SEC
PCOAB
Roundtable on Internal Controls Reporting
File Number 4-511

Dear Roundtable Members:

My comments to the distinguished committee members of the SEC and the PCAOB are drawn primarily from experience as a manager in a small community bank. I understand that the solicitation for comment specifically asked about section 404 of Sarbanes Oxley. However, I wish to preface my remarks by commenting on the entire law in general.

As a manager in a bank, which is not listed on a stock exchange at this time, I have seen a dramatic shift in attitude among our directors after the passage of the Sarbanes-Oxley Act (SOX). They once viewed public listing as an inevitable rite of passage. However, the dramatic increase in accounting fees after SOX forced them to reconsider. They now view public listing and the increased regulatory environment as an expensive encumbrance with no offsetting value.

I've seen comments from people who feared that the SOX would trigger a wave of stock-exchange de-listings by companies seeking to avoid the additional reporting burdens under the law. Those fears have apparently failed to materialize other than a few isolated cases. But "listed" companies are stuck where they are because it takes money to reduce shareholder count by buying them out. And money is a luxury that growing companies do not have.

The real concern should be with "unlisted" companies which actively limit growth or pursue measures designed to avoid public listing. As I mentioned above, the company I work for is contemplating such actions. I can only assume there are many more. It is not good policy to create such a threshold of regulatory compliance that corporate directors find it more palatable to shed shareholders or limit growth opportunities than to accept increased regulatory burden. This would not be happening if Sarbanes-Oxley were more reasonable or provided some worth while trade off, such as immunity from lawsuits. But the law does no such thing. Nor is it gradually ramped up to require greater compliance as a company grows. It's simply a regulatory wall that affects all publicly-listed firms in a like manner regardless of size or shareholder count. It demands large-company sophistication from smaller companies which are least able to bear the cost of such effort.

Speaking specifically of Section 404 of the Act, I am especially disturbed about increased auditing costs under SOX. The law clearly makes *management* accountable for accurate financial statements. However, this clear line of responsibility under the law gets blurred a few paragraphs later when outside auditors are required to attest to the effectiveness of management's controls. The law may as well say: "Everyone involved in a financial report in any way is a potential lawsuit target."

Our auditors are very aware of the implied liability in the law. They made it a priority to get our officers to sign legal documents designed to shield them from potential lawsuits. They increased their fees by 40% and then conducted an audit that seemed suspiciously similar to a pre-SOX audit. What did we get out of it? An expensive audit that yielded the same conclusions as the comparatively inexpensive audit that we had a year prior, that's what.

I believe there is a problem, folks. The *intent* of Section 404 of Sarbanes-Oxley is to hold management accountable for the accuracy of its financial statements. Auditors should attest to management's controls, but not be held liable for what management *does* with them. *Auditors* should breathe a sigh of relief knowing that some other person's neck is on the line. Yet the fear of lawsuits completely fills the air. The law *says* that management is accountable, but what it *does* is make the auditors a very likely lawsuit target.

Moreover, the sad fact that government officials did nothing to stop the demise of Arthur Andersen for the undisciplined acts of a few casts a disgraceful shadow upon the character of regulatory agencies of the U.S. Government. Pair that unfair and unjust execution with Sarbanes Oxley and you might understand the attitude of fear that now exists in surviving auditors. It explains why they feel compelled to raise prices, as every opinion or attestation might condemn them to the same fate as Arthur Andersen. Was it really intent of Section 404 to put *auditors* in the same guillotine as *management?*

Perhaps the spreading of liability to non-managers and non-risk takers (auditors) is exactly what the SOX authors intended, although I very much doubt it. Auditors have many jobs, but one of them is not to become doomed to the same fate as management for simply offering an opinion. Nor is the responsibility of an auditor to become the de-facto regulator. Rule makers in Washington should be shocked by the increased accounting costs and consequent waste of resources of affected companies. It's such a problem that the company I work for is attempting to reduce shareholder count in order to avoid even more regulation by the SEC.

I have several recommendations for your committee, as follows:

1. Change the threshold for mandatory SEC registration and public listing to somewhere between 2500 and 5000 shareholders from the current 500. This will give smaller companies room to prepare for compliance should "public listing" be a goal, not an event forced upon them as shareholder count grows by dying shareholders who divide up stock among multiple heirs.
2. Specifically shield auditors from lawsuits <u>unless</u> they have intentionally colluded with management to ignore deficiencies or pass-off weak or non-existent controls.
3. Allow *meaningful* exceptions for regulated industries, such as banks and bank holding companies.
4. Gradually ramp up the law to match compliance requirements with a company's revenue or shareholder growth. Small companies with less than $100-$200 million

revenues, regardless of shareholder count, should be completely exempted from Sarbanes-Oxley, so long as certain basic accounting guidelines are met.

Sincerely,

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