



New Developments Summary

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SEC amends ‘accelerated filer’ and ‘large accelerated filer’ definitions

Certain low-revenue issuers will be non-accelerated filers

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The SEC recently adopted the [Final Rule, Amendments to the Accelerated Filer and Large Accelerated Filer Definitions](#), amending these terms in Exchange Act Rule 12b-2, *Definitions*, to exclude an issuer that is eligible to be a smaller reporting company and had annual revenues less than \$100 million. The amendments will reduce the number of issuers required to comply with Sarbanes-Oxley Act Section 404(b), the auditor attestation on the internal control over financial reporting requirement.

The Final Rule is effective 30 days after publication in the *Federal Register* and applies to annual reports due on or after the effective date.

A. Overview

The [Final Rule](#) amends the “accelerated filer” and “large accelerated filer” definitions in Rule 12b-2, *Definitions*, of the Securities Exchange Act of 1934 (Exchange Act) to exclude an issuer that is eligible to be a smaller reporting company (SRC) and had annual revenues of less than \$100 million in its most recent fiscal year for which audited financial statements are available (the SRC revenue test). The amended rules also add a similar accommodation for business development companies (BDCs) that have public float of less than \$700 million and investment income of less than \$100 million. As a non-accelerated filer, such an issuer will not be required to comply with Sarbanes-Oxley Act Section 404(b), the auditor attestation requirement for an issuer’s internal control over financial reporting (ICFR), and may follow the extended filing deadlines applicable to a non-accelerated filer (45 days for quarterly reports and 90 days for annual reports). The amendments do not affect management’s responsibility to establish and maintain effective ICFR, or to perform its annual assessment of ICFR under Sarbanes-Oxley Act Section 404(a).

The amendments also add a check box to the cover page of annual reports on Forms 10-K, 20-F, and 40-F for a registrant to indicate when an ICFR auditor attestation report is included in the filing, so that this information is more prominently disclosed.

The amendments also revise the transition provisions in Exchange Act Rule 12b-2 for exiting accelerated filer and large accelerated filer status, by increasing the transition thresholds and adding a revenue test.

The Final Rule is effective 30 days after publication in the *Federal Register*, and the amendments apply to annual reports due on or after the effective date. An issuer may apply the amendments to a 2020 reporting period if the annual periodic report is due after the effective date, even if that report is for a fiscal year ending before the effective date.



Grant Thornton insights: Determining filing status for 2020 Form 10-K

Registrants with March 31, 2020 fiscal year-ends that have Form 10-Ks due after the effective date of the Final Rule may question whether they are permitted to apply the new “accelerated filer” and “large accelerated filer” definitions to determine filing status for 2020 Form 10-Ks, even though the fiscal year-ends precede the effective date of the Final Rule.

At the date of this publication, the effective date of the Final Rule is unknown, because it has not yet been published in the *Federal Register*. Until an effective date is known, issuers planning to rely on the amendments are encouraged to discuss their specific facts and circumstances with qualified securities counsel.

However, if the Final Rule is published in the *Federal Register* 30 days before the due date of Form 10-K for the year ended March 31, 2020, an accelerated filer or large accelerated filer that qualified to be an SRC at its most recent SRC determination date and met the SRC revenue test (that is, the prior year’s revenues were less than \$100 million) may now be a non-accelerated filer for its annual report on Form 10-K for the year ended March 31, 2020 and for subsequent interim reports on Form 10-Q. This means that the non-accelerated filer may take advantage of the extended filing deadlines and will no longer be required to obtain an auditor’s attestation on ICFR. The non-accelerated filer would check both the non-accelerated filer and SRC boxes on the cover page of Form 10-K and would not check

the box that an ICFR auditor attestation report is included in Form 10-K, unless the audit committee determines that such a report will be obtained and voluntarily included in Form 10-K.

B. Amendments to exclude low-revenue SRCs

The Jumpstart Our Business Startups Act of 2012 created a new class of issuers, emerging growth companies (EGCs), which are exempt from obtaining an auditor's attestation report on ICFR for up to five years after going public. The amendments to the "accelerated filer" and "large accelerated filer" definitions will increase the number of smaller issuers that fall outside of that auditor attestation requirement, allowing current EGCs that are also SRCs and have revenues of less than \$100 million to continue to be exempt from the auditor attestation requirement after losing EGC status.

The SEC noted in the Final Rule that it expects an additional 527 issuers to qualify as non-accelerated filers¹ under the amended rules, of which an estimated 154 issuers are already EGCs.

2018 amendments to SRC definition

The SEC amended the SRC definition in 2018 to expand the scope of companies that qualify for scaled disclosures. However, the 2018 amendments also eliminated the provision that excludes SRCs from the "accelerated filer" and "large accelerated filer" definitions. As a result, a registrant with greater than \$75 million but less than \$250 million in public float, or a registrant with up to \$700 million in public float but less than \$100 million in revenue, qualified as both an SRC and an accelerated filer. Once an issuer fails to qualify as an SRC, it remains unqualified until it meets the subsequent qualification threshold, set at 80 percent of the initial threshold for the criteria on which it previously failed to qualify as an SRC, and continues to meet any other threshold it previously satisfied. The following table summarizes the initial and subsequent qualification thresholds.

A company qualifies as an SRC during its initial or subsequent determination if it meets one of the following thresholds, as applicable	
Initial qualification thresholds ²	Subsequent qualification thresholds
Public float is less than \$250 million, regardless of revenue levels	Public float is less than \$200 million, if issuer previously had \$250 million or more in public float
Annual revenues are less than \$100 million and issuer has (1) no public float or (2) public float of less than \$700 million	<ul style="list-style-type: none"> Annual revenues are less than \$80 million, if issuer previously had \$100 million or more in annual revenues Public float is less than \$560 million, if issuer previously had \$700 million or more in public float

¹ See page 81 of the [Final Rule](#).

² For non-reporting companies, the initial SRC determination is performed in conjunction with its initial public offering.

2020 amendments to ‘accelerated filer’ and ‘large accelerated filer’ definitions

To alleviate costs and burdens for certain low-revenue issuers, the Final Rule adds a new condition to the definitions of “accelerated filer” and “large accelerated filer” to exclude from such definitions a subset of SRCs with less than \$100 million in annual revenues. The table below summarizes the relationship between SRCs and non-accelerated, accelerated, and large accelerated filers under the amended rules.

Status	Public float	Annual revenues	Auditor attestation on ICFR required
SRC and non-accelerated filer	Less than \$75 million	N/A	No
	\$75 million to less than \$700 million	Less than \$100 million	No
SRC and accelerated filer	\$75 million to less than \$250 million	\$100 million or more	Yes, unless issuer is an EGC
Accelerated filer (non-SRC)	\$250 million to less than \$700 million	\$100 million or more	Yes, unless issuer is an EGC
Large accelerated filer (non-SRC)	\$700 million or more	N/A	Yes

Foreign private issuers

Under the amended rules, a foreign private issuer (FPI) that qualifies as an SRC under the SRC revenue test will be a non-accelerated filer. However, an FPI is not eligible to use the scaled disclosures available to SRCs, unless the FPI uses the forms and rules applicable to domestic issuers and provides financial statements compliant with U.S. GAAP.³

Business development companies

The amendments include a provision under which a BDC will be excluded from the “accelerated filer” and “large accelerated filer” definitions if the BDC has (1) less than \$700 million in public float, and (2) investment income of less than \$100 million. In addition, BDCs are subject to the same transition provisions for accelerated filer and large accelerated filer status as other issuers, but instead substituting investment income for revenue. BDCs will continue to be ineligible to qualify as an SRC under the amendments.

³ The Final Rule clarifies this by adding instructions to the SRC definition in Exchange Act Rule 12b-2, *Definitions*, Securities Act of 1933 Rule 405, *Definition of terms*, and Regulation S-K, Item 10(f).

C. Transition thresholds

The Final Rule revises the transition provisions for issuers exiting accelerated filer and large accelerated filer status as follows:

- Increases the public float transition threshold from \$50 million to \$60 million for an accelerated or large accelerated filer to become a non-accelerated filer.
- Increases the public float transition threshold from \$500 million to \$560 million for a large accelerated filer to become an accelerated filer.
- Adds the SRC revenue test in addition to the public float transition thresholds.

The amendments set the accelerated and large accelerated filer transition thresholds at 80 percent of the corresponding initial qualification thresholds to align these thresholds with the SRC transition thresholds. The amended thresholds will limit the cases when an issuer is both an accelerated filer or large accelerated filer and an SRC.

The following table summarizes the subsequent determinations that must be met for an issuer to become both an SRC and a non-accelerated filer under the amendments.

Initial determination	Initial status	Subsequent determination thresholds to become an SRC and a non-accelerated filer
\$700 million or more in public float and \$100 million or more in annual revenues	Large accelerated filer	<ul style="list-style-type: none"> • Public float of less than \$60 million, or • Public float of \$60 million to less than \$200 million and less than \$100 million in annual revenues, or • Public float of \$200 million to less than \$560 million and less than \$80 million in annual revenues
\$700 million or more in public float and less than \$100 million in annual revenues	Large accelerated filer	<ul style="list-style-type: none"> • Public float of less than \$60 million, or • Public float of \$60 million to less than \$560 million and less than \$100 million in annual revenues
\$250 million to less than \$700 million in public float	Accelerated filer	<ul style="list-style-type: none"> • Public float of less than \$60 million, or

and \$100 million or more in annual revenues

- Public float of \$60 million to less than \$200 million and less than \$100 million in annual revenues, or
- Public float of \$200 million to less than \$700 million and less than \$80 million in annual revenues

\$75 million to less than \$250 million in public float and \$100 million or more in annual revenues

Accelerated filer and SRC

- Public float of less than \$60 million, or
- Public float of less than \$700 million and less than \$100 million in annual revenues



Example – Transition from accelerated filer to non-accelerated filer status

ABC Company, a calendar year-end non-EGC, is eligible to be an SRC for its fiscal year ending December 31, 2020 under the public float test (that is, public float is \$235 million as of June 30, 2020). However, since the company does not meet the SRC revenue test (annual revenues of \$150 million as of December 31, 2019), it will be an accelerated filer as of December 31, 2020. As an accelerated filer, the company

- Is required to file its 2020 Form 10-K within 75 days of its fiscal year-end;
- Is required to include an auditor's attestation on ICFR within that Form 10-K; and
- May continue to apply the scaled disclosures available for SRCs.

If, at June 30, 2021, ABC Company's public float decreased to \$215 million and its annual revenues as of December 31, 2020 decreased to \$95 million, the company would qualify as an SRC under the SRC revenue test and, as a result, the company would become a non-accelerated filer at December 31, 2021. As a non-accelerated filer, the company may

- File its 2021 Form 10-K within 90 days of its fiscal year-end;
- Exclude an auditor's attestation report on ICFR within that Form 10-K; and
- Continue to apply the scaled disclosures available to SRCs.

If ABC Company had a public float over \$250 million as of June 30 2019, its annual revenues would need to be less than \$80 million, which is 80 percent of the initial qualification thresholds, in order for the company to become a non-accelerated filer in a subsequent period.

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