

SEC Proposes to Increase the Number of Smaller Reporting Companies

The Securities and Exchange Commission (“SEC”) recently proposed amendments to its “smaller reporting company” (“SRC”) definition to expand the number of companies qualifying as SRCs.¹ Companies who qualify as SRCs can benefit from so-called scaled disclosure accommodations, which are intended to lessen the burden of complying with SEC disclosure requirements.² The SEC has requested comments on the proposed amendments by August 30, 2016.

I. The Current Rules

Under the current rules, a company that is a reporting registrant qualifies as an SRC if it (1) has less than \$75 million in public float³ as of the last business day of its most recently completed second fiscal quarter; or (2) if it has zero public float and annual revenues of less than \$50 million during its most recent fiscal year for which audited financial statements are available.

Companies that do not currently qualify as SRCs must wait until their public float falls below \$50 million or, if they have zero public float, until their revenues fall below \$40 million, in order to qualify. These lower thresholds for non-qualifying companies are intended to avoid situations where companies enter and exit SRC status due to small fluctuations in their public float or revenue.

II. The Proposed Amendments

If the proposed amendments are adopted, the thresholds to qualify as an SRC would be increased (1) to \$250 million in public float; or (2) to \$100 million in annual revenues if there is no public float.⁴

Additionally, under the proposed amendments, companies who determined they do not currently qualify as an SRC would qualify when their public float fell below \$200 million or, if they had zero public float, when their revenues fell below \$80 million.

In connection with the proposed amendments to the SRC definition, the SEC is also proposing to amend its definition of “accelerated filer” so that the changes to the SRC definition would not affect the determination of which companies would be “accelerated filers.”

¹ See *Amendments to Smaller Reporting Company Definition*, Release Nos. 33-10107; 34-78168; File No. S7-12-16 (June 27, 2016) (“Proposed Release”), available at <https://www.sec.gov/rules/proposed/2016/33-10107.pdf>.

² These accommodations include presentation of two years rather than three years of audited financial statements, a management’s discussion & analysis of two rather than three years and reduced executive compensation disclosure. A chart summarizing the disclosure accommodations currently available to SRCs is attached as [Annex A](#).

³ The definition of SRC provides that a company’s public float is computed by multiplying the aggregate worldwide number of shares of a registrant’s voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity.

⁴ For initial filers, the public float threshold would continue to be calculated as of a date within 30 days of the filing of the initial registration statement.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; or John Schuster at 212.701.3323 or jschuster@cahill.com.

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Annex A

Smaller Reporting Company Scaled Disclosure Accommodations

Regulation S-K	
Item	Scaled Disclosure Accommodation
101 – Description of Business	May satisfy disclosure obligations by describing the development of its business during the last three years rather than five years. Business development description requirements are less detailed than disclosure requirements for non-smaller reporting companies.
201 – Market Price of and Dividends on the Registrant’s Common Equity and Related Stockholder Matters	Stock performance graph not required.
301 – Selected Financial Data	Not required.
302 – Supplementary Financial Information	Not required.
303 – Management’s Discussion and Analysis of Financial Condition and Results of Operations (MD&A)	Two-year MD&A comparison rather than three-year comparison. Two year discussion of impact of inflation and changes in prices rather than three years. Tabular disclosure of contractual obligations not required.
305 – Quantitative and Qualitative Disclosures About Market Risk	Not required.
402 – Executive Compensation	Three named executive officers rather than five. Two years of summary compensation table information rather than three. Not required: <ul style="list-style-type: none"> • Compensation discussion and analysis. • Grants of plan-based awards table. • Option exercises and stock vested table. • Pension benefits table. • Nonqualified deferred compensation table. • Disclosure of compensation policies and practices related to risk management. • Pay ratio disclosure.

Regulation S-K	
Item	Scaled Disclosure Accommodation
404 – Transactions With Related Persons, Promoters and Certain Control Persons ¹⁶	Description of policies/procedures for the review, approval or ratification of related party transactions not required.
407 – Corporate Governance	Audit committee financial expert disclosure not required in first year. Compensation committee interlocks and insider participation disclosure not required. Compensation committee report not required.
503 – Prospectus Summary, Risk Factors and Ratio of Earnings to Fixed Charges	No ratio of earnings to fixed charges disclosure required. No risk factors required in Exchange Act filings.
601 – Exhibits	Statements regarding computation of ratios not required.
Regulation S-X	
Rule	Scaled Disclosure
8-02 – Annual Financial Statements	Two years of income statements rather than three years. Two years of cash flow statements rather than three years. Two years of changes in stockholders' equity statements rather than three years.
8-03 – Interim Financial Statements	Permits certain historical financial data in lieu of separate historical financial statements of equity investees.
8-04 – Financial Statements of Businesses Acquired or to Be Acquired	Maximum of two years of acquiree financial statements rather than three years.
8-05 – Pro forma Financial Information	Fewer circumstances under which pro forma financial statements are required.
8-06 – Real Estate Operations Acquired or to Be Acquired	Maximum of two years of financial statements for acquisition of properties from related parties rather than three years.
8-08 – Age of Financial Statements	Less stringent age of financial statements requirements.