

Proposed SEC Amendment Could Reduce Compliance Costs for Smaller Public Companies

Written by Paul Bork

August 10, 2016

Under a mandate from Congress under the Fixing America's Surface Transportation (FAST) Act of 2015, the Securities and Exchange Commission recently proposed an amendment to the definition of "smaller reporting company" that would permit a broader group of registrants to take advantage of scaled disclosure accommodations under Regulation S-K and S-X.

Under current SEC rules, a "smaller reporting company" is defined as an SEC registrant with either:

- Less than \$75 million in public float as of the last business day of their most recently completed second fiscal quarter, or
- Zero public float and annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available.

Registrants that fall into this definition are subject to less extensive reporting and financial disclosure requirements, and in some cases, outright exemptions from certain disclosures. Such relaxed reporting and disclosure requirements substantially reduce the burdens and costs of compliance with federal securities laws.

The SEC has proposed that the definition of a "smaller reporting company" be expanded to include registrants with less than \$250 million in public float, or zero public float and annual revenues of less than \$100 million. In addition, under the proposed amendment, if a registrant exceeds annual revenues of \$100 million, it may not qualify as a smaller reporting company until its annual revenues fall below \$80 million, a proportional increase from the current lower threshold of \$40 million.

In tandem with the proposed change in the definition of "smaller reporting company," the SEC is also proposing to amend the definitions of "accelerated filer" and "large accelerated filer" so that registrants with public floats between \$75 million and \$250 million, while qualifying for reduced disclosure requirements, would still be subject to the accelerated timeline for filing of annual and quarterly reports. Thus, while the proposed amendment may reduce the substance of annual and quarterly disclosures for qualifying companies, the status quo would continue with regard to the accelerated timing of those filings.

The proposed amendment, if adopted, could benefit a substantial number of additional registrants: approximately 42% of all registrants have a public float of less than \$250 million, compared to 32% with a public float of less than \$75 million, the current cap for a smaller reporting company. Based on Form 10-Ks filed in 2015, there could be well over 700 additional companies that would see their compliance burdens substantially reduced.

The SEC has asked for comments on the proposed amendment by August 30, 2016.

RELATED PRACTICES

- [Capital Markets](#)
- [Business Counseling](#)
- [Public Companies](#)

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an

attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.