



Small Businesses Benefit From Reduced Securities Law Disclosure Requirements

Small businesses that plan on accessing the public capital markets need to reduce the costs and time demands of U.S. federal securities law compliance. For the most part, small businesses that have annual revenues of less than US\$100 million bear a compliance burden similar to that of much larger businesses. Much of this burden comes from security registration statement disclosure requirements and mandatory periodic reporting requirements.

Despite the large business bias of federal securities law, fifty percent of U.S. public companies are small businesses.

Market Capitalization, Total Assets and Revenue for Companies, by Revenue - March 2005

Table with 9 columns: Revenue (millions), Number of Companies, Cumulative Percent of Companies, Mean Market Capitalization (millions), Median Market Cap. (millions), Mean Revenue (millions), Median Revenue (millions), Mean Total Assets (millions), Median Total Assets (millions). Rows represent revenue brackets from >= \$1 to >= \$100 million.

Source: Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission; Table 19 (in part). April 23, 2006

Qualifying as a Small Business Issuer

Some small businesses can reduce the time and cost of corporate securities law compliance by qualifying for "small business issuer" status. Regulation S-B, the source of disclosure requirements for "small business issuer" filings under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act") defines "small business issuer" as:

- 1. a U.S. or Canadian issuer of equity or debt securities;
2. that has annual revenues of less than US\$25,000,000;
3. that is not an investment company or an issuer of asset-backed securities;
4. that does not have a "public float" that is equal to or greater than US\$25,000,000 (A company's "public float" is the aggregate market value of its outstanding voting and non-voting common equity held by non-affiliates); and
5. if a majority owned subsidiary, whose parent company also meets all of the above criteria.

Companies that fit under the "small business issuer" definition can take advantage of the U.S. Securities and Exchange Commission (the "SEC") small business disclosure system. The benefit of the small business disclosure system is a decreased disclosure obligation. This usually means that less time, effort, and money is spent on securities regulation law compliance.

### Small Business Issuer Time and Cost Savings

The below table shows the SEC's estimate of the amount of time it should take to lawfully comply with respective disclosure forms. Because it is not clear how the SEC derived these time estimates, the table is most useful as a rough approximation of time and cost savings.

	<u>Standard SEC Disclosure Requirements</u>		<u>Small Business Issuer SEC Disclosure Requirements</u>	
	<b>Form</b>	<b>SEC Estimated Average Burden Hours per Response</b>	<b>Form</b>	<b>SEC Estimated Average Burden Hours per Response</b>
<b>Securities Act Registration Statement</b>	Form S-1	1,162	Form SB-2	148
<b>Exchange Act Registration Statement</b>	Form 10	36*	Form 10-SB	133
<b>Exchange Act Annual Report</b>	Form 10-K	2,196	Form 10-KSB	1,646
<b>Exchange Act Quarterly Report</b>	Form 10-Q	192	Form 10-QSB	182

Companies that qualify as “small business issuers” can take advantage of the reduced disclosure regime of Regulation S-B. Securities can be offered and sold publicly by filing Securities Act registration statement Form SB-2. Small business issuers that would like to have their securities publicly traded over the counter can file Exchange Act registration statement Form 10-SB and request quotation on the Over the Counter Bulletin Board (OTCBB). Annual and quarterly Exchange Act reporting requirements can be met by filing annual report Form 10-KSB and quarterly report Form 10-QSB. While OTCBB quotation rules require that quoted companies file quarterly and annual reports, companies can be quoted on the Pink Sheets without meeting Registration Act requirements.

Entry into the small business disclosure system is straightforward. A company that is not currently subject to Exchange Act reporting requirements should first determine that it meets the “small business issuer” definition. The company’s revenue from its last fiscal year must be less than US\$25,000,000. The company’s public float should be calculated no more than sixty days prior to filing a registration statement on either Securities Act Form SB-2 or Exchange Act Form 10-SB.

To learn more about raising capital under U.S. federal securities law, either through the private placement offering of securities or an initial public offering through the public registration of securities, visit the *Learning Center* at [www.shajlaw.com](http://www.shajlaw.com) and download [Capitalizing Your Small Business](#).



### Small Business Disclosure System Flexibility

A company that has revenues of US\$25,000,000 or more, or has a public float of US\$25,000,000 or more, can qualify as a “small business issuer” if for two consecutive years its revenues and public float are less than the US\$25,000,000 limit.

Once a “small business issuer” decides to meet its Exchange Act reporting requirements by filing annual and quarterly reports under the small business disclosure system, the company must continue to file reports on Form 10-KSB and Form 10-QSB for the entire fiscal year. A “small business issuer” can decide to opt in or out of the small business disclosure system at the end of each fiscal year, but not during the fiscal year. For example, a company that meets the “small business issuer” definition, but has filed its 2007 first-quarter report on Form 10-Q, cannot file its second quarter report on Form 10-QSB. The company must continue to file quarterly reports on Form 10-Q, file its annual report on Form 10-K and switch to Form 10-QSB for the filing of its 2008 first-quarter report.

Small business issuers that exceed either the US\$25,000,000 revenue limitation or the public float limitation for two consecutive years are no longer eligible to meet Exchange Act reporting requirements using the small business disclosure system. A company that fails to meet the revenue requirement in one year (but meets the public float requirement), and then fails to meet the public float requirement in the following year (but meets the revenue requirement) is still considered to be a “small business issuer.”

#### Is Your Company (and, if a subsidiary, its parent company) a Small Business Issuer?

SMALL BUSINESS ISSUER REQUIREMENTS	YES OR NO?
U.S. or Canadian Company	
Revenues of less than US\$25,000,000	
Public Float of less than US\$25,000,000	
NOT an Investment Company	
DOES NOT issue Asset-Backed Securities	

If you answered “Yes” five times, it is quite likely your company qualifies as a “small business issuer” and can take advantage of the small business disclosure system. Qualifying for “small business issuer” registration and reporting requirements can help save time and money complying with U.S. federal securities law.

For more information or help with your securities law issues, call Saboor H. AbdulJaami at +1 (646) 435-0668.

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