

ICFR Relief Now Effective for Small Companies

On April 27, 2020, a new SEC rule became effective that offers substantial relief for smaller issuers. The rule updates the definitions for accelerated and large accelerated filers and revises their transition thresholds. As a result, smaller reporting companies (SRC) with less than \$100 million of revenue would no longer be required to have an auditor sign off on their internal control over financial reporting (ICFR). This may reduce compliance costs for smaller issuers. SRCs also would have an additional 15 days and five days, respectively, to file their annual and quarterly reports. The final rule requires filings to have more prominent disclosure on whether an ICFR auditor attestation is included.

The rules will apply to annual reports due on or after the effective date of April 27, 2020.

The final rule does not change an auditor's role in a financial statement audit. Management of SRCs would still be required to make internal control assessments and establish and maintain the effectiveness of their ICFR. Banks remain subject to the FDIC Improvement Act's external integrated financial statement and ICFR audit requirements, which apply to institutions with more than \$1 billion in assets.

Background

In June 2018, the SEC updated the SRC definition to expand the number of companies that benefit from scaled disclosure requirements (see BKD's article [SEC Relief for Smaller Reporting Companies](#)). The SEC divides all issuers into categories that determine both filing deadlines and the application of the auditor's attestation of management's assessment of ICFR: large accelerated, accelerated and nonaccelerated filers. Under the June 2018 updates, a company could qualify as an SRC and still be an accelerated filer. The definitions of accelerated and large accelerated filers are based on public float; however, the SRC changes did not increase the current \$75 million public float threshold in the accelerated filer definition. Companies with \$75 million or more of public float qualifying as an SRC are currently subject to accelerated filers' requirements, including earlier filing deadlines and external audits of ICFR.

Final Rule

The amendments will:

- Exclude from the accelerated and large accelerated filer definitions an issuer that is SRC eligible and had no revenues or annual revenues of less than \$100 million in the most recent fiscal year for which audited statements are available.
- Increase the transition thresholds for accelerated and large accelerated filers becoming a nonaccelerated filer from \$50 million to \$60 million and for exiting large accelerated filer status from \$500 million to \$560 million.
- Add a revenue test to the transition thresholds for exiting both accelerated and large accelerated filer status.
- Business development companies (BDC) will be excluded from the accelerated and large accelerated filer definitions if they have a public float of between \$75 million and \$700 million and investment income of less than \$100 million.

SRC Amendments

Issuers that are SRC eligible and have a public float between \$75 million and \$250 million would be accelerated filers if their annual revenues are \$100 million or more. Some but not all SRCs would become nonaccelerated filers.

Current SEC Rules					
Status	Public Float	Annual Revenues	10-Q Filing Deadline	10-K Filing Deadline	ICFR Required
SRC & Nonaccelerated Filer	Less than \$75 million	N/A	45 Days	90 Days	No
SRC & Accelerated Filer	\$75 million to less than \$250 million	N/A	40 Days	75 Days	Yes
	\$250 million to less than \$700 million	Less than \$100 million	40 Days	75 Days	Yes
Accelerated Filer (not SRC)	\$250 million to less than \$700 million	\$100 million or more	40 Days	75 Days	Yes
Large Accelerated Filer	More than \$700 million	N/A	40 Days	60 Days	Yes

The amendments increase the number of issuers that are exempt from the ICFR auditor attestation requirement by increasing the number of nonaccelerated filers. The changes do not relieve an independent auditor of its obligation to consider ICFR in the performance of its financial statement audit, regardless of whether the issuer is subject to the ICFR auditor attestation requirement. Evaluation and communication to the audit committee of significant deficiencies and material weaknesses in ICFR are required in both a financial statement audit and an ICFR attestation audit.

Final Rule					
Status	Public Float	Annual Revenues (or investment income for BDCs)	10-Q Filing Deadline	10-K Filing Deadline	ICFR Required
SRC, BDC & Nonaccelerated Filer	Less than \$75 million	N/A	45 Days	90 Days	No
	\$75 million to less than \$700 million	Less than \$100 million	45 Days	90 Days	No
SRC, BDC & Accelerated Filer	\$75 million to less than \$250 million	\$100 million or more	40 Days	75 Days	Yes
Accelerated Filer (not SRC or BDC)	\$250 million to less than \$700 million	\$100 million or more	40 Days	75 Days	Yes
Large Accelerated Filer (not SRC or BDC)	\$700 million or more	N/A	40 Days	60 Days	Yes

Transition Provisions

Under current rules, once an issuer is an accelerated or large accelerated filer, it will not become a nonaccelerated or accelerated filer until its public float falls below a specified lower threshold than the public float threshold it initially needed to become an accelerated or large accelerated filer. These thresholds are in place to limit changes in filing status due to small fluctuations in public float.

Current Requirements			
Initial Public Float Determination	Resulting Filer Status	Subsequent Public Float Determination	Resulting Filer Status
\$700 million or more	Large accelerated filer	\$500 million or more	Large accelerated filer
		Less than \$500 million but \$50 million or more	Accelerated filer
		Less than \$50 million	Nonaccelerated filer
Less than \$700 million but \$75 million or more	Accelerated filer	Less than \$700 million but \$50 million or more	Accelerated filer
		Less than \$50 million	Nonaccelerated filer

The amendments revise the transition thresholds to align with the SRC transition thresholds at 80 percent of the initial thresholds. This also would limit the cases in which an issuer could be both an accelerated filer or large accelerated filer and an SRC. The amendments would add the SRC revenue test to the public float transition thresholds for accelerated and nonaccelerated filers. An accelerated filer would remain one unless either its public float falls below \$60 million or it becomes eligible to use the SRC accommodation under the revenue test.

Final Rule			
Initial Public Float Determination	Resulting Filer Status	Subsequent Public Float Determination	Resulting Filer Status
\$700 million or more	Large accelerated filer	\$560 million or more	Large accelerated filer
		Less than \$560 million but \$60 million or more	Accelerated filer
		Less than \$60 million	Nonaccelerated filer
Less than \$700 million but \$75 million or more	Accelerated filer	Less than \$700 million but \$60 million or more	Accelerated filer
		Less than \$60 million	Nonaccelerated filer

BDCs

The final rule includes BDC-specific provisions because BDCs are not eligible to be SRCs and to provide a definition of “revenue” for BDCs to use. A BDC will be excluded from the accelerated and large accelerated filer definitions if the BDC has both:

- A public float of \$75 million or more, but less than \$700 million
- Investment income of less than \$100 million (dividends, interest on securities and other income)

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Consistent with the current filing definitions, a BDC with public float of less than \$75 million is already a nonaccelerated filer, regardless of the amount of its annual investment income.

BDCs will be subject to the new transition provisions for accelerated filer and large accelerated status, using annual investment income as the measure of its annual revenues.

BDCs will remain ineligible to be SRCs, their financial statements will continue to be audited by an independent auditor and the BDC management will still be required to make internal control assessments and establish and maintain the effectiveness of their ICFR.

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