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September 17, 2007

Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-15-07
Release No. 33-8819
Proposed Rule: Smaller Reporting Company Regulatory Relief and Simplification

Dear Ms. Morris:

This letter is the response of BDO Seidman, LLP to your request for comments regarding the above proposal.

We support extending the scaled disclosure and reporting requirements for smaller companies to a much larger group of companies. The revenues and public float thresholds reflected in Regulation S-B were adopted in 1992. Given the inflation, economic growth, and increases in stock prices that have occurred since that time, we believe that it is appropriate to raise those thresholds. We also support eliminating the smaller reporting company forms.

Our comments focus on the definition of a smaller reporting company, smaller reporting company forms and the location of the rules, improvements to these rules that could be made as the Commission reconsiders them, Canadian foreign private issuer matters, and transition matters.

Smaller Reporting Company Definition

Public Float Test

We believe that $75 million is the minimum level at which the public float ceiling should be set for purposes of defining a smaller reporting company. Setting the criterion at this level has the appeal of being consistent with the level in the definition of an accelerated filer. In addition, based on the statistics in the appendices to the *Final Report of the Advisory Committee on Smaller Public Companies to the U.S. Securities and Exchange Commission*, institutional holdings and analyst coverage of companies with public float below this level are insignificant.[1] However, the Final Report also indicates that institutional holdings and analyst coverage of

[1] See the Final Report, Appendix E, Table 7, Analyst Coverage and Institutional Holdings, by Market Capitalization, December 2004. The statistics in the Final Report are based on market capitalization rather than public float. Taking this into account, we believe that our statement is appropriate.

companies with greater levels of public float are also limited. Accordingly, we think that the Commission would be justified in setting the public float criterion at a higher level if it chose to do so.

Other Size Measures

We believe that public float may not always serve as a reliable indicator of the level of disclosure that is appropriate to meet investors' needs. For example:

- A company in the development stage may have a public float in excess of $75 million but no revenue and few assets other than cash. Investors in such a company are probably most interested in information about the progress of its development and its prospects and would not find the incremental disclosures required of companies that are not smaller reporting companies to be of much value. We believe it would be appropriate for the Commission to excuse such a company from making those incremental disclosures.
- A company that would be considered "large" based on its revenues or assets might have a significant number of shares owned by non-affiliates but have relatively little public float if it is having financial difficulties. Investors in such a company might be interested in the incremental disclosures required of companies that are not smaller reporting companies.

We suggest that including a size criterion, such as annual revenue, in the definition would reduce the risk that an issuer would be required to provide disclosures at a level which is inconsistent with the needs of investors. For certain industries (e.g., financial services), total assets might be a more relevant criterion.

Inflation Adjustments

We agree with the Commission's plan to adjust periodically the size criteria for inflation. We recommend that the Commission also adjust the public float criterion in the definition of an accelerated filer at the same time, so the definitions will be consistent.

Applying the Proposed Rules

If a company has a public float that is greater than zero but not significant, it is not clear to us whether it should determine whether it is a smaller reporting company based on the public float test or the revenue test.

Proposed Item 10(f) of Regulation S-K states (emphasis added), "In the case of an issuer whose public float as calculated under paragraph (i) or (ii) of this definition was *zero* because the issuer had no *significant* public common equity outstanding or no market price for its common equity existed, [the issuer is a smaller reporting company if it] had annual revenues of less than $50 million during the most recently completed fiscal year."[2] It seems to us that a company can only have zero public float if it has *zero* public common equity outstanding, and if it has an

[2] See proposed Items 10(f)(1) and 10(f)(2).

insignificant amount of public common equity outstanding, then its public float is greater than zero. Therefore, it's not clear to us how this proposed rule should be applied in the fact pattern described in the preceding paragraph.

In the commentary in the release, the Commission states (emphasis added), "The smaller reporting company definition would include a public float eligibility ceiling of $75 million for most companies. Other companies, for example, companies that *do not have* a public float as defined or are unable to calculate it, would be eligible for scaled treatment if their revenues are below $50 million annually."[3] Based on this, we would expect that a company with an insignificant public float would determine its status using the float test because its public float is greater than zero. We suggest that the Commission clarify this in the adopting release and the final rules.

Smaller Reporting Company Forms and Location of Rules

As we have stated previously,[4] we believe that the Commission should eliminate the small business issuer *forms*. We believe that allowing smaller reporting companies to provide scaled disclosure on large issuer forms will increase the use of the scaled disclosure approach.

However, we recommend that the Commission leave the *rules* applicable to smaller reporting companies in Regulation S-B and not integrate them into Regulation S-K. We disagree with the assertion that integrating the rules would simplify regulation and lower costs. To the contrary, we believe that integrating the rules would complicate them by making it more difficult to find the appropriate rule. We believe that a much simpler approach would be to leave the rules separate and make greater use of the approach reflected in General Instruction D.3 of Form S-4 (which directs small business issuers to simply look to Regulation S-B, rather than Regulations S-K and S-X).

If the Commission nevertheless decides to integrate the rules applicable to smaller reporting companies, we have two recommendations. First, we don't see the logic of having the rules covering the financial statements of certain issuers in Regulation S-X and the rules for other issuers in Regulation S-K. We recommend that the Commission locate all rules covering financial statements in Regulation S-X, and that it locate the rules for smaller companies' financial statements in a separate article of Regulation S-X. Similarly, we recommend that the smaller reporting company rules covering disclosures other than financial statements be located in a separate section of Regulation S-K, similar to the Regulation M-A rules.

[3] See pages 11 and 15.
[4] See our comment letter on the Exposure Draft of the Final Report of Advisory Committee on Smaller Public Companies in File No. 265-23 dated April 3, 2006.

Improvements to Smaller Reporting Company Rules

As the Commission reconsiders its rules covering reporting and disclosure by smaller reporting companies, it has asked for suggestions to ease the burdens on smaller companies without compromising investor protection. We offer the following suggestions.

Shorten Regulation S-B by Increasing References to Regulation S-X

For certain topics, Item 310 of Regulation S-B simply directs issuers to the requirements of Regulation S-X, rather than repeating similar requirements in Regulation S-B. (Of course, those directions explain, when applicable, that information for only the number of periods required by Regulation S-B is required.) This is the case for auditor matters (Article 2), guarantor financial statement requirements (Rule 3-10), and collateral entity financial statement requirements (Rule 3-16). We believe there are other topics where this approach is followed in practice because Regulation S-X provides so much more robust guidance. Therefore, we suggest that if the Commission changed Regulation S-B to reflect this approach it would shorten and simplify it. We suggest the Commission eliminate the following sections of Regulation S-B and refer to Regulation S-X (but require information for fewer periods) instead:

- Item 310(c) – Refer to Rule 3-05 instead
- Item 310(d) – Refer to Article 11 instead
- Item 310(e) – Refer to Rule 3-14 instead

Make Conforming Changes to Regulation S-X

Rule 3-05 of Regulation S-X requires financial statements of businesses acquired or to be acquired to be prepared in accordance with that regulation. We believe that the Commission should modify this rule to permit financial statements of a target that meets the definition of a smaller reporting company to comply with Regulation S-B. Currently, the Commission staff permits this in practice if the target is a registrant. However, the staff refuses to allow this if the target is not a registrant, requiring the target's financial statements to comply with Regulation S-X. This is the case even if the target's financial statements were previously filed by the issuer on a Form S-4.[5] We believe that if the target could use financial statements that comply with Regulation S-B to complete an IPO of its own, such financial statements should be sufficient to meet the needs of the acquirer's investors. Accordingly, we believe the Commission should modify this rule in the manner described above. We believe the Commission should add a similar provision to Rule 3-09 of Regulation S-X, which requires financial statements of certain equity method investees.

We believe the Commission should also amend Rule 3-05(b)(2)(iv). Currently this rule permits registrants to file two years of target financial statements if the target's revenues are less than $25 million. We believe the Commission should amend this rule to make it consistent with the proposed changes to the smaller reporting company rules. In that regard, we recommend that it

[5] See the SEC Staff Training Manual, Topic Two.I.F.3.c)(1).

should permit a registrant to file only two years of target financial statements if the target met the definition of a smaller reporting company.

Canadian Foreign Private Issuers

We disagree with the proposed approach for Canadian foreign private issuers. Currently, Canadian small business issuers can file Canadian GAAP financial statements that are reconciled to U.S. GAAP in registration statements and reports filed on S-B forms. The proposed smaller reporting company rules would eliminate this accommodation. We see no reason for this change and recommend that the Commission retain this accommodation.

Transition Matters

We read the proposed rules to say that although the criteria for determining whether a company is an accelerated filer and a smaller reporting company are consistent, the timing of transition differs. Accelerated filers change to their new status when determining the due date of the annual report covering the year in which their status changed. In contrast, a change in smaller reporting company status does not affect the disclosure requirements in the annual report covering the year of the status change. Such a change affects periodic reports covering the next fiscal year. If that understanding is correct, we agree with the proposed approach. If it is not correct, we suggest the Commission take this approach. Our uncertainty about the appropriate reading of the rules resulted from commentary in the proposing release which appears to us to imply greater consistency between the transition rules than there actually is. We encourage the Commission to clarify this in the commentary in the adopting release and suggest that including examples would help.

We support the proposal to include a check box on the cover page of all filings requiring all companies to indicate whether they meet the definition of a smaller reporting company. We also support the proposed "a la carte" approach, permitting smaller reporting companies to provide more than the minimum disclosures required. Given the flexibility this approach is intended to provide, it is not clear to us why, as discussed on page 32 of the proposing release, it is necessary for a smaller reporting company to "lock in" to one approach or the other when it files its first Form 10-Q for a year. It is also not clear to us how the a la carte approach can work when the approach a company must use for a year is determined based on the "information" in the first Form 10-Q.[6] It appears to us that making a determination in this manner requires a smaller reporting company that wants to preserve the option of following the smaller reporting company rules in its Form 10-K to adhere to the smaller reporting company rules and not provide any additional information in the first Form 10-Q. Otherwise, it will lose the ability to follow any smaller reporting company rule. If a company provides a balance sheet as of the end of its preceding year (which is not required by Item 310(b) of Regulation S-B but is required by Rule 10-01(c)(1) of Regulation S-X), should that really require a company to comply with Regulation S-X and the large company rules in Regulation S-K for the rest of the year? We suggest that the Commission instead simply state in the rules that companies should apply the a la carte approach

[6] See Proposed Item 10(f)(2) of Regulation S-K.

in a manner that results in a presentation that is meaningful and not misleading. We suggest that the Commission also comment in the adopting release that presentations that are consistent from quarter to quarter or year to year are generally more meaningful.

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We appreciate this opportunity to express our views to the Commission. We would be pleased to answer any questions the Commission or its staff might have about our comments. Please contact Wayne Kolins, National Director – Assurance Practice, at (212) 885-8595 or via electronic mail at wkolins@bdo.com, or Wendy Hambleton, National Director – SEC Practice, at (312) 616-4657 or via electronic mail at whambleton@bdo.com.

Very truly yours,

BDO Seidman, LLP