

December 7, 2005

**SEC ADVISORY COMMITTEE ON SMALLER PUBLIC COMPANIES
PRELIMINARY RECOMMENDATIONS
PROPOSED BY THE
CORPORATE GOVERNANCE AND DISCLOSURE SUBCOMMITTEE**

- Smaller Public Companies not be subject to further acceleration of the due dates of annual and quarterly reports required under the Securities Exchange Act of 1934 (the “1934 Act”) beyond 75 days for annual reports and 40 days for quarterly reports. *On September 21, 2005, the Commission voted to propose for comment an amendment implementing this recommendation.*
 - Additional regulation has significantly taxed the resources of Smaller Public Companies.
 - Accelerating further the due dates of periodic reports in light of the significantly increased burdens and higher costs could lead to additional late filings and jeopardize the quality of disclosure.
- In the event the Commission elects to provide Smaller Public Companies with relief from the outside auditors 404 attestation requirement under the Sarbanes Oxley Act (“SOX”), which the Subcommittee strongly supports, and as a condition to such relief, require (i) additional disclosure concerning the issuer’s internal control over financial reporting beyond that required under Item 308 of Regulation S-K and Regulation S-B, and (ii) impose (or require prominent disclosure with respect to) audit committee corporate governance standards, whether or not required under applicable SRO listing standards, substantially equivalent to those codified under SEC Rule 10A-3. These requirements would address audit committee independence, responsibility for selection and oversight of auditors, procedures for handling complaints, authority to engage independent advisors, and funding.
 - The Committee has received considerable oral testimony and written comments concerning the substantial, unexpected and disproportionate burden the outside auditor attestation under Section 404 of SOX has placed on Smaller Public Companies, both in terms of internal and external resource requirements and costs. Accordingly, the Subcommittee supports the elimination of the outside auditor attestation for Smaller Public Companies, subject to such issuers providing enhanced disclosure and meeting minimal audit committee governance standards, as described above.

- Provide foreign private issuers that are accelerated filers with greater certainty concerning the date for compliance with SOX 404 by testing foreign private issuer status for such purpose as of the end of an earlier fiscal period, such as of the end of the prior fiscal year.
 - Because foreign private issuer status is tested at the end of each fiscal quarter, a foreign private issuer that is an accelerated filer may not know whether it must comply with SOX 404 for the fiscal year ending on or after July 15, 2006 or for its current fiscal year until the last day of this fiscal year. This uncertainty creates an unnecessary hardship on such foreign private issuers.
- Amend SEC rules under Sections 12(g) and 15(d) of the 1934 Act as follows: (i) as authorized under such sections, interpret “held of record” to mean beneficial holders within the meaning of the 1934 Act; (ii) increase the thresholds under Section 12(g) requiring registration under the 1934 Act to \$15,000,000 in total assets and 1,000 security holders; (iii) amend the threshold under Section 15(d) of the 1934 Act permitting deregistration from 300 to 750 security holders, and (iv) exclude from the count of the number of security holders for such purposes, holders of unexercised options issued in compensatory transactions. The Subcommittee recommends the proposal described in clause (ii) above be adopted with a reasonable phase-in period so as not to unduly burden affected issuers, such as a 24 month period.
 - Use of a record holder test undermines the intent of the 1934 Act by providing registration thresholds which can be easily manipulated by aggregating beneficial holders together in street name.
 - Holders of stock options who have not exercised such securities and made an investment decision should not be counted in determining the number of holders for purposes of triggering the registration requirements under the 1934 Act.
- The Subcommittee strongly supports the loan prohibition contained in SOX. The Subcommittee recommends that the Staff, working with other government agencies as appropriate, seek to provide the issuer community with greater clarity as to the types of transactions which fall within the prohibition.
 - Examples of transactions which have created uncertainty under the loan prohibition include the cashless exercise of stock options, indemnity advances, relocation accommodations and split dollar life insurance policies. The Subcommittee further believes these transactions, if approved by independent directors, are unlikely to lead to the abuse envisioned under the SOX loan prohibition.

The following additional recommendations are intended to reduce the costs incurred by Smaller Public Companies associated with the preparation, filing and dissemination of SEC documents where such cost reductions can be achieved without compromising investor protection.

- Modify the annual financial statements required under Regulation S-K and Regulation S-B with respect to Smaller Public Companies to require an audited balance sheet as of the end of

the two most recent fiscal years and audited statements of income, cash flows and changes in stockholders equity for each of the two fiscal years preceding the date of the most recent audited balance sheet, as well as corresponding changes to the Managements Discussion and Analysis of Financial Condition and Results of Operations sections of SEC reports, and other affected rules.

- The Subcommittee believes that eliminating the third year of audited financial statements for Smaller Public Companies which are not S-B filers today will reduce costs and simplify disclosure while not impacting investor protection as such third year data and corresponding analysis is generally less relevant to investors than the more current data, and such third year data is readily available online.
 - The Subcommittee believes that adding a requirement for a second year of audited balance sheet for Smaller Public Companies which are S-B filers today provides investors with a basis for comparison with the current period, without substantially increasing audit costs.
 - Elimination of the third year of audited financial statements may help reduce costs associated with switching audit firms by eliminating expenses and processes associated with predecessor auditor consent requirements.
 - If the SEC extends this accommodation to Smaller Public Companies, the Subcommittee recommends that the SEC evaluate whether its rules can be simplified by consolidating Regulation S-B with Regulation S-K and by adopting a new Regulation S-K provision providing the existing and recommended accommodations to Smaller Public Companies.
 - The purpose of these combined recommendations is to reduce duplicative regulation, eliminate the stigma noted by several commentators associated with taking advantage of cost savings and reduced regulation afforded S-B filers today, and extend certain accommodations afforded S-B filers to a broader range of Smaller Public Companies.
- Eliminate the need to disseminate paper versions of SEC documents to investors by extending the “access equals delivery” presumption to all SEC filings available in electronic form over the internet, including documents regulated under the 1934 Act such as proxy statements and annual reports. **On November 29, 2005, the Commission voted to propose for comment rules that would allow use of the internet to satisfy proxy material delivery requirements.**
 - Smaller Public Companies would benefit from reduced costs by the elimination of the preparation of paper documents and associated mailing expenses for security holders who have internet access and prefer this mode of delivery.
 - In the Securities Reform Release, the SEC cited that over 70% of Americans have internet access and adopted an “access equals deliver” presumption with respect to the delivery of final prospectuses under the 1933 Act.

- Extending the “access equals delivery” presumption to a wider range of SEC filings should not impair investor protection provided security holders requiring paper versions have the opportunity to obtain them in a timely manner at no cost to such security holders. In connection with this proposal, the Subcommittee recommends that issuers be required to provide physical notice of the availability of such documents, and agree to provide security holders with paper versions of such documents if requested, without charge to such security holders (such as through the use of a toll free telephone number).
- Allow Smaller Public Companies to use Form S-3 and to incorporate past and future SEC filed documents by reference. Further, the Subcommittee recommends eliminating the requirement that the registrant has filed in a timely manner all reports required to be filed during the preceding twelve calendar months as a condition to use of Form S-3, provided that the issuer has been reporting under the 1934 Act for at least 12 months and, at the time of such filing, all required reports have been filed.
 - As online accessibility to previously filed documents on corporate websites and through Edgar increases, Smaller Public Companies should be able to take advantage of the efficiency and cost savings of incorporation by reference to information already on file. With the widespread accessibility to SEC filed documents online, the Subcommittee believes that size of the issuer need no longer be a determinant of the use of more cost-effective SEC forms.
 - Smaller Public Companies would not enjoy automatic effectiveness of registration statements as is the case with well known seasoned issuers under the Securities Reform Release. Accordingly, the Commission’s Staff can elect to review the registration statement and documents incorporated by reference of Smaller Public Companies if it chooses to do so. In addition, 1934 Act documents are subject to more frequent SEC review as well as enhanced processes, such as disclosure controls and procedures and certifications by the chief executive officer and chief financial officer. The Subcommittee believes these safeguards justify the potential cost reductions and process efficiencies that can be achieved by streamlining SEC filings and eliminating duplicative disclosure of information already in prior SEC filings.
 - The Subcommittee believes that an issuer’s failure to timely file an SEC report should not result in increased costs of compliance and duplication of information already widely available. The Subcommittee believes that the risk of SEC enforcement proceedings, delisting notifications and disclosure, and associated negative market reaction are sufficient and more appropriate deterrents.
- Establish a task force to work with other governmental bodies to reduce inefficiencies associated with governmental filings, including synchronizing filing requirements involving substantially similar information, such as financial statements, and studying the feasibility of extending incorporation by reference privileges to other governmental filings containing substantially equivalent information.

- The Subcommittee received numerous comments in written and oral testimony as to the high costs of compliance with duplicative disclosure requirements of multiple government agencies. These concerns were voiced particularly strongly from the local banking community.
- Examine ways to further reduce costs associated with SEC filings, including considering upgrades or technological alternatives to Edgar so that Smaller Public Companies can make their filings without the need for third party intervention and associated costs.
 - The significant technological advances in software compatibility and capability since Edgar was adopted should be evaluated, and more cost-effective alternatives implemented if available.

The Subcommittee has also evaluated other aspects of governance and disclosure regulation and their impact on Smaller Public Companies, and has concluded that many of the current rules and recent reforms in the areas of governance and disclosure are working well. The oral testimony and written comments generally supported this conclusion. Accordingly, the Subcommittee has not recommended further changes in these areas. In particular, the Subcommittee is of the view that the following reforms have had a positive impact on the quality of corporate governance and disclosure: the CEO/CFO certification requirements and associated required processes, particularly disclosure controls, the independence requirements for boards and board committees, the enhanced responsibilities of audit committees, whistle blower protection, more frequent SEC review of periodic reports and additional guidance and increased focus on the Management's Discussion and Analysis of Financial Condition and Results of Operations sections of SEC reports and registration statements.

Respectfully submitted,

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