

SEC Expands on "Smaller Reporting Companies" Eligible for Scaled Disclosure

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The SEC announced that it has voted to amend the definition of "smaller reporting company," or "SRC," expanding the population of companies that qualify for a range of scaled (reduced) disclosure requirements. The rules will become effective 60 days after publication in the Federal Register.

Examples of scaled disclosure include that SRCs, in their annual reports on Form 10-K, are not obligated to include risk factors, and selected and supplementary financial data. They may include only two years of income statements (vs three years) and a comparison of two years (vs three years) of financial results. In their proxy statements, SRCs are not required to include a CD&A, CEO pay ratio and certain executive compensation tables. They may include fewer NEOs, and only two years of compensation in the Summary Compensation Table.

Under the new definition, companies with a public float of less than \$250 million (vs \$75 million) will qualify as SRCs. A company with no public float or with a public float of less than \$700 million will also qualify as an SRC if it had annual revenues of less than \$100 million (vs \$50 million) during its most recently completed fiscal year. Commission staff estimates that 966 additional companies will be eligible for SRC status in the first year under the new definition.

The SEC released the following summary of the amendments to the definition of an SRC:

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	Less than \$100 million of

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	annual revenues and no public float	annual revenues and • no public float, or • public float of less than \$700 million
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For purposes of determining whether or not it is an SRC, a reporting issuer (vs. a non-reporting issuer filing its first registration statement) must measure its public float annually, on the last trading day of the second fiscal quarter of the previous fiscal year. Qualifying issuers are then eligible to use scaled disclosure rules for the first quarterly report on Form 10-Q for the fiscal year following the determination. Newly eligible SRCs may "early adopt" those rules for the quarterly report immediately following the determination.

Once a company fails to qualify as an SRC, it may continue to report under SRC disclosure requirements through the end of that fiscal year. However, in order to re-qualify as an SRC, the company must meet more stringent qualification thresholds. The subsequent qualification thresholds, set forth in the table below, are set at 80% of the initial qualification thresholds in the table above.

Criteria	Previous SRC Definition	Revised SRC Definition
Public Float	Public float of less than \$50 million	Public float of less than \$250 million
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; and Less than \$560 million of public float, if it previously had \$700 million or more of public float.

It is worth noting that a company may qualify as an SRC, but still be an accelerated filer. The amendments do not change the threshold in the "accelerated filer" definition that requires, among other things, that filers provide the auditor's attestation of management's assessment of internal control over financial reporting. However, the SEC staff has begun to formulate recommendations to the Commission for possible additional changes to the "accelerated filer" definition to reduce the number of companies that qualify as accelerated filers.

In addition to amendments to the definition of "smaller reporting company," the SEC also adopted amendments to Rule 3-05(b)(2)(iv) of Regulation S-X, in order 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.