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May 30, 2005

SEC Advisory Committee on Smaller Public Companies
U. S. Securities and Exchange Commission
Washington DC 20549

Re: Request for Comments on Committee Agenda

Ladies and Gentlemen:

I am an attorney in Tampa, Florida that exclusively represents true small businesses. My definition of a true small business is a business that meets the definition of "small business issuer" in Rule 405 of 1933 Act Regulation C. After all, that is what the SEC itself has defined as "small business."

The definition of "small business issuer" adopted by the SEC as set forth in Rule 405 is as follows:

Small Business Issuer. The term "small business issuer" means an entity that meets the following criteria:

- has revenues of less than \$25,000,000;
- is a U.S. or Canadian issuer;
- is not an investment company; and
- if a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the outstanding voting and non-voting equity held by non-affiliates) of \$25,000,000 or more.

The title of your committee, "SEC Advisory Committee on Smaller Public Companies," suggests that you will focus a large percentage of your time on issues relevant to companies that meet the definition of "small business issuer" as set forth in Rule 405, particularly in view of the fact that 3,560 10K-SB small business issuers maintained reporting status during 2004, according to the comment letter submitted to the Committee by Mr. Brad Smith.

This letter addresses the following issues:

- Specific recommendations concerning seasoned, compliant small business issuers and Form S-3 and a Registered Finders Program that I would like the Committee to endorse and to lobby the SEC for adoption. I note that both of these recommendations have also been endorsed and adopted by the vast majority of participants at numerous SEC Government/Business Forums on Small Business Capital Formulation.
- Issues of SOX 404 compliance and auditor certifications in the context of Rule 405 small business issuers.
- A request for information concerning the personal, hands-on experience that each member of the Committee has in dealing with Rule 405 small business issuers.
- The significance of concerns to Rule 405 small business issuers and their advisors raised by requesting public disclosure of the requested information.

Specific Recommendations:

I have two specific recommendations I would like the Committee to endorse and to lobby the SEC for adoption. I note that both of these recommendations have also been endorsed by the vast majority of participants at numerous SEC Government/Business Forums on Small Business Capital Formulation:

Small business issuers that have been a reporting issuer for at least 12 months and have been current in all quarterly and annual report filings during the prior 12 months should be able to utilize Form S-3.

I do not believe that there is any sound policy reason to prohibit the use of a registration statement on Form S-3 by a small business issuer that meets the above requirements. All small business issuers have their initial filings reviewed. The subsequent Q's and K's generally build off the reviewed filing. Because of the requirements in my proposal to be a reporting issuer for 12 months and to have timely filed all reports in the prior twelve months, only seasoned small business issuers who have a demonstrated compliance history of timely filing could take advantage of the ability to use Form S-3.

Further, the NASD's new proposed rule to penalize late filers who receive two "E's" on their symbol for late filing by prohibiting them from trading on the OTCBB for on year is a "stick" to penalize late filing reporting issuers that trade on the OTCBB. The SEC should also offer a "carrot" to encourage timely filing. That carrot would be the ability to use Form S-3. This will be a very valuable tool to promote timely filing by all small business reporting issuers.

This should be a very simple proposal for the SEC to adopt. It raises no investor protection concerns and facilitates capital formation by small business issuers. I urge the Committee to endorse and lobby the SEC to adopt this proposal.

Create a new regulatory system administered by the SEC for Finders, people who assist Rule 405 small business issuers to raise money and who receive transaction based compensation for their services but who are not broker/dealers or associated persons of a broker dealer.

At the last SEC Government/Business Forum on Small Business Capital Formulation, representatives of the Division of Market Regulation said concerning finders, “[W]e really appreciate the input. Our doors are open.” Forum Transcript, Page 133, lines 11-12. Here is my input. I hope the doors are still open.

I have a very simple, acceptable and effective solution to this issue. I would create a new class of persons called “SEC Registered Finders.” My proposal recognizes that a new regulatory framework for finders will not work if finders have to take an NASD test and become an associated person of a broker/dealer. However, it also recognizes that there is a need for full disclosure, investor protection and SEC oversight in this area.

Here is the outline of my proposed SEC Registered Finders regulation:

- Require all finders to furnish prospective clients a completed Form U-4 at least 7 days prior to the execution of any contract. The Form U-4 will give prospective clients access to the same information about the finder they would have if the finder were a principal or associated person of a broker/dealer. The Form U-4 must be updated immediately for any event requiring an amendment to a Form U-4.
- In addition to the U-4 disclosure, the finder must also deliver, at least 7 days prior to signing a contract with a client, a written Supplementary Track Record Disclosure including the name, address, telephone number and e-mail address of anyone with whom they have signed a finder’s contract within the last 5 years. The client shall have 3 days to rescind the contract after it is signed. The Disclosure must include whether or not the finder was successful and, if successful, how much money the finder raised. This will give prospective clients the opportunity to perform due diligence on the finder before executing any contract plus the right to rescind. This track record disclosure must be updated immediately upon the signing of any new finder contract or upon the abandonment or termination of any offering in which the finder has been involved.
- All finders must register with the SEC by filing the Form U-4 and Supplementary Track Record Disclosure and amendments, thus making the information available to potential clients, the investing public and the SEC in the same manner that ADV information for investment advisors is currently available. This will assure that material information concerning the finder and his or her activities is available to the SEC, potential clients and all members of the investing public.

- Limit the finder to being a party to four finder's fund raising contracts in any twelve month period, whether or not the transactions result in money actually being raised. If someone wants to be a party to more than four such transactions in a twelve month period, they should become a principal or associated person of a broker/dealer.
- All finders would be subject to the same federal and state securities laws in connection with the offer and sales of securities to which broker/dealers and their associated persons are subject. Finders would be subject to the same enforcement actions, criminal penalties, and civil liabilities to which broker/dealers and their associated persons are subject.
- The regulation should remind finders that they are not eligible to receive S-8 stock for acting as a finder.

The SEC Finders Registration Program will be significant improvement over the current situation. It will enhance protections for potential clients and the investing public and the visibility of finders to SEC and state securities regulators, all of whom currently have almost no knowledge of the background and track record of finders and no way to obtain that knowledge and visibility, as today finders almost always operate below the radar screen with no regulatory compliance and no required disclosures.

I would hope the Committee would make any modifications they deem necessary, endorse the Registered Finder proposal rule and then seek input from the Division of Market Regulation to craft a final proposed Registered Finders Rule and thereafter encourage the Commission to adopt the proposed Rule. The Committee should also lobby for preemption of state laws concerning broker/dealer registration requirements and payment of transaction based compensation if a finder is an SEC Registered Finder similar to the Rule 506 and federal Registered Investment Advisor preemptions that exist today. This could be coordinated with representatives of NASAA. The finder would remain subject to all other state laws regulating the offer and sale of securities.

SOX 404:

This is certainly a hot topic for this Committee. I hope the Committee will take the time to address this issue in the context of Rule 405 small business issuers.

Let us consider a hypothetical, but what I believe to be quite typical, example of a small business issuer:

A small business issuer has a sole officer and director, a bookkeeper and a PCAOB member independent auditor. The company went public to raise capital because without offering potential investors the transparency and the liquidity that comes from being an SEC reporting public company and having a public trading market for its securities, the small business issuer would not have been able to raise capital.

I represent several of such issuers. What is the small business issuer in this hypothetical supposed to do in terms of SOX 404 compliance?

Change the hypothetical and assume that instead of a bookkeeper, the small business issuer has a CFO. I also represent several of such issuers. Are these small business issuers supposed to institute zillions of COSO procedures? At what cost? At what benefit to their limited number of shareholders?

And how is their independent auditor to know how to determine what internal controls are material and not material in terms of internal controls for this small business issuer, as discussed the PCAOB's May 16, 2005 guidance release on this issue? A "you'll know materiality when you see it" standard is too indefinite for Rule 405 small business issuers and their independent auditors. Certainly more definitive standards of what is required in this area for these issuers and their accountants could be developed without undermining the intent of SOX 404.

I challenge the Committee divide the class of non-accelerated filers into those that are small business issuers and those that are not. The Committee should make recommendations to the Commission concerning SOX 404 specifically tailored to non-accelerated filers that are small business issuers and a separate set of recommendations tailored to non-accelerated filers that are not.

Follow-Up Contacts:

I recommend that members of the Committee take the time to call the following individuals for additional input concerning the issues and concerns raised in this letter:

- Bill Ross [509-444-4800] – Principal of Public Securities, an NASD Market Maker for numerous small business issuers whose securities trade on the OTCBB.
- Stephen Brock [702-248-4798] – A registered investment advisor, principal of an NASD Broker Dealer and President of Public Company Management Corporation, a company that trades on the OTCBB and represents small business issuers in SEC registration and compliance matters.
- John Malone [713-266-0530] – Principal of Malone & Bailey, a PCAOB member CPA firm that has over 60 small business issuer clients.

I also encourage you to carefully read comment letters from Mr. Scott Shaw and Mr. James B. Williamson, III. I further recommend personal conversations with everyone that submits a comment letter.

Request for Information:

I would like to know the personal, hands-on experience that each member of the Committee has in dealing with Rule 405 small business issuers. I am interested in the personal experience of Committee members, not the experience of others in their firms or organizations. To the extent a member doesn't readily have exact information, please give your best approximation.

At the next open meeting, or at least by written responses posted on the Small Business section of the SEC website, I request that every member of the Committee answer the following:

For Attorneys:

- During the past 5 years, how many Rule 405 small business issuers that have filed and cleared either 1933 Act or 1934 Act Registration Statements have you personally represented?
- Currently, how many Rule 405 small business issuers that are intending to file or that have filed but not yet cleared either 1933 Act or 1934 Act Registration Statements do you personally represent?
- During the past 5 years, how many Rule 405 small business issuers that are required to file on-going reports under the 1934 Act, commonly referred to as reporting small business issuers, have you personally represented but do not currently represent?
- Currently, how many Rule 405 small business issuers that are required to file on-going reports under the 1934 Act, commonly referred to as reporting small business issuers, do you personally represent?
- What percentage of your current practice involves representing small business issuers?

For the record, my answers to the above questions would be:

- During the past 5 years, how many Rule 405 small business issuers that have filed and cleared either 1933 Act or 1934 Act Registration Statements have you personally represented?
Answer: At least 18.
- Currently, how many Rule 405 small business issuers that are intending to file or that have filed but not yet cleared either 1933 Act or 1934 Act Registration Statements do you personally represent?
Answer: 11.
- During the past 5 years, how many Rule 405 small business issuers that are required to file on-going reports under the 1934 Act, commonly referred to as reporting small business issuers, have you personally represented but do not currently represent?
Answer: At least 5.
- Currently, how many Rule 405 small business issuers that are required to file on-going reports under the 1934 Act, commonly referred to as reporting small business issuers, do you personally represent?
Answer: 4.
- What percentage of your current practice involves representing small business issuers?
Answer: One hundred percent of my current practice involves representing small business issuers.

For Accountants:

- I ask the same questions as above.

For those associated with financial services, venture capital, investment or similar firms:

- During the last 5 years, of all the companies that you have financed or for which you have participated in arranging financing, what percentage were small business issuers at the time of financing?
- During the last 5 years, of all the small business issuers that have approached you for financing or assistance in securing financing, what percentage of these small business issuers received financing from you or sources that you arranged?
- During the last 5 years, how many small business issuers have you been involved in taking public when they were still small business issuers?
- With how many small business issuers do you currently advise or are you currently involved?

For those associated with businesses:

- If you are involved with one or more public companies, what percentage of the companies qualify as Rule 405 small business issuers?
- How many friends, business associates or clients do you personally know that are executives or directors of companies that meet the definition of small business issuers as defined by the SEC in Rule 405? Compare to how many you have that are not.

Committee members, your answers to the questions posed above in this letter will show the extent to which each member of your Committee has personal hands-on experience with small business issuers. Those of us who know the interests and concerns of true small businesses in the U.S, both small business issuers themselves and we who primarily or exclusively represent small business issuers, are certainly entitled to this information from every member of the Committee.

Significance of this Request for Information:

The concerns raised by asking the questions above are quite significant to small business issuers and their advisors. [Please note: The quotes below are posted on the SEC website at this link: <http://www.sec.gov/info/smallbus/transcript.pdf>.]

At the last SEC Government/Business Forum on Small Business Capital Formulation, Mr. Wander, your Co-Chairman, stated, “ I mean, we generally advise companies who are, you know, less than 50 million not to go public ... ” Forum Transcript, Page 103, lines 1-2. He continued in response to a question concerning minimum market capitalization to go public, “Well, as Steve said, it’s got to be – his was 200 million. I certainly think that’s a good starting point.” Forum Transcript, Page 103, lines 20-22.

I further note that another Forum participant, Stan Keller, stated almost immediately after Mr. Wander’s comments, “I think with the development of S-B, and I can tell you, one, my heart was never in it because I don’t think it was viewed as particularly significant. And I’ve never used it.” [emphasis added] Forum Transcript, Page 104, lines 6-9.

Mr. Wander’s stated reasoning for his position appears primarily to be concerns with the potential adverse consequences of what he perceives to be a lack of coverage issue. Forum Transcript, Page 103, line 3. With all due respect to Mr. Wander, his reasoning defies the actual experience of small business issuers. Mr. Wander and members of the Committee, with the exception of PIPE transactions, there are essentially no broker/dealers that will raise money through a securities offering on behalf of the vast majority of small business issuers. The number of such broker/dealers drops virtually to zero for non-reporting small business issuers. PIPE’s are not available to non-reporting small business issuers. And, as discussed below, under the current regulatory scheme, small business issuers cannot take advantage of a non-registered finder to assist them to raise money.

The composition of the Committee appears to be as follows:

- *It has a Co-Chairman who seems to have publicly stated that he believes Rule 405 small business issuers should not be public companies.*
- *It has many members who, we believe the record in response to the questions posed above will demonstrate, lack significant personal hands-on experience in dealing with Rule 405 small business issuers.*

All of the above leads to the following question: *How can this Committee with the above composition effectively address the interests and concerns of true small businesses in the U.S., the over 3500 SEC reporting Rule 405 small business issuers and the hundreds of Rule 405 small business issuers that file 1933 and 1934 Act SB registration statements with the SEC every year?*

Those of us who know the interests and concerns of true small businesses in the U.S, both small business issuers themselves and we who primarily or exclusively represent small business issuers, are certainly entitled to a response to this question.

Conclusion:

We hope the Committee will address the issues and advance the interests of Rule 405 small business issuers and rather than taking actions which will not improve and may actually be detrimental to their situation. We trust that the Committee will take action to improve the plight of the leading growth engine of the American economy, small business and small business issuers in particular.

The Committee should adopt the recommendations set forth in this letter concerning:

- The eligibility of seasoned, compliant small business issuers to use Form S-3.
- The Registered Finders Program.
- The division of non-accelerated filers into two classes for the purpose of SOX 404 compliance, with special consideration being given to small business issuers as a unique class.

This will go a long way to address the concerns and promote the interests of small business issuers.

Thank you for taking the time to consider this input.

Sincerely,

/s/ Michael T. Williams, Esq.

Michael T. Williams, Esq.

Cc: Chairman William H. Donaldson
Commissioner Cynthia A. Glassman
Commissioner Harvey J. Goldschmid
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Alan Beller, Director, Division of Corporation Finance
Annette L. Nazareth, Director, Division of Market Regulation