

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8599; 34-52189; File No. 265-23]

Advisory Committee on Smaller Public Companies

SUBJECT: Request for Public Input by Advisory Committee on Smaller Public Companies.

AGENCY: Securities and Exchange Commission.

ACTION: Issuance of Request.

SUMMARY: The SEC Advisory Committee on Smaller Public Companies is soliciting public input on issues related to the current securities regulatory system for smaller companies, including the impact of the Sarbanes-Oxley Act of 2002 on the system. The Advisory Committee is doing this by publishing a series of questions and asking interested parties to respond to the questions.

DATES: Answers to the questions should be received on or before August 31, 2005.

ADDRESSES: The questions may be answered in either of the following ways:

Online submissions:

- Answer the questions online at (<http://www.sec.gov/cgi-bin/acspc-questions>) and follow the instructions for submitting your answers; or

Paper submissions:

- Send your paper submission, in triplicate, to Jonathan G. Katz, Committee Management Officer, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-9303. You may also fax your submission to 202-772-9324, Attn: Committee Management Officer. All paper submissions should refer to File Number 265-23.

FOR FURTHER INFORMATION CONTACT: Questions about this request should be referred to William A. Hines, Special Counsel, at (202) 551-3320, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: The questions below are being published at the request of the SEC Advisory Committee on Smaller Public Companies to solicit public input on the issues raised. All interested parties are invited to submit their answers to any or all of these questions in the manner described above. The text of the solicitation of public input is as follows:

### **Provide Input to the Advisory Committee**

The SEC Advisory Committee on Smaller Public Companies is seeking input from the public on ways to improve the current regulatory system for smaller companies under the securities laws of the United States, including the Sarbanes-Oxley Act of 2002 (“SOX”). The Advisory Committee is especially interested in hearing from smaller companies and their managements about their experiences with the existing regulatory framework. The Advisory Committee is also very interested in hearing from investors. The questions set forth below have been prepared by the Advisory Committee. **The questions and statements set forth below have not been prepared by and do not reflect any position or regulatory agenda of the Commission.**

You should not assume that there is a set cut-off in size of smaller companies in responding to the Advisory Committee’s request. For example, answers reflecting experiences of management or investors regarding companies

with sales or market capitalization of \$100 million, or \$750 million, or even more are appropriate where answers provide a basis for considering the company to be a smaller company. You should indicate in your answers the size of the company or companies and the basis of measurement (e.g., sales, market capitalization, number of employees) to which your answers relate.

**Answers should be received on or before August 31, 2005.** Questions about this request should be referred to William A. Hines, Special Counsel, at (202) 551-3320, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

The Advisory Committee welcomes responses that answer any or all of the questions, and that provide answers in whatever order or format the responder chooses. Responders that prefer to provide general responses rather than responses to specific questions may prefer to respond in paper rather than online at this Web site address. Paper submissions should be sent, in triplicate, to Jonathan G. Katz, Committee Management Officer, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-9303. You may also fax your submission to 202-772-9324, Attn: Committee Management Officer. All paper submissions should refer to File Number 265-23.

The Advisory Committee intends to keep individual identifying information (such as names, personal phone numbers and e-mail addresses) confidential and publish only a compendium of answers given in response to these

questions, without individual identifying information. However, you should submit only answers that you would not object to becoming publicly available.

You are encouraged but not required to provide the following information:

Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Street Address: \_\_\_\_\_

\_\_\_\_\_

City: \_\_\_\_\_

State/Province/Country: \_\_\_\_\_

Zip or Postal Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

And for those responses that relate to a specific company:

Company: \_\_\_\_\_

Street Address: \_\_\_\_\_

\_\_\_\_\_

City: \_\_\_\_\_

State/Province/Country: \_\_\_\_\_

Zip or Postal Code: \_\_\_\_\_

Company Market

Capitalization: \_\_\_\_\_

Other Company Size

and Basis of Measurement: \_\_\_\_\_

### General Impact of Sarbanes-Oxley Act

1. Has SOX changed the thinking of smaller companies about becoming or remaining a public company? If so, how?
2. Has SOX affected the relationship of smaller companies with their shareholders? If so, how?
3. Do you believe SOX has enhanced, or diminished, the value of smaller companies? Please explain.
4. Has the current securities regulatory system, including SOX, increased or decreased the attractiveness of U.S. capital markets relative to their foreign counterparts for companies? For investors? Please explain.
5. Does the current securities regulatory system adversely impact or enhance this country's culture of entrepreneurship? Has the current system impaired or enhanced the ability of American companies to compete on a global basis? If so, how?
6. Has SOX resulted in a diversion of the attention of company management away from operational activities, or otherwise imposed an opportunity cost on the management of smaller public companies? If so, have the benefits of SOX justified the diversion or opportunity cost? Please explain.

7. Does the current securities law disclosure system properly balance the interests of investors in having access to complete and accurate information for making investment decisions with the need for companies to protect information for competitive reasons? Please explain.
  
8. Has the current securities regulatory system had an impact on the amount and type of litigation to which smaller companies are subject? Has the overall impact on companies, investors and markets taken as a whole been positive or negative? Please explain.
  
9. Has SOX changed the capital raising plans of smaller companies? If yes, how have those plans changed? Has SOX affected the thinking of smaller companies about buying or being acquired by other companies or looking for merger partners or acquisition targets? Explain your answer and indicate any way in which SOX has changed a smaller company from a buyer to a seller of a business, or vice versa.

## SOX Section 404/Internal Controls

10. In developing a “risk-based” approach for assessing and auditing internal control over financial reporting for smaller companies under SOX Section 404, what criteria would you use to categorize internal controls from the highest risk to the lowest risk controls?
  
11. Do you believe that at least some SOX Section 404 internal controls for smaller companies can be appropriately assessed less often than every year? If so, what controls do you think need to be assessed by management every year? What controls do you think need to be assessed at least every two years? What controls do you think could be assessed only once every three years?
  
12. Current standards require that the auditor must perform enough of the testing himself or herself so that the auditor’s own work provides the principal evidence for the auditor’s opinion. Are there specific controls for smaller companies for which the auditor should appropriately be permitted to rely on management’s testing and documentation? Are there specific controls for smaller companies where this is particularly not the case?
  
13. Is the cost and timing of SOX Section 404 certification a deterrent to smaller companies going public? Are there companies where this

deterrent is appropriate? (I.e., are there companies that should not go public and is SOX Section 404 one appropriate control on the process?) If there is such a deterrent, would it be appropriate to provide some exemption or special consideration to companies that have recently gone public, and for how long would you extend this special treatment?

14. Do the benefits of SOX Section 404 outweigh its costs for smaller companies? Please explain. Would you support a total exemption from SOX Section 404 requirements for smaller companies? Why or why not? Would such an exemption have a negative effect on investors' interests or perception regarding smaller companies? Why or why not?

Accounting/Auditing

15. Has SOX affected the relationship of smaller companies with their auditing firms? If yes, how? Is the change positive or negative?
16. Are the current accounting standards applied to all U.S. companies appropriate for smaller companies? If not, please explain what revisions to existing standards might be appropriate.
17. For smaller companies, would extended effective dates for new accounting standards ease the burden of implementation and reduce the costs in a desirable way? How would such extensions affect investors or markets? Would allowing a company's independent auditors to provide more

implementation assistance than they are able to currently reduce such burdens or costs? Would such a step positively or negatively affect the quality of audits? Please explain.

[The Advisory Committee is particularly interested in responses to questions 18-20 from companies with a market capitalization of \$100 million or less.]

18. Would auditors providing assistance with accounting and reporting for unusual or infrequent transactions impair the auditors' independence as it relates to smaller companies? Would providing such assistance reduce the cost of compliance for smaller companies? What would be the impact on the quality of audits, investors or markets? Please explain.

19. Is the quarterly Form 10-Q or Form 10-QSB information valuable to users of the financial statements of smaller companies? Would a system that required semi-annual reporting with limited revenue information provided in the other quarters reduce costs of compliance without decreasing the usefulness of the reported information to investors? Please explain.

20. Is segment information useful for smaller companies? Please explain.

21. Should accounting standards provide smaller companies with different alternatives for measuring accounting events that would reduce the amount of time that would otherwise be spent by smaller companies to

comply with those accounting standards? If these alternatives were available to smaller companies, would smaller companies take advantage of them even if the results of the measurements obtained from the alternatives were less favorable to them in the short term? Why or why not?

### Corporate Governance/Listing Requirements

22. Are the listing standards of the New York Stock Exchange, the American Stock Exchange, other exchanges or Nasdaq that require a majority of independent directors and independent audit, nominating and compensation committees (or in the alternative, in the case of Nasdaq, that nomination and executive compensation decisions at a minimum be recommended or determined by a majority of the independent directors) creating a hardship for smaller companies? Are there benefits to companies and investors of these listing standards in the context of smaller companies? Do the hardships outweigh the benefits in the case of smaller companies? If so, should these standards be revised for smaller companies, and, if so, how? In each case please explain. Are smaller companies experiencing difficulty finding independent directors to satisfy these listing standards (including independent directors with the required level of financial literacy and sophistication for audit committee service)? What steps are being undertaken to meet these requirements?

23. Other than director independence and concerns related to SOX Section 404-mandated internal controls, do you believe other aspects of governance and disclosure reform are unduly burdensome for smaller companies, taking into account the benefits they provide to investors and markets? If so, please explain which items are unduly burdensome and the extent of such burden. How could the burdens be appropriately ameliorated?
24. Is the loan prohibition contained in SOX creating a hardship for smaller companies? If so, explain the manner in which this hardship is being created. Do the benefits to companies and investors outweigh the hardships? Should the prohibition be narrowed for smaller companies to exempt certain types of transactions where conflicts of interest or a likelihood of abuse may not be present?

#### Disclosure System

25. Is the relief provided by SEC Regulation S-B meaningful? Why or why not? Should the SEC provide an alternative disclosure framework for smaller companies in the context of securities offerings and periodic reporting? Should the alternative framework be available to a broader category of companies than Regulation S-B is currently? Should the alternative framework be based on Regulation S-B or on a different

approach? Could these steps be taken without impairing investor protection?

26. Are the costs of preparing and distributing printed paper versions of proxy statements and annual reports to shareholders unduly costly for smaller companies? Describe the extent of such costs, and the amount that could be saved if the SEC allowed complete electronic delivery of documents.
27. Will the phase-down to the final accelerated reporting deadlines for periodic reports under the 1934 Act for companies with \$75 million market capitalization (ultimately 60 days for Form 10-K and 35 days for Form 10-Q) be burdensome for smaller companies? If so, please explain the manner and extent of this burden. Does the burden outweigh benefits to investors and markets for smaller companies?
28. Should the current limit on the amount of securities that may be sold under Securities Act Rule 701 or the \$5 million threshold that triggers an additional disclosure obligation under that rule be increased or modified in any way? Please explain.

Miscellaneous

29. Is there any other matter relating to the securities laws applicable to smaller companies that you wish to comment on or to bring to the Advisory Committee's attention?

PRIVACY ACT DISCLOSURE: Pursuant to subsection (f) of the Privacy Act, 5 U.S.C. 552a(f), the Commission, on September 24, 1975, promulgated rules relating to records maintained by the Commission concerning individuals (40 FR 44068). The rules as amended (17 CFR 200.301 et seq.) address an individual's rights to know what information the Commission has in its files concerning the individual; to have access to those records; to petition the Commission to have inaccurate or incomplete records amended or corrected; and not to have personal information disseminated to unauthorized persons. The full text of the Commission's rules implementing the Privacy Act can be found in 17 CFR 200.301 et seq.

AUTHORITY: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, § 10(a), Alan L. Beller, Designated Federal Officer of the Committee, has approved publication of this release at the request of the Committee. The action being taken through the publication of this release, the solicitation of public input on various issues, is being taken solely by the Committee and not by the Commission.

The Commission is merely providing its facilities to assist the Committee in taking this action.

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Jonathan G. Katz  
Committee Management Officer

Dated: August 2, 2005