

## Practice Update

# SEC Adopts Final Rules Amending Smaller Reporting Company Definition

July 3, 2018

By [Esther L. Moreno](#) and [Christina C. Russo](#)

On June 28, 2018, the U.S. Securities & Exchange Commission (the Commission) adopted final rules to amend the definition of smaller reporting company. The revised definition will expand the number of registrants that will qualify as smaller reporting companies and as a result benefit from scaled disclosure. The Commission has described its motivation for the amendment as an effort to promote capital formation and reduce compliance costs for a greater number of companies while maintaining an appropriate level of investor protection.

### *Revised Definition for Initial Qualification*

Under the revised definition, a registrant will initially qualify as a “smaller reporting company”:

- if it has a public float of less than \$250 million; or
- if it has annual revenues of less than \$100 million and either no public float or a public float of less than \$700 million.

The revised definition is a significant change to the current definition whereby a registrant initially qualifies as a smaller reporting company if it has a public float of less than \$75 million or has annual revenues of less than \$50 million and no public float.

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### *Revised Definition for Subsequent Qualification*

The final rules also adopt a revised definition for subsequent qualification as a smaller reporting company after a registrant determines it no longer qualifies as a smaller reporting company under the initial qualification threshold. Such a registrant will remain unqualified until it determines it meets the following qualification thresholds:

- a public float of less than \$200 million if it previously had a public float of \$250 million or more; or
- less than \$80 million of annual revenues if it previously had annual revenues of \$100 million or more and a public float of less than \$560 million if it previously had a public float of \$700 million or more.

The revised subsequent qualification thresholds will be set at 80% of the initial qualification thresholds. Currently, the subsequent qualification thresholds are a public float of less than \$50 million or annual revenues of less than \$40 million and no public float.

### *Interplay Between Smaller Reporting Company Status and Accelerated Filer and Large Accelerated Filer Status*

As part of the final rules, the Commission chose to maintain the current thresholds for “accelerated filer” and “large accelerated filer” status and eliminate the exclusion of companies eligible to use the smaller reporting company requirements from the definitions of “accelerated filer” and “large accelerated filer.” This change will result in some registrants qualifying as both a smaller reporting company and as an accelerated filer. The Commission will be considering in the future whether it should amend the definition of accelerated filer and the Chairman of the Commission has specifically directed Commission staff to consider the historical and current

relationship between the smaller reporting company and accelerated filer definitions.

### *Other Matters*

The Commission also determined to amend Rule 3-05 of Regulation S-X to increase the net revenue threshold to \$100 million. This change results in registrants being able to omit financial statements for the earliest of three fiscal years if the net revenues of a business to be acquired is less than \$100 million. The revenue threshold in Rule 3-05 of Regulation S-X is currently based on the revenue threshold in the definition of smaller reporting company and the Commission determined it was appropriate to maintain this alignment.

### *Effective Date*

The final rules will be effective 60 days after publication in the Federal Register. A copy of the Commission's final rules can be found [here](#).

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