CFA Institute

560 Ray C. Hunt Drive
Charlottesville, VA
22903-2981 USA

+1 (434) 951 5499 tel
+1 (434) 951 5262 fax
info@cfainstitute.org
www.cfainstitute.org

30 August 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendments to Smaller Reporting Company Definition (File No. S7-12-16)

Dear Mr. Fields:

CFA Institute[1] appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or the "Commission") proposal (the "Proposal) to amend the definition of "smaller reporting company" ("SRC") under its rules and regulations, and to amend certain sections of the accelerated filer definition. CFA Institute represents the views of those investment professionals who are its members before standard setters, regulatory authorities, and legislative bodies worldwide about issues affecting the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues affecting the efficiency, integrity and accountability of global financial markets.

Executive Summary

We do not favor changing the current SRC definition to allow an expanded group of companies to qualify. The scaled disclosure regime in the Proposal would prevent investors from receiving all the material information that is important. Given staff studies that indicate only marginal cost savings to SRCs from scaled disclosures, we do not see a compelling reason to allow additional registrants to qualify. We do, however, encourage the Commission to continue its review of the scaled disclosure approach, in general, to determine which disclosures are repetitive and should be deleted, and which should be retained even under a scaled disclosure regime.

If the SEC decides to adopt the proposed amendments, we agree that registrants that qualify under the new standards should not be exempt from the reporting requirements mandated by section 404(b) of the Sarbanes-Oxley Act ("Section 404(b)").

[1] CFA Institute is a global, not-for-profit professional association of more than 133,000 investment analysts, advisers, portfolio managers, and other investment professionals in 151 countries, of more than 125,500 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 147 member societies in 73 countries and territories.

We also agree that any definitional changes to accelerated filer and large accelerated filer should not exempt registrants with between $75 million and $250 million in market capitalization from full compliance with the requirements of Section 404(b).

Discussion

Smaller Reporting Companies

Under current definitions[2], SRCs generally are defined as registrants with a public float of less than $75 million as of the last day of their most recently completed second fiscal quarter; or with a zero public float and less than $50 million of annual revenues during the most recently completed fiscal year for which audited financial statements are available. Proposed amendments to the definitions would increase the public float figure to *$250 million* and the annual revenues to *less than $100 million*.[3]

Furthermore, current rules and regulations allow registrants who qualify under the smaller company definition to use a "scaled disclosure" approach in providing information to investors. Designed to provide relief for smaller registrants, scaled disclosure allows such firms to satisfy their disclosure obligations with generally less-stringent requirements than for non-smaller company registrants, most notably in Regulation S-K and S-X.

The SEC reasons that raising the definitional thresholds and thus allowing more registrants to qualify as SRCs will foster capital formation and reduce compliance costs. At the same time, it is not proposing that the *substance* of the existing scaled disclosure requirements in Regulations S-K and S-X will change—just the number of registrants that can qualify to use them. To that end, it reasons that important investor protections will not be sacrificed.

In choosing the proposed new thresholds, staff considered recommendations submitted by its Advisory Committee on Small and Emerging Companies (ACSEC) and its Government-Business Forum on Small Business Capital Formation to increase the thresholds. Moreover, the Fixing America's Surface Transportation Act of 2015 directs the SEC to explore ways to reduce burdens on groups of smaller registrants, including SRCs.

The SEC reviewed what adjustments in inflation would do to affect the total registrant pool, and concluded the affect would be minimal. As rationale for choosing specific dollar limits for the proposed thresholds, the staff reasoned that the new public float thresholds would allow a similar percentage of registrants to qualify as when the SRC definition was first established (42%). Changes in the revenue thresholds for companies that had no public float would affect only 1% of new registrants.

[2] Definitions of smaller reporting company are found in Rule 405 of the Securities Act of 1933, Rule 12b-2 of the Securities Exchange Act of 1934 and Item 10(f) of Regulation S-K.
[3] As is the case under the current regulatory scheme, companies that do not qualify, but hope to, will be subject to initial thresholds that differ (e.g., a public float of less than $200 million) so as to minimize changes in qualifying status that might occur repeatedly due to slight fluctuations in float levels.

We appreciate that the Commission has been tasked with reducing burdens on SRCs. But we have three specific concerns about the use of scaled disclosure generally. In particular, we believe that allowing different sized entities to use different disclosure regimes will signal to investors that the entities lack comparable quality.[4] That will occur, however, only if investors are aware of the difference in reporting requirements. We also are concerned that scaled disclosures, in general, deprive investors of certain material information that they should receive. Moreover, our members must exercise due diligence in analyzing investments and scaled disclosure may, in some cases, result in insufficient information being provided to conduct a thorough analysis.

Having said this, we also recognize that certain types of information that are affected by the current scaled disclosure requirements are arguably more important than others. For example, we believe that requiring SRCs to provide the pension benefits table and a disclosure of compensation policies and practices related to risk management (both of which can be deleted under scaled disclosure) are more vital than certain other disclosures. Thus, in keeping with the Commission's intent to simply disclosure and to ease burdens on SRCs, we think it would be helpful to conduct an overall review of the scaled disclosure framework with an eye to retaining items of information important to investors and research analysts, while deleting those items that require repetitive information.

We note with interest the SEC's empirical analysis in this rulemaking, suggesting that scaled disclosure for the group that would qualify under the Proposal produces "modest, but statistically significant" costs savings due to compliance costs. It also suggests that the new disclosure regime would produce 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 growth in capital investments, like research and development. Given the projected slight advantages/disadvantages that the Proposal would have on the new group of SRCs, we believe it prudent to err on the side of investor protection when deciding whether or not to keep the current definition in place. This is particularly so in light of the fact that smaller companies often have the least experienced management and may be new to the public markets. Given that, we believe certain categories of information that the scaled disclosure requirements would exempt should be available to investors.

While we do not favor changing the definition of SRC so as to increase the pool of registrants, we do support staff's decision to require registrants that would qualify under the new thresholds to still comply with Section 404(b) requirements.[5] We have long expressed concerns with exemptions for certain registrants from the Section 404(b) auditor attestation requirement under the Sarbanes-Oxley Act. We believe this is an important check on the reliability of information that should be provided to investors and something that strengthens investor protections. Thus,

[4] See November 12, 2014 letter from CFA Institute to Securities and Exchange Commission ("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").
[5] Under current regulations, SRCs are exempted from Section 404(b) reporting requirements.

should the SEC decide to proceed with the proposed amendments, we urge that it retain the auditor attestation requirements for the new SRCs, as it proposes.

To this point, we wish to expressly address one alternative to the proposed amendments that is discussed in the release. That alternative would extend a Section 404(b) exemption to the expanded set of SRCs so that all could take advantage of the exemption, rather than keeping the exemption only for those with market capitalizations of less than $75 million. We strongly discourage consideration of this alternative. While this alternative would create a uniform exemption for all SRCs, it also increases the potential for dilution of investor protections. As the release notes, there are indications that Section 404(b) reporting has improved reporting quality, the registrants' ability to detect fraud, and investor confidence. This must not be sacrificed for concessions whose uncertain advantages may not outweigh the costs to investors.

We support staff's recommendation that the Commission should review the SRC definition periodically to determine whether the thresholds being used remain appropriate. While we appreciate the sensitivity to reducing financial burdens on smaller companies, we also believe that investors deserve to receive the information that would not be provided under a scaled disclosure system. Reviewing the thresholds on a periodic basis will help ensure that these remain in balance.

We also appreciate that additional registrants that would qualify under a new SRC definition would retain the obligation to provide additional information so as to avoid misleading statements. This imposes a broader duty on these registrants to provide a mix of information that provides an accurate context for evaluating the statements required under the rule.

Accelerated Filer and Large Accelerated Filer Definitions

While the Commission is not proposing to raise the public float thresholds under the definitions of accelerated filer and large accelerated filer, it seeks changes that are necessary to preserve applicability of the thresholds in light of the proposed SRC amendments. The Commission expressly rejects a recommendation by the ACSEC that would effectively exempt registrants with assets between $75 million and $250 million from having to comply with Section 404(b)'s auditor attestation requirements.

We support both approaches. While we may not support the proposed increase in SRC thresholds, should the amendments be implemented, it would be important to maintain the current size limitations on registrants under accelerated filer disclosure and filing requirements. With respect to the ACSEC recommendation, we know of no compelling argument to support what we see as a further weakening of investor protections, particularly in light of the 2011 Staff Study finding that this group had a lower restatement rate when compared with those not subject to Section 404(b).

Conclusion

While we support meaningful accommodations for SRCs that ease their compliance cost burdens, we believe the benefits to SRCs do not outweigh the potential dilution of investor protections, and thus do not support the proposed amendments. Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at kurt.schacht@cfainstitute.org, 212.756.7728 or Linda Rittenhouse at linda.rittenhouse@cfainstitute.org, 434.951.5333.

Sincerely,

/s/ Kurt N. Schacht

Kurt N. Schacht, CFA
Managing Director, Standards and Advocacy
CFA Institute

/s/ Linda L. Rittenhouse

Linda L. Rittenhouse
Director, Capital Markets Policy
CFA Institute