

SECURITIES AND EXCHANGE COMMISSION  
ADVISORY COMMITTEE ON  
SMALL AND EMERGING COMPANIES

Washington, DC 20549-3628

January 6, 2012

The Honorable Mary L. Schapiro  
Chairman  
U. S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1070

Dear Chairman Schapiro:

As you know, the Securities and Exchange Commission organized the Advisory Committee on Small and Emerging Companies to provide the Commission with advice on the Commission's rules, regulations, and policies with regard to its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as they relate to the following:

- (1) capital raising by emerging privately held small businesses and publicly traded companies with less than \$250 million in public market capitalization;
- (2) trading in the securities of such businesses and companies; and
- (3) public reporting and corporate governance requirements to which such businesses and companies are subject.

On behalf of the Advisory Committee, we are pleased to submit the enclosed recommendation to the Commission. This recommendation is the first of what will be an ongoing series of recommendations to be provided by the Advisory Committee in fulfillment of its mandate.

We and the other members of the Advisory Committee are prepared to provide any additional assistance that the Commission or its staff may request.

Respectfully submitted on behalf of the Committee,

Stephen M. Graham  
Committee Co-Chair

M. Christine Jacobs  
Committee Co-Chair



Members of the Committee:

David A. Bochnowski  
John J. Borer, III  
Dan Chace  
Milton Chang  
Joseph "Leroy" Dennis  
Stephen M. Graham  
Shannon L. Greene  
M. Christine Jacobs  
Kara B. Jenny  
Steven R. LeBlanc  
Richard L. Leza  
Paul Maeder

Kathleen A. McGowan  
Catherine V. Mott  
Karyn Smith  
Dan Squiller  
Charlie Sundling  
Timothy Walsh  
Gregory C. Yadley

Official Observers:  
A. Heath Abshure  
Sean Greene

Enclosure

cc: Commissioner Elisse Walter  
Commissioner Luis Aguilar  
Commissioner Troy A. Paredes  
Commissioner Daniel M. Gallagher  
Meredith B. Cross  
Lona Nallengara  
Elizabeth Murphy  
Gerald J. Laporte  
Jennifer Zepralka

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

**Recommendation Regarding Relaxing or Modifying  
Restrictions on General Solicitation in Certain Private Offerings of Securities**

January 6, 2012

AFTER CONSIDERING THAT:

1. The Advisory Committee is of the view that private offerings of securities pursuant to Section 4(2) under the Securities Act of 1933 (the “Securities Act”) are a successful instrument for facilitating capital formation by emerging privately held small businesses and smaller public companies;
2. In offerings of securities conducted pursuant to Rule 506 of Regulation D (“Rule 506”), which is a safe harbor for private offerings of securities under Section 4(2) of the Securities Act and the most widely used Regulation D exemption, neither the issuer nor any person acting on the issuer’s behalf may offer or sell securities by any form of general solicitation or general advertising and securities sold pursuant to Rule 506 must be sold to “accredited investors” or persons who, either alone or with a representative, have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of a prospective investment;
3. The Advisory Committee is of the view that the restrictions on general solicitation and general advertising prevent many privately held small businesses and smaller public companies from gaining sufficient access to sources of capital and thereby materially limit their ability to raise capital through private offerings of securities; and
4. The Advisory Committee is of the view that the investor protections afforded by the existing restrictions on general solicitation and general advertising are not necessary in private offerings of securities whereby the securities are sold solely to accredited investors.

THEREFORE, the Advisory Committee recommends that the Commission take immediate action to relax or modify the restrictions on general solicitation and general advertising to permit general solicitation and general advertising in private offerings of securities under Rule 506 where securities are sold only to accredited investors.