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SEC Expands Scope of Companies that Qualify for Reduced Compensation Disclosure

Nearly 1,000 additional companies will be eligible for scaled back disclosures following the SEC's announcement. However, reduced disclosure may not make sense for all companies.

Smaller reporting companies received a boost from the Securities and Exchange Commission (SEC) in June when it adopted amendments to expand the number of public companies eligible for scaled disclosure. These rules reflect the goals of the current leadership at the Commission to retain smaller public companies by reducing their disclosure requirements and, thus, the costs of compliance.

The previous definition of a smaller reporting company (SRC) was a public float of $75 million or less or, if a company had no public float (due to no public equity outstanding or no market price for its public equity), less than $50 million in revenue.

Under the new definition, as illustrated in Figure 1, the public float threshold has been increased to $250 million or, if a company cannot calculate its public float, $100 million in revenue. The new definition also adds an additional group of companies to the definition: those with annual revenues of less than $100 million for the previous fiscal year and a public float of less than $700 million.

SRCs are subject to significantly reduced public company reporting requirements, which did not change under the SRC amendments and include:

- No requirement to provide a Compensation Discussion and Analysis (CD&A) and compensation committee report
- The number of executives listed in the Summary Compensation Table is limited to the CEO and the next two highest paid executive officers (vs. the CEO, CFO and next three highest paid officers for regular filers) and the reporting period is over a two-year period instead of a three-year period
- Fewer executive compensation tables are required
- No CEO pay ratio reporting requirement
- No compensation risk disclosure requirement

The amendments will become effective 60 days after they are published in the Federal Register.

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Figure 1

Definition of a Smaller Reporting Company

Criteria	Previous SRC Definition	Revised SRC Definition
Public Float	Public float of less than $75 million	Public float of less than $250 million
Revenues	Less than $50 million of annual revenues if no public equity outstanding or no market price for public equity	Less than $100 million of annual revenues for the prior year *and* no public float, or a public float of less than $700 million

Source: Securities and Exchange Commission

Consistent with the current definition, public float continues to be calculated as of the last day of the company's most recently completed fiscal quarter.

The SEC also amended the definition of an SRC for a company that loses its SRC status and then looks to re-enter the scaled disclosure system in the future when its size is again reduced. The new "subsequent qualification" thresholds are set at 80% of the initial qualification thresholds as seen in Figure 2.

Figure 2

Qualification Thresholds for Companies Re-entering SRC Status

Criteria	Previous SRC Definition	Revised SRC Definition
Public Float	Public float of less than $50 million	Public float of less than $200 million if previously had public float of $250 million or more
Revenues	Less than $40 million of annual revenue and no public float	▪ Less than $80 million of annual revenue if previously had $100 million or more in annual revenue; and ▪ Less than $560 million of public float, if it previously had $700 million or more of public float

Source: Securities and Exchange Commission

The new amendments do not make any changes to the definitions of an "accelerated filer" and "large accelerated filer." Because of the increased public float for SRCs, an SRC is no longer automatically a non-accelerated filer. However, the SEC has stated the staff is developing recommendations for potential changes to the definition of accelerated filer to reduce the number of companies that qualify. This would further reduce compliance costs for smaller issuers.

Next Steps

The SEC estimates approximately 966 additional companies will be eligible for SRC status in the first year under the new definition. Existing public companies with a market cap between $200 million and $250 million will not receive any immediate relief under the new rule because re-entering the system once you’re no longer in it requires a higher threshold. However, issuers with a market cap between $75 million and $200 million will need to make a decision about whether to opt into scaled disclosures.

Companies need to be mindful of potential backlash from their investors. Some investors may continue to expect fuller disclosure, especially when it comes to the CD&A because these companies will still be required to hold a Say-on-Pay vote. In fact, companies with a lack of robust disclosure around their executive pay programs may be more likely to have a lower Say-on-Pay vote regardless of whether their pay is aligned with performance. This is not a trivial risk and may mean that retaining regular company disclosures could be worth the extra effort.

If you have questions about executive compensation matters and related disclosure, please contact our team.

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