

# Technical Line

## Reminders on reporting and filer status considerations for SEC registrants

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### What you need to know

- Registrants should closely monitor whether they continue to qualify as a smaller reporting company, an emerging growth company and/or a foreign private issuer and must perform annual redetermination tests at the end of their second fiscal quarter (i.e., 30 June 2022 for calendar-year registrants).
- The SEC has different rules for each reporting and filer status and in some cases, different entry and exit thresholds (e.g., subsequent qualification thresholds for smaller reporting company and filer status are set at 80% of initial qualification thresholds).
- Registrants also need to verify their filing status every year to determine the deadline for filing their periodic reports. If a registrant meets the definition of a large accelerated filer as of the end of its fiscal year, it must file its Form 10-K for that year within 60 days after its year end. In the subsequent fiscal year, the registrant must file its quarterly reports on Form 10-Q within 40 days of each quarter end.
- All registrants are required to obtain auditor attestation for internal control over financial reporting under Section 404(b) unless they qualify as an emerging growth company or non-accelerated filer.

### Overview

Registrants need to make sure they are aware of the Securities and Exchange Commission (SEC) rules to determine their filer status and whether they qualify as a smaller reporting company (SRC), an emerging growth company (EGC) or a foreign private issuer (FPI). These determinations could have reporting implications in areas such as filing deadlines for periodic reports, the

timing of adoption of deferred accounting standards and whether auditor attestation for internal control over financial reporting (ICFR) is required. Registrants need to consider their public float as of the end of their second fiscal quarter (i.e., 30 June for calendar-year registrants) when determining their filer status and whether they continue to qualify as an SRC, or an EGC.

With the surge of initial public offering (IPO) transactions over the past two years fueled in part by special purpose acquisition company IPO transactions, more companies are focusing on these reporting and disclosure rules for the first time.

Timely monitoring of filing status can also be particularly important in times of significant market volatility because a calendar-year company can unexpectedly be required to obtain an auditor attestation about the effectiveness of their ICFR or file periodic reports following an accelerated timeline based on their public float as of 30 June. In periods of market decline, registrants may be able to qualify as an SRC and/or exit out of their current accelerated filer status and take advantage of certain accommodations available to SRCs and non-accelerated filers (e.g., exemption from obtaining auditor attestation on ICFR).

A registrant's filer status is also important when adopting new SEC rules since the mandatory compliance date may depend on the registrant's filer status. EGCs are eligible to adopt new accounting standards issued by the Financial Accounting Standards Board (FASB) on the delayed private company adoption timeline, and SRCs have been allowed to defer adoption of certain standards.

This publication discusses the requirements for qualifying as an SRC, EGC, accelerated or large accelerated filer and FPI, the implications of gaining or losing a status and transition provisions and reporting and disclosure requirements and/or accommodations.

## **Smaller reporting companies**

Regulation S-K Item 10(f)(1) defines an SRC as an issuer, excluding an investment company, an asset-backed issuer or a majority-owned subsidiary whose parent is not a smaller reporting company, that meets either of the following conditions after performing its initial qualification test (e.g., upon filing an initial registration statement for common equity<sup>1</sup>):

- ▶ Public float<sup>2</sup> is below \$250 million.
- ▶ Annual revenue for the most recently completed fiscal year is less than \$100 million and public float is less than \$700 million (including no public float).

Once an issuer determines that it does not qualify for SRC status because it exceeded one or more of the conditions above at the initial qualification test, it will remain unqualified unless it meets certain thresholds when making its annual determination as discussed further below.

## **Recurring annual determinations**

The annual determination (or redetermination) for SRC status is performed as of the last business day of the company's second fiscal quarter. For a calendar-year company, the annual test for the year ending 31 December 2022 would be performed on 30 June 2022, the last business day of the fiscal quarter.

The SEC set different entry and exit thresholds for SRC status to minimize moves from one category to the other due to relatively small changes in public float. The subsequent qualification thresholds are set at 80% of the initial qualification thresholds above.

### **Entry thresholds**

A registrant that did not initially qualify as an SRC may subsequently qualify only if it meets one of the following thresholds:

- ▶ Public float is below \$200 million at the determination date.
- ▶ Annual revenue for the year completed before the determination date is less than \$80 million, and public float at the determination date is less than \$560 million (including no public float).

For purposes of performing the two-part revenue and public float qualification test, a registrant should ordinarily use its audited financial statements for the most recent fiscal year required to be included in its initial registration statement or its last annual report on Form 10-K.

Additionally, application of the two-part revenue and public float test depends on the annual revenue and public float tests performed in the prior year. Generally, if a registrant loses its SRC status because it exceeds either the \$100 million annual revenue or \$700 million public float threshold, the registrant is only required to apply the 80% threshold to the criteria it previously exceeded when performing the current qualification test. Refer to Section 5120.1b of the Division of Corporation Finance's Financial Reporting Manual (FRM)<sup>3</sup> for further details.

#### **Illustration 1 – Requalification test for smaller reporting companies**

ABC registrant is a calendar-year company that completed its IPO on 5 March 2020 and qualified as an SRC. On 30 June 2020, the registrant lost its SRC status because its public float was \$710 million as of 30 June 2020, and its annual revenues were \$90 million for the fiscal year ended 31 December 2019.

**Scenario 1 – At the next determination date (30 June 2021), the registrant's public float was \$600 million as of 30 June 2021, and its annual revenues were \$90 million for the fiscal year ended 31 December 2020.**

Since its public float didn't fall below \$560 million (i.e., 80% of the initial qualification thresholds) as of 30 June 2021, the registrant does not qualify as an SRC. At the next determination date (i.e., 30 June 2022), the registrant would also only be required to apply the 80% threshold to the criteria it previously exceeded (i.e., public float), assuming its annual revenue remains below \$100 million.

**Scenario 2 – At the next determination date (30 June 2021), the registrant's public float was \$500 million as of 30 June 2021, and its annual revenues were \$90 million for the fiscal year ended 31 December 2020.**

Since its public float fell below \$560 million (i.e., 80% of the initial qualification thresholds) as of 30 June 2021, the registrant re-qualifies as an SRC.

### **Exit thresholds**

A registrant that qualifies as an SRC must re-determine annually whether it continues to qualify as such on its redetermination date (the last business day of its second fiscal quarter for which a public trading price of its common stock is available) by measuring its public float and revenue for the most recently completed year. A registrant that previously qualified as an SRC maintains that status until one of three exit criteria is met at the redetermination date:

- ▶ Public float exceeds \$250 million, and annual revenue exceeds \$100 million.
- ▶ Annual revenue exceeds \$100 million, and it has no public float.
- ▶ Public float exceeds \$700 million, regardless of annual revenue.

If a registrant has no public float (e.g., it has only public debt or preferred stock), it would continue to qualify if its annual revenues are less than \$100 million during its most recently completed fiscal year for which audited financial statements are available.

#### ***Eligibility for FPIs***

Any FPI is eligible to qualify as an SRC in accordance with the threshold requirements. However, to take advantage of the disclosure relief as an SRC, an FPI must use domestic forms (e.g., Form 10-K, not Form 20-F) and file financial statements prepared using US GAAP. Refer to the FPI section below for more information.

#### **Implications of changes in SRC status**

A registrant that newly qualifies as an SRC at its annual determination (i.e., the last business day of its second fiscal quarter) may choose to reflect its change in status in its quarterly report for the second fiscal quarter, including taking advantage of the accommodations summarized in the section below, or defer to a quarterly or annual report filed thereafter. However, the registrant must reflect its SRC status no later than in its first Form 10-Q for the next fiscal year.

**The SEC sets different entry and exit thresholds for SRC status (e.g., subsequent qualification thresholds are set at 80% of the initial qualification thresholds).**

Once a reporting issuer fails to qualify for SRC status at its annual redetermination, it may choose to continue using the scaled disclosures permitted for SRCs in its annual report on Form 10-K for the current fiscal year but must begin providing non-scaled larger company disclosures in its first Form 10-Q for the next fiscal year.

In addition, the issuer can continue taking advantage of other SRC accommodations (e.g., provide financial statements of an acquired business in accordance with Article 8 of Regulation S-X if it made its initial filing on Form 8-K and its acquisition before the new fiscal year starts, defer adoption of a new or amended accounting standards) during this same period.

#### **How we see it**

Although the company can continue using scaled disclosures in its annual report on Form 10-K for the current fiscal year when it loses its SRC status, the company would need to separately determine and adopt any new filing status (e.g., large accelerated filer, accelerated filer) in the fiscal year the SRC status is lost (i.e., Form 10K filing).

Specifically, when a non-EGC transitions from non-accelerated filer status to accelerated or large accelerated filer status, it is required to obtain an auditor attestation under Section 404(b). The interaction of SRC and accelerated filer thresholds are discussed below.

#### **SRC status accommodations**

##### ***Scaled disclosure requirements***

Smaller reporting companies may choose to comply with either the scaled reporting and disclosure requirements in Regulation S-K for SRCs or the more rigorous disclosure requirements for larger public companies on an item-by-item basis in each filing. SRCs should also apply whatever approach they select consistently to allow investors to make period-to-period comparisons.

However, if a scaled disclosure requirement is more rigorous than the corresponding requirement for larger companies, the SRC is required to comply with the more rigorous requirement. For example, Item 404(d) of Regulation S-K sets forth more rigorous related party transaction disclosure requirements with which an SRC must comply.<sup>4</sup>

The tables in Appendices A and B include the itemized instructions of Form 10-K and Form 10-Q, the location of their respective disclosure instructions in Regulations S-X and S-K and a summary of scaled disclosure requirements. Certain key modified or scaled disclosure accommodations for SRCs as described in Regulation S-K for Form 10-K are discussed below.

- ▶ *Description of business* – An SRC is required to describe only business development for the period of time that is material to an understanding of the general development of the business and includes only those topics specified in Item 101(h). For example, SRCs are not required to disclose information about their geographic areas or human capital resources (other than material information about the labor contracts) otherwise required by a non-SRC. An SRC is also permitted to provide only material updates along with a hyperlink to the most recent filing that includes a full discussion of its business developments that, together with the update, would present a complete discussion.
- ▶ *Market risk disclosures* – Quantitative and qualitative disclosures about market risk (Item 305) are not required for an SRC.
- ▶ *Executive compensation* – An SRC is permitted to limit the executive compensation information it provides to that included in specified summary compensation tables. It can limit the information it includes to the last two fiscal years (rather than three as required for larger issuers) and to three named executive officers (compared with five for larger issuers). An SRC is not required to provide, for example, a Compensation Discussion and Analysis, or tables for grants of plan-based awards, options exercised and stock vested.
- ▶ *Corporate governance* – An SRC can omit disclosure about whether it has an audit committee financial expert (until its first annual report after the effective date of its registration statement) and omit from its annual reports and proxy statements disclosures about “Compensation Committee Interlocks and Insider Participation” and the Compensation Committee Report.

In addition, although SRCs can omit their risk factor disclosures under Item 105 from their Forms 10-K and registration statements on Form 10, they must continue to provide risk factor disclosures in their Securities Act registration statements (e.g., Form S-1, Form S-4).

When evaluating the disclosure accommodations, companies that newly qualify for SRC status should consider whether removing any existing disclosures (e.g., risk factors) would result in the omission of material information for investors.

Refer to Chapter 9 of our publication *SEC annual reports – Form 10-K* for more details on disclosure requirements for SRCs.

## How we see it

If the SEC adopts its recently proposed rules aimed at enhancing and standardizing climate-related disclosures for investors, SRCs would have a longer transition period compared to other non-SRCs and would be exempt from certain emission disclosures and assurance requirements.<sup>5</sup> Accordingly, SRCs should monitor developments in this area.

## Financial information of the SRC registrant

### Annual financial information

SRCS may choose to comply with either the requirements for SRC financial statements in Article 8 or those for non-SRCs elsewhere in Regulation S-X in their annual financial report. Article 8 of Regulation S-X requires SRCs to file an audited balance sheet as of the end of the two most recent fiscal years and audited statements of comprehensive income, cash flows and changes in stockholders' equity and noncontrolling interests for the two most recent fiscal years. Larger registrants are required to file audited financial statements for three fiscal years.

In addition, SRCs that choose to prepare their financial statements in accordance with Article 8 are not required to follow the balance sheet and statement of comprehensive income presentation as described in Rules 5-02 and 5-03 of Regulation S-X or provide the related note disclosures. SRCs can also omit the financial schedules required by Rule 5-04 of Regulation S-X and any note disclosures required by Rule 4-08 of Regulation S-X (with the exception of the derivative accounting policy disclosures in Rule 4-08(n)).

However, SRCs always must comply with Article 2 of Regulation S-X, which outlines the requirements for the reporting and qualifications of the auditor, and Rule 4-10 of Regulation S-X, which addresses the accounting and reporting for oil- and gas-producing activities.

SRCs should also provide all information required by the applicable SEC industry guide.

Refer to Chapter 9 of our publication ***SEC annual reports – Form 10-K*** for more details on reporting requirements for SRCs.

#### *Interim financial information*

For the most part, SRCs do not get relief from interim financial reporting. However, they can condense their interim financial statements and include fewer line items than non-SRCs do.

For example, an SRC's interim balance sheet only needs to include separate captions for each component that represents 10% or more of total assets. Totals for current assets and current liabilities are included if the SRC presents a classified balance sheet. However, an SRC must present cash and retained earnings or accumulated deficit, regardless of their relative significance to total assets.

In their interim income statements, SRCs only need to include revenue, each cost and expense category presented in the annual financial statements that exceed 20% of revenues, provision for income taxes, and discontinued operations. Interim cash flow statements can be condensed to show only cash flows from operating, investing and financing activities.

Refer to our publication ***SEC quarterly reports – Form 10-Q*** for further details.

#### *Other financial statement requirements*

SRCs are not required to provide financial statement schedules. As outlined above, they are not subject to the reporting requirements of Rule 5-04 of Regulation S-X (regarding the requirement to provide Schedule I) or the related disclosure requirements in Rule 4-08(e) of Regulation S-X. However, when the restricted net assets of an SRC's consolidated subsidiaries represent a significant portion of consolidated net assets as of its year-end, the SRC should consider including disclosures in the liquidity section of its Management's Discussion and Analysis of the amount and a description of the nature of the restrictions on the net assets of the consolidated subsidiaries.

#### *Other accommodations*

Certain accounting standards include accommodations for adoption dates for SRCs. For example, FASB Accounting Standards Codification (ASC) 326, *Financial Instruments–Credit Losses*, is effective for SRCs for annual periods beginning after 15 December 2022 and interim periods therein (compared to annual periods beginning after 15 December 2019 for larger SEC issuers).

## Filer status

A registrant's filer status (i.e., non-accelerated, accelerated or large accelerated filer status) primarily affects the deadline for filing periodic reports with the SEC and the requirement to obtain auditor attestation on ICFR.

Rule 12b-2 of the Securities Exchange Act of 1934 (Rule 12b-2) requires registrants to determine their filing status as of the end of each fiscal year based on certain criteria, including its public float, calculated as of the last business day of its most recent second fiscal quarter. Calculating the public float on the last business day of the most recent second fiscal quarter allows the company to determine well in advance when it must file its next Form 10-K. Further, Rule 12b-2 stipulates different requirements for registrants that are entering and exiting from one filer status category to another.

### Filer determinations and reporting implications

#### *Large accelerated filer*

Rule 12b-2 defines a "large accelerated filer" as an issuer that meets all of the following conditions as of the end of its fiscal year:

- ▶ Has a public float of \$700 million or more (measured as of the last business day of its most recent second fiscal quarter).
- ▶ Has been a public company for at least 12 months subject to the reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act).
- ▶ Has previously filed at least one annual report.

When a company meets the definition of a large accelerated filer as of the end of its fiscal year, it must file its Form 10-K for that fiscal year within 60 days after its fiscal year-end. In the subsequent fiscal year, the company must file its quarterly reports on Form 10-Q within 40 days of each quarter-end. The registrant must also obtain an auditor attestation for ICFR under Section 404(b) of the Sarbanes-Oxley Act of 2002 (Section 404(b)).

#### *Accelerated filer*

Rule 12b-2 defines an "accelerated filer" as an issuer that meets all of the following conditions as of the end of its fiscal year:

- ▶ Has a public float of \$75 million or more but less than \$700 million (measured as of the last business day of its most recent second fiscal quarter).
- ▶ Has been a public company for at least 12 months subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act.
- ▶ Has previously filed at least one annual report.
- ▶ Is unable to qualify as an SRC because of its revenues (discussed further below).

When a company meets the definition of an accelerated filer as of the end of its fiscal year, it must file its Form 10-K for that fiscal year within 75 days after its fiscal year-end. In the subsequent fiscal year, the company must file its quarterly reports on Form 10-Q within 40 days of each quarter-end. The registrant is required to obtain auditor attestation for ICFR under Section 404(b) unless the registrant qualifies as an EGC.

#### *Non-accelerated filer*

Although the term "non-accelerated filer" is not defined in Rule 12b-2 or elsewhere in the SEC's rules, the SEC said that if an issuer does not meet the definition of accelerated filer or large accelerated filer, it is considered a non-accelerated filer.<sup>6</sup>

**Issuers with less than \$100 million in annual revenues and less than \$700 million in public float qualify as non-accelerated filers and are not subject to the ICFR requirements.**

When a registrant is a non-accelerated filer as of the end of its fiscal year, it must file its Form 10-K for that fiscal year within 90 days after its fiscal year end and its Form 10-Q within 45 days of each quarter end. Such a registrant is not subject to the requirements for auditor attestation for ICFR under 404(b).

It is important to note if a non-accelerated filer is required to transition to accelerated or large accelerated filer status in its Form 10-K for the current fiscal year or if an SRC qualifies for accelerated filer status (i.e., it has annual revenue of more than \$100 million and a public float of \$75 million to less than \$250 million), it is required to obtain an auditor's attestation on the effectiveness of ICFR under Section 404(b), unless the registrant is an EGC.

#### ***Interaction between accelerated filer status and SRC status***

The SEC amended its definitions of accelerated filers and large accelerated filers to exclude SRCs that have not yet begun to generate significant revenues by allowing issuers with less than \$100 million in annual revenues and less than \$700 million in public float to qualify as non-accelerated filers. Consequently, these issuers are not subject to the requirements for auditor attestation for ICFR.

The amended rules, which are intended to provide relief to companies that no longer qualify as EGCs, do not, however, provide relief for all SRCs that qualify as accelerated filers. That is, issuers that qualify for SRC status under the public float test only (i.e., they have a public float of less than \$250 million but more than \$75 million) will continue to be accelerated filers if their annual revenue is above \$100 million.

For considerations related to the redetermination of SRC, EGC and filer status subsequent to a special purpose acquisition company merging with an operating company, refer to our Technical Line, [Navigating the requirements for merging with a special purpose acquisition company](#), for further considerations.

#### **Filer status summary**

The following table summarizes the entry thresholds for the various filer status categories that registrants have to monitor at their annual redetermination date, the auditor attestation requirements for ICFR with filing due date for Form 10-Ks and Form 10-Qs:

Status	Public float	Annual revenues	Required to obtain auditor attestation on ICFR	Form 10-K due date (days from year-end)	Form 10-Q due date (days from quarter-end)
SRC and non-accelerated filer	Less than \$75 million	No limit	No	90 days	45 days
	\$75 million to less than \$700 million	Less than \$100 million	No	90 days	45 days
SRC and accelerated filer	\$75 million to less than \$250 million	\$100 million or more	Yes	75 days	40 days
Accelerated filer (not SRC)	\$250 million to less than \$700 million	\$100 million or more	Yes	75 days	40 days
Large accelerated filer	\$700 million and greater	Not applicable	Yes	60 days	40 days

Companies that qualify as EGCs are exempt from the auditor attestation requirement of Section 404(b) even if they are accelerated filers.

## Considerations following an IPO

A company that conducts an IPO would not meet the definition of an accelerated or large accelerated filer at the end of the fiscal year in which it went public because it would not have had periodic reporting obligations for at least 12 months. It would be considered a non-accelerated filer for purposes of its first annual report on Form 10-K following its IPO, even if its public float were to exceed the thresholds in the accelerated or large accelerated filer definitions.

### Illustration 2 – Filer status considerations following an IPO

Company A closes its IPO on 4 December 2021, raising approximately \$800 million in public float. It files its annual report for its fiscal year ended 31 December 2021 as a non-accelerated filer within 90 days of its fiscal year-end. In redetermining its filer status for the subsequent year, it remeasures its public float on 30 June 2022, the last business day of its second fiscal quarter for 2022, at \$900 million. As a result, the registrant would become a large accelerated filer when it files its annual report for its fiscal year ended 31 December 2022 since its public float exceeded \$700 million, it has previously filed at least one annual report on Form 10-K, and it has had Exchange Act periodic reporting obligations for at least 12 months.

In contrast, Company B closes its IPO on 4 January 2022, also raising \$800 million. It files its annual report for its fiscal year ended 31 December 2021 as a non-accelerated filer within 90 days of its fiscal year-end unless it is subject to the Exchange Act reporting requirement by virtue of Section 15(d). In redetermining its filer status for the subsequent year, it remeasures its public float on 30 June 2022, the last business day of its second fiscal quarter for 2022, at \$900 million. In this case, the company is still a non-accelerated filer since it has not had Exchange Act periodic reporting obligations for at least 12 months.

## Filer status exit provisions

### *Based on public float only*

The exit thresholds based solely on public float for large accelerated filer status and accelerated filer status (i.e., regardless of revenue) are set at 80% of the respective entry thresholds (detailed above) and have to be applied at every annual status redetermination date. Any change in accelerated filer status must be first reflected in the annual report for the year which the accelerated filer status determination is made.

For example, a large accelerated filer whose public float is less than \$560 million (but more than \$60 million) as of the last business day of its most recently completed second fiscal quarter would no longer be considered a large accelerated filer for that fiscal year. Such an issuer would become an accelerated filer<sup>7</sup> with its Form 10-K for that year that would be due 75 days after year-end. A large accelerated filer whose public float drops below \$60 million would become a non-accelerated filer with its Form 10-K due 90 days after year-end.

Similarly, an accelerated filer whose public float falls below \$60 million as of the last business day of its second fiscal quarter would no longer be considered an accelerated filer for that fiscal year and would become a non-accelerated filer for its annual report that would be due 90 days after that year-end.

### *Based on public float in combination with revenue*

An accelerated filer would also become a non-accelerated filer as of the end of its fiscal year, based on both its revenue and public float, in each of the following situations:

- ▶ An issuer that qualified as an accelerated filer and SRC because its revenue was more than \$100 million and its public float was less than \$250 million on its prior annual redetermination date reports revenue below \$100 million and estimates that its public float is still less than \$250 million for purposes of the current-year redetermination test.

- ▶ An issuer that was an accelerated filer (but not an SRC) in the prior year because its revenue was more than \$100 million and its public float was greater than \$250 million reports revenue below \$80 million and estimates public float below \$560 million for purposes of its current annual redetermination test.

For example, if a calendar-year issuer has a public float of \$230 million at 30 June 2022 and had revenue of \$101 million in 2021, it would be an SRC and an accelerated filer for the purposes of its 2022 annual report based on its public float because it exceeded the revenue threshold. If its public float remains the same at 30 June 2023, and its annual revenue in 2022 falls to less than \$100 million, it would be an SRC and a non-accelerated filer for the purposes of its 2023 annual report.

In contrast, if a calendar-year registrant has a public float of \$400 million at 30 June 2022 and had annual revenue of \$101 million in 2021, it also would not be eligible to be an SRC because it exceeds the revenue threshold, and it would be an accelerated filer for the purposes of its 2022 annual report based on its public float. If its public float remains the same at 30 June 2023, its annual revenue in 2022 would need to fall below \$80 million for it to be an SRC and a non-accelerated filer for the purposes of its 2023 annual report.

Registrants that have seen changes in their public float due to fluctuations in stock prices as of their filer status redetermination date (i.e., 30 June 2022 for calendar-year companies) should consider whether they will enter (or exit) accelerated or large accelerated filer status for their year-end filings. Registrants that determine for the first time that they have to follow the accelerated filing dates for their 2022 Form 10-K filings should begin planning to comply with Section 404(b), which requires them to obtain independent auditor attestation on the effectiveness of their ICFR.

Refer to Appendix C for further guidance on the transition between filer status categories and the requirements to provide auditor attestation of ICFR.

**Once a registrant loses its EGC status upon or after completion of its IPO, it cannot reclaim it.**

## Emerging growth companies

The Jumpstart Our Business Startups (JOBS) Act created a new category of issuer called an EGC to encourage IPOs by providing relief from certain SEC regulations. To qualify for the relief, a company must qualify for EGC status when it submits its confidential registration statement. That is, it must have total annual gross revenues of less than \$1.07 billion during its most recently completed fiscal year, regardless of whether financial statements for that period are presented in the registration statement.

### *EGC status eligibility determinations*

An EGC may lose its status by any of the following:

- ▶ Exceeding \$1.07 billion in revenues during its most recently completed fiscal year (determined at year end)
- ▶ Becoming a large accelerated filer (i.e., a seasoned issuer with public float of \$700 million or more), which is ultimately determined at year end with public float measured on the last day of the second fiscal quarter as discussed above
- ▶ Issuing more than \$1 billion in nonconvertible debt securities over a rolling three-year period, including securities issued in registered or unregistered offerings (determined on an ongoing basis)
- ▶ Hitting the last day of the fiscal year in which it celebrates the fifth anniversary of its first sale of registered common equity securities

The fiscal year revenue threshold is determined annually for the current fiscal year. For example, if a calendar-year EGC exceeds \$1.07 billion in annual revenue in 2022, its status is lost for fiscal year 2022 and the related accommodations cannot be applied in its Form 10-K for 2022.

The large accelerated filer criteria is also an annual determination as discussed in the section above. For example, if a calendar-year EGC, previously a non-accelerated filer, becomes a large accelerated filer on 31 December 2022, the EGC status is lost on that date and the related accommodations cannot be applied in its Form 10-K for 2022.

The \$1 billion in nonconvertible debt criterion is the only one measured on an ongoing basis rather than at a point in time (i.e., it's performed continuously, not at the end of a quarter or at year end). This criterion should consider nonconvertible debt securities "issued" during the rolling three-year period, even if they are not currently outstanding. The SEC staff has interpreted the phrase "issued more than \$1 billion nonconvertible debt" in the JOBS Act to be limited to debt securities (e.g., borrowings from banks would be excluded). In addition, the SEC staff stated that it will not object if an EGC excludes debt securities issued in an A/B exchange offer (i.e., Form S-4 exchange offer of registered debt securities for 144A debt securities), because the debt securities issued in the registered exchange offer are identical to, and replace, securities that were issued in the nonpublic offering.

For example, if a calendar-year registrant loses its EGC status in January 2022 because it exceeded the rolling three-year \$1 billion nonconvertible debt issuance threshold and will not file its 2021 Form 10-K until February 2022, the registrant will no longer qualify as an EGC for purposes of the 2021 Form 10-K and thus cannot rely on the EGC accommodations (e.g., the registrant must obtain an auditor attestation under Section 404(b) for the year ended 31 December 2021). Similarly, the registrant will not be an EGC for its Form 10-Q for the first quarter 2022.

Assuming none of the first three criteria above have been met at an earlier date, a registrant will lose its EGC status on the last day of the fiscal year that includes the fifth anniversary of the date of the first sale of common equity securities under an effective registration statement. For example, if the first sale of common equity securities (i.e., common equity IPO) for a calendar-year company occurred in March 2017, the company would lose its EGC status on 31 December 2022.

There is a grace period permitting an issuer that qualified as an EGC at the time it made the first confidential submission of its IPO registration statement and that subsequently ceases to be an EGC (because it meets one of the loss criteria described above) to continue to be treated as an EGC through the earlier of either of the following:

- ▶ The date on which the issuer consummates its IPO pursuant to the registration statement.
- ▶ The end of the one-year period beginning on the date the company ceases to be an EGC.

For example, an eligible EGC confidentially submits a Form S-1 for its IPO on 15 December 2021 and subsequently determines on 1 January 2022 that its annual revenues exceeded \$1.07 billion. This registrant would be allowed to retain its EGC filing status through the IPO in 2022. The registrant will file as a non-EGC if it would like to file a follow-on offering registration statement after the IPO is completed in 2022.

Once a registrant loses its EGC status upon or after consummation of its IPO, it cannot reclaim it (e.g., even if its annual revenues fall below \$1.07 billion).

In addition, evaluating EGC eligibility after a significant acquisition differs depending on whether the acquisition is accounted for as a forward or reverse acquisition under ASC 805. Refer to Section 10120.2 of the SEC Financial Reporting Manual for examples illustrating how the tests would be applied for forward and reverse acquisitions.

### ***Eligibility for other issuers***

FPIs are eligible to qualify as EGCs following the same criteria and considerations above. To determine an FPI's total annual gross revenues, the SEC staff has indicated that total revenues under US GAAP should be used for FPIs that reconcile their financial statements to US GAAP. For FPIs that present their financial statements under IFRS as issued by the International Accounting Standards Board, total revenue under IFRS should be used.

The SEC staff clarified that business development companies, a category of closed-end investment companies that are not required to register under the Investment Company Act of 1940, are eligible to qualify as EGCs. However, issuers of asset-backed securities under Regulation AB and investment companies registered under the Investment Company Act of 1940 are not eligible to be EGCs.

### **EGC status accommodations**

EGCs are exempt from certain requirements provided for by the JOBS Act. The scaled disclosures afforded to EGCs generally allow for temporary relief. An EGC is not required to follow all of the scaled disclosure provisions and may instead take an "à la carte" approach and decide to comply with some EGC-scaled disclosure requirements and other full SEC disclosure requirements, except for the transition period provision for new or amended accounting standards. For example, if an EGC decides to take advantage of the extended transition periods for new or revised accounting standards in the IPO registration statements, such election is irrevocable and applies to all new or revised accounting standards.

The scaled disclosures available to EGCs include:

- ▶ An EGC is not required to provide more than two years of audited financial statements in its IPO registration statement. However, an EGC that is not an SRC is required to provide three years of financial statements in its post-IPO annual reports.
- ▶ An EGC may provide scaled executive compensation disclosures in a manner consistent with an SRC and is not required to include a Compensation Discussion and Analysis.
- ▶ The JOBS Act defers the requirement to have the independent auditor assess an EGC's ICFR under Section 404(b) (although it must still comply with the Section 404(a) requirement that management assess its ICFR, generally beginning with the second annual report on Form 10-K).
- ▶ The JOBS Act exempts an EGC from adopting new or revised accounting standards following public company effective dates if private companies have a delayed effective date. Instead, the private company effective date will apply to an EGC that doesn't elect to follow public company effective dates (however, most standards would allow a company to elect to early adopt on the public company timeline if desired).

Additionally, an EGC's independent auditor is not required to disclose critical audit matters (CAMs) in its audit opinion.

### **Considerations when a registrant loses EGC status**

When a registrant loses its EGC status, it would be required to file its annual report for that year as a non-EGC and comply with the requirements of Section 404(b), unless it is a non-accelerated filer.

For example, if a calendar-year EGC exceeds \$1.07 billion in annual revenue in 2022, the EGC relief provisions would not apply to its 2022 Form 10-K. This means the registrant would have to comply with Section 404(b) in its 2022 Form 10-K unless it separately qualifies as a non-accelerated filer and is therefore exempt from Section 404(b) requirements under the filer status requirements.

Generally, if an EGC follows the extended transition provisions for private companies with respect to adopting new accounting standards and it loses its EGC status after it would have had to adopt a standard absent the extended transition, the issuer should adopt the standard in its next filing after losing EGC status.

For example, a calendar-year EGC completed its IPO in January 2020 and used the relief to defer adopting ASC 842, *Leases*, until the effective date for private companies (i.e., the annual period beginning on 1 January 2022 and interim periods within the annual period beginning on 1 January 2023 for calendar-year entities). The registrant lost its EGC status on 31 December 2021, either because it exceeded \$1.07 billion in annual revenues in 2021 or its public float as of 30 June 2021 (the last business day of its second quarter) exceeded \$700 million.

In this case, the registrant would be required to adopt the new leases standard in its 2021 Form 10-K (retroactively adopted on 1 January 2021) and begin to present subsequent interim and comparative financial information under ASC 842 (i.e., both Q1 2021 and 2022 interim financial information disclosed in Form 10-Q for the first quarter of 2022 would reflect the adoption of the standard). In addition, the registrant would also be required to provide selected quarterly financial data as described in Item 302(a) of Regulation S-K if there has been a material retrospective change (or changes that are material in the aggregate) affecting comprehensive income as a result of the adoption.

## Foreign private issuer

The SEC defines an FPI as any issuer that is incorporated or organized outside the US<sup>8</sup> and meets either of the following conditions:

- ▶ 50% or more of the outstanding voting securities are directly or indirectly owned of record by non-US residents (i.e., the shareholder test).
- ▶ All three of the following statements are true (i.e., the business contacts test):
  - ▶ The majority of the executive officers or directors are not US citizens or residents.
  - ▶ 50% or more of the issuer's assets are located outside the US.
  - ▶ The issuer's business is not administered principally in the US.

FPI status is therefore not determined solely by the country in which a company is incorporated. However, a company that is incorporated in a state, territory or possession of the US can never qualify as an FPI, regardless of the location of its shareholders, assets or management.

## Recurring annual determinations

An FPI must redetermine its FPI status annually on the last business day of its second fiscal quarter by applying the shareholder test and business contacts test, assuming it continues to be organized under the laws of a foreign country.

For example, if a calendar-year FPI that is incorporated under the laws of a foreign country determines on 30 June 2022 (the last business day of its 2022 second fiscal quarter) that non-US residents hold 50% or more of its outstanding voting securities (i.e., the shareholder test), the entity will continue to qualify as an FPI.

In this example, the entity is not required to assess the business contacts test. However, if the entity determines on 30 June 2022 that non-US residents hold less than 50% of its outstanding voting securities, it must consider the business contacts test. If any of the conditions set forth in the business contacts test are not true, the entity would no longer qualify as an FPI.

The redetermination of the FPI status and the application of the shareholder test and the business contacts test may involve judgment and legal interpretations and analysis. Registrants should consult with their legal counsel as needed.

A non-FPI registrant could also regain (or gain initially) FPI status if it meets the definition of an FPI on the redetermination date (i.e., the requirements for exiting or entering status as an FPI are the same).

### Implications of loss of FPI status

Once a reporting issuer fails to qualify for FPI status, in accordance with the shareholder or business contacts tests at its annual redetermination, it may choose to continue to file and furnish reports using forms and requirements applicable to FPIs through the end of the fiscal year, assuming the entity continues to be organized under the laws of a foreign country. However, beginning on the first day of the fiscal year following the redetermination date, the registrant must use the forms and follow the requirements prescribed for domestic registrants (e.g., Form 10-K instead of Form 20-F). Also, the registrant would no longer be eligible for any of the accommodations described in the section below starting on the first day of the fiscal year following the redetermination date.

For example, if a calendar-year registrant determines on 30 June 2022 that it no longer qualifies as an FPI, it would become subject to domestic reporting requirements on 1 January 2023. It would therefore file its annual report for the year ended 31 December 2022 on Form 10-K rather than Form 20-F and begin filing quarterly reports on Form 10-Q with the first calendar quarter of 2023 (i.e., 30 March 2023).

The due dates of the Forms 10-K and 10-Q would be based on the issuer's filer status (i.e., non-accelerated, accelerated or large accelerated filer) as a domestic filer, tested as of the redetermination date. (Refer to the filer status section above for more details).

In addition, the financial statements included in the Forms 10-K and 10-Q would be required to conform with US GAAP for all periods presented. The registrant would also be required to file reports on Form 8-K for events occurring on or after 1 January 2023.

If a reporting issuer is no longer incorporated or organized under the laws of any foreign country, its FPI status is terminated immediately, and the entity must immediately begin filing domestic reports. This determination would be made at the time of the change of the incorporation status and without regard to the redetermination test date referred to above.

### How we see it

FPIs should carefully monitor their FPI status because it may require significant effort for them to comply with domestic filer requirements (e.g., preparation of prior-year financial statements in accordance with US GAAP) if they lose their FPI status.

### FPI status accommodations

FPIs are afforded certain accommodations with respect to reporting and disclosure requirements. Some of the key differences between reporting and disclosures requirements for FPIs and those for domestic filers include the following:

- While financial statements required in annual reports filed with the SEC by an FPI are generally the same as for domestic issuers, an FPI files its statements with the SEC on a Form 20-F, which is due four months after its fiscal year-end regardless of filer status (i.e., non-accelerated, accelerated or large accelerated filer).

**FPIs should closely monitor their filing status to ensure they have sufficient time to prepare for SEC filing requirements as domestic filers if their status is lost.**

- ▶ An FPI is generally exempt from the interim reporting requirements of the Exchange Act. However, it may need to furnish interim statements on Form 6-K if the statements are distributed to stockholders or otherwise made public (e.g., by a national exchange or domestic laws)<sup>9</sup> or include (or incorporate by reference) interim financial statements in a registration statement. These interim financial statements are not required to be reviewed by the registrant's independent auditor. However, management of the issuer often requests its independent auditor to perform a review of the interim financial statements included in a registration statement.
- ▶ Although an FPI is not required to comply with the Form 8-K filing requirements applicable to domestic registrants, it is required to furnish certain information on Form 6-K (e.g., interim statements in the scenario discussed above) to the SEC. Such information includes material information that the FPI (1) makes or is required to make public pursuant to the law of its domicile, incorporation or organization, (2) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange, or (3) distributes or is required to distribute to its security holders.
- ▶ The acquisition of a significant business does not trigger an FPI to file financial statements of the acquired business under Rule 3-05 of Regulation S-X and Article 11 pro forma information on a Form 8-K. However, Rule 3-05 financials and related pro forma information are required in registration statements (e.g., Form F-1, Form F-3, Form F-4, and registration statements on Form 20-F).
- ▶ An FPI is eligible to include in its SEC filings financial statements presented in accordance with IFRS as issued by the International Accounting Standards Board without also presenting a reconciliation to US GAAP. An FPI that complies with another basis of reporting (e.g., home-country GAAP) is required to provide a reconciliation to US GAAP in SEC filings. With respect to the annual financial statements, the registrant's independent auditor must audit the reconciliation note.
- ▶ An FPI is eligible to prepare its financial statements in any currency that management believes is appropriate. However, Rule 3-20 of Regulation S-X requires an FPI to measure its operations using the currency of the primary economic environment in which the entity conducts its business. An FPI is also permitted to use a convenience translation (i.e., translation of the most recent fiscal year and the subsequent interim period included in the filing presented in US dollars using the exchange rate as of the most recent balance sheet date) when using a reporting currency other than the US dollar.
- ▶ FPIs are not required to provide executive compensation disclosures under Item 402 of Regulation S-K in annual and other SEC filings but should provide the information required by Form 20-F, for which disclosure requirements are less extensive than those under Item 402 of Regulation S-K. To the extent that an FPI discloses more extensive executive compensation information under home market requirements or voluntarily, such information must also be disclosed under Form 20-F.
- ▶ FPIs are exempt from the proxy rules under Rule 3a12-3(b) of the Exchange Act and the disclosure requirements of Regulation FD.

#### ***Interaction between FPI, SRC and EGC statuses***

An FPI can assess whether it meets the definition of an SRC (and apply the SRC accommodations) only if it elects to use the registration and reporting forms of a domestic company. In this case, it must apply the requirements of the domestic company forms. Refer to the section above for further discussion on SRC status.

Additionally, FPIs that separately qualify as EGCs may take advantage of applicable provisions of the JOBS Act to the same extent as US companies do. Refer to the section above for further discussion on EGC qualification.

#### **Other considerations**

Foreign audit firms whose audit reports on the financial statements of issuers included in SEC filings are required to be registered with the Public Company Accounting Oversight Board.

FPIs must obtain auditor attestation for ICFR under Section 404(b), unless it qualifies as an EGC or a non-accelerated filer exempted from Section 404(b).

In addition, the independent auditor of an FPI is required to disclose CAMs in its audit opinion, unless the FPI is also an EGC.

#### **Endnotes:**

- <sup>1</sup> A company filing an initial registration statement for shares of its common equity (Securities Act or Exchange Act) should determine its estimated public float as of a date within 30 days of the date the registration statement is filed and then finalize its public float calculation at the time the IPO is completed and the common share price at IPO is known.
- <sup>2</sup> Public float is determined by multiplying the aggregate number of voting and non-voting common shares held by non-affiliates by the price at which the common shares were last sold, or the average of the bid and asked prices, in the principal market for the registrant's common shares. Thus, the determination of public float is premised on the existence of a public trading market for the issuer's common equity securities. This is different than the definition of market capitalization, which is an amount equal to the total number of issued and outstanding shares of the issuer's common equity securities. Calculating a registrant's public float may involve judgment and legal interpretations and analysis, including determining affiliate status based on the facts and circumstances, registrants are recommended to consult with their legal counsel.
- <sup>3</sup> The Division of Corporation Finance Financial Reporting Manual is available at <http://www.sec.gov/divisions/corpfin/cffinancialreportingmanual.pdf>.
- <sup>4</sup> See our publication, *Proxy statements – An overview of the requirements*, for a more complete discussion of the disclosure requirements of Item 404 of Regulation S-K.
- <sup>5</sup> Refer to our To the Point, *SEC proposes enhancing and standardizing climate-related disclosures*, for additional guidance on this proposal.
- <sup>6</sup> The SEC adopted amendments to the accelerated filer and large accelerated filer definitions in April 2020. See Release No. 34-8865.
- <sup>7</sup> This excludes certain SRCs with annual revenue of less than \$100 million, which would qualify as non-accelerated filers.
- <sup>8</sup> Rule 405 under the Securities Act separately defines Foreign Issuer as an issuer which is a foreign government, a foreign national or a corporation or other organization that is incorporated or organized under the laws of any foreign country.
- <sup>9</sup> An NYSE listed foreign private issuer is required to submit a Form 6-K to the SEC containing semi-annual unaudited financial information no later than six months following the end of the company's second fiscal quarter. The Form 6-K must include an interim balance sheet as of the end of its second fiscal quarter, and a semi-annual income statement that covers its first two fiscal quarters.

## Appendix A – Form 10-K filing by an SRC

Form Item	Form 10-K instructions	Disclosure requirement	Scaling for SRCs
<b>Part I</b>			
Item 1	Business	S-K Item 101	Scaled
Item 1A	Risk factors	S-K Item 105	Not required
Item 1B	Unresolved staff comments	Material unresolved SEC staff comment letters received more than 180 days before the fiscal year-end	Required if SRC is accelerated filer
Item 2	Properties	S-K Item 102	Same as non-SRC
Item 3	Legal proceedings	S-K Item 103	Same as non-SRC
Item 4	Mine safety disclosures	S-K Item 104	Same as non-SRC
<b>Part II</b>			
Item 5	Market for registrant's common equity and related stockholder matters	S-K Item 201  S-K Item 701  S-K Item 703	Same as non-SRC except stock performance graph in Item 201(e)  Same as non-SRC  Same as non-SRC
Item 7	Management's discussion and analysis	S-K Item 303	Scaled
Item 7A	Quantitative and qualitative disclosures about market risk	S-K Item 305	Not required
Item 8	Financial statements  Supplementary financial information	S-X Rules 3-01 through 3-04  S-X Articles 4 and 5  S-X Article 7 if the registrant is an insurance company or Article 9 if it's a bank holding company  S-K Item 302	Scaled in Article 8 of Regulation S-X  Not required
Item 9	Changes in and disagreements with accountants on accounting and financial disclosure	S-K Item 304(b)	Same as non-SRC
Item 9A	Controls and procedures	S-K Items 307 and 308	Same as non-SRC  An SRC is required to include an audit report on its ICFR only if it is also an accelerated filer
Item 9B	Other information	Any information required to be disclosed on Form 8-K during the quarter but not reported	Same as non-SRC
Item 9C	Disclosure Regarding Foreign Jurisdictions that Prevent Inspections	Holding Foreign Companies Accountable Act (HFCAA) disclosure	Same as non-SRC

Form Item	Form 10-K instructions	Disclosure requirement	Scaling for SRCs
<b>Part III</b>			
Item 10	Directors, executive officers and corporate governance	S-K Items 401, 405, 406 and 407(c)(3), (d)(4) and (d)(5)	Scaled corporate governance disclosures under Item 407
Item 11	Executive compensation	S-K Items 402 and 407(e)(4) and (e)(5)	Scaled executive compensation disclosures under Item 402
Item 12	Security ownership	S-K Items 201(d) and 403	Same as non-SRC
Item 13	Certain relationships and related transactions, and director independence	S-K Items 407(a) and 404(c) S-K Items 404(a) and (d) S-K Item 404(b)	Same as non-SRC Expanded for SRCs Not required
Item 14	Principal accountant fees and services	Item 9(e) of Schedule 14A	Same as non-SRC
<b>Part IV</b>			
Item 15	Exhibits Financial statement schedules	S-K Item 601 Exhibits S-X Article 12 Financial Statement Schedules	Same as non-SRCs Not required
Item 16	Form 10-K summary	Optional	Optional

## Appendix B – Form 10-Q filing by an SRC

Form item	Form 10-Q instructions	Disclosure requirement	Scaling for SRCs
<b>Part I</b>			
Item 1	Financial statements	S-X Rule 10-01	Scaled in Article 8-03 of Regulation S-X
Item 2	Management's discussion and analysis	S-K Item 303(b)	Same as non-SRCs
Item 3	Quantitative and qualitative disclosures about market risk	S-K Item 305	Not required
Item 4	Controls and procedures	S-K Item 307 S-K Item 308(c)	Same as non-SRCs
<b>Part II</b>			
Item 1	Legal proceedings	S-K Item 103	Same as non-SRCs
Item 1A	Risk factors	Material changes in risk factors since those disclosed in last 10-K	Not required
Item 2	Unrestricted sales of equity securities and use of proceeds	S-K Item 701 if not previously included in a Form 8-K S-K Item 703	Same as non-SRCs Same as non- SRCs
Item 3	Defaults upon senior securities	Disclose if not previously included in a Form 8-K	Same as non-SRCs
Item 4	Mine safety disclosures	S-K Item 104	Same as non-SRCs
Item 5	Other information	Any information required to be disclosed on Form 8-K during the quarter but not reported  S-K Item 407(c)(3) changes to procedures to nominate members of the board of directors	Same as non-SRCs Same as non-SRCs
Item 6	Exhibits	S-K Item 601	Same as non-SRCs

## Appendix C – Transition between accelerated and smaller reporting company status categories and requirement for auditor attestation on ICFR

Prior status	Initial public float	Initial annual revenue	Required to obtain auditor attestation on ICFR?	Enter/exit ICFR attestation requirement if:
<b>SRC and non-accelerated filer</b>	Less than \$75 million	Less than \$100 million	No	The issuer's (1) public float increases to \$700 million or more (making it a large accelerated filer,) or (2) public float increases to \$75 million but less than \$700 million and revenue increases to \$100 million or more (making it an accelerated filer).
<b>SRC and non-accelerated filer</b>	Less than \$75 million	\$100 million or more	No	The issuer's (1) public float increases to \$700 million or more (making it a large accelerated filer,) or (2) public float increases to \$75 million but less than \$700 million (making it an accelerated filer), unless revenue decreases to less than \$100 million (in which case it remains an SRC and non-accelerated filer).
<b>SRC and non-accelerated filer</b>	\$75 million or more, but less than \$700 million	Less than \$100 million	No	The issuer's (1) public float increases to \$700 million or more (making it a large accelerated filer,) or (2) revenue increases to \$100 million or more (making it an accelerated filer), unless public float also decreases to less than \$75 million (in which case it remains an SRC and non-accelerated filer).
<b>SRC and accelerated filer</b>	\$75 million to less than \$250 million	\$100 million or more	Yes	The issuer's (1) public float decreases to less than \$60 million (making it a non-accelerated filer and an SRC,) or (2) revenue decreases to less than \$100 million (making it a non-accelerated filer and an SRC), unless public float also increases to \$700 million or more (in which case it becomes a large accelerated filer).
<b>Accelerated filer</b>	\$250 million to less than \$700 million	\$100 million or more	Yes	The issuer's (1) public float decreases to less than \$60 million (making it an SRC and non-accelerated filer,) or (2) revenue decreases to less than \$80 million (making it an SRC and non-accelerated filer), unless public float also increases to \$700 million or more (in which case it becomes a large accelerated filer).
<b>Large accelerated filer</b>	\$700 million and greater	Less than \$100 million	Yes	The issuer's (1) public float decreases to less than \$60 million (making it an SRC and non-accelerated filer,) or (2) public float decreases to between \$60 million and less than \$560 million and revenue remains below \$100 million (making it an SRC and non-accelerated filer).
<b>Large accelerated filer</b>	\$700 million and greater	\$100 million or more	Yes	The issuer's (1) public float decreases to less than \$60 million (making it an SRC and non-accelerated filer,) or (2) public float decreases to between \$60 million and less than \$560 million and revenue decreases to less than \$80 million (making it an SRC and non-accelerated filer).