



SEC SMALL AND EMERGING COMPANIES ADVISORY COMMITTEE MEETING

OVERVIEW

For questions on the note below, please contact [Hope Jarkowski](#) or [Kwon Park](#) at (202) 547-3035.

Today, the SEC held a meeting of its Advisory Committee on Small and Emerging Companies. The meeting focused on public company disclosure effectiveness, intrastate crowdfunding, venture exchanges, and treatment of “finders.” The Advisory Committee also voted on a recommendation to the Commission regarding the “Section 4(a)(1 1/2) exemption” sometimes used by shareholders to resell privately issued securities.

Please click below for additional information:

[Agenda](#)

[Chair Mary Jo White Opening Statement](#)

Key Takeaways

- Many Committee members said certain SEC filings for small companies are merely a check in the box exercise, burdensome, and costly.
- Committee members urged for the Commission to review Rule 147 and 504, which are causing impediments toward the use of state crowdfunding.
- Committee members approved its [written recommendation](#) on the Section 4(a)(1 1/2) Exemption.
- David Shillman, Division of Trading and Markets, indicated that venture exchanges have not been viable due to the lack of liquidity and value proposition for market makers to participate, but that he could not comment precisely on the market volume that venture exchanges might take on in the future.

SUMMARY

Public Company Disclosure Effectiveness

Karen Garnett, Division of Corporation Finance (CF)

- The Commission is focusing on three general areas:
 1. Regulation SK;

- Whether changes are needed to principles/ prescriptive-based requirements to allow investors to make better informed decisions;
 - Whether there are opportunities to update and modernize requirements;
 - How to tailor disclosure to make it more readily available to investors; and
 - Whether scaled disclosure requirements work and are effective in reducing compliance burdens for public companies.
2. Regulation SX disclosure requirements; and
 3. How companies provide information in SEC filings.
- EDGAR modernization is a technical project to make existing systems more user-friendly and readily accessible to investors.
 - The Commission is considering both impacts on investors versus the costs and burdens of compliance programs.

M. Christine Jacobs, McKesson Corporation

- Regulatory burdens post-Enron have led to the JOBS Act.
- Existing small companies with a market capitalization (market cap) of less than \$75 million have to comply with the same rules and regulations as the largest public companies.
- Treating all small companies the same with no adjustment for size, past behavior, or performance is harmful.

Shannon Greene, Crowdcheck

- For small companies, investors decide to invest in the people running a company and not based on company disclosures.

Charles Baltic, Needham & Company

- Mandated disclosures need to remain relevant and material in guiding investment decisions for investors.
- It is imperative to reduce reporting burdens for emerging growth companies (EGCs).

Discussion

Dan Chace, Wasatch Micro Cap Fund: Current SEC filings and metrics are not useful for investors making decisions about whether to invest in small companies. *Higgins:* Nothing in the SEC rules prevent companies from making additional disclosures in SEC filings to investors.

John Borer, The Benchmark Company LLC: Reporting feels like a compliance regimen -- a checkbox document without effective disclosures for investors.

Catherine Mott, BlueTree Capital Group: As an investor, say-on-pay and information on how much money is spent on lobbying and other such expenses are important and should be disclosed.

Gregory Yadley, Sumaker, Loop & Kendrick LLP: Supports disclosing more forward looking statements, but worried about redundancy.

Hanks: When will EDGAR be modernized? *Higgins:* Full modernization is a ten-year process, but there are things that the Commission can do beforehand to make company information more easily available to investors.

Sonia Luna, Aviva Spectrum: If there are no material changes since a previous SEC filing, could a principles-based approach allow companies to make a reference to prior filings? *Garnett:* When looking at principles-based disclosures, the Commission looks to materiality but it is not the only basis for requirements.

John Hempill, Sheppard, Mullin, Richter & Hampton LLP: Smaller companies have no incentive to improve disclosures for periodic filings -- these filings are only a cost burden.

Timothy Walsh, Gaw Capital Partners USA: Is there an ongoing project to make smaller companies exempt from certain requirements? *Garnett:* Scaled disclosures, different disclosure requirements between EGCs and smaller companies, and other actions are included in our efforts.

David Bochnowski, Northwest Indiana Bancorp: Companies do not want to disclose forward-looking statements because of litigation risk.

Intrastate Crowdfunding and Securities Act Rule 147

[Michael Pieciak, NASAA Corporate Finance Chair](#)

- In the near future, majority of states will have some form of state-based crowdfunding.
- Three main impediments on the use of state-based crowdfunding:
 1. Rule 147 - focus on residency at both the time of offer and sale are difficult in the internet-age;
 2. Rule 147 – compliance with the 80% rule for revenues, assets, and net proceeds; and
 3. Inability for companies to incorporate in another state and conduct an intrastate offering in its principal place of business.
- Rule 504 also inhibits crowdfunding use because of the low \$1 million threshold and general solicitation (state registration) requirement.
- NASAA is coordinating a meeting with New England states to discuss a regional approach to crowdfunding and capital formation.

Discussion

Yadley: Is there an online portal requirement? *Pieciak:* Some states allow issuers to make online portals available and some states mandate it.

Luna: Has NASAA looked at other countries and their crowdfunding rules? *Pieciak:* NASAA has observed the 13 provinces in Canada, but not countries outside North America.

Stephen Graham, Fenwick & West: 80% does not represent the correct percentage that should be required by Rule 147, and serves as a major impediment to crowdfunding.

David Paul, DJP&Co: The Committee should study Title III of the JOBS Act. The appetite for federal crowdfunding will exceed any state rule. *Pieciak:* The main issue that separates federal versus state crowdfunding is compliance requirements/costs.

Commissioner Piwowar: Believes federal crowdfunding will compliment state-based rules and the idea for regional crowdfunding sounds great.

Hempill: The principal place of business impediment is unnecessary. *Higgins:* The 80% requirement seems over the top. *Pieciak:* Maybe the focus should be on a company's principal place of business, and require that state's law govern.

Consideration of Written Recommendation on the "Section 4(a)(1 1/2) Exemption"

- Committee members approved and submitted to the Commission, its [written recommendation](#) on the Section 4(a)(1 1/2) Exemption.

Rules and Market Structure Matters Relevant to Venture Exchanges

David Shillman, Division of Trading and Markets (TM)

- Correcting misperceptions of venture exchanges:
 1. The Commission has already approved venture exchanges, but they have not been viable due to the lack of liquidity; and
 2. Venture exchanges are not required to comply with Reg NMS.

Discussion

Graham: What is the real impediment when moving toward the establishment of viable venture exchanges? *Shillman:* Impediments include attracting liquidity on these exchanges, and designing an attractive value proposition for liquidity providers.

Luna: What is the definition of a "liquidity provider," and are they in play or about to be in play?

Shillman: Someone who takes two sides of quotes and is willing to trade. Nothing prevents exchanges from implementing periodic auctions for less liquid securities, but they would be doing so with a market that is continuously trading and adapting.

Borer: Do venture exchanges include only non-34 Act companies or 34 Act companies that are liquid? Where is the demand for thinly traded stocks coming from? *Shillman:* In order to trade on exchanges, companies must be 34 Act registered, but alternative trading systems (ATs) do not have that restriction. Demand is coming primarily from the Street and it provides market makers more opportunity in less liquid markets. The SEC must ensure market structure is designed appropriately for small-cap stocks, but also investors are protected – as small-cap stocks are riskier and more prone to fraud and manipulation.

Shillman: The ability to sustain a long-term trading restriction (to allow pilot programs) would require legislative change.

Yadley: Views on venture exchanges in 2 -3 years? *Shillman:* Hard to say, but would like to see tighter spreads and more liquidity provided on a regular basis. Information obtained through the tick size pilot study will assist in learning more about the potential impacts of venture exchanges.

Treatment of “Finders”

Yadley: Finders will require some grandfathering, written disclosures on representation and compensation. Anti-fraud and other applicable laws should apply to finders. Even a small step forward toward a finder exemption will be beneficial for small companies trying to raise capital.

Graham: How much capital is underutilized due to the absence of this type of exemption? *Yadley:* There is no data to support absence of capital, but it is a big problem – one I personally encountered.

Baltic: Does FINRA need to take part in a finder exemption program? *Yadley:* FINRA or any other party that will take ownership.

Pieciak: Will this activity be a profession or a side profession for finders? *Yadley:* Depends on who is being helped.

Mott: More professionalism is needed around this finder concept, and this could be beneficial for companies in smaller towns trying to raise capital.

Hanks: This is a matter of entrepreneur protection, and to extent there are grey areas and hundreds of online platforms, more clarity is needed.

Hempill: Is the SEC thinking about this? *Heather Seidel, TM:* Yes.