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TOPICS IN THIS SECURITIES BRIEFING:

This Securities Briefing provides an overview of the SEC's proposed rules to amend the disclosure and reporting requirements for smaller companies under the Federal securities laws, including expanding the group of companies eligible for the smaller company requirements and integrating Regulation S-B with Regulation S-K.

This Securities Briefing is intended only as a summary of the SEC rules discussed and you are encouraged to review the full text of the proposed rules.

PROPOSED SEC RULE TO AMEND DISCLOSURE AND REPORTING REQUIREMENTS FOR SMALLER REPORTING COMPANIES

OVERVIEW

The SEC has proposed rules to amend the disclosure and reporting requirements for a greater number of smaller companies under the Federal securities laws. The proposed rules create a new term - "smaller reporting company" - to replace the current term "small business issuer." The proposed rules permit most companies with a public float of less than \$75 million to qualify for the simpler or "scaled" disclosure and reporting requirements currently available to small business issuers. The proposed rules provide a revenue test for issuers that do not have a public float or are unable to calculate it. The proposed rules also eliminate the stand-alone Regulation S-B by integrating its requirements into Regulation S-K.



The proposed rules are intended to implement various recommendations of the Advisory Committee on Smaller Public Companies that the SEC established to assess the current regulatory system for smaller public companies. The SEC's primary objectives for the proposed rules include:

- Expanding the eligibility for compliance with the SEC's "scaled disclosure and reporting requirements" for smaller companies by making those requirements available to most companies with a public float of less than \$75 million.
- Simplifying the SEC's rules for smaller companies by combining the two categories of small business issuers and non-accelerated filers into one category called "smaller reporting companies."
- Simplifying and improving the SEC's disclosure and reporting rules by integrating Regulation S-B disclosure requirements into Regulation S-K.

EXPANDING ELIGIBILITY FOR SMALLER REPORTING COMPANY STATUS

There are currently two categories of smaller companies: "small business issuers" which are companies with both a public float and revenues of less than \$25 million and "non-accelerated filers" which are companies that do not qualify as "large accelerated filers" or "accelerated filers." In general, non-accelerated filers are companies with a public float of less than \$75 million. Small business issuers are eligible to make required disclosures based on Regulation S-B using "SB" forms for the periodic reports and registration statements, and have a longer time period for filing their quarterly and annual reports. In addition, non-accelerated filers have a longer time period for becoming compliant with Section 404 of the Sarbanes-Oxley Act of 2002.

The proposed rules create a new company category called "smaller reporting company" to replace the current "small business issuer" category plus capture non-accelerated filers. A smaller reporting company is defined as a company that:

- Had a public float of less than \$75 million as of the last business day of its most recently completed second quarter, or



- In the case of an initial registration statement filed under the Securities Act of 1933, had a public float of less than \$75 million as of a date within 30 days of the registration statement filing date, or
- If the public float is zero (due to no significant public common equity outstanding or no market price exists for common equity), had annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available.

A company's public float is calculated by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity in the principal market for the common equity. In the case of an IPO, the public float is computed by multiplying the aggregate worldwide number of shares held by non-affiliates before the registration plus the number of shares included in the registration statement by the estimated public offering price of the shares.

The proposed rules provide that the \$75 million and \$50 million ceilings adjust for inflation every five years beginning on September 1, 2012 to reflect changes in the value of the Personal Consumption Expenditures Chain-Type Price Index.

The current definition of small business issuer excludes companies that are not organized in the United States or Canada, investment companies and asset-backed issuers. The proposed rules continue to exclude investment companies and asset-backed issuers from eligibility to qualify as a smaller reporting company. Any foreign companies that meet the smaller reporting company criteria are eligible to qualify as smaller reporting companies under the proposed rules.

INTEGRATING REGULATION S-B INTO REGULATION S-K

The SEC believes that it is time to eliminate the dual disclosure scheme of Regulations S-B and S-K as being overly complex and a possible deterrent for smaller public companies taking advantage of the scaled disclosure and reporting requirements. The proposed rules integrate Regulation S-B requirements into Regulation S-K largely by adding new subsections to the relevant items of Regulation S-K which contain the applicable provisions of Regulations S-B. Each new subsection will have a heading of "Smaller reporting companies" to make it easier to find the disclosure requirements applicable to smaller reporting companies in each item.

The proposed rules do not propose any major substantive changes to the Regulation S-B items being moved into Regulation S-K. When the disclosure standards of identically numbered items in Regulations S-B and S-K are substantially the same for smaller reporting companies and other companies, there are no changes proposed to the existing Regulation S-K item. The proposed rules make the following specific integration proposals:

- Add a new Item 310 (Financial Statements of Smaller Reporting Companies) to reflect the alternative requirements on form and content of financial statements of smaller companies that are currently in Item 310 of Regulation S-B. While Item 310 of Regulation S-B currently permits foreign companies to provide financial statements prepared in accordance with a comprehensive body of accounting principles other than U.S. GAAP, the proposed rules will require that the financial statements of foreign companies be prepared in accordance with U.S. GAAP.
- Add a new subsection (h) to Item 101 (Description of Business) to require the alternative disclosure standards for smaller companies that now exist in Item 101 of Regulation S-B.
- Make a minor wording change to Item 201 (Market Price of and Dividends on Registrant's Common Equity and Related Stockholder Matters) to replace the reference to "small business issuer" to "smaller reporting company" as existing Item 201 of Regulation S-K currently permits an alternative disclosure standard for smaller companies.
- Add a new subsection (c) to each of Items 301 (Selected Financial Data) and 302 (Supplementary Financial Information) providing that smaller reporting companies are not required to provide this information.
- Add a new subsection (d) to Item 303 (Management's Discussion and Analysis of Financial Condition and Results of Operations) to include the alternative disclosure standards for smaller companies under current Item 303 of Regulation S-B.
- Add a new subsection (e) to Item 305 (Quantitative and Qualitative Disclosures about Market Risk) providing that smaller reporting companies are not required to provide this information.
- Add a new subsection (l) to Item 402 (Executive Compensation) to add the alternative disclosure standards on executive compensation for smaller companies currently in Item 402 of Regulation S-B.

- Add a new subsection (d) to Item 404 (Transactions with Related Persons, Promoters and Certain Control Persons) to add the alternative disclosure standards for related party transactions that are currently in Item 404 of Regulation S-B.
- Add a new subsection (g) to Item 407 (Corporate Governance) to add the alternative disclosure standards that are currently in Item 407 of Regulation S-B.
- Add a new subsection (e) to Item 503 (Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges) to include the alternative disclosure requirements that are currently in Item 503 of Regulation S-B.
- Make a minor change to the instructions of Item 504 (Use of Proceeds) to clarify that new Item 310 of Regulation S-K, rather than Regulation S-X, will govern whether financial statements of businesses proposed to be acquired must be included in the filings of smaller reporting companies relying on Item 310 of Regulation S-K.
- Add a new subsection (m) to Item 512 (Undertakings) to include the alternative disclosure standards for smaller companies under current Item 512 of Regulation S-B.
- Add a new subsection (c) to Item 601 (Exhibits) to include the standards currently in Item 601 of Regulation S-B for smaller companies and modify the wording of Item 601 to eliminate all references to "SB" forms and Regulation S-B.

SMALLER REPORTING COMPANIES GIVEN AN "A LA CARTE" DISCLOSURE APPROACH

The proposed rules allow a smaller reporting company to choose, on an item-by-item basis, to comply with the disclosure standard applicable to smaller reporting companies or the disclosure standard applicable to larger companies. In this way, a smaller reporting company has, in the SEC's words, the "option to take advantage of the smaller reporting company requirements for one, some, all or none of the items, at its election, in any one filing." The proposed rules do require smaller reporting companies to provide their financial statements under either Item 310 of Regulation S-K or Regulation S-X for an entire year, and they will not be permitted to switch between the two standards in various filings during the same fiscal year. The



SEC intends to provide "maximum flexibility" for smaller reporting companies under this "a la carte" approach.

In addition, a new check box is proposed for the cover page of all filings for smaller reporting companies to check in order to indicate that they are eligible for smaller reporting company status. The SEC intends this approach to balance the interests of investors who wish to determine if a filer is eligible for smaller reporting company status with the need for transparency while not "unduly stigmatizing smaller companies."

ELIMINATION OF "SB" FORMS

The proposed rules eliminate all forms associated with Regulation S-B (Forms 10-KSB, 10-QSB, 10-SB, SB-1 and SB-2) which will result in a more simplified regulatory scheme for public companies. This change will cause most smaller reporting companies to use Form S-1 to register offerings. The SEC intends that eliminating the "SB" forms will reduce the lack of market acceptance currently associated with smaller filers.

In addition, the proposed rules eliminate the transitional disclosure format currently available to small business issuers for Form SB-1 registration statements and Form 10-KSB because they are not commonly understood and infrequently used.

TRANSITION TO AND FROM SMALLER REPORTING COMPANY STATUS

The proposed rules provide that smaller reporting companies lose eligibility for smaller reporting company status in the first fiscal year following a fiscal year in which their public float is greater than \$75 million as of the last business day of the second fiscal quarter. A company that does not file reports as a smaller reporting company will be required to transition to that status in the next fiscal year if its public float falls below \$50 million as of the last business day of the second fiscal quarter.

If a company does not have a public float or no public market for its common equity securities exists and its annual revenues are less than \$50 million, it will retain smaller reporting company status until its annual revenues exceed \$50 million. If an issuer does not qualify for smaller reporting company status under the revenue test, it remains unqualified as a smaller reporting company until its annual revenues are less than \$40 million during the previous fiscal year.



The proposed rules provide that the determination as to whether a company qualifies for smaller reporting company status will be made at the beginning of a fiscal year based on the information in Form 10-Q or an initial registration statement, whichever is filed first during the fiscal year.

COMMENTS ON, AND COPY OF, PROPOSED SEC RULES TO AMEND DISCLOSURE AND REPORTING REQUIREMENTS FOR SMALLER REPORTING COMPANIES

The SEC release proposing to amend the disclosure and reporting requirements for smaller reporting companies contains a number of questions that interested parties may consider in their comment letters. Comments on the proposed rules are due on or before September 17, 2007. A copy of the proposed SEC rules to require electronic filing of Form D is available on the SEC's website at www.sec.gov by selecting Proposed Rule: Smaller Reporting Company Regulatory Relief and Simplification or by going to <http://www.sec.gov/rules/proposed/2007/33-8819.pdf>

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