



September 17, 2007

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Smaller Reporting Company Regulatory Relief and Simplification  
File No. S7-15-07, 72 Federal Register 39670 (July 19, 2007)

Dear Ms. Morris:

America's Community Bankers<sup>1</sup> is pleased to comment on the proposal by the Securities and Exchange Commission ("SEC") to amend its disclosure and reporting requirements for smaller public companies under the Securities Act of 1933 ("Securities Act") and the Exchange Act of 1934 ("Exchange Act"). The proposal would extend the benefits of the optional scaled disclosure and reporting requirements, as currently set out in the SEC's Regulation S-B, to a larger group of smaller companies by raising the eligibility ceiling from \$25 million in public float to \$75 million in public float. In addition to this increase, the proposal would add an eligibility ceiling of \$50 million in annual revenue if the company does not have a public float or a public market for its equity security. The proposal would also combine the "small business issuer" and "non-accelerated filer" categories into a proposed single category designated "smaller reporting companies." Finally, the proposal would integrate the current Regulation S-B abbreviated reporting requirements for smaller companies into Regulation S-K.

### **ACB Position**

ACB strongly supports the SEC's proposal to extend to a larger group of smaller companies the optional scaled disclosure and reporting requirements that currently are available to smaller companies under Regulation S-B. Although we believe that the SEC's proposal is long overdue, we are not convinced that the proposed increase in the eligibility ceiling from \$25 million in public float to \$75 million in public float will be meaningful. ACB strongly believes that the ceiling should be increased to \$100 million in public float. We strongly support the proposed addition of an eligibility ceiling of \$50 million in annual revenues for companies that do not have public float or a public market for its equity securities. Finally, we agree with the SEC that the reporting process will be streamlined by integrating the disclosure requirements for smaller

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<sup>1</sup> America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit [www.ACB.us](http://www.ACB.us).

companies contained in Regulation S-B with the disclosure requirements of Regulation S-K. We applaud the SEC's consideration and proposed implementation of certain recommendations made by its Advisory Committee on Smaller Public Companies ("Advisory Committee").

## **Background**

ACB supports the SEC's proposed implementation of certain recommendations made by its Advisory Committee to amend the SEC's rules that scale the disclosure and reporting requirements for smaller companies. We strongly support the SEC's proposal to make available to an expanded group of smaller companies the SEC's abbreviated disclosure and reporting requirements that are currently found in Regulation S-B. To accomplish this, the SEC proposes to replace the current term "small business issuer," which sets out the eligibility requirements for Regulation S-B, with the term "smaller reporting company." The proposed term "smaller reporting company" would establish the expanded eligibility ceiling, which would be increased from the current \$25 million in public float to \$75 million in public float.

Although we strongly support the increase in the eligibility ceiling, we are not convinced that the proposed increase to \$75 million in public float is large enough to provide meaningful relief to smaller companies. The SEC states that of the 11,898 companies that filed annual reports under the Exchange Act in 2006, 3,749 had a public float of less than \$25 million and 4,976 had a public float of less than \$75 million.<sup>2</sup> The proposed ceiling increase would add only 1,227 companies or approximately 10 percent of the total number of companies filing reports. Because of the increased costs and burdens associated with disclosure and reporting requirements, many of which often are not applicable to smaller companies, ACB recommends that the SEC increase the eligibility ceiling to \$100 million in public float. ACB also made this recommendation in a letter to the SEC commenting on the work of the Advisory Committee.<sup>3</sup> We believe that this ceiling will help reduce the costs and burdens associated with disclosure and reporting requirements under the Securities Act and Exchange Act<sup>4</sup> for a larger number of smaller companies.

ACB also strongly supports the addition to the definition of "smaller reporting company" the annual revenue test as an alternative to the public float test. The revenue test would permit

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<sup>2</sup> 72 *Fed. Reg.* at 39671.

<sup>3</sup> See letter dated August 9, 2005 from Charlotte M. Bahin, Senior Vice President, Regulatory Affairs, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission.

<sup>4</sup> Recently enhanced disclosure requirements are more burdensome and costly for smaller public companies. For example, the SEC adopted, effective December 29, 2006, amendments to the disclosure requirements for executive and director compensation. These amendments made significant revisions to disclosures in compensation tables, reporting stock option awards, and perquisites. The amendments also added a new section requiring a discussion and analysis of compensation. Smaller companies often do not have the type of compensation programs that require disclosure under these rules. The SEC provided relief and reduced or eliminated some of the new disclosure requirements for smaller companies that were eligible to file reports under Regulation S-B. By increasing the eligibility ceiling, additional smaller companies will be able to take advantage of reduced reporting requirements for executive compensation and reduce the cost and burden for smaller companies.

companies that do not have or are not able to calculate public float or market price to be eligible for scaled treatment if their revenues are below \$50 million annually. Currently, under Regulation S-B, a company is required to have a public float below \$25 million and revenues below \$25 million to be eligible to use Regulation S-B. The proposed revenue ceiling would not be mandatory, as is currently the case. The proposed annual revenue ceiling is important to smaller companies and community banks that may have exceeded the 500 record holder threshold and have a class of equity security registered under Section 12 of the Exchange Act but have very little, if any, trading in its stock and no public float.

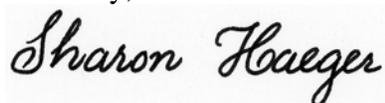
Finally, we support the proposed five-year inflation adjustments to the eligibility ceilings, which would be based on the Personal Consumption Expenditures Chain-Type Price Index as published by the U.S. Department of Commerce. Not revised since 1992, the current \$25 million ceiling became outdated as the average size of public float and revenues of smaller companies significantly increased. Tying the ceiling and revenues to the index will help to keep the metrics current. However, we believe that the SEC should periodically revisit and monitor both the public float and revenue ceilings to ensure that the inflation adjustments are keeping pace with growth in the markets.

ACB strongly supports the continued use of public float rather than market capitalization to determine the eligibility ceilings, which is in contrast to the recommendations made by the Advisory Committee. We agree with the SEC that it has consistently used public float in this context and that the use of market capitalization would require developing new standards and calculations for disclosures. Market capitalization is a more complicated metric because it would fluctuate with market conditions, which adds uncertainty, and would need to be calculated based on an average over a predetermined time. Further, as the SEC points out, market capitalization would add only a few more companies to coverage under the proposed rule. Public float is a more useful metric because affiliate shares are excluded from the calculation. Affiliate shares are generally held by officers, directors or other persons close to the operations of the company. Because of the affiliation, these persons do not need the full spectrum of disclosures and reports required by the Securities Act and Exchange Act for public shareholders.

## **Conclusion**

ACB appreciates the opportunity to comment on this important proposal concerning scaled disclosure requirements for smaller companies. Should you have any questions please contact Patricia Milon at (202) 857-3121 or [pmilon@acbankers.org](mailto:pmilon@acbankers.org), or the undersigned at (202) 857-3186 or [shaeger@acbankers.org](mailto:shaeger@acbankers.org).

Sincerely,



Sharon A. Haeger  
Regulatory Counsel