

# SEC Proposes to Eliminate Auditor Attestation Requirement for Low-Revenue Reporting Companies

May 23, 2019

On May 9, 2019, the U.S. Securities and Exchange Commission (the “Commission”) proposed amendments to the definitions of accelerated filer and large accelerated filer that would eliminate, for low-revenue reporting companies, the requirement that an independent auditor attest to and report on management’s assessment of the effectiveness of internal control over financial reporting (the “Auditor Attestation”). These companies would remain subject to other Sarbanes-Oxley Act requirements, including establishing, maintaining and assessing the effectiveness of internal control over financial reporting; providing certifications of financial reports by the principal executive officer and the principal financial officer; and maintaining an independent audit committee.

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Companies subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are categorized as non-accelerated, accelerated or large accelerated filers. Accelerated and large accelerated filers must comply with the Auditor Attestation requirement under Section 404(b) of the Sarbanes-Oxley Act. Historically, smaller reporting companies were generally excluded from the accelerated and large accelerated filer definitions and did not have to comply with the Auditor Attestation requirement. However, the June 2018 amendments to the definition of smaller reporting company and the definitions of accelerated filer and large accelerated filer resulted in some smaller reporting companies qualifying as accelerated or large accelerated filers, which subjected those smaller reporting companies to the Auditor Attestation requirement.

Below is a summary of the proposed amendments. The full text of the proposed rule is available [here](#). The Commission has requested comments within 60 days after publication of the proposed rule in the Federal Register.

## PROPOSED AMENDMENTS

### Excluding Low-Revenue Smaller Reporting Companies

An issuer is categorized as a smaller reporting company if it satisfies either a public float test or a revenue test. Initially, those tests are whether the issuer (i) has a public float of

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less than \$250 million or (ii) has annual revenues of less than \$100 million and either (x) no public float or (y) a public float of less than \$700 million. An issuer must test its status as a smaller reporting company annually, and an issuer that loses its status as a smaller reporting company can regain it if the issuer either (i) has a public float of less than \$200 million or (ii) meets certain tests for qualification based on revenues and public float.

The Commission's proposal would revise the definitions of accelerated filer and large accelerated filer such that an issuer that qualifies as a smaller reporting company based on the revenue test would not be considered an accelerated or large accelerated filer.

Currently, to be considered an accelerated filer an issuer must have (i) a public float of at least \$75 million but less than \$700 million as of the last business day of the issuer's most recently completed second fiscal quarter, (ii) been subject to the requirements of Exchange Act Sections 13(a) or 15(d) for at least 12 calendar months and (iii) filed at least one annual report pursuant to Exchange Act Sections 13(a) or 15(d). To be considered a large accelerated filer an issuer must meet all the same requirements as an accelerated filer, but have a public float of at least \$700 million as of the last business day of the issuer's most recently completed second fiscal quarter.

The proposed amendments, if adopted, would add a fourth requirement to each of the accelerated filer and large accelerated filer definitions that the issuer does not meet the requirements for smaller reporting companies under the revenue test of the smaller reporting company definition. Foreign private issuers that meet the low-revenue test of the smaller reporting company definition would also be able to qualify as non-accelerated filers under the proposed amendments.

The Commission believes that the proposed amendments, if adopted, would likely provide the greatest benefit to companies, among others, that may be in the development stage, such as biotech and other life sciences companies, with great promise but minimal to no sales, providing cost savings that can be reinvested in business growth without significantly compromising the disclosure provided to investors.

#### **Aligning Transition Provisions in the Accelerated and Large Accelerated Filer Definitions**

Once an issuer has been categorized as an accelerated or large accelerated filer, it is not able to exit a category until its public float falls below enumerated thresholds, as determined at the end of each fiscal year. The Commission proposes to revise the transition thresholds for accelerated and large accelerated filers to more closely align

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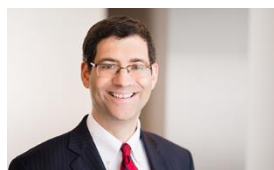
with the transition thresholds in the definition of smaller reporting company and to add the smaller reporting company revenue test.

Under the proposed amendments, an issuer who initially qualifies as a large accelerated filer could not transition to an accelerated filer unless its public float falls below \$560 million (previously \$500 million), and an issuer who initially qualifies as an accelerated filer (or a large accelerated filer) could not transition to a non-accelerated filer unless its public float falls below \$60 million (previously \$50 million). In either case, the proposed amendments would also allow for a transition to non-accelerated filer status if the issuer meets the revenue test in the smaller reporting company definition.

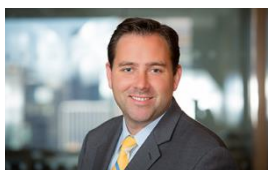
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Please do not hesitate to contact us with any questions.

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