

ASSOCIATION OF CORPORATE COUNSEL

TITLE: Attorney Best Practices for Minimizing Risk for Technology Licensees & Licensors

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PRESENTED BY: ACC's Corporate & Securities Law Committee

SPONSORED BY: Lindquist & Vennum PLLP

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MODERATOR: Jonathan B. Levy, Lindquist & Vennum PLLP

Operator: Just a reminder, today's conference is being recorded. Welcome to this ACC Webcast.

John Levy: Good afternoon everyone. Welcome to the Association of Corporate Counsel's Webcast – Smaller and Not-So-Small Reporting Companies Changing Rules and Best Practices.

We're very excited to be talking about the SEC's new disclosure system for small reporting companies. And we hope that this will be an informative and a practical webcast for in-house counsel of companies that are now subject to the rules or may become subject to the new rules shortly.

I am John Levy of Lindquist & Vennum law firm in Minneapolis. Joining me this afternoon is Cate Heaven, Vice President and General Counsel of Winmark Corporation – a public company based here in Minneapolis that is a smaller reporting company. Winmark's a franchisor of retail stores, including Play It Again Sports, Once Upon a Child, Playdo's Closet, and Music-go-Round.

Winmark also has a leasing business that provides finance to middle market and smaller businesses. Also joining me is Dick Primuth of Lindquist & Vennum. Dick is the Head of the Transactional Practice at Lindquist & Vennum. And he manages a corporate and transactional group in Minneapolis in Denver of 120 business lawyers. He has an active securities and public company practice that includes many public companies that are eligible for smaller reporting company status.

Our panel today will discuss the context or setting of the new rules. We'll provide an overview of the specific rule changes. We'll talk about exit and entry of the SRC system. We'll talk about best practices and risk areas. We'll get some real-world practical advice from Cate, who is In-House Counsel in dealing with the new rules.

And finally we'll have time for questions and further discussion. You will be able to use the chat box feature to send question to us. And finally there will be an opportunity for you to evaluate the program by clicking in your links box to fill out an evaluation form.

In addition to the slides, you should also be able to view in your links box the additional materials that we have provided. And these include the SEC's small entity compliance guide, the SEC's adopting release, the SEC's compliance and disclosure interpretations on the new rules, and an

appendix that sets forth the specific changes and instructions to the regulations to help guide in your preparing disclosure documents.

First, let's talk about the context of the new reporting system. First of course what is the small reporting company or SRC? And our SRC qualifies for this new disclosure regime if it had less than 75 million in public float as of the last business day of the second fiscal quarter last year, or if it is a company with no public float then less than 50 million in revenue last year.

We're going to talk more about the public float calculation in detail in a few minutes. But putting the new SRC rules in context, these are part of a kinder and gentler SEC that is – the SEC is trying to make disclosure and its regulations a little more favorable for smaller companies after the Sarbanes-Oxley rule making that imposed you know a high regulatory burden on small public companies.

These changes in the SRC system were part of the advisory committee on smaller public companies, which was – or is a committee designed to look at ways to relieve regulatory burdens on small companies. In addition to the SRC systems, there has been a reduced – there were a number of postponements to the implementation of 404 of Sarbanes-Oxley. And then when it was applied to smaller companies, the PCAOB adopted AS5 to reduce the – reduce the burden and add a station requirements as is – won't take effect until next year.

In addition, there is obviously the expansion of – that small companies can use as three to do primary offerings subject to one-third of their capitalization limit. And rule 144 of course was shortened from one year to six months to help liquidity for smaller public companies.

The SEC rule changes for smaller reporting companies are a significant expansion compared to the old SB system. The SB system was 25 million in revenue and public float compared to now 75 million in public float or 50 million in revenue for companies with no common equity to trade.

With this discussion as a background, I would like to now turn it over to Dick to provide an overview of specific changes to regulation SK and SX.

Dick Primuth: Thank you, John. Going through this first slide that I am going to be covering is the issue of the phase-in. As most of you know, regulation SB is being phased out. And by the end of March 2009 all reporting companies will be required to file their periodic reports on form 10-K and 10-Q.

If you are an SB filer with a fiscal year ending prior to December 15, 2008 you can still continue to file on SB forms including your next 10-K SB annual report. However if you are a calendar year company that previously filed under SB you should now be filing under the standard 34X forms regardless of whether you filed the Form 10-K or Form 10-K for your last year.

As the next bullet point summarizes, the less stringent financial requirements in regulation SB have now been incorporated into SK and are now available to an additional approximately 1,600 companies. The way in which these requirements have been incorporated as John mentioned is that they are included in new paragraphs and instructions delineating the alternative scale disclosure requirements for smaller public companies.

In our – in the appendix to our presentation today we have provided the specific paragraph and instruction references to facilitate your navigating through regulation SK to find these new scaled requirements.

As this slide also indicates, the financial statement reporting requirements in regulation SB item 310 have now been moved to regulation SX article eight. Finally, rejecting the suggestions of some commentators, the SEC decided not to require an either or approach to reporting either as a larger company or a smaller reporting company.

Smaller reporting companies may comply with larger company requirements on an al a carte basis. And the SEC encourages this in its adopting release.

Now we would like to discuss what disclosures that have and that continue to be applicable to larger companies may be completely omitted by smaller reporting companies. Clearly one of the most significant and welcome decisions is that smaller reporting companies are not required to provide compensation discussion and analysis under item 402 of regulation SK.

Those of you who were reporting as non-accelerated filers last year and had to grapple with this requirement I am sure are very delighted with this particular area of regulatory relief. The other disclosures that may be omitted by smaller reporting companies are perhaps not as burdensome but nevertheless welcome.

The compensation committee report under item 407 is not required. Risk factors that are otherwise required under item 503 may also be omitted although the authority for this is not in item 503 per se but rather in item 1A under Form 10-K and under Form 10-Q in part two under item 1A.

Finally, other SK items that are not applicable to smaller reporting companies are selective financial data and supplementary financial data under items 301 and 302.

Some other disclosures that may be omitted completely include the quantitative and qualitative disclosure about market risk under item 305. Compensation Committee interlock and insider participation under item 407, and many of my clients are quite thrilled about the fact that as a small reporting company, they do not have to provide the performance graph under item 201.

Next slide please. Thanks.

Now I would like to cover where the disclosure requirements are reduced but not completely omitted. The first bullet point about less detail about the business does not really do justice to the changes that are available to smaller reporting companies. And I would like to take a minute to cover these in somewhat greater detail.

Among the other things that smaller reporting companies that are now available to smaller reporting companies is that when they discussed the development of their business it need only cover three rather than five years.

Also, there is simplified language in – if you look in paragraph H, or regulation SK there is much simpler language as to what should be address when you are providing narrative description of your smaller reporting company. There is no requirement for segment reporting under item 101 for a smaller reporting company, and we will talk about this more later.

Other areas include the fact that you don't have to provide financial information about geographic areas, nor do you have to provide quite as detailed a disclosure with regard to available information and with regard to reports to security holders.

Coming back to the slide itself, we talk about the fact that two years of financial statements rather than three years are required under article eight of regulation SX. And the only real change in moving these requirements into regulation SX is other than some technical language changes is that you need to provide two audited balance sheets rather than one.

Also, if you do not provide – or if you only provide two years of financial information you need – your MD&A need only cover – discuss those two years under item 303. Finally under item 303 in your MD&A you do not have to provide tabular disclosure of contractual obligations.

Another area where the disclosure requirements have been materially simplified for SRCs is with regard to tabular executive compensation information under item 402. In most cases you will only need to provide compensation disclosure with respect to the three highest paid officers including the principle executive officer.

The principle financial officer does not necessarily need to be disclosed. I would however suggest that you look carefully at the requirements for SRCs under 402 in this area because there are instances where you may have to provide additional disclosure with respect to additional individuals who may have worked for the company in the prior year but were not working for the company at the end of the year that you are reporting on.

With regard to the three tables that are required rather than seven tables, the summary compensation table only needs to cover two years of information rather than three. And with regard to the other two, the director of compensation table does not need the footnote disclosure of grant a fair value of equity awards.

One other point that is not covered and was – I must confess was somehow omitted from the slides is that we wanted to talk a little bit about changes under item 404, which relates to transactions with related parties, promoters and certain control persons. There is both some good news and bad news in terms of how the SEC dealt with this part of regulation SK.

There is – for SRCs, no disclosure of policies and procedures for approving related person transactions is required. With regard to a threshold for reporting have related party transactions, while larger companies – the threshold is \$120,000. For smaller reporting companies it is the lesser of \$120,000 or one percent of total assets.

Also SRCs under this – under the rules applicable to them under item 404 need to provide specific information about underwriting discounts, commissions, and corporate parents. And there is certain other disclosures regarding promoters and certain control persons that is not applicable to larger reporting companies.

This – all of this is covered in our appendix, so you can refer to that. And I would also refer you to a March 5, 2000 SEC smaller company interpretive advice, which clarified what item 404 information, is required under schedule 14A. And that is one of the items that we are providing as a supplement to this presentation.

John?

John Levy: Great. Thanks, Dick.

Hey I just want to make one small point about acquisitions. There was a change in SX. If your company is involved in an acquisition and the acquisition is such that you must disclose pro forma financial statements, typically those are required within 75 days of the acquisition under an 8-K.

Article SX has been amended to provide that is the targets revenues are now less than 50 million you must disclose pro forma financial statements for the past two years rather than three years. The old rule was 25 million, which followed the convention of 25 million in revenues.

Now that we have talked about the rules in detail, we want to talk a little bit more about eligibility issues. And three issues in particular. Entering and exiting the SRC disclosure system. Who is an affiliate? And related issues in calculating public float. And third, I want to talk about a recent enforcement matter concerning affiliate status.

Again, starting at the most basic, if you qualify as a smaller reporting company, based on last year's calculations, you must check the box in your periodic reports. Even if you follow the disclosure of a larger SK filer, you still have to check that box.

Now let's talk a little bit about exiting and entering the SRC system. You must have had – must have had less than 75 million in public float based on last year's calculation. And if you have no public float because you are – you have no common equity that is traded, then it is a \$50 million in revenue test.

And when do you calculate that test? Just like the accelerate filer test, the last business day of the second fiscal quarter. So for the public float test that would be June 30 for calendar year companies. And as I said it follows the accelerated filer test.

One benefit I guess is that once you qualify you don't need – unlike the accelerated filer test you don't need to wait until next year. Your next 10-Q can follow the smaller reporting company rules. But you would know that this – when this benefit doesn't apply to companies that didn't qualify as smaller reporting companies last year, those companies would be subject to the exit rules, which means that you are – you have to have less than 50 million in public float based on this June 30 calculation in order to start using the SRC system this coming May.

So next I want to talk briefly about IPOs. When your company does an IPO, the registrants calculate their public float within 30 days of filing the registration statement, the filing. And you take your estimated offering price per share times the shares held by non-affiliates before the offering, plus the number of shares to be sold.

And that is the baseline for deciding your S1 disclosures, whether you know do the full SK larger company disclosure system or the SRC system. But there is an innovation that the SEC permitted. You know at effectiveness, you can recalculate your public float. And if it is below 75 million, the new company can follow the smaller reporting company rules with the next periodic report even if your S1 followed the SK requirements for larger companies.

And the good news is the opposite is not true. So if you did it your IPO, and you thought you were going to be a small reporting company, so you followed the small reporting company system, but your IPO was so great that your public float is over 75 million, you don't need to automatically – immediately change your disclosure in your next queue to the larger company SK system. You just follow the last business day of the second fiscal quarter determination test.

So you basically have another year. You ended up being a big company. Now let's talk again or briefly about exiting the system. If on the last day of the fiscal, second fiscal quarter, your public float is above 75 million, you exit the smaller reporting company system and do larger company disclosure, but not right away. You do it next year.

And then again, as we – as I mentioned, once you become – if you are now or once you become a larger company you don't drop down to the smaller reporting companies status again until your public float drops below 50 million, not 75 million. That is this exit rule that applies right now to larger companies.

If you have no public float because you have – you are reporting float because you have – you are reporting because you have public debt or whatever, then you – to exit the – to go down to a small company you have to – you can't do it unless your revenues drop below 40 million.

Now I want to turn it over to Dick to talk about affiliates in order to calculate the value of public float.

Dick Primuth: Thanks, John.

In item 10 paragraph F of regulation SK the determination of public float refers to number of – or is defined as the number of outstanding shares of voting and non-voting equity held by non-affiliates.

Obviously therefore you have to determine who may be an affiliate for purposes of making this calculation. The – the two operative definitions that you will want to refer to but perhaps all or most of you are quite familiar with is the definition of an affiliate and the definition of control. The definition of affiliate for everyone is a person that directly or indirectly through one or more intermediary's controls or is controlled by, or is under common control with, in this case a reporting company.

Obviously control is the key word in this definition. And we can define control as the position direct or indirect of the power to direct or cause the direction of the management and policies of a person, whether it is through the ownership of voting securities by contract or otherwise.

These of course are broad generalities and as most of you may know, the SEC refuses to provide detailed guidance as to who may be deemed an affiliate and who is not an affiliate, and what represents control because these determinations are heavily back dependent. However we will briefly review those persons who are often considered affiliates by SEC practitioners.

The most obvious category of course is directors, executive officers, and other insiders. Also typically affiliates are deemed to be ESOPS, ESOTS and other entities where company stock is in some sort of a trust or other vehicle that over which management has some level of control. Frequently 10 percent stockholders are deemed affiliates and that of course again is the facts and circumstances as to the degree of friendliness or hostility between that 10 percent stockholder and management.

Finally something else you may want to consider is that there may be what the SEC release refers to in a footnote as stagnant shareholders. These could be someone who is not technically an insider, but maybe has been a shareholder holding a block of stock of material block of stock for an extended period of time, not trading in the securities but just a very content and supportive shareholder who has a continuing relationship with the company.

Sometimes that person may be a former member of the executive team who just continues to be interested in its affairs. Under certain circumstances you may want to look at these individuals as people who would be affiliates for purposes of the (12V2) definition.

I think the overall take away from this slide is that for those companies that are close to exceeding the \$75 million tipping point or whatever the tipping point is depending on your status into an accelerated filer status, is that you want to carefully look at all these categories to determine whether a sufficient number of shares can be excluded when you determine what your public float is.

John, next slide.

John Levy: OK. Thanks, Dick. I just want to make one point about an enforcement risk in this area. This affiliate discussion you know is not – you know purely academic. There was an 8-K filed by this company called Haut Corporation. And it announced that the SEC had started an investigation into it for not correctly classifying who is an affiliate for purposes of calculating its accelerated filer status.

The – I guess the allegation is that this company was trying to avoid complying with the 404 internal controls of you know internal control process of Sarbanes-Oxley. And there is some dispute about whether – you know who constitutes an affiliate. And I would just say that I think the SEC – as everyone knows, the SEC reviews every public company, every three years. And so they are going to look at this determination. So I think you just got to be careful and be sensitive to this affiliate status to the extent that it is going to affect your qualification as a smaller reporting company.

Now I want to turn the discussion to what we call you know best practices and risk areas. These are issues and concerns that we think – that has come up and will come up and sort of the everyday application and practical application of the new rules. And first I want to turn it over to Dick to talk about how to decide how much disclosure to provide under the you know sort of a carte system.

Dick Primuth: The first slide at this point relates to those companies which have been reporting as non-accelerated filers, but who have generally been complying with the disclosure regimen of regulation SK before the SRC amendments were adopted.

And in many cases, these non-accelerated – now smaller reporting companies, but formerly non-accelerated filers have a public float that is approaching \$75 million. And since they are already quite familiar and have been reporting in this manner for many years the question is: should this company supply – continue to supply the larger public company level of information just because it is more practical.

If they – if this company would soon pass – if this company would soon pass past that \$75 million mark, and for a year or two that level of disclosure not been made, it might just be more work than it is worth to recreate it as compared to continuing to make disclosure.

So this is you know based upon your circumstances, but if you are approaching 75 million and you are already used to reporting under regulation SK as applicable to larger reporting companies, then it may just be easier to continue to report largely or completely under regulation SK without reference to the smaller reporting company requirements.

The second point in this slide is related to the disclosure risk factors. Frankly I have been advising my clients that they should continue to report risk factors simply because this is probably good disclosure for purposes of informing investors of the particular features affecting that company. And it is a way to maximize your protection for forward-looking statements under the Private Securities Litigation Reform Act.

Another reason to provide disclosure risk factors is that then if you are going to do an S3 registration statement, you would not need to provide – you could incorporate those risk factors by reference into your S3 registration statement and then you would only need to provide deal specific risk factors in the S3 registration statement otherwise.

Next slide, John.

The – another factor in deciding whether to opt for a larger company disclosure is how it aids investors in understanding your company in relation to the burden that is associated with providing this information. This cost benefit analysis also varies with each company. But one obvious area where the disclosure is not particularly onerous is to provide five years of selected financial information under item 301, or the supplementary financial data under item 302.

And as the slide indicates, another benefit of providing this information is it really makes your conference calls with shareholders and your investor presentations much easier. If you have to – if it is already available in a publicly filed document then you don't need to recreate it or make a special effort to provide it in these circumstances because you have already for it.

So once again, you have to measure the burden against the benefit. But in these areas we think that the benefit may outplay the burden.

John Levy: Yes. And, Dick, I just would maybe interject one point on the investor presentation. If you find that your – you know you want to talk about three years of financial information or even five years of financial information, because that is – it's important in your business to the investment –

investor community or your shareholders, then gosh why not put it in your – why not keep it in your periodic reports?

Dick Primuth: Exactly. Exactly. The next slide says no cherry picking. And the point here is that providing more ample disclosure in certain periods is not appropriate. If in later periods you are going to make less disclosure to minimize bad news.

To put some flush on this and give you an example, for example, you might want to discuss in the description of your business that you have growing sales of a new product line in comparison to your legacy products. But in the following year, the sale of that new product line may – sales may have actually declined rather than increased.

And then in the – so therefore in the second year you would omit this comparative disclosure between new products versus legacy products. This is the kind of cherry picking which the SEC definitely discourages.

Some other guidelines for making scale disclosure under the various SK items, sale disclosures must be consistent on a period-to-period basis to permit comparison by investors whether quarterly or annually. An example of this might be how this principle would be violated is if you provide five years of selected financial information in your 10-K for one year when the trend line is favorable, but then omit a five-year presentation in your next 10-K when the earlier years are stronger than the most current – two most current years. So this would be an example of what you shouldn't be doing.

The couple of other points that have been made in the SEC release is when you make al a carte disclosure you cannot apply a larger company disclosure requirement if the disclosure requirement is more rigorous for a smaller reporting company. An example of this, we talked a little bit about this when talking about item 404.

Smaller reporting companies under item 404 are required to provide additional information about underwriting discounts, commissions, and corporate parents. In this circumstance, you cannot opt for the larger company standard, which does not require this information, rather than the smaller company standard.

On a similar – in a similar vein, you cannot as a smaller reporting company uses a larger company standard if it eliminates the need for any disclosure. An example of this relates to reporting related party transactions.

A larger reporting company is required to report related party transaction when the amount involved exceeds \$120,000. Smaller reporting companies have to report based on the lesser of one percent of their total assets based on a two-year average or \$120,000. What smaller reporting companies cannot do is apply the larger company \$120,000 test if their assets – if one percent of their assets would be less than \$120,000.

John Levy: Thanks, Dick.

This is John again. I want to make one small point about segment reporting. As Dick mentioned in the business section, smaller reporting companies don't have to provide financial information by segment. This was – or is a requirement for larger companies to provide you know disclosures of revenues, expenses, profits, losses, and total assets.

But – and this is mentioned in a footnote in the SEC release, you know under FAZ 131 which requires financial foot note disclosure about business segments – you know business enterprise as they call them in the accounting literature. So your financial footnotes might have the same segment or similar segment information that used to be in your business section. So you might

want to include it in your business section just as a good practice because you know you can write about it and have a little more expanded disclosure in your business section.

Sort of a similar point in the ratio of earnings to fixed charges and statement regarding computation of ratios, these are disclosures required in public debt when an issuer issues public debt. And now smaller reporting companies don't have to include the ratios, and don't have to include the statement as exhibit 12, which basically shows how the ratios are calculated.

But if you have public debt outstanding, and you are excited to get rid of these you know these ratios and the statements, you might just check your conveyance to make sure that you didn't – or it is not just automatically required that such disclosures be made.

And then I want to turn to rule 12B20 of the Exchange Act, which is really a you know a 10B5 warning basically that says you know you have to include you know other disclosure that in good faith wouldn't – you know wouldn't – to avoid the information that you have make it not misleading.

And this – you know this warning from the SEC which applies to everyone, including smaller reporting companies you know could come into play you know depending on the context. And you know just sitting around, it – you don't know exactly how it's going to come up. But you know let's say if you had a – you don't – smaller reporting companies don't have to disclose compensation committee interlocks.

And this doesn't happen that much, but theoretically it could happen where you know a director on one issuers company is an officer at another issuer's company that your CEO is the director of. And there is compensation committee overlap. Well, if one of the issuers was the smaller reporting company, they wouldn't have to disclose that in their proxy or in their 10-K and proxy incorporated by reference.

But you might want to because it is just – you know that is one area where I don't know if it is you know would be misleading, but I think it would certainly be a good practice. Another area would be the quantitative and qualitative disclosures about market risk. If your company is a hedging company, or does a lot of hedging strategies, and for many years or you know you included you know disclosure under item 305, and now that you are a small reporting company you took that out.

Well I think you need to think about whether that is – you know whether that is material to investors, and whether it is would make your disclosure misleading.

Again, I want to talk about SEC review.

Dick Primuth: Say John, before you go to that could I make one other piggyback on your point.

John Levy: Yes. Absolutely.

Dick Primuth: About 10B5. Something I forgot to mention. In the – there is much reduced executive compensation tabular information required for small reporting companies. But you should also refer to paragraphs O and Q under item 402 because the SEC has made a point of calling for additional supplemental narrative disclosure to make the tables meaningful.

So they're – while you are not required to provide a CDNA there may be circumstances in which it is desirable and may be mandatory that you make some narrative disclosure to add – to really provide information, which might otherwise be material omissions in terms of the tabular information you do provide.

Thanks, John.

John Levy: Great. No, thank you, Dick.

And on SEC review, as we know, SEC reviews every public company every three years. They say that they are going to evaluate compliance in accordance with the smaller reporting company rules and not the larger rules. Not the rules for larger companies even if your company follows the larger company disclosures.

Well I think we'll just have to take them at their word right now. Now, after Dick and I have talked way too much probably, we're going to turn it over to Cate to hear some real world or practical experience from the in-house general counsel's perspective.

Cate, go ahead.

Cate Heaven: Thanks, John. No, I don't think that you guys talk too much. And I want to thank you all for attending this event, and thank my presenters for providing such good information. I know that I really wish I could have had these slides before we went through our first reporting season. It would have made life a little bit easier for us.

I think – I just wanted to start overall by making some general comments about the rule changes to say that I was very excited to see that the SEC decided to decrease their requirements for smaller reporting companies. As a smaller reporting company we have a relatively small number of people for the amount of disclosure that the SEC thinks that we should do.

So we were very happy to see that. And now all we need is for them to delay 404B from the Sarbanes-Oxley perspective for one more year and we'll be even happier. But I know better than to wish for perfection, right?

So in any case, I know John hit on a brief description of Winmark at the beginning. But I just want to refresh your recollection since you have had a lot of information since then. We are a franchisor of four retail value-oriented retailing concepts. And we also do middle market and small equipment leasing, which means that we have a pretty diversified number of businesses for our size.

And in addition, we are – in addition to having common stock we also currently have a subordinated outstanding. So even though we are small, we have a lot going on. And we were using the non-accelerated rules before this came about.

So rather than being in a – from a perspective where we had a smaller amount of disclosure with SB forms, we actually have the opportunity to scale up in terms of compensation in the CDNA and then scale back down. So the board of directors will tell you that I have written way too many memorandums about changes in the SEC rules in the last couple of years.

I think they will be happy if there are no new rules announcements for a little while. So when I was looking at the rules from a pragmatic perspective, just as at 10,000 feet, the things that jumped out at me were the a la carte feature and the fact that it was a one-way ratchet and that overall there is a recognition that smaller reporting companies are not the same as your accelerated filers.

I really enjoyed the fact that we had an a la carte feature because I think that it provides us the opportunity to think very clearly about what it is that we think is important for shareholders to disclose. Bearing in mind of course with the one-way ratchet that is the rule is more stringent for smaller reporting companies that we have to comply with it.

And as Dick pointed out, really the related party disclosure is a primary area where we have additional requirements. And as a company that does do related party transactions we had to modify our reporting a little bit as a result of the smaller reporting company changes.

So I think when I was talking to John about this presentation beforehand, he kept asking you know what was your methodology? How did you determine what you wanted to take a la carte? And I think first and foremost that as you all probably know, smaller reporting companies have very different management structures. So you know our management structure, we philosophically believe that more is not necessarily better from a disclosure perspective.

We want to make sure that the disclosure that we have is clear and concise. And so we took a look at the rules as a group and made a determination item-by-item what we wanted to tick and what we didn't want to tick. And you know generally speaking we took a look at what is important to our businesses, the mix of information that we provided in the past since we did comply with the full SK rules.

And then also the SEC guidance. And I personally had to practice saying yes in the mirror rather than no because as you all know, as an SEC attorney, quite frequently say no, no, no or yes we have to disclose that, not we actually have flexibility here.

So I found that our – I really enjoyed our team approach. I spoke with all the people that work together from – on our disclosure team. We came up with a memorandum and we met with our outside advisors including of course, John. And our auditors and – because we pride ourselves on our relationship with our outside advisors.

I think that it was a very good process for us. So I think overall that's how we did it this year. And then we did find that we had decreased disclosure but we you know strive to make sure that everything that we did do would be clear for the investors.

I would say that as another part of the process for me, each and every year I am going to revisit the smaller reporting company rules and take a look and see if we want to modify our disclosure. Bearing in mind of course the good warnings that you have already gotten about no cherry picking and not being misleading.

I think that you know in the spirit of having the a la carte feature we should continue to challenge ourselves to think about what we do and do not want to put in our filings.

So a couple of other tips for complying. And then I promise to stop talking so that you guys can ask questions. I think it is a good idea if you think you may be a smaller reporting company to do the calculation now since you have the ability to start using the smaller reporting company rules in the next 10-Q.

And as John and Dick mentioned, you do need to use the exit analysis rather than the entry analysis. And then as part of our corporate governance, we make – do the calculation every year at the end of our second quarter to ensure that we still are a smaller reporting company and that we are not accelerated.

So I think that is an excellent analysis to go through, including taking a look – a close look at your affiliates and how they are. And make sure that your SEC compliance team including your outside attorneys and auditors are on board with your suggestions and have open dialog. And consider the overall mix of information that you have provided to your shareholders, and what you plan to provide them in the future.

So of course I will say I do actually read the releases. That makes me a total geek, but you know if you think that you get a lot of added value from that I would do that as well. And that is really all

of the tips that I have from the general counsel's perspective about how to comply. Did I miss anything John, what do you think?

John Levy: No. I think that was great, Cate, thank you so much.

I think now is time for questions. And it looks like we have a great question. And I will read it. And regarding the cherry picking advice. SRCs made disclose information required by larger companies, but not of smaller reporting companies. So it seems that what you decide to include or not include in the first year of reporting under this new regulatory scheme is critical since you may be locked in with your choice in future in future years.

For example, if you add the performance graph this year, you may not be able to execute it next year. Is that correct?

Dick Primuth: Well I guess that was one of my slides. And I would say you would have to – if you did exclude it, I think as they say you have to do it very carefully. I think there is probably a judgment all there. But I think the better practice would be if you do start with a performance graph you should stay with it. The – I know that in applying that performance graph you can change your alternatives, or the basket securities that you refer to.

Dick Primuth: Yes, John?

John Levy: Yes. No. That is right. The peer group of ...

Dick Primuth: Or the peer group, I am sorry. Thank you. So there is some opportunity – but you always were locked in to the performance graph. So I guess the short answer is if that is the only thing you change, I am not sure you can get into a lot of trouble. But I think that the point is a good one that is made by this particular question.

John Levy: Yes, Dick, I would agree with that. I think that is a very good question. And you know I think the answer is that the SEC would bring an enforcement case for that if you had a performance graph and dropped it, I doubt it. But does it create some risk if you know you only included a performance graph when it was going in the right direction relative to the S&P and the peer group?

Yes, I think that would be – that would be risky.

Dick Primuth: I think if you changed once you probably are OK. But if you change back and forth year-to-year I think that is when you would get into trouble.

John Levy: I think that is right.

Cate Heaven: What do you think if your business has had a substantial change? I mean in that instance, do you sort of redo the – your analysis and take a look at it presuming that you are not cherry picking?

Dick Primuth: Yes. Well for example, there might be a spin-off. So part of your business might have disappeared. So how do you even do a performance graph in that circumstance? So – and you might in fact have a different kind of narrative disclosure rather than a performance graph as a way to soften the blow.

But I think this is obviously a case-by-case situation. And I think that to not continue with a performance graph assuming your company is basically the same year-to-year in terms of its business, would send up some red flags. And if there were a couple other similar items of cherry picking in your year-to-year disclosures, I think the SEC might in fact take a – consider an enforcement action.

John Levy: Great. Any other questions? Please put it in the chat box.

Dick Primuth: John, if I could make one comment.

John Levy: Yes of course.

Dick Primuth: That was sort of building on what Cate said. Something that in terms of the affiliate calculation, one thing that I would recommend, and I know if Cate did this or not. But if it is going to matter, if you are at a tipping point with respect to being a smaller ((inaudible)). I think you may want to document your affiliate calculation with some sort of a memo. The auditors may require it.

And so you should not – this should not just be something where you fill in a number you know on your periodic report. It is something that probably should be backed up with a memo as to who is or is not an affiliate.

John Levy: Well I think that is very good advice Dick and absolutely critical. Even for deciding whether you are subject to 404, that was – that is important to maintain.

Cate Heaven: I also find memos helpful because I can't remember what I do from one day to the next. So when it is written down it is a lot easier to explain when someone asks you a question later.

Dick Primuth: Exactly.

John Levy: I think we probably have time – I would throw this question out to Cate and Dick. What do you think about the SEC's comment about how they are going to review smaller reporting companies? And sort of where you think this is going.

Cate Heaven: I think you should always think carefully about what you say in all of your reporting documents, and assume that the SEC is going to read and question anything that you put in the documents. As a general motto of principle. I think it is wonderful if they will actually say well for you for doing extra disclosure and we're not going to look at it too critically.

But I think it is always smart to think carefully about everything you write.

Dick Primuth: And maybe the other point is, is that they may not go in through the front door of saying oh we are going to apply the larger company standards. But they may find a back door as a different way to criticize your disclosure you know under 10B5 or some other theory so that they might get at you anyway.

So you – I think your point is well taken in terms of making several disclosures.

John Levy: Yes. I think they all do. That is right. That is what I – I agree with that. So I think we'll wrap it up. I don't see any more questions in the chat box. And I guess I just want to thank you, Dick and Cate. Your materials were great and very helpful comments.

I want to thank the ACC and Commpartners.

Anyone out there with any other questions can e-mail us with any questions. I think our e-mail addresses are in our bio. And I think that is it. You may now disconnect. Thank you so much.

END