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6/13/05
Via Email: rule-comments@sec.gov, oneillk@sec.gov
Mr. Jonathan Katz
Committee Management Officer
Mr. Kevin O'Neill
Special Counsel
Office of Small Business Policy
Division of Corporate Finance
Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549-0310

Re: File No. 265-23 - Comments to the Advisory Committee on Smaller Public Companies

Dear Mr. Katz, O'Neill, and other Committee members serving on the SEC Advisory Committee on Smaller Public Companies:

For the record, I do not speak for the New York Society of Security Analysts, nor for its Committee for Improved Corporate Reporting, a committee on which I serve, however, I was asked to engage in the discourse related to the matters where the SEC and its Advisory Committee on Smaller Public Companies asked the CFA Institute's Centre for Financial Market Integrity. In turn, it included the NYSSA to participate in the proceedings related to scaling securities regulations for smaller public companies to assure the costs and associated 'regulatory' burdens equal benefits in some way to the investors and the public. To this endeavor, I provide comments in context.

In the SEC Release Nos. 33-8571; 34-5160, the Advisory Committee is soliciting comments Related to Subjects under observation by the Committee established in conjunction with Congressional Charter to consider impact of Sarbanes-Oxley Act of 2002 from the context of:

1) Frameworks for internal control over financial reporting applicable to smaller public companies, methods for management's assessment of such internal control, and standards for auditing such internal control;

2) Corporate disclosure and reporting requirements and federally imposed corporate governance requirements for smaller public companies;

3) Accounting standards and final reporting requirements applicable to smaller public companies; and

4) The process, requirements and exemptions related to offerings of securities by smaller public companies, particularly public offerings.

Question 1- Much of text below **responds and agrees** that the Committees' solicitation for comments related to Question 1: Are the subjects identified in the summary of the Committee Agenda proposed: 4/12/2005 and published in the April 29, 2005 Federal Register (Vol. 70, No. 82)/ SEC Advisory Committee on Smaller Public Companies Committee Agenda, the appropriate subjects for the Committee to Consider.

Question 2, With respect this question, at this point it appears the Committee has identified all pertinent 'micro' issues related to small public companies, except the macroeconomic problems eroding domestic commerce such as 'free" including treaties such as NAFTA, PNTR with the PRC, and legislation such as Trade Promotion Authority. These erode the economic, financial-realizable, and social returns that should exist in a private enterprise/private property society with a culture of entrepreneurship, instead however, in combination with other forces has been creating 'winners and losers''. Not specifically related to the microeconomic and operating matters of small public companies, notwithstanding, macro issues I identified absolutely affect the economic viability of their domestic operating environment and harm BROAD BASED, quality, permanent capital formation. 'Free' trade produces bleed-out to management and societies where their people are unconnected and uninvolved with capital formation and private enterprise in the US, keeping in mind the breadth of domestic participants including ordinary investors in our markets.

Question 3, there does not appear to be among the subjects that the Committee should NOT consider.

Mindful of the overarching principles by which the Committee is characterizing its work, to further Commission's Investor Protection Mandate, to this end, I support Sarbanes-Oxley. I opposing regulatory and legislative largess, including coddling management at firms of any size, especially when fraud and even negligence at a large or small company produces pain to institutional, as well as individual and ordinary shareholders, except when speculators experience financial harm when the vagaries of a correction in a stock occur in part from sensational headlines over management misdeeds.

Seek Cost Choice/Benefit Inputs, however effectively including some economic cost/benefit analysis of externalities such as grand scale cost of fraud to society including the employees of enterprises where such occurs.

I also oppose separate GAAP for smaller public companies. "Little" GAAP disserves the users of financial statements looking for comparability, while distracting FASB from more important tasks. All public companies access the public's money over the same exchanges without qualification of the investor: each investor's means and legal status are deemed equal in the eyes of the law.

The regulatory framework attempts to level the playing field for the ordinary investor as well as the busy, knowledgeable institutional investor likewise counting on "substance-over-form" checks and balances so as to facilitate respect for management's public reports, by-laws, and credibility for its words and actions. For this reason we have anti-fraud statues at the state and federal level, even with the exchanges providing some sort of due diligence and bar of quality by way of listing requirements for companies that want their shares exchange-traded. Perhaps the exchanges should increase the minimum tangible shareholders' equity amount necessary to obtain a listing over the public exchanges to $5mm or even $10mm; typically a company needed something between $1mm-$2mm in tangible equity.

The following text serves to support my comments above.

Prior to the Legislation's passage, I had concerns about alleged conflicts of interest at the accounting firms, one of which employed me in the mid 1990s to work in a department established to compete directly with the investment banks for financial sector M&A transactions and advisory engagements. Sarbanes-Oxley generally would prohibit assurance firms from selling these services to companies.

Moreover, given my understanding of political contributions that grease the Congressional wheel however, and likewise having been a campaign contributor into Republicans' campaigns, I cynically knew why Senate's drafts deviated significantly from those of the House, marshaled by Rep Oxley, a recipient of a fair amount of political money from financial and insurance firms, associated trade associations and their lobbyists.

As summer progressed after the Worldcom meltdown, I found increasing management disinterest or distaste to know their "place", so to speak, at the companies that employ them. As a result, I became a Sarbanes version ally where that version appeared to provide more adequate protection to all participants relying on top quality, fully track-able reporting to investors, i.e., nonmanagement (usually absentee) shareholders, other stakeholders, and arm's length experts engaging with management on some level. Even billionaire corporate raiders share this same interest for fully track-able, top-quality public and internal financial reporting.

CFO.com summarized reasons for the legislation as "CFOs must now certify that their companies' financial statements are accurate (gee, there's a concept). They must also make sure their internal financial controls are up to snuff" (Goff, John. "Sarboxing", CFO.com 6/26/03), with the legislation serving as catalyst after a period when CFOs were 'anti-tech' largely because the many stakeholders would ask them to figure Return on Investment on IT op/infrastructure investment.", according to CFO.com. Perhaps.

After Congressional interference with expensing options in the mid 1990s when the shares of all public companies experienced upsurge for a time, the 'dotcom' bubble occurred when 'free' options exercised by options holders of any company able to advantage themselves drove the upward market gallop, in conjunction with the 'new economy' and 'globalism' propaganda beginning to create 'winners' and 'losers' among sectors and companies. According to that propaganda about which sectors would enjoy a promising future, managements of companies in those favored sectors more easily could unload their free options pirating bounty from the market, while managements of companies in shunned sectors suffered from the stock sales bleed by speculators herd-buying into the stocks of companies in the favored sectors. Investors infrequently remained prudent. More became speculators in the 'try-your-luck-on-this-new-dotcom-IPO', and with 'free' options management obtained in their comp packages, themselves could self-enrich from the market updrafts while investor-turned-speculators gave a pass to a great deal of egregious management behavior reflected in inferior reporting and management obsessions with 'reward', especially if the company talked a good talk about how it already was, or was becoming a new economy company, however ludicrous the story.

We see this with Enron, a gas pipe line/utility company saying it was morphing itself and actually attempting to change itself into a 'new economy', energy trading company, trading a non-storable commodity and associated futures without any oversight from the Commodity Futures Trading Commission. Senator Banking Committee head, Senator Phil Gramm (R-Texas), meanwhile, and a recipient of Enron campaign contributions, often ran pass interference for it and peers related to their operating strategy to access 'deregulation' i.e., where it and its peer utilities could operate without regulatory oversight on matters such as fixed electricity rates, and the Federal Energy Regulatory Commission, whose head Enron's CEO chose, would give some oversight but evidently little, with no oversight on the energy contracts and associated futures trading of those. Hearsay from a consultant of one of the outside accountants hired to review the trading books said the books contained fraudulent trades, while the elaborate Joint Venture/ Specialty Purpose Entity schematic I personally observed at a presentation Enron gave in May 2001 to New York analysts. The "take-it-on-faith" expression comes to mind. One can conjecture Enron's senior management came to New York for the purpose of expeditiously receiving more favorable attention and associated 'press' to coax up the lagging stock price, while shares of virtually all companies were sinking in the markets at that point in 2001.

Having said this, please consider my observations as a backdrop to defend Sarbanes-Oxley and debate/oppose its condemnation in part using a recent Wall Street Journal Review and Outlook (April 19, 2005; Page A20) editorial titled "Sox and Stocks".

The Journal writes, "But they also say that Section 404 makes no distinction between internal controls that matter and those that don't... The regulations are also vague on crucial points – for instance, whether companies can rely on internal auditors or must hire outsiders for the job. Most companies are paying external auditors to duplicate their internal work, just in case." **I suggest to define the engagement to the outside auditor for the IT audit.**

The Journal writes: "Worst of all, 404 forces companies to re-document their efforts every year, regardless of circumstances." **I found disingenuous the Journal's comment and suggested, if a company has a change in operating lines such as adding a new one, of course there again is a redocumentation to include it in the memorialization, however the systems and associated reports are generally 'push-botton'. Is management recreating its revenue generating strategies every year? Unlikely, however the reports of the accounting systems generally can be reproduced upon hitting the "Print" key.**

The Journal writes: "No surprise, then, that the number of companies missing financial filing deadlines has at least doubled compared with a year ago." **As I have stated before, the likelihood is that management had avoided or perhaps failed to have their reports of their accounting systems that produced reports to source and track the production of their public financial data.**

The Journal continues: "And costs are piling up. One conservative estimate puts the national 404 tab at $35 billion, or some 20 times what the SEC predicted. Companies also finance the new accounting oversight board, a bill that approaches $2 million for some larger companies." **I rebut that $35B seriously overestimates the costs large companies of course facing larger IT audit expenses of reporting systems in the past they rejected or ignored; add up the costs of the six largest corporate failures in the last five years however and probably we've got $35B with Enron and Worldcom summing to around $20B.**

The Journal states: "As always, the Fortune 500 can afford the burden better than can small companies". **I counter that, perhaps these companies should have stayed private if the reporting and accounting systems burden in management's mind is too great. As I have said, Management (and the banks) control the cash. For example in the Enron failure, cash flow for several years indicated the company's negative cash-flow situation. Accrual accounting large profits on years of negative cash flow clues one to some sort of operating and/or strategy**

problem. Small public companies similarly behave - if disconnect exists between accrual earnings and cash flow for more than a quarter, this to me indicates some sort of problem.

"Because Sox's goal was to punish all business, its rules hold companies with 40 employees to the same standards as IBM", according to the Journal. **I disagree that Sox's role was to punish business; I consider all management employees of the company owned by all of its shareholders, many who similarly are company employees. Largely because board quality over the years had eroded into yes-men and lackeys of senior management and most shareholdership of larger corporate interests includes large numbers of absentee non-founding owners, we see greater and more frequent propensity for the "Moral Hazard" which Sox is interested to eliminate for all the stakeholders.**

In the case of some smaller public companies, perhaps they are earning insufficient revenues, and producing insufficient profits given its sector. Meanwhile other macro issues such as 'free' trade, and globalization generally are eroding the domestic commercial environment where insufficient revenues are producing marginal returns to the non-management shareholders. In effect, the macro environment is more the culprit for killing the goose that laid the golden egg that would flourish the revenues and presumably profits of smaller public companies, assuming they went public not just as a investment banker driven deal and for the founding owners to cash out of a lame business. How many of these populate the markets? Given this, why is the company public? With insufficient profits to spread around to absentee owners, is the public model largely for management's comp and options schemes? Or the investment bankers' fees?

The legislation is looking to resolve the agency problem which can exist regardless of size of the enterprise. Ask any investor if they like fraud committed by management of any of the firms in which they own shares, a risk absentee owners face in the joint-stock model. Sox becomes an acceptable cost when management good-faith may have died and 'moral hazard' becomes an operating strategy, especially with 'free' options to reward the piracy at the expense of the non-management shareholders and other listed companies under the 'new economy', contemporary colonialism scenario.

"The American Electronics Association estimates that while Section 404 costs the average multi-billion dollar company about 0.05% of revenue, the figure can approach 3% for small companies.", says the Journal. **Please remember that many small public companies belong to, and pay some trade association, which in turn pays or employees lobbyists to sit with congressional staffers to craft cozy legislation and/or make political contributions into the election/re-election campaigns of our public servants. If that likewise irks management, I suggest drying up those expenditures leaving for more systems compliance.**

The Journal mentioned, "One result is that many companies are rethinking their decision to tap the public equity markets – 21% of all those surveyed in a 2004 Foley and Lardner study. Foreign companies are threatening to delist from U.S. stock exchanges, an issue serious enough that the European Union's internal-markets chief, Charlie McCreevey, is making a trip to the U.S. this week to demand changes that would make it easier for European companies to end filings with the SEC." **I shed no tears for the delisting of these crony, opaque reporters who ran their businesses to suit their cozy, crony interests with very little ordinary investor involvement in their shares. By no means do I give any support of dual listing requirements and any lower bar by which American public companies can find escape from transparency and timely, quality public reporting. Management is paid to do its job and nothing else but. They often sell all sorts of propaganda to the shareholders and other stakeholders, so if they intend to improve their domestic operating decisions that may cost more, they can nail down their 'story' and dialogue with the analyst community.**

"The greatest Sox irony is that its main beneficiaries are the same big accounting firms that the politicians blamed for Enron, WorldCom and the other scandals. The Big Four accounting firms audit the majority of public companies, and by some estimates up to 30% of 404 costs will be paid to these external auditors. Nice work if you can get it. The feds killed Arthur Andersen for its many sins (including Enron), but its offending partners simply scooted to one of the other firms and are laughing all the way to their new vacation homes." , the Wall Street Journal conjectures. **Having been employed at KPMG, I can assure you that its audit partners and their staffs work like dogs, more than likely a great deal more all year round than perhaps even most managements. Further, Sarbanex-Oxley fed into the interests of the investment banks and made it difficult for public accounting firms to provide business combination advice -as this competes directly with the M&A services of the investment banks. I know, KPMG hired me from Wall Street to work on M&A, not a few deals of which were, and were going to be a number of multi-billion dollar business combination/divestitures.**

"As for detecting fraud, good luck. The Association of Certified Fraud Examiners published a 2004 report noting that 43% of detected business frauds of $1 million or more in losses came from tips. External or internal audits caught another 41% of cases. Internal controls accounted for only 8% of fraud detection, or less than half of the 18% detected "by accident.", according to the Journal. **Sarbanes-Oxley should solve this. And if the CFO left, perhaps he wasn't up to the responsibilities of the job.**

According to Mr. Thane of the New York Stock Exchange and as quoted in the Wall Street Journal "The larger issue here is balancing shareholder confidence against the business risk-taking that creates jobs and wealth." **Does that mean Caveat Emptor? So much for clean, above-board management practices. And considering at this point insufficient job-creation is occurring, eliminating 'free' trade which is management's biggest 'free' lunch, repealing NAFTA, and opposing CAFTA would produce far more than what they conjecture would be produced if not spending for Sarbanes-Oxley. In our historical experience, the less free trade we practiced, the better was our domestic economy, and the more broadly and deeply we developed wealth. Any notion that NAFTA produced the 90s bull market evidently forgot the huge taxpayer-RTC bailout, concomitant cheap real estate, and the 'free' options/market 'free' lunch more ubiquitously used after 1994.**

Would Sarbanes-Oxley have prevented the Enron grand scale ponzi scheme and fraud? Yes on two accounts: to have addressed the fraud in the trading books and to have required the arm's length audit (by an accounting firm other than the one handling the assurance of the public financial reports) of the memorialized systems reports of the internal controls producing the public reporting..

What really are we encountering, however, as the undertow of political money and the ability for a political money contributing (management) class - perhaps even a kleptocracy - exists working the system to either buy cozy legislation, that isn't this case given the complaints from virtually all US and foreign companies publicly traded over US exchanges, or use the Executive Branch and the regulatory ruse to end-run around structured legislation corporate/management to improve management supervision. By no means do I believe Senator Sarbanes ever intended this legislation to achieve anything less than responsible reporting with management certifying the sources of their numbers, and the credibility and quality of their public reporting. Having seen when Senate and House drafts of legislation deviate materially and 'committee' eventually crafts something neither body passed, or when a federal agency such as the Federal Election Commission or in this case the Securities and Exchange Commission alters legislative phase in dates such as Section 404 compliance for Small public companies and foreign filers, or the Office of the Comptroller of the Currency interfering with legislative compliance mandates such as the Community Reinvestment Act requirements under the Gramm, Leach, Bliley Act of 1999, we see the Executive Branch taking on a role which the Constitution never gave it. I oppose any sort of regulatory/Executive Branch end-run around the legislative process.

Apparently Sections 404 - "Evaluation of Internal Controls" and 302 - "Management Certifications" have produced the most anxiety for management and cost to the company in this stage of compliance with the legislation. As an investor, and with my permanent professional and consulting (including counter-party credit risk analysis) experience, I prefer this legislation, management compliance in all ways to the legislation and all of its sections, and in the time frame for which the legislation called.

It seems those managements who have loudly complained the most are those representing domestic and foreign enterprises that enjoyed little attention to the quality of their public reporting. Further, given the recent bubble and the recklessness of virtually all investors participating in speculating on individual stocks, sectors of stocks, virtually the entire market as some index funds allow, many gave a pass to a great deal of inferior reporting and virtually no interest or attention in the IT/reporting systems producing the data.

Financial institutions experienced their Federal Reserve/FDIC/OTS mandated fire drill related to Year 2000 systems compliance, incurred the associated costs and accordingly notified shareholders and regulators alike on compliance status, so as represent themselves as responsible, attentive, and compliant management. The associated costs incurred I parallel to those management currently is incurring to comply with Section 404. To my knowledge going forward, management has in place these systems, with any material Section 404 reporting change only occurring in the event of material changes in the NATURE of what it needs to publicly report. Management information systems produce typically with their pushing some buttons. Perhaps we need more CFOs who have experience working for public accounting firms, who have experienced the audit drills while on systems audits at other public companies. The AICPA prior to Sarbanes-Oxley has had standards and assurance for Management Information Systems Audits. Evidently only if management asked for these audits would the accounting firm comply, although usually provided by the same firm assuring the public financial reports.

Meanwhile, ineffective Board representation combined with contemporary ‘transition’ into grand scale absentee ownership (individual and institutional investors who are indifferent about the entire macro and micro nature of their ‘invested’ assets, as long as these produce the desired return) has produced an amnesia with regard to risks entailed with passively investing in public companies in which one takes no interest, never uses the company’s products and/or services and has virtually no understanding of the business, the way management should run that business, and the potential for management self-dealing, let alone how management would go about indulging in that.

Recent financial crises have occurred at large as wells small companies, although failures and intrigues among our largest companies have stolen headlines in our widely read financial press. Notwithstanding, these same intrigues and management self dealing, self-enrichment happen similarly at smaller, publicly traded companies, even in recent albeit earlier times among community banks and thrifts. While gainfully employed at investment banks and prior to Sarbanes-Oxley one of the of the big four accounting firms engaging in financial institutions/financial services business combinations, as well as engaging in services advising on recapitalizing sick banks, thrifts, even though these enterprises experience regulatory exams with federal and state examiners, in the late 1980s and early 1990s, I found the internal control systems often remained underutilized for producing effective, completely reliable, management reports for board and arms length expert use. I realized if an enterprise’s systems failed to effectively how it was making and using, or losing money, then usually it eventually experienced some sort of material operating problem.. In the case of a bank or thrift, if examined this might garner a Memorandum of Understanding, and if in an economic downturn, some sort of eventual credit/asset quality, liquidity, or eventual capital crisis.

The other participants in the recent financial crisis have been the legislators and lobbyists, which partly produced the reason for the Sarbanes-Oxley. We seem again to have the same culprits of previous financial failures, as demonstrated in the ‘unintended’ consequences of most of the S&L legislation and associated failures created under a ‘moral hazard’ scenario. With respect to the success of Sarbanes-Oxley, prudence should fan skepticism among the board and other stakeholders encouraging educated directors, ‘owners’ and other stakeholders all which may serve to remedy agency self-dealing.

Further, those parties knowledgeable of the legislative process, as well as the forces that drive matters to the point where legislation becomes the result are asking was the legislation necessary? With Congress' conflicts of interest keep happy voters as well as campaign contributors but the Enron and Worldcom failures produced public outrage to goad Congress to legislate corporate governance, accountability for internal controls, and the firms which provide assurance for that and external reporting services, was SOX necessary federal legislation when the SEC could have had the Exchanges require any eventual compliance of its listed firms? Was it necessary to make into statute the practice of arm's length assurance and audit? Perhaps the 50 states should audit the companies incorporated in each one, looking for signs of malfeasance and negligence, rather than permit further federal encroachment into states' matters.

I state yes above, although I remain somewhat skeptical that more vigilant oversight wouldn’t have been the appropriate answer at the board level of the issuers, at the accounting firms, and for their profession’s code of conduct to remain fully respectful for the degree of integrity necessary to provide such services that fan the public trust, or cynicism and litigation. Perhaps without legislative force, however, nothing would have changed, even though we should be concerned about what REALLY is happening below the radar-screen, and Sarbanes-Oxley’s "unintended" consequences where the Executive Branch decides in some way to end-run around the legislation, passed to throw a bone to the public.

Congress further hoped to subtly shed attention and blame from itself and its relations with campaign contributing management and board cronies. With Congress typically passing management-cozy laws, with Sarbanes-Oxley, however, the jury may be out still on management's continuation of its recent practice of battering and violating the reporting model in order to self-deal and self-enrich. Between senior management certifications required under Sections 302 and 906, and discipline for improper influence on conduct of audits in section 303, management, auditors, and external reporting firms may find it extremely difficult to commit fraud and misrepresent the firm's performance.

The Act moreover is attempting to end to corporate earnings-gaming by requiring 'arms-length' practices for the reporting and earnings calculating via disciplining and diminishing the relationship between management and the public accounting firms.

Sarbanes-Oxley is additionally repositioning a firm's relationship with the public accounting firms at the board level. In several other sections including Section 404, SOX also shifts internal audit responsibilities toward oversight of financial integrity, hopefully including a greater emphasis on the quality of the information produced from the internal reporting with associated controls, not merely auditing the systems to determine levels of functionality, which was formerly what the internal audit largely examined. Section 804 extends the 'Statute of Limitations for Securities Fraud', hopefully another way to mitigate corporate fraud (all above and following Sarbanes-Oxley references I cite from Ernst & Young's "Sarbanes-Oxley Act of 2002 The Current Landscape (Rule Updates and Business Trends", as of 8/03).

Firms enjoy access to, and associated ownership liquidity from the public exchanges while complying with the exchanges' listing requirements and regulations, which Sarbanes-Oxley supersedes in terms of authority. With Sarbanes-Oxley eliminating much of the former permissibility to use the reporting model to contort appearances of financial performance (Section 401 is requiring complete, enterprise wide disclosure, linking with the SEC's Reg G (1/22/03) to prohibit presentation of misleading and inaccurate non GAAP reporting), this may be why management is seeking desperately to retain the use of free options and is attempting to have Congress force the FASB to withdraw pending GAAP to expense options as a form of executive compensation.

Perhaps likewise, the control and reporting staff at listed firms should be required to comply with Continuing Professional Education in control-"cost" ie, managerial accounting and financial reporting including new GAAP; professionals at the public accounting firms must meet these continuing ed requirements (Ernst & Young, "Preparing for Internal Control Reporting, A Guide for Management's Assessment under Section 404 of the Sarbanes-Oxley Act" part 0677, p. 14, "Whether the accounting department has processes in place to identify significant changes in GAAP promulgated...").

And although it should not surprise me, notwithstanding, I find noteworthy the distinctions made between audit and assurance services rendered by the public accounting firms to listed companies. Over the years as issuers wanted to cheapen their annual outside accounting firm costs and limit the scope of the engagement, evidently the accounting firms complied and separated assurance of the public information into audit of systems and assurance of management's suppositions of the public reports. A disconnect existed between the respective results of audit and assurance efforts, where one may attribute the disconnect partly to a management disrespect for the "Cost-Benefit Concept" that would reduced the moral hazard risk with which it can flirt, as well as avoid reducing difficult-to-quantify risks and the practice of 'old-fashioned' audit tasks (0677, p. 27). Sadly, the accountants complied.

By way of the AICPA if they collectively agreed to stick to broad scope assurance with audit back up, if not for their own protection, perhaps they could have retained the high ground in this entire situation. E&Y indicates in aforementioned literature, "Finally, the project team needs to include in its understanding and evaluation the company's process for producing financial reports" (0677, p. 21). This responsibility evidently before Sarbanes-Oxley fell outside of assurance although now must be part of the check list of assurance/audit firm tasks. Hopefully, with the PCAOB created by Sarbanes-Oxley, the accounting firms will find that they need to render superior, arm's length work (Sections 101&102, 104, and 108). 'Window dressing', meanwhile, comes to mind. Public accounting firm partners anecdotally mentioned that internal audit responsibilities are shifting more towards oversight of financial integrity. From what are these responsibilities shifting? What before was so flawed about how the public accounting firms handled these things, and how can the public accountants certify systems as fool-proof and game-proof? Time will tell.

I disagree with a premise that the 'reporting model' has failed - other than when FASB endures management chiseling for GAAP that enables earnings inflated reporting. I absolutely support complete transparency, high-idealed board practices, and corporate governance that are fully accountable to the non management shareholder in every prudent way in order to eliminate the pervasive agency problem that has been abusing the stakeholders in public companies. As well, internationalizing the reporting model adds yet another element of distraction that management uses to self-enrich; we need to deal with our US GAAP problems.

With some public accounting experts suggesting three dimensions of risk that companies should answer in their financial reporting: what has management practiced to produce 'value', what practices destroy value, and what confidence has the ordinary investor to estimate the distribution of outcomes, although these experts have asked in the end something seemingly abstract, perhaps investors and speculators alike unconsciously ask themselves this by their ‘investment’ choices. Having said that, Sarbanes-Oxley implementation incurs upfront costs to the company and all shareholders, enterprise value exists in more than the dollars spent on one-time overhead expenses and associated benefits. Although management would say in this case legislation required them to spend the money, legislation in reality required management to improve corporate governance, internal and external reporting, and certify the verifications of the reporting of its internal and external financials. I see value created in all of that.

Perhaps few investors really care about Sarbanes-Oxley, however, and the associated efforts described above that we are making regarding increasing transparency and more effective governance. Perhaps huckstering the ‘markets’ as a ‘safe’ investment and as a proxy for savings accounts, but now attracting the same market gambling that previously found outlet at the race track has contorted the activity in the investment markets, coincident with this get-rich-quick mentality that is occurring in times of indolence and giving corporate interests front and center stage. Such speaks ill of our society, when commercial interests have gained the power and attention that they have. Sarbanes-Oxley unfortunately will not solve any of this.

In the following past-as-prologue concerns, the board must demand the necessary information. Should we assume that boards of directors neglected to ask for full disclosure and full transparent financial reporting from management? Or rather, why wasn’t management giving the board this information? Next, perhaps Shareholders’ Equity would provide the better location for reporting of changes in Goodwill, as these and other fair value changes fail the realizable and earned tests for revenue recognition in income statement reporting. Perhaps ‘nailed-down’ measurement standards for intangible items that need valuation for balance sheet purposes, however, which I would never include in this in the Income Statement, unless these items actually earned realizable revenue.

And although some experts believe that Value Reporting can eliminate information confusion that seems to be causing battles among the users and issuers of financial reports, rather than exposing management’s interest to self-enrich, in reality, the judgment call pervasive through the reporting model I view as producing the confusion. Also mixed with this, is management’s desire to distinguish itself from the next guy, so as to gain the investors’ dollars, the Value reporting constituency fail to observe. It seems this is partly the undertow to the authors’ interests and thesis related to finding the ‘value drivers’ of firm, including the Global Reporting Initiative (triple bottom line). In addition, the accounting firms should include in their audit report their insights ‘about how to improve that performance” and charge for it accordingly. The auditors’ job is not to advise management even if they like envisioning their role co-dependently as consultants to have value-added position that violates the arm’s length, disinterested 3rd party rule, and exists as another part of the undertow. Accounting firms’ senior partners err again if they think that the industry ‘expert’ model has worked well for management allies such as the bankers and consultants, and that the accountants while rendering assurance services to publicly traded firms likewise can enjoy this.

Without omitting comment about the role of sell-side analysts, a respected utility analyst by the name of Barry Spenser (God rest his soul) once noted about this group, “Why do you think they call it the SELL side?” His rhetorical question answered many issues related to the problems everyone else had with Wall Street and sell-side analysts, among yet another reason Sarbanes-Oxley was passed. The public had failed to ask Wall Street about the truthful role of the ‘sell-side’ analyst, and wait for the correct answer; salesmen will tell you anything if they are permitted.

Respectfully submitted,
Andrea Psoras
Principal
Strategic Advisory

Member, New York Society of Security Analysts
Serving on Committees for:
Improved Corporate Reporting
Corporate Governance/Shareholder Rights
Socially Responsible Investments