Statement of James P. Hickey, CFA
Principal and Technology Group Head
William Blair & Company

to the SEC Advisory Committee on Smaller Public Companies

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I am Jim Hickey, and I am a Principal of William Blair & Company, a Chicago-based Investment Banking and Investment Management firm. For 70 years, William Blair has provided capital market advice and services to small and medium-sized growth companies, and to investors seeking opportunities in such businesses. I have been at Blair for 22 years, first as an Equity Research Analyst covering technology companies for 11 years, and then as an Investment Banker focused on the technology sector.

I appreciate the opportunity to appear before you this afternoon to discuss the impact of Sarbanes-Oxley compliance on small businesses. I believe that it is clear that the Sarbanes-Oxley regulations have made an important positive contribution in restoring investor confidence in the integrity of the financial reports by public companies after the disclosure of egregious misbehavior by several large high-profile companies with complex operations and capital structures. Regulations requiring more active involvement by more independent Boards and Audit committees, CEO and CFO certifications, expanded disclosures and other actions that have improved the timeliness and transparency of financial information have had a good effect.

However, the zeal which attended the drafting of the legislation and subsequent rule making has just as clearly caused serious negative outcomes, particularly for smaller companies. The lack of distinction in the regulations between large and small enterprises is a fatal flaw, in my opinion, as is the apparent absence in practice of any consideration of the cost/benefit tradeoff of the new rules. Rather than making the capital formation process more efficient, Sarbanes-Oxley has made capital raising much less efficient and more difficult for smaller businesses. The managements and directors of my small and medium sized company clients universally see Sarbanes-Oxley as a major cost burden that generates little or no benefit to them or their businesses. My clients most commonly cite the overall cost burden from the new regulations (including out-of pocket costs and lost productivity), the deterioration in their relationship with their outside Auditors, the difficulty in recruiting independent directors, and the difficulty in obtaining research coverage as the main drawbacks of the new regulatory environment.

I have seen firsthand how the new regulations are interfering with the capital raising process. Examples include:

- A software company I have worked with for several years that originally desired to go public to raise growth capital and provide liquidity for its owners. The Sarbanes Oxley burdens were a major factor in its decision last year to sell the company rather than go public, despite achieving strong revenue growth and record profitability.

- Another software company we took public several years ago decided to go private in 2002, due in part to the looming burdens of Sarbanes-Oxley compliance and difficulty in generating research coverage. Recently, despite outstanding financial performance as a private entity, this client elected to sell control to a private equity firm instead of considering a public offering for the same reasons.

- A local client that has achieved strong sales and profit growth and that clearly had the scale necessary to be a successful US IPO candidate elected to go public on the AIM exchange in the UK -- expressly to avoid the incremental costs and productivity burdens of Sarbanes-Oxley compliance which they estimated at as much as an incremental $2 million per year. (A number of Israel-based companies with which we have been discussing IPO opportunities on NASDAQ have expressed a new interest in AIM as well, due entirely to Sarbanes-Oxley burdens.)

- A venture-backed client that is in the midst of a self-imposed 12 to 18-month delay its planned IPO to ensure its directors that it will be fully Sarbanes-Oxley compliant.

- Several public equity offering projects in which I have been involved have experienced unprecedented delays due to the inability or unwillingness of their auditors to provide timely responses during the registration process. An issuers' auditor can no longer be looked to for advice on how to handle various issues. It seems the response to almost every issue now needs to be "cleared through the national office" and every response takes weeks longer to be produced than was the case a couple of years ago. Such delays leave potential issuers exposed to additional market risk that did not exist in the past.

My discussions with clients confirm the findings of recent studies that illustrate how the costs of Sarbanes Oxley compliance are falling disproportionately on smaller companies, particularly in terms of revenue and profits, and are increasing at a faster rate than for larger companies. Audit fees that have tripled, director fees that have increased 50% or more, and substantial increases in SEC-related legal fees are common experiences. Furthermore, it is the least costly requirements -- such as executive certifications, director independence, and enhanced disclosure -- that are perceived to have the most benefit, while the most expensive and time consuming requirements -- such as Section 404 compliance -- are perceived to have the least benefit.

I understand the Advisory Committee is considering establishing a new definition for small companies and recommending that Section 404 compliance for such companies be deferred for an additional year, and that ongoing compliance be required every third year, not annually. I would support these proposals (but would urge consideration of segmenting the 404 issues into three parts and require compliance audits in one part each area to avoid a massive effort by smaller companies every third year). However, I believe even more relief is necessary. I urge you to consider establishing explicitly different standards for such companies, standards which sustain the spirit of the Sarbanes-Oxley reforms but which better consider the cost/benefit tradeoff on small businesses. Such issuers should be required to work towards the standards of larger companies, but not necessarily meet every single requirement and perhaps have a more liberal materiality threshold applied.

One other point I would like to make, as someone who has spent over a decade each as an Equity Research Analyst and as an Investment Banker, is to urge the Advisory Committee to also consider the effect that regulations related to Research Analyst conflicts of interest are having on the capital raising process. Certain of these new rules are clearly beneficial – such as increased disclosure of conflicts, financial interests, and compensation practices as well as prohibitions related to analyst supervision and promises of favorable research coverage. However, other rules just as clearly make the capital raising process less efficient. Two examples include the prohibitions on communications between analysts, bankers, and issuers and on promising research coverage in connection with underwriting engagements. The communication restrictions simply make the process much more time consuming, less efficient, and less productive for issuers by having to effectively duplicate a substantial portion of their communications to bankers and analysts. Furthermore, I believe an investment bank has an obligation to provide research coverage to its investor clients to whom it has sold securities during an underwriting. While promises of favorable coverage should not be allowed, coverage itself should be part of the commitment an investment bank makes to its clients – issuer and investor alike.

In closing, I hope the analysis and recommendations of the Advisory Committee inject a greater degree of common sense and a consideration of the cost/benefit tradeoff of regulations applicable to smaller companies and contribute to restoring some of the efficiency that has been lost in our capital markets since the adoption of Sarbanes-Oxley.