August 29, 2016

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments Regarding Amendments to Smaller Reporting Company Definition; File No. S7-12-16

Dear Mr. Fields:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on a proposal by the Securities and Exchange Commission to amend the definition of "smaller reporting company" as used in the SEC's rules and regulations. The proposed amendments would expand the number of registrants that qualify as smaller reporting companies by increasing the public float threshold from $75 million to $250 million. Smaller reporting companies are subject to scaled disclosure requirements that allow them to file less financial and other information in their quarterly and annual SEC reports.

ICBA's Position

ICBA agrees with the SEC that raising the financial thresholds in the smaller reporting company definition would further the goal of promoting capital formation and reducing compliance costs for small registrants without jeopardizing investor protections. We believe the SEC should adopt the recommendations of both the Advisory Committee on Small and Emerging Companies (ACSEC) as well as the SEC Government-Business Forum on Small Business Capital Formation and include registrants with a public float of up to $250 million as part of the SEC's definition of "smaller reporting company."

Although the proposal would permit a broader group of registrants to make scaled disclosures to their investors, we do not believe that these scaled disclosures would

[1] The Independent Community Bankers of America®, the nation's voice for more than 6,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With 52,000 locations nationwide, community banks employ 700,000 Americans, hold $3.6 trillion in assets, $2.9 trillion in deposits, and $2.4 trillion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

materially affect investors' access to material information about these registrants. These scaled disclosures would only eliminate surplus or additional information that is generally unnecessary to the ordinary investor. For instance, two years of executive compensation rather than three years would be included in a smaller reporting company's disclosures. Furthermore, there would be a two-year MD&A comparison rather than a three-year comparison in the annual report on Form 10-K and Regulation S-X would only require two years of income statements, cash flow statements and changes in stockholders' equity statements rather than three years.

As the SEC points out in its proposal, the additional registrants that would qualify for scaled disclosure would remain subject to liability for their disclosures and, in addition to the information expressly required to be included by the rules, would be required to provide such further material information, if any, as may be necessary to make any requirement statements, in the light of the circumstances under which they are made, not misleading. In addition, their disclosure would be subject to the same review that they currently receive as part of the SEC's Division of Corporation Finance's review process. In other words, these measures of investor protection would still remain if the proposal was adopted.

However, ICBA believes the SEC should go further with its proposal and adopt the ACSEC recommendation that the accelerated filer definition include registrants with a public float threshold of $250 million or more, but less than $700 million rather than the current definition which includes registrants with a public float of $75 million or more, but less than $700 million. If implemented, registrants with public floats of between $75 million and $250 million would be considered non-accelerated filers and would be no longer required to provide auditor attestation reports required by Section 404(b) of the Sarbanes-Oxley Act.

ICBA has supported legislation to implement this exemption for community bank holding companies since they already make extensive financial disclosures in their quarterly call reports filed with their primary bank regulator. Furthermore, these community bank holding companies and their banking subsidiaries are subject to an annual safety and soundness exam and a compliance exam every three years. Under Part 363 of the FDIC regulations, if the insured depository institution's assets equal $500 million or more, the IDI must file audited financial statements with the FDIC and if the IDI's assets equal $1 billion or more, must also file an auditor attestation report concerning their internal controls. In short, the SOX 404(b) requirement is redundant and unnecessary for publicly held bank holding companies to maintain effective internal controls.

Although, as noted above, the argument for a SOX 404(b) exemption is stronger for publicly held community bank holding companies, ICBA believes that all publicly held registrants with public floats of up $250 million should be exempt from SOX 404(b). Even though, as the SEC's 2011 Staff Section 404(b) study indicates, accelerated filers

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that were subject to the Section 404(b) auditor attestation requirements have lower restatement rates than registrants that were not subject to the requirements, we still believe the costs of performing a Section 404(b) audit outweigh the possible loss of investor protection and benefits.

For example, annual audit fees for publicly held bank holding companies would drop dramatically--some as much as 50%-- if they were exempted from SOX 404(b) based on the last ICBA SOX 404(b) study that was done in 2005. In the case of some of the larger community bank holding companies, this reduction in audit fees of would be very significant. Overall compliance costs would also drop and this would, in turn spur growth in small registrants to the extent that the audit and cost savings and other resources devoted to disclosure and compliance are productively deployed in alternative ways. It would also encourage capital formation because companies that may have been hesitant to go public may choose to do so if they face reduced audit and disclosure requirements.

Conclusion

ICBA strongly supports expanding the number of registrants that qualify as "smaller reporting companies" by increasing the public float threshold from $75 million to $250 million. This would significantly reduce the compliance costs of those companies without materially affecting investors' access to information about these registrants. However, ICBA would like the SEC to go even further with their proposal and adopt the ACSEC recommendation that the accelerated filer definition include registrants with a public float threshold of $250 million or more, but less than $700 million. This would exclude companies with public floats of up to $250 million from the auditor attestation requirements of SOX 404(b)—substantially reducing their annual audit fees and their compliance costs. In the case of community bank holding companies that are already subject to substantial supervision and the regulation including the audit requirements of Part 363 of the FDIC regulations, SOX 404(b) is unnecessary to maintain effective internal controls. However, for all companies with public floats from $75 million to $250 million, the costs of SOX 404(b) greatly outweigh the benefits.

ICBA appreciates the opportunity to comment on a proposal by the Securities and Exchange Commission to amend the definition of "smaller reporting company" as used in the SEC's rules and regulations. If you have any questions or would like additional information, please do not hesitate to contact me by email at [redacted].

Sincerely,
/s/ Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel