

CONFIRMING SEC FILER STATUS FOR THE UPCOMING YEAR

Jun 18, 2025

In light of the recent market volatility, public companies should keep in mind the upcoming annual re-evaluation of their filer status, as a change may have ramifications for both the timing and content for the following year's SEC reporting. June 30 is a key measurement date for calendar fiscal year reporting companies in determining whether their filing status changes for the following year in respect of the following:

- Large accelerated filer (LAF)
- Accelerated filer (AF);
- Non-accelerated filer (NAF);
- Smaller reporting company (SRC); and
- Emerging growth company (EGC).

The year-end determination governs (i) the deadline for the respective annual report and subsequent quarterly reports for LAFs, AFs and NAFs, and (ii) the availability of certain scaled reporting obligations for SRCs and EGCs.

For purposes of this discussion, we have assumed that an applicable company reports on domestic issuer reports (i.e. 8-K, 10-Q and 10-K), has been subject to the reporting requirements of the Exchange Act for at least twelve calendar months and has filed at least one annual report.

As indicated below under “**Forward-Looking Statements?**”, Commissioner Mark Uyeda noted that the determination of the filing status that a company qualifies for may be difficult as a result of overlapping categories and the complexity of the tests. In this regard, we encourage companies to reach out to outside securities counsel if there is uncertainty regarding their filer status.

STATUS AS A LAF, AF OR NAF

WHY IT MATTERS

The filing deadlines for 10-Ks and 10-Qs for an issuer is based upon whether it qualifies as an LAF, AF or NAF:

Filer Status	10-K Due Date after Fiscal Year End	10-Q Due Date after Quarter End
Large Accelerated Filer	60 days	40 days
Accelerated Filer	75 days	40 days
Non-Accelerated Filer	90 days	45 days

Additionally, new disclosure rules promulgated by the SEC may have phase-in compliance dates based upon a company's status as an LAF, an AF or an NAF. The challenged climate-related disclosure rules adopted on March 6, 2024 (and which are no longer being defended by the SEC) had such phase-in dates.

WHAT ARE THE QUALIFICATIONS?

Large Accelerated Filer: Generally, an LAF is a company with a public float of \$700 million or more as of the last business day of its second quarter that is not eligible to qualify as a smaller reporting company on the basis of the Revenue Test (as discussed below, or see paragraph (2) or (3)(iii)(B) of the definition of "smaller reporting company" in Rule 12b-2). Once qualifying as an LAF, a company will retain that status unless it has a public float of less than \$560 million as of the end of the of the company's second quarter, or it becomes eligible to use the SRC requirements under the Revenue Test.

"Public float" is determined as of the last business day of the company's most recently completed second fiscal quarter and computed by multiplying (1) the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates (i.e., shareholders other than directors, executive officers and others determined to be affiliates of the company) by (2) the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity.

Accelerated Filer: Generally, an AF is a company with a public float that is \$75 million or more, but less than \$700 million, as of the last business day of its second quarter that is not able to rely on SRC accommodations on the basis of the Revenue Test. Once qualifying as an AF, a company will retain that status unless (1) (a) it has a public float of less than \$60 million as of the end of its second quarter, or (b) it becomes eligible to use the SRC requirements under the Revenue Test, in which case it will become an NAF, or (2) it becomes an LAF.

Non-Accelerated filer: An NAF is a company that is neither a large accelerated filer nor an accelerated filer (i.e., a company with a public float of less than \$75 million on the last business day of its second quarter or that qualifies as an SRC based on the Revenue Test). A company will cease to be an NAF if it becomes an LAF or AF.

STATUS AS A SMALLER REPORT COMPANY

WHY IT MATTERS

A public company that qualifies as an SRC receives the benefit of certain scaled disclosure obligations under the Exchange Act. The reduced disclosures begin immediately with the next quarterly report (for example, a company's whose second quarter ends June 30th may take advantage of the scaled disclosure available to the SRC in the Form 10-Q for the second quarter).

The following is a summary of certain of the scaled disclosure items that are available to SRCs:

- ***Reduced Financial Reporting:***
 - Only two years of audited financial statements and comparative data instead of three years.
 - SRCs that qualify as NAFs do not have to provide auditor attestation of internal control over financial reporting (but those that are AFs are required to provide an auditor attestation, unless the AF is an EGC).
- ***Simplified Business Description:*** Only requires a description of the development of the business for a period of time material to an understanding of the business' general development, as well as, to the extent material, discussions of principal products and services and their markets, distribution methods, dependence upon any customers, description of competitive business conditions, IP and governmental regulation, number of total employees, among other items. [Reg. S-K Item 101]
- ***No Stock Performance Graph:*** Stock performance graph not required. [Reg. S-K Item 201]
- ***Simplified MD&A:*** Comparison of financial results for only two prior fiscal years is required in the Form 10-K, and an SRC may use any presentation or format for the discussion that it believes enhances a reader's understanding. [Reg. S-K Item 303]
- ***No Quantitative and Qualitative Disclosure about Market Risk:*** Quantitative and Qualitative Disclosure about Market Risk not required. [Reg. S-K Item 305]
- ***Reduced Compensation Disclosure:*** SRCs have significantly reduced executive compensation disclosure obligations, including:
 - ***Fewer NEOs.*** Named executive officers are limited to the CEO and the two most highly compensated executive officers other than the CEO who were serving in such capacity at the end of the last completed fiscal year.

- Also up to 2 additional individuals for whom disclosure would be required but for the fact that the individual was not serving as an executive officer at the end of the fiscal year (which is the same as other filers).
- *Fewer Years in SCT.* The Summary Compensation Table only requires two years of compensation information for NEOs - not three years.
- *Fewer Compensation Tables.* The only compensation tables required are the Summary Compensation and Outstanding Equity Awards at Fiscal Year End tables.
- *No CD&A.* No compensation discussion and analysis is required - only narrative disclosure of material factors to understand the information in the summary compensation table.
- Examples include material terms of an executive officer's employment agreement or arrangement, repricing information or other matters such as change of vesting or forfeiture conditions or a change or elimination of performance criteria, waiver or modification of any specified performance targets or conditions, material terms of non-equity incentive plan awards and identification of material items in the "All Other Compensation" column of the Summary Compensation Table.
- *Additional Excepted Items.* The following disclosures are not required: (1) PEO pay ratio to median employee, (2) quantification of potential payments upon termination of NEOs, (4) disclosure of compensation policies and practices relating to risk management, (5) compensation committee interlocks and (6) compensation committee report.

[Reg. S-K Items 402 & 407]

However, SRCs have enhanced disclosure obligations for related person transactions, including:

- For each of the last two fiscal years, transactions with a value that exceed the lesser of \$120,000 and 1% of the average of total assets at year-end in which a related person has a direct or indirect material interest.
- A list of all parents of the company showing the basis of control, and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

In contrast to other reporting companies, however, an SRC need not provide a description of the company's policies and procedures for the review and approval of related person transactions.

[Reg. S-K Item 404]

WHAT ARE THE QUALIFICATIONS?

An SRC is a company that (1) had a public float of less than \$250 million as of the end of the of the company's second quarter, or (2) had annual revenues of less than \$100 million as of the most recently completed fiscal year for which audited financial statements are available, and a public float of less than \$700 million as of the end of the of the company's second quarter (the "*Revenue Test*"). A company will cease to qualify as an SRC once it fails to satisfy such criteria.

STATUS AS AN EMERGING GROWTH COMPANY

WHY IT MATTERS

EGC status was created as part of the Jobs Act of 2012 to ease methods of capital raising and relax the regulatory burden on smaller companies. Below are certain benefits available to an EGC, although it is worth noting that a company qualifying as both an EGC and SRC may be able to avail itself of additional benefits that are applicable to an SRC.

- ***Simplified MD&A:*** Comparison of financial results for only two prior fiscal years is required in the Form 10-K.
- ***Auditor Attestation:*** Not required.
- ***Delayed Adoption of New or Modified Accounting Standards:*** So long as applied consistently since a Company's IPO, the company may delay adoption of new US GAAP accounting standards applicable to public companies until required for non-public companies (once a company ceases to apply this benefit while an EGC, the company cannot revert back in subsequent filings).
- ***Reduced Executive Compensation Disclosure.***
 - An EGC may comply with the reduced disclosure obligations applicable to SRCs.
 - Not required to provide pay v. performance disclosure.
- ***No Say on Pay Vote.*** Not required while an EGC and for a short transition period thereafter.

WHAT ARE THE QUALIFICATIONS?

A company qualifies as an EGC if it had total annual gross revenues of less than \$1,235,000,000 during its last completed fiscal year (amount subject to adjustment for inflation by the SEC) as reflected on its income statement included in a registration statement. A company qualifying as an EGC will remain an EGC until the earliest of:

- (i) The last day of the fiscal year of the company during which it had total annual gross revenues of \$1,235,000,000 or more;
- (ii) The last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities by the company pursuant to an effective registration statement under the Securities Act of 1933;
- (iii) The date on which the company has, during the previous three-year period, issued more than \$1,000,000,000 in non-convertible debt; or
- (iv) The date on which such issuer is deemed to be an LAF (which as noted above, is contingent upon the company's public float as of the last business day of the company's second quarter).

Once a company loses EGC status, it may not be regained.

FORWARD-LOOKING STATEMENTS?

In his [remarks at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference](#) on February 24, 2025, Commissioner Mark Uyeda addressed the classification scheme described above, as well as the scaled disclosure rules, noting that the SEC "should consider a company's size and resources so that smaller companies are not disproportionately burdened as they compete" for capital and resources. He expressed the view that "[the SEC's] current rules with respect to filer categories and associated disclosure obligations are needlessly complex and do not provide sufficient scaled disclosure benefits." Commission Uyeda stated that the overlapping categories may result in increased complexity and compliance costs and noted that Commissioner Peirce said that "even we at the SEC need diagrams to figure...out [the overlapping definitions]." He called on the SEC to "review its disclosure requirements and identify rules that should apply only to the largest companies."

However, the SEC has not proposed new rules in this area as of June 2025. Accordingly, if you have questions about your filer status, we encourage you to reach out to outside securities counsel, as Commission Uyeda is correct - the current status is indeed overlapping and complex.

RELATED CAPABILITIES

- Securities & Corporate Governance

MEET THE TEAM

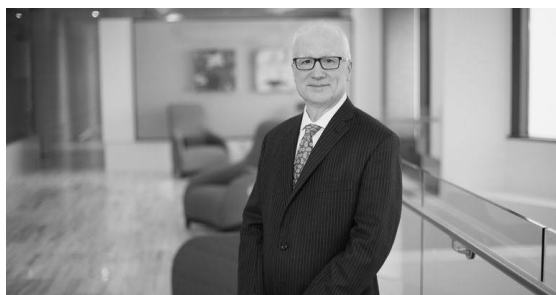


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