

April 11, 2006

**Sent via e-mail to rule-comments@sec.gov**

Advisory Committee on Smaller Public Companies  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-3628  
Attn: James C. Thyen, Co-Chair  
Herbert S. Wander, Co-Chair

**Re: File No. 265-23  
Recommendations for Reducing Unnecessary Regulatory Burdens on  
Smaller Public Companies – Advisory Committee Recommendation IV.P.6**

Ladies and Gentlemen:

We are writing to express our support for Recommendation IV.P.6 included in the exposure draft of the United States Securities and Exchange Commission Advisory Committee on Smaller Public Companies (the “Committee”), as published in Releases Nos. 33-8666 and 34-53385. The undersigned have been active participants for the past seven years as members of the Task Force which authored the *Report and Recommendation of the Task Force on Private Placement Broker-Dealers*, recently published at 60 The Business Lawyer 959 (May 2005) (the “Report”). While we currently serve as the Co-Chairs of the Private Placement Broker-Dealer Task Force drawn from interested committees of the Business Law Section of the American Bar Association (“ABA”), this letter is submitted by the undersigned individually and not on behalf of the ABA or any Committee or Section of the ABA.

We commend the Committee for its diligence in comprehensively evaluating the many issues that fell within its charter. The number of public meetings, the openness to all viewpoints, and the quality and clarity of the draft recommendations in the exposure attest to the enormity and success of the Committee’s work.

The recommendation that the Securities and Exchange Commission spearhead a multi-agency effort to create a streamlined registration process for finders, mergers and acquisitions advisors and institutional private placement practitioners (collectively referred to as Private Placement Broker-Dealers or “PPBDs”) properly recognizes the impediments to small business capital formation that could be eliminated without loss of investor protection. This is consistent with the Commission’s role as both a regulator and an agency responsible for encouraging capital formation. We urge the Committee to include this recommendation as drafted in its final Report for the following reasons:

1. The Committee’s recommendation will legitimize the activities of, and simplify compliance procedures applicable to, persons exclusively involved in private placement of

securities without compromising investor protection. To the contrary, the recommendation will bring a large number of PPBDs who currently operate in a massive “gray market” into the light. Investors will be able to be able to access information regarding them, and the anti-fraud rules of the Commission and state regulatory agencies will be fully applicable to the activities of PPBDs.

2. As the world economy becomes more global, smaller business find it increasingly difficult to access the public markets for capital. The costs of an underwritten public offering, complying with the corporate governance and other requirements of maintaining public status, and attracting analyst coverage today make it difficult, if not impossible, to justify a small public offering. Therefore, smaller companies will continue to seek capital through private placement of their securities. In addition, a typical growth pattern for smaller public companies is to acquire privately held complementary companies. These merger and acquisition transactions are often facilitated by persons characterized as PPBDs.

3. In each of the most recent two sessions of the SEC Government-Business Forum on Small Business Capital Formation, the number one recommendation of the Forum participants has been for the Commission, the National Association of Securities Dealers (“NASD”) and State securities regulators to enact regulations that would be consistent with the recommendations contained in the Report.

4. Because of its economic structure, it is unrealistic to believe that the NASD on its own initiative will take the lead role in implementing a limited registration procedure for private placement broker-dealers. Its organization and member fee structure reflects the tremendous amount of infrastructure necessary for the NASD properly to carry out its regulatory duties. We believe that the limited class of PPBDs easily can be fit within the self-regulatory framework, but concluding that the NASD will do so voluntarily without direction from the Commission is, we think, naïve.

5. While several states are evaluating possible legislative and regulatory initiatives addressing some of the issues included in the Report, the result will take years long and be less efficient and less effective than if the Commission takes action to coordinate the effort and encourage some consistency.

6. While the thrust of the Report is to provide a simplified registration process and on-going regulatory oversight better adapted to the limited nature of the business of PPBDs, we believe the Commission can explore with the NASD and the States alternative regimes to accomplish the same goals. For example, the development of an exemption from the licensing requirements for persons or transactions involved in the “sale of a business” might very well be a more logical approach than an NASD membership application. Also, an exemption from federal broker-dealer registration might be appropriate so long as there is registration in at least one state, by analogy to the structure utilized for small offerings under Rule 504 of the Commission’s Regulation D. Other models, such as the federal-state division of responsibility for investment advisors, also might similarly accommodate the needs of the Commission, the NASD and the

states. For this reason, the Committee's recommendation that the Commission spearhead a multi-agency effort is both welcome and wise.

For the above reasons, we enthusiastically support and endorse the Committee's recommendation that the Commission form a multi-agency regulatory task force to create a practical set of regulations and procedures to effect a PPBD regime that will eliminate barriers to smaller public and private companies' capital formation activities, and rationalize the applicability of the laws and regulations to persons assisting such companies in merger and acquisition activities.

Respectfully submitted,

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