

To the Point

SEC proposes changes to simplify the filer status framework and allow scaled disclosure for more companies

The proposed amendments are intended to convert the current multilayered system of filer statuses into a more simplified structure.

What you need to know

- ▶ The SEC proposed rules to streamline the filer status framework for Exchange Act reporting companies into two primary categories: large accelerated filers and non-accelerated filers. The accelerated filer and smaller reporting company categories would be eliminated.
- ▶ The proposal would raise the public float threshold for large accelerated filers to \$2 billion from \$700 million, require a two-year lookback for entering or exiting large accelerated filer status and require at least 60 months of reporting before a company can become a large accelerated filer.
- ▶ Registrants that do not meet the proposed definition of large accelerated filer would be classified as non-accelerated filers and benefit from certain accommodations available to smaller reporting companies and emerging growth companies, including relief from the ICFR auditor attestation requirement. This would be a significant expansion of the number of companies exempt from Section 404(b) of the Sarbanes-Oxley Act.¹
- ▶ The proposal would introduce a new sub-category for the smallest non-accelerated filers, which would be eligible for extended periodic report filing deadlines.
- ▶ Comments are due 60 days after publication in the Federal Register.

Overview

The Securities and Exchange Commission (SEC or Commission) **proposed** amendments that are intended to simplify the Securities Exchange Act of 1934 (Exchange Act) filer status framework and extend current disclosure scaling and other accommodations to most public companies, among other things.

Under the proposal, large accelerated filers would represent registrants with \$2 billion or more in public float measured using the issuer's 10-trading-day average stock price over each of the last two second fiscal quarters. To enter or exit large accelerated filer status, a company would need to meet or miss the threshold for two consecutive years, and new registrants would remain non-accelerated filers for at least 60 months after becoming subject to Exchange Act reporting.

All other registrants would be non-accelerated filers. For these issuers, the proposal would extend scaled disclosure and other accommodations that largely mirror those currently available to smaller reporting companies (SRCs) and emerging growth companies (EGCs).

The proposed changes in definitions of large accelerated filer and non-accelerated filer would not apply to asset-backed issuers² and foreign private issuers that file using foreign forms (e.g., Form 20-F and Form 40-F).

The SEC also proposed extending certain filing deadlines for the smallest issuers and conforming amendments to Regulations S-K and S-X and related forms.

Key considerations

Redefinition of large accelerated filer status

The proposal intends to narrow the population of large accelerated filers by increasing the public float threshold to \$2 billion from \$700 million. The SEC noted that the existing threshold, which was adopted in 2005, currently captures a significantly larger portion of registrants than originally intended.

Under the proposal, public float would be determined using the average of the registrant's stock price over the last 10 trading days of each of the last two second fiscal quarters.³ It would no longer be measured as of a single day at the end of the second fiscal quarter.

A registrant would need to meet (or miss) the threshold for two consecutive fiscal years before its status changes. The proposal also would extend the seasoning requirement to 60 consecutive calendar months from 12 months, effectively creating a five-year on-ramp before a registrant can become a large accelerated filer, regardless of size.

Elimination of accelerated filer and SRC categories

The proposal would eliminate the accelerated filer and SRC categories and make non-accelerated filer the default status for all registrants that are not large accelerated filers.

Under the proposal, every new registrant would begin reporting as a non-accelerated filer and retain that status for at least five years. After five years, an issuer would remain a non-accelerated filer unless and until its public float is at least \$2 billion for two consecutive years.

Expanded use of scaled disclosures

Non-accelerated filers, subject to limited exceptions, would be permitted to apply most scaled disclosures and accommodations provided under Regulations S-K and S-X for SRCs, including:

- ▶ Two years of audited financial statements and management's discussion and analysis
- ▶ Reduced executive compensation disclosures
- ▶ Omission of certain disclosures, such as risk factors in Forms 10-Q and 10-K, and quantitative and qualitative market risks

The proposal would extend certain EGC accommodations to non-accelerated filers, which would make separate reliance on EGC status unnecessary in most circumstances.⁴

ICFR auditor attestation implications

Under the proposal, non-accelerated filers would not be required to obtain an auditor's attestation on a company's internal control over financial reporting (ICFR) pursuant to Section 404(b) of the Sarbanes-Oxley Act. However, management's assessment of ICFR under Section 404(a) of the Sarbanes-Oxley Act would continue to be required.

Extended filing deadlines for the smallest issuers

The proposal would introduce a new sub-category of small non-accelerated filers defined as non-accelerated filers with \$35 million or less in total assets as of the end of their two most recent second fiscal quarters. Small non-accelerated filers would have an additional 30 days to file Form 10-K annual reports and an additional five days to file Form 10-Q quarterly reports.

Transition provisions

Existing registrants would perform an initial reassessment of whether they are a large accelerated filer or a non-accelerated filer by looking back to their filer-status assessment as of the end of the fiscal year immediately preceding effectiveness and applying the proposal's two-year lookback mechanics and, where relevant, the seasoning requirement. Once a company completes its initial assessment, it could apply any newly available accommodations beginning with its next Securities Act of 1933 (Securities Act) or Exchange Act filing made after the assessment.

Registrants that do not complete the initial assessment in time (the day before the last day of the fiscal year in which the final rules take effect) would generally remain in their pre-effective-date status category until the next annual assessment.

How we see it

The SEC is concurrently proposing amendments to streamline the registered offering framework for Exchange Act reporting companies. The proposed amendments related to registered offering reform and the filer status framework, together with the recently proposed optionality for semiannual interim reporting, reflect the SEC's objective of facilitating capital formation in the public markets and would meaningfully alter the regulatory landscape for affected companies. For further details on these proposed rules, refer to our [To the Point](#) publications, ***SEC proposes enhancements to registered offering process***, and ***SEC proposes optional semiannual reporting in lieu of quarterly Form 10-Q reporting***.

Endnotes:

- ¹ The SEC estimates that approximately 1,600 registrants, representing 27% of all registrants or 60% of those currently required to have ICFR auditor attestation, would become newly exempt from this requirement under Section 404(b) of the Sarbanes-Oxley Act, should the proposed amendments be adopted.
- ² As defined in Item 1101(b) of Regulation AB. See 17 CFR 229.1101(b).
- ³ The Commission has recently proposed optional semiannual reporting in lieu of quarterly Form 10-Q reporting. See [To the Point: SEC proposes optional semiannual reporting in lieu of quarterly Form 10-Q reporting](#). If that rule is adopted, semiannual filers would determine public float over the last 10 trading days of the first semiannual period.
- ⁴ The proposal would not eliminate or change the definition of EGC in Exchange Act Rule 12b-2 and Securities Act Rule 405. Issuers will still need to check the boxes for EGC status in certain periodic reports and registration statements.

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