Office of Advocacy

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SEC's Shareholder Director Nomination Rule

Advocacy's Letter to the Securities and Exchange Commission

On December 18, 2003, the U.S. Small Business Administration's Office of Advocacy (Advocacy) sent a letter to the Securities and Exchange Commission (Commission) on its proposed rule, *Security Holder Director Nominations (68 Fed. Reg. 60784).* The rule would require public companies to include shareholders' nominations for elections to the board of directors. A complete copy of Advocacy's letter to the Commission may be accessed at *http://www.sba.gov/advo/laws/comments/*.

The Commission's proposed rule is likely to have an adverse impact small public companies.

- Due to the potential impacts on small public companies, the Commission asked in its proposal whether the rule should be limited to accelerated filers (public companies with more than $75 million worth of stock available to the public, or "market float"). Advocacy believes such a limitation is appropriate, and recommended that the Commission exclude non-accelerated filers, or those with less than $75 million in market float, from any final version of the proposed rule.

- The Commission's proposal would reduce small public company earnings by increasing their due diligence requirements and distribution costs for the inclusion of shareholder nominees for the board of directors. These costs would not be proportionate to the costs imposed on larger public companies.

- Although the Commission set triggers to ensure that shareholder director nominations would be likely to protect shareholder value, the proposed rule's triggers are less effective with respect to small public companies because of their low levels of outstanding equity. This means that small public companies are more likely to face costly and time consuming contested board elections more often.

For more information, visit Advocacy's Web page at *http://www.sba.gov/advo* or contact Michael See at (202) 619-0312.