

SEC Proposes Amendments to "Accelerated Filer" and "Large Accelerated Filer" Definitions

IN SHORT

The Situation: The U.S. Securities and Exchange Commission ("SEC") proposed amendments to the definitions of "accelerated filer" and "large accelerated filer" under the Securities Exchange Act of 1934.

The Result: The proposed amendments provide that an issuer who is eligible to be a "smaller reporting company" ("SRC") because of annual revenues below \$100 million will no longer qualify as an "accelerated filer" or a "large accelerated filer" and will be exempt from the requirement to obtain the attestation of their internal control over financial reporting from an independent outside auditor.

Looking Ahead: The public comment period will remain open for 60 days following publication of the amendments in the Federal Register.

On May 9, 2019, the SEC announced proposed amendments to the definitions of "accelerated filer" and "large accelerated filer" as set forth in Section 12b-2 under the Exchange Act. The proposed amendments, if adopted as drafted, would:

- Exclude from the accelerated filer and large accelerated filer definitions those issuers who would meet the qualifications of an accelerated filer or a large accelerated filer but who qualify as a SRC under the SRC revenue test, meaning that the issuer either (i) had no revenues or (ii) had annual revenues below \$100 million in the most recent fiscal year for which audited financial statements are available;
- Increase the public float threshold at which accelerated filers would become non-accelerated filers from \$50 million to \$60 million and increase the public float threshold at which large accelerated filers would become accelerated filers from \$500 million to \$560 million; and
- Add a revenue test to the exit thresholds, thereby permitting issuers to exit accelerated or large accelerated filer status even if their public float would otherwise require them to remain classified as such.

Read the full text of the proposed amendments [here](#).

The proposed amendments come nearly one year after the SEC amended the SRC definition, effective June 28, 2018, to expand the subset of issuers eligible to take advantage of the scaled disclosure requirements granted to SRCs under Section 12b-2 of the Exchange Act.

It should be noted that the SEC's proposed amendments would not alter many of the key investor protections that SOX created, such as independent audit committee requirements, CEO and CFO certifications of financial reports, or the requirement that issuers continue to establish, maintain, and assess the effectiveness of their internal controls over financial



Impact of the Amendments

Section 404(b) of the Sarbanes-Oxley Act of 2002 ("SOX") requires accelerated filers and large accelerated filers to have external independent auditors attest to and report on the effectiveness of their internal controls over financial reporting. The attestation requirement exists primarily to ensure that internal controls are sound. Auditors may identify significant deficiencies or material weaknesses previously unknown to management, enhancing investor protection as a result.

Compliance with the internal controls attestation requirement has proven to be costly and, by some estimates, has resulted in some issuers diverting upwards of \$1 million of capital from core business investment during any fiscal year. Through these amendments, the SEC is seeking to reduce these compliance costs by exempting a larger subset of lower-revenue issuers from the attestation requirement. These newly excluded issuers can instead reinvest capital previously earmarked for internal controls attestation compliance into their core businesses.

The proposed amendments reflect the ongoing efforts of the SEC and its staff to improve the efficiency of securities regulation without sacrificing investor protection. These efforts have given rise to interpretive guidance when appropriate and rulemaking, requiring a much longer administrative process, when necessary.

It should be noted that the SEC's proposed amendments would not alter many of the key investor protections that SOX created, such as independent audit committee requirements, CEO and CFO certifications of financial reports, or the requirement that issuers continue to establish, maintain, and assess the effectiveness of their internal controls over financial reporting. Rather, the proposed amendments would merely increase the number of issuers that qualify as SRCs, enabling a larger subset of smaller issuers for which compliance with the internal controls attestation requirement may be overly burdensome to instead prioritize core business investment.

TWO KEY TAKEAWAYS

1. Issuers that would be reclassified by the proposed amendments to the definitions of large accelerated filer or accelerated filer should determine whether any comments should be submitted to the SEC to favorably guide the final rulemaking.
2. These issuers should begin preparing for a possible reclassification in filing status.



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