Testimony of Joseph Piché
Chief Executive Officer and Founder
Eikos Inc.
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Chairman Kerry, Ranking Member Snowe, and Members of the Committee, it is an honor to be asked to testify this morning regarding the impact of Sarbanes-Oxley on small businesses.

My name is Joseph Piché, and I am the founder and CEO of Eikos, Inc. Eikos is a high performance materials or “nanotechnology” company based in Massachusetts that makes flexible, transparent, conductive films for application to electronic displays, solar cells, touch screens and any other electronic application that might require a transparent and conductive material. I started the company in my basement in 1996, and we have grown to employ 16 very talented people. In 2006 we had approximately $3.5 million in sales, and our products have applications throughout the world. The health of Eikos stands upon its technological know-how and the associated portfolio of intellectual property. As much of our commercial sales are in Japan and Asia, we contribute in a small way to reduce America’s trade deficit.

I am proud of what my team and I have done with Eikos, but we have reached a point where we need to access capital markets in order to continue to expand. We have explored various options and concluded that best venue for raising the required capital for expansion might lie in the public markets. As such, we explored the options within the U.S. and concluded that the atmosphere for doing so here was less favorable than utilizing other public markets such as the AIM in London.

I am not an economist, nor an accountant, nor an expert in the details the issues regarding of regulation of public companies, but from my perspective as an entrepreneur, the atmosphere for raising capital in the U.S. has taken a turn for the worse, specifically, with regard to the cost of going public and the costs associated with compliance for a small public company in the U.S.

We at Eikos believe that some aspects of Sarbanes-Oxley have contributed to the current change in the financial climate in the US capital markets. While Sarbanes-Oxley has had many positive impacts, it has made it more difficult for me to take my company public – and it has dramatically increased our cost of doing business even as a private company.

Let me say at the outset that I believe Sarbanes-Oxley is, for the most part, very good legislation. Entrepreneurs like me depend on our capital markets, and our capital markets depend on trust. Sarbanes-Oxley and the Public Companies Accounting Oversight Board have helped to restore the trust that corporate accounting scandals had helped to destroy. But over time, it has become clear that some of the secondary impacts of Sarbanes-Oxley have made it more difficult for companies like mine to do business.

Increased Costs

As I mentioned, Eikos now needs to raise capital through the public equity markets. However, due to the increased regulations of Sarbanes-Oxley, the cost for our company to obtain this equity may be extraordinarily high. The accounting costs specifically associated with taking a company public are now so large that they threaten to wipe out the funding that a company like Eikos would receive in its IPO. What is the incentive to take a company public when the company will not gain any capital as a result?

The increased cost of accounting has far broader effect on small businesses than just the question of whether or not to go public. Sarbanes-Oxley has increased the demand for accounting services, while the accounting industry has consolidated. Due to increased demand upon a reduced supply, with the added burden the accounting firms themselves face due to more conservative business practices, the price for accounting services has increased dramatically. I have witnessed at least a 20 percent increase the cost of accounting services for Eikos.

This cost is small relative to the huge resource expenditure that public companies are now required to make as part of Sarbanes-Oxley. For example, I see other nanotechnology companies that have gone public, and are now spending more per employee on Sarbanes-Oxley compliance than they are spending on health care. This is not in the best interest of the companies or their employees. Eikos would be much more likely to go public, raising necessary capital, if we did not believe that the costs of compliance alone might be larger than the capital raised. Again, I believe that transparent accounting is vital for both private and public companies, but the high cost of accounting for small businesses is hurting their growth.

Liability

Sarbanes-Oxley's liability provisions pose further difficulties for small businesses like mine. In the current business environment, high-quality executives and advisors are increasingly demanding that companies offer Directors' and Officers' (D&O) insurance. The increased liability imposed by Sarbanes-Oxley makes it simply not worth the risk to serve on a board of directors, for example, without the protection of insurance. Before Sarbanes-Oxley, I could buy good D&O insurance for $8,000. After Sarbanes-Oxley, the price shot up to $40,000 – a 500 percent increase. And it is not the same policy: the deductible went up, and the coverage is much less comprehensive.

At Eikos, we offer the best available health insurance. It is something about which I refuse to compromise, because I do not want any of my employees to worry about their health or the health of a family member. But the high cost of D&O insurance is forcing me to make a choice between maintaining this high standard and offering the insurance coverage necessary to attract and retain the best management and directors. It cannot have been the intent of Congress, when it passed Sarbanes-Oxley, to put small businesses like mine in such a dilemma.

Driving Investment Overseas

I cannot emphasize enough how important it is that America have capital markets that lead the world in transparency and accountability. It is our transparency and accountability that inspire the global investment community's confidence in American markets, which attracts investment from around the world to the United States. Sarbanes-Oxley was designed to strengthen the world's confidence in our markets, and thus attract even more foreign investment.

This was a noble goal, and in many ways it has succeeded quite well. But in some ways it has gone too far. Some of the very requirements in Sarbanes-Oxley that were designed to restore global confidence in American markets are creating tremendous financial incentives for private American companies to go public – not in the United States, but in other countries. By increasing the costs of going public in the United States, Sarbanes-Oxley is giving foreign capital markets a competitive advantage over American markets.

Eikos has carefully considered going public on the London AIM stock exchange. We estimate that it would cost Eikos approximately $2 million to go public on a U.S. exchange, but only $500,000 to go public on the AIM. We are by no means alone: IPOs in foreign markets have increased over the last several years, while IPOs in U.S. markets have held stagnant or decreased.

Conclusion

I would like to thank you, Senator Kerry, for your leadership in sponsoring legislation to help make it easier for small businesses to comply with Sarbanes-Oxley. I would also like to thank the Members of this Committee for your ongoing commitment to supporting small businesses like mine. America's small businesses are engines of innovation and employment, and they are absolutely essential to the nation's continued competitiveness in the 21st century's global economy.