



CENTER FOR CAPITAL MARKETS
C O M P E T I T I V E N E S S

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July 29, 2019

Ms. Vanessa Countryman
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendments to the Accelerated Filer and Large Accelerated Filer Definitions (Release No. 34-85914; File No. S7-06-19)

Dear Secretary Countryman:

The U. S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") on the proposed *Amendments to the Accelerated Filer and Large Accelerated Filer Definitions* ("Proposed Amendments"). The Proposed Amendments would:

- Exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be a smaller reporting company ("SRC") and had no revenues or annual revenues of less than \$100 million in the most recent fiscal year for which audited financial statements are available.¹

¹ On June 28, 2018, the Commission adopted amendments to the SRC definition to expand the number of companies that benefit from scaled disclosure requirements. The 2108 amendments define SRCs as companies with (1) public float of less than \$250 million or (2) less than \$100 million of annual revenues and no public float or public float of less than \$700 million (also known as the revenue test). Thus, under the Proposed Amendments, companies that are eligible to be an SRC that have a public float of \$75 million to less than \$700 million would be non-accelerated filers if their annual revenues are less than \$100 million. Companies with \$75 million to less than \$250 million in public float and \$100 million or more in annual revenues would be both SRCs and accelerated filers. Under both the existing definitions and Proposed Amendments, companies with \$250 million to less than \$700 million in public float and annual revenues of \$100 million or more are accelerated filers but not SRCs (see page 22). The SEC also notes that although rare, under the existing rules, some

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- Increase the transition thresholds for accelerated and large accelerated filers becoming non-accelerated filers from \$50 million to \$60 million and for exiting large accelerated filer status from \$500 million to \$560 million.²
- Add a revenue test to the transition thresholds for exiting accelerated and large accelerated filer status by allowing an accelerated or a large accelerated filer to become a non-accelerated filer if it becomes eligible to be an SRC under the SRC revenue test.³

One important consequence of the Proposed Amendments is that the exemption for non-accelerated filers from Section 404(b) of The Sarbanes-Oxley Act of 2002 (“SOX”) would be extended to SRCs that have a public float of \$75 million to less than \$700 million and had no revenues or annual revenues of less than \$100 million in the most recent fiscal year for which audited financial statements are available.⁴ Specifically, this subset of SRCs would be exempt from the requirement to have their outside independent auditors attest to the effectiveness of their internal control over financial reporting (“ICFR”).⁵

The SEC estimates that 282 current issuers would become exempt under the Proposed Amendments from SOX Section 404(b) requirements for auditor attestation on the effectiveness of ICFR.⁶ Nonetheless, these issuers would continue

issuers that meet the large accelerated filer definition may be eligible to be an SRC because of the expanded revenue test in the SRC definition (see the Proposed Amendments, page 8).

On June 28, 2018, the Commission adopted amendments to the SRC definition to expand the number of companies that benefit from scaled disclosure requirements. The 2108 amendments define SRCs as companies with (1) public float of less than \$250 million or (2) less than \$100 million of annual revenues and no public float or public float of less than \$700 million (also known as the revenue test). Thus, under the Proposed Amendments, companies that are eligible to be an SRC that have a public float of \$75 million to less than \$700 million would be non-accelerated filers if their annual revenues are less than \$100 million. Companies with \$75 million to less than \$250 million in public float and \$100 million or more in annual revenues would be both SRCs and accelerated filers. Under both the existing definitions and Proposed Amendments, companies with \$250 million to less than \$700 million in public float and annual revenues of \$100 million or more are accelerated filers but not SRCs (see page 22). The SEC also notes that although rare, under the existing rules, some issuers that meet the large accelerated filer definition may be eligible to be an SRC because of the expanded revenue test in the SRC definition (see the Proposed Amendments, page 8).

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to be required to establish and maintain effective ICFR, as well as annually assess and disclose the effectiveness of ICFR in compliance with SOX Section 404(a).

In proposing the amendments to the accelerated filer and large accelerated filer definitions, the SEC's stated objective is to promote capital formation for smaller reporting issuers without significantly affecting the ability of investors to make informed investment decisions based on the financial reporting of those issuers.⁷ This objective is an important focus for the CCMC, and it should be noted that the business community believes that strong and effective internal controls and audits are an important component of the ability of businesses to communicate with investors in order to raise the capital needed to operate, grow, and compete. However, we have also observed that related costs can be disproportionately expensive and regressive, which is why the CCMC has advocated for the requirement to be scalable. Therefore, it is important that the SEC finds the right threshold for which companies are exempted from the ICFR audit requirement supported by a cost-benefit analysis or consider other means to scale the requirements.

The CCMC has long been concerned that a decline in public companies has created fewer opportunities for American families and businesses. In response to this concern, in Spring 2018, the CCMC was one of eight organizations and associations to offer a number of recommendations in *Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public* ("The On-Ramp").⁸

Relevant to the Proposed Amendments, *The On-Ramp* included the following recommendation:

*... the SEC should consider aligning the SRC definition with the definition of a non-accelerated filer after the careful study of the costs and benefits of such an approach that the rulemaking process affords. The SEC should also institute a revenue-only test for pre or low revenue companies that may be highly valued.*⁹

control structure and procedures for financial reporting. (see the Proposed Amendments, pages 46 and 60-61). The number also excludes up to an additional 100 affected issuers for which the SEC was unable to determine the filer classification or revenues (see the Proposed Amendments, page 61).

⁷ See the Proposed Amendments, pages 1-2.

⁸ The other seven are the American Securities Association, Biotechnology Innovation Organization, Equity Dealers of America, sifma, Technet, Nasdaq, and the National Venture Capital Association.

⁹ See *The On-Ramp*, page 27.

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Further elaborating on this recommendation, *The On-Ramp* also suggested:

As the SEC considers aligning the SRC definition with the non-accelerated filer definition, it should weigh the benefits that would accrue to the economy by lessening compliance burdens on small and mid-size companies against any potential decrease in investor protection. The SEC should also take into consideration the fact that many companies may still choose to maintain compliance with Section 404(b) even if they are afforded an exemption from it – at the very least, shareholders could encourage issuers to maintain internal control systems similar to 404(b).¹⁰

Following the release of *The On-Ramp*, the SEC in Summer 2018 expanded the criteria at which a company would qualify as an SRC to qualify for scaled disclosure requirements as companies with less than \$250 million of public float or less than \$100 million in annual revenues and \$700 million of public float, while the thresholds for qualifying as an “accelerated filer” and a “large accelerated filer” remain unchanged.¹¹ This meant that companies with \$75 million or more of public float that qualify as SRCs would still be subject to the requirement that issuers provide an auditor’s attestation of management’s assessment of ICFR in accordance with Section 404(b) of Sarbanes Oxley.

Given this recent action by the SEC, the previous *On-Ramp* recommendation may no longer be suitable in terms of aligning the SRC and non-accelerated definition via a public float threshold consistent with *The On-Ramp* recommendation, we are pleased that the SEC has decided to propose a revenue-only test.

Thank you for your consideration of the CCMC’s recommendations and we stand ready to discuss them with you further.

Sincerely,



Tom Quaadman

¹⁰ See *The On-Ramp*, page 28.

¹¹ <https://www.sec.gov/rules/final/2018/33-10513.pdf>