

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8571; 34-51610; File No. 265-23]

SUBJECT: Summary of Proposed Committee Agenda of Advisory Committee on Smaller Public Companies.

AGENCY: Securities and Exchange Commission.

ACTION: Request for Comments.

SUMMARY: The Advisory Committee is soliciting public comment on a summary of its proposed Committee Agenda. The Committee Agenda sets forth the specific issues that the Committee proposes to address in connection with its evaluation of the current securities regulatory system for smaller public companies, including the impact of the Sarbanes-Oxley Act of 2002 on areas under consideration.

DATES: Comments should be received on or before May 31, 2005.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet submission form (<http://www.sec.gov/info/smallbus/acspc.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 265-23 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Committee Management Officer, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number 265-23. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/info/smallbus/acspc.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20002. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Questions about this release should be referred to Kevin M. O'Neill, Special Counsel, at (202) 551-3260, or William A. Hines, Special Counsel, at (202) 551-3320, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0310.

SUPPLEMENTARY INFORMATION: At the request of the SEC Advisory Committee on Smaller Public Companies, the Commission is publishing this release soliciting public comments on the issues that the Committee proposes to address. The Commission announced the establishment of the Advisory Committee on December 16, 2004.

The Committee was officially established on March 23, 2005 with the filing of its Charter with Congress. The Charter provides that the Committee's objective is to assess the current regulatory system for smaller public companies under the securities laws and make recommendations for changes. The Charter directs the Committee to consider the following areas of inquiry, including the impact in each area of the Sarbanes-Oxley Act of 2002, Pub. L. 107-204, 116 Stat. 745 (July 30, 2002): (1) frameworks for internal control over financial reporting applicable to smaller public companies, methods for management's assessment of such internal control, and standards for auditing such internal control; (2) corporate disclosure and reporting requirements and federally-imposed corporate governance requirements for smaller public companies; (3) accounting standards and financial reporting requirements applicable to smaller public companies; and (4) the process, requirements and exemptions relating to offerings of securities by smaller public companies, particularly public offerings.

In accordance with these Charter directives, the Committee approved a proposed Committee Agenda at a public meeting held on April 12, 2005. A summary of the Committee Agenda is set forth below. The full text of the Committee Agenda may be found on the Committee's Web page at <http://www.sec.gov/info/smallbus/acspc.shtml>. The Committee Agenda identifies in general terms the subjects that the Committee proposes to address. All interested parties are invited to submit their views, in writing, on any or all of the subjects identified, or on any other matter relating to the current regulatory system for smaller public companies under the securities laws that the Committee should consider addressing. The Committee specifically seeks public comment on the following questions relating to the proposed summary of the Committee

Agenda:

Question 1: Are the subjects identified in the summary of the Committee Agenda the right subjects for the Committee to consider?

Question 2: Should the Committee consider subjects not identified in the summary of the Committee Agenda in order to properly fulfill its mandate?

Question 3: Should the Committee not consider some subjects identified in the summary of the Committee Agenda for any reason, such as to conserve resources, to focus resources on other, more critical subjects, or because of the limited length of the Committee's 13-month term?

The Committee is interested in receiving comments identifying problems, but is most interested in receiving comments proposing solutions to problems.

Summary of Committee Agenda

1. Definition of "Smaller Public Company."
 - 1.1. Develop preliminary observations to be used for analysis of each substantive area under items 2 through 7 below.
 - 1.2. Examine appropriateness of existing definitions.
 - 1.3. How do existing definitions work? Are they meaningful and effective? Are they practical? Is it possible to develop risk-based or other definitions? Seek economic analysis.
2. Internal Control – Section 404 of Sarbanes-Oxley; S-K Item 308, S-X Reg. § 210.2-02(e).
 - 2.1. Evaluate first quarter 2005 reports.

- 2.1.1. Effective control.
 - * Size/characteristics of company.
- 2.1.2. Ineffective control.
 - * Size/characteristics of company.
 - * Reasons for failure.
 - * Materiality of failure.
- 2.2. Evaluate benefits and costs/burdens for smaller public companies, including disproportionate costs/burdens, competitive disadvantages and effectiveness in preventing fraud.
 - 2.2.1. Seek economic input.
 - 2.2.2. Consider impact on “tone at the top.”
 - 2.2.3. Versus private companies and foreign companies.
- 2.3. Evaluate procedures used in first quarter reports.
 - 2.3.1. Company procedures.
 - 2.3.2. Auditor procedures.
 - 2.3.3. What worked well.
 - 2.3.4. What worked less well or did not work.
- 2.4. Mechanisms to evaluate.
 - 2.4.1. Questionnaires prepared by FEI, NASDAQ and others.
 - 2.4.2. One or more roundtables held by SEC and PCAOB.

- 2.4.3. Other written or oral input.
3. Corporate Governance Standards.
- 3.1. Review and catalog.
 - 3.2. Evaluate impact of requiring independent directors for smaller public companies.
 - 3.2.1. Boards themselves and Committees.
 - 3.2.2. Impact on controlling families or other controlling shareholders.
 - 3.2.3. Impact on other stakeholders.
 - 3.2.4. Impact of stakeholders on effectiveness of independent directors.
 - 3.2.5. Loss of market and company knowledge and experience.
 - 3.3. Evaluate impact of independence definitions.
 - 3.3.1. Boards themselves and Committee.
 - 3.3.2. Adequate supply of competent directors.
 - 3.3.3. How are boards/committees performing?
 - 3.3.4. Cost of board operation.
 - 3.3.5. Other.
 - 3.4. Evaluate impact of special requirements on audit committee make-up and operation.
 - 3.4.1. Special independence requirements.
 - 3.4.2. Financial expertise requirements and disclosure requirements.
 - 3.4.3. Loss of operational knowledge, experience and depth.

- 3.5. Recommendations.
- 4. Effects of other Statutory Requirements and Commission Regulations, including under Sarbanes-Oxley, on Smaller Public Companies.
 - 4.1. Officers' certifications.
 - 4.2. Auditing firm's standards and requirements.
 - 4.3. Prohibition of loans to executive officers and directors.
 - 4.4. Other.
 - 4.5. Recommendations.
- 5. Disclosure Requirements.
 - 5.1. How do disclosure requirements affect smaller public companies?
 - 5.2. Analyze Regulation S-B (including seeking economic input).
 - 5.3. Analyze forms and requirements.
 - 5.3.1. Exchange Act periodic reporting forms (10-K, 10-KSB, 10-Q, 10-QSB).
 - 5.3.2. Special Securities Act forms (SB-1, SB-2).
 - 5.3.3. Are S-B forms helpful, beneficial, effective or negative, both for the issuer and the investor market?
 - 5.4. Identify other aspects of disclosure regime that might be modified for smaller public companies.
 - 5.5. Identify other possible scaling standards.
 - 5.5.1. Is size the most appropriate standard or is risk?

- 5.5.2. Are revenues a better scaling standard for some disclosure rules and other regulations?
- 5.5.3. Should other alternatives be considered?
- 5.6. Liability concerns.
- 5.7. Consider issues of delinquent and deficient micro-cap disclosure.
- 5.8. Evaluate the balance of disclosure to protect investors with the competitive needs of smaller public companies.
- 5.9. Recommendations.
- 6. Accounting Principles.
 - 6.1. Evaluate “one size fits all” vs. “Big GAAP-Little GAAP.”
 - 6.2. Identify priority accounting principles, if any, where modifications might be considered for smaller public companies.
 - 6.3. Emphasize importance of cash in many smaller companies.
 - 6.4. Analyze overlay and impact of other regulatory schemes (financial institutions, insurance, government contractors, etc.).
 - 6.5. Analyze role of outside audit firms with respect to smaller companies, e.g., environmental shift in role of auditors, communications with outside auditors, concentration of Big Four accounting firms, difficulty in switching audit firms.
 - 6.6. Analyze whether extended effective dates for smaller companies are appropriate for future accounting principles.
 - 6.7 Recommend changes, if any.

7. Capital Formation.

7.1. Analyze existing structure.

7.2. Analyze selected exemptions from registration and subsequent reporting.

7.3. Evaluate Regulation A.

7.4. Analyze investment banker roles.

7.5. Analyze analysts' coverage.

7.6. Costs and timing to get access to markets.

7.6.1. Broader access to capital, including foreign markets.

7.6.2. Possible roles of capital formation specialists, including brokers and
“finders.”

7.7. Cost of and ability to exit the markets.

7.8. Possible improvements in interaction and interplay between federal law or SEC,
state laws or state regulators, and self-regulatory organizations and rules (e.g.,
Rule 15c2-11).

7.9. Liability issues.

7.10 Recommendations.

8. Small Business Forums and Related Issues.

8.1. Analyze recommendations from recent SEC Small Business Forums.

8.2. Review small business statutes (Regulatory Flexibility Act and 1980 Small
Business Investment Incentive Act).

GENERAL REQUEST FOR COMMENT: Any interested person wishing to submit written comments on any aspect of the summary of the Committee Agenda, as well as on other matters relating to this release, is requested to do so.

AUTHORITY: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, § 10(a), Gerald J. Laporte, Designated Federal Officer of the Committee, has approved publication of this release at the request of the Committee. The solicitation of comments is being made solely by the Committee and not by the Commission. The Commission is merely providing its facilities to assist the Committee in soliciting public comment from the widest possible audience.

Jonathan G. Katz
Committee Management Officer

Dated: April 26, 2005