



SOCIETY OF CORPORATE SECRETARIES & GOVERNANCE PROFESSIONALS

November 12, 2010

Mr. Gerald J. Laporte
Chief, Office of Small Business Policy
Securities and Exchange Commission
Washington, D. C. 20549

Dear Mr. Laporte:

We are honored to be invited to present the views of the Society of Corporate Secretaries and Corporate Governance Professionals (the “Society”) on Small Business Capital Formation sponsored by to the Office of Small Business Policy (the “Office”) of the Securities and Exchange Commission (“SEC”).

Background of the Society

Founded in 1946, the Society is a professional membership association of over 3,100 attorneys, accountants and other governance professionals who serve more than 2,000 companies of most every size and industry. Most of the Society’s members are in fact business organizations that identify themselves as small or mid-cap companies. Given the nature of their responsibilities as governance professionals and, in many cases, securities lawyers, our members work each day to understand and implement the regulations that govern the access to the capital markets. Although the large preponderance of these regulations are helpful, a selected group of them redound to the detriment of these smaller business organizations either because they are proportionately more costly to these smaller business organizations or more difficult to comply with, compared with the benefits gained from compliance.

The Society supports many of the recommendations made at past Forums, and we have identified below those proposals that our members believe are most important for SEC action. Given the extensive background considered by the Office in the past, we have not reiterated here the rationale for these proposals. It is our hope that, despite the number of times that these proposals have been recommended to the Commission through the annual Forum, the following proposals will be acted upon in the coming months.

- The SEC should increase the public equity float threshold for being a smaller reporting company from having a public float of less than \$75 million to at least less than \$250 million.
- The SEC should exempt companies with a public float of less than \$250 million from Section 404(b) of the Sarbanes Oxley Act.

- The SEC should adopt a new private offering exemption from the registration requirements of the Securities Act that does not prohibit general solicitation and advertising for transactions with purchasers who do not need all the protections of the Securities Acts registration requirements.
- The SEC should eliminate the one-third of market capitalization limit for primary offerings by smaller public companies in General Instruction I.B.6(a) of Form S-3 and General Instruction I.B.5(a) of Form F-3.
- The SEC should shorten the integration safe harbor in Regulation D from six months to 90 days, and further consider shortening such period to 30 days, as recommended by the April 2006 Final Report of the SEC Advisory Committee on Smaller Public companies.

In addition to the above, the Society also believes the staff should consider small and mid-cap companies in connection with its rulemaking under the Dodd-Frank Wall Street Reform and Consumer Protection Act. At a minimum:

- The SEC should apply scaled regulation to Section 1502 “Conflict Minerals” Disclosure that requires all reporting companies to disclose annually whether “conflict minerals” (including gold) in products manufactured by their companies originated in the Democratic Republic of the Congo or an adjoining country.
- The SEC should exempt smaller reporting companies from the requirements of Section 14A of the Exchange Act, notwithstanding the instruction to new Rule 14a-21, for the reason that such companies would nevertheless be compelled to include CD&A disclosure or risk an unfavorable shareholder vote.

We note that many of these recommendations have been identified by the Office and by the presenters and organizations in previous years. We believe that that these proposals will have a meaningful benefit on the access to the capital markets for smaller companies. As a result, our recommendation is that they should be adopted as soon as possible.

Very truly yours,



Society of Corporate Secretaries & Corporate Governance Professionals

By: Steven Shapiro
Co-Chair, Small and Mid-Cap Companies Committee

cc: Anthony Barone