

SECURITIES AND EXCHANGE COMMISSION
ADVISORY COMMITTEE ON
SMALL AND EMERGING COMPANIES

Washington, DC 20549-3628

March 9, 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:

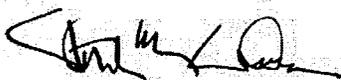
- (1) capital raising by emerging privately held small businesses and publicly traded companies with less than \$250 million in public market capitalization;
- (2) trading in the securities of such businesses and companies; and
- (3) public reporting and corporate governance requirements to which such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

On behalf of the Advisory Committee, we are pleased to submit the enclosed recommendation to the Commission on improving access to the public markets for small and emerging companies. The recommendation was unanimously approved by the members of the Advisory Committee present at a meeting held on February 1, 2012.

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

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

* Not present at the meeting held on February 1, 2012.

Official Observers

A. Heath Abshire
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 Improving Access to the
Public Markets for Small and Emerging Companies**

February 1, 2012

AFTER CONSIDERING THAT:

1. Small and emerging companies could significantly benefit from modifications to the rules and regulations of the Securities and Exchange Commission (“Commission”) affecting access to the capital markets;
2. Modifications to these rules and regulations could facilitate the development and growth of small and emerging companies, which may help rebuild the initial public offering market in the United States and encourage economic growth and job creation;
3. Any such modifications should be made keeping in mind investor protections afforded by existing rules or regulations or that may be necessary in connection with new rules or regulations;
4. Currently, Regulation A, or the “Conditional Small Issues Exemption,” provides an exemption from the registration requirements under the Securities Act of 1933, as amended (the “Securities Act”), for public offerings of up to \$5 million in any 12-month period by non-reporting companies pursuant to which securities can be offered publicly and are eligible to trade freely immediately after the offering in the over-the-counter market without any restrictions on the types of investors that can participate in the offering;
5. The volume of Regulation A offerings by small and emerging companies raising capital has been immaterial in recent years, with only 24 and 20 Regulation A offering statements having been filed with the Commission in 2010 and 2011, respectively, and only six of those offering statements having been qualified by the Commission to date;
6. Proponents of regulatory change to facilitate capital formation for small and emerging companies have asserted that the \$5 million offering limitation is too low for Regulation A to be a viable tool for capital formation for small and emerging companies, particularly in light of the lack of a state “blue sky” exemption for Regulation A offerings, effectively preventing companies from taking advantage of rapidly changing means to access and communicate with potential investors;

7. The traditional sources of equity capital, which include private equity, venture capital and “angel” capital investors, have been unavailable to many small business owners and entrepreneurs seeking capital to fund a developing business;
8. The Committee has reviewed and considered, in general terms, various proposed modifications to Regulation A designed to increase the utility of Regulation A, but is skeptical that any such modifications would provide substantial benefits to small and emerging companies; and
9. The Commission has limited resources with which to address issues relating to the access to capital for small and emerging companies, and, accordingly, it should address modifications to Regulation A only to the extent it is able to do so without adversely affecting its ability to address issues the resolution of which would likely provide substantial benefits to small and emerging companies, such as rules relating to triggers for public reporting, restrictions on general solicitation and the disclosure requirements and restrictions on communications in initial public offerings.

THE ADVISORY COMMITTEE RECOMMENDS THAT:

1. The Commission develop the terms and conditions of a new exemption for offerings modeled on the terms and conditions of Regulation A, but that provides for public offerings of up to \$50 million annually.
2. The new exemption should, as required under Regulation A, require issuers to prepare, file with the Commission and provide to potential investors an offering statement prepared in accordance with requirements established by the Commission, and the Commission, in connection with identifying the requirements for such offering statement shall consider additional disclosure requirements necessary for the protection of investors in light of the increased offering cap, including the requirement for audited financial statements.
3. The Commission should consider additional investor protections for the new exemption, including publicly accessible electronic filings of offering statements, periodic reporting for companies that have completed an offering pursuant to the new exemption and “bad actor” disqualification provisions.
4. In developing the terms and conditions of the new exemption, the Commission should appropriately calibrate such terms and conditions for small and emerging companies, taking into account the relatively smaller size and more limited resources of the companies that will take advantage of the new exemption.
5. The Commission should, in connection with allocation of resources for the review of regulations affecting capital formation, consider the greater importance of other areas of its review, including the review of rules relating to triggers for public reporting, restrictions on general solicitation and the disclosure requirements and restrictions on communications in initial public offerings.