



SEC Proposal Would Relax ICFR Auditor Attestation Requirement for Certain Smaller Reporting Companies

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These proposed amendments have the potential to reduce compliance costs for many public companies and could have a significant impact on lower-revenue companies to whom the ICFR auditor attestation requirement can be particularly burdensome. SRCs with less than \$100 million in revenue should begin thinking about how the proposed amendments, if adopted, could impact their business and reporting processes. With the recent closure of the 60-day comment period on July 29, 2019, SRCs should be on the lookout for any SEC rule changes that may be adopted in light of the [comments received](#).

Background on the ICFR Auditor Attestation Requirement

Currently, all public companies are required to have their management annually review the effectiveness of the issuer's ICFR under Section 404(a) of the Sarbanes-Oxley Act (SOX). However, "accelerated" filers (market capitalization between \$75 million and \$700 million) and "large accelerated" filers (market capitalization greater than \$700 million) are subject to an additional requirement under SOX 404(b). For these filers, an independent auditor must review and attest to management's internal assessment of the company's ICFR. Public companies that are not accelerated or large accelerated filers are explicitly exempt from ICFR auditor attestation requirement pursuant to SOX 404(c).

The ICFR auditor attestation requirement is intended to improve the accuracy and reliability of SEC disclosures. However, many public companies find that this assurance comes at a significant price. Indeed, this requirement can be the most costly aspect of being an

accelerated filer and costs and fees associated with the ICFR auditor attestation requirement may also divert capital from core business needs.

The SEC amended the SRC definition in June 2018 (discussed here) to increase the SRC market capitalization ceiling from \$75 million to \$250 million and include companies with less than \$100 million in annual revenues if such companies also have a market capitalization of less than \$700 million. Prior to such amendments, the SRC category of filers generally did not overlap with either the accelerated or large accelerated filer categories. Following these amendments, however, it became possible for a company to be both an SRC, which is intended to have reduced reporting obligations, and an accelerated filer, which is subject to the ICFR auditor attestation requirement, as well as a number of other increased or accelerated reporting requirements.

SEC's Proposal

The SEC's proposed amendments, which were subject to public comment period until July 29, 2019, would provide a narrow carve-out from the current definitions of accelerated filer and large accelerated by excluding any company that both:

1. Qualifies as a SRC,
2. Has less than \$100 million in annual revenues during the most recent fiscal year for which audited financial statements are available.

Most significantly, these companies would no longer be subject to the SOX 404(b) auditor attestation requirement. Practically speaking, the SEC estimates that the amendments would result in 539 additional issuers being classified as nonaccelerated filers and no longer subject to the ICFR auditor attestation requirement.

Additionally, these companies would no longer need to comply with the shorter deadlines for filing periodic reports applicable to accelerated filers and large accelerated filers. They also would not be required to provide disclosure about unresolved staff comments on their periodic and/or current reports or disclosure required by about whether they make filings available on or through their Internet websites.

The SEC's proposed amendments also revise the transition provisions for entering and exiting accelerated filer and large accelerated filer status by increasing the transition thresholds to align them with those contained in the SRC definition. Notably, SRCs with market

capitalizations between \$75 million and \$250 million would still be subject to all of the accelerated filer requirements if their annual revenues exceed \$100 million.

Comment Letters

The majority of the comment letters expressed support for the proposed amendments. Out of the 61 comment letters received by the SEC, 49 of them (which included comments from each of the big four accounting firms, several SRCs (particularly those in the biotech industry), various law firms and Nasdaq) were in favor of the amendments. Of these 49, seven were strongly in favor.

The remaining 12 comment letters (generally from academics and industry groups) were opposed to the relaxed standards that would be introduced by the new amendments, emphasizing that, together, the risk of (i) significantly weaker internal controls and (ii) an increased number of accounting restatements outweighed any potential cost savings benefit that would result from the amendments.

Categories



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