

**Changeover to the SEC’s New Smaller Reporting Company System  
by  
Small Business Issuers and Non-Accelerated Filer Companies  
A Small Entity Compliance Guide \***

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**INTRODUCTION**

The Securities and Exchange Commission has adopted a new system of disclosure rules for smaller companies filing periodic reports and registration statements with the SEC. The new rules are effective February 4, 2008. They are scaled to reflect the characteristics and needs of smaller companies and their investors. They replace the disclosure requirements formerly in the SEC’s Regulation S-B, which applied to “small business issuers.” The new rules are available to all “smaller reporting companies,” a larger group of smaller companies.

- This compliance guide explains how current small business issuers and other smaller companies newly eligible to use the SEC’s scaled disclosure rules, primarily “non-accelerated filer” companies, can make the changeover to the new rules with minimal effort and expense.

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\* This guide was prepared by the staff of the U.S. Securities and Exchange Commission as a “small entity compliance guide” under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended. The guide summarizes and explains rules adopted by the SEC, but is not a substitute for any rule itself. Only the rule itself can provide complete and definitive information regarding its requirements.

- To review the changes made by the new rules in detail, you may view the SEC's release adopting the new rules at <http://www.sec.gov/rules/final.shtml>. The release is entitled "Smaller Reporting Company Regulatory Relief and Simplification," Release No. 33-8876 (Dec. 19, 2007).
- You also may contact a staff attorney in the SEC's Office of Small Business Policy at (202) 551-3460 to discuss any questions you may have regarding the rule changes.
- All companies qualifying as "smaller reporting companies" under the new rules will be required to check the "Smaller Reporting Company" box on the cover page of most filings made with the SEC under the new rules. The checkbox requirement applies whether or not a company chooses to take advantage of the scaled disclosure requirements.

The "smaller reporting company" category includes companies that qualified as "small business issuers" before the new rules, as well as most companies that qualify as "non-accelerated filers." In general, companies that enter the system with less than \$75 million in common equity public float qualify as smaller reporting companies. Companies unable to calculate the public float typically qualify if they have less than \$50 million in annual revenues upon entering the system.

Under the new system, smaller reporting companies will prepare and file their SEC reports and registration statements using the same forms as other SEC reporting companies, though the information required to be disclosed may differ. Eventually, there will be no special "small business" forms like Forms 10-KSB and SB-2. Instead, smaller reporting companies will use standard forms like Forms 10-K and S-1 used by other companies. Regulation S-X contains the SEC requirements for financial statements, while Regulation S-K contains the non-financial disclosure requirements. To locate the scaled disclosure requirements, smaller reporting companies will refer to the special paragraphs labeled "smaller reporting companies" in Regulation S-K.

## **1. QUALIFYING AS A "SMALLER REPORTING COMPANY"**

Under the new rules, companies qualify as "smaller reporting companies," and therefore for scaled disclosure, if they (1) have a common equity public float of less than \$75 million or (2) are unable to calculate their public float and have annual revenue of \$50 million or less, upon entering the system. These standards differ from the standards that governed eligibility for the SEC's former small company disclosure requirements, which were available to "small business issuers." To qualify as a small business issuer, a company needed to have (1) less than \$25 million in public float and (2) less than \$25

million in annual revenue. Because of the more generous standards, many more companies qualify for scaled disclosure under the new rules.

**When and how does a company calculate its public float?**

All companies calculate their public float as of the last business day of their second fiscal quarter. Most SEC reporting companies already calculate this number to determine whether they need to file annual and quarterly reports with the SEC as “accelerated filers.” You calculate public float the same way you already do for purposes of answering the item on the Form 10-KSB or Form 10-K cover page that requires stating the aggregate market value of the voting and non-voting common equity held by non-affiliates.

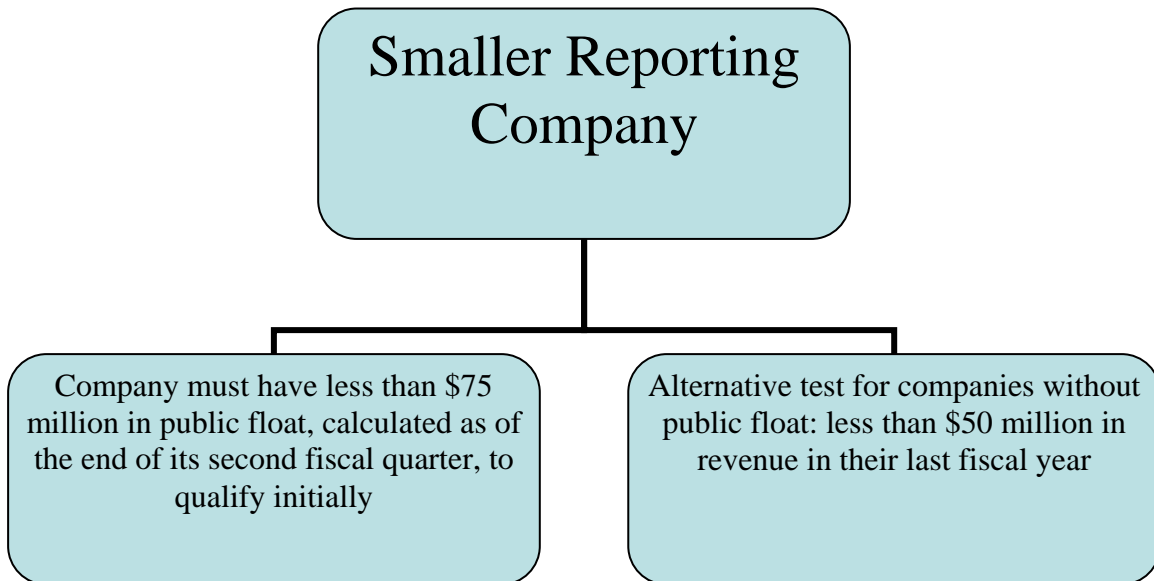
**Can foreign companies qualify as smaller reporting companies?**

Yes. The new rules permit foreign companies to qualify as smaller reporting companies if they use domestic forms (instead of the special “F” forms for foreign private issuers) and if they prepare their financial statements in accordance with United States Generally Accepted Accounting Principles (U.S. GAAP). Previously, the only foreign companies permitted to use SEC scaled disclosure requirements were Canadian companies.

**What types of companies are excluded from qualifying as smaller reporting companies?**

The new rules continue to exclude investment companies, including business development companies, and asset-backed issuers from eligibility for scaled treatment.

The following diagram may help you remember how the new standards work.



## 2. COMPLIANCE DATE GUIDANCE FOR CURRENT SMALL BUSINESS ISSUERS

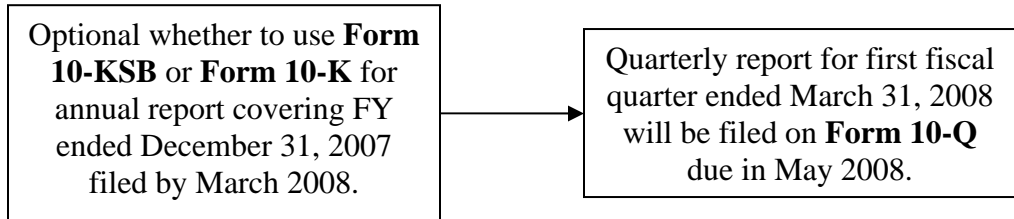
In the past, small business issuers filed their registration statements and periodic reports using SEC forms designated with the letters “SB.” Under the new rules, all companies, large and small, will file on the standard Securities Act and Securities Exchange Act forms. These forms are similar to the “SB” forms. Using the standard forms is not expected to increase burdens for small business issuers.

### **When are companies required to stop filing annual and quarterly reports on Form 10-KSB and 10-QSB and use Form 10-K and 10-Q instead?**

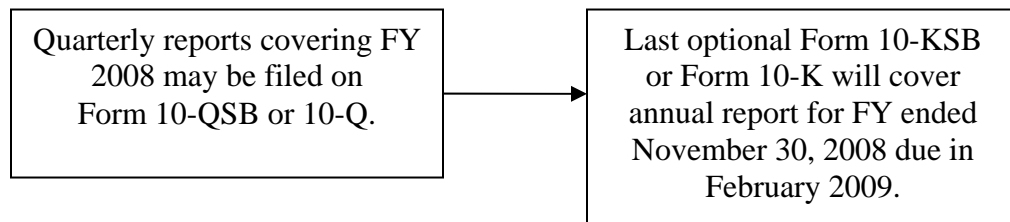
You have a choice. Small business issuers will have the option to file **their next annual report for a fiscal year ending after December 15, 2007** on Form 10-KSB or the standard Form 10-K. Any quarterly reports due before this annual report may be filed on Form 10-QSB or Form 10-Q. After the next annual report, all future annual and quarterly reports must be on the standard forms instead of the “SB” forms. This means that the date a small business issuer will be required to file on standard forms depends on its particular fiscal year end.

## Examples

1. A small business issuer with a **December 31, 2007 fiscal year end** has the option of filing its 2007 annual report on either Form 10-KSB or Form 10-K when it files with the Commission by March 2008. Forms 10-QSB and 10-KSB will be unavailable to the company for reporting periods after December 31, 2007.



2. A small business issuer with a **November 30, 2008 fiscal year end** could file its 2008 quarterly reports on Form 10-QSB or Form 10-Q. Its 2008 annual report due in February 2009 could be filed using either Form 10-K or Form 10-KSB. Reports due after February 2009 must be filed on standard forms.



### **3. TRANSITION TO NON-SB FORMS – GUIDANCE FOR CURRENT SMALL BUSINESS ISSUERS**

#### **Using Forms 10-K and 10-Q as a Smaller Reporting Company**

If you currently are reporting as a small business issuer and are using the “SB” forms, you may have questions on what you will need to do differently when you file your first Form 10-K or Form 10-Q or a Form S-1.

#### **Current Small Business Issuers’ Transition to Form 10-K**

Current small business issuers will notice few differences when they prepare their first standard Form 10-K to comply with the new rules. A minor difference is that the item requirement numbering is different on the two forms in some instances. For example, the Executive Compensation form item requirement appears as Item 10 of Form 10-KSB, while on Form 10-K Executive Compensation appears as Item 11. The principal

differences these companies may notice on Form 10-K are that current small business issuers will:

- no longer be required to state revenues for the most recent fiscal year on the cover page;
- no longer be required to state their public float as of a specified date within the past 60 days; instead the public float noted on the cover page of the Form 10-K is calculated as of the last business day of the company's most recently completed second fiscal quarter;
- be able to choose to comply with the smaller reporting company scaled item requirements or larger company item requirements (except Item 404) in Regulation S-K on an item-by-item basis;
- be required to check a box on the cover page of the filing indicating their status as smaller reporting company; and
- if they are a Canadian small business issuer, now be required to present financial statements in accordance with U.S. GAAP.

### **Small Business Issuers' Transition to Form 10-Q**

Most of the Form 10-QSB item requirements track the Form 10-Q item requirements exactly. In some cases the item requirement numbering differs between the "SB" and standard forms. For example, Items 3 and 3A(T) of Form 10-QSB appear in Items 4 and 4(T) of Form 10-Q.

### **Small Business Issuers with Pending Registration Statements on Form SB-2 or SB-1**

**Our company filed a registration statement on Form SB-2 before the new rules became effective and plans to file a pre- or post-effective amendment after February 4, 2008, the effective date of the new rules. Does the company have to file the amendment on a form such as Form S-1 or S-3?**

Yes, if you filed a registration statement on Form SB-2 or SB-1 before February 4, 2008 and file an amendment to that filing on or after that date, you need to:

- File the amendment on a form such as Form S-1 or S-3, depending on your eligibility for the particular form; and
- Elect whether to keep the Form SB-2 disclosure format in the amendment for up to six months after the effective date of the new rules, August 4, 2008.

If you do not file a pre-effective amendment to the Form SB-2 registration statement, it may be declared effective by the SEC

staff after the effective date of the new rules without the need to file an amendment to transition to a non “SB” Securities Act form.

**Example**

If you filed a Form SB-2 registration statement on November 15, 2007 and filed a pre-effective amendment to that filing on or after February 4, 2008, you would be required to file your amendment as a Form S-1/A filing, the “A” signifying an amendment on Form S-1. At your option, you would be able to retain the disclosure format of Form SB-2 in the Form S-1/A until August 4, 2008.

**Small Business Issuers Filing New Securities Act Registration Statements**

**Our company reports as a small business issuer but is preparing to file a Securities Act registration statement after the effective date of the new rules. What will the company need to do now that Forms SB-2 and SB-1 are no longer available for Securities Act registration statements?**

Most companies that formerly filed on Form SB-2 for securities offerings will use Form S-1. The following chart matches the Form SB-2 item requirements with those of Form S-1. Note that Items 1 to 8 of Form SB-2 are identical to Items 1 to 8 of Form S-1.

<b>Form SB-2</b>	<b>Form S-1</b>
Item 9 (Item 103-Legal Proceedings)	Item 11(c)
Item 10 (Directors, Executive Officers, Promoters and Control Persons)	Item 11(k)
Item 11 (Security Ownership of Certain Beneficial Owners and Management)	Item 11(m)
Item 12 (Description of Securities)	Item 9
Item 13 (Interest of Named Experts and Counsel)	Item 10
Item 14 (Disclosure of Commission Position of Indemnification for Securities Act Liabilities)	Item 12A
Item 15 (Organization within Last Five Years)	Item 11(n)
Item 16 (Description of Business)	Item 11(a)
Item 17 (Management's Discussion and Analysis or Plan of Operation)	Item 11(h)
Item 18 (Description of Property)	Item 11(b)
Item 19 (Certain Relationships and Related Transactions)	Item 11(n)
Item 20 (Market for Common Equity and Related Stockholder Matters)	Item 11(d)
Item 21 (Executive Compensation)	Item 11(l)
Item 22 (Financial Statements)	Item 16
Item 23 (Changes in Disagreements With Accountants on Accounting and Financial Disclosure)	Item 11(i)
Item 24 (Indemnification of Directors and Officers)	Item 14
Item 25 (Other Expenses and Issuance and Distribution)	Item 13
Item 26 (Recent Sales of Unregistered Securities)	Item 15
Item 27 (Exhibits)	Item 16
Item 28 (Undertakings)	Item 17

#### **4. GUIDANCE FOR NEWLY ELIGIBLE SMALLER REPORTING COMPANIES**

Reporting companies that were not small business issuers before the effective date of the new rules need to determine whether they qualify as smaller reporting companies now. They may do so by calculating their public float as of the last business day of their most recently completed second fiscal quarter or, for companies unable to calculate their public float, checking their annual revenue for the fiscal year before the calculation date.



If a company qualifies, it is required to check the smaller reporting company box on the cover of any registration statement or periodic report it files with the SEC. Smaller reporting companies will maintain that status until the year after the next calculation date.

**Our company is planning to file a registration statement for an initial public offering. How do we calculate the company's public float?**

A non-reporting company calculates public float based on three components:

- its bona fide estimated offering price per share at the time of filing the registration statement;
- the number of shares of common stock outstanding that are held by non-affiliates before the offering; and
- the number of shares of common stock to be sold at the estimated offering price.

**Example**

A company registers 7,000,000 shares in its initial public offering and has 25,000,000 shares of common stock outstanding held by non-affiliates before the offering.

$$7,000,000 + 25,000,000 = 32,000,000 \text{ shares of common stock}$$

$$32,000,000 \times \text{offering price per share} = \text{IPO public float}$$

Multiply 32,000,000 shares by the estimated offering price per share in the initial public offering. If the total is less than \$75 million, then the company qualifies to file the registration statement as a smaller reporting company.

**What happens if a company files its IPO registration statement, calculates its public float, and does not qualify as a smaller reporting company but, after the original filing, the offering price and number of shares being offered decreases such that it would qualify as a smaller reporting company? If the company provided the larger company disclosure at the time of filing the IPO registration statement, but it turns out the company qualifies as a smaller reporting company, can it change its disclosure to comply with the scaled disclosure requirements?**

The company may recalculate its public float at the time it completes the initial public offering to determine whether it then qualifies for scaled disclosure reporting in periodic reports due after the initial public offering registration statement. But the company is not required to do so.

A **smaller reporting company** that is no longer eligible for scaled disclosure will no longer be permitted to file registration statements or periodic reports using scaled disclosure. This company may finish reporting as a smaller reporting company for the rest of the fiscal year, including in its annual report on Form 10-K. The company must provide the standard non-scaled disclosure in the first quarterly report for the new fiscal year following the eligibility determination date.

A **reporting company that newly qualifies as a smaller reporting company** is permitted to provide scaled disclosure as soon as it wishes to do so — even in the next quarterly report on Form 10-Q it files covering the second fiscal quarter in which the company made its new eligibility determination.

A reporting **company without a calculable public float** determines its eligibility as a smaller reporting company based on its annual revenues in the most recent fiscal year completed before the last business day of the second fiscal quarter. This company also is permitted to provide scaled disclosure as soon as it wishes to do so — even in the next Form 10-Q it files after that date.

**For purposes of public float, our company was considered a larger company, but when we calculated the company’s public float on the last business day of the second fiscal quarter, the company became eligible to be a smaller reporting company. When is the company permitted to start filing scaled disclosure?**

The company may start providing scaled disclosure in the quarterly report on Form 10-Q that covers the second fiscal quarter of the public float determination date.

### **Example**

A larger reporting company with a fiscal year end of December 31, 2008 that qualified to be a smaller reporting company as of the last business day of June 2008 would be permitted to provide scaled disclosure beginning with the quarterly report on Form 10-Q for the fiscal quarter ended June 30, 2008, which would be due in August 2008.

**Our company is a smaller reporting company, but when we calculated our public float as of the last day of the second fiscal quarter, we discovered we no longer qualified as a smaller reporting company. When does the company start filing disclosure based on the non-scaled Regulation S-K item requirements?**

The company needs to begin providing non-scaled, larger company disclosure in the quarterly report for the first fiscal quarter following the fiscal year of the public float determination date.

**Example**

On the last business day of its second fiscal quarter in 2008, a smaller reporting company with a fiscal year end of December 31, 2008 determined that its public float exceeded \$75 million as of the end of that day. This company is required to transition out of the scaled disclosure system into the larger company disclosure system by the time it files its quarterly report on Form 10-Q covering the first fiscal quarter of fiscal year 2009, which would be due in May 2009.

**5. CHART OF SCALED DISCLOSURE REQUIREMENTS AVAILABLE TO SMALLER REPORTING COMPANIES**

Smaller reporting companies may choose to comply with scaled or non-scaled financial and non-financial item requirements on an item-by-item basis in any one filing. Where the smaller reporting company requirement is more rigorous, however, the company must meet the more rigorous standard. Currently, the smaller reporting company requirements under Item 404 of Regulation S-K are the only place where the scaled requirements can be more rigorous than the larger company standard.

***Table of Regulation S-K Items Containing Scaled Disclosure Provisions Applicable to Smaller Reporting Companies***

<b>Item 101</b>	Description of business
<b>Item 201</b>	Market price of and dividends on registrant's common equity and related stockholder matters
<b>Item 301</b>	Selected financial data
<b>Item 302</b>	Supplementary financial information
<b>Item 303</b>	Management's discussion and analysis of financial condition and results of operations
<b>Item 305</b>	Quantitative and qualitative disclosures about market risk
<b>Item 402</b>	Executive compensation
<b>Item 404</b>	Transactions with related persons, promoters and certain control persons
<b>Item 407</b>	Corporate governance
<b>Item 503</b>	Prospectus summary, risk factors, and ratio of earnings to fixed charges
<b>Item 504</b>	Use of proceeds
<b>Item 601</b>	Exhibits

**Risk Factor Disclosure in Filings on Exchange Act Forms.** Smaller reporting companies are not required to provide risk factor disclosure in Forms 10, 10-K and 10-Q.

**Financial Statement Requirements.** Smaller reporting companies will refer to new Article 8 of Regulation S-X, which replaces Item 310 of Regulation S-B, for their financial statement requirements. The new rules require smaller reporting companies to provide two years of comparative audited balance sheet data in annual financial statements, rather than the one year that was previously required under Regulation S-B.