

SEC Expands Definition of Smaller Reporting Company

On June 28, 2018, the U.S. Securities and Exchange Commission (SEC) voted to adopt amendments to the “smaller reporting company” (SRC) definition to expand the number of companies that qualify for certain existing scaled disclosure accommodations. The new SRC definition enables a company with less than \$250 million of public float to provide scaled disclosures, as compared to the \$75 million threshold under the prior definition. The final rules also expand the SRC definition to include companies with less than \$100 million in annual revenues if they also have either no public float or a public float that is less than \$700 million. Importantly, the amendments do not change the public float threshold in the “accelerated filer” definition. Accelerated filers, among other things, are required to provide the auditor’s attestation of management’s assessment of internal control over financial reporting.

Amendments to the SRC Definition

The following table summarizes the amendments to the SRC definition:

Criteria	Previous SRC Definition	Revised SRC Definition
Public Float	Public float of less than \$75 million.	Public float of less than \$250 million.
Revenues	Less than \$50 million of annual revenues and no public float.	Less than \$100 million of annual revenues and <ul style="list-style-type: none"> • either no public float or a • public float of less than \$700 million.

Consistent with the previous SRC definition, under the amendments, a company that determines that it does not qualify as an SRC under the above initial qualification thresholds will remain unqualified until it determines that it meets one or more lower subsequent qualification thresholds. The subsequent qualification thresholds, set forth in the table below, are set at 80 percent of the initial qualification thresholds:

Criteria	Previous SRC Definition	Revised SRC Definition
Public Float	Public float of less than \$50 million	Public float of less than \$200 million, if it previously had \$250 million or more of public float.
Revenues	Less than \$40 million of annual revenues and no public float	Less than \$80 million of annual revenues, if it previously had \$100 million or more of annual revenues.

		Less than \$560 million of public float, if it previously had \$700 million or more of public float.
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Summary of Scaled Disclosure Accommodations

The following tables summarize the scaled disclosure accommodations available to SRCs:

Regulation S-K

Item	Accommodation
101 – Description of Business	May satisfy disclosure obligations by describing the development of the registrant’s business during the last three years, rather than five years. Business development description requirements are less detailed than disclosure requirements for non-SRCs.
201 – Market Price of, and Dividends on, the Registrant’s Common Equity and Related Stockholder Matters	Stock performance graph not required.
301 – Selected Financial Data	Not required.
302 – Supplemental Financial Information	Not required.
303 – Management’s Discussion and Analysis of Financial Condition and Results of Operations (MD&A)	Two-year MD&A comparison, rather than three-year comparison. Two-year discussion of impact of inflation and changes in prices, rather than three years. Tabular disclosure of contractual obligations not required.
305 – Quantitative and Qualitative Disclosures About Market Risk	Not required.
402 – Executive Compensation	Three named executive officers rather than five. Two years of summary compensation table information rather than three. Not required: • Compensation discussion and analysis.

	<ul style="list-style-type: none"> • Grants of plan-based awards table. • Option exercises and stock vested table. • Pension benefits table. • Nonqualified deferred compensation table. • Disclosure of compensation policies and practices related to risk management. • Pay ratio disclosure.
404 – Transactions with Related Persons, Promoters and Certain Control Persons	Description of policies/procedures for the review, approval or ratification of related-party transactions not required.
407 – Corporate Governance	<p>Audit committee financial expert disclosure not required in first annual report.</p> <p>Compensation committee interlocks and insider participation disclosure not required.</p> <p>Compensation committee report not required.</p>
503 – Prospectus Summary, Risk Factors and Ratio of Earnings to Fixed Charges	<p>No ratio of earnings to fixed charges disclosure required.</p> <p>No risk factors required in Exchange Act filings.</p>
601 – Exhibits	Statements regarding computation of ratios not required.

Regulation S-X

Item	Accommodation
8-02 – Annual Financial Statements	<p>Two years of income statements rather than three years.</p> <p>Two years of cash flow statements rather than three years.</p> <p>Two years of changes in stockholders' equity statements rather than three years.</p>
8-03 – Interim Financial Statements	Permits certain historical financial data in lieu of separate historical financial statements of equity investees.

8-04 – Financial Statements of Businesses Acquired or to Be Acquired	Maximum of two years of acquiree financial statements rather than three years.
8-05 – Pro Forma Financial Information	Fewer circumstances under which pro forma financial statements are required.
8-06 – Real Estate Operations Acquired, or to Be Acquired	Maximum of two years of financial statements for acquisition of properties from related parties rather than three years.
8-08 – Age of Financial Statements	Less stringent age of financial statement requirements.

Amendments to Rule 3-05 of Regulation S-X

The SEC also voted to adopt amendments to Rule 3-05(b)(2)(iv) of Regulation S-X to increase the net revenue threshold in that rule from \$50 million to \$100 million. As a result, companies may omit financial statements of businesses acquired, or to be acquired, for the earliest of the three fiscal years otherwise required by Rule 3-05 if the net revenues of that business are less than \$100 million.

Going Forward – Accelerated Filer Definition

The final amendments preserve the application of the current thresholds contained in the “accelerated filer” and “large accelerated filer” definitions in Exchange Act Rule 12b-2. As a result, companies with \$75 million or more of public float that qualify as SRCs will remain subject to the requirements that apply to accelerated filers, including the timing of the filing of periodic reports and the requirement that accelerated filers provide the auditor’s attestation of management’s assessment of internal control over financial reporting required by Section 404(b) of the Sarbanes-Oxley Act of 2002. However, Chairman Clayton has directed the staff, and the staff has begun, to formulate recommendations to the SEC for possible additional changes to the “accelerated filer” definition, including possibly relinking the accelerated filer threshold to the SRC threshold (as it was before the adoption of these amendments).

Timing for Implementation

The rules will become effective on September 10, 2018.

Additional Information

A copy of the adopting release for the amendments to the SRC definition is available [here](#), a copy of the press release issued by the SEC regarding the amendments is available [here](#), and a copy of Chairman Clayton’s statement about the amendments is available [here](#).