

Client Update

SEC Proposes to Expand Availability of Scaled Disclosure Requirements

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On June 27, 2016, the SEC proposed amendments to increase the financial thresholds in the definition of “smaller reporting company,” expanding the universe of companies that benefit from scaled disclosure under Regulations S-K and S-X, but not changing the scaled disclosure regime itself. The SEC estimates that if the proposed amendments are adopted, an additional 782 registrants would be eligible for smaller reporting company status, in addition to the approximately 2,900 registrants that already claim this status.

The amended definition of “smaller reporting company” would include companies with less than \$250 million in public float, compared to the current \$75 million threshold. For companies with no public float, the amended definition would include companies with annual revenues of less than \$100 million, compared to the current \$50 million threshold. If a company has already exceeded either of these thresholds, it would only qualify as a smaller reporting company once its public float is less than \$200 million or, if the company has no public float, its annual revenues are less than \$80 million.

The existing scaled disclosure regime provides benefits to smaller reporting companies by allowing them to comply on an “à la carte” basis with either the less stringent requirements applicable to smaller reporting companies or the requirements applicable to other reporting companies for certain disclosure requirements under Regulations S-K and S-X. The SEC’s summary of accommodations available to smaller reporting companies is provided in Appendix A. Most notable are the flexibility with respect to required financial statements and the exemptions from required compensation disclosure, including the Compensation Discussion and Analysis. In contrast to these accommodations, Item 404 of Regulation S-K may require smaller reporting companies to provide more extensive related party transaction disclosure than other reporting companies as smaller reporting companies must disclose transactions with related persons that exceed the lesser of \$120,000 or 1% of the

average of the smaller reporting company's total assets at year end of the last two completed fiscal years.

The SEC has not proposed to increase the \$75 million threshold in the "accelerated filer" definition. As a result, companies with \$75 million or more of public float that qualify as smaller reporting companies would still be subject to the requirements that currently apply to accelerated filers, including accelerated reporting deadlines and the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002. The SEC has, however, requested comment on whether to increase the accelerated filer threshold from the current \$75 million float to \$250 million.

The proposed amendments are independent from the accommodations made available to "emerging growth companies" ("EGCs") under the JOBS Act, which include certain of the scaled disclosure accommodations for these companies. Whereas EGC status is generally available only for a five-year period from the first registered sale of common equity securities, there is no expiration of smaller reporting company status. The SEC estimates that of the additional 782 registrants that would be eligible for smaller reporting company status if the proposed amendments are adopted, 153 are currently EGCs.

The SEC included requests for comment on the proposed amendments, which are due 60 days after publication in the Federal Register.

The proposed rule may be found at <https://www.sec.gov/rules/proposed/2016/33-10107.pdf>.

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Please do not hesitate to contact us with any questions.

Appendix A

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 (cont'd)	
Item	Scaled Disclosure Accommodation
404 – Transactions With Related Persons, Promoters and Certain Control Persons ¹	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.

¹ Item 404 also contains the following expanded disclosure requirements applicable to smaller reporting companies: (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 parents and 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, and (3) an additional year of Item 404 disclosure is required in filings other than registration statements.