

**SECURITIES AND EXCHANGE COMMISSION
ADVISORY COMMITTEE ON
SMALL AND EMERGING COMPANIES**

Washington, DC 20549-3628

March 21, 2013

The Honorable Elisse B. Walter
Chairman
U. S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1070

Dear Chairman Walter:

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 disclosure and other requirements for smaller public companies under the federal securities laws. The recommendations were unanimously approved by the members of the Advisory Committee present and voting at a meeting held on February 1, 2013.

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
Charlie Sundling *
Timothy Walsh
Gregory C. Yadley

* Not present at the meeting held on February 1, 2013.

Official Observers

A. Heath Abshire
Sean Greene

Enclosure

cc: Commissioner Luis Aguilar
 Commissioner Troy A. Paredes
 Commissioner Daniel M. Gallagher
 Lona Nallengara
 Elizabeth Murphy
 Gerald J. Laporte

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

**Recommendations Regarding Disclosure and Other Requirements
for Smaller Public Companies**

February 1, 2013

AFTER CONSIDERING THAT:

1. Small businesses have historically played a significant role as drivers of economic activity, innovation and job creation in the United States.
2. The U.S. Securities and Exchange Commission (Commission) has provided for simplified disclosure and reporting for smaller issuers for over 30 years. Under current Commission rules, “smaller reporting companies” have certain scaled disclosure and reporting requirements available to them. The rules define “smaller reporting company” as a company with less than \$75 million in common equity public float, or, if unable to calculate the public float, companies with less than \$50 million in annual revenues. Similarly, under current Commission rules, a company is considered a “non-accelerated filer” if it has a public float of less than \$75 million as of the last day of the most recently completed second fiscal quarter.
3. The Jumpstart Our Business Startups Act (JOBS Act), enacted on April 5, 2012, created a new category of company called an “emerging growth company,” to which certain scaled disclosure and other requirements apply at the time of the company’s initial public offering (IPO) and for a specified period thereafter. An emerging growth company is defined as a company with total annual gross revenues of less than \$1 billion during its most recently completed fiscal year. The JOBS Act includes a “start date” condition for the emerging growth company category that provides that only a company whose IPO occurred after December 8, 2011 may be considered an emerging growth company. A company retains its status as an emerging growth company until the earliest of the following:
 - its total annual gross revenues reach \$1 billion or more;
 - it is deemed to be a large accelerated filer under Securities Exchange Act of 1934 (Exchange Act) Rule 12b-2;
 - it has issued more than \$1 billion in non-convertible debt in the previous three years; or
 - the last day of issuer’s fiscal year following the fifth anniversary of the issuer’s first registered sale of common equity securities.

4. The scaled disclosure requirements available to smaller reporting companies overlap with those available to emerging growth companies, but the provisions are not identical. In many cases, the disclosure requirements applicable to smaller reporting companies are less burdensome than those applicable to emerging growth companies, with a few notable exceptions, such as exemptions from the requirement to provide an auditor attestation report under Section 404(b) of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), and exemptions from certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) relating to executive compensation.
5. Companies that are considered smaller reporting companies may have revenue that is considerably less than the \$1 billion threshold for the emerging growth company category, but because of the “start date” and the five-year anniversary conditions for the emerging growth company category, existing smaller reporting companies are unable to take advantage of the provisions of the JOBS Act.
6. The Committee believes that expanding the scaled and other regulatory relief provided to smaller reporting companies to include some of the regulatory relief provided to emerging growth companies under the JOBS Act would be helpful to facilitate innovation and job creation by smaller companies without adverse effects on investor protection.
7. The Committee also believes that regulatory relief should be provided to smaller reporting companies with respect to the Commission’s other disclosure requirements that place a disproportionate burden on smaller reporting companies in terms of the cost of, and time spent on, compliance with such requirements without a corresponding benefit to investors. These include the exhibit filing requirement for all material contracts not made in the ordinary course of business, as well as the requirement that all issuers submit financial information in XBRL format for periodic reports and other public filings.
8. The Committee also believes that the current threshold for the smaller reporting company is too low and the Committee believes that expanding the companies that could qualify as smaller reporting companies would further encourage more robust smaller company participation in the capital markets without adverse effects on investor protection.
9. According to data provided by the Commission’s staff, in 2011, there were approximately 8,100 operating companies that filed annual reports on Form 10-K with the Commission, and the staff estimates that approximately 59% had a public float of less than \$75 million, approximately 11% had a public float between \$75 million and \$250 million and approximately 6% had a public float between \$250 million and \$500 million.

THE COMMITTEE RECOMMENDS THAT:

1. The Commission revise the definition of “smaller reporting company” in Rule 405 under the Securities Act of 1933, Rule 12b-2 under the Exchange Act, and Item 10 of Regulation S-

K to include companies with a public float up to \$250 million, or, if unable to calculate the public float, companies with less than \$100 million in annual revenues.

2. The Commission revise its disclosure and other rules applicable to smaller reporting companies to incorporate exemptions from the following requirements, which are available to emerging growth companies under the JOBS Act:

- o the requirement in Exchange Act Section 14A(a) to conduct shareholder advisory votes on executive compensation and on the frequency of such votes;
- o the requirement in Exchange Act Section 14A(b) to provide disclosure about and conduct shareholder advisory votes on golden parachute compensation;
- o the requirement in Section 953(b) of the Dodd-Frank Act to provide disclosure of the ratio of the median annual total compensation of all employees of the issuer to the annual total compensation of the chief executive officer (when adopted);
- o the requirement in Exchange Act Section 14(i) to provide disclosure of the relationship between executive compensation and issuer financial performance (when adopted);
- o in the case of a new or revised financial accounting standard that has different compliance dates for public and private companies, the requirement to comply with any such financial accounting standard until the date that a private company is required to comply; and
- o any rules of the Public Company Accounting Oversight Board requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis).

3. The Commission specify that such scaled disclosure and other provisions shall be available to a smaller reporting company for as long as the company meets the revised smaller reporting company definition.

4. The Commission revise the definition of "accelerated filer" in Rule 12b-2 under the Exchange Act to include companies with a public float of \$250 million or more, but less than \$700 million, as of the last business day of the company's most recently completed second fiscal quarter. As a result of such revision, the requirement to provide an auditor attestation report under Section 404(b) of the Sarbanes-Oxley Act would no longer apply to companies with public float between \$75 million and \$250 million.

5. The Commission revise the material contracts exhibit filing requirement in Item 601(b)(10) of Regulation S-K to provide that smaller reporting companies will not be required to file schedules or similar attachments to such exhibits unless such schedules or attachments contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the disclosure document.

6. The Commission revise its rules to provide an exemption for smaller reporting companies from the requirement to submit financial information in XBRL format for periodic reports and other public filings.
7. When adopting new disclosure rules, the Commission consider whether such rules place a disproportionate burden on smaller reporting companies in terms of the cost of, and time spent on, compliance with such requirements, and if so, provide for exemptions from or phase-in periods for such new rules for smaller reporting companies.