

SEC Proposes New Rules That Would Make Available Scaled Disclosure to More Companies

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Summary

On June 27, 2016, the SEC proposed amendments to its rules and regulations that would expand the number of companies that qualify as “smaller reporting companies” by revising the thresholds for qualification that would largely impact companies with a public float of between \$75 million and \$250 million. Smaller reporting companies benefit from important relief from SEC compliance through so-called “scaled disclosure” which results in reduced public company compliance costs. The SEC expects that as a result of the proposed changes, there will be approximately 750 additional companies that would become eligible for smaller reporting company status. While this proposal is still in the rule-making phase, if adopted as proposed, companies with public floats of between \$75 million and \$250 million could potentially benefit from significant public company compliance cost savings.

In Depth

On June 27, 2016, the Securities and Exchange Commission (SEC) proposed amendments to its rules and regulations that would expand the number of companies that qualify as “smaller reporting companies” by revising the thresholds for qualification. Smaller reporting companies benefit from important relief from SEC compliance through so-called “scaled disclosure” which results in reduced public company compliance costs. Scaled disclosure accommodations available to smaller reporting companies include, among other things:

- Stock performance graph not required;

- Two-year MD&A comparison rather than three-year comparison;
- Reduced executive compensation disclosure, including compensation discussion and analysis not required;
- Compensation committee report not required; and
- Two years of income statements, cash flow statements and changes in stockholders' equity rather than three years.

Under the current rules, companies subject to periodic and current reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 may qualify as smaller reporting companies if they (1) have a public float of less than \$75 million as of the last business day of their most recently completed second fiscal quarter, or (2) have zero public float with less than \$50 million in annual revenues during the most recently completed fiscal year for which audited financial statements are available. The proposed amendments would increase the thresholds so that reporting companies with (1) a public float of less than \$250 million or (2) zero public float with less than \$100 million in annual revenues will qualify for smaller reporting company status. For companies filing a registration statement for the first time, the proposed amendments would similarly increase the public float threshold from \$75 million to \$250 million, calculated within 30 days of the filing of the registration statement.

Under the current rules, if a company does not qualify as a smaller reporting company, it cannot qualify as a smaller reporting company until it has less than \$50 million of public float at the end of the second fiscal quarter, and if such company has zero public float then it would remain unqualified until it had annual revenues of less than \$40 million in the prior fiscal year. These separate thresholds prevent situations where companies enter and exit smaller reporting company status due to small fluctuations in public float or revenue. Under the proposed changes, the \$50 million public float threshold would be increased to \$200 million and the \$40 annual revenue threshold would be increased to \$80 million.

The proposed amendments can be summarized as follows:

Category	Current Definition	Proposed Definition
Reporting company	Less than \$75 million of public float at end of second fiscal quarter	Less than \$250 million of public float at end of second fiscal quarter
Company filing initial registration statement	Less than \$75 million of public float within 30 days of filing	Less than \$250 million of public float within 30 days of filing
Company with zero public float	Less than \$50 million of revenues in most recent fiscal year	Less than \$100 million of revenues in most recent fiscal year
Non-smaller reporting company that seeks to qualify as a smaller reporting company based on public float	Less than \$50 million of public float at end of second fiscal quarter	Less than \$200 million of public float at end of second fiscal quarter
Non-smaller reporting company with zero public float that seeks to qualify as a smaller reporting	Less than \$40 million of revenues in most recent fiscal year	Less than \$80 million of revenues in most recent fiscal year

company		
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The proposal also includes a proposed amendment to the definition of “accelerated filer”. Under the current definition, all smaller reporting companies are exempt from “accelerated filer” status. Accelerated filers are subject, among other things, to accelerated periodic reporting deadlines (e.g. 10-Q is due 40 days after end of fiscal quarter rather than 45 days) and in the case of non-EGC filers, accelerated filers are required to provide an auditor attestation report in their 10-K. The proposal proposes to eliminate the smaller reporting company exemption, and as such, a company with a public float of \$75 million or more that would qualify as a smaller reporting company under the proposed amendments would nevertheless continue to be subject to accelerated filer status.

The SEC estimates that in 2015, approximately 32 percent of filers had public floats of less than \$75 million and that if the threshold is increased to \$250 million, then the number of filers will increase to 42 percent of filers. As a result, the SEC expects that there will be 751 additional companies with a public float of between \$75 million and \$250 million that would become eligible for smaller reporting company status if the amendments are made.

While this proposal is still in the rule-making phase, if adopted as proposed, companies with public floats of between \$75 million and \$250 million could potentially benefit from significant public company compliance cost savings.

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