

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:

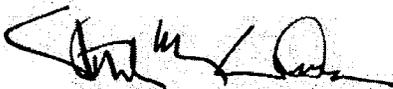
- (1) capital raising by emerging privately held small businesses and publicly traded companies with less than \$250 million in public market capitalization;
- (2) trading in the securities of such businesses and companies; and
- (3) public reporting and corporate governance requirements to which such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

On behalf of the Advisory Committee, we are pleased to submit the enclosed recommendations to the Commission on registration requirements and reporting obligations under the Securities Exchange Act of 1934. The recommendations were approved by a majority of the members of the Advisory Committee present at a meeting held on February 1, 2012.

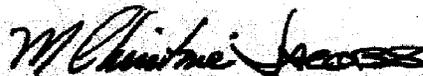
We and the other members of the Advisory Committee are prepared to provide any additional assistance that the Commission or its staff may request with respect to these recommendations.

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.

** Present at the meeting held on February 1, 2012, but did not vote in favor of the attached recommendation.

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

**Recommendations Regarding Registration Requirements and
Reporting Obligations under the Securities Exchange Act of 1934**

February 1, 2012

AFTER CONSIDERING THAT:

1. Under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") and the rules of the Securities and Exchange Commission (the "Commission") thereunder, a company is required to register a class of its equity securities and is subject to a reporting obligation under the Exchange Act if, at the end of the company's fiscal year, the securities are held of record by 500 or more persons and the company has total assets exceeding \$10 million;
2. A company becomes subject to a reporting obligation, under Section 15(d) of the Exchange Act, upon effectiveness of a registration statement relating to an offering of the company's securities under the Securities Act of 1933;
3. Under Section 12(g)(4) of the Exchange Act and Rule 12g-4 thereunder, a company that has a class of securities registered under Section 12(g) may terminate that registration and suspend its reporting obligation when the number of holders of record of that class falls below 300 or, alternatively, when the number of holders of record of that class falls below 500 and the company's assets have not exceeded \$10 million at the end of each of its last three fiscal years;
4. Under Rule 12g5-1 under the Exchange Act and Commission staff interpretations, the definition of "held of record" includes only those persons who are registered as shareholders on the records maintained by a company, which means that a broker-dealer or other securities intermediary that holds securities of a company would be registered on the records of the company as only one holder even if it holds securities of that company on behalf of a large number of clients, each of whom would be a beneficial owner;
5. Section 15(d) of the Exchange Act and Rule 12h-3 of the Commission's Exchange Act rules provide for the suspension of a company's Section 15(d) reporting obligation under the same thresholds as those that apply to suspending a Section 12(g) reporting obligation;
6. The Advisory Committee is concerned that:
 - (a) under the current thresholds that trigger Exchange Act registration and reporting, some private companies may be required to register and begin reporting sooner than desired and at a time in their development that is not the most advantageous

to the company or its shareholders, or, to avoid registration, companies may be driven to manage their capital raising or employee compensation activities in ways that may not be in their or their security holders' best interests;

- (b) public companies have been able to cease reporting under the Exchange Act – referred to as “going dark” – while their securities continue to be actively and widely traded and held by many more than 500 shareholders, leaving such shareholders and possible investors with little or no information, because ownership through securities intermediaries has resulted in fewer than 300 holders of record of the class of securities, even though the number of beneficial owners may be far greater;
 - (c) small and emerging companies may be discouraged from compensating their employees with stock, which may make it more difficult for such companies to attract and retain employees, because securities held by company employees, even if such employees cannot trade the securities, are counted for purposes of determining whether the company is required to register the class of securities under Section 12(g) of the Exchange Act and become subject to a reporting obligation; and
 - (d) banks and bank holding companies (“banking institutions”), which, the Committee notes, are subject to extensive regulation by, and financial reporting to, federal and state government agencies, are subject to the same triggers and thresholds for registration and reporting under the Exchange Act as other types of companies, but due to the nature of their shareholders may be disproportionately affected by the current regulatory thresholds;
7. The Advisory Committee believes that the characteristics that are most relevant in connection with a determination of whether a company should be subject to reporting obligations have changed since the enactment of Section 12(g), and that the current triggers and thresholds for registration and reporting under the Exchange Act are no longer the correct triggers and thresholds by which a determination should be made as to whether a company should be required to register and report under the Exchange Act;
 8. The Advisory Committee has considered whether the thresholds for Exchange Act registration and reporting, as well as for terminating registration and suspending reporting, should be adjusted, including whether a test based on the number of beneficial holders, rather than a test based on the number of holders of record, should be considered, whether the amount of assets test should be reconsidered, and whether a new standard or standards should be used to determine whether a company shall be required to register and report, or to terminate registration and suspend reporting, under the Exchange Act;
 9. The staff of the Commission currently is undertaking a comprehensive study of the registration and reporting requirements under the Exchange Act, which includes, among other things, a consideration of the questions described in paragraph 8, above;

10. The Commission has authority under Section 12(h) of the Exchange Act to exempt companies from the registration requirements of Section 12(g) and reporting obligations under Section 15(d), if the Commission finds that the action is not inconsistent with the public interest and protection of investors; and
11. The Commission also has broad exemptive authority with respect to requirements of the Exchange Act under Section 36 of that statute.

THE ADVISORY COMMITTEE RECOMMENDS THAT:

1. The Commission take action immediately to amend its registration and reporting rules under the Exchange Act to adopt an interim rule, to be effective while the related study is pending, under which:
 - a company's obligation to register and begin public reporting would not be triggered until it had a class of securities held by 1,000 or more holders of record, except that a banking institution's obligation to register and begin public reporting would not be triggered until it had a class of securities held by 2,000 or more holders of record;
 - a company that is currently obligated to file reports with the Commission could cease public reporting if the number of holders of record of the class of securities that subjects the company to reporting is less than 600, except that a banking institution could cease public reporting if the number of holders of record of the class of securities that subjects the banking institution to reporting is less than 1,200; and
 - holders of record who are employees of the company or banking institution and who are appropriately restricted from trading their securities would not be counted in determining whether the company or banking institution has met these thresholds;
2. In addition to the questions described in paragraph 8 above, the Commission staff's study of the registration and reporting requirements under the Exchange Act should include an assessment of the effects of the above-referenced interim rule changes, as well as consideration of possible transition periods for companies impacted by interim rule changes that previously initiated or ceased public reporting in reliance on the current regulations; and
3. After completion of the staff study and an analysis of findings thereunder, the staff of the Commission would be required to evaluate the registration and reporting rules under the Exchange Act and to recommend to the Commission permanent modifications of such rules based on the findings of such staff study.