

Advocacy Supports SEC Proposal to Extend Short Form Eligibility to Smaller Public Companies and Urges Continued Attention to Small Business Impacts

On June 26, 2007, the Securities and Exchange Commission (SEC) proposed to amend the eligibility requirements of “short forms” Form S-3 and Form F-3 to allow eligible companies with less than \$75 million in public float to conduct primary securities offerings. Advocacy supports this proposal to allow qualified smaller public companies to utilize shelf registrations, because it will provide efficiency and flexibility for these small entities in accessing the public markets. Advocacy’s letter to the SEC may be accessed at: <http://www.sba.gov/advo/laws/comments/>.

- Form S-3 (for domestic companies) and Form F-3 (for foreign companies) are short forms used by companies to register securities offerings. These short forms are more efficient because they allow companies to incorporate by reference a company’s prior and future Exchange Act filings. These forms also allow companies to perform shelf registrations, or register securities offerings prior to any specific offering, and release delayed or continuous offerings without waiting for additional SEC action.
- This proposal would allow companies with less than \$75 million in public float to register primary offerings of their securities on Form S-3, provided: (1) they meet the other registrant requirements (2) they are not shell companies and have not been shell companies for at least 12 calendar months before filing their registration statement; and (3) they do not sell more than the equivalent of 20 percent of their public float in primary offerings over any period of 12 months.
- Although small public companies and their representatives were supportive of this rulemaking, they also voiced their recommendations for refinements in these key areas: 1) the 20 percent public float limitation and 2) allowing Forms S-3 and F-3 for certain secondary offerings.
- Advocacy is pleased that the SEC is considering this proposal and five other small business initiatives that were recommended by the SEC’s Advisory Committee on Smaller Public Companies. While these proposals will be helpful, Advocacy is concerned that smaller public companies still face the large and disproportionate costs of internal controls reporting requirements under Section 404 of the Sarbanes-Oxley Act of 2002. Advocacy recommends that the SEC reconsider the Advisory Committee’s central recommendation, to provide an extension for small public companies to comply with Section 404.

For more information, visit Advocacy’s Web page at <http://www.sba.gov/advo>, or contact Assistant Chief Counsel Janis Reyes by email at janis.reyes@sba.gov or by phone at 202-619-0312.