

**Appendix to “Smaller and Not-So-Small Reporting Companies, Changing Rules and Best Practices” presentation for Association of Corporate Counsel members on May 29, 2008**

## **Guide to Smaller Reporting Company (SRC) Alternative Disclosure Under Regulation S-K**

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*The following provides a summary of the opportunities for scaled disclosure by a smaller reporting company under 12 non-financial statement Regulation S-K items, including the relevant paragraph or instruction that should be referenced for more details.*

### **Item 101 - Description of Business**

New paragraph (h) sets forth alternative disclosure requirements for SRCs, including:

- Disclosure of the development of the business only needs to cover three, rather than five, years;
- A less detailed description of what should be addressed, “if material,” in the narrative description of the SRC’s business;
- No requirement for segment reporting under Item 101;
- No financial information about geographic areas required;
- Less detailed required disclosures regarding available information and reports to security holders.

### **Item 202 - Market Price of and Dividends of Registrant's Common Equity and Related Stockholder Matters**

Instruction 6 to paragraph (e) now provides that smaller reporting companies are not required to provide a performance graph.

### **Item 301 - Selected Financial Data**

Under new paragraph (c), the presentation of up to five years of selected financial data is not required for smaller reporting companies.

### **Item 302 - Supplemental Financial Information**

Under new paragraph (c), the presentation of two years of quarterly data and other supplemental information is not required for smaller reporting companies.

## **Item 303 - Management's Discuss and Analysis of Financial Condition and Results of Operations**

New paragraph (d) provides that:

- If only two years of financials are provided, then only two years of analysis required; and
- No requirement to provide tabular disclosure of contractual obligations.

## **Item 305 - Quantitative and Qualitative Disclosures about Market Risk**

Added new paragraph (e) specifying that smaller reporting companies are not required to disclose this item.

## **Item 402 - Executive Compensation**

New paragraphs (l) through (r), rather than paragraphs (a) to (k), provide the scaled disclosure requirements applicable to SRCs:

- Executive compensation disclosure for only three officers (including the principal executive officer, but not principal financial officer), subject to certain limited exceptions;
- Summary Compensation Table disclosure for only two years;
- Only three tables (Summary Compensation, Outstanding Equity Awards, and Director Compensation) required, rather than the seven tables required of larger companies; and
- Paragraphs (o) & (q) may require supplemental narrative disclosure, however.
- No Compensation Discussion and Analysis discussion required; and,
- No footnote disclosure of the grant date fair value of equity awards in the Director Compensation Table required.

## **Item 404 - Transactions with Related Persons, Promoters and Certain Control Persons**

Changes were made to introductory text of paragraph (c) (1), and paragraph (d) was added such that:

- No disclosure of policies and procedures for approving related-person transactions required;
- Threshold for reporting of related party transactions is possibly for stringent and is defined as the lesser of 1% of total assets (based on the average of total assets at year end for the last two completed fiscal years) or \$120,000.
- Additional specific information about underwriting discounts and commissions and corporate parents required; and
- Disclosure regarding promoters and certain control persons required.

See March 5, 2008 SEC Smaller Company Interpretative Advice (which can be found at <http://www.sec.gov/info/smallbus/srccdinterps.htm> ) clarifying what Item 404 information is required under Schedule 14A.

### **Item 407 - Corporate Governance**

Added new paragraph (g) which specifies smaller reporting companies are not required to provide:

- Compensation Committee Interlock and Insider Participation disclosure or a Compensation Committee Report, and
- Audit Committee Report until the first annual report after filing the initial registration statement becomes effective.

### **Item 503 - Prospectus Summary, Risk Factors and Ratio of Earnings to Fixed Charges**

Added new paragraph (e) that specifies that smaller reporting companies need not:

- Provide information regarding the ratio of earnings to fixed charges when it issues debt;
- Provide the information regarding the ratio of combined fixed charges and preference dividends to earnings when it issues preference equity securities;
- Provide risk factors in Forms 10, 10-K and 10-Q.

### **Item 504 -Use of Proceeds**

Revised Instruction 6 provides that new Article 8 of Regulation S-X will govern whether financial statements of businesses proposed to be acquired must be included in the filing of smaller reporting companies.

### **Item 601 - Exhibits**

Added new paragraph (c) that specifies that smaller reporting companies need not provide Exhibit 12 (Statement re Computation of Ratios).

### **Other Opportunities for Scaled Disclosure**

- The financial disclosure requirements under Item 310 of Regulation S-B, that require only two years of audited financial statements (rather than three), have become new Article 8 of Regulation S-X, with the only change being a requirement to provide two years of comparative audited balance sheet data
- SRCs are not required to provide any disclosure of risk factors under either Item 1A of Form 10K or Item 1A of Form 10-Q