

May 31, 2005

Mr. Jonathan G. Katz
Committee Management Officer
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549-0609

**Summary of Proposed Committee Agenda of
Advisory Committee on Smaller Public Companies
Commission File No. 265-23**

Dear Mr. Katz:

We are pleased to comment on the proposed committee agenda of the Advisory Committee on Smaller Public Companies (the Committee). We commend the Securities and Exchange Commission (the Commission) for establishing the Committee. The proposed agenda topics comprise a comprehensive list of relevant issues for consideration by the Committee. However, we suggest that the Committee give priority to those agenda topics where its recommendations could provide the greatest benefits, particularly given its initial 13-month charter.

In our view, the proposed topics on which the Committee should focus first are the definition of a smaller public company, capital formation, disclosure requirements, and corporate governance. Our comments and recommendations regarding the proposed agenda are discussed in detail below.

Priority of Agenda Topics

Although its charter may be extended by the Commission, the Committee should focus its efforts on those aspects of its proposed agenda that provide the greatest opportunity to provide meaningful recommendations for regulatory reforms that would promote capital formation by smaller public companies consistent with the objectives of investor protection.

We recommend that the Committee initially focus its efforts in specific areas of its proposed agenda. In particular, the Committee should develop a clear understanding about the scope of companies within its mandate, which will allow the Committee to assess the respective definitions and applicable regulations that currently exist. Below we offer some observations about the definitions of small business issuers, accelerated filers, well-known seasoned issuers, and Form S-3 eligible issuers.

In addition to these definitional issues, the Committee should consider the following subject areas:

- **Capital formation:** The public capital markets provide an efficient, lower-cost source of capital. The Committee should focus on the existing registration requirements, and related exemptions, as they affect the sources and cost of capital available to smaller public companies.
- **Disclosure requirements:** In recent years, new accounting standards have become effective shortly after their adoption. In many cases, those standards have not been rigorously field-tested, and many interpretive issues remained to be resolved during the implementation process. Smaller public companies, with fewer resources, face significant challenges when they join larger companies in the forefront of implementation efforts. The Committee should address the advisability of delayed, phased implementation of new accounting standards. In addition, the Committee should address the efficacy of Regulation S-B, the Commission's alternative reporting system for eligible small business issuers. However, at a time when the Commission and the accounting standard-setters are focused on improvements to the accounting standards and convergence of U.S. and international accounting standards, we do not believe the Committee should become engaged in a consideration of differential accounting principles for smaller public companies.
- **Corporate governance:** Effective systems of corporate governance provide a foundation for healthy growth and investor protection. The Committee should explore ways to foster the development of effective corporate governance during the early stages of company development, before a company becomes public.

The Commission recently deferred the effective date for reporting on internal control over financial reporting by companies that are not accelerated filers until fiscal years ending on or after July 15, 2006. Also, the Committee of Sponsoring Organizations (COSO) of the Treadway Commission expects to issue an improved internal control framework for smaller companies, *Implementing the COSO Control Framework in Smaller Businesses*, later this year. In addition, there has been considerable effort already to assess the lessons learned from the initial Section 404 reporting by accelerated filers and to improve implementation in 2005 and succeeding years, including the recent issuance of guidance by the Commission and the Public Company Accounting Oversight Board. Rather than expending effort now to further assess first-year implementation by the largest public companies, we recommend that the Committee allow some time for further developments to unfold before focusing on unique aspects of internal control reporting by smaller public companies.

Definitions Applicable to Smaller Public Companies

As stated above, we suggest that the Committee assess the existing definitions applicable to smaller public companies, including “small business issuer,” “accelerated filer,” and as proposed “well-known seasoned issuer.”

In previous comment letters to the Commission we have expressed our view that the threshold of \$75 million of public common equity float is too low for purposes of the definition of an accelerated filer in Exchange Act Rule 12b-2. In our view, many issuers currently subject to the accelerated reporting deadlines do not have a sufficient market following to warrant the incremental costs of accelerated filing. In light of the Commission’s proposed definition of a well-known seasoned issuer in Release No. 33-8501, *Securities Offering Reform*, and its analysis underlying the proposed threshold of \$700 million in public common equity float, we have urged the Commission to raise the current \$75 million threshold in the Exchange Act Rule 12b-2 definition of an accelerated filer. We believe that well-known seasoned issuers would have the level of market capitalization and investor interest, as well as the available resources, to merit accelerated reporting. Accordingly, the level of public float used to determine well-known seasoned issuer status also should be used to determine accelerated filer status. We also have recommended that the Commission not proceed with the further acceleration of such deadlines as currently scheduled, but instead retain the filing deadlines in effect this past year for accelerated filers.

Under Rule 12b-2, an issuer remains an accelerated filer until it becomes eligible to file as a small business issuer. As well as raising the threshold for public common equity float, we have recommended that the Commission reassess the criteria for exiting the accelerated filing deadlines. While we acknowledge the benefits to the market of consistency and predictability in the timing of annual and quarterly reporting by issuers, an issuer should not continue to be subject to shorter reporting deadlines long after it ceases to have a wide market following.

Currently, an issuer is eligible to use Form S-3 to register any class of securities if, among other things, it has at least \$75 million in public voting and nonvoting common equity float, measured as of any date within 60 days of the filing date, a threshold that has been in place since 1992. We have concurred with the Commission that it would be appropriate to adjust the \$75 million eligibility threshold in light of the increase in market equity valuations since 1992. In addition, we have suggested that the SEC consider adopting an indexing approach that would provide for periodic adjustments to the threshold based on changes in broad equity market indices. Similarly, the Committee should consider whether the Commission should reassess the \$25 million thresholds of annual revenue and public equity float in the definition of a “small business issuer” as adopted in 1992, and whether the Commission should adopt an indexing approach to the respective quantitative thresholds.

Mr. Jonathan G. Katz
May 31, 2005

Page 4

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We would be pleased to discuss our comments with the Commission, its staff, or the Committee at your convenience.

Very truly yours,

Ernst + Young LLP