
LEGAL UPDATES AND NEWS

SEC Proposes Changes to Definitions of Accelerated and Large Accelerated Filers

The Securities and Exchange Commission (“SEC”) has proposed amendments to its definitions of “accelerated filer” and “large accelerated filer” that will exclude any issuer that qualifies as a “smaller reporting company” (“SRC”) under the SRC revenue test adopted by the SEC in 2018. The proposed amendments would also increase the public float thresholds at which accelerated and large accelerated filers would be able to step down to a non-accelerated filer or accelerated filer status, respectively, and would add the SRC revenue test as a second transition threshold.

These proposed amendments follow the SEC’s 2018 changes to the definition of an SRC, which increased the threshold for no longer qualifying as an SRC. The SEC’s stated purpose in proposing the new changes is to promote capital formation by excluding certain smaller companies from the costs associated with being an accelerated or larger accelerated filer. These include allowing companies that qualify as SRCs under the revenue test to be exempt from having their independent auditors attest to the effectiveness of their internal controls over financial reporting (“ICFR”) and, in certain cases, reducing the disclosure requirements in SEC filings for companies with declining public floats or annual revenues. The public comment period for the proposed changes ends July 29, 2019. Given the nature of the proposals and the SEC’s recent rulemaking record, these changes likely will be adopted with few or no modifications, though it is unknown when they would go into effect.

Background

In 2018, the SEC amended its definition of an SRC by increasing the permissible public float of an SRC from less than \$75 million to less than \$250 million. The SEC also expanded the SRC revenue test to make it applicable to issuers with annual revenues of less than \$100 million if they have a public float of less than \$700 million. However, corresponding changes to the definitions of accelerated and large accelerated filer were not adopted at that time, which led to an overlap between the filer categories, with some companies being concurrently considered SRCs and accelerated filers (see our previous newsletter regarding the 2018 changes, [available here](#)). At the time, the SEC noted it would review the definitions of accelerated and large accelerated filer and evaluate whether changes should be made. The changes the SEC is now proposing are a result of those efforts.

Accelerated and Large Accelerated Filer Definitions

If the SEC's proposed changes are adopted, the definitions of accelerated and large accelerated filer will exclude issuers that had annual revenues of less than \$100 million for the previous year and a public float of less than \$700 million. The practical effect of this change would be that issuers that qualify as SRCs under the revenue test would be exempt from the ICFR auditor attestation requirement (though such issuers will still be required to establish, maintain and internally assess the effectiveness of their ICFR) and would be allowed to file their periodic reports using the more relaxed time schedule afforded to SRCs. However, the proposed changes would not affect the status of SRCs that qualify only under the public float test (issuers that have less than \$250 million in public float but more than \$100 million in annual revenues). Such SRCs, while being eligible for the relaxed disclosure requirements available to SRCs, would continue to be considered accelerated filers and thus required to provide the ICFR auditor attestation and file their periodic reports under the time schedule for accelerated filers.

Financial institutions should note that any change to these SEC definitions would not alter the Federal Deposit Insurance Corporation Improvement Act requirement that institutions with \$1 billion or more in assets obtain an ICFR auditor attestation for purposes of their annual reporting requirements with the applicable federal banking agencies (though such attestation need not be included in any filing with the SEC where the financial institution is exempt from the SEC's auditor attestation requirement).

Transition Thresholds

The proposed changes would amend the public float thresholds and add the SRC revenue test to the public float transition thresholds. These changes would allow companies with a declining public float and/or annual revenue to more readily transition to a filer status that is in line with their current situation, with an accompanying easing of the timing for filing periodic reports and, in the case of a transition to non-accelerated status, relief from certain disclosure requirements for SEC filings.

Public Float

The proposed changes would amend the public float thresholds for issuers exiting accelerated or large accelerated filer status. The public float threshold for stepping down from large accelerated filer to accelerated filer would increase from \$500 million to \$560 million (large accelerated filers with public floats that decrease to less than \$250 million but not less than \$60 million that do not meet the SRC revenue test discussed below would step down to a concurrent SRC/accelerated filer status). The public float threshold for stepping down from large accelerated filer or accelerated filer to a non-accelerated filer would increase from \$50 million to \$60 million.

The table below summarizes the public float thresholds that are being proposed by the SEC to move to a lower filer status. The current thresholds are noted in bold for comparison.

Proposed Amendments to the Public Float Thresholds			
Initial Public Float Determination	Resulting Filer Status	Subsequent Public Float Determination	Resulting Filer Status
\$700 million or more	Large Accelerated Filer	\$560 (\$500) million or more	Large Accelerated Filer
		Less than \$560 (\$500) million but \$250 million or more	Accelerated Filer
		Less than \$250 million but \$60 (\$50) million or more	SRC/Accelerated Filer (<i>if the company does not qualify as a non-accelerated filer under the applicable SRC revenue test</i>)
		Less than \$60 (\$50) million	Non-Accelerated Filer
Less than \$700 million but \$75 million or more	Accelerated Filer	Less than \$700 million but \$250 million or more	Accelerated Filer
		Less than \$250 million but \$60 (\$50) million or more	SRC/Accelerated Filer (<i>if the company does not qualify as a non-accelerated filer under the applicable SRC revenue test</i>)
		Less than \$60 (\$50) million	Non-Accelerated Filer

SRC Revenue Test

The proposed changes would institute the SRC revenue test as a second threshold by which issuers can become non-accelerated filers. An accelerated or large accelerated filer evaluating its filing status by using the SRC revenue test for the first time, or a concurrent SRC/accelerated filer with a public float of less than \$250 million, would transition to non-accelerated filer status if its annual revenues decreased to less than \$100 million (in the case of a large accelerated filer, only if its public float has also fallen below \$560 million). In all other circumstances, an accelerated filer or a large accelerated filer with a public float below \$560 million would transition to non-accelerated filer status if its annual revenue falls below \$80 million.

The table below summarizes the circumstances under which the proposed use of the SRC revenue test would lead to the issuer transitioning to non-accelerated filer status.

Proposed Use of the SRC Revenue Test as a Transition Threshold			
Initial Filer Status	Subsequent Determination Using the SRC Revenue Test		Resulting Filer Status
Large Accelerated Filer	Public float less than \$560 million	Annual revenue below \$80 million	Non-Accelerated Filer
		Annual revenue below \$100 million (<i>only if the company is using the SRC revenue test for the first time in determining its filing status</i>)	
Accelerated Filer	Annual revenue below \$80 million		Non-Accelerated Filer
	Annual revenue below \$100 million (<i>only if the company is using the SRC revenue test for the first time in determining its filing status</i>)		
SRC/Accelerated Filer	Annual revenue below \$100 million		Non-Accelerated Filer

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