



SEC Expands "Smaller Reporting Company" Eligibility and Working on SOX 404(b) Relief (Chart)

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On June 28, 2018, the Securities and Exchange Commission adopted amendments to the "smaller reporting company" (SRC) definition to expand the number of companies that qualify for certain existing scaled disclosure accommodations. These accommodations are summarized in the [table](#) following this article. The Commission staff estimates that 966 additional companies will be eligible for SRC status in the first year under the new definition.

The new smaller reporting company definition includes companies with less than \$250 million of public float or with less than \$100 million in annual revenues and either no public float or public float of less than \$700 million. The following table summarizes the amendments to the smaller reporting company definition.

Criteria	Previous Initial SRC Definition	Revised Initial 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 and no public float	Less than \$100 million of annual revenues and <ul style="list-style-type: none"> • no public float, or • public float of less than \$700 million
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A company that does not qualify as an SRC under the above thresholds will remain unqualified until it can meet 80% of one or more of the initial qualification thresholds. The following table summarizes the subsequent qualification thresholds.

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

The amendments do not change the thresholds in the “accelerated filer” and “large accelerated filer” definitions in Exchange Act Rule 12b-2. As a result, companies with \$75 million or more of public float that qualify as SRCs will remain subject to the requirements that apply to accelerated filers, including the timing of the filing of periodic reports and the requirement to provide the auditor’s attestation of

management's assessment of internal control over financial reporting required by Section 404(b) of the Sarbanes-Oxley Act of 2002. However, the Chairman has directed the staff, and the staff has begun, to formulate recommendations to the Commission for possible additional changes to the "accelerated filer" definition that, if adopted, would have the effect of reducing the number of companies that qualify as accelerated filers in order to promote capital formation by reducing compliance costs for those companies.

Scaled Disclosure Accommodations

The following table summarizes these scaled disclosure accommodations^[1]

Regulation S-K	
Item	Scaled Disclosure Accommodation
101 ? Description of Business	May satisfy disclosure obligations by describing the development of the re during the last three years rather than five years. Business development d requirements are less detailed than disclosure requirements for non-SRCs
201 ? Market Price of and Dividends on the Registrant's Common Equity and Related	Stock performance graph not required.
Stockholder Matters	
301 – Selected Financial Data	Not required.

<p>302 – Supplementary Financial Information</p>	<p>Not required.</p>
<p>303 – Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”)</p>	<p>Two-year MD&A comparison rather than three-year comparison.</p> <p>Two-year discussion of impact of inflation and changes in prices rather than three-year discussion.</p> <p>Tabular disclosure of contractual obligations not required.</p>
<p>305 – Quantitative and Qualitative Disclosures About Market Risk</p>	<p>Not required.</p>
<p>402 – Executive Compensation</p>	<p>Three named executive officers rather than five.</p> <p>Two years of summary compensation table information rather than three.</p> <p>Not required:</p> <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.

<p>404 – Transactions With Related Persons, Promoters and Certain Control Persons^[2]</p>	<p>Description of policies/procedures for the review, approval or ratification of transactions not required.</p>
<p>407 – Corporate Governance</p>	<p>Audit committee financial expert disclosure not required in first annual report.</p> <p>Compensation committee interlocks and insider participation disclosure not required.</p> <p>Compensation committee report not required.</p>
<p>503 – Prospectus Summary, Risk Factors and Ratio of Earnings to Fixed Charges</p>	<p>No ratio of earnings to fixed charges disclosure required.</p> <p>No risk factors required in Exchange Act filings.</p>
<p>601 – Exhibits</p>	<p>Statements regarding computation of ratios not required.</p>

<p>Regulation S-X</p>	
<p>Rule</p>	<p>Scaled Disclosure</p>

<p>8-02 – Annual Financial Statements</p>	<p>Two years of income statements rather than three years.</p> <p>Two years of cash flow statements rather than three years.</p> <p>Two years of changes in stockholders' equity statements rather than three years.</p>
<p>8-03 – Interim Financial Statements</p>	<p>Permits certain historical financial data in lieu of separate historical financial statements of equity investees.</p>
<p>8-04 – Financial Statements of Businesses Acquired or to Be Acquired</p>	<p>Maximum of two years of acquiree financial statements rather than three years.</p>
<p>8-05 – Pro forma Financial Information</p>	<p>Fewer circumstances under which pro forma financial statements are required.</p>
<p>8-06 – Real Estate Operations Acquired or to Be Acquired</p>	<p>Maximum of two years of financial statements for acquisition of properties from related parties rather than three years.</p>
<p>8-08 – Age of Financial Statements</p>	<p>Less stringent age of financial statements requirements.</p>

[1] In addition to the accommodations itemized in the table, SRCs

using Form S-1 may incorporate by reference information filed prior and subsequent to the effectiveness of the registration statement if they meet the eligibility requirements in General Instruction VII of Form S-1. See Item 12(b) of Form S-1; see also Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies, Release No. 33-10003 (Jan. 19, 2016) [81 FR 2743 (Jan. 19, 2016)].

[2] Item 404 also contains the following *expanded* disclosure requirements applicable to SRCs: (1) rather than a flat \$120,000 disclosure threshold, the threshold is the lesser of \$120,000 or 1% of total assets, (2) disclosures are required about underwriting discounts and commissions where a related person is a principal underwriter or a controlling person or member of a firm that was or is going to be a principal underwriter, (3) disclosures are required about the issuer's parent(s) and their basis of control, and (4) an additional year of Item 404 disclosure is required in filings other than registration statements.

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