



Defining Issues[®]

SEC rule provides smaller companies relief by amending filer definitions

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KPMG reports on the SEC's rule¹ exempting more companies from internal control audits.

Applicability

Public companies, including foreign issuers² and business development companies.

Key impacts

The final rule:

- amends the accelerated filer and large accelerated filer definitions to exclude smaller reporting company (SRC) issuers with less than \$100 million in annual revenue;
- exempts more issuers from the requirement to have an audit of their internal control over financial reporting (ICFR);
- increases certain transition thresholds between filer categories and adds a revenue test for companies exiting accelerated or large accelerated status;
- retains other requirements such as those related to independent audit committees and management certifications of financial reporting;
- allows foreign issuers and business development companies (BDCs) to qualify as non-accelerated filers, in certain circumstances; and
- adds a check box to the cover page of annual reports (i.e. Forms 10-K, 20-F, and 40-F) for companies to indicate whether an ICFR audit is included in the filing.

Why has the SEC amended the definitions?

In September 2018, the SEC's changes to the definition of an SRC³ took effect and broke the link with non-accelerated filers. By removing that connection, many newly qualified SRCs remained accelerated filers. While these companies enjoyed the benefits of being an SRC, they remained subject to the ICFR audit requirement.

What are the amendments?

The SEC has provided an additional exclusion from both the accelerated filer and large accelerated filer definitions. Any SRC whose most recent annual revenue was less than \$100 million is a non-accelerated filer.

¹ SEC Release No. 34-88365, [Amendments to the Accelerated Filer and Large Accelerated Filer Definitions](#).

² Rule also applies to foreign private issuers that file using domestic forms.

³ For more information see KPMG's Defining Issues 18-14, [SEC updates smaller reporting company definition](#).

This includes any SRC that qualified using either the revenue test or the public float test⁴ (less than \$250 million).

The SEC also increased the thresholds at which companies exit accelerated filer and large accelerated filer status. For accelerated or large accelerated filers to become non-accelerated filers, the company's public float would need to fall below \$60 million, rather than \$50 million. For a large accelerated filer to become an accelerated filer, its public float would need to be above \$60 million, but below \$560 million. Currently, the upper limit is \$500 million.

Alternatively, an accelerated or large accelerated filer may become a non-accelerated filer if it subsequently qualifies as an SRC under the revenue test.⁵ An accelerated filer that previously had more than \$100 million of annual revenue would become an SRC and non-accelerated filer if its revenue fell below \$80 million.

In general, the exit transition thresholds are set below the qualifying thresholds to avoid companies oscillating between categories. The \$560 million threshold also aligns with the SRC public float transition threshold under the revenue test when a company previously exceeded \$700 million in public float. This alignment eliminates situations where a company qualified as both an SRC and a large accelerated filer.

With these changes, a non-accelerated SRC is exempt from an audit over its ICFR. However, the amendments do not change other requirements of the Sarbanes-Oxley Act, such as those regarding independent audit committees, CEO and CFO certifications of financial reporting, or the requirement for management to establish, maintain and assess the effectiveness of ICFR. These SRCs are also no longer subject to the accelerated or large accelerated filing deadlines for annual and quarterly reports.

Foreign issuers that use the forms and rules designated for domestic issuers and provide their financial statements under US GAAP are eligible to qualify as an SRC.⁶ Therefore, foreign issuers that meet the required thresholds to qualify as an SRC under the SRC revenue test are eligible to be a non-accelerated filer and exempt from an ICFR audit.

Additionally, under the final rule, BDCs that have less than \$100 million of annual investment income and a public float of \$75 million to less than \$700 million, qualify as non-accelerated filers⁷ and are exempt from the ICFR audit requirement. While BDCs would qualify for this exclusion by meeting the SRC revenue test, substituting their annual investment income as the measure of annual revenue, these companies would continue to be ineligible to be SRCs.

SRCs that are also accelerated filers

The amendments to the filer definitions will expand the number of SRCs that qualify as non-accelerated filers. However, those SRCs that qualify using the public float test with over \$75 million in public float but more than \$100 million of revenue in their most recently completed fiscal year will continue to be accelerated filers.

⁴ Measurement is determined as of the last business day of the company's most recently completed second fiscal quarter. The Final Rule does not change the existing measurement date.

⁵ Large accelerated filers would need to have a public float less than \$560 million to qualify.

⁶ Foreign issuers that qualify as foreign private issuers (FPI) and elect the FPI reporting regime (e.g. prepare financial statements under IFRS standards, using Form 20-F) may not qualify as an SRC, but have other accommodations available.

⁷ BDCs are subject to the same transition thresholds to exit accelerated and large accelerated filer status as other registrants, substituting annual revenue with annual investment income.

Relationships between SRCs and non-accelerated and accelerated filers		
Status	Public float	Annual revenues
SRC and non-accelerated filer	Less than \$75 million	N/A
	\$75 million to less than \$700 million	Less than \$100 million
SRC and accelerated filer	\$75 million to less than \$250 million	\$100 million or more
Accelerated filer (not SRC)	\$250 million to less than \$700 million	\$100 million or more

Transition to the amendments

These amendments are effective for annual report filings due on or after April 27, 2020. Therefore, a company may apply the new filer definitions when determining filing status even though its fiscal year-end date precedes April 27, 2020, the effective date. For example, a registrant with a fiscal year that ended on or after January 26, 2020 that is due to file its Form 10-K on or after the effective date and that qualifies as a non-accelerated filer under the final rule would not be subject to the ICFR auditor attestation requirement for that Form 10-K. In this example, the company may also comply with the filing deadlines and reporting requirements of a non-accelerated filer.

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