## Form 10-K Annual Reports by Type of Filer
**FY 2010 (10/1/2009-9/30/2010)**

<table>
<thead>
<tr>
<th>Type of Filer</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smaller Reporting Companies</td>
<td>4,353</td>
<td>48%</td>
</tr>
<tr>
<td>Non-Accelerated Filers</td>
<td>1,184</td>
<td>13%</td>
</tr>
<tr>
<td>Accelerated Filers</td>
<td>1,800</td>
<td>20%</td>
</tr>
<tr>
<td>Large Accelerated Filers</td>
<td>1,479</td>
<td>17%</td>
</tr>
<tr>
<td>Other</td>
<td>98</td>
<td>1%</td>
</tr>
<tr>
<td><strong>Total</strong>*</td>
<td><strong>8,914</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

*Excludes foreign private issuers, registered investment companies, registered employee benefit plans and ABS issuers. Source: Gerry LaPorte, Chief of SEC Office of Small Business Policy, 11/19/10.*
Smaller Reporting Company Rules – History and Purpose

- Proposed and adopted in 2007
- Objectives:
  - Broader coverage (up to $75 million public float)
  - Consolidate small business issuers with non-accelerated filers
  - Regulatory simplification (eliminate Reg. S-B)
  - Reduce compliance costs
  - Introduce concept of scaled disclosure
Smaller Reporting Company Definition

- **How small?** (Rule 12b-2 and Reg. S-K, Item 10(f))
  - For reporting company, less than $75 million in public float, **or**
  - For IPO, as of a date within 30 days of the registration statement filing date:
    - (shares held by nonaffiliates + shares being offered) \( \times \) estimated IPO price < $75 million
  - If no public float, then less than $50 million in annual revenues in most recent audited financials

- **Any other requirements?**
  - Not an investment company
  - Not an asset-backed issuer
  - Not a majority-owned subsidiary of a company that is not a smaller reporting company
Entering and Exiting

- Measure public float annually, on the last trading day of the second fiscal quarter
- Eligible to use smaller reporting company disclosure rules for the next fiscal year (starting with the Form 10-Q for the first quarter of the next fiscal year)
- Check the “smaller reporting company” box on the cover of the Form 10-Q for the first quarter of the next fiscal year, or “early adopt” – start using the smaller reporting company rules in the next Form 10-Q – for the second quarter of the year.
- Check the “smaller reporting company” box on the cover of that Form 10-Q
Entering and Exiting (cont’d)

- Once company has reported as a smaller reporting company, **if it disqualifies** based on the test at the end of Q2, it can wait until Q1 of the next fiscal year to switch to regular reporting.

- If company is a smaller reporting company once, then disqualifies, **how does it become one again?**
  - More stringent tests for returning:
    - Must have a public float of < $50 million, **or**
    - If no public float, then revenues of <$40 million
Benefits of Smaller Reporting Company Status

- **Less detailed disclosure requirements**
  - Some S-K items have less onerous disclosure requirements for smaller reporting companies
  - Some S-K items do not apply to smaller reporting companies
  - See chart in Reg. S-K, Item 10(f) – next slide
  - Form 10-K, Item 1A. “Risk Factors” not required

- **Is it all or none?**
  - No; “a la carte”

- **Non-accelerated filers exempted from SOX Section 404(b) by Dodd-Frank Act**
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 101</td>
<td>Description of business</td>
</tr>
<tr>
<td>Item 201</td>
<td>Market price of and dividends on registrant’s common equity and related stockholder matters</td>
</tr>
<tr>
<td>Item 301</td>
<td>Selected financial data</td>
</tr>
<tr>
<td>Item 302</td>
<td>Supplementary financial information</td>
</tr>
<tr>
<td>Item 303</td>
<td>Management’s discussion and analysis of financial conditions and results of operations</td>
</tr>
<tr>
<td>Item 305</td>
<td>Quantitative and qualitative disclosures about market risk</td>
</tr>
<tr>
<td>Item 402</td>
<td>Executive compensation</td>
</tr>
<tr>
<td>Item 404</td>
<td>Transactions with related persons, promoters and certain control persons</td>
</tr>
<tr>
<td>Item 407</td>
<td>Corporate governance</td>
</tr>
<tr>
<td>Item 503</td>
<td>Prospectus summary, risk factors, and ratio of earnings to fixed charges</td>
</tr>
<tr>
<td>Item 504</td>
<td>Use of proceeds</td>
</tr>
<tr>
<td>Item 601</td>
<td>Exhibits</td>
</tr>
</tbody>
</table>
Modified Reg. S-K and S-X Items

- **Executive compensation disclosures**
  
  \( \text{(Reg. S-K, Item 402)} \)
  
  - No CD&A is required
  - Fewer named executive officers
    - Only CEO and two next most highly compensated executive officers
    - Plus up to two former executive officers
  - Two years (instead of three) in summary compensation table
  - Abbreviated post-termination compensation information
    - No numerical amounts required
  - No disclosures re: compensation policies and practices as they relate to risk management \((\text{Item 402}(s))\)
  - Tables **not** required:
    - Grants of Plan-Based Awards
    - Option Exercises and Stock Vested
    - Pension Benefits
    - Nonqualified Deferred Compensation
Modified Reg. S-K and S-X Items (cont’d)

- **Financial Statements**
  - Not “regular” Reg. S-X; use Article 8 of Reg. S-X
  - Must still be U.S. GAAP
  - Time periods for audited financial statements
    - Two years income statement
    - Two years balance sheet
    - Two years cash flows
    - Two years changes in stockholders’ equity

- **MD&A** *(Reg. S-K, Item 303)*
  - Comparison of two years (not three)
  - No five-year contractual obligations table
Modified Reg. S-K and S-X Items (cont’d)

- **Item 404 – Transactions with Related Persons, Promoters and Certain Control Persons**
  - Provide 404(a) information based on transaction threshold equal to the lesser of $120,000 or 1% of the average total assets at fiscal yearend
  - No need to provide 404(b) disclosure about review, approval and ratification of related person transactions
  - Provide promoters and certain control persons disclosure under 404(c), and provide list of parents, basis of control, and percentage ownership
  - Provide related person transaction information for each of the last two fiscal years
Modified Reg. S-K and S-X Items (cont’d)

- **Other Modified S-K Items**
  - **Item 101** – *Description of Business*
    - Three-year look back for description of business
  - **Item 201** – *Market Price of and Dividends on the Registrants’ Equity and Related Stockholder Matters*
    - No performance graph required

- **S-K Items not required at all for SRCs**
  - **Item 301** – *Selected Financial Data* (5-year data)
  - **Item 302** – *Supplementary Financial Data* (Quarterly data)
  - **Item 305** – *Quantitative and Qualitative Disclosures about Market Risk* (Derivatives disclosures)
  - **Item 407(e)(4) and (5)** – Compensation Committee interlocks, Compensation Committee report
Scaled Disclosures – an *a la carte* approach

- May choose among the scaled disclosure for smaller reporting company and the larger company disclosure requirements on an item-by-item basis – essentially just voluntary reporting
- Must always comply with smaller reporting company item requirements if more rigorous
  - e.g., S-K Item 404
- No requirement to indicate whether complying with scaled disclosure requirements, requirements applicable to larger public companies, or a combination
Scaled Disclosures – an *a la carte* approach  
*(cont’d)*

- If company qualifies, it must check the box on the cover of its periodic reports indicating its status, whether or not it uses the scaled disclosure requirements
- Exchange Act Rule 12b-20 and anti-fraud considerations
Expanded Form S-3 Eligibility

- Form S-3 or Form F-3 is available for primary offerings of equity or debt securities, without regard to the size of the issuer’s public float or the rating of the debt issued, provided the issuer:
  - meets the other registrant eligibility conditions for use of Form S-3 or F-3;
  - has a class of common equity securities listed and registered on a national securities exchange; and
  - sells no more than the equivalent of 1/3 of its public float in primary offerings over any 12 calendar month period.
Expanded Form S-3 Eligibility (cont’d)

- Form S-3 not available for shell companies
- Public float =
  - (i) last sale price or average bid/ask, multiplied by
  - (ii) number of shares held by non-affiliates
- Sale amount can increase if public float increases or decreases if public float decreases