

SEC Advisory Committee on Smaller Public Companies

Committee Agenda

The following overarching principles should characterize the Committee's work:

- Further Commission's Investor Protection Mandate.
- Seek Cost Choice/Benefit Inputs.
- Keep It Simple.
- Maintain Culture of Entrepreneurship.
- Capital Formation Should Be Encouraged.
- Recommendations Should Be Prioritized.

1. Definition of "Smaller Public Company."

- 1.1 Develop preliminary observations to be used for analysis of each substantive area under Items 2 through 7 below.
- 1.2 Examine appropriateness of existing definitions.
 - 1.2.1 Small business ("S-B") issuer -- less than \$25 million in public float and revenues.
 - 1.2.2 Accelerated filer definition – more than \$75 million in market float.
 - 1.2.3 Fewer than 500 shareholders of record and \$10 million in assets (Exchange Act §12(g) standard, including implications of issuing employee stock options).
 - 1.2.4 Use of Registration Statement S-3.
 - 1.2.5 Well-known seasoned issuers (public float of at least \$700 million by non-affiliates).
 - 1.2.5 Listing standards.
 - * NYSE.
 - * NASDAQ.
 - * AMEX.
 - * OTCBB.
 - * Pink Sheets.

* Others.

1.2.6 Market definitions of “small cap” and “micro cap.”

1.2.7 Other definitions?

1.3 How do existing definitions work? Are they meaningful and effective? Are they practical? Is it possible to develop risk-based or other definitions? Seek economic analysis.

1.4 Utilize the SEC Office of Economic Analysis to evaluate the definitions.

2. Internal Control – Section 404 of Sarbanes-Oxley; S-K, Item 308, S-X, Reg ¶210.2-02(e).

2.1 Evaluate first quarter 2005 reports.

2.1.1 Effective control.

* Size/characteristics of company.

2.1.2 Ineffective control.

* Size/characteristics of company.

* Reasons for failure.

* Materiality of failure.

2.2 Evaluate benefits and costs/burdens for smaller companies, including disproportionate costs/burdens, competitive disadvantages and effectiveness in preventing fraud.

2.2.1 Seek economic input.

2.2.2 Consider impact on “tone at the top.”

2.2.3 Versus private companies and foreign companies.

2.2.4 Evaluate cost choices imposed on companies.

2.2.5 Evaluate the leadership mindshare shift required.

2.2.6 Evaluate potential diminishing returns to investors.

2.2.7 Estimate annual cost of being public relative to profit potential.

2.3 Evaluate procedures used in first quarter reports.

2.3.1 Company procedures.

2.3.2 Auditor procedures.

2.3.3 What worked well.

2.3.4 What worked less well or didn't work.

2.4 Mechanisms to evaluate.

2.4.1 Questionnaires prepared by FEI, NASDAQ and others.

2.4.2 One or more roundtables held by SEC and PCAOB.

2.4.3 Other written or oral input.

* Define "tone at the top."

* Seek information re: costs and benefits.

2.5 Based on evaluation, recommend or support modifications, if any, to:

2.5.1 SEC regulations.

2.5.2 PCAOB Auditing Standard No. 2.

2.5.3 COSO (including evaluation of task force proposal).

2.5.4 Recommend or support delaying effectiveness for non-accelerated filers or others.

2.5.5 Consider staggering reports – i.e., a report might be due every other year rather than every year.

2.5.6 Other alternatives.

3. Corporate Governance Standards.

3.1 Review and catalog.

3.1.1 NYSE.

3.1.2 NASDAQ.

- 3.1.3 Other (AMEX, OTCBB, Pink Sheets).
- 3.1.4 Private entities.
 - * Ratings and standards: ISS, Corporate Library, IRR, Moody's, etc.
 - * Institutional standards: CALPERs, TIAA-CREFF, others.
- 3.2 Evaluate impact of requiring independent directors for smaller companies.
 - 3.2.1 Boards themselves and Committees.
 - 3.2.2 Impact on controlling families or other controlling shareholders.
 - 3.2.3 Impact on other stakeholders.
 - 3.2.4 Impact of stakeholders on effectiveness of independent directors.
 - 3.2.5 Loss of market and company knowledge and experience.
- 3.3 Evaluate impact of independence definitions.
 - 3.3.1 Boards themselves and Committees.
 - 3.3.2 Adequate supply of competent directors.
 - 3.3.3 How are boards/committees performing?
 - 3.3.4 Cost of board operation.
 - 3.3.5 Other.
- 3.4 Evaluate impact of special requirements on audit committee make-up and operation.
 - 3.4.1 Special independence requirements.
 - 3.4.2 Financial expertise requirements and disclosure requirements.
 - 3.4.3 Loss of operational knowledge, experience and depth.
- 3.5 Evaluate impact of stockholder approval of equity compensation plans.
- 3.6 Recommendations.

4. Effects of other Statutory Requirements and Commission Regulations, including under Sarbanes-Oxley, on Smaller Businesses.

- 4.1 Officers' certifications.
- 4.2 Auditing firm's standards and requirements.
 - 4.2.1 Independence.
 - 4.2.2 Partner rotation.
 - 4.2.3 See above re: internal control audit.
- 4.3 Prohibition of loans to executive officers and directors.
- 4.4 Other.
 - 4.4.1 Whistleblower regulation.
 - 4.4.2 Reg. G.
 - 4.4.3 Accelerated filing deadlines.
 - 4.4.4 Increased SEC review of periodic reports.
 - 4.4.5 Codes of conduct.
 - 4.4.6 Disgorgement for restatements.
 - 4.4.7 Benefit plan blackouts.
 - 4.4.8 Officer and director bars.
 - 4.4.9 Increased criminal sanctions.
- 4.5 Recommendations.

5. Disclosure Requirements.

- 5.1 How do disclosure requirements affect smaller public companies?
- 5.2 Analyze Regulation S-B (including seeking economic input).
 - 5.2.1 Is size definition of S-B correct?

- 5.2.2 Irrespective of the size of issuer, is Regulation S-B helpful, effective or beneficial?
- 5.2.3 What is the market reaction to S-B companies?
- 5.2.4 What changes, if any, to improve or replace S-B?
- 5.3. Analyze forms and requirements.
 - 5.3.1 Periodic reporting Exchange Act forms (10-K, 10-KSB, 10-Q, 10-QSB).
 - 5.3.2 Special Securities Act forms (SB-1, SB-2).
 - 5.3.3 Are S-B forms helpful, beneficial, effective or negative, both for the issuer and the investor market?
 - 5.3.4 What is the market reaction to S-B forms?
 - 5.3.5 What changes, if any, to recommend?
 - * Modified quarterly reporting (perhaps only revenue and ownership information and brief MD&A)?
 - * Semi-annual instead of quarterly periodic reporting?
 - * Permitting “fully comply” certification to be affixed to incomplete filings, with appropriate disclosure, instead of withholding information from investors until filing is complete?
- 5.4 Identify other aspects of disclosure regime that might be modified for smaller companies.
 - 5.4.1 MD&A.
 - 5.4.2 Proxy rules (14A and C).
 - 5.4.3 Williams Act (13D and G).
 - 5.4.4 Regulation FD.
 - 5.4.5 Section 16 reporting and short swing profit recapture provision.
- 5.5 Identify other possible scaling standards.
 - 5.5.1 Is size the most appropriate standard or is risk?

- 5.5.2 Are revenues a better scaling standard for some disclosure rules and other regulations?
- 5.5.3 Should other alternatives be considered?
- 5.6 Liability concerns.
 - 5.6.1 General.
 - 5.6.2 Safe-harbor for forward-looking information.
 - 5.6.3 Special considerations re: outside directors.
- 5.7 Consider issues of delinquent and deficient micro-cap disclosure.
 - 5.7.1 Standards.
 - 5.7.2 Cure period.
 - 5.7.3 Deregistration.
 - 5.7.4 Consider modification of Rule 15c2-11.
 - 5.7.5 Relationship with Commission delinquent filer program.
- 5.8 Evaluate the balance of disclosure to protect investors with the competitive needs of smaller public companies.
 - 5.8.1 Has disclosure gone so far that smaller public companies cannot be competitive in the global marketplace?
 - 5.8.2 What is the proper balance of disclosure?
- 5.9 Recommendations.
- 6. Accounting Principles.
 - 6.1 Evaluate “one size fits all” vs. “Big GAAP-Little GAAP.”
 - 6.2 Identify priority accounting principles, if any, where modifications might be considered for smaller public companies, including, but not limited to, stock option expensing.
 - 6.3 Emphasize importance of cash in many smaller companies.

- 6.4 Analyze overlay and impact of other regulatory schemes (financial institutions, insurance, government contractors, etc.).
- 6.5 Analyze role of outside audit firms with respect to smaller companies, e.g., environmental shift in role of auditors, communications with outside auditors, concentration of Big Four accounting firms, difficulty in switching audit firms.
- 6.6 Analyze whether extended effective dates for smaller companies are appropriate for future accounting principles.
- 6.7 Recommend changes, if any.

7. Capital Formation.

- 7.1 Analyze existing structure.
 - 7.1.1 SB-1.
 - 7.1.2 SB-2.
 - 7.1.3 S-3.
 - 7.1.4 Proposed changes under '33 Act Release No. 8501.
 - * New registration statements.
 - * New offering procedures and rules.
- 7.2 Analyze selected exemptions from registration and subsequent reporting.
 - 7.2.1 Section 4(6).
 - 7.2.2 California Rule 1001.
 - 7.2.3 Test the Waters.
 - 7.2.4 Rule 701 (especially advisability of revisiting ceilings in view of increase in market standards and average time to go public).
 - 7.2.5 Others.
- 7.3 Evaluate Regulation A.
- 7.4 Analyze investment banker roles.
- 7.5 Analyze analysts' coverage.

- 7.6 Costs and timing to get access to markets.
 - 7.6.1 Broader access to capital, including foreign markets.
 - 7.6.2 Possible roles of capital formation specialists, including brokers and “finders.”
- 7.7. Cost of and ability to exit the markets.
- 7.7 Possible improvements in interaction and interplay between federal law or SEC, state laws or state regulators, and self-regulatory organizations and rules (e.g., Rule 15c2-11).
- 7.8 Liability issues.
- 7.9 Recommendations.
- 8. Small Business Forums and Related Issues.
 - 8.1 Analyze recommendations from recent SEC Small Business Forums.
 - 8.2 Review small business statutes (Regulatory Flexibility Act and 1980 Small Business Investment Incentive Act).
- 9. Final Recommendations.
 - 9.1 Possibility of rolling or staggered recommendations.
 - 9.2 Categories of possible solutions:
 - 9.2.1 SEC rules.
 - 9.2.2 SEC staff interpretations or practices.
 - 9.2.3 PCAOB standards or staff interpretations or practices.
 - 9.2.4 SRO rules or staff interpretations or practices.
 - 9.2.5 Others (i.e., ISS, Moody’s etc.).
 - 9.3 Should size or other measurements be a determining factor?
 - 9.3.1 If so, what should be the measurement, breakpoints, and how many levels (remember: keep it simple).

9.3.2 Are there other solutions (i.e., a system based on meeting compliance and disclosure standards would relieve issuers from certain burdens; if compliance was not met, there could be additional requirements).