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OPPORTUNITY FOR PUBLIC COMPANIES QUALIFYING FOR SEC'S "SMALLER REPORTING COMPANY" STATUS:

Save on SOX 404(b) Costs and Defer "Say-on-Pay/Frequency" Votes

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The SEC exempts "smaller reporting companies" from complying with various regulations that the SEC determines would be unduly burdensome or costly for these companies. These include, among others, the costly auditor attestation of internal controls under Sarbanes-Oxley Rule 404(b), the lengthy and often complex Compensation Discussion and Analysis (CD&A) disclosure for proxy statements, and the recent "say-on-pay/frequency" shareholder votes required by the Dodd-Frank legislation.

On January 25, 2011, the SEC adopted final rules implementing the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act concerning three shareholder advisory votes:

- the vote approving executive compensation (the "say-on-pay" vote),
- the vote to determine the frequency of the "say-on-pay" vote, and
- the vote approving golden

parachute compensation.

The SEC's final rules provide a temporary exemption for smaller reporting companies (until January 21, 2013) from compliance with the "say-on-pay" and frequency votes (but not the golden parachute compensation vote, which is applicable to any merger proxy statement initially filed with the SEC on or after April 25, 2011). The SEC may determine to exempt smaller reporting companies from additional regulations it adopts in the future to implement other provisions of the Dodd-Frank Act.

As mentioned above, other benefits of qualifying as a smaller reporting company include exemptions from both Section 404(b) of Sarbanes-Oxley and the CD&A.

To qualify as a smaller reporting company under SEC regulations, a company must have a public float of less than \$75 million as of the last day of its second fiscal quarter. Investment companies and asset-backed issuers cannot qualify as smaller reporting companies.

A qualifying company must "opt in" to smaller reporting company status.

A calendar-year company with a public float of less than \$75 million as of June 30, 2010, that has not yet "opted in" should consider doing so by checking the "smaller reporting company" box on the cover of its 2010 10-K in order to take advantage of the SEC's less burdensome and cost-saving requirements in its 2010 10-K, throughout 2011 and for so long as the company continues to qualify as a "smaller reporting company" under SEC rules.

We have considered the possible downside of electing smaller reporting company status. Our analysis has not revealed any meaningful legal concerns presented by the election. For example, electing smaller reporting company status does not, in and of itself, render an issuer ineligible to use a Form S-3 registration statement. There is a potential practical concern, however, that by making the election (by checking the "smaller reporting company" box on the cover page of

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an issuer's SEC filings), the investment community may perceive the company as a smaller, less robust company. Although a final determination should be made by each company after consultation with its advisors, we view this concern as most often outweighed by the substantial benefits of a smaller reporting company status.

For further information, contact Steven Siesser at 212 204 8688 or Laura Kuntz at 973 597 2398.

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