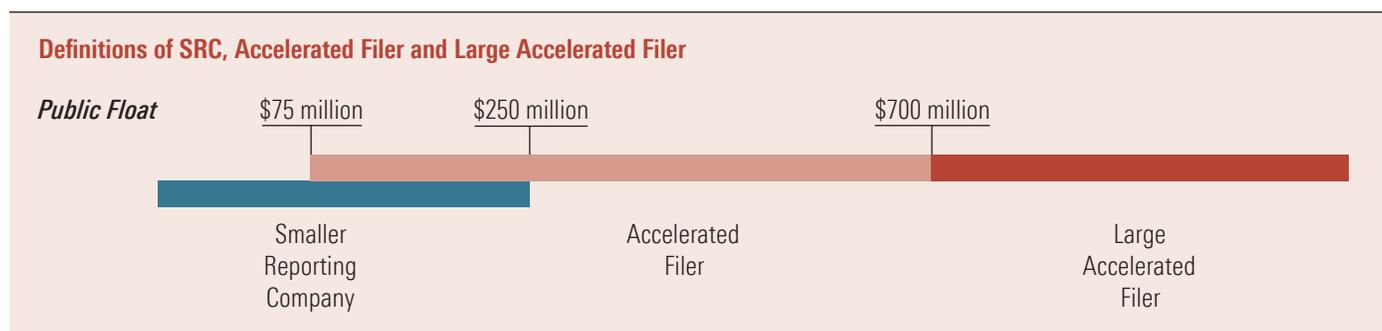
On June 28, 2018, the Securities and Exchange Commission adopted amendments to the definition of “Smaller Reporting Company” (SRC) that are intended to expand the number of registrants eligible to provide scaled disclosure, which will reduce compliance costs for smaller registrants that choose to provide scaled disclosure. Under the new definition, a company qualifies as a SRC if it has either (i) a public float of less than \$250 million as of the last business day of its most recently completed second fiscal quarter or (ii) annual revenues of less than \$100 million if it also has either no public float or a public float of less than \$700 million.

To avoid situations in which registrants frequently enter and exit SRC status due to small fluctuations in their public float or revenues, consistent with the current SRC definition, the amendment also establishes lower qualification thresholds for subsequent annual determinations made as of the end of the registrant’s most recently completed second fiscal quarter. Once a registrant determines that it does not qualify as a SRC, either upon an initial determination in the case of registrants filing an initial registration statement or as of an annual determination in the case of a reporting registrant, it will remain unqualified until it meets a lower threshold set at 80 percent of the initial qualification threshold. The initial and subsequent qualification thresholds are shown in the following table:

Criteria	Initial SRC Determination		Subsequent SRC Annual Determination	
	Current Definition	Revised Definition	Current Definition	Revised Definition
Public Float	Less than \$75 million	Less than \$250 million	Less than \$50 million	Less than \$200 million, if it previously had \$250 million or more of public float
Annual Revenues	Less than \$50 million and no public float	Less than \$100 million and > no public float, or > public float of less than \$700 million	Less than \$40 million and no public float	Less than \$80 million, if it previously had \$100 million or more of annual revenues; and Less than \$560 million of public float, if it previously had \$700 million or more of public float

The amendments become effective 60 days after publication in the Federal Register. Importantly, however, for the first fiscal year ending after effectiveness of the amendments, a registrant will qualify as a SRC if it meets one of the initial qualification thresholds in the revised definition as of the date it is required to measure its public float or revenues, even if it did not previously qualify as a SRC. For example, a registrant with a December 31 fiscal year end that previously was not a SRC and that had a public float of \$220 million as of June 29, 2018 (the last business day of its most recently completed second quarter) will qualify as a SRC for the fiscal year ending December 31, 2018.

Additional amendments were also made to the definitions of "accelerated filer" and "large accelerated filer" to preserve the existing public float thresholds and eliminate the exclusion of SRCs from those definitions. As a result, some registrants will qualify as both SRCs and accelerated filers. As a consequence, newly eligible SRCs that are also accelerated filers will be required to comply with the shorter filing deadlines for their annual and quarterly reports as well as the auditor internal control attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002. Conforming changes were made to the cover pages for periodic reports (Form 10-Q and Form 10-K) and registration statements (Forms S-1, S-3, S-4, S-8, S-11 and Form 10) to delete the parenthetical regarding SRCs that followed the non-accelerated filer checkbox.



Recognizing the regulatory complexity created by the new overlap in the SRC and accelerated filer definitions, the Commission directed the SEC staff to formulate a recommendation on future changes to reduce the number of registrants that fall within the accelerated filer definition.

Lastly, the amendment also increases the revenue threshold under which certain registrants are eligible to provide two rather than three years of historical audited financial statements of certain acquired businesses. The current rule allows registrants to omit financial statements for the earliest of the three fiscal years required if the net revenues of the business to be acquired are less than \$50 million. Because the \$50 million threshold was based on the revenue threshold in the prior SRC definition, the amendment also increases the net revenue threshold from \$50 million to \$100 million to require the third year of historical financial statements.

The scaled disclosure accommodations available to SRCs on an item-by-item basis are unchanged and are summarized in the following tables:

Disclosure Item	Applicable Item of Regulation S-K	Scaled Disclosure Requirements for Smaller Reporting Companies
Description of Business	Item 101	Less detailed than the disclosure required for larger reporting companies and only requires disclosure of business development activities for three years rather than five years. Segment reporting is not required.
Selected Financial Data and Supplementary Financial Information	Item 301, Item 302	Not required.
Management's Discussion & Analysis of Financial Condition and Results of Operations	Item 303	Less detailed than the disclosure required for larger reporting companies. Only requires MD&A for two years rather than three years and no tabular disclosure of contractual obligations.
Quantitative and Qualitative Disclosures about Market Risk	Item 305	Not required.
Executive Compensation	Item 402	<p>Executive compensation disclosure for the principal executive officer and two other most highly compensated executive officers, rather than five executive officers.</p> <p>Two years of compensation information in the Summary Compensation Table rather than three years.</p> <p>No Compensation Discussion and Analysis.</p> <p>Only three of the seven compensation tables required of larger reporting companies (the Summary Compensation Table, the Outstanding Equity Awards at Fiscal Year End Table and the Director Compensation Table) with alternative narrative disclosure.</p> <p>No footnote disclosure of grant date fair value in the Director Compensation Table.</p> <p>Disclosure of compensation policies and practices related to risk management not required.</p> <p>Pay ratio disclosure not required.</p>
Transactions with Related Persons, Promoters and Certain Control Persons	Item 404	<p>This is the one item where the requirements for smaller reporting companies are more stringent than those for larger reporting companies. While larger reporting companies have to disclose related person transactions in excess of \$120,000, smaller reporting companies must disclose transactions that exceed the lesser of \$120,000 or 1 percent of average total assets at year-end for the two most recently completed fiscal years.</p> <p>In addition, smaller reporting companies:</p> <ul style="list-style-type: none"> > Must provide additional disclosure about underwriting discounts and commissions and corporate parents; and > Must provide disclosure regarding promoters and certain control persons. <p>Not required to disclose policies and procedures for approving related person transactions.</p>

Corporate Governance	Item 407	Not required to provide disclosure on compensation committee interlocks and insider participation or a compensation committee report. Not required to provide audit committee financial expert disclosure until the first annual report after initial registration statement is filed with the SEC.
Risk Factors	Item 503	Not required for Forms 10-Q and 10-K. (However, we do not recommend that issuers eliminate risk factor disclosures in these filings). No ratio of earnings to fixed charges disclosure required.
Exhibits	Item 601	Statements regarding computation of ratios not required.
Financial Statements	Applicable Item of Regulation S-X	Scaled Disclosure Requirements for Smaller Reporting Companies
Audited Statements of Income, Cash Flows and Changes in Stockholder's Equity	Article 8	Required for two years rather than three years.
Audited Balance Sheets	Article 8	As with larger reporting companies, required for two years (an increase from the one year required by former Regulation S-B).