



# New Developments Summary

## Revised ‘smaller reporting company’ definition

### SEC expands scope of companies that qualify for scaled disclosures

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#### Summary

The Securities and Exchange Commission (SEC) approved the [Final Rule, Amendments to Smaller Reporting Company Definition](#), raising the financial thresholds in the “smaller reporting company” (SRC) definition and expanding the scope of companies that qualify for scaled disclosures. The Final Rule does not increase the current thresholds contained in the “accelerated filer” and “large accelerated filer” definitions. Therefore, companies qualifying as an SRC under the amended definition that have public float of \$75 million or more will remain subject to the accelerated filer requirements, including accelerated filing deadlines for periodic reports, and would be required to comply with Sarbanes-Oxley Act Section 404(b), the auditor attestation requirement for a registrant’s internal control over financial reporting.

The amendments increase the initial qualification thresholds in the SRC definition so that a company qualifies as an SRC when it meets at least one of two criteria:

- Its public float is less than \$250 million, regardless of revenue levels, or
- Its annual revenues are less than \$100 million and it either has no public float or its public float is less than \$700 million.

A company that does not qualify as an SRC based on these criteria during its initial assessment will remain unqualified until it determines that it meets the subsequent qualification thresholds, which are set at 80 percent of the initial thresholds. For the first fiscal year ending after the Final Rule’s effective date, all issuers may evaluate SRC eligibility by applying the amended [initial](#) qualification thresholds, regardless of their prior filing status.

The Final Rule is effective September 10, 2018.

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## A. Smaller reporting company status

A company meeting the smaller reporting company (SRC) definition<sup>1</sup> may rely on the scaled disclosure requirements available to an SRC outlined in Regulation S-K and in Regulation S-X, Article 8, *Financial statements of smaller reporting companies*. The scaled disclosures are available to SRCs on an *a la carte* basis. That is, an SRC may elect to comply with the scaled financial and non-financial disclosures on an item-by-item basis.

On June 28, the Securities and Exchange Commission (SEC) adopted the [Final Rule, Amendments to Smaller Reporting Company Definition](#), raising the financial thresholds in the SRC definition (as described further in the table below) and expanding the scope of companies that qualify for scaled disclosures. The Final Rule is intended to reduce compliance costs for smaller companies and facilitate capital formation, while maintaining investor protections.

A reporting company determines if it is an SRC as of the last business day of its second fiscal quarter by calculating public float on that day. A reporting company with no outstanding public common equity or no market price for its outstanding common equity, or a reporting company with a public float of less than \$700 million, can use its revenues for the most recently completed fiscal year as its basis for determining SRC status. A non-reporting company determines its status in conjunction with filing an initial registration statement; however, the initial determination may be updated if the results of the initial public offering are different than originally estimated.

The following table summarizes the initial qualification thresholds a company must meet to qualify as an SRC under the previous definition compared to the revised definition.

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 in annual revenues and no public float	Less than \$100 million in annual revenues and <ul style="list-style-type: none"> <li>• No public float, or</li> <li>• Public float of less than \$700 million</li> </ul>

Once a company fails to qualify as an SRC, it will remain unqualified until it determines it meets the subsequent qualification thresholds, which are set at 80 percent of the initial thresholds. The following

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<sup>1</sup> The Final Rule amends the SRC definition in Securities Exchange Act of 1934 Rule 12b-2, *Definitions*, Securities Act of 1933 Rule 405, *Definition of terms*, and Regulation S-K, Item 10(f).

table summarizes the subsequent qualification thresholds a company must meet to qualify as an SRC under the previous definition compared to the revised definition.

Criteria	Previous SRC definition	Revised SRC definition
Public float	Public float of less than \$50 million	Public float of less than \$200 million, if it previously had \$250 million or more of public float
Revenues	Less than \$40 million in annual revenues and no public float	<ul style="list-style-type: none"> <li>Less than \$80 million in annual revenues, if it previously had \$100 million or more in annual revenues; and</li> <li>Less than \$560 million of public float, if it previously had \$700 million or more of public float</li> </ul>

### Impact on current-year SRC determinations

For the first fiscal year ending after the Final Rule's effective date (September 10, 2018), any issuer will qualify as an SRC if it meets one of the initial qualification thresholds as of the date required to measure disclosure status, which in some cases may be a date that precedes the Final Rule effective date. For example, a company with a September 30, 2018 fiscal year-end that had public float of \$220 million as of March 31, 2018 will qualify as an SRC for the fiscal year ending September 30, 2018, regardless of its previous disclosure status.

## B. Amendments to 'accelerated filer' and 'large accelerated filer' definitions

The Final Rule amends the definitions<sup>2</sup> of "accelerated filer" and "large accelerated filer" to eliminate the provision that excludes companies that are SRCs. As a result, a registrant with greater than \$75 million in public float could qualify as both an SRC and an accelerated filer. An accelerated filer that is also an SRC would be eligible to use the scaled disclosures available to SRCs; however, it would still be subject to the accelerated filing deadlines for periodic reports and would be required to comply with Sarbanes-Oxley Act Section 404(b), the auditor attestation requirement for a company's internal control over financial reporting (ICFR), unless the company is an emerging growth company (EGC).

<sup>2</sup> The Final Rule amends the "accelerated filer" and "large accelerated filer" definitions in Securities Exchange Act of 1934 Rule 12b-2, *Definitions*.

### SRC and accelerated filer status example

ABC company, a non-EGC, is an accelerated filer at September 30, 2018, the company's fiscal year-end. Using its March 31, 2018 public float calculation, it also qualifies as an SRC for its fiscal year ending September 30, 2018, since its public float is less than \$250 million.

ABC Company can take advantage of scaled disclosures in its Form 10-K; however, it would be required to file its Form 10-K within 75 days of its fiscal year-end (consistent with the accelerated filing deadlines) and to include an auditor's attestation report on ICFR within that Form 10-K.

Even though the Final Rule retains these financial thresholds, SEC Chairman Jay Clayton has directed the staff to formulate recommendations for potential changes to the accelerated filer definition that, if adopted, would reduce the number of registrants defined as accelerated filers.

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## C. Amendments to Regulation S-X, Rule 3-05

Paragraph (b)(2)(iv) of Regulation S-X, Rule 3-05, *Financial statements of businesses acquired or to be acquired*, permits a registrant to omit the earliest of the three fiscal years of audited financial statements of certain targets if the net revenues of the acquired or to be acquired business are less than a specified threshold. The Final Rule raises this threshold from \$50 million to \$100 million to align with the revised financial thresholds in the SRC definition.

Regulation S-X, Rule 8-04 contains the scaled disclosure alternatives available to SRCs with respect to an acquired or to be acquired business and generally permits an SRC to provide a maximum of two years of financial statements of certain targets. S-X Rule 8-04 was not amended by the Final Rule.

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