

SEC Expands the Definition of “Smaller Reporting Company”

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On June 28, 2018, the Securities and Exchange Commission (SEC) adopted amendments to the definition of “smaller reporting company” to expand the number of companies that qualify for certain scaled disclosure requirements in SEC filings. Under the new definition, smaller reporting companies are companies with a public float of less than \$250 million, as compared to the \$75 million threshold under the prior definition. The amendments also expand the definition to include companies with less than \$100 million in annual revenues if they also have either no public float or a public float that is less than \$700 million. Previously, the revenue test included companies only if they had no public float and less than \$50 million in annual revenues.

Notably, the amendments preserve the existing public float threshold in the related “accelerated filer” definition. As a result, qualifying as a smaller reporting company will no longer automatically make a registrant a non-accelerated filer. Companies with a public float of \$75 million or more that qualify as smaller reporting companies are still subject to requirements that apply to accelerated filers, including filing deadlines for periodic reports and the obligation to provide the auditor’s attestation of management’s assessment of internal control over financial reporting required by the Sarbanes-Oxley Act, even if they are eligible for scaled disclosures in other areas. However, the SEC staff has begun to formulate recommendations for potential amendments to the “accelerated filer” definition that would reduce the number of companies that qualify as accelerated filers.

Smaller reporting companies benefit from scaled disclosure requirements in their SEC filings, such as (i) providing two years of financial statements and accompanying Management’s Discussion & Analysis disclosure, rather than three years; (ii) reduced disclosures regarding executive compensation (e.g., fewer named executive officers, fewer disclosure tables, no Compensation Discussion & Analysis and no pay ratio disclosure); and (iii) no requirement to include risk factors in Forms 10-K or 10-Q.

The amendments, which are expected to promote capital formation and reduce compliance costs for smaller companies, will become effective 60 days after publication in the Federal Register. Accordingly, a calendar year filer that meets the new definition can begin providing scaled disclosures in its Form 10-Q for the third quarter of 2018. For determination of smaller reporting company status, public float is measured as of the last day of the company’s most recently completed second fiscal quarter, while annual revenues are tested as of the most recently completed fiscal year for which audited financial statements are available. SEC staff estimates that nearly 1,000 companies will be newly eligible for smaller reporting company status in the first year under the new definition.

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