



SEC ADVISORY
COMMITTEE ON SMALL
AND EMERGING BUSINESSES



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MULTIPURPOSE ROOM
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Disclaimer



- **These slides have been prepared by the SEC Staff as background for the Advisory Committee. Statements do not necessarily reflect the views of the Commission.**

Scaled Regulation



- The SEC first adopted an integrated scaled disclosure system for small business in 1992.
- In 2007, the SEC adopted a number of regulatory changes intended to simplify and ease the burdens of regulations that affect smaller companies.

Scaled Regulation



- This included establishing category of “smaller reporting companies” – companies that have less than \$75 million in public float (or if the company cannot calculate public float, less than \$50 million in revenue) – eligible to provide scaled disclosure.
- SRCs may choose to comply with scaled or non-scaled item requirements on an item-by-item basis, unless the item specifies that SRCs must comply.

Current SRC Scaled Disclosure Requirements



- The Regulation S-K items that have scaled provisions for SRCs are:
 - Item 101- SRCs may provide less detailed description of their business (for example, financial information about segments not required; business development activities for 3 years instead of 5).
 - Item 201 – SRCs may omit performance graph.
 - Item 301 – SRCs may omit selected financial information.
 - Item 302 – SRCs may omit supplementary financial information.

Current SRC Scaled Disclosure Requirements



- Item 303 – SRCs permitted to provide two years of analysis in MD&A if they present only two years of financial statements. Tabular disclosure of contractual obligations not required.
- Item 305 – SRCs may omit market risk disclosure.
- Item 402 – SRCs may present executive compensation disclosure for three NEOs instead of five; present Summary Compensation Table for two years instead of three; no CD&A; fewer compensation tables required.

Current SRC Scaled Disclosure Requirements



- Item 404- SRCs required to provide disclosure about related party transactions when amount involved exceeds the lesser of \$120,000 or 1% of the average of the SRC's total assets at year end for the last two years. SRCs may omit disclosure of policies and procedures for reviewing related person transactions, but must provide the disclosure of transactions for two years, rather than one year (this is more burdensome than under non-scaled rules).

Current SRC Scaled Disclosure Requirements



- Item 407 – SRCs may omit disclosures on compensation committee interlocks and insider participation and compensation committee report. SRCs may omit disclosure of audit committee financial expert in the first annual report after IPO.
- Item 503 – SRCs may omit ratio of earnings to fixed charges. SRCs also are not required to provide risk factor disclosure in Forms 10-K and 10-Q.
- Item 601 – SRCs do not have to provide Exhibit 12, “Statements re: Computations of Ratios”.

Scaled Regulation



- Financial statements in registration statements and annual reports -- SRCs are required to provide two years of audited financial statements; all other companies must provide two years' audited balance sheets and three years of other audited financial statements.
- There are other scaled or phased-in requirements in SEC rules that apply to newly-public companies, such as phase-in of Sarbanes-Oxley 404(a) and 404(b) requirements.

Scaled Regulation



- For the most part, the general disclosure requirements for newly-public companies are the same as for all public companies.

Other Disclosure Requirements



- Say-on-pay/say-on-frequency/say-on-golden parachutes –
 - Public companies subject to the federal proxy rules are required to provide a shareholder advisory “say-on-pay” vote on executive compensation, a separate shareholder advisory vote on the frequency of the say-on-pay vote, and disclosure about, and a shareholder advisory vote to approve, compensation related to merger or similar transactions, known as “golden parachute” arrangements.
 - Say-on-pay and frequency vote and disclosures are required in the proxy statement for the first meeting at which directors will be elected following the company’s IPO. SRCs are exempted from say-on-pay and frequency vote until meetings occurring after January 21, 2013.

Other Disclosure Requirements



- Conflict minerals disclosure provisions required by the Dodd-Frank Act --
 - The Commission proposed rules in December 2010; final rules have not yet been adopted.
 - Dodd-Frank provision requires issuers to disclose annually whether any conflict minerals that are necessary to the functionality or production of a product originated in the Democratic Republic of the Congo or an adjoining country. If so, issuers are further required to provide a report describing, among other matters, the measures taken to exercise due diligence on the source and chain of custody of those minerals. The report must include an independent private sector audit that is certified by the person filing the report.

*Proposed legislation (S. 1933 and H.R. 3606) would not include an exemption from conflict minerals disclosure.

Other Disclosure Requirements



- Pay ratio and pay for performance disclosure required under Section 953 of Dodd-Frank Act –
 - Under Section 953 of the Dodd-Frank Act, the Commission must adopt rules requiring new disclosures about the relationship between executive compensation and company performance, and the ratio between the median of the annual total compensation of an issuer's employees and the annual total compensation of the issuer's chief executive officer.
 - The Commission has not yet proposed rules implementing these provisions.