March 27, 2006

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File No. 265-23

Dear Members of the Commission,

I am writing to provide comments on the Exposure Draft published by the Advisory Committee on Smaller Public Companies.

I am a CPA/MBA with more than 25 years of experience in finance and accounting. I have been an auditor with a Big-4 accounting firm, the finance and treasury director of a Fortune 500 company, and the CFO of three small technology companies here in Silicon Valley. I have worked with many companies, public and private, large and small, old and new economy. Currently, I am a management consultant and investor.

I have read the Exposure Draft and while I am sympathetic to the viewpoint of the majority expressed therein, it is my belief that the Committee's recommendations are misguided. In particular, the exemptive relief and limitations on external auditor involvement for smaller public companies from Section 404 of the Sarbanes-Oxley Act set forth in Recommendations III.P.1, III.P.2 and III.P.3 are unsound public policy and contrary to the SEC's mandate of investor protection.

<u>Lack of Focus on Investor Benefit</u>

The Committee's rationale for seeking exemptive relief is the cost of compliance, which it states proportionately hits small companies harder. This should not come as a surprise since most costs of doing business hit small companies harder than large companies. This is a fact of economic existence as articulated in the well-accepted economic principle of economies of scale. More importantly, however, cost must be weighed against resulting benefits. In the case of Sarbanes-Oxley, the benefits accrue not to the companies that are required to comply with its requirements, but to the investing public at large. The increased scrutiny on accounting and controls brought on by Sarbanes-Oxley and Section 404 has contributed to a much higher degree of transparency in financial reporting and helped to restore investor confidence in our capital markets. This is a huge benefit that will be curtailed should exemptive relief be granted, as the Committee recommends, to almost 80% of all publicly traded companies.

Results in Unequal Treatment of Investors

The Committee's recommendations will result in investors in smaller companies receiving less assurances and access to important information about their investments than investors in large companies. In short, small company investors will receive less regulatory protection than large company investors. It is not clear why the Committee believes that small company investors are not entitled to the same protections as large company investors. Large, sophisticated institutional investors may be able to factor this added risk into their investment decisions, spreading their investments among many companies in their portfolios. Smaller investors and individuals (many of whom own shares of their employers in their retirement plans) do not have the resources to diversify their investments nor do they have the technical knowledge required to analyze and decipher the financial reports issued by public companies. At the very least, small and large investors would like a level playing field and be able to invest with the knowledge that any public company they may invest in, regardless of size, is subject to the same rules, regulations and investor protections. Investors do not want the unequal treatment that they will receive should the Committee's recommendations be adopted.

Recommends Exemptive Relief Where Compliance is Needed Most

By their nature, small companies are riskier than large companies. The tradeoff for this added risk is the potential for greater growth. Small companies are, nonetheless, riskier. Small companies have fewer resources and less market power, leaving them at the mercy of external events that large companies would take in stride. Small companies tend not to have extensive management resources nor highly formalized business processes. They are also prone to a higher degree of management override and, as a group, account for a higher proportion of accounting restatements and fraud (see Separate Statement of Mr. Schacht, Part VIII of the Exposure Draft, Page 126). The Committee would certainly agree that small companies are inherently riskier investments. In view of this additional risk, it makes little sense that smaller companies should be provided with exemptive relief from Section 404 compliance. Indeed, one could make the argument that in view of the added risk factors, smaller companies should receive greater, not less, scrutiny than larger companies.

Misunderstands Internal Controls and the Audit Process

The Committee believes that "small companies are different" and, therefore, they require different internal control and auditing standards than large companies, standards that have not yet been developed. This is erroneous. Small companies are different from large companies, but not with respect to internal controls and auditing. Fraud, accounting errors and mismanagement occur in all companies, big and small, and there are sufficient and scalable internal control and auditing standards to apply in every situation. Using the gauge of company-specific measures of financial statement materiality and following the "top-down" approach recommended by the PCAOB, the level of effort required to implement and audit internal controls can be tailored depending upon the size and complexity of each individual company. Good judgment and management of the implementation process are still required to ensure it is cost-effective. However, this is the primary responsibility of company management and cannot be replaced with exemptions and additional standards.

Will Create a Two-Tiered Stock Market

The Committee's recommendations will create a two-tiered stock market that consists of a small top-tier of large companies that have certified internal controls and a large second-tier of smaller companies that do not. This will discourage investment in smaller public companies, reduce their sources of funding, and increase their costs of capital. Smaller companies are already at a disadvantage in terms of access to capital and the exemptive relief sought by the Committee would make matters worst, not better. The Committee itself seems to recognize this as reflected in its comments on the disadvantages of Regulation S-B filers (see Page 59 of the Exposure Draft), and its conclusion that small public companies should not have different accounting standards than large public companies (see discussion of "Big GAAP versus Little GAAP" on Page 102 of the Exposure Draft). It is puzzling how the Committee can feel that one set of rules should be applied in one situation while a different set of rules should be applied in another. One can only surmise that the Committee feels that investors value regulation of large public companies more than regulation of small public companies. That is absurd and shortsighted. The net result of any exemptive relief (and, for that matter, the "scaled regulation" sought by the Committee) will be that smaller public companies will be viewed with a greater degree of skepticism and as riskier investments by the investment community, raising their costs of capital and reducing the value of their stock.

Removes the Teeth from Sarbanes-Oxley

Finally, the exemptive relief sought by the Committee would remove the teeth from Sarbanes-Oxley. For good reason, the Commission requires that all annual financial statements of public companies be subject to an independent audit. The Commission correctly understands that without such a requirement, it would be highly unlikely that all of such financial statements would be properly prepared in accordance with generally accepted accounting principles. Similarly, it is highly unlikely that all public companies would maintain adequate systems of internal controls in the absence of the legal requirement that such controls be subject to independent audit. It just will not happen, as the recent dramatic increase in accounting restatements since the enactment of Sarbanes-Oxley has shown (see Wall Street Journal, March 3, 2006, "Sarbanes-Oxley Changes Take Root"). The requirement of Section 404 that a company's management assess its internal controls and that such assessment be independently audited is the only way to ensure a full and fair disclosure of the condition of a company's financial controls and any material internal control weaknesses. Section 404 is, to put it another way, the Act's crucial "internal control" and granting the exemptive relief sought by the Committee from its requirements would create a "material weakness" in the SEC's implementation of Sarbanes-Oxley.

The economy is finally on the mend and the stock market is approaching levels not seen since the early 2000s. Sarbanes-Oxley has played an instrumental role in restoring investor confidence in the integrity of our financial markets. People feel that the stock market is once again a good place to invest in America. It is during these times that the seeds of future financial frauds and collapses are sown. I strongly urge the Commission not to allow these seeds to sprout and grow, shielded from the bright light of financial scrutiny, and to move forward with full Sarbanes-Oxley compliance for all companies, regardless of size, without further delay.

Thank you for the opportunity to comment on the Exposure Draft. Should you, your staff or the Committee have any questions regarding my comments, please do not hesitate to contact me.

Sincerely yours,

Miles Mochizuki, CPA