Westminster Securities Corporation

MEMBER NEW YORK STOCK EXCHANGE

June 16, 2005

Mr. Jonathan Katz
Secretary
United States Securities and Exchange Commission
450 – 5th Street, NW
Washington, DC 20549

Re: File No. 265-23
Comments for SEC Advisory Committee on Smaller Public Companies
Meeting in New York, June 16 and 17, 2005

Dear Mr. Katz:

I would like to first express my appreciation for the opportunity to speak before the SEC Advisory Committee on Smaller Public Companies, and share my views with regard to a number of the topics presented. While I find all of the topics on the Committee's agenda to be significant and worthy of consideration, I will focus here on those for which I feel I have the most knowledge and input to offer.

I am speaking before the Committee from a dual perspective: first, as President, shareholder, and registered representative of an NYSE and NASD member firm that has small business issuers (SBI's) as clients, and secondly, as an individual who has invested personally in many SBI's and has also acted as an officer and director of SBI's. I have been working with SBI's for over twenty years, and have witnessed numerous changes in regulations that have successfully improved the transparency of small cap markets, particularly the OTC Bulletin Board (OTCBB). While some of these regulations placed increased burdens on issuers, they were regulations aimed specifically at smaller issuers for the purpose of enhancing disclosure and market liquidity for smaller public companies. By contrast, the Sarbanes-Oxley Act (SOX), has placed a broad-based burden on public company issuers of all shapes, sizes, and characteristics. While there are many positive aspects of the Act, such as those regarding conduct and related-party transactions, the audit and review standards are particularly onerous. In the case of larger companies, I believe the burden can be financially absorbed with minimal impact, and the benefit is realized by the largest number of investors. In the case of smaller public companies, however, I believe the cost, in terms of both financial impact and use of management resources, has a disproportionately large effect, and these expenses are not commensurate with the benefit received by a smaller number of investors.

In response to this, I note two trends that are having a negative effect on capital formation for small companies in the U.S.:

- Many issuers are choosing to terminate their registration, or "go dark"
- An increasing number of issuers are choosing to go public in markets outside the U.S.

Both of these fall under the "law of unintended consequences", having an effect that is the exact opposite of what SOX attempts to accomplish. Rather than increasing disclosure and providing stronger controls for companies, many issuers are terminating previously available disclosures, or, by going public elsewhere, not providing them at all.

According to a study at the University of Maryland, approximately 200 companies petitioned to delist their stock in 2003, with an estimated similar number in 2004. This compares with just 67 companies in 2002, prior to the implementation of SOX. Considering there are approximately 5,000 issuers on the Nasdaq Small Cap (SC), American Stock Exchange (Amex) and OTCBB markets combined, which is where I would assume the brunt of these de-registrations were felt, this implies a loss of about 4% of smaller companies from the public arena per year. I cannot begin to estimate the number of individual investors affected by this, but I expect that the number is vast. Short of taking costly legal action against the issuer and further burdening our court system, investors in such a situation have little recourse. Their securities are either moved to the pink sheets where they frequently trade at a fraction of their prior price, or they stop trading altogether and pricing becomes subject to the whims of a few large holders or management who may offer to repurchase their shares at a steep discount. As the investors are left in the dark, having significantly less knowledge about the actions of management and operational results of the company, they are left with little leverage with which to form the basis of a more accurate valuation.

The second trend is the growth of competing, non-U.S. marketplaces catering to small cap companies, particularly the Alternative Investment Market (AIM) in London. In 2004, the number of international companies listed on the AIM was 116, nearly double the 60 from 2003. Through May of this year alone, another 33 foreign companies have joined the AIM. By contrast, Nasdaq SC issuers have declined by 63 from December 2003 to 2004, while OTCBB issuers have remained approximately even. The one bright spot is Amex, which gained 63 issuers from January 2004 to 2005, although this still nets to zero gains across the three markets. Among its listed companies, the AIM includes 17 U.S. and 28 Canadian companies. Some of these abandoned their U.S. trading status in order to join the AIM; some never pursued U.S. trading at all. Coming into its 10th birthday this Sunday, the AIM has been praised in international press for its continued growth beyond expectations, and very limited scandals. Our own investment banking clients, including Chinese, Eastern European, and even U.S. issuers, have requested that we consider the AIM as an option for them as an alternative to U.S. markets. Additionally, our customers that invest in small cap stocks are expressing interest in purchasing securities traded in non-U.S. markets. Further emphasizing this attraction is the fact that newer markets are being formed that are emulating the AIM, rather than Nasdaq. In the past two months alone the Irish Stock Exchange launched the Irish Enterprise Exchange, while the European Euronext market launched the Alternext market, each focused on small-cap companies. As these alternatives become increasingly available and credible, issuers, both U.S. and international, will have less incentive to face the complexities and costs of trading on comparable U.S. markets.

In light of these two trends, as well as comments from and observations of those smaller public companies which are choosing to stay the course and comply with the newer regulations as they become applicable to them, I offer the following specific recommendations:

Definition of Smaller Public Company

I have reviewed other comments which have referenced the Office of Economic Analysis study which found $700 million market capitalization to be the threshold below which companies are not "widely followed". I find this to be an appropriate threshold with respect to determining whether accelerated filing should be required. An alternative would be a market capitalization of $500 million, which is the average of companies on the Amex and also on the competing AIM. To supplement the market cap requirement, I would suggest that the market capitalization be determined over a set period of time, 6 months or a year in advance of when the company would become subject to accelerated filing, or in conjunction with an annual revenue minimum based upon the prior year's revenues. This is essential in order to allow the issuer time to hire personnel and implement procedures to ensure timely filing. Companies falling below these thresholds already face difficulty meeting their current deadlines, as auditors routinely push them to the back of their queue as they service larger, higher-profile and higher-paying clients.

I would further recommend the definition of SBI's be expanded to include companies with market capitalization and revenues below $100 million. For this I have taken into account the effects of inflation, the general increase in market valuations over the years, as well as the increased costs of being a public company as a result of SOX, which represent significant costs to companies much larger than the $25 million current standard. I further support the idea that SBI's (under the revised definition) be provided with standards still different from those of Smaller Public Companies, and that Regulation S-B be revised to provide greater differentiation from Regulation S-K. SBI's are the companies with the greatest potential for growth, that create the most jobs and fuel our economy. While there are risks and failures among these, they also offer the highest returns over time, and they often grow into larger cap companies or become acquired by larger cap companies, thereby fueling additional growth. If we do not nurture our SBI's during their incubation period, we will continue to lose that level of innovation to markets outside of our borders.

Regarding Section 12(g), as stated previously, I am concerned about the number of shareholders affected by issuers terminating their registration with the SEC. Based on the extensive use of DTC (or "Cede & Co.") as a depositary for shareholders' shares, I believe it is essential that the language in the rule be modified to refer to "beneficial owners", not "holders of record". Only in this way can we truly know the number of investors being affected by an issuer's decision to go dark.

Disclosure Requirements

I believe that the current periodic reporting requirements for SBI's are appropriate and beneficial to the marketplace, as they put SBI's on a similar tier as larger corporations. As I have previously noted, however, SBI's do compete with larger companies for auditor time and attention – and frequently lose. In addition to giving SBI's additional time after the accelerated filers to file their reports (thus giving them some hopefully exclusive time with their auditor), I would suggest the SEC work with the PCAOB to encourage non-Dec. 31 fiscal years. Recommendations could be made based upon particular industries with less cyclical results, and would have the potential of spreading auditor resources throughout the year rather than being concentrated in the first quarter when most annual reports as well as tax filings are due.

While it is my opinion that the periodic disclosure requirements are beneficial, I do believe that the 4-day 8-K reporting period can be burdensome for some SBI's, and I will make a case for two situations in which I believe the time frames should be extended. First, for major corporate events, such as mergers, acquisitions, or changes in business, the form 8-K should have a high level of detail including a complete description of the transaction and related financial statement information. Due to the limited resources of SBI's (who likely already expended significant resources just to accomplish the transaction), a 4-day limit may cause a rushed, incomplete filing which then needs to be amended one or more times in the future. This could provide information to the marketplace that leaves uncertainty, and could thereby have a negative effect. Providing additional time would help ensure that all pertinent information is released simultaneously into the market. The second situation would be for sales of unregistered securities. In private investments in public equity (PIPEs), unregistered securities are sold, often at a discount to market, to certain accredited investors. The discount to market is based upon the fact that the securities cannot be immediately resold, and therefore there is no immediate overhang on the market. Still, upon announcement of a below market private placement, the marketplace frequently has a negative reaction. The way the rule is currently written, an announcement (compliant with SEC Rule 135(c)) needs to be made within four days of sale, or "closing". In a private placement where multiple closings may be held, making these announcements while the offering is still ongoing may hamper ongoing selling efforts in the event there is a decline in the market price in response to the announcement. This could result in not raising additional funds that the company may have been able to use for growth, or having to reduce the selling price per share which would likely have a further negative effect on the market. I would propose instead that an 8-K regarding sales in a private placement need not be filed until the offering has been completed or terminated. After all, the pricing in a private placement should be based on its current market and potential, and not on the public's reaction to the placement itself.

Modification of Rule 15c2-11

My final recommendation relates to Rule 15c2-11, under which our firm has filed numerous applications on behalf of issuers each year since the inception of the rule. I concur with the points set forth in the letter by Mr. Coulson, President of the Pink Sheets, with respect to the need for more of the information to be placed in the hands of investors, rather than in our filing cabinets. The first step in this direction has been the Pink Sheets' implementation of a forum on their own site in which companies can post certain basic corporate and financial information. I would suggest that the SEC or NASD (as appropriate) either support them in this effort by creating rule changes requiring companies to post this information, and/or by creating a separate public depository for the same or similar information. By making more information publicly available, it has the added benefit of qualifying more shares to be resold under Rule 144 which may help add liquidity to the market. Further, it avoids the potential conflict a broker-dealer may face in holding nonpublic information.

With regard to the approval process for 15c2-11 filings, I recommend that a revised, definitive listing of standards and requirements be published, as the current application items are a far cry from the qualitative standards that the examiners review in the course of most applications. Many issuers are shocked by some of the questions, some of which they view as requesting nonpublic information, including details regarding relationships among shareholders, merger & acquisition plans, and compensation of investor relations firms. While we understand and respect the basis for the NASD's concern in reviewing additional items such as these, I believe it is more appropriate that these be incorporated into the rule so that the issuer understands they are part of the application process and not an attempt by the sponsoring broker dealer to obtain sensitive information. I further support Mr. Coulson's position that, subject to it being disclosed, broker-dealers be allowed some level of compensation in connection with their efforts in assisting companies to become traded under Rule 15c2-11. As the scrutiny of companies attempting to become quoted on the Pink Sheets or OTCBB has increased over the past 2-3 years, the number of broker-dealers filing applications on behalf of these companies seems to have proportionately declined. We are among only a handful of broker-dealers, to our knowledge, that continue to file these applications on a regular basis. Being a small firm, of course, our capacity is limited. Allowing compensation for broker-dealers providing this service would create incentive for more firms to enter or re-enter this space, and devote an appropriate level of resources to support these companies. Perhaps then, like the AIM which has a paid nominated advisor service, the OTCBB can break free from its current stagnation and begin to add more companies.

I hope that what is presented above provides some useful insight, and I thank you again for the opportunity to express my opinions regarding how current and pending regulations affect smaller public companies. I continue to believe that the U.S. has the best, most transparent markets in the world. That said, I believe we need to repair some of the stigma that foreign issuers in particular have against SOX, by showing our willingness to adopt standards that are appropriate for different types of issuers. While I understand that these are complex matters which should not be entered into lightly, I believe it is essential that necessary changes be adopted quickly in order to remove the uncertainty that currently hangs over our small cap markets.

Should you have any questions or comments regarding this or related matters that I may be of assistance in, please feel free to contact me at any time.

Respectfully submitted,

WESTMINSTER SECURITIES CORP.

John P. O'Shea
President