

[Section 102. Item 10—General, Securities and Exchange Commission](#)

SEC Compliance and Disclosure Interpretations

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¶8002 [Smaller Reporting Company; Accelerated Filer Status]

Question 102.01

Question: Could a company with a fiscal year ended December 31, 2007 be both a "smaller reporting company," as defined in [Item 10\(f\)](#), and an "accelerated filer," as defined in [Rule 12b-2](#) under the Exchange Act, for filings due in 2008, if it was an accelerated filer with respect to filings due in 2007 and had a public float of \$60 million on the last business day of its second fiscal quarter of 2007?

Answer: Yes. A company must look to the definitions of "smaller reporting company" and "accelerated filer" to determine if it qualifies as a smaller reporting company and non-accelerated filer for each year. This company will qualify as a smaller reporting company for filings due in 2008 because fiscal year 2007 is the initial determination year for the company to qualify for smaller reporting company status, and it had less than \$75 million in public float on the last business day of its second fiscal quarter. However, since the company was an accelerated filer with respect to filings due in 2007, it is required to have less than \$50 million in public float on the last business day of its second fiscal quarter in 2007 to exit accelerated filer status in 2008, as provided in paragraph (3)(ii) of the definition of "accelerated filer" in [Rule 12b-2](#). This company had a public float of \$60 million on the last business day of its second fiscal quarter of 2007, and therefore is unable to transition to non-accelerated filer status. As this example illustrates, due to the application of the transition rules for accelerated filers, a company can be both an accelerated filer and a smaller reporting company at the same time. Such a company may use the scaled disclosure rules for smaller reporting companies in its annual report on [Form 10-K](#), but the report is due 75 days after the end of its fiscal year and must include the [Sarbanes-Oxley Section 404](#) auditor attestation report described in [Item 308\(b\) of Regulation S-K](#).

Reference: [Item 10 of Regulation S-K](#)

History: Issued March 2008; modified July 3, 2008.

¶8003 [Change of Status]

Question 102.02

Question: Will a company that does not qualify as a smaller reporting company for filings due in a particular year be able to qualify as a smaller reporting company if its public float falls below \$75 million at the end of its second fiscal quarter in a future fiscal year?

Answer: Any reporting company that can calculate its public float and did not qualify as a smaller reporting company previously will not qualify as a smaller reporting company in the future unless its public float falls below \$50 million on the last business day of its second fiscal quarter. This is provided for in [Item 10\(f\)\(2\)\(iii\)](#) of Regulation S-K and follows the rule for exiting accelerated filer status in [Rule 12b-2](#) under the Exchange Act. Companies that cannot calculate their public float would need to fall below \$40 million in annual revenues to qualify as smaller reporting companies in the future.

Reference: [Item 10 of Regulation S-K](#)

History: Issued March 2008; modified July 3, 2008.

¶8004 [Parent and Subsidiary]

Question 102.03

Question: Under the definition of "smaller reporting company" in [Item 10\(f\)](#) of Regulation S-K, does the corporate parent of a majority-owned subsidiary have to satisfy the public float or revenue requirements of the definition in order for the majority-owned subsidiary to qualify as a smaller reporting company?

Answer: Yes, the definition of "smaller reporting company" excludes a majority-owned subsidiary if its corporate parent does not also meet the requirements of a smaller reporting company.

Reference: [Item 10 of Regulation S-K](#)

History: Issued July 3, 2008.

¶8005 [Parent and Subsidiary]

Question 102.04

Question: Under the definition of "smaller reporting company" in [Item 10\(f\)](#) of Regulation S-K, must the corporate parent of a majority-owned subsidiary be required to file reports under [Section 13\(a\)](#) or [Section 15\(d\)](#) of the Exchange Act in order for the majority-owned subsidiary to qualify as a smaller reporting company?

Answer: No.

Reference: [Item 10 of Regulation S-K](#)

History: Issued July 3, 2008.

¶8005A [Non-GAAP Information]

Question 102.05

Question: A registrant discloses a financial measure or information that is not in accordance with GAAP or calculated exclusively from amounts presented in accordance with GAAP. In some circumstances, this financial information may have been prepared in accordance with guidance published by a government, governmental authority or self-regulatory organization that is applicable to the registrant, although the information is not required disclosure by the government, governmental authority or self-regulatory organization. Is this information considered to be a "non-GAAP financial measure" for purposes of [Regulation G](#) and [Item 10](#) of Regulation S-K?

Answer: Yes. Unless this information is *required* to be disclosed by a system of regulation that is applicable to the registrant, it is considered to be a "non-GAAP financial measure" under [Regulation G](#) and [Item 10 of Regulation S-K](#). Registrants that disclose such information must provide the disclosures required by [Regulation G](#) or [Item 10 of Regulation S-K](#), if applicable, including the quantitative reconciliation from the non-GAAP financial measure to the most comparable measure calculated in accordance with GAAP. This reconciliation should be in sufficient detail to allow a reader to understand the nature of the reconciling items.

Reference: [Item 10 of Regulation S-K](#)

History: Issued April 2009.