

SEC Proposes Further Relief for Low Revenue Smaller Reporting Companies

WRITTEN BY

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On May 9, 2019, the SEC [proposed rule changes](#) to the disclosure requirements for smaller reporting companies (SRCs). Last year, the SEC expanded the number of companies that qualify for scaled disclosure accommodations under SEC rules by increasing the public float and revenue caps in the SRC definition (from \$75 million up to \$250 million of public float or up to \$700 million of public float with \$100 million or less in revenues). However, as noted in our post [here](#), those changes left a mismatch with other SEC rules about accelerated timing of disclosure filings and auditor attestation requirements for internal control over financial reporting. The SEC recognized this misalignment last year and these latest amendments are a limited effort at addressing this issue.

The new proposals, if adopted, would exempt SRCs from those accelerated filing deadlines for their annual and quarterly reports and from SOX Section 404(b) auditor attestation. The proposal will be subject to a 60-day public comment period.

As detailed in the SEC's [press release](#), the proposed changes would, among other things:

- Exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be a SRC and had annual revenues of less than \$100 million in the most recent fiscal year for which audited financial statements are available;
- Increases the public float transition thresholds for accelerated and large accelerated filers becoming a non-accelerated filer to \$60 million from \$50 million and for exiting large accelerated filer status to \$560 million from \$500 million; and
- Add a revenue test to the transition thresholds for exiting both accelerated and large accelerated filer status.

Accordingly, certain low-revenue issuers would not be required to have their assessment of the effectiveness of internal control over financial reporting attested to by an independent auditor, although they would continue to be required to make such assessments and to establish and maintain the effectiveness of their internal control over financial reporting. As a result, such issuers would be able to save on their audit fees.

Below are two illustrative charts from the SEC's release that shows both the existing relationships between SRCs and non-accelerated filers and accelerated filers and the proposed relationships.

Existing Relationships between SRCs and Non-Accelerated and Accelerated Filers ¹		
Status	Public Float	Annual Revenues
SRC and Non-Accelerated Filer	Less than \$75 million	N/A
SRC and Accelerated Filer	\$75 million to less than \$250 million	N/A
	\$250 million to less than \$700 million	Less than \$100 million
Accelerated Filer (not SRC)	\$250 million to less than \$700 million	\$100 million or more

¹ Similar changes apply to large accelerated filers. We've left them out for simplicity because they are so rare?.

Proposed Relationships between SRCs and Non-Accelerated and Accelerated Filers		
Status	Public Float	Annual Revenues
SRC and Non-Accelerated Filer	Less than \$75 million	N/A
SRC and Accelerated Filer	\$75 million to less than \$700 million	Less than \$100 million
Accelerated Filer (not SRC)	\$75 million to less than \$250 million	\$100 million or more
	\$250 million to less than \$700 million	\$100 million or more

Below is an illustrative chart from the SEC release that shows the transition thresholds for issuers exiting accelerated and large accelerated filer status.

Subsequent Determination of Filer Status Based on Public Float under Existing and Proposed Amendments			
Initial Public Float Determination	Resulting Filer Status	Subsequent Public Float Determination	Resulting Filer Status
\$700 million or more	Large Accelerated Filer	\$500 million [\$560 million] ² or more	Large Accelerated Filer
		Less than \$500 million [\$560 million] but \$50 million [\$60 million] or more	Accelerated Filer
		Less than \$50 million [\$60 million]	Non-Accelerated Filer
Less than \$700 million but \$75 million or more	Accelerated Filer	Less than \$700 million but \$50 million [\$60 million] or more	Accelerated Filer
		Less than \$50 million [\$60 million]	Non-Accelerated Filer

² The numbers in bold are as proposed.

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