

SEC Amends Definition of Accelerated and Large Accelerated Filer

March 17, 2020 – Governance & Compliance Insider
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On March 12, 2020, the Securities and Exchange Commission (the “Commission”) adopted amendments to the “accelerated filer” and “large accelerated filer” definitions in the Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

The amendments would exclude from the definition of “accelerated filer” and “large accelerated filer” issuers that are eligible to be smaller reporting companies and that have less than \$100 million in revenues in their most recent fiscal year for which audited financial statements are available. This exclusion permits these issuers to forego an auditor attestation report on the issuers’ internal control over financial reporting (“ICFR”) in their annual reports on Form 10-K. The following table from the adopting release sets forth the relationship between smaller reporting companies, non-accelerated filers, accelerated filers and large accelerated filers following the new amendments.

Relationships between SRCs and Non-Accelerated, Accelerated, and Large Accelerated Filers under the Final Amendments

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

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Note: This table addresses initial determinations of filer status and does not consider requirements for transitions between filer status. Transition thresholds have also been amended, as discussed below.

More specifically, the amendments:

- Exclude from the “accelerated filer” 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. The amendments also allow business development companies to qualify for this exclusion if they meet the requirements of the smaller reporting company revenue tests using their annual investment income as the measure of annual revenue, although business development companies would continue to be ineligible to be smaller reporting companies;
- Increase the public float transition thresholds for an accelerated and a large accelerated filer becoming a non-accelerated filer from \$50 million to \$60 million and for exiting large accelerated filer status from \$500 million to \$560 million;
- Provide that an issuer may exit reporting as an accelerated filer or large accelerated filer by either falling below the adjusted public float thresholds or by falling below the smaller reporting company revenue test thresholds, as applicable; and
- Add a check box to the cover pages of annual reports on Forms 10-K, 20-F, and 40-F to indicate whether an ICFR auditor attestation is included in the filing.

The amendments do not impact the most significant exemption from the ICFR auditor attestation requirement, which is the exemption provided to an emerging growth company (“EGC”) pursuant to Title I of the JOBS Act. Generally, an EGC is company that has total annual gross revenues of less than \$1.07 billion during its most recently completed fiscal year end and that has not sold common equity securities under a registration statement. The JOBS Act provides EGCs with a five-year exemption from the ICFR auditor attestation requirement.

The following are two examples of the implementation of the new definitions and transition thresholds taken from the adopting release:

An issuer with a December 31 fiscal year end that did not exceed the public float threshold for a smaller reporting company in the prior year and that has a public float, as of June 30, 2020, of \$230 million and annual revenues for the fiscal year ended December 31, 2019 of \$101 million will be eligible to be a smaller reporting company under the public float test; however, because the issuer would not be eligible to be a smaller reporting company under the smaller reporting company revenue test, it will be an accelerated filer (assuming the other conditions for accelerated filer are also met). At the next determination date (June 30, 2021), if its public float, as of June 30, 2020, remains at \$230 million and its annual revenues for the fiscal year ended December 31, 2019 are less than \$100 million, the issuer will be eligible to be a smaller reporting company under the smaller reporting company revenue test (in addition to the public float test) and thus it will become a non-accelerated filer.

On the other hand, an issuer with a December 31 fiscal year end that has a public float, as of June 30, 2020, of \$400 million and annual revenues for the fiscal year ended December 31, 2019 of \$101 million will not be eligible to be a smaller reporting company under either the public float test or the smaller reporting company revenue test and will be an accelerated filer (assuming the other conditions for accelerated filer also are met). At the next determination date (June 30, 2021), if its public float, as of June 30, 2021, remains at \$400 million, that issuer will not be eligible to be a smaller reporting company under the smaller reporting company revenue test unless its annual revenues for the fiscal year ended December 31, 2020 are less than \$80 million, at which point it will be eligible to be a smaller reporting company under the smaller reporting company revenue test and to become a non-accelerated filer.

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.