



October 6, 2011

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090.

Re: Executive Order 13579, "Regulation and Independent Regulatory Agencies
Retrospective Review of Existing Regulations
File Number S7-36-11

The National Small Business Association (NSBA) was founded in 1937 to advocate for the interests of small businesses in the U.S. It is the oldest small business organization in the U.S. The NSBA represents more than 150,000 small businesses throughout the country in virtually all industries and of widely varying sizes.

We commend President Obama for issuing Executive Order 13579, "Regulation and Independent Regulatory Agencies." We further commend the Securities and Exchange Commission for undertaking a review of existing regulations to determine whether any should be modified, streamlined, expanded or repealed to promote economic growth, innovation, competitiveness, and job creation.

The National Small Business Association looks forward to working with the SEC to improve the regulatory climate for small businesses and to improve small businesses' access to capital.

We are developing detailed proposals to reform existing SEC regulations. We are also developing proposed statutory changes to improve small businesses' access to capital. Our proposals will address both the private equity markets, initial public offerings and the burdens placed on small capitalization public companies. Our proposals will be designed to substantially reduce the administrative burden on small private and public businesses while maintaining needed protections for the investing public.

It is our observation that participants in the Annual SEC Forum on Small Business Capital Formation have routinely made constructive suggestions, almost none of which have ever been acted upon by the SEC. It is our hope that the President's initiative will make this review different and it is that spirit that we will be undertaking a major effort to develop sound policy proposals over the next few months.

The Commission in its September 6, 2011 "Request for Information" asked for input on the following questions:

1. What factors should the Commission consider in selecting and prioritizing rules for review?
2. How often should the Commission review existing rules?

3. Should different rules be reviewed at different intervals? If so, which categories of rules should be reviewed more or less frequently, and on what basis?
4. To what extent does relevant data exist that the Commission should consider in selecting and prioritizing rules for review and in reviewing rules, and how should the Commission assess such data in these processes? To what extent should these processes include reviewing financial economic literature or conducting empirical studies? How can our review processes obtain and consider data and analyses that address the benefits of our rules in preventing fraud or other harms to our financial markets and in otherwise protecting investors?
5. What can the Commission do to modify, streamline, or expand its regulatory review processes?
6. How should the Commission improve public outreach and increase public participation in the rulemaking process?
7. Is there any other information that the Commission should consider in developing and implementing a preliminary plan for retrospective review of regulations?

Our preliminary input is as follows:

1. What factors should the Commission consider in selecting and prioritizing rules for review?

We believe that the primary factors should be:

1. The cost the rule is imposing on the private sector.
2. Whether the rule is having a disproportionate negative impact on small, entrepreneurial businesses, including:
 - a. their ability to raise needed capital, and
 - b. their operating costs.
3. Whether the rule is having a demonstrative positive impact:
 - a. protecting the investing public against fraud; or
 - b. providing information to the investing public that improves its ability to make informed investing decisions.

2. How often should the Commission review existing rules?

Rules that have a large impact on a large number of companies should be reviewed at least biennially. Other rules should be reviewed less often. The Office of Economic Analysis should provide and publish estimates of the number of firms affected by, and the costs imposed by, each SEC rule. These estimates should be published so that the business community and interested public policy scholars can critique the estimates and provide input to improve the estimates. Relatively “minor” rules should be included in this analysis since it is widely underappreciated by regulators the costs imposed by an accumulation of dozens of small requirements. If a rule is so “minor” that its analysis is to be disregarded by the SEC, it is more than likely that the rule could be withdrawn with little or no adverse impact.

3. Should different rules be reviewed at different intervals? If so, which categories of rules should be reviewed more or less frequently, and on what basis?

See our answers to questions 1 and 2.

4. To what extent does relevant data exist that the Commission should consider in selecting and prioritizing rules for review and in reviewing rules, and how should the Commission assess such data in these processes? To what extent should these processes include reviewing financial economic literature or conducting empirical studies? How can our review processes obtain and consider data and analyses that address the benefits of our rules in preventing fraud or other harms to our financial markets and in otherwise protecting investors?

The Commission should undertake to survey ALL public companies but particularly small capitalization companies traded on NASDAQ, traded over the counter (OTCCBB, OTC Link (including OTCQX, OTCQB and OTC Pink) and issuers without active market makers. The purpose of this survey would be to develop a database for use by the SEC and the public (especially researchers). There should be a comparable survey of firms that have made Regulation D filings and, if possible, firms that have made other private placements. There is currently an astonishing lack of data regarding the securities law regulatory burden on small businesses and the basic economic structure of small capitalization public firms.

The data collected by this survey should include gross receipts, earnings, number of employees, industry classification, number of market makers, number of analysts, regulatory status, legal form, classes of securities and the like. It also should include information on compliance costs incurred by regulation or at least by category (offerings, periodic reporting, reporting major events, mandated internal controls and reviews, etc.). It should include in-house costs and the costs of engaging outside advisers. It should include both offering costs (public and private) and ongoing reporting and other compliance costs.

This survey could be undertaken by the SEC Office of Economic Analysis or contracting out to a business or university. It should become an annual survey so trends can be determined and so changes in the law (whether statutory or regulatory) can be analyzed. The universe of public and Reg. D companies is manageable, so the costs of the proposed survey should be modest.

This type of data would be invaluable for purposes of determining which regulations are driving costs and conducting meaningful reviews and cost-benefit analyses. It would be well worth the relatively minor cost of conducting the survey and collating and releasing the data.

5. What can the Commission do to modify, streamline, or expand its regulatory review processes?

The Commission should make the process more transparent. It should hold hearings where the commissioners can actually interact with small registrants and small businesses that raise capital in the private equity market. It should make it clear through action that the process will result in meaningful change. Businesses will quickly tire of a process that consumes time and resources but does not result in meaningful reform.

Again, we would direct attention to the many constructive recommendations made by the Annual SEC Forum on Small Business Capital Formation that have almost never been acted upon by the SEC.

6. How should the Commission improve public outreach and increase public participation in the rulemaking process?

The Commission should seek comments by means other than publishing notices in the federal register. Most businesses do not read the federal register. Seeking meaningful input requires both working through business associations (including small business associations and single industry trade associations) and actually sending a request for input to those companies who have registered securities or who have made Regulation D filings.

7. Is there any other information that the Commission should consider in developing and implementing a preliminary plan for retrospective review of regulations?

The Commission should also seek information from accountants and attorneys that represent small businesses either through their professional societies or individually. The caliber and sophistication of these advisors' input will usually be high. We would caution, however, that they also will often be "too comfortable" with complexity because their fees are higher when the rules are complex, because they already have a substantial background knowledge in the securities law field and because they can afford to spend large blocks of time familiarizing themselves with complex rules since that is their livelihood. Business executive and business owners, in contrast, must spend time actually operating their business and will be less able to provide detailed commentary. This does not make their point of view less worthy.

The Commission should commission research from independent economists on the regulatory burden on small businesses. The Commission should provide some significant level of resources to researching the important issues raised by the President. These issues are most effectively and credibly researched by outside economists rather than employees of the regulating agency.

The Commission should seek input from the Small Business Administration, particularly its Office of Advocacy and from the Office of Management and Budget Office of Information and Regulatory Affairs (OIRA).

Based on the admittedly limited data available, it appears that roughly half of public companies have market capitalization of less than \$100 million and sixty percent have a market capitalization of less than \$200 million. These firms typically have revenues less than \$50 million annually and very limited compliance staff. Together these firms account for less than one percent of the total market capitalization for the less than \$100 million category and less than two percent of the total market capitalization for the less than \$200 million category. Since this data is pre-recession, it is quite possible that the small capitalization firms

The regulatory burden is a major financial burden on these firms and consumes a major portion of management time, particularly when raising initial or additional capital. These firms are major job creators and a significant component of economic growth. As a matter of national policy, we should be cautious about the degree to which our securities laws impede their growth or even survival.

Sincerely,

David R. Burton
General Counsel