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CAPITAL MARKETS & SECURITIES

SEC PROPOSES RULE TO AMEND THE DEFINITION OF "SMALLER REPORTING COMPANY" *POTENTIAL TO EXPAND ELIGIBLE REGISTRANTS*

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On June 27, the United States Securities and Exchange Commission (the "Commission") proposed amendments[1] to the definition of "smaller reporting company" that would effectively expand the number of registrants that would qualify as smaller reporting companies and be eligible to provide the scaled disclosure requirements contained in Regulation S-K and Regulation S-X. The Commission has proposed the amendments as part of its efforts to promote capital formation and reduce compliance costs for smaller registrants while maintaining protections for investors.

As proposed, the definition of "smaller reporting company" would apply to registrants with a public float of less than $250 million. A registrant with a public float of zero would also qualify as a smaller reporting company if it had annual revenues of less than $100 million during its most recently completed fiscal year. Consistent with the current definition, a registrant would calculate its public float as of the last business day of its most recently completed second fiscal quarter and a registrant filing its initial registration statement under the Securities Act or Exchange Act would calculate its public float as of a date within 30 days of filing the registration statement.

Under the proposed definition, a registrant would avoid entering and exiting the smaller reporting company status based on minor fluctuations in its public float calculation; once it exceeded the smaller reporting company threshold, it would not qualify again as a smaller reporting company unless and until its public float dropped below a lower threshold of $200 million, measured as of the last business day of its most recently completed second fiscal quarter. Similarly, a registrant with a public float of zero that exceeded the smaller reporting company threshold would not qualify again as such unless and until it had annual revenues of less than $80 million during its previous fiscal year.

A summary of the proposed changes are included in the chart:

Registrant Category	Current Definition	Proposed Definition
Reporting Registrant	Less than $75 million of public float at end of second fiscal quarter	Less than $250 million of public float at end of second fiscal quarter
Registrant Filing Initial Registration Statement	Less than $75 million of public float within 30 days of filing	Less than $250 million of public float within 30 days of filing
Registrant with Zero Public Float	Less than $50 million of revenues in most recent fiscal year	Less than $100 million of revenues in most recent fiscal year
Non-Smaller Reporting Company that Seeks to Qualify as a Smaller Reporting Company Based on Public Float	Less than $50 million of public float at end of second fiscal quarter	Less than $200 million of public float at end of second fiscal quarter
Non-Smaller Reporting Company with Zero Public Float that Seeks to Qualify as a Smaller Reporting Company	Less than $40 million of revenues in most recent fiscal year	Less than $80 million of revenues in most recent fiscal year

The proposed definition uses the same criteria to determine a registrant's smaller reporting company status as those currently in effect, namely, a registrant's public float and revenues. However, the Commission is seeking comment as to whether these criteria should be re-evaluated. The Commission estimates that if the proposed amendments are adopted, approximately 42% of registrants would qualify as smaller reporting companies based on their public float (an increase from 32% of registrants in 2015 that qualified based on a public float of $75 million).

The Commission has also proposed amendments to the definitions of "accelerated filer" and "large accelerated filer" to preserve the application of the current thresholds contained in those definitions. The proposed amendments seek to eliminate the provision in the definitions of both accelerated filer and large accelerated filer that excludes registrants that are eligible to use the scaled smaller reporting company disclosure requirements in their annual and quarterly reports. The effect of the proposed amendments would be that registrants with a public float of $75 million or more that qualify as smaller reporting companies would still be required to comply with certain requirements applicable to accelerated filers. These requirements include the due dates of the registrants' periodic reports and the requirement to provide an auditor's attestation of management's assessment of internal controls over financial reporting as required by the Sarbanes-Oxley Act of 2002.

The Commission is seeking comments to the proposed amendments. If adopted, the amendments would allow for an increase to the pool of registrants eligible to use the scaled disclosure requirements available to smaller reporting companies, effectively reducing the regulatory burden and cost of compliance borne by those registrants.

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[1] https://www.sec.gov/rules/proposed/2016/33-10107.pdf