

20-F and 40-F Filers Don't Get Many of the Benefits of the Amended Accelerated Filer Definition

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For Form 10-K filers, the SEC's March 12 amendments to the "accelerated filer" definition made sense and helped better coordinate the "smaller reporting company" definition with the "accelerated filer" definition. The amendments would, in part, exclude from the definition of "accelerated filer" and "large accelerated filer" issuers that are eligible to be a smaller reporting company and which do not have \$100 million in revenues in their most recent fiscal year for which audited financial statements are available. As a result, the amendments will expand the number of Form 10-K filers which are exempted from having to provide an auditor attestation report on internal control over financial reporting in the annual report they file with the SEC. A more detailed discussion of the amendments can be found here: governancecomplianceinsider.com/sec-amends-definition-of-accelerated-and-large-accelerated-filer/.

However, for foreign private issuers that file their annual report on Form 20-F or Form 40-F, the benefits from the March 12 amendments are limited. A foreign private issuer filing on Form 20-F or Form 40-F is not eligible to use the requirements for smaller reporting companies, and so is excluded from the expanded accelerated filer exemption. The following table helps illustrate the disparity:

Relationships between SRCs, Non-Accelerated and Accelerated Filers under the Final Amendments for 10-K Filers and 20-F or 40-F Filers

Public Float	Annual Revenues	20-F or 40-F Filer Status*	10-K Filer Status
Less than \$75 million	N/A	Non-Accelerated	SRC and Non-Accelerated
\$75 million to less than \$700 million	Less than \$100 million	Accelerated	SRC and Non-Accelerated
\$75 million to less	\$100 million or	Accelerated	SRC and

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than \$250 million	more		Accelerated Filer
\$250 million to less than \$700 million	\$100 million or more	Accelerated	Accelerated Filer (not SRC)

Note: This table addresses initial determinations of filer status and does not consider requirements for transitions between filer status.

In other words, if a 10-K filer, a 20-F filer and a 40-F filer each had a public float of \$90 million and no revenue, only the 20-F filer and the 40-F filer would be categorized as an accelerated issuer and required to provide an auditor attestation report on its internal control over financial reporting. The final release noted that foreign private issuers reporting on the forms available to them (20-F or 40-F) have other accommodations that 10-K filers do not have. While that is true, it may be cold comfort for an issuer faced with the expense and effort associated with getting an auditor attestation on its internal control over financial reporting.

The amendments will become effective 30 days after publication in the Federal Register. The final amendments will apply to annual report filings due on or after the effective date.