fund and does not own, directly or indirectly, 10 percent or more of another business enterprise that is not also a private fund or a holding company, it is not required to file any BE–13 report except to indicate exemption from the survey if contacted by BEA.

(c) *Forms to be filed.* Depending on the type of investment transaction, U.S. affiliates would report their information on one of five forms—BE–13A, BE–13B, BE–13D, BE–13E, or BE–13 Claim for Exemption.

(1) Form BE–13A—Report for a U.S. business enterprise when a foreign entity acquires a voting interest (directly, or indirectly through an existing U.S. affiliate) in that U.S. business enterprise including segments, operating units, or real estate; and

(i) The total cost of the acquisition is greater than $3 million; and

(ii) By this acquisition, the foreign entity now owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the acquired U.S. business enterprise.

(2) Form BE–13B—Report for a U.S. business enterprise when it is established by a foreign entity or by an existing U.S. affiliate of a foreign parent; and

(i) The expected total cost to establish the new U.S. business enterprise is greater than $3 million; and

(ii) The foreign entity owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the new U.S. business enterprise.

(3) Form BE–13D—Report for an existing U.S. affiliate of a foreign parent when it expands its operations to include a new facility where business is conducted and the expected total cost of the expansion is greater than $3 million.

(4) Form BE–13E—Report for a U.S. business enterprise that previously filed Form BE–13B or BE–13D. Form BE–13E collects updated cost information and will be collected annually until the establishment or expansion of the U.S. business enterprise is complete.

(5) Form BE–13 Claim for Exemption—Report for a U.S. business enterprise that:

(i) was contacted by BEA but does not meet the requirements for filing Forms BE–13A, BE–13B, or BE–13D; or

(ii) whether or not contacted by BEA, met all requirements for filing Forms BE–13A, BE–13B, or BE–13D except the $3 million reporting threshold.

(d) *Due date.* The BE–13 forms are due no later than 45 calendar days after the acquisition is completed, the new U.S. business enterprise is established, the expansion is begun, the cost update is requested, or a notification letter is received from BEA by a U.S. business enterprise that does not meet the filing requirements for the survey.

[FR Doc. 2016–15598 Filed 6–30–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, and 240

[Release No. 33–10107; 34–78168; File No. S7–12–16]

RIN 3235–AL90

Amendments to Smaller Reporting Company Definition

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to the definition of ‘‘smaller reporting company’’ as used in our rules and regulations. The proposed amendments, which would expand the number of registrants that qualify as smaller reporting companies, are intended to promote capital formation and reduce compliance costs for smaller registrants, while maintaining investor protections. Registrants with less than $250 million in public float would qualify, as would registrants with zero public float if their revenues were below $100 million in the previous year.

DATES: Comments should be received on or before August 30, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an email to *rule-comments@sec.gov.* Please include File No. S7–12–16 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–12–16. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's Web site. To ensure direct electronic receipt of such notifications, sign up through the ‘‘Stay Connected’’ option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Amy Reischauer, Special Counsel, Office of Small Business Policy, Division of Corporation Finance, at (202) 551–3460, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rule 405 [1] under the Securities Act of 1933 (Securities Act),[2] Rule 12b–2 [3] under the Securities Exchange Act of 1934 (Exchange Act) [4] and Item 10(f) [5] of Regulation S–K.[6]

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[1] 17 CFR 230.405.

[2] 15 U.S.C. 77a *et seq.*

[3] 17 CFR 240.12b–2.

[4] 15 U.S.C. 78a *et seq.*

[5] 17 CFR 229.10(f).

[6] 17 CFR 229.10 *et seq.*

I. Introduction

Over the years, the Commission has sought to promote capital formation and reduce compliance costs for smaller registrants while maintaining investor protections.[7] Our disclosure system provides accommodations in the form of scaled disclosure requirements for certain categories of smaller registrants in an attempt to further these goals.

Smaller reporting companies are one category of registrants eligible for scaled disclosure.[8] The Commission established the smaller reporting company category of registrants in 2007 in an effort to provide general regulatory relief for smaller registrants.[9] The smaller reporting company definition replaced the ''small business issuer'' definition in former Regulation S–B. The Commission created Regulation S–B, a small business integrated registration and reporting system, in 1992 as part of a larger effort to facilitate small business capital formation and reduce the compliance burdens placed on small registrants by the federal securities laws.[10] Regulation S–B was specifically tailored to small business issuers, which were issuers with both annual revenues and public floats of less than $25 million.

Smaller reporting company is defined in Securities Act Rule 405, Exchange Act Rule 12b–2 and Item 10(f) of Regulation S–K. Substantively, the three definitions are identical. Smaller reporting companies generally [11] are registrants with:

• Less than $75 million in public float as of the last business day of their most recently completed second fiscal quarter; [12] or

• zero public float [13] and annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available.

Smaller reporting companies may comply selectively with the scaled disclosures available to them on an item-by-item basis.[14] The following table summarizes the scaled disclosure accommodations available to smaller reporting companies in Regulation S–K and Regulation S–X.[15]

Item	Scaled disclosure accommodation
Regulation S–K	
101—Description of Business	May satisfy disclosure obligations by describing the development of its business during the last three years rather than five years. Business development description requirements are less detailed than disclosure requirements for non-smaller reporting companies.

[7] *See, e.g.,* Simplified Registration and Reporting Requirements for Small Issuers, Release No. 33–6049 (Apr. 3, 1979) [44 FR 21562 (Apr. 10, 1979)] (Form S–18 Release); Small Business Initiatives, Release No. 33–6924 (Mar. 11, 1992) [57 FR 9768 (Mar. 20, 1992)].

[8] In 2012, Title I of the JOBS Act created a new category of registrant called an ''emerging growth company.'' Pub. L. 112–106, Secs. 102–104, 126 Stat. 306 (2012). Emerging growth companies (EGCs) also are eligible for a variety of accommodations, including certain of the scaled disclosure accommodations available to smaller reporting companies, such as the scaled executive compensation disclosures under Item 402(l) through (r) of Regulation S–K. In addition, EGCs are exempt from the Sarbanes-Oxley Act Section 404(b) auditor attestation of internal control over financial reporting. For a discussion of scaled disclosure accommodations available to EGCs, *see* Business and Financial Disclosure Required by Regulation S–K, Release No. 33–10064 (Apr. 13, 2016) [81 FR 23915 (April 22, 2016)] (Regulation S–K Concept Release).

A registrant qualifies as an EGC if it did not complete its first registered sale of common equity securities on or before December 8, 2011 and has total annual gross revenues of less than $1 billion during its most recently completed fiscal year.

[9] Smaller Reporting Company Regulatory Relief and Simplification, Release No. 33–8876 (Dec. 19, 2007) [73 FR 934 (Jan. 4, 2008)] (Smaller Reporting Company Adopting Release).

[10] Small Business Initiatives, Release No. 33–6949 (July 30, 1992) [57 FR 36442 (Aug. 13, 1992)]. The Commission rescinded Regulation S–B when it established the smaller reporting company definition. Regulation S–B was modeled after former Form S–18, which allowed issuers that were not subject to the Commission's reporting requirements to raise limited amounts of capital without immediately incurring the full range of disclosure and reporting obligations required of other issuers. *See* Form S–18 Release. While Form S–18 was intended to facilitate small business access to public capital markets, eligibility to use the form was based on offering size, not issuer size. The Commission rescinded Form S–18 when it adopted Regulation S–B.

[11] The smaller reporting company definition specifically excludes investment companies, asset-backed issuers (as defined in Item 1101 of Regulation AB [17 CFR 229.1101]) and majority-owned subsidiaries of a parent that is not a smaller reporting company. Lower public float and revenue thresholds apply to registrants that determined that they did not qualify as smaller reporting companies in the prior year, but are eligible to transition to smaller reporting company status. Specifically, these registrants would qualify as smaller reporting companies if their public float was less than $50 million as of the last business day of their most recently completed second fiscal quarter or they had zero public float as of such date and revenues of less than $40 million during the previous fiscal year.

[12] Public float is computed by multiplying the aggregate worldwide number of shares of a registrant's voting and non-voting common equity held by non-affiliates by 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. A registrant filing its initial registration statement under the Securities Act or Exchange Act calculates its public float by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares. In contrast, market capitalization reflects the value of a registrant's voting and non-voting common equity held by all holders, whether affiliates or non-affiliates.

[13] A registrant may have zero public float because it has no public equity outstanding or no market price for its equity exists. Based on data compiled by the Commission's Division of Economic and Risk Analysis (DERA), in calendar year 2015, approximately 18 percent of smaller reporting companies had no public float.

[14] *See* Smaller Reporting Company Adopting Release. Where a disclosure requirement applicable to smaller reporting companies is more stringent than the corresponding requirement for non-smaller reporting companies, however, smaller reporting companies must comply with the more stringent standard. The Smaller Reporting Company Adopting Release identified Item 404 of Regulation S–K [17 CFR 229.404] as the only instance in Regulation S–K in which the disclosure requirements applicable to smaller reporting companies could be more stringent.

[15] 17 CFR 210.1–01 *et seq.*

Item	Scaled disclosure accommodation
201—Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.	Stock performance graph not required.
301—Selected Financial Data	Not required.
302—Supplementary Financial Information	Not required.
303—Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A).	Two-year MD&A comparison rather than three-year comparison.
	Two-year discussion of impact of inflation and changes in prices rather than three years.
	Tabular disclosure of contractual obligations not required.
305—Quantitative and Qualitative Disclosures About Market Risk.	Not required.
402—Executive Compensation	Three named executive officers rather than five.
	Two years of summary compensation table information rather than three.
	Not required: • Compensation discussion and analysis. • Grants of plan-based awards table. • Option exercises and stock vested table. • Pension benefits table. • Nonqualified deferred compensation table. • Disclosure of compensation policies and practices related to risk management. • Pay ratio disclosure.
404—Transactions With Related Persons, Promoters and Certain Control Persons [16].	Description of policies/procedures for the review, approval or ratification of related party transactions not required.
407—Corporate Governance	Audit committee financial expert disclosure not required in first year.
	Compensation committee interlocks and insider participation disclosure not required.
	Compensation committee report not required.
503—Prospectus Summary, Risk Factors and Ratio of Earnings to Fixed Charges.	No ratio of earnings to fixed charges disclosure required.
	No risk factors required in Exchange Act filings.
601—Exhibits	Statements regarding computation of ratios not required.

Regulation S–X

Rule	**Scaled Disclosure**
8–02—Annual Financial Statements	Two years of income statements rather than three years.
	Two years of cash flow statements rather than three years.
	Two years of changes in stockholders' equity statements rather than three years.
8–03—Interim Financial Statements	Permits certain historical financial data in lieu of separate historical financial statements of equity investees.
8–04—Financial Statements of Businesses Acquired or to Be Acquired.	Maximum of two years of acquiree financial statements rather than three years.
8–05—Pro forma Financial Information	Fewer circumstances under which pro forma financial statements are required.
8–06—Real Estate Operations Acquired or to Be Acquired.	Maximum of two years of financial statements for acquisition of properties from related parties rather than three years.
8–08—Age of Financial Statements	Less stringent age of financial statements requirements.

II. Proposed Amendments

A. Rationale for Proposed Amendments

The Commission seeks to promote capital formation and reduce compliance costs for smaller registrants while maintaining investor protections.[17] Raising the financial thresholds in the smaller reporting company definition attempts to further these goals by expanding the number of smaller registrants that are eligible to deliver scaled disclosure to their investors. Doing so also would address several recommendations made to us multiple times by our Advisory Committee on Small and Emerging Companies (ACSEC) [18] and the SEC Government-Business Forum on Small Business Capital Formation (Small Business Forum),[19] as well as comments

[16] Item 404 also contains the following *expanded* disclosure requirements applicable to smaller reporting companies: (1) Rather than a flat $120,000 disclosure threshold, the threshold is the lesser of $120,000 or 1% of total assets, (2) disclosures are required about parents and underwriting discounts and commissions where a related person is a principal underwriter or a controlling person or member of a firm that was or is going to be a principal underwriter, and (3) an additional year of Item 404 disclosure is required in filings other than registration statements.

[17] *See* note 7.

[18] The Commission established the ACSEC in 2011 with the objective of providing the Commission with advice on its rules, regulations and policies with regard to its mission of protecting investors, maintaining fair, orderly and efficient markets and facilitating capital formation, as they relate to: (1) Capital raising by emerging privately-held small businesses (emerging companies) and publicly traded companies with less than $250 million in public market capitalization (smaller public companies) through securities offerings, including private and limited offerings and initial and other public offerings; (2) trading in the securities of emerging companies and smaller public companies; and (3) public reporting and corporate governance requirements of emerging companies and smaller public companies. *See* Advisory Committee on Small and Emerging Companies Charter (Sept. 24, 2015); Advisory Committee on Small and Emerging Companies, Release No. 33–9258 (Sept. 12, 2011) [76 FR 57769 (Sept. 16, 2011)]. The Commission's Investor Advisory Committee has not provided the Commission with a recommendation regarding the smaller reporting company definition.

[19] The Small Business Investment Incentive Act of 1980 directed the Commission to conduct an annual government-business forum to undertake an ongoing review of the financing problems of small businesses.

15 U.S.C. 80c–1. The Small Business Forum has met annually since 1982 to provide a platform to highlight perceived unnecessary impediments to

from small registrants, Congress and others.[20]

Advisory Committee on Small and Emerging Companies. In September 2015 and March 2013, the ACSEC recommended revising the smaller reporting company definition to include registrants with a public float of up to $250 million.[21] The 2013 ACSEC Recommendations also included a recommendation to revise the smaller reporting company definition for registrants that are unable to calculate their public float to include registrants with less than $100 million in annual revenues.

Small Business Forum. The 2015 Small Business Forum recommended that the smaller reporting company definition be revised to include registrants with a public float of less than $250 million or registrants with a public float of less than $700 million and annual revenues of less than $100 million.[22]

Regulation S–K Study. Section 108 of the Jumpstart Our Business Startups Act (JOBS Act)[23] required the Commission to conduct a review of Regulation S–K and to transmit to Congress a report of the review. In December 2013, the Commission published a staff report on the review of the disclosure requirements in Regulation S–K (S–K Study).[24] The S–K Study recommended consideration of the criteria used to determine eligibility for scaling of disclosure requirements, including the definitional thresholds for smaller reporting companies.

Disclosure Effectiveness Initiative Comments. The Commission staff currently is undertaking a broad-based review of our disclosure requirements, known as the Disclosure Effectiveness Initiative.[25] As part of the Disclosure Effectiveness Initiative, the staff requested public input generally on how our disclosure system could be improved and, while the staff did not ask specifically for comment on smaller reporting companies, it received some comments on the smaller reporting company definition and scaled disclosure requirements available to smaller reporting companies.[26] Only three commenters addressed the smaller reporting company definition or the general concept of scaling disclosure requirements for smaller reporting companies.[27] One of these commenters generally supported scaled disclosure requirements, noting that smaller companies face challenges when preparing annual reports.[28] Another of these commenters suggested that overreliance on public float to define smaller reporting companies creates a compliance burden for registrants with high valuations that otherwise would be considered small.[29] This commenter recommended revising the smaller reporting company definition to include registrants with a public float below $250 million or annual revenues below $100 million regardless of public float to avoid grouping ''highly valued'' registrants with little or no revenue with larger registrants. The third commenter expressed concerns with a differential disclosure regime for different sized entities, stating that ''investors will factor the differences (*i.e.,* they will price the lack of transparency, clarity and comparability in what may be perceived to be lower-quality requirements) into their price determinations.''[30]

FAST Act. The Fixing America's Surface Transportation (FAST) Act of 2015[31] requires the Commission to revise Regulation S–K to further scale or eliminate disclosure requirements to reduce the burden on a variety of smaller registrants, including smaller reporting companies, while still providing all material information to investors.[32] Because a number of Regulation S–K items already provide scaled disclosure requirements for smaller reporting companies, raising the financial thresholds in the smaller reporting company definition would be responsive to the FAST Act because it would reduce the burden on smaller registrants by increasing the number of registrants eligible for scaled disclosure.

Although the proposed amendments would permit a broader group of registrants to make scaled disclosure to their investors, we do not believe that the scaled disclosure would significantly alter the total mix of information available about these registrants. We believe the existing scaled disclosure requirements benefit the current pool of smaller reporting companies, but we are requesting comment on how an extension of scaled disclosure requirements to a proposed broader pool of registrants could affect investors' access to material information about registrants. We further believe that the Commission should periodically re-evaluate whether the

small business capital formation and address whether they can be eliminated or reduced. Each forum seeks to develop recommendations for government and private action to improve the environment for small business capital formation, consistent with other public policy goals, including investor protection. Information about the Small Business Forum is available at *http://www.sec.gov/info/smallbus/sbforum.shtml*.

[20] *See* letters from the UK Financial Report Council (Mar. 10, 2015) (UK Financial), Biotechnology Industry Organization (July 14, 2015) (BIO), and Standards & Financial Market Integrity Division, CFA Institute (Nov. 12, 2014) (CFA Institute). For a discussion of these comments *see* notes 25 through 30 and related text.

[21] ACSEC Recommendations about Expanding Simplified Disclosure for Smaller Issuers (Sept. 23, 2015) (2015 ACSEC Recommendations), available at *https://www.sec.gov/info/smallbus/acsec/acsec-recommendations-expanding-simplified-disclosure-for-smaller-issuers.pdf* and ACSEC Recommendations Regarding Disclosure and Other Requirements for Smaller Public Companies (Feb. 1, 2013) (2013 ACSEC Recommendations), available at *https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-smaller-public-co-ltr.pdf*. Both of these recommendations also included a recommendation that the Commission revise the ''accelerated filer'' definition to include companies with a public float of $250 million or more, but less than $700 million. The accelerated filer definition currently includes companies with a public float of $75 million or more, but less than $700 million. Exchange Act Rule 12b–2. If these recommendations were implemented, non-EGC registrants with public floats between $75 million and $250 million would not be required to provide an auditor attestation report under Section 404(b) of the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 1116 Stat. 745 (2002) (Sarbanes-Oxley Act)). *See* Section II.C for a discussion of the accelerated filer definition.

[22] Final Report of the 2015 SEC Government Business Forum on Small Business Capital Formation (Apr. 2016) (2015 Small Business Forum Recommendations), available at *https://www.sec.gov/info/smallbus/gbfor34.pdf*. The 2014, 2013, 2012, 2010 and 2009 Small Business Forums made the same or similar recommendations (Prior Small Business Forum Recommendations). Final Small Business Forum reports are available at *https://www.sec.gov/info/smallbus/sbforumreps.htm*.

[23] Pub. L. 112–106, 126 Stat. 306 (2012).

[24] Report on Review of Disclosure Requirements in Regulation S–K (Dec. 2013), available at *https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf*.

[25] *See* Disclosure Effectiveness, available at *https://www.sec.gov/spotlight/disclosure-effectiveness.shtml.*

[26] Comment letters related to this request are available at *https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness.shtml.*

[27] Other commenters commented on the placement of scaled disclosure requirements in Regulation S–K and on the scaled disclosure requirements available to EGCs. For a discussion of these comments, *see* Section IV.H of the S–K Concept Release. For purposes of this proposal, we focus on comments relevant to the smaller reporting company definition.

[28] *See* letter from UK Financial.

[29] *See* letter from BIO.

[30] *See* letter from CFA Institute.

[31] Pub. L. 114–94, 129 Stat. 1312 (2015).

[32] Specifically, FAST Act § 72002 requires the Commission within 180 days of enactment ''to take all such actions to revise [R]egulation S–K . . . to further scale or eliminate requirements of [R]egulation S–K, in order to reduce the burden on emerging growth companies, accelerated filers, smaller reporting companies, and other smaller issuers, while still providing all material information to investors.'' The FAST Act also requires the Commission to carry out a study to determine how best to modernize and simplify the disclosure requirements in Regulation S–K in consultation with the Investor Advisory Committee and the Advisory Committee on Small and Emerging Companies, to issue a report of findings and recommendations to Congress, and to propose revisions to those requirements. Pub. L. 114–94, Sec. 72003, 129 Stat. 1312 (2015).

definition of smaller reporting company remains appropriate. Under our proposed amendments, the additional registrants that would qualify for scaled disclosure would remain subject to liability for their disclosures and, in addition to the information expressly required to be included by the rules, would be required to provide such further material information, if any, as may be necessary to make any required statements, in the light of the circumstances under which they are made, not misleading.[33] In addition, their disclosure would be subject to the same review that they currently receive as part of the Division of Corporation Finance's review process. These measures of investor protection would remain unchanged under the proposed amendments.

Although the proposed amendments would not affect the existing scaled disclosure requirements in Regulation S–K or Regulation S–X, we are considering our approach to scaled disclosure generally in connection with the Disclosure Effectiveness Initiative. To that end, in April 2016, we issued the Regulation S–K Concept Release in which we considered and sought comment on other aspects of our scaled disclosure system, including categories of registrants eligible for scaled disclosure, whether we should exclude certain types of registrants from the use of scaled disclosure, and whether and how we should scale our disclosure requirements. Comments received on the Regulation S–K Concept Release will help to inform any further consideration of changes to the scaled disclosure system or other changes in connection with the Disclosure Effectiveness Initiative.

B. Proposed Amendments to Smaller Reporting Company Definition

We are proposing amendments to the smaller reporting company definition to expand the number of registrants that qualify as smaller reporting companies and thereby benefit from scaled disclosure requirements. In addition, we are proposing amendments to the ''accelerated filer'' and ''large accelerated filer'' definitions in Exchange Act Rule 12b–2 to preserve the application of the current thresholds contained in those definitions.[34]

When considering potential new thresholds for the public float and revenue calculations, we determined that solely adjusting those thresholds for inflation would not meaningfully reduce the burdens on smaller registrants because it would have a small impact on the number of additional registrants that would qualify as smaller reporting companies. If adjusted for inflation, the $75 million public float threshold set in 2007 would be equivalent to $85.7 million, and the $50 million revenue threshold set in 2007 would be equivalent to $57.2 million.[35]

We also considered that EGCs, many of which have larger public floats and revenues than smaller reporting companies, are eligible for a variety of accommodations, including certain scaled disclosure accommodations. The EGC accommodations, however, are time-limited for equity issuers, as they phase out generally by the fifth anniversary of the first registered sale of common equity securities of the registrant.[36] Because smaller reporting company status is not time-limited and could extend indefinitely depending on the company's growth, we believe that the new smaller reporting company thresholds should be lower than the thresholds to qualify as an EGC, which this proposal would maintain.

The smaller reporting company thresholds we are proposing today are consistent with those recommended by the ACSEC and the Small Business Forum, although they would be more limited in some respects.[37] These amendments use the same criteria of public float and revenues to determine smaller reporting company status that the Commission adopted in 2007. We are, however, seeking comment on whether we should use other criteria and, if so, what criteria we should consider.[38]

Under the proposed definition, registrants [39] with a public float of less than $250 million would qualify as smaller reporting companies.[40] Consistent with the current definition, a reporting company would determine whether it qualifies as a smaller reporting company by calculating its public float as of the last business day of its most recently completed second fiscal quarter.[41] Similarly, as with the current definition, a registrant filing its initial registration statement under the Securities Act or the Exchange Act would calculate its public float as of a date within 30 days of filing the registration statement.[42] A registrant whose public float was zero would qualify as a smaller reporting company if it had annual revenues of less than $100 million during its most recently completed fiscal year.[43]

Under the proposed definition, a registrant that determines that it does not qualify as a smaller reporting company will remain unqualified unless and until it determines that its public float was less than $200 million as of the last business day of its most recently completed second fiscal quarter.[44] If such a registrant's public float was zero, it would remain unqualified unless and until it had annual revenues of less than $80 million during its previous fiscal year.[45]

[33] *See* Securities Act Rule 408 [17 CFR 230.408] and Exchange Act Rule 12b–20 [17 CFR 240.12b–20].

[34] The definitions of accelerated filer and large accelerated filer are based on public float, but contain a provision excluding registrants that are eligible to use the smaller reporting company requirements in Regulation S–K for their annual and quarterly reports. As a result, raising the smaller reporting company public float threshold without eliminating that provision effectively would raise the accelerated filer public float threshold. *See* Section II.C for a discussion of the proposed amendments to the accelerated filer and large accelerated filer definitions.

[35] The inflation adjustment was performed using the CPI calculator of the Bureau of Labor Statistics (*http://data.bls.gov/cgi-bin/cpicalc.pl*). For further discussion of the impact of adjusting the thresholds solely for inflation, including the number of additional registrants that would be eligible for smaller reporting company status, *see* note 99 and related text.

[36] A registrant retains EGC status until the earliest of: (1) The last day of its fiscal year during which its total annual gross revenues are $1 billion or more; (2) the date it is deemed to be a large accelerated filer under the Commission's rules; (3) the date on which it has issued more than $1 billion in non-convertible debt in the previous three years; or (4) the last day of the fiscal year following the fifth anniversary of the first registered sale of common equity securities of the registrant. Pub. L. 112–106, Sec. 101, 126 Stat. 306 (2012); 15 U.S.C. 77b(a)(19); 15 U.S.C. 78c(a)(80). In addition, the FAST Act amended Securities Act Section 6(e)(1) [15 U.S.C. 77 f(e)(1)] to provide a grace period for EGCs at risk of losing such status after the initial filing or confidential submission of their initial public offering (IPO) registration statement but before the IPO is completed. Such registrants shall continue to be treated as an EGC through the earlier of the consummation of the IPO or one year after they would otherwise cease to be an EGC. *See* Pub. L. 114–94, Sec. 71002, 129 Stat. 1312 (2015).

[37] *See* 2015 ACSEC Recommendations; 2013 ACSEC Recommendations; 2015 Small Business Forum Recommendations; Prior Small Business Forum Recommendations. *See also* note 21.

[38] For a discussion of alternative thresholds, *see* Section III.C.

[39] The proposed amendments would not change the types of registrants that are eligible to qualify as smaller reporting companies. *See* note 11.

[40] *See* Proposed Item 10(f)(1)(i) and (ii) of Regulation S–K; Proposed Securities Act Rule 405; Proposed Exchange Act Rule 12b–2.

[41] *See* Proposed Item 10(f)(1)(i) of Regulation S–K; Proposed Securities Act Rule 405; Proposed Exchange Act Rule 12b–2.

[42] *See* Proposed Item 10(f)(1)(ii) of Regulation S–K; Proposed Securities Act Rule 405; Proposed Exchange Act Rule 12b–2.

[43] *See* Proposed Item 10(f)(1)(iii) of Regulation S–K; Proposed Securities Act Rule 405; Proposed Exchange Act Rule 12b–2. A registrant may have zero public float if it has no public equity outstanding or no market price for its public equity.

[44] *See* Proposed Item 10(f)(2)(iii) of Regulation S–K; Proposed Securities Act Rule 405; Proposed Exchange Act Rule 12b–2.

[45] *See id.*

The following table summarizes the proposed amendments to the smaller reporting company definition.

Registrant category	Current definition	Proposed definition
Reporting Registrant	Less than $75 million of public float at end of second fiscal quarter.	Less than $250 million of public float at end of second fiscal quarter.
Registrant Filing Initial Registration Statement	Less than $75 million of public float within 30 days of filing.	Less than $250 million of public float within 30 days of filing.
Registrant with Zero Public Float	Less than $50 million of revenues in most recent fiscal year.	Less than $100 million of revenues in most recent fiscal year.
Non-Smaller Reporting Company that Seeks to Qualify as a Smaller Reporting Company Based on Public Float.	Less than $50 million of public float at end of second fiscal quarter.	Less than $200 million of public float at end of second fiscal quarter.
Non-Smaller Reporting Company with Zero Public Float that Seeks to Qualify as a Smaller Reporting Company.	Less than $40 million of revenues in most recent fiscal year.	Less than $80 million of revenues in most recent fiscal year.

Empirical analysis conducted by the Commission's Division of Economic and Risk Analysis (DERA) suggests that scaled disclosures may generate a modest, but statistically significant, amount of cost savings in terms of the reduction in compliance costs for most of the newly eligible smaller reporting companies under the proposed amendments, a modest, but statistically significant, deterioration in some of the proxies used to assess the overall quality of information environment, and a muted effect on the growth of the registrant's capital investments, investments in research and development (R&D) and assets.[46]

1. Public Float Thresholds

In 2015, approximately 32% of registrants had less than $75 million in public float,[47] compared to approximately 42% of registrants when the smaller reporting company was established.[48] The decrease in the size of the pool of registrants that qualify as smaller reporting companies has limited the benefits of scaled reporting to a smaller percentage of registrants than under the original definition. If adopted as proposed, increasing the public float threshold to $250 million would result in approximately 42% of registrants qualifying as smaller reporting companies based on their public float.[49] As is the case with the current definition, we believe that once a registrant determines that it does not qualify as a smaller reporting company,[50] it should not qualify until its public float falls below another, lower threshold. This definitional structure helps to avoid situations in which registrants enter and exit smaller reporting company status due to small fluctuations in their public float. Therefore, we propose increasing the public float threshold from $50 million to $200 million for registrants that determined that they did not qualify as smaller reporting companies and subsequently seek to qualify.

2. Revenue Thresholds

In 2015, approximately 10% of registrants qualified as smaller reporting companies by having zero public float and less than $50 million in annual revenues.[51] The number of registrants that would qualify as smaller reporting companies would increase by 31, or less than 1%, if the annual revenue threshold were adopted as proposed and increased to $100 million.[52] The threshold is consistent with thresholds recommended by the ACSEC and the Small Business Forum.[53]

Under the current definition, once a registrant determines that it does not qualify as a smaller reporting company,[54] it cannot qualify based on revenues until its revenues fall below $40 million. As discussed above with respect to the public float thresholds, we believe having a separate, lower revenue threshold for these registrants helps to avoid situations in which registrants enter and exit smaller reporting company status due to small fluctuations in their revenues. Increasing the annual revenue threshold from $40 million to $80 million for registrants with zero public float that determined that they did not qualify as smaller reporting companies but subsequently seek to qualify would maintain the ratio that exists between the $50 million and $40 million thresholds in the current definition.

We are not proposing, as recommended by one commenter on the Disclosure Effectiveness Initiative,[55] to eliminate the public float criteria for registrants that meet these proposed revenue thresholds or any other revenue thresholds. When the Commission proposed the smaller reporting company definition, it specifically solicited comment on a revenue-only test. In adopting the smaller reporting company definition, the Commission noted that the majority of commenters supported the proposal to use a public float standard in most cases, agreeing that the Commission should use a revenue test only if a registrant is unable to calculate

[46] For a discussion of DERA's empirical analysis, *see* Section III.B.

[47] Based on public float values disclosed by registrants in their Form 10–K filings, 2,408, or 31.8%, of the 7,557 registrants that filed a Form 10–K in 2015 reported having a public float of less than $75 million.

[48] Approximately 4,976, or 41.8%, of the 11,898 registrants that filed Exchange Act annual reports in 2006 had a public float of less than $75 million. *See* Smaller Reporting Company Regulatory Relief and Simplification, Release No. 33–8819 (July 5, 2007) [72 FR 39670 (July 19, 2007)]. The release cites data from the Commission's EDGAR filing system and Thomson Financial (Datastream). The Datastream data included all registered public firms trading on the New York Stock Exchange, the American Stock Exchange, the Nasdaq, the Over-the-Counter Bulletin Board and the Pink Sheets and excluded closed end funds, exchange traded funds, American depositary receipts and direct foreign listings.

[49] Based on public float values disclosed by registrants in their Form 10–K filings, 3,159, or 41.8%, of the 7,557 registrants that filed a Form 10–K in 2015 reported having a public float of less than $250 million.

[50] Either upon an initial determination in the case of registrants filing an initial registration statement, or as of an annual determination in the case of reporting registrants.

[51] 775, or 10.3%, of the 7,557 registrants that filed a Form 10–K in 2015 reported having zero public float and less than $50 million in annual revenues, based on public float values and revenues disclosed by registrants in their Form 10–K filings.

[52] Based on public float values and revenues disclosed by registrants in their Form 10–K filings, 31 of the 7,557 registrants that filed a Form 10–K in 2015 had zero public float and between $50 million and $100 million in annual revenues.

[53] *See* 2015 Small Business Forum Recommendations; 2013 ACSEC Recommendations.

[54] Either upon an initial determination in the case of registrants filing an initial registration statement, or as of an annual determination in the case of reporting registrants.

[55] *See* BIO Letter.

its public float.[56] By eliminating the revenue test for most registrants, the Commission stated that the new definition of smaller reporting company would simplify and streamline the definition while expanding the number of companies eligible to qualify. The amendments to the smaller reporting company definition we are now proposing retain this approach because we believe that the public float test has worked well in practice and has streamlined the definition,[57] as the Commission intended when it adopted the current test.[58] We do, however, request comment below on whether we should consider instead using or allowing a revenue-only test for the smaller reporting company definition.

C. Proposed Amendments to Accelerated Filer and Large Accelerated Filer Definitions

We are not proposing to amend the public float thresholds for when a registrant would qualify as an accelerated filer or large accelerated filer.[59] We are proposing amendments to those definitions, however, to eliminate the provision in each that specifically excludes registrants that are eligible to use the smaller reporting company requirements under Regulation S–K for their annual and quarterly reports.[60] As a result, the proposed amendments would preserve the application of the current thresholds contained in the accelerated filer and large accelerated filer definitions.

Because the public float thresholds for exiting smaller reporting company status and entering accelerated filer status currently are both $75 million, and the determinations are both made as of the last business day of a registrant's second fiscal quarter, the smaller reporting company provision in the accelerated filer definition does not currently exclude from the accelerated filer definition any registrants that would not otherwise be excluded. If we raised the smaller reporting company public float threshold to $250 million without eliminating the smaller reporting company provision from the accelerated filer definition, however, those registrants with public floats of up to $250 million would be excluded from the accelerated filer requirements because they would be eligible under the proposed amendments to use the smaller reporting company requirements under Regulation S–K. In effect, we would be raising the accelerated filer public float threshold indirectly. Eliminating the smaller reporting company provision in the accelerated filer definition, therefore, would maintain the status quo regarding the size of registrants that are subject to the accelerated filer disclosure and filing requirements.

The public float threshold for entering large accelerated filer status currently is $700 million, so the smaller reporting company provision in the large accelerated filer definition does not currently exclude from the large accelerated filer definition any registrants that would not otherwise be excluded. If the proposed amendments were adopted and the smaller reporting company public float threshold became $250 million, the smaller reporting company provision in the large accelerated filer definition still would not exclude any registrants that would not otherwise be excluded. Nevertheless, we are proposing to eliminate this provision because it currently does not capture any registrants, would not capture any registrants if the proposed amendments were adopted, and could lead to confusion if retained.

In September 2015, the ACSEC recommended that the Commission revise the accelerated filer definition to include registrants with a public float threshold of $250 million or more, but less than $700 million.[61] If we implemented this recommendation, in addition to having a longer period to file their annual and quarterly reports, non-EGCs with public floats between $75 million and $250 million would no longer be required to provide, and investors in those registrants would no longer receive the benefits of, auditor attestation reports required by Section 404(b) of the Sarbanes-Oxley Act.[62]

In April 2011, the staff conducted a study (Staff Section 404(b) Study)[63] mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act)[64] to determine how the Commission could reduce the burden of complying with Section 404(b) of the Sarbanes-Oxley Act for registrants with market capitalizations between $75 million and $250 million.[65] The staff's analysis, in part, found no specific evidence that any potential savings from exempting registrants with public floats between $75 million and $250 million from the auditor attestation provisions of Section 404(b) would justify the loss of investor protections and benefits to registrants from such an exemption.[66] Rather, the staff found that accelerated filers (including those with a public float between $75 million and $250 million) that were subject to the Section 404(b) auditor attestation requirements generally had a lower restatement rate than registrants that were not subject to the requirements. Moreover, the staff found that the population of registrants with public floats between $75 million and $250 million did not have sufficiently unique characteristics that would justify differentiating this

[56] *See* Smaller Reporting Company Adopting Release. The small business issuer definition, which the smaller reporting company definition replaced, was based on both public float and annual revenue.

[57] Registrants no longer have to calculate both public float and annual revenue under the smaller reporting company definition.

[58] *See* Smaller Reporting Company Adopting Release.

[59] Accelerated filer and large accelerated filer are defined in Exchange Act Rule 12b–2. Being an accelerated filer or a large accelerated filer triggers the requirement contained in Section 404(b) of the Sarbanes-Oxley Act that a non-EGC registrant's registered public accounting firm provide, for inclusion in the registrant's annual report, an attestation report on internal control over financial reporting. Accelerated and large accelerated filers also must provide their internet address and disclosure regarding the availability of their filings required by Items 101(e)(3) and (4) of Regulation S–K, as well as disclosure required by Item 1B of Form 10–K about unresolved staff comments on their periodic or current reports. In addition, accelerated and large accelerated filers are subject to accelerated periodic report filing deadlines.

[60] Subparagraphs (1)(iv) of the accelerated filer definition and (2)(iv) of the large accelerated filer definition in Exchange Act Rule 12b–2.

[61] 2015 ACSEC Recommendations; 2013 ACSEC Recommendations.

[62] As a general matter, the Sarbanes-Oxley Act requires that the management of certain registrants assess the effectiveness of the registrant's internal control over financial reporting, while Section 404(b) specifically requires a registrant's auditor to attest to, and report on, management's assessment.

[63] Study and Recommendations on Section 404(b) of the Sarbanes-Oxley Act of 2002 For Issuers With Public Float Between $75 and $250 Million (Apr. 2011), available at *https://www.sec.gov/news/studies/2011/404bfloat-study.pdf.*

[64] Pub. L. 111–203, 124 Stat. 1376 (2010).

[65] *See* Dodd-Frank Act § 989G(b). That section also provided that the study shall "consider whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance with such section would encourage companies to list on exchanges in the United States in their initial public offerings."

[66] In 2007, the Commission issued interpretive guidance for management regarding its evaluation of internal controls and disclosure requirements, and the Public Company Accounting Oversight Board adopted Auditing Standard No. 5 regarding Audits of Internal Control over Financial Reporting (AS 5) in an effort to reduce the compliance burden and improve the implementation of Section 404, including the requirements of Section 404(b). *See* Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Release No. 33–8810 (June 20, 2007) [72 FR 35324 (June 27, 2007)]. However, one stakeholder representative has raised concerns about whether, in response to PCAOB inspection results, some auditors more recently have started to take approaches to evaluating internal control over financial reporting that are inconsistent with attaining goals for reduced compliance costs in this area. *See* letter from Center for Capital Markets Competitiveness (May 29, 2015).

population of registrants from other accelerated filers with respect to the Section 404 auditor attestation requirements.[67] Ultimately, the study recommended that the Section 404(b) requirements be maintained for accelerated filers, including those with a public float between $75 million and $250 million.[68]

Since the staff's study was concluded, academic research has resulted in mixed findings.[69] In light of these mixed findings, we are not proposing to raise the accelerated filer public float threshold or to modify the Section 404(b) requirements for registrants with a public float between $75 million and $250 million. However, we are requesting comment below on whether we should consider raising the public float threshold in the accelerated filer definition.

D. Request for Comment

1. Should the thresholds for smaller reporting company status be raised? Why or why not? Should the current thresholds be kept at their current levels but adjusted for inflation? Why or why not?

2. Does raising the thresholds for smaller reporting company status as proposed appropriately consider the objectives of capital formation and investor protection? Why or why not? Is there a better way to accomplish these objectives?

3. Would raising the thresholds promote capital formation or liquidity for smaller registrants? Could raising the thresholds result in a loss of material information about registrants that would qualify as smaller reporting companies under the higher thresholds? Does scaled disclosure impact the ability of investors to make informed investment decisions? Does scaled disclosure lead to a greater incidence of fraud?

4. As proposed, should the smaller reporting company definition continue to be based primarily on public float and, in the absence of public float, revenue? Why or why not? If so, should the public float threshold be $250 million? Should the revenue threshold be $100 million for registrants without a public float? Should the public float threshold be $200 million for registrants that determined in a prior year that they did not qualify as smaller reporting companies and seek to transition to smaller reporting company status? Should the revenue threshold be $80 million for registrants without a public float that determined in a prior year that they did not qualify as smaller reporting companies and seek to transition to smaller reporting company status? Should any of the proposed thresholds be higher or lower? Why or why not?

5. Should the smaller reporting company definition be based on both public float and revenue? Why or why not? If so, what should the public float and revenue thresholds be? If we required both thresholds, should the registrant maintain its smaller reporting company status until it exceeds both the public float and revenue thresholds or until it exceeds either threshold?

6. Should the definition be based on whether a registrant meets *either* a public float threshold or a revenue threshold? Why or why not?

7. Should the definition contain only a public float test, regardless of the registrant's revenues, rather than the current definition? Why or why not? If so, what should the threshold be?

8. Should we eliminate the public float test and instead apply only a revenue test? Why or why not? If so, what should the threshold be? Should we allow a revenue-only test as an alternative to the public float test and permit a registrant to choose which test to apply? Why or why not? If so, what should the thresholds be for each test?

9. Should we revise the method of calculating public float in our current rules? If so, how?

10. Should the smaller reporting company definition be based on market capitalization rather than public float? If so, what market capitalization should we use? How should we determine any new market capitalization thresholds? What would be the advantages or disadvantages of this approach?

11. Are there other criteria or measures for defining smaller reporting companies that we should consider? If so, what are they and what, if any, thresholds would be appropriate?

12. Should any thresholds in the smaller reporting company definition be indexed to adjust for inflation? If so, to what indicator should the thresholds be indexed and how frequently should they be adjusted?

13. If the thresholds are raised in the manner proposed, should the Commission re-visit the thresholds on a periodic basis to assess whether the thresholds are contributing to capital formation, liquidity and investor protection? If so, what criteria would be useful for assessing the efficacy of the thresholds and how frequently should re-assessments occur?

14. If the thresholds are raised, should larger registrants be limited in their ability to avail themselves of some of the scaled disclosure accommodations? Should any of the scaled disclosure requirements of Regulation S–K or Regulation S–X not be available for registrants at the higher end of the range in terms of public float or revenue? If so, which disclosure requirements and why? If so, would differences among the types of scaled disclosure accommodations adversely impact comparability across the larger group of registrants that would qualify as a smaller reporting company? Why or why not?

15. If we increase the thresholds in the smaller reporting company definition, should we eliminate the provision in the accelerated and large accelerated filer definitions that specifically excludes registrants that are eligible to use the smaller reporting company requirements under Regulation S–K for their annual or quarterly reports, as proposed? Why or why not?

16. If we increase the public float threshold in the smaller reporting company definition as proposed, should we also increase the public float threshold in the accelerated filer definition? Why or why not?

17. If we increase the public float and revenue thresholds in the smaller reporting company definition as proposed, should we also increase the thresholds in Exchange Act Rule 12g5–1(a)(7)?[70] Why or why not?

18. If we increase the revenue threshold in the smaller reporting company definition as proposed, should we also increase the threshold in Rule

[67] *See* Staff Section 404(b) Study at 107. At the same time, the staff's study recognized that registrants at the lower end of the studied range of $75 million and $250 million could be more likely to have characteristics more similar to non-accelerated filers (*i.e.,* registrants that are just under or just over the $75 million threshold are likely to have similar characteristics to one another). *See id.* at 4. The staff's study did not specifically assess whether registrants at the lower end of the group, such as those with a public float between $75 million and $125 million, might differ in relative benefits than registrants at the higher end.

[68] *See* Staff Section 404(b) Study at 112. Title I of the JOBS Act exempts EGCs from the Section 404(b) auditor attestation requirements, but EGC status is a temporary accommodation by Congress to lessen the burdens on new companies entering the public markets. Pub. L. 112–106, Sec. 103, 126 Stat. 306 (2012) (amending Section 404(b) of the Sarbanes-Oxley Act [Pub. L. 107–204, Sec. 404(b) 116 Stat. 745 (2002)]). Smaller reporting company status, however, is not time-limited.

[69] For a discussion of the academic research, *see* Section III.C.

[70] Exchange Act Rule 12g5–1(a)(7) [17 CFR 240.12g5–1(a)(7)] provides issuers of securities in Tier 2 Regulation A offerings with an exemption from the mandatory registration requirements of Exchange Act Section 12(g) provided certain conditions are met, including a requirement that the issuer have a public float of less than $75 million as of the last business day of its most recently completed semiannual period, or, in the absence of a public float, annual revenues of less than $50 million as of its most recently completed fiscal year.

3–05 of Regulation S–X? [71] Why or why not?

III. Economic Analysis

As discussed above, we are proposing amendments to the definition of ''smaller reporting company'' as used in our rules and regulations. The proposed amendments are intended to promote capital formation and reduce compliance costs for smaller registrants by expanding the number of smaller registrants that are eligible to deliver scaled disclosure to their investors, while maintaining investor protections.

Registrants with less than $250 million (vs. currently $75 million) in public float would qualify, as would registrants with zero public float if their revenues were below $100 million (vs. currently $50 million) in the previous year. We are sensitive to the costs and benefits of the proposed amendments. In this economic analysis, we examine the existing baseline, which consists of the current regulatory framework and market practices, and discuss the potential benefits and costs of the proposed amendments, relative to this baseline, and their potential effects on efficiency, competition and capital formation.[72] We also consider the potential costs and benefits of reasonable alternatives to the proposed amendments. Where practicable, we attempt to quantify the economic effects of the proposed amendments; however, in certain cases, we are unable to do so because either we lack the necessary data or the economic effects are not quantifiable. In these cases, we provide a qualitative assessment of the likely economic effects.

A. Baseline and Potential Affected Parties

In calendar year 2015, of the 7,557 registrants that filed a Form 10–K with the Commission, 3,183 (42.1% of all registrants) were eligible to claim smaller reporting company status. Of those, 2,900 (38.4% of all registrants) claimed smaller reporting company status. Under the current definition, a registrant may qualify as a smaller reporting company under either a public float threshold or an annual revenue threshold if the public float is zero. Of the 2,900 smaller reporting companies, 2,241 companies (29.7% of all registrants) qualified under the $75 million public float threshold and 659 companies (8.7% of all registrants) qualified under the $50 million revenue threshold.[73] Of the 2,900 smaller reporting companies, 490 (6.5% of all registrants) also claimed EGC status.[74]

Table 1 summarizes the number and percentage of registrants that claimed smaller reporting company status in each calendar year over the 2013–2015 period.

TABLE 1—SMALLER REPORTING COMPANIES (SRCS) IN 2013–2015 PERIOD

Filing year	Total # of registrants	# of SRCs	% of total	Qualified based on public float (% of total)	Qualified based on revenue (% of total)
2013	7,624	3,380	44.3	33.5	10.8
2014	7,642	3,179	41.6	32.7	8.9
2015	7,557	2,900	38.4	29.7	8.7

Table 2 shows that, while smaller reporting companies account for a substantial percentage of the total number of registrants in calendar year 2015, they account for less than one percent of the entire public float, market value and revenue of all registrants.[75]

TABLE 2—SIZE PROXIES FOR SMALLER REPORTING COMPANIES (SRCS) IN 2015

	Public float	Market value	Revenue
Mean	$17.0 million	$33.6 million	$21.3 million.
Median	8.8 million	13.0 million	0.21 million.
Aggregate size	38.0 billion	79.3 billion	61.9 billion
% of the aggregate size of all registrants.	0.01%	0.31%	0.37%.

[71] Rule 3–05 of Regulation S–X provides the requirements for financial statements of businesses acquired or to be acquired. Paragraph (b)(2)(iv) allows registrants to omit such financial statements for the earliest of three fiscal years required if the net revenues of the business to be acquired are less than $50 million. The $50 million threshold is based on the revenue threshold in the smaller reporting company definition. *See* Smaller Reporting Company Adopting Release.

[72] Section 23(a)(2) of the Exchange Act requires us, when adopting rules, to consider the impact that any new rule would have on competition. In addition, Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act direct us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[73] Based on analysis by DERA. Staff obtained the smaller reporting company status and public float data from corporate financial reports filed with the Commission using eXtensible Business Reporting Language (XBRL), available at: *http://www.sec.gov/dera/data/financial-statement-data-sets.html.* Staff also extracted the smaller reporting company status and public float directly from Forms 10–K using a computer program. For robustness, staff compared the smaller reporting company status and public float information between the two sources and corrected discrepancies. Staff extracted annual revenue data from the Compustat database and XBRL filings. Registrants transitioning out of smaller reporting company status that reported either public float greater than $75 million or zero public float but revenue greater than $50 million were not counted as smaller reporting companies.

[74] Staff determined whether a registrant claimed EGC status by parsing several types of filings (for example, Forms S–1, S–1/A, 10–K, 10–Q, 8–K, 20–F/40–F, and 6–K) filed by that registrant.

[75] Market value and revenue data as of the fiscal year end are obtained from Compustat. Where revenue data was unavailable from Compustat, staff obtained the information directly from XBRL data filed with the registrants' Forms 10–K. Where revenue data was unavailable in XBRL, staff obtained the data directly from the registrants' Forms 10–K. The summary statistics on revenue are for all current smaller reporting companies, not just those qualifying under the revenue threshold.

Table 3 shows the distribution of registrants that claimed smaller reporting company status in calendar year 2015 using the Fama-French 49-industry classification.[76] The ''Business Services'' industry accounts for 11.7% of all smaller reporting companies, followed by ''Financial Trading'' (9.5%), ''Banking'' (7.8%), ''Pharmaceutical Products'' (6.8%), ''Petroleum and Natural Gas'' (6.9%), and ''Computer Software'' (5.6%).[77] We note that industries with a larger fixed component of operating costs, such as shipping, defense, and aircraft, tend to have fewer smaller reporting companies.

TABLE 3—INDUSTRY DISTRIBUTION OF SMALLER REPORTING COMPANIES (SRCS) IN 2015

Industry ID	Industry	# of SRCs	% of all SRCs	Industry ID	Industry	# of SRCs	% of all SRCs
1	Agriculture	27	0.9	26	Defense	2	0.1
2	Food Products	40	1.4	27	Precious Metals	44	1.5
3	Candy & Soda	3	0.1	28	Non-Metallic and Industrial Metal Mining.	110	3.8
4	Beer & Liquor	19	0.7	29	Coal	4	0.1
5	Tobacco Products	8	0.3	30	Petroleum and Natural Gas.	200	6.9
6	Recreation	21	0.7	31	Utilities	18	0.6
7	Entertainment	60	2.1	32	Communication	50	1.7
8	Printing and Publishing.	11	0.4	33	Personal Services	50	1.7
9	Consumer Goods	53	1.8	34	Business Services	337	11.6
10	Apparel	18	0.6	35	Computers	24	0.8
11	Healthcare	39	1.3	36	Computer Software.	163	5.6
12	Medical Equipment	102	3.5	37	Electronic Equipment.	104	3.6
13	Pharmaceutical Products.	198	6.8	38	Measuring and Control Equipment.	52	1.8
14	Chemicals	49	1.7	39	Business Supplies	3	0.1
15	Rubber and Plastic Products.	20	0.7	40	Shipping Containers.	3	0.1
16	Textiles	5	0.2	41	Transportation	21	0.8
17	Construction Materials.	30	1.0	42	Wholesale	84	2.9
18	Construction	24	0.8	43	Retail	81	2.8
19	Steel Works	6	0.2	44	Restaurants, Hotels, Motels.	28	1.0
20	Fabricated Products.	3	0.1	45	Banking	225	7.8
21	Machinery	58	2.0	46	Insurance	25	0.9
22	Electrical Equipment.	39	1.3	47	Real Estate	96	3.3
23	Automobiles and Trucks.	26	0.9	48	Financial Trading	277	9.5
24	Aircraft	4	0.1	49	Other	34	1.2
25	Shipbuilding, Railroad Equipment.	2	0.1				

By increasing the public float threshold from $75 million to $250 million and the annual revenue threshold from $50 million to $100 million in the smaller reporting company definition, the proposed amendments would permit more registrants to qualify as smaller reporting companies. To estimate the number of additional registrants that could be potentially affected by the proposed amendments, we use the public float data from Form 10–K filings and revenue data from Compustat to determine the number of existing registrants that could qualify as a smaller reporting company under the proposed new thresholds. Under the proposed amendments, we estimate that 782 additional registrants could be eligible for smaller reporting company status, 751 of which have a public float between $75 million and $250 million and 31 of which have zero public float and annual revenues between $50 million and $100 million.

The 782 additional registrants have an average public float of $149 million (median $144 million), an average market value of $257 million (median $195 million), and average revenues of $248 million (median $80 million). Of the 782 potentially eligible registrants, 153 currently are EGCs and are eligible for certain scaled disclosure under Title I of the JOBS Act, including the scaled executive compensation disclosures available to smaller reporting companies under Item 402 of Regulation S–K. The 782 additional registrants tend to be concentrated in the following industries: ''Banking'' (17.4%),

[76] Using Standard Industry Classification (SIC) codes, Professors Eugene Fama and Kenneth French have sorted companies into 48 main industries, plus a residual ''Other'' industry. This classification is commonly used in the financial economics literature and is available at: *http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/Data_Library/det_49_ind_port.html.*

[77] Smaller reporting companies account for 57% of all 10–K filers in ''Business Services,'' 37% in ''Financial Trading,'' 20% in ''Banking,'' 39% in ''Pharmaceutical Products,'' 50% in ''Petroleum and Natural Gas'' and 47% in ''Computer Software,'' suggesting that these industries all have a fairly high concentration of small registrants.

''Pharmaceutical Products'' (13.4%), ''Financial Trading'' (9.0%), ''Business Services'' (6.1%) and ''Electric Equipment'' (4.9%). If all 782 registrants were to claim smaller reporting company status, the proposed amendments would lead to a noticeable increase in the presence of ''Banking'' and ''Pharmaceutical Products'' registrants in the pool of smaller reporting companies.

We estimate that the proposed amendments would lead to an expansion of the smaller reporting company pool. Under the proposed rules, 41.8% of the total registrants would qualify using a public float threshold of less than $250 million, while currently 31.9% of the total registrants reported having a public float of less than $75 million. In addition, 10.7% of the total registrants would qualify using a revenue threshold of $100 million, while currently 10.3% of the total registrants reported having less than $50 million in revenues.[78] The 41.8% of registrants qualifying under the public float threshold would be in line with the 42% of registrants that qualified under the public float threshold when the Commission first established the definition of smaller reporting company. Raising the percentage of registrants qualifying under the public float threshold to the 2007 level would reflect the real growth in the stock market as well as inflation in nominal prices in the past decade. We do not have sufficient data to be able to compare the percentage of registrants qualifying under the revenue threshold when the Commission first established the definition of smaller reporting company to the 10.7% that would qualify using a revenue threshold of $100 million. Table 4 summarizes the size of the potential smaller reporting companies in terms of public float, market value and annual revenue under the proposed amendments.

TABLE 4—SIZE PROXIES FOR THE POTENTIALLY ELIGIBLE SMALLER REPORTING COMPANIES UNDER THE PROPOSED AMENDMENTS

	Public float	Market value	Revenue
Mean	$50.0 million	$111.1 million	$74.2 million.
Median	$20.9 million	$29.1 million	$1.5 million.
Aggregate size	$157.8 billion	$374.1 billion	$294.2 billion.
% of the aggregate size of all registrants[79].	0.03%	1.46%	1.75%.

B. Potential Economic Effects

1. Introduction

The primary benefit stemming from the proposed amendments would be a reduction in compliance costs for those registrants that would newly qualify for smaller reporting company status. If the compliance costs have a fixed cost component, which typically burdens smaller registrants disproportionately, the cost savings may be particularly helpful for these registrants.

As a secondary effect of the proposed amendments, a lower disclosure burden could spur growth in smaller registrants to the extent that the compliance cost savings and other resources (*e.g.,* managerial effort) devoted to disclosure and compliance are productively deployed in alternative ways. It also could encourage capital formation because companies that may have been hesitant to go public may choose to do so if they face reduced disclosure requirements.[80]

With respect to costs, the proposed amendments would reduce the amount of information available to investors, thereby potentially reducing investor protection. A decrease in the amount of disclosure could increase the information asymmetry between investors and company insiders, leading to lower liquidity and higher costs of capital for the affected registrants. For example, an academic study [81] finds that during the three-month period following the establishment of the smaller reporting company definition, registrants with public floats between $25 million and $75 million that claimed smaller reporting company status experienced a significant reduction in liquidity relative to comparable companies. Also, under the proposed amendments, the newly eligible smaller reporting companies would not be required to provide certain executive compensation disclosure requirements, potentially lowering corporate governance transparency of these registrants.[82]

It is important to note that the smaller reporting company thresholds establish eligibility for but do not mandate reliance on any of the scaled disclosure

[78] Using 2015 data, we estimated that, of 7,557 total registrants that filed 10-Ks, 3,965 registrants would potentially qualify as smaller reporting companies under the proposed thresholds. In particular, we estimated that 3,159 registrants reported public float below $250 million in 2015, resulting in a percentage of 41.8% (3,159/7,557) of registrants potentially qualifying as smaller reporting companies under the proposed public float threshold, and 2,408 registrants reported a public float below $75 million in 2015, resulting in a percentage of 31.9% (2,408/7,557). Also, we estimated that 806 registrants reported annual revenues below $100 million in 2015, resulting in a percentage of 10.7% (806/7,557) of registrants potentially qualifying as smaller reporting companies under the proposed revenue threshold, and 775 registrants reported annual revenues below $50 million in 2015, resulting in a percentage of 10.3% (775/7,557).

[79] The percentages in Table 4 are generally in line with the percentages in 2006 prior to the adoption of the current smaller reporting company definition. Because public float information in 2006 was not easily available, we use the free float values from Thomson Reuter's Datastream database instead, which excludes from a company's total market value all insider ownership and 5% institutional ownership. We estimate that in 2006 the total number of registrants with free float less than $75 million accounted for 0.37% of the aggregate free float, 1.81% of the aggregate market value, and 1.92% of the aggregate revenue.

[80] The debate on the impact of the Sarbanes-Oxley Act on companies' propensities to go private (Engel et al. (2007)), go dark (Leuz et al. (2008)), and go public (Bova et al., (2014)) highlights the importance of compliance costs in companies' decisions to participate in the public capital market. *See* Ellen Engel, Rachel M. Hayes, and Xue Wang. *The Sarbanes-Oxley Act and Firms' Go Private Decisions* 44 J. Account. & Econ. 116 (2007); Christian Leuz, Alexander J. Triantis, and Tracy Yue Wang, *Why Do Firms Go Dark? Causes and Economic Consequences of Voluntary SEC Deregistrations,* 45 J. Account. & Econ. 181 (Mar. 1, 2008); and *Francesco* Bova, Miguel Minutti-Meza, Gordon D. Richardson, and Dushyantkumar Vyas, *The Sarbanes-Oxley Act and Exit Strategies of Private Firms,* 31 Contemporary Account. Research 818 (Jan. 12, 2014).

[81] *See* Lin Cheng, Scott Liao, and Haiwen Zhang, *Commitment Effect versus Information Effect of Disclosure: Evidence from Smaller Reporting Companies,* 88 Account. Rev. 1239 (Jul. 2013).

[82] For a review of the effects of executive compensation disclosures on compensation practices, *see* Michael Jensen, Kevin Murphy, and Eric Wruck, *Remuneration: Where We Have Been, How We Got to Here, What Are the Problems, and How to Fix Them,* Working paper, Harvard Business School (2004), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=561305. See also* Benjamin E. Hermalin and Michael S. Weisbach, *Information Disclosure and Corporate Governance,* 67 J. Fin. 195 (2012), and Anya Kleymenova and A. Irem Tuna, *Regulation of Compensation,* Working Paper, University of Chicago (2016), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2755621.*

accommodations.[83] If the proposed amendments were adopted, we expect that the newly eligible registrants would weigh the costs and benefits of scaled disclosure for themselves and decide whether to take advantage of any of the scaled disclosure accommodations. To the extent that there may be agency concerns, expanding smaller reporting company eligibility may provide opportunities for adverse selection in a greater number of registrants, that is, registrants whose outside investors would have benefited from more disclosure may choose the lower disclosure requirement once becoming eligible. The net benefit for the newly eligible registrants would ultimately depend on the specific facts and circumstances.

2. Estimation of Potential Costs and Benefits

In this section, we estimate the incremental costs and benefits associated with smaller reporting company-related scaled disclosures, using a multivariate empirical analysis. The challenge is to isolate the economic effects of scaled disclosures from the effect of other significant accommodations, such as the exemption from Section 404(b) that is currently available to all smaller reporting companies. For this reason, we cannot isolate the costs and benefits associated with scaled disclosures using data from current smaller reporting companies.[84] Under the proposed amendments, the newly eligible smaller reporting companies would be able to provide scaled disclosures but would continue to be subject to Section 404(b) as accelerated filers.

It is possible, however, to isolate the effects of scaled disclosures using 2006 − 2009 data. This is because, as a result of the rules that established the smaller reporting company category in 2007, registrants with public float between $25 million and $75 million experienced no change in the Section 404(b) exemption but became eligible for the smaller reporting company scaled disclosures. Our empirical methodology is a difference-in-difference estimation between a treatment group and a comparison group.[85] In particular, the treatment group (Treatment Group) consists of registrants with public float between $25 million and $75 million that claimed smaller reporting company status in 2008. Two natural comparison groups exist. The first comparison group (Control Group 1) consists of registrants that did not qualify for smaller reporting company status because they had public float just above $75 million (between $75 million and $125 million).[86] The second comparison group (Control Group 2) consists of registrants with public float and revenues below $25 million that were already eligible for scaled disclosures at that time and thus not affected by the Commission's 2007 rules.[87]

To analyze the economic effects of eligibility for scaled disclosures resulting from the Commission's 2007 rules, we compare the Treatment Group with Control Group 1 and Control Group 2 in the following areas: cost savings, information environment, liquidity and growth. We then use the analysis to extrapolate the likely effects of the expansion of eligibility for smaller reporting company status under the proposed amendments. In extrapolating the likely effects, we place particular emphasis on the comparison between the Treatment Group and Control Group 1, which represents a closer group in size to the newly eligible smaller reporting companies under the proposed amendments.

i. Potential Cost Savings: Estimates Based on Changes in Audit Fees

The cost savings from scaled disclosures could include savings of resources that would be used for the relevant parts of disclosures, for example, managerial and employee time, other internal resources, and audit fees related to certain disclosures. Among these potential savings, changes in audit fees are readily quantifiable. To the extent that the scaled disclosure accommodations impact information that must be audited, scaled disclosures of the audited portions of the filings should lead to a reduction in audit expenses. Because many of the scaled disclosures available to smaller reporting companies relate to governance and compensation disclosures that are not subject to audit, we acknowledge that a reduction in audit fees is likely a small part of the total cost savings associated with scaled disclosures. However, quantifying the change in audit fees can potentially help us estimate the entire cost savings.

To estimate the cost savings from the proposed amendments, we first examine changes in the audit fees of registrants that were newly eligible to use scaled disclosures as a result of the 2007 rules relative to those in the comparison groups between the pre-rule 2006 − 2007 period and the post-rule 2008 − 2009 period. Audit fee data come from the Audit Analytics database. We include only registrants that had both pre-rule and post-rule audit fee data in the analysis. Table 5 reports the main results.

[83] If a disclosure requirement applicable to smaller reporting companies is more stringent than for non-smaller reporting companies, however, smaller reporting companies must comply with the more stringent standard. Item 404 is the only Regulation S–K disclosure requirement that could be more stringent.

[84] Although there exists a clear threshold for eligibility, we cannot use the well-known empirical method of Regression Discontinuity Design to assess the treatment effect of scaled disclosures for smaller reporting companies. This method requires that the assignment of the treatment among registrants is ''as good as random'' around the threshold. Under this assumption, the registrants that receive the treatment of scaled disclosure (*i.e.,* smaller reporting companies) should be comparable to those registrants that do not receive the treatment because their public float is just above the $75 million threshold. Given the exemption from Section 404(b) available to current smaller reporting companies with public float below $75 million, this assumption does not hold.

[85] Difference-in-difference is a technique used to calculate the effect of a variable on a treatment group versus a control group. In particular, in the analysis below, the average change over time in the outcome of a variable for the treatment group is compared to the average change over time in the outcome of that variable for the control group.

[86] This would allow for a $50 million bandwidth similar to that used in the Commission's 2007 rules, which raised the threshold for relief from $25 million to $75 million.

[87] The comparison groups help control for confounding factors that may also independently affect the economic effects associated with scaled disclosures. While we determine Treatment Group and Control Group 1 based on public float alone, we use both public float and revenues to determine Control Group 2, because, prior to the Commission's 2007 rules, registrants with public float below $25 million were not eligible for scaled disclosures if their revenues exceeded $25 million.

TABLE 5—PRE- AND POST-COMMISSION'S 2007 RULES AUDIT FEES FOR SMALLER REPORTING COMPANIES (SRCs) AND COMPARISON GROUPS

Fiscal year	Treatment group (SRCs with public float $25m–$75m)	Control group 1 (Non-SRCs with public float $75m–$125m)	Control group 2 (SRCs with public float and revenues below $25m)
Avg. 2006–2007	$311,105	$676,194	$113,757
Avg. 2008–2009	$267,252	$654,463	$101,854
Number of Observations	1,315	694	962

For smaller reporting companies with public floats between $25 million and $75 million, in 2008–2009, average audit fees declined by $43,853. In contrast, both Control Group 1, which just missed eligibility for claiming smaller reporting company status, and Control Group 2, which already was subject to scaled disclosures, experienced a much smaller decline in average audit fees after the adoption of the Commission's 2007 rules: $21,731 and $11,903, respectively. Thus, the difference-in-difference estimate of the savings in audit fees associated with scaled disclosures is between $22,122 and $31,950 per smaller reporting company. Both estimated differences differ significantly from zero. Although two different control groups are used to control for all other factors that may have caused the changes in audit fees in smaller registrants during the 2006–2009 period,[88] the effect of the 2008 financial crisis may not be completely ruled out and could make the estimated savings in audit fees appear larger than they actually were.

We can also estimate the savings in audit fees in terms of a percentage reduction, instead of a dollar value.[89] The audit fees for the Treatment Group declined by 14.1% in the 2008–2009 period relative to the 2006–2007 period, but only by 3.2% for Control Group 1 and 10.5% for Control Group 2. Thus, the difference-in-difference estimate of the treatment effect in terms of a percentage reduction is a 3.6% to 10.9% reduction of the audit fees.

For the 782 newly eligible registrants that we estimate would be potentially affected by the proposed amendments, the average audit fees were $683,607 in fiscal year 2014. Thus, if we use the dollar value estimates of the audit fee savings, then the estimated reduction in audit fees would be between $24,353 and $35,172 for this group, which are the inflation-adjusted values of the audit fee savings estimates in 2008 and 2009.[90] This estimate for savings on audit fees for the newly eligible registrants would be about 3.6% (=$24,353/$683,607) to 5.1% (=$35,172/$683,607) of the audit fees. If we use the percentage reduction estimates, then the estimated reduction in the audit fees would range from $24,610 (=$683,607 × 3.6%) to $74,513 (=$683,607 × 10.9%) for the Treatment Group.

We recognize that our analysis is subject to a number of assumptions, some of which may not be fully applicable when estimating the possible current change in audit expenses as a result of the proposed amendments.[91] In addition, we recognize that audit expenses are only one component of costs for registrants and that changes in audit fees do not capture the full range of potential cost savings stemming from scaled disclosures. There are cost savings apart from the audit, such as cost savings resulting from a smaller reporting company not being required to prepare compensation discussion and analysis (CD&A) and from other scaled disclosures in Item 402 of Regulation S–K. These cost savings likely will include both internal cost savings (such as employee and managerial time and resources) and external cost savings from fees for other outside professionals such as attorneys. Given the nature of scaled disclosures available to smaller reporting companies, we expect these other cost savings to be much larger than the cost savings in audit fees. Accordingly, we assume that 25% of the total cost savings from scaled disclosure comes from savings in audit fees and 75% of the savings comes from reduction in other expenses. Given this assumption, we estimate total annual cost savings per newly eligible registrant to be between $98,439 (=$24,610 × 4) and $298,052 (=$74,513 × 4), which is 0.04% (=$98,439/$246.9 million) to 0.12% (=$298,052/$246.9 million) of the average revenue of the newly eligible registrants.

ii. Information Environment, Liquidity and Growth

A registrant's information environment can be measured by the amount of useful information available to investors and the quality of information. To gauge the potential effects on the degree of external information production about the registrant that could benefit investors, we determine a registrant's percentage of institutional ownership, total 5% block institutional ownership, and analyst coverage (*i.e.,* whether a registrant is covered by at least one analyst and the number of analysts).

To measure disclosure quality, we use four discretionary accrual measures commonly used in the accounting literature as proxies for earnings management and the incidence of material restatements (based on when the restatement happened—beginning

[88] For example, among other factors, we note that the Commission approved Public Company Accounting Oversight Board Auditing Standard No. 5 regarding Audits of Internal Control over Financial Reporting (AS 5). Among other things, AS 5 was intended to reduce unnecessary costs by making the audit scalable to fit the size and complexity of company. AS 5 became effective in November 2007 and registrants with fiscal years ending between July and November were allowed to avail themselves of the provision earlier. The adoption and implementation of AS 5 in 2007 could have had an impact on the audit fees of all companies subject to Section 404(b). Given that in our analysis both Treatment Group and Control Group 1 were affected by AS 5, however, the difference-in-difference methodology should control for the potential effects of AS 5 on audit fees. In addition, based on companies' fiscal year end, we have no reason to believe that early adopters were more or less concentrated in Treatment Group than Control Group 1.

[89] If there is a fixed (dollar value) component in audit expenses that apply to registrants of all sizes, then the estimates under this alternative approach can be viewed as the upper bound of the potential audit fee savings.

[90] The inflation adjustment was performed using the CPI calculator of the Bureau of Labor Statistics (*http://data.bls.gov/cgi-bin/cpicalc.pl*).

[91] Estimates based on data from 2006 to 2009 may not be directly applicable to newly eligible registrants under the proposed amendments. On the one hand, because auditors may charge larger registrants more for auditing the same disclosure items, our estimate could be viewed as a conservative estimate on the potential savings of audit fees for the newly eligible smaller reporting companies. On the other hand, if there were any increased competition in the auditing industry since 2009, then it could have led to lower audit expenses for the same disclosure items. Thus, our estimate could be higher or lower than the actual savings on audit fees for smaller reporting companies in 2008 and 2009.

year—and when the restatement was reported—filing year). Scaled disclosure may contribute to lowering the overall quality of the information environment, which is proxied here by the propensity for earnings management and the incidence of material restatements.[92] The data on restatements are from the Audit Analytics database. A material restatement is defined as a restatement that is reported under Item 4.02 of Form 8–K.

To examine the potential effects on liquidity, we focus on the share turnover ratio, which is calculated by dividing the total number of shares traded over a period by the number of shares outstanding. To assess the effects of scaled disclosures on growth, we examine a registrant's capital investment, which is measured by the capital expenditures to assets ratio, as a proxy for real growth. Because there is a high concentration of smaller reporting companies in industries for which R&D investment is important (*e.g.,* pharmaceutical products and electronic equipment), we also examine a registrant's investment in R&D. Finally, we examine asset growth, which is the growth rate in book assets, which could capture a registrant's growth through both capital investment and acquisition.

Table 6 reports the estimated treatment effect. The number in the Treatment Group vs. Control Group 1 column reflects the difference between: (1) The average change in the metric for the Treatment Group, from the 2006–2007 period, when it was not eligible for scaled disclosure, to the 2008–2009 period, when it was eligible for scaled disclosure, and (2) the average change in the metric between the same periods for Control Group 1, which was never eligible for scaled disclosure. Similarly, the number in the Treatment Group vs. Control Group 2 column reflects the difference between: (1) The average change in the metric for the Treatment Group from the 2006–2007 period, when it was not eligible for scaled disclosure, to the 2008–2009 period, when it was eligible for scaled disclosure and (2) the average change in the metric between the same periods for Control Group 2, which had been eligible for scaled disclosure for both periods.[93]

This table shows the scaled disclosure effect for smaller reporting companies (SRCs) on information environment, liquidity, and growth. Treatment Group consists of SRCs with public float between $25 million and $75 million in fiscal year 2008. Control Group 1 consists of non-SRCs with public float between $75 million and $125 million. Control Group 2 consists of small business issuers with public float and revenues below $25 million. Institutional Ownership is total percentage institutional ownership. Block Institutional Ownership is total block (5%) institutional ownership. Number of Analysts is the number of analysts following a registrant. Analyst Coverage Dummy is a dummy variable indicating the existence of analyst following. Earnings Mgmt. 1–4 are four different discretionary accruals measures. Earnings Mgmt. 1 follows Kothari, Leone, and Wasley (2005), and Earnings Mgmt. 2–4 follows Dechow, Sloan, and Sweeney (1995).[94] Material Restatement (Filing Year) is a dummy variable that equals one if a registrant discloses restatement under Item 4.02 of Form 8–K in that year, and zero otherwise. Material Restatement (Beginning Year) is a dummy variable that equals one if the material reason for the restatement under Item 4.02 of Form 8–K originated in that year, and zero otherwise. Share Turnover is the ratio of shares traded over shares outstanding. Capital Investment is capital expenditures over book assets. R&D investment is R&D expenditures over revenue. Asset Growth is the annual growth rate of book assets. ***, **, and * indicate significance at 1%, 5%, and 10% confidence levels, respectively.

TABLE 6—EFFECT OF SCALED DISCLOSURES ON INFORMATION ENVIRONMENT, LIQUIDITY AND GROWTH

	Treatment Group vs. Control Group 1	Treatment Group vs. Control Group 2
Information Environment:		
External Information Production		
Institutional Ownership	*** −0.052	*** −0.022
Institutional Block Ownership	** −0.016	−0.002
Number of Analysts	−0.179	−0.068
Analyst Coverage Dummy	*** −0.099	***0.087
Information Environment:		
Disclosure Quality		
Earnings Mgmt. 1	0.025	0.015
Earnings Mgmt. 2	0.024	0.013
Earnings Mgmt. 3	0.020	0.024
Earnings Mgmt. 4	0.018	0.023
Material Restatement (Filing Year)	0.018	0.015
Material Restatement (Beginning Year)	**0.036	0.016
Liquidity		
Share Turnover Ratio	−0.063	−0.052
Growth		
Capital Investment	0.005	−0.005
R&D Investment	−0.035	−0.002

[92] In using these proxies, we do not mean to suggest that scaled disclosure would be expected to directly cause an increase in earnings management or an increased incidence of material restatements, as there is little direct connection between the types of disclosure governed by our scaled disclosure requirements and the disclosure affected by a restatement.

[93] Specifically, for each number reported in Table 6, we estimate the following equation:

$$y = a + b * SRC + c * After + d * [SRC * After]$$

where the single-letter terms "*a*" to "*d*" are coefficients to be estimated; "SRC" equals one for the treatment group and zero for the comparison group; and "After" equals one for fiscal years 2008 and 2009 and zero for fiscal years 2006 and 2007. The treatment effect is reflected in the coefficient estimate *d,* which is the differential value of the variable *y* for treated firms following the start of the treatment. A statistically negative estimate of *d* is consistent with a reduction in the value of the dependent variable *y* (Institutional Ownership, Institutional Block Ownership, etc.) for treated firms.

[94] *See,* Patricia M. Dechow, Richard G. Sloan, and Amy P. Sweeney, *Detecting Earnings Management* 70 Account. Rev. 193 (1995); S.P. Kothari, Andrew J. Leone, and Charles E. Wasley, *Performance Matched Discretionary Accrual Measures,* 39 J. Account. & Econ. 163 (2005).

TABLE 6—EFFECT OF SCALED DISCLOSURES ON INFORMATION ENVIRONMENT, LIQUIDITY AND GROWTH—Continued

	Treatment Group vs. Control Group 1	Treatment Group vs. Control Group 2
Asset Growth Rate	−0.005	*** −0.282

The results in Table 6 suggest that the scaled disclosures had a negative effect on institutional ownership. The Treatment Group, which became eligible for scaled disclosures, experienced a 5.2% greater decrease in average institutional ownership from period to period than the companies in Control Group 1, which remained ineligible for scaled disclosures, and a 2.2% greater decrease in average institutional ownership from period to period than the companies in Control Group 2, which were eligible for scaled disclosures throughout both periods.

The results reflect a positive effect on material restatements measured based on when such restatement was triggered (material restatement by beginning year) in smaller reporting companies, while the effect on analyst coverage is inconclusive. Smaller reporting companies tend to lose analyst coverage relative to comparable companies that just missed eligibility, but they gain coverage relative to even smaller companies that already enjoyed scaled disclosures. There is no statistically significant effect on earnings quality as captured by discretionary accruals measures or the incidence of material restatement by filing year. Overall, the evidence suggests a modest, but statistically significant, negative effect of scaled disclosure on smaller reporting companies' overall information environment.

The effect of scaled disclosures on share turnover ratio is negative but statistically insignificant, suggesting no significant effect of scaled disclosures on smaller reporting companies' liquidity.[95] Because the newly eligible registrants are larger in market capitalization and have more institutional ownership and analyst coverage than the current smaller reporting companies, we do not expect the proposed amendments to have a significantly negative impact on their liquidity.

The results in Table 6 indicate no clear difference between smaller reporting companies and comparable registrants in terms of changes in capital investment and R&D investment. The effect on asset growth rate is mixed. There is no significant difference between the Treatment Group companies and Control Group 1, but compared to Control Group 2, Treatment Group companies had deterioration in asset growth rate after the 2007 rules. Overall, our empirical analysis suggests that scaled disclosures have only a minimal effect on growth in current smaller reporting companies relative to comparable companies. Thus, we also do not expect any significant effect of the scaled disclosures on the growth of the newly eligible registrants under the proposed amendments.

iii. Conclusion

Taken together, our empirical analysis suggests that, for most of the newly eligible smaller reporting companies under the proposed amendments, scaled disclosures may generate a modest, but statistically significant, amount of cost savings in terms of the reduction in compliance costs, a modest, but statistically significant, deterioration in some of the proxies used to assess the overall quality of information environment, and a muted effect on the growth of the registrant's capital investments, investments in R&D and assets.

3. Affiliated Ownership and Adverse Selection

In general, holding market value constant, the use of public float to define eligibility favors registrants with more affiliated ownership. If we consider two registrants with the same market value but different affiliated ownership, the one with greater affiliated ownership will have a lower public float, which is the value of non-affiliated ownership, and thus will be more likely to qualify for smaller reporting company status based on the public float threshold. This could be problematic if the adverse selection problem creates a conflict of interest between affiliated owners—who are often the decision makers—and non-affiliated owners—who are often the uninformed minority shareholders on whom reduced disclosure would have a greater impact. We examine whether the effects of scaled disclosure on registrants' information environment, liquidity, and growth depend on the percentage of affiliated ownership, which is the market value of affiliated equity shares divided by the registrant's total market value of equity. The average affiliated ownership is 43% for smaller reporting companies in the treatment group in years 2008 and 2009 (median 42%).

The results are reported in Table 7. The number in the Treatment Group vs. Control Group 1 column reflects the difference between: (1) The difference between the average metric of registrants in the Treatment Group with affiliated ownership that is higher than the group median and that of the registrants in the Treatment Group with affiliated ownership that is lower than the group median and (2) the difference between the average metric of registrants in Control Group 1 with affiliated ownership that is higher than the group median and that of the registrants in Control Group 1 with affiliated ownership that is lower than the group median. Similarly, the number in the Treatment Group vs. Control Group 2 column reflects the difference between: (1) The difference between the average metric for the higher-than-median affiliated ownership registrants and that of the lower-than-median affiliated ownership registrants in the Treatment Group and (2) the difference between the average metrics for the same sectors of Control Group 2.[96]

[95] In contrast, Chang et al. (2013) did find a negative and significant effect of the Commission's 2007 rules on smaller reporting companies' liquidity. The difference in the results could stem from the use of a different empirical methodology, different sample and sample period. Chang et al. (2013) excluded financial companies. While the authors examined a pre-rule period of April to June of 2007, we included the entire 2006 and 2007 periods. Also, while the authors examined a post-rule period of February to August of 2008, we included the entire 2008 and 2009 periods. In addition, the authors focus on a set of illiquidity measures, while we focus on the share turnover ratio, a commonly used liquidity measure.

[96] Specifically, for each number reported in Table 7, we estimate the following equation:

$$y = a + b * SRC + c * After + d * HighAff + e * [SRC * After] + f * [SRC * HighAff + g * [After * HighAff] + h * [SRC * High Aff * After]$$

where the single-letter terms ''a'' to ''h'' are coefficients to be estimated. ''After'' and ''SRC'' are defined in note 93. ''HighAff'' is a dummy variable equal to one if the firm's affiliated ownership is greater than the sample median of 0.42; otherwise, ''HighAff'' is equal to zero. The treatment effect of interest is measured by the coefficient h, which is the differential value of the variable y for treated firms with high affiliated ownership, following the start of the treatment. *See also* note 93.

This table shows the estimated difference in the scaled disclosure effect on smaller reporting companies with high affiliated ownership and those with low affiliated ownership. Affiliated ownership is the percentage of a registrant's market value of equity that is owned by affiliated parties (*i.e.,* corporate insiders and 10% block owners). Companies with high (low) affiliated ownership include companies with affiliated ownership above (below) the sample median. A negative and significant estimate means that scaled disclosures have a more negative effect on smaller reporting companies with high affiliated ownership than on those with low affiliated ownership. ***, **, and * indicate significance at 1%, 5%, and 10% confidence levels, respectively.

TABLE 7—AFFILIATED OWNERSHIP AND ADVERSE SELECTION

	Treatment Group vs. Control Group 1	Treatment Group vs. Control Group 2
Information Environment:		
External Information Production		
Institutional Ownership	*** −0.127	* −0.110
Institutional Block Ownership	** −0.079	* −0.126
Number of Analysts	** −0.742	** 1.277
Analyst Coverage Dummy	−0.052	** 0.500
Information Environment:		
Disclosure Quality		
Earnings Mgmt. 1	0.010	0.286
Material Restatement (Filing Year)	0.038	−0.040
Material Restatement (Beginning Year)	** 0.084	0.001
Liquidity		
Share Turnover Ratio	0.052	0.059
Growth		
Capital Investment	** 0.029	0.049
R&D Investment	0.014	−0.756
Asset Growth Rate	0.136	−1.485

Our analysis suggests that affiliated ownership may exacerbate the potential negative effects of scaled disclosure on external information production by professionals such as institutional investors. There is also some evidence that larger affiliated ownership may exacerbate the adverse effect of scaled disclosure on material restatements measured based on when such restatement was triggered in smaller reporting companies (relative to Control Group 1). At the same time, scaled disclosures tend to have a more positive effect on smaller reporting companies' capital investment when affiliated ownership is higher. Overall, there is inconclusive evidence that affiliated ownership is associated with adverse selection in current smaller reporting companies. For the 782 newly eligible registrants that would potentially be affected by the proposed amendments, the average affiliated ownership is 34.5% of market capitalization, lower than for the current smaller reporting companies (47.6% in 2015). Thus, any agency concerns arising from affiliated ownership should have a lower impact for the newly eligible registrants than for the current smaller reporting companies.

4. Effects on Efficiency, Competition and Capital Formation

The proposed amendments may have competitive effects. On one hand, the proposed amendments may reduce the potential disadvantage that the newly eligible registrants have relative to the current smaller reporting companies that already use the scaled disclosure requirements. The proposed amendments may also increase the competitive advantage of the newly eligible registrants relative to unregistered companies that compete with them in the product market. However, because there is no clear evidence that scaled disclosures have a significant effect on the growth of current smaller reporting companies, we expect these potentially positive competitive effects to be modest. On the other hand, setting any eligibility threshold may create a competitive disadvantage for those registrants that miss eligibility because their public float is just above the specified threshold, relative to the newly eligible registrants. However, our economic analysis suggests that this potentially negative effect would be modest.

As discussed above, our empirical analysis suggests that scaled disclosures related to smaller reporting companies are unlikely to have a significantly negative effect on the overall information environment of smaller reporting companies. Thus, we do not expect that the proposed amendments would have a significant negative effect on the information efficiency of affected parties. Finally, it is difficult to quantify the effect of scaled disclosures on capital formation because the Commission's 2007 rules coincided with the 2008 financial crisis and its aftermath, which led to extremely thin capital market activities. However, given that both the potential cost savings and the potential negative consequences of scaled disclosure are modest, as shown in Tables 5 and 6, we do not expect the proposed amendments to have a significant impact on capital formation for the newly eligible registrants.

C. Possible Alternatives

In this section, we present several alternatives to the proposed amendments and discuss their relative costs and benefits.

As a first alternative, we could use a different registrant size metric in the smaller reporting company definition. While public float has the advantage of capturing the value held by non-affiliated investors who may be more affected by informational asymmetries, the disadvantage of public float is twofold. First, reported public float numbers are not easily verifiable. Second, using public float to define eligibility may increase adverse selection due to conflicts of interest between affiliated and non-affiliated owners. We considered equity market value as an alternative size metric to public float. Equity market value is more accessible and more easily verifiable than public float. It does not differentiate registrants based on the degree of informational asymmetry concerns, but it also does not favor registrants with more affiliated ownership. If we define registrants as smaller reporting companies when they have less than $250 million in equity market value or zero equity market value but revenue below $100 million, 3,604 or 47.7% of the registrants that filed Forms 10–K in 2015 would qualify as smaller reporting companies (3,084 based on equity market value and 520 based on revenue).[97]

As a second alternative, we could revise the smaller reporting company definition to capture registrants that meet *either* a public float threshold *or* a revenue threshold. For example, one commenter suggested defining a smaller reporting company as any registrant with either public float below $250 million or revenue below $100 million.[98] This alternative would lead to 1,266 additional eligible registrants relative to the current definition, and 201 relative to the proposed amendments. Among the 201 additional registrants, 41.5% are in ''Pharmaceutical Products'' and 18% are in ''Financial Trading.'' Expanding the pool of eligible registrants would lead to increased cost savings for registrants while also increasing the potential for informational asymmetries and other costs associated with scaled disclosures. In addition, relative to the current smaller reporting companies or those newly eligible under the proposed amendments, the 201 additional qualifying registrants may have different characteristics that could affect the appropriateness of scaled disclosure. For example, the 201 additional registrants are substantially larger than those eligible under the current definition or the proposed amendments. The average public float of the 201 additional registrants is $769 million, while it is $17 million under the current definition and $50 million under the proposed amendments. The size of these registrants implies that any cost savings from scaled disclosures would generate a much smaller impact on their firm value and may not justify the potential loss of informational transparency.

While neither public float nor revenue data show a natural breakpoint, as a third alternative to the proposed amendments, we could have revised the smaller reporting company definition using different thresholds. For example, we could take inflation since 2007 into account, raising the public float threshold from $75 million to $85.7 million and the revenue threshold from $50 million to $57.2 million. The inflation adjustment of the current thresholds would expand the pool of eligible smaller reporting companies by 88 registrants, 82 of which reported public float between $75 million and $85.7 million in their 2015 Form 10–Ks and six of which had zero public float and revenue between $50 million and $57.2 million.[99] Alternatively, instead of $250 million public float, we could use $700 million public float, which is the threshold in the ''large accelerated filer'' definition. For registrants with zero public float, we could use $1 billion in revenue instead of $100 million in revenue, which is the threshold in the EGC definition. A $1 billion revenue threshold would make scaled disclosure accommodations for smaller reporting companies and EGCs uniform for the subset of smaller registrants that have zero public float. Using 2015 data, we estimate that if we were to use these alternative thresholds in combination, there would be 899 newly eligible registrants for smaller reporting company status (746 newly eligible registrants based on public float and 153 newly eligible registrants based on revenues), in addition to the 782 newly eligible registrants under the proposed amendments. Expanding the pool of registrants eligible for smaller reporting company status using the latter two alternative thresholds would further reduce overall compliance costs for registrants but also potentially increase the informational asymmetries and other adverse effects associated with scaled disclosures. Relative to the current smaller reporting companies or the newly eligible smaller reporting companies under the proposed amendments, these additional qualifying registrants also may have different characteristics that could affect the appropriateness of scaled disclosure. For example, the 899 additional registrants under this alternative are much larger, implying that any cost savings from scaled disclosures would generate a much smaller impact on the registrants' firm value, and may not justify the potential loss of informational transparency.

As a fourth alternative, we could consider expanding the number of registrants eligible for the Sarbanes-Oxley Act Section 404(b) exemption. The newly eligible smaller reporting companies under the proposed amendments would remain subject to Section 404(b). This would create two tiers among smaller reporting companies: registrants with public floats below $75 million would be eligible for the scaled disclosures and exempt from Section 404(b) and registrants with public floats between $75 million and $250 million would be eligible only for the scaled disclosures. Thus, one alternative would be to extend the Section 404(b) exemption to all registrants that are eligible for and claim smaller reporting company status.

The advantage of this alternative would be twofold. First, it would provide a uniform exemption from the auditor attestation about the effectiveness of internal controls over financial reporting for all smaller reporting companies, which could potentially simplify the regulatory framework. Second, it could lead to greater cost savings for the newly eligible registrants. Although there is debate on whether the direct cost of Section 404(b) is substantial for the majority of registrants, there are academic studies suggesting that the cost was non-trivial for smaller registrants when Section 404(b) was first implemented in 2004,[100] and that expenses related to Section 404(b) compliance have decreased over time as companies and their auditors gained more experience with the requirements and as a result of steps taken by both the Commission and the Public Company Accounting Oversight Board.[101] There also may be indirect costs associated with Section 404(b), such as, among other things, increasing smaller registrants' propensity to go private or decreasing their propensity to go public or altering their incentives to grow by undertaking less investment.[102]

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[97] This alternative would lead to a slightly smaller pool of registrants eligible for smaller reporting company status than under the proposed amendments.

[98] *See* BIO Letter.

[99] The inflation adjustment was performed using the CPI calculator of the Bureau of Labor Statistics (*http://data.bls.gov/cgi-bin/cpicalc.pl*).

[100] *See, e.g.,* Peter Iliev, *Effect of SOX Section 404: Costs, Earnings Quality, and Stock Prices,* 45 J. Fin. 1163–1196 (2010).

[101] *See, e.g.,* Cindy R. Alexander et al., *Economic Effects of SOX Section 404 Compliance: A Corporate Insider Perspective,''* 56 J. Account. & Econ. 267–290; John Coates and Suraj Srinivasan, *SOX after Ten Years: A Multidisciplinary Review,* Accounting Horizons, forthcoming (2014). *But see* note 66 (indicating that one stakeholder representative has raised concerns about whether, in response to PCAOB inspection results, some auditors more recently have started to take approaches to evaluate internal control over financial reporting that are inconsistent with attaining goals of reduced compliance costs).

[102] *See* Gao, Feng, Joanna Wu, and Jerold Zimmerman, *Unintended Consequences of Granting Small Firms Exemptions From Securities Regulation: Evidence From The Sarbanes-Oxley Act,* Journal of Accounting Research, Vol. 49, No. 2, 459–506 (2009) (providing evidence that the exemption from Section 404 for non-accelerated filers has created an incentive for some of these firms to remain below the bright-line threshold of $75 million of public float).

Extending the exemption also could lead to a reduction of these indirect costs, although this reduction is difficult to quantify.

Under this alternative, however, investors of the affected registrants would lose the benefits of Section 404(b). Existing surveys of corporate leaders as well as academic studies suggest that Sarbanes-Oxley Act Section 404(b) has led to improvements in the quality of registrants' information environment and financial reporting, registrants' ability to prevent and detect fraud, and investor confidence in U.S. registrants.[103] Moreover, an academic study found that non-accelerated filers not subject to the Section 404(b) auditor attestation requirements suffered from a deterioration in the quality of their financial reporting vis-à-vis accelerated filers.[104] Another recent working paper suggests that registrants that voluntarily comply with the Section 404(b) auditor attestation have lower cost of capital.[105]

D. Request for Comment

We request comment on all aspects of this economic analysis, including the costs and benefits of the proposals and alternatives thereto, as well as their potential effects on efficiency, competition, and capital formation. With respect to comments, we note that they are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate. We also request qualitative feedback on the nature of the benefits and costs we have identified and any other benefits and costs that we should consider.

To assist in our consideration of these costs and benefits, we specifically request comment on the following:

19. Are there quantifiable aspects of savings related to scaled disclosures other than those captured by audit fees? Please provide detailed descriptions of these aspects of savings and quantitative data or support, if applicable.

20. Some registrants eligible for scaled disclosure choose not to avail themselves of the scaling permitted by our rules. Why do such registrants choose not to claim the smaller reporting company status and not to use the scaled disclosure accommodations? Are there quantifiable benefits to such potentially eligible registrants of opting out of scaled disclosure?

21. Are there filers that are not required to file with the Commission that choose to voluntarily provide non-scaled disclosure even though the filer would qualify under the smaller reporting company thresholds? Why do such filers choose to opt out of scaled disclosure? Are there quantifiable benefits to such filers of opting out of scaled disclosure?

22. Are there indirect costs or cost savings related to scaled disclosures for smaller reporting companies that we have not considered and could be quantified?

23. To arrive at an estimate for the total cost savings associated with scaled disclosures, we assume that the total cost savings (including employee and managerial time and resources) are four times the cost savings on audit fees. Is there a different assumption we should use and why? Please provide data to support the suggestion if available.

24. Are there ways to further assess the degree of adverse selection associated with the proposed amendments? Are there other proxies for information environment, liquidity and growth that would better capture the potential economic impact of scaled disclosure? Are there data or empirical studies about incidence of fraud in relation to registrants' size?

25. Are there other ways to quantify the effect of scaled disclosures on smaller reporting companies' capital formation?

26. Are there any metrics alternative to public float and annual revenue to be considered in the definition of smaller reporting companies? What are the advantages and disadvantages associated with these alternative metrics?

IV. Paperwork Reduction Act

A. Background

The proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[106] We are submitting a request for approval of the proposed amendments to the Office of Management and Budget (OMB) for review in accordance with the PRA and its implementing regulations.[107] The titles of the collections of information are: [108]

(1) ''Regulation S–K'' (OMB Control No. 3235–0071);
(2) ''Regulation C'' (OMB Control No. 3235–0074);
(3) ''Regulation 12B'' (OMB Control No. 3235–0062);
(4) ''Form 10–K'' (OMB Control No. 3235–0063);
(5) ''Form 10–Q'' (OMB Control No. 3235–0070);
(6) ''Schedule 14A'' (OMB Control No. 3235–0059);
(7) ''Schedule 14C'' (OMB Control No. 3235–0057);
(8) ''Form 10'' (OMB Control No. 3235–0064);
(9) ''Form S–1'' (OMB Control No. 3235–0065);
(10) ''Form S–3'' (OMB Control No. 3235–0073);
(11) ''Form S–4'' (OMB Control No. 3235–0324); and
(12) ''Form S–11'' (OMB Control No. 3235–0067).

We adopted the existing rules, regulations, and forms pursuant to the Securities Act and the Exchange Act. These rules, regulations, and forms set forth the disclosure requirements for annual and quarterly reports, proxy and information statements, and registration statements that are prepared by registrants to provide investors information to make informed investment and voting decisions. Our proposed amendments are intended to make scaled disclosure accommodations available to a larger number of registrants. The proposed amendments

[103] *See* John Coates and Suraj Srinivasan, *SOX after Ten Years: A Multidisciplinary Review,* Accounting Horizons, forthcoming (2014). *See also,* United States Government Accountability Office, Report to Congressional Committees, Internal Controls (July 2013) available at *http://www.gao.gov/assets/660/655710.pdf* (noting that compliance with Section 404(b) has a positive impact on investor confidence in the quality of financial reports and recommending that the Commission consider requiring companies to explicitly state whether they have obtained an auditor attestation of their internal controls, which may increase transparency and investor protection).

[104] *See* Anthony D. Holder, Khnondkar E. Karim, and Ashok Robin, *Was Dodd-Frank Justified in Exempting Small Firms from Section 404b Compliance?,* Accounting Horizons, Vol. 27, No. 1 (2013). Similarly, a 2012 study found that smaller accelerated filers subject to the Section 404(b) auditor attestation requirements benefit from higher revenue quality as compared to non-accelerated filers, which are not subject to the requirements. *See* Gopal V. Krishnan and Wei Yu, *Do Small Firms Benefit from Auditor Attestation of Internal Control Effectiveness,* Auditing: A Journal of Practice & Theory, Vol. 34, No. 1 (Nov. 2012).

[105] *See* Cory A. Cassell, Linda A. Myers, and Jian Zhou, *The Effect of Voluntary Internal Control Audits on the Cost of Capital* (June 1, 2013), available at SSRN: *http://ssrn.com/abstract=1734300,* finding that voluntary compliance with Section 404(b) is associated with significant reductions in both the cost of equity and the cost of debt in the first year of voluntary compliance. However, we note that the registrants that voluntarily comply with Section 404(b) may be fundamentally different from other non-accelerated filers. Thus, the economic effects of voluntary compliance with Section 404(b) may not necessarily apply to other firms.

[106] 44 U.S.C. 3501 *et seq.*

[107] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[108] The paperwork burden from Regulation S–K, Regulation C and Regulation 12B is imposed through the forms that are subject to the requirements in those regulations and is reflected in the analysis of those forms. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to each of Regulation S–K, Regulation C and Regulation 12B.

should decrease the disclosure requirements for some registrants. The proposed amendments do not affect any disclosure requirements for any registrant with a calculable public float of $250 million or more.

The hours and costs associated with preparing disclosure, filing information required by forms, and retaining records constitute reporting and cost burdens imposed by collection of information requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid control number. Compliance with the information collections listed above is mandatory to the extent applicable to each registrant.[109] Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed.

B. Summary of Information Collections

The proposed amendments, which would amend the definition of smaller reporting company to capture a greater number of registrants, may decrease existing collection of information total burden estimates, or not affect them at all, for some reports on Form 10–K and Form 10–Q, some proxy statements on Schedule 14A, some information statements on Schedule 14C, and some registration statements on Form 10, Form S–1, Form S–3, Form S–4, and Form S–11, filed by registrants that meet the definition of smaller reporting company as we propose to revise it.

The proposed amendments would not change the amount of information required to be included in Exchange Act reports by any registrant because of its status as an accelerated filer or a large accelerated filer.

C. Burden and Cost Estimates

For purposes of the PRA, we believe that if the proposed amendments were adopted the total decrease in burden hours for Form 10–K, Form 10–Q, Schedule 14A, Schedule 14C, Form 10, Form S–1, Form S–3, Form S–4, and Form S–11 would be approximately 220,357 burden hours and the total decrease in external costs would be approximately $35,691,649.

Our burden hour and cost estimates presented below represent the average burdens for all registrants, both large and small. In deriving our estimates, we recognize that the burdens likely would vary among individual registrants based on a number of factors, including the size and complexity of their business. We believe that some registrants would experience costs in excess of this average and some registrants would experience less than the average costs. In addition, for quarterly and annual reports and for proxy and information statements, we estimate that 75% of the burden of preparation is carried by the registrant internally and that 25% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour.[110] For registration statements, we estimate that 25% of the burden of preparation is carried by the registrant internally and that 75% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour.

For purposes of the PRA, we estimate that over a three-year period,[111] the annual aggregate decreased burden [112] resulting from the proposed amendments would average:

- 142,068 hours and $18,943,168 of external costs for Form 10–K;
- 71,938 hours and $9,594,202 of external costs for Form 10–Q;
- 432 hours and $57,600 of external costs for Schedule 14A;
- 7 hours and $880 of external costs for Schedule 14C;
- 9 hours and $11,100 of external costs for Form 10;
- 3,477 hours and $4,172,314 of external costs for Form S–1;
- 37 hours and $43,920 of external costs for Form S–3;
- 2,140 hours and $2,567,578 of external costs for Form S–4; and
- 251 hours and $300,888 of external costs for Form S–11.

These estimates were based on the following assumptions:

1. Form 10–K

We estimate that approximately 782 registrants would become newly eligible to use scaled disclosure for smaller reporting companies or have a new opportunity to assess whether to avail themselves of scaled disclosure for their annual reports and could experience burden and cost savings if these proposed amendments are adopted.[113] We estimate that if these registrants use all of the scaled disclosure requirements,[114] they would save 177,584 burden hours and an aggregate cost of $23,678,960.[115]

While we are unsure of the extent to which these newly eligible smaller reporting companies would realize the full savings from the scaled disclosure requirements, for purposes of this analysis, we estimate that eligible registrants would realize approximately 80% of these savings.[116] As a result, we

[109] As noted above, registrants claiming smaller reporting company status have the option to selectively comply with the scaled disclosures available to them on an item-by-item basis.

[110] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This is the rate we typically estimate for outside legal services used in connection with public company reporting.

[111] We calculated an annual average over a three-year period because OMB approval of PRA submissions covers a three-year period.

[112] Our decreased burden estimates take into account, and are net of, any increased burden that may result from smaller reporting companies providing expanded disclosures under disclosure requirements that are more stringent for smaller reporting companies than for non-smaller reporting companies, such as Item 404 of Regulation S–K.

[113] We estimate that 782 additional registrants would be eligible under the proposed amendments to use the scaled disclosure requirements available to smaller reporting companies for their annual and quarterly reports in the first year. We base this estimate on the number of additional registrants that would have been eligible to use scaled disclosure for their annual and quarterly reports in 2015, based on data collected by DERA from annual reports on Form 10–K filed in 2015. This data shows that 751 registrants had a public float greater than $75 million but less than $250 million, and 31 registrants with a public float of zero had annual revenues greater than $50 million but less than $100 million.

[114] A smaller reporting company generally may choose to comply with some, all, or none of the scaled disclosure requirements available for smaller reporting companies under our rules.

[115] Consistent with our analysis in the Smaller Reporting Company Adopting Release, we estimate the compliance burden for a Form 10–K for a smaller reporting company using all scaled disclosure available to be the same as the last available PRA inventory for completing a Form 10–KSB, which was 1,272 burden hours and a cost of $169,600 (424 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Form 10–K by up to 177,584.38 hours (1,499.09 internal hours per filing using standard Regulation S–K disclosure minus 1,272 internal hours per filing using scaled disclosure = 227.09 internal hours saved per filing × 782 filings) and decrease the cost by up to $23,678,960 (499.70 professional hours per filing using standard Regulation S–K disclosure minus 424 professional hours per filing using scaled disclosure = 75.70 external hours saved per filing × $400 per hour = $30,280 external cost savings per filing × 782 filings).

[116] This estimated realization rate reflects the percentage of registrants eligible to claim smaller reporting company status in 2015 that claimed such status. Based on data collected by DERA, 2,900, or approximately 91.1%, of the estimated 3,183 eligible registrants claimed smaller reporting company status. Specifically, 2,241, or approximately 93.1%, of the estimated 2,408 registrants that would qualify under the public float threshold and 659, or approximately 85.0%, of the estimated 775 registrants that would qualify under the annual revenue threshold, claimed smaller reporting company status.

In addition, this estimated realization rate is further reduced to reflect that a portion of newly eligible smaller reporting companies may already qualify as EGCs, which are eligible to rely on certain scaled disclosure requirements for a limited period, including some of the scaled requirements available to smaller reporting companies. Based on data collected by DERA, 153, or approximately 19.6%, of the 782 newly eligible registrants were EGCs and therefore eligible to rely on some scaled estimate that the aggregate decrease in burden for Form 10–K would be 142,068 internal burden hours and costs of $18,943,168.[117]

2. Form 10–Q

We assume that the same approximately 782 registrants would become newly eligible to use scaled disclosure for purposes of their quarterly reports. We estimate that if these registrants use all of the scaled smaller reporting company requirements, they would save 89,922 burden hours and an aggregate cost of $11,992,752.[118]

Assuming that newly eligible registrants realize approximately 80% of these savings, we estimate that the aggregate decrease in burden for Form 10–Q would be 71,938 internal burden hours and costs of $9,594,202.[119]

3. Schedule 14A

We estimate that registrants newly eligible to use scaled disclosure would file approximately 720 definitive proxy statements on Schedule 14A.[120] We estimate that if these registrants use all of the scaled smaller reporting company requirements, they would save 540 burden hours and an aggregate cost of $72,000.[121]

Assuming that newly eligible registrants realize approximately 80% of these savings, we estimate that the aggregate decrease in burden for Schedule 14A would be 432 internal burden hours and costs of $57,600.[122]

4. Schedule 14C

We estimate that registrants newly eligible to use scaled disclosure would file approximately 11 definitive information statements on Schedule 14C.[123] We estimate that if these registrants use all of the scaled smaller reporting company requirements, they would save eight burden hours and an aggregate cost of $1,100.[124]

Assuming that newly eligible registrants realize approximately 80% of these savings, we estimate that the aggregate decrease in burden for Schedule 14C would be seven internal burden hours and costs of $880.[125]

5. Form 10

We estimate that registrants newly eligible to use scaled disclosure would file one registration statement on Form 10.[126] We estimate that if this registrant uses all of the scaled smaller reporting company requirements, it would save nine burden hours and an aggregate cost of $11,100.[127] Due to the low number of Form 10 filers, the reduced number of scaled disclosure accommodations available to EGCs for purposes of Form 10, and rounding considerations, we assume that any newly eligible registrant would realize the full extent of these savings.

6. Form S–1

We estimate that registrants newly eligible to use scaled disclosure would file approximately 52 registration statements on Form S–1.[128] We estimate that if these registrants use all of the scaled smaller reporting company

disclosure accommodations and already benefitting from a portion of these estimated savings.

[117] This estimated decrease in the compliance burden for Form 10–K is based on 80% × 177,584.38 internal hours saved = 142,067.50 internal hours saved and 80% × $23,678,960 external cost savings = $18,943,168 external cost savings.

[118] Similar to our approach to estimating the reduced compliance burden for a Form 10–K using scaled disclosure, we base our estimates of the reduced compliance burden for smaller reporting companies using all scaled disclosure available for certain other filings on the last available PRA inventory for completing the most comparable form under Regulation SB. We estimate the compliance burden for a Form 10–Q for a smaller reporting company using all scaled disclosure available to be the same as the last available PRA inventory for completing a Form 10–QSB, which was 102.24 burden hours and a cost of $13,362 (34.08 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Form 10–Q by up to 89,922.18 hours (140.57 internal hours per filing using standard Regulation S–K disclosure minus 102.24 internal hours per filing using scaled disclosure = 38.33 internal hours saved per filing × 782 registrants × 3 filings per year) and decrease the cost by up to $11,992,752 (46.86 professional hours per filing using standard Regulation S–K disclosure minus 34.08 professional hours per filing using scaled disclosure = 12.78 external hours saved per filing × $400 per hour = $5,112 external cost savings per filing × 782 registrants × 3 filings per year).

[119] This estimated decrease in the compliance burden for Form 10–Q is based on 80% × 89,922.18 internal hours saved = 71,937.74 internal hours saved and 80% × $11,992,752.00 external cost savings = $9,594,201.60 external cost savings.

[120] We base this estimate on the number of definitive proxy statements on Schedule 14A filed in 2015 by registrants that would have been newly eligible to use scaled disclosure under the proposed amendments. Based on data collected by DERA, registrants with a public float greater than $75 million but less than $250 million filed 697 definitive proxy statements on Schedule 14A, and registrants with a public float of zero and annual revenues greater than $50 million but less than $100 million filed 23 definitive proxy statements on Schedule 14A.

[121] We base our estimate of the reduced compliance burden for Schedule 14A for a smaller reporting company using all scaled disclosure available on our estimate of the compliance burden for Item 407(d)(5), (e)(4) and (e)(5) of Regulation S–K, with which smaller reporting companies are not required to comply. We estimate this burden to be 0.75 burden hours and a cost of $100 (0.25 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Schedule 14A by up to 540 hours (0.75 internal hours saved per filing × 720 filings) and decrease the cost by up to $72,000 (0.25 professional hours saved per filing × $400 per hour = $100 external cost savings per filing × 720 filings).

[122] This estimated decrease in the compliance burden for Schedule 14A is based on 80% × 540 internal hours saved = 432 internal hours saved and 80% × $72,000.00 external cost savings = $57,600.00 external cost savings.

[123] We base this estimate on the number of definitive information statements on Schedule 14C filed in 2015 by registrants that would have been newly eligible to use scaled disclosure under the proposed amendments. Based on data collected by DERA, registrants with a public float greater than $75 million but less than $250 million filed 11 definitive information statements on Schedule 14C, and registrants with a public float of zero and annual revenues greater than $50 million but less than $100 million filed no definitive information statements on Schedule 14C.

[124] Similar to Schedule 14A, we base our estimate of the decrease in the compliance burden for Schedule 14C for a smaller reporting company using all scaled disclosure available on our estimate of the compliance burden for Item 407(d)(5), (e)(4) and (e)(5) of Regulation S–K, which is 0.75 burden hours and a cost of $100 (0.25 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Schedule 14C by up to 8.25 hours (0.75 internal hours saved per filing × 11 filings) and decrease the cost by up to $1,100 (0.25 professional hours saved per filing × $400 per hour = $100 external cost savings per filing × 11 filings).

[125] This estimated decrease in the compliance burden for Schedule 14C is based on 80% × 8.25 internal hours saved = 6.6 internal hours saved and 80% × $1,100.00 external cost savings = $880.00 external cost savings.

[126] We base our estimated number of each type of registration statement filed on the average number of that type of registration statement filed in each of the calendar years 2013 through 2015 by registrants that would have been newly eligible to use scaled disclosure under the proposed amendments. Based on data collected by DERA, during 2013 through 2015, registrants with a public float greater than $75 million but less than $250 million filed one registration statement on Form 10 during the period 2013 through 2015, and registrants with a public float of zero and revenues greater than $50 million but less than $100 million filed an average of one registration statement on Form 10 each year.

[127] We estimate the compliance burden for a Form 10 for a smaller reporting company using all scaled disclosure available to be the same as the last available PRA inventory for completing a Form 10–SB, which was 44.50 burden hours and a cost of $53,400 (133.50 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Form 10 by up to 9.25 hours (53.75 internal hours per filing using standard Regulation S–K disclosure minus 44.50 internal hours per filing using scaled disclosure = 9.25 internal hours saved per filing × 1 filing) and decrease the cost by up to $11,100 (161.25 professional hours per filing using standard Regulation S–K disclosure minus 133.50 professional hours per filing using scaled disclosure = 27.75 external hours saved per filing × $400 per hour = $11,100 external cost savings per filing × 1 filing).

[128] Based on data collected by DERA, during 2013 through 2015, registrants with a public float greater than $75 million but less than $250 million filed an average of approximately 26 registration statements on Form S–1 each year, and registrants with a public float of zero and revenues greater than $50 million but less than $100 million filed an average of approximately 26 registration statements on Form S–1 each year.

requirements, they would save 4,346 burden hours and an aggregate cost of $5,215,392.[129]

Assuming that newly eligible registrants realize approximately 80% of these savings, we estimate that the aggregate decrease in burden for Form S–1 would be 3,477 internal burden hours and costs of $4,172,314.[130]

7. Form S–3

We estimate that registrants newly eligible to use scaled disclosure would file approximately 183 registration statements on Form S–3.[131] We estimate that if these registrants use all of the scaled smaller reporting company requirements, they would save 46 burden hours and an aggregate cost of $54,900.[132]

Assuming that newly eligible registrants realize approximately 80% of these savings, we estimate that the aggregate decrease in burden for Form S–3 would be 37 internal burden hours and costs of $43,920.[133]

8. Form S–4

We estimate that registrants newly eligible to use scaled disclosure would file approximately 32 registration statements on Form S–4.[134] We estimate that if these registrants use all of the scaled smaller reporting company requirements, they would save 2,675 burden hours and an aggregate cost of $3,209,472.[135]

Assuming that newly eligible registrants realize approximately 80% of these savings, we estimate that the aggregate decrease in burden for Form S–4 would be 2,140 internal burden hours and costs of $2,567,578.[136]

9. Form S–11

We estimate that registrants newly eligible to use scaled disclosure would file approximately three registration statements on Form S–11.[137] We estimate that if these registrants use all of the scaled smaller reporting company requirements, they would save 251 burden hours and an aggregate cost of $300,888.[138] Due to the low number of Form S–11 filers and rounding considerations, we assume that the newly eligible registrants would realize the full extent of these savings.

D. Request for Comment

We request comment to:

• Evaluate whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility;

• evaluate the accuracy of our estimate of the burden of collections of information;

• determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

• evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and

• evaluate whether the proposed amendments would have any effects on any other collections of information not previously identified in this section.[139]

Any member of the public may direct to us any comments about the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. S7–XX–XX. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–XX–XX, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30

[129] We estimate the compliance burden for a Form S–1 for a smaller reporting company using all scaled disclosure available to be the same as the last available PRA inventory for completing a Form SB–2, which was 159.50 burden hours and a cost of $191,400 (478.50 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Form S–1 by up to 4,346.16 hours (243.08 internal hours per filing using standard Regulation S–K disclosure minus 159.50 internal hours per filing using scaled disclosure = 83.58 internal hours saved per filing × 52 filings) and decrease the cost by up to $5,215,392 (729.24 professional hours per filing using standard Regulation S–K disclosure minus 478.50 professional hours per filing using scaled disclosure = 250.74 external hours saved per filing × $400 per hour = $100,296 external cost savings per filing × 52 filings).

[130] This estimated decrease in the compliance burden for Form S–1 is based on 80% × 4,346.16 internal hours saved = 3,476.93 internal hours saved and 80% × $5,215,392.00 external cost savings = $4,172,313.60 external cost savings.

[131] Based on data collected by DERA, during 2013 through 2015, registrants with a public float greater than $75 million but less than $250 million filed an average of approximately 181 registration statements on Form S–3 each year, and registrants with a public float of zero and revenues greater than $50 million but less than $100 million filed an average of approximately two registration statements on Form S–3.

[132] We base our estimate of the reduced compliance burden for Form S–3 for a smaller reporting company using all scaled disclosure available on our estimate of the average compliance burden for Items 503(d) and 504 of Regulation S–K, which requirements are scaled for smaller reporting companies. We estimate the decrease in compliance burden for a registration statement on Form S–3 for a smaller reporting company using all scaled disclosure available to be 0.25 burden hours and a cost of $300 (0.75 professional hours × $400/hour) per filing.

Accordingly, we estimate that it would decrease the compliance burden of Form S–3 by up to 45.75 hours (0.25 internal hours saved per filing × 183 filings) and decrease the cost by up to $54,900 ($300 external cost savings per filing × 183 filings).

[133] This estimated decrease in the compliance burden for Form S–3 is based on 80% × 45.75 internal hours saved = 36.60 internal hours saved and 80% × $54,900.00 external cost savings = $43,920.00 external cost savings.

[134] Based on data collected by DERA, during 2013 through 2015, registrants with a public float greater than $75 million but less than $250 million filed an average of approximately 29 registration statements on Form S–4 each year, and registrants with a public float of zero and revenues greater than $50 million but less than $100 million filed an average of approximately three registration statements on Form S–4.

[135] We estimate the reduction in the compliance burden for Form S–4 for a smaller reporting company using all scaled disclosure available to be the same as the reduction in the compliance burden for a Form S–1 for a smaller reporting company using all scaled disclosure available as compared to standard Regulation S–K disclosure, which was 83.58 burden hours and a cost of $100,296 (250.74 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Form S–4 by up to 2,674.56 hours (83.58 internal hours saved per filing × 32 filings) and decrease the annual cost by up to $3,209,472 ($100,296 external cost savings per filing × 32 filings).

[136] This estimated decrease in the compliance burden for Form S–4 is based on 80% × 2,674.56 internal hours saved = 2,139.65 internal hours saved and 80% × $3,209,472.00 external cost savings = $2,567,577.60 external cost savings.

[137] Based on data collected by DERA, during 2013 through 2015, registrants with a public float greater than $75 million but less than $250 million filed an average of approximately two registration statements on Form S–11 each year, and registrants with a public float of zero and revenues greater than $50 million but less than $100 million filed an average of approximately one registration statement on Form S–11.

[138] We estimate the reduction in the compliance burden for Form S–11 for a smaller reporting company using all scaled disclosure available to be the same as reduction in the compliance burden for Form S–1 for a smaller reporting company using all scaled disclosure available as compared to standard Regulation S–K disclosure, which was 83.58 burden hours and a cost of $100,296 (250.74 professional hours × $400/hour) per report.

Accordingly, we estimate that it would decrease the compliance burden of Form S–11 by up to 250.74 hours (83.58 internal hours saved per filing × 3 filings) and decrease the annual cost by up to $300,888.00 ($100,296 external cost savings per filing × 3 filings).

[139] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) [140] requires us, in promulgating rules under Section 553 of the Administrative Procedure Act,[141] to consider the impact of those rules on small entities. We have prepared this Initial Regulatory Flexibility Analysis (IRFA) in accordance with Section 603 of the RFA.[142] This IRFA relates to the proposed amendments to the smaller reporting company definition as used in our rules.

A. Reasons for, and Objectives of, the Action

Small businesses, the ACSEC, the Small Business Forum, Congress and others have raised concerns about the burden of our disclosure rules on smaller registrants. The primary reason for, and objective of, the proposed amendments to the smaller reporting company definition is to reduce the disclosure burdens on smaller registrants by expanding the number of registrants that qualify as smaller reporting companies. The primary reason for, and objective of, the proposed amendments to the accelerated filer and large accelerated filer definitions is to maintain the status quo regarding the category of registrants that are subject to accelerated and large accelerated filer disclosure and filing requirements.

The ACSEC and the Small Business Forum have recommended that we revise the smaller reporting company definition to include registrants with a public float of up to $250 million. The proposed amendments are responsive to those recommendations.

The FAST Act requires us to revise Regulation S–K to further scale or eliminate disclosure requirements to reduce the burden on a variety of smaller registrants, including smaller reporting companies, while still providing all material information to investors. A number of existing Regulation S–K disclosure requirements provide smaller reporting companies with the opportunity to provide scaled disclosures in their Commission filings. Raising the financial thresholds in the smaller reporting company definition would be responsive to the FAST Act because it would reduce the burden on smaller registrants by increasing the number of registrants eligible to provide scaled disclosures.

B. Legal Basis

We are proposing the amendments pursuant to Sections 7, 10 and 19 of the Securities Act, Sections 3(b), 12, 13, 15(d) and 23(a) of the Exchange Act and Section 72002 of the FAST Act.

C. Small Entities Subject to the Proposed Amendments

For purposes of the RFA, under Securities Act Rule 157 [143] an issuer, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities not exceeding $5 million. Under Exchange Act Rule 0–10(a),[144] an issuer, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. For purposes of the RFA, under our rules an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[145]

The proposed amendments would increase the financial thresholds in the smaller reporting company definition. We estimate that there are currently 837 entities that qualify as ''small'' under the definitions set forth above.[146] We believe it is likely that virtually all small businesses or small organizations, as defined in our rules described above, are already encompassed within the current smaller reporting company definition and would continue to be encompassed within the definition if the proposed amendments were adopted. To the extent any small business or small organization, as defined for RFA purposes, is not already encompassed within the current smaller reporting company definition, we believe it is likely that the proposed amendments would capture those entities.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to the smaller reporting company definition would increase the number of registrants eligible to provide scaled disclosures in response to Regulation S–K and Regulation S–X disclosure requirements. The proposed amendments do not revise the scaled disclosure requirements themselves.

If the proposed amendments were adopted, registrants with public floats in excess of $75 million and less than $250 million would become eligible to provide scaled disclosures. Registrants with zero public float and revenues in excess of $50 million and less than $100 million in the most recent fiscal year also would become eligible to provide scaled disclosures. Registrants with less than $75 million of public float and registrants with zero public float and less than $50 million in annual revenues would not be impacted by the proposed amendments because they already are eligible to provide scaled disclosures.

The proposed amendments would not increase the overall disclosure requirements for small entities and could decrease substantially the disclosures required for registrants with public floats between $75 million and $250 million and registrants with zero public float and annual revenues between $50 million and $100 million.

Item 404 is the only disclosure item in Regulation S–K that may require more extensive information for smaller reporting companies than for non-smaller reporting companies. Item 404(d)(1) requires disclosure of transactions with related persons that exceed the lesser of $120,000 or 1% of the average of the smaller reporting company's total assets at year end for the last two completed fiscal years. This requirement may be more burdensome to a smaller reporting company if 1% of its average total assets is less than $120,000, which is the disclosure threshold for non-smaller reporting companies. This disclosure requirement would affect only smaller reporting companies with related person transactions. Item 404 also requires disclosure, only by smaller reporting companies, about parents and underwriting discounts and commissions where a related person is a principal underwriter or a controlling person or member of a firm that was or is going to be a principal underwriter. In addition, for filings other than registration statements, Item 404 requires smaller reporting companies to provide information covering an additional year.

[140] 5 U.S.C. 601 *et seq.*

[141] 5 U.S.C. 553.

[142] 5 U.S.C. 603.

[143] 17 CFR 230.157.

[144] 17 CFR 240.0–10(a).

[145] 17 CFR 270.0–10(a).

[146] Staff estimate based on review of Form 10–K filings with fiscal periods ending between January 31, 2015 and January 31, 2016.

E. Overlapping or Conflicting Federal Rules

We do not believe any current federal rules duplicate, overlap or conflict with the proposed amendments.

F. Significant Alternatives

The RFA directs us to consider significant alternatives that would accomplish the stated objectives of our proposed amendments, while minimizing any significant adverse impact on small entities. Accordingly, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- clarifying, consolidating or simplifying compliance and reporting requirements for small entities under our rules as revised by the proposed amendments;
- using performance rather than design standards; and
- exempting small entities from coverage of all or part of the proposed amendments.

The proposed amendments generally do not create any new compliance or reporting requirements. Instead, they would expand the number of companies eligible for the different compliance and reporting requirements available to smaller reporting companies.[147] As a result, we do not believe it is necessary or appropriate to exempt small entities in connection with this rulemaking. The proposed amendments are intended to increase the number of registrants eligible to provide scaled disclosures under Regulation S–K and Regulation S–X. We believe that some of the registrants that would become eligible to provide scaled disclosures if the proposed amendments are adopted may be smaller entities. Therefore, we believe that the proposed amendments may simplify compliance and reporting requirements for small entities. With respect to the use of performance rather than design standards, because the proposed amendments are not expected to have any significant adverse effect on small entities (and may, in fact, relieve burdens for some such entities), we do not believe it is necessary to use performance standards in connection with this rulemaking.

In Section III, above, we discuss additional alternatives that we have considered. We note that those alternatives, such as using a different threshold or different standard for determining smaller reporting company status, are unlikely to have a significant effect on smaller entities because, as noted above, we believe virtually all small entities are already eligible for smaller reporting company status. Similarly, with respect to the alternative of not amending the accelerated and large accelerated filer definitions, we believe there are very few small entities that would be considered accelerated filers under the current definitions, and, therefore, this alternative would not significantly affect small entities.

G. General Request for Comment

We encourage comments with respect to any aspect of this IRFA. In particular, we request comments on:

- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and
- How to quantify the impact of the proposed amendments.

Commenters should describe the nature of any impact and provide empirical data supporting the extent of the impact. Any comments we receive will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VI. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[148] the Commission must advise the OMB as to whether a proposed regulation constitutes a ‘‘major’’ rule. Under SBREFA, a rule is considered ‘‘major’’ where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment or innovation.

If a rule is ‘‘major,’’ its effectiveness will generally be delayed for 60 days pending Congressional review.

We request comment on whether our proposed amendments would be a ‘‘major rule’’ for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- any potential increase in costs or prices for consumers or individual industries; and
- any potential effect on competition, investment or innovation.

We request those submitting comments to provide empirical data and other factual support for their views to the extent possible.

VII. Statutory Basis and Text of Proposed Rules

The rule amendments described in this release are being proposed pursuant to Sections 7, 10 and 19 of the Securities Act (15 U.S.C. 77a *et seq.*), as amended, Sections 3(b), 12, 13, 15(d) and 23(a) of the Exchange Act (15 U.S.C. 78a *et seq.*), as amended, and Section 72002 of the FAST Act.

List of Subjects in 17 CFR Parts 210, 229, 230, 240

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l*, 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.,* and 18 U.S.C. 1350 unless otherwise noted.

* * * * *

■ 2. Amend § 229.10 by revising paragraphs (f)(1) and (f)(2) to read as follows:

§ 229.10 (Item 10) General.

* * * * *

(f) * * *

(1) *Definition of smaller reporting company.* As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(i) Had a public float of less than $250 million as of the last business day of its

[147] As discussed in Section V.D, Item 404 is the only disclosure item in Regulation S–K that may require more extensive information for smaller reporting companies than for non-smaller reporting companies.

[148] 5 U.S.C. 801 *et seq.*

most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by 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; or

(ii) In the case of an initial registration statement under the Securities Act or Exchange Act for shares of its common equity, had a public float of less than $250 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(iii) In the case of an issuer whose public float as calculated under paragraph (i) or (ii) of this definition was zero, had annual revenues of less than $100 million during the most recently completed fiscal year for which audited financial statements are available.

(2) *Determination.* Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company, using the amounts specified in paragraphs (f)(1)(i) or (f)(1)(iii) of this Item, as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10–Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of this Item, the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (f)(2)(i) of this Item. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer determines that it does not qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (f)(1)(i) of this Item, was less than $200 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no public equity outstanding or no market price for its equity existed, if the issuer had annual revenues of less than $80 million during its previous fiscal year.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 3. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 4. Amend § 230.405 by revising the definition of ''smaller reporting company'' to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Smaller reporting company. As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(1) Had a public float of less than $250 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by 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; or

(2) In the case of an initial registration statement under the Securities Act or Exchange Act for shares of its common equity, had a public float of less than $250 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(3) In the case of an issuer whose public float as calculated under paragraph (1) or (2) of this definition was zero, had annual revenues of less than $100 million during the most recently completed fiscal year for which audited financial statements are available.

(4) *Determination.* Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company using the amounts specified in paragraphs (f)(1)(i) or (f)(1)(iii) of Item 10 of Regulation S–K (§ 229.10(f)(1)(i) or § 229.10(f)(1)(iii) of this chapter), as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10–Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of Item 10 of Regulation S–K (§ 229.10(f)(1)(ii) of this chapter), the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (4)(i) of this definition. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer determines that it does not qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (1) of this definition, was less than $200 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no public equity outstanding or no market price for its equity existed, if the issuer had annual revenues of less than $80 million during its previous fiscal year.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 6. Amend § 240.12b–2 by:

■ a. Amending the definition of ''accelerated filer and large accelerated filer'' as follows:

■ i. Adding the word ''and'' at the end of paragraph (1)(ii);

■ ii. Removing ''; and'' at the end of paragraph (1)(iii) and in its place adding a period;

■ iii. Removing paragraph (1)(iv);

■ iv. Adding the word ''and'' at the end of paragraph (2)(ii);

■ v. Removing ''; and'' at the end of paragraph (2)(iii) and in its place adding a period; and

■ vi. Removing paragraph (2)(iv); and

■ b. Revising the definition of ''smaller reporting company.''

The revision to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Smaller reporting company. As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(1) Had a public float of less than $250 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by 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; or

(2) In the case of an initial registration statement under the Securities Act or Exchange Act for shares of its common equity, had a public float of less than $250 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(3) In the case of an issuer whose public float as calculated under paragraph (1) or (2) of this definition was zero, had annual revenues of less than $100 million during the most recently completed fiscal year for which audited financial statements are available.

(4) *Determination.* Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company using the amounts specified in paragraphs (f)(1)(i) or (f)(1)(iii) of Item 10 of Regulation S–K (§ 229.10(f)(1)(i) or § 229.10(f)(1)(iii) of this chapter), as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10–Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of Item 10 of Regulation S–K (§ 229.10(f)(1)(ii) of this chapter), the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (4)(i) of this definition. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer determines that it does not qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (1) of this definition, was less than $200 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no public equity outstanding or no market price for its equity existed, if the issuer had annual revenues of less than $80 million during its previous fiscal year.

* * * * *

By the Commission.

Dated: June 27, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–15674 Filed 6–30–16; 8:45 am]

BILLING CODE 8011–01–P