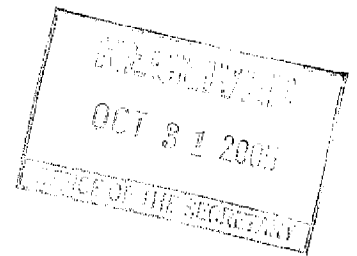


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October 25, 2005

Mr. Jonathan G. Katz
Committee Management Officer, Advisory Committee on Smaller Public Companies
SECURITIES AND EXCHANGE COMMISSION
450 Fifth Street, NW
Washington, DC 20549-0609

RE: File Number 265-23 -149
Public Comments on the Committee Agenda



Dear Mr. Katz:

I serve as a member of the Board of Trust Managers of a small, publicly held real estate investment trust. I would like to offer my comments to the Committee Agenda of the Advisory Committee on Smaller Public Companies.

I appreciate the Committee's purpose in reviewing matters of interest relative to smaller public companies. Matters on your agenda of significant interest to me are (paragraph numbers should coincide with the applicable paragraph numbers of the Committee Agenda):

1. Definition of "Smaller Public Company". 1.2.1 Small business ("S-B") issuer – less than \$25 million in public float and revenues.

It is my understanding that the definition of a "small business" has not been addressed in several years. It would appear to me that such definition should be revisited due to inflation, consolidation of companies, and the increased cost of compliance for small companies that no longer meet the definition of a "small business" under Reg. S-B. I would encourage you to consider a significant increase in the public float test or consideration of a test that provides for a multiple of tests that must be met in order to be treated as not a "small business".

For example, one approach might be to have a test that included ceilings applicable to public float, total assets and gross income. Or in the alternative, it would appear to me that in today's economy, for purposes of regulatory compliance under the securities laws a company with less than \$75 million in public float would

be considered a “small business.” This approach is consistent with the SEC’s accelerated filer process.

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

It appears to me that there must be significant different requirements in the area of the internal controls and procedures instituted by Sarbanes-Oxley made upon “small business” companies as opposed to larger companies. The onerous mandates of Sarbanes-Oxley especially in the area of internal controls and procedures are an incredible hardship on smaller public companies. In fact, these mandates may force many small public companies to go private which would diminish the abilities of these companies to raise necessary capital. Furthermore, as with the company that I serve on the Board of Trust Managers, it would be extremely difficult for this company, as a real estate investment trust, to go private and to do so would extremely limited the company’s ability to access capital.

It would appear to me that either “small business” companies should be exempt from the requirements of Section 404 of Sarbanes-Oxley or the Commission should institute less onerous internal controls and procedure requirements for “small business” companies. It would appear to me that internal controls and procedures for a “small business” should be reasonable in light of the size of the company. To put such costly requirements on the “small business” in effect works as a detriment to its shareholders.

Some of my concerns and considerations in regard to the requirements of Sarbanes-Oxley (“SOX”), especially in the 404 requirements are as follows:

- The lost opportunities due to emphasis on SOX compliance on a small company’s management instead of contributing management’s attention to product development, marketing and the growth of the company.
- 404 compliance must be addressed differently with small companies in order to insure that small public companies are given the opportunity to develop, grow and succeed.
- There is and will be a gross imbalance between the costs and benefits for small companies in meeting the 404 requirements. This imbalance

will directly and significantly impact cash flow and retained earnings of small public companies.

- A risk-based approach to the design, implementation, assessment and audit of internal controls and procedures of small companies must be considered. This approach should place more emphasis on control environment and pervasive controls than on documentation and testing of transaction and process level controls. This approach should also focus on controlling and monitoring areas of highest risk to the financial reporting of the applicable small business.
- Evaluation should be given to the consideration as a control deficiency the lack of documentation of the design control or the lack of evidence supporting management's assessment of the control. Too much time, effort and money will be spent by small public companies to document internal controls that are effective, but for which a material weakness is deemed due to the lack of documentation.
- The reasonableness of allowing auditors to rely on the testing work of historically objective and competent individuals should be considered.
- Auditors of small public companies should be allowed and encouraged to take a more integrated audit approach where reliance on substantive audit work to support the assessment of the effectiveness of internal controls is allowed.
- Although I understand the need for a strong control environment and the need for internal control over financial reporting, the approach must not result in overkill that lacks any risk-based approach and focuses inordinately on documentation. Surely such an approach that overly burdened small public companies was never intended by Congress and was not the motivation for SOX.
- The definition of "material weakness" should be seriously considered and revised due to the extraordinary impact of this term on the process. It would appear that a "reasonably possible" standard as opposed to "more than remote" should be used. Furthermore, I would recommend that the term "could" cause a material weakness is resulting in too broad a search since anything "could". When in fact, the intent should be to focus on those things that "do" cause a material weakness.

- I would encourage the Committee to recommend that the final phase-in of the accelerated filing deadlines for small companies not be required. The burden of compliance is incredible in light of the enormity of this requirement not only on the companies, but also the accounting professionals necessary to this compliance. Furthermore, I question the benefit to investors by requiring this of most small public companies.
- I would encourage the SEC to consider an approach to materiality for small public companies that is reasonable, sensible and meaningful, will lessen the burden on smaller public companies and provide meaningful information to investors.

3.4 Evaluate impact of special requirements on audit committee make-up and operation.

I would encourage the committee to consider the recommendation of a change to the financial expertise requirement of Sarbanes-Oxley as applicable to a “small business” company. Many times it is very difficult for a “small business” company to obtain the services of a person meeting the requirements of a “financial expert” for its audit committee. It is especially difficult to find someone who meets the experience requirements of the definition.

4.2. Auditing firm’s standards and requirements. 4.2.1 Independence.

The prohibition against the auditor’s assistance in the preparation of the financial statements and the design of financial system’s controls and procedures is an undue hardship for small companies. These requirements force the small business company to obtain the additional services of another qualified accountant or accounting firm in order to complete the preparation of its financial statements and to design its systems. This greatly increases the costs to the small business company as compared to its income and resources.

It would appear that some relief in the onerous requirements in this area would be beneficial for small business companies.

5.2 Analyze Regulation S-B (including seeking economic input).

As mentioned above, I would recommend a change in the definition of a “small business.” I do believe that Reg S-B is helpful. However, the definition is out of date and should be modified.

- 5.8 Evaluate the balance of disclosure to protect investors with the competitive needs of smaller public companies.

Small public companies are very much at risk if disclosure requirements are not brought in line with the balance that is needed. Small public companies are finding it increasingly difficult to be competitive in the global marketplace with considering the increased burden of disclosure and compliance relative their size, income and resources.

- 6.1 Evaluate "one size fits all" vs. "Big GAAP-Little GAAP."

I would encourage the implementation of a "Big GAAP -Little GAAP" concept. It will be ruinous for small business companies to comply with a "one size fits all" accounting principles.

I would remind the committee that small businesses are the back-bone and uniqueness of the American system of capitalism. These small businesses must thrive for the benefit of our economy and these small businesses must have access to the capital markets to thrive. To have access to the capital markets means that the regulatory process applicable to small businesses must reasonable protect the investors without being so onerous that efficient compliance is likely not possible.

I appreciate very much your consideration of these comments.

Sincerely yours,



Larry G. Brown