SECURITIES AND EXCHANGE COMMISSION

ADVISORY COMMITTEE ON SMALL AND EMERGING COMPANIES

January 2013

Re: SEC Advisory Committee on Small and Emerging Companies – February Meeting

We would like to thank those of you who attended our September meeting and we look forward to seeing all of you in D.C. in a few weeks.

As those in attendance in San Francisco will recall, we spent much of our time discussing market structural issues and scaled disclosure. We also touched on the conflict minerals issue. We believe that following our discussion it was the consensus of the committee that we develop recommendations to the SEC as follows:

- Immediately provide for a meaningful increase in tick size as a necessary step toward encouraging the reestablishment of an infrastructure designed to increase liquidity for small public companies.

- Encourage the establishment of an exchange limited to accredited investors where disclosure requirements for listed companies would be appropriately limited in light of the absence of retail investors.

- Rationalize the disclosure framework for small cap companies by raising the market capitalization threshold for small reporting companies (SRCs) and extending to SRCs the benefits granted to emerging growth companies under the JOBS Act.

- Further ease the compliance burden on SRCs by exempting SRCs from other requirements that result in significant costs for SRCs without generating information necessary to making an informed investment decision.

Noting conflict minerals, we expressed the view that Congress is working at cross purposes by encouraging capital formation for small companies while at the same time significantly increasing the compliance burden, and thereby eroding capital, by using disclosure requirements to address political issues, while doing little to enhance investor protection. We believe that SRCs should be exempt from such disclosure requirements.

In light of the foregoing, we have prepared the attached draft recommendations for your consideration. We intend to discuss and finalize these recommendations at our February meeting.

As always, we thank you for your time and consideration and look forward to your continued involvement.

Best regards,

Stephen M. Graham

M. Christine Jacobs

U.S. Securities and Exchange Commission
Advisory Committee on Small and Emerging Companies

Recommendations Regarding Trading Spreads for Smaller Exchange-Listed Companies

[_____ __], 2013

AFTER CONSIDERING THAT:

1. Section 106(b) of the Jumpstart Our Business Startups Act (JOBS Act), enacted on April 5, 2012, directed the U.S. Securities and Exchange Commission (Commission) to conduct a study examining the impact of the transition to trading and quoting securities on U.S. securities exchanges in one penny increments, called "decimalization," on the number of initial public offerings (IPOs), the impact of decimalization on liquidity for securities of small and middle capitalization companies, and whether there is sufficient economic incentive to support trading operations in these securities in one penny increments.

2. In July 2012, the Commission delivered to Congress the report of the staff of the Commission required by Section 106(b), entitled "Report to Congress on Decimalization," which the Committee has reviewed and considered. Based on the review conducted in connection with the preparation of the report, the staff recommended that the Commission not proceed with a specific rulemaking to increase tick sizes at this time, as provided for in Section 106(b) of the JOBS Act, but recommended that the Commission should consider the additional steps that may be needed to determine whether such rulemaking should be undertaken in the future.

3. This Committee considered the issue of tick sizes for equity securities of smaller exchange-listed companies at public meetings on June 8, 2012, September 7, 2012 and February 1, 2013.

4. The Committee believes that providing economic incentives to market participants that would encourage the provision of trading support to the equity securities of small and middle capitalization companies, which includes market making and providing research analyst support, could serve to increase the liquidity for the equity securities of small and middle capitalization companies, which would enhance the attractiveness of the IPO market for small companies and the ability of small and middle-capitalization companies to raise capital.

5. This Committee has concluded that a change in the method for determining tick sizes for equity securities of smaller exchange-listed companies is the type of economic incentive market participants may require to provide the trading support for the equity securities of small and middle capitalization companies that is necessary to increase their liquidity and facilitate IPOs and capital formation.

THE COMMITTEE RECOMMENDS THAT:

The Commission adopt rules to increase tick size for smaller exchange-listed companies in the United States that will allow such companies to choose their own tick size within a range designated by the Commission.

U.S. Securities and Exchange Commission
Advisory Committee on Small and Emerging Companies

[_____ __], 2013

AFTER CONSIDERING THAT:

1. Although the regulatory regime under which the U.S. equity markets operate permits flexibility in establishing listing standards, the Committee believes that these markets often fail to offer a satisfactory listing venue for small and emerging companies.

2. The failure of U.S. equity markets to offer a satisfactory listing venue for small and emerging companies undermines entrepreneurship and weakens the broader U.S. economy.

3. Establishing a separate U.S. equity market specifically for small and emerging companies, where they would be subject to a regulatory regime strict enough to protect investors but flexible enough to accommodate innovation and growth, offers promise of providing a satisfactory listing venue for small and emerging companies.

4. A possible feature of an appropriate regulatory regime for such a market would be limiting investor participation to sophisticated investors who meet a standard designed to assure that the regulatory protection afforded is appropriate given the characteristics of those investors.

THE COMMITTEE RECOMMENDS THAT:

The U.S. Securities and Exchange Commission should facilitate and encourage the creation of a separate U.S. equity market or markets for small and emerging companies, in which investor participation would be limited to sophisticated investors, and small and emerging companies would be subject to a regulatory regime strict enough to protect such investors but flexible enough to accommodate innovation and growth by such companies.

U.S. Securities and Exchange Commission
Advisory Committee on Small and Emerging Companies

Recommendations Regarding Disclosure and Other Requirements for Smaller Public Companies

[_____], 2013

AFTER CONSIDERING THAT:

1. Small businesses have historically played a significant role as drivers of economic activity, innovation and job creation in the United States.

2. The U.S. Securities and Exchange Commission (Commission) has provided for simplified disclosure and reporting for smaller issuers for over 30 years. Under current Commission rules, "smaller reporting companies" have certain scaled disclosure and reporting requirements available to them. The rules define "smaller reporting company" as a company with less than $75 million in common equity public float, or, if unable to calculate the public float, companies with less than $50 million in annual revenues.

3. The Jumpstart Our Business Startups Act (JOBS Act), enacted on April 5, 2012, created a new category of company called an "emerging growth company," to which certain scaled disclosure and other requirements apply at the time of the company's initial public offering (IPO) and for a specified period thereafter. An emerging growth company is defined as a company with total annual gross revenues of less than $1 billion during its most recently completed fiscal year. The JOBS Act includes a "start date" condition for the emerging growth company category that provides that only a company whose IPO occurred after December 8, 2011 may be considered an emerging growth company. A company retains its status as an emerging growth company until the earliest of the following:

    - its total annual gross revenue reach $1 billion or more;
    - it is deemed to be a large accelerated filer under Exchange Act Rule 12b-2;
    - it has issued more than $1 billion in non-convertible debt in the previous three years; or
    - the last day of issuer's fiscal year following the fifth anniversary of the issuer's first registered sale of common equity securities.

4. The scaled disclosure requirements available to smaller reporting companies overlap with those available to emerging growth companies, but the provisions are not identical. In many cases, the disclosure requirements applicable to smaller reporting companies are less burdensome than those applicable to emerging growth companies, with a few notable exceptions, such as exemptions from the requirement to provide an auditor attestation report under Section 404(b) of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), and exemptions from certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) relating to executive compensation.

5. Companies that are considered smaller reporting companies may have revenue that is considerably less than the $1 billion threshold for the emerging growth company category, but because of the "start date" and the five-year anniversary conditions for the emerging growth company category, existing smaller reporting companies are unable to take advantage of the provisions of the JOBS Act.

6. The Committee believes that expanding the scaled and other regulatory relief provided to smaller reporting companies to include some of the regulatory relief provided to emerging growth companies under the JOBS Act would be helpful to facilitate innovation and job creation by smaller companies without adverse effects on investor protection.

7. The Committee also believes that regulatory relief should be provided to smaller reporting companies with respect to certain of the Commission's other disclosure requirements that place a disproportionate burden on smaller reporting companies in terms of the cost of, and time spent on, compliance with such requirements. These include the exhibit filing requirement for all material contracts not made in the ordinary course of business, as well as the requirement that all issuers submit financial information in XBRL format for periodic reports and other public filings.

8. The Committee also believes that the current threshold for the smaller reporting company is too low and the Committee believes that expanding the companies that could qualify as smaller reporting companies would further encourage more robust smaller company participation in the capital markets without adverse effects on investor protection.

9. According to data provided by the Commission's staff, in 2011, there were approximately 8,100 operating companies that filed annual reports on Form 10-K with the Commission, and the staff estimates that approximately 59% had a public float of less than $75 million, approximately 11% had public float between $75 million and $250 million and approximately 6% had public float between $250 million and $500 million.

THE COMMITTEE RECOMMENDS THAT:

1. The Commission revise the definition of "smaller reporting company" in Rule 405 under the Securities Act of 1933, Rule 12b-2 under the Securities Exchange Act of 1934 (Exchange Act), and Item 10 of Regulation S-K to include issuers with public float up to $[250] million.

2. The Commission revise its disclosure and other rules applicable to smaller reporting companies to incorporate exemptions from the following requirements, which are available to emerging growth companies under the JOBS Act:

    - the requirement to provide an auditor attestation report under Section 404(b) of the Sarbanes-Oxley Act,
    - the requirement in Exchange Act Section 14A(a) to conduct shareholder advisory votes on executive compensation and on the frequency of such votes;
    - the requirement in Exchange Act Section 14A(b) to provide disclosure about and conduct shareholder advisory votes on golden parachute compensation;

- the requirement in Section 953(b) of the Dodd-Frank Act to provide disclosure of the ratio of the median annual total compensation of all employees of the issuer to the annual total compensation of the chief executive officer (when adopted);
- the requirement in Exchange Act Section 14(i) to provide disclosure of the relationship between executive compensation and issuer financial performance (when adopted);
- in the case of a new or revised financial accounting standard that has different compliance dates for public and private companies, the requirement to comply with any such financial accounting standard until the date that a private company is required to comply; and
- any rules of the Public Company Accounting Oversight Board requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis).

3. The Commission specify that such scaled disclosure and other provisions shall be available to a smaller reporting company for as long as the company meets the revised smaller reporting company definition.

4. The Commission revise the material contracts exhibit filing requirement in Item 601(b)(10) of Regulation S-K to provide that smaller reporting companies will not be required to file schedules or similar attachments to such exhibits unless such schedules or attachments contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the disclosure document.

5. The Commission revise its rules to provide an exemption for smaller reporting companies from the requirement to submit financial information in XBRL format for periodic reports and other public filings.

U.S. Securities and Exchange Commission
Advisory Committee on Small and Emerging Companies

[_____ __], 2013

AFTER CONSIDERING THAT:

1. The mission of the U.S. Securities and Exchange Commission (Commission) is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

2. The Committee notes that in recent years, legislation has been proposed or enacted that would require or requires or directs the Commission to amend its rules and forms to impose disclosure requirements on issuers relating to matters that the Committee believes is outside of the scope of the mission of the Commission. The Committee believes that the provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) imposing obligations on reporting issuers to include in Exchange Act reports information about conflict minerals originating in the Democratic Republic of the Congo, mine safety, and payments by resource extraction issuers are examples of such legislative mandates.

3. The Committee believes that that these disclosure requirements, particularly those relating to conflict minerals and payments by resource extraction issuers, impose costs on small businesses, without generating information useful for investors to make an informed investment decision, and have a negative effect on capital formation.

4. The Committee acknowledges and recognizes that these types of legislative mandates are responding to important and worthwhile humanitarian, social or foreign policy objectives.

5. The Committee does not believe that confronting these objectives through disclosure provisions in the federal securities laws is an effective way of addressing the underlying issues.

THE COMMITTEE BELIEVES THAT:

1. Congress should take action to exempt small businesses from the Dodd-Frank Act provisions imposing disclosure obligations on reporting issuers about conflict minerals originating in the Democratic Republic of the Congo and payments by resource extraction issuers.

2. Congress should not use the federal securities laws and the Commission's disclosure requirements as a vehicle to further humanitarian, social or foreign policy objectives.