

RECORD OF PROCEEDINGS

SECURITIES AND EXCHANGE COMMISSION

ADVISORY COMMITTEE
on
SMALLER PUBLIC COMPANIES

Second Day of Meeting

August 10, 2005

1:00 p.m.

The John Marshall School of Law
Room 300
315 South Plymouth Court
Chicago, Illinois

The following individuals were present in person:

Committee Members:

Patrick C. Barry

Richard D. Brounstein

Pastora S.J. Cafferty

C.R. "Rusty" Cloutier

James A. "Drew" Connolly III

E. David Coolidge, III

Alex Davern

Joseph "Leroy" Dennis

Janet Dolan

Richard M. Jaffee

Mark Jensen

Deborah Lambert

Richard Leisner

Robert E. Robotti

Kurt Schacht

James C. Thyen

Herbert S. Wander

Committee Observers:

George J. Batavick

Daniel L. Goelzer

Jack E. Herstein

SEC Staff:

Cindy Alexander

Anthony G. Barone

Mark W. Green

Kathleen Hanley

Will Hines

Gerald J. Laporte

Kevin M. O'Neill

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PROCEEDINGS

2 MR. WANDER: I'd like to welcome everyone to our
3 third public meeting of the Advisory Committee on Smaller
4 Public Companies, welcome our guests, and welcome all of
5 those who are listening to the webcast.

6 And I do know people are listening to the webcast
7 because I got a few calls driving in this morning from people
8 asking what we're going to be doing this afternoon and did
9 they hear right yesterday.

10 So one of the first housekeeping items is to remind
11 everybody please speak into the microphone so that the people
12 listening to the webcast will be able to hear this.

13 Are there microphones over there?

14 MR. O'NEILL: We're fine.

15 MR. WANDER: For those of you on the webcast, "over
16 there" means the table on my right.

17 I think everyone is here. We have a very full
18 agenda and two action items on our agenda today.

19 And the first item on our agenda is any discussion
20 that any of the Advisory Committee members or observers would
21 like to make concerning the presentations we heard yesterday
22 afternoon, as well as some of the responses to the
23 questionnaires that have already been received or other

24 written presentations made to the subcommittee -- or to the
25 committee. Any comments, suggestions, suggestions for the
1 future?

2 MR. JAFFEE: I'll start off. Dick Jaffee.

3 I think yesterday's testimony to me was very
4 interesting because a number of the people who testified were
5 actually practitioners who have been dealing with the issues
6 as opposed to some of the people who testified in New York
7 who had a broader focus and agenda.

8 But when I listened to the CFO from I think it was
9 LKQ and then the CFO from the nanotechnology company and also
10 the representative who was the public accountant from
11 Minneapolis, it was very -- it was the same thing I've been
12 hearing from the CFO of my own company.

13 And it sort of revalidated the position that I've
14 come to -- and I sent an e-mail to Herb and Jim a couple of
15 days ago -- which is that many of the things in
16 Sarbanes-Oxley people can discuss and have pros and cons
17 about the various aspects of corporate governance,
18 independence of directors, certifications, whistle-blower
19 provisions. But, in general, none of those things broke
20 enormous new ground for corporate America, particularly small
21 businesses.

22 When we got to 404, that was a major departure for
23 all of us who had to comply. And I don't want to paraphrase
24 what they said again, but I can speak for myself, the cost
25 benefit of 404 for a small public company just doesn't seem
1 to be there. And the cost is enormous.

2 And, you know, as evidenced by the Foley and
3 Lardner survey that you guys circulated right before this
4 meeting, there's no end in sight. We've got three or four
5 years of evidence of audit fees and other things just going
6 up double digits. And we don't see the end of it.

7 So I thought the testimony was very relevant and it
8 put the problem squarely at the feet of 404. That, to me, is
9 the biggest single problem that we have to deal with.

10 MR. WANDER: Any other comments?

11 When we get down to the last item before
12 adjournment on our agenda, we're going to talk about the San
13 Francisco meeting which will be held in the middle -- middle
14 to late September, I think it's the 20th and 21st in San
15 Francisco, and at that time any suggestions you have for
16 further witnesses.

17 I know I've had some privately -- some private
18 ones. But we'd also like to hear from the committee members
19 on who you'd like to hear from in San Francisco in addition

20 to those people that Mark is lining up for us, particularly
21 from Silicon Valley.

22 Any other comments, suggestions? Good.

23 MR. DAVERN: Herb, I just have one question. Are
24 we going to have testimony on Monday or Tuesday, or what is
25 the schedule?

1 MR. WANDER: I think it's Tuesday. Monday is the
2 meeting of the small business -- what is it called -- forum.

3 Gerry Laporte?

4 MR. LAPORTE: Yeah. We had planned that the -- on
5 Monday would be both the meeting of this Advisory Committee
6 and the meeting of the Small Business Forum. And some of
7 those sessions would be combined, okay, so the actual
8 testimony for this committee would take place on Monday, the
9 19th. And Tuesday would be the business meeting of the
10 Advisory Committee only.

11 MR. WANDER: Okay. In my haste to prepare for this
12 meeting, I didn't have a chance to read the schedule for San
13 Francisco.

14 Well, we had allotted 45 minutes. We've saved some
15 time. Those of you who have planes to catch, you will now
16 have a better chance for making your plane.

17 MR. CONNOLLY: Mr. Chairman, I left myself just 30

18 seconds to state that the witnesses yesterday were incredibly
19 diverse. And I'm very pleased to know that in addition to
20 the issues on Sarbanes-Oxley, which were clearly the
21 compelling and overriding ones that pulled us together, we
22 are commencing testimony, commencing looking at some of the
23 other federal securities regs, some of the rules, some of the
24 applicability.

25 The professor from Cooley Law School discussing
1 directly and specifically the Pink Sheets was quite helpful.
2 And the gentleman from William Blair on the subject of
3 research was very helpful for me as well, and I'm hoping that
4 that will continue into San Francisco.

5 MR. WANDER: We're always looking for your
6 suggestions and recommendations concerning witnesses.

7 All right. We are going to move to the second
8 topic on our agenda, which are reports of subcommittee
9 activities. And we will start with the report from Janet
10 Dolan dealing with internal control over financial reporting.

11 And we are also, at the conclusion of her report,
12 moving up item number four on our agenda so Janet can make
13 the recommendation that the committee adopt a resolution
14 recommending to the SEC that they approve for another year
15 the implementation of internal controls over financial

16 reporting for nonaccelerated filers.

17 So, Janet, we're ready for your report and then for
18 the discussion on the resolution, which, by the way, you
19 should all have at your place. And those of our guests, if
20 you need a copy of the resolution, just put up your hands and
21 someone will give you one.

22 Janet?

23 MS. DOLAN: Thank you very much, Mr. Chairman.

24 We, on our subcommittee, I want to say very much
25 appreciated the participation of those who appeared at
1 yesterday's hearing. Yesterday's hearing was designated for
2 testimony on 404 and how it is currently -- 404 as it's
3 currently implemented and how that is impacting small
4 companies. Therefore, we feel very appreciative to those
5 persons who came and took their time to, first of all,
6 prepare preliminary remarks but then to share their views
7 with us.

8 We all feel that we've received some very valuable
9 insight yesterday. And we, in particular, wanted to thank
10 those presenters who put recommendations for change before
11 our subcommittee.

12 I also want to thank all of those who have sent
13 written comments throughout this process, particularly in

14 anticipation of this Chicago meeting being the meeting
15 devoted to 404. So for all of you who have submitted your
16 written comments, we appreciate them very much.

17 As our subcommittee has listened to testimony, as
18 we have read all of the remarks submitted, we tried to gather
19 and start to assimilate these into the major areas of concern
20 that we're hearing about. While each of these major areas
21 may have lots of different flavors to it and certainly some
22 subsets to it, it's very clear to us that all of the
23 testimony and input that we're getting is really starting to
24 cluster around and identify four or five major areas in which
25 we should take up and see if we can make recommendations to
1 try to improve the implementation of 404 and try to alleviate
2 the impact that it has caused in some of these areas.

3 The first is that there is a climate of fear in the
4 auditing profession that their risk exposure is so high that
5 they cannot adapt their auditing approach for AS2 to fit the
6 size of a particular company.

7 The second is that there's a lack of appreciation
8 that the greatest risk factors for fraud in small companies
9 is much more in the area of tone at the top than it is in the
10 area of transactional controls.

11 Third, a major driver of the cost of 404 for

12 smaller companies has been driven by the scarcity of
13 resources for small companies to comply with 404. And this
14 is driven by a number of factors. I'll just cite two of the
15 ones we hear the most about.

16 The first is that most small companies did not and
17 do not have the internal staff or expertise to do the company
18 activities required in order to ready itself for the 404
19 audit and, therefore, they had to hire or contract for these
20 services.

21 And the second is that the point in time pressure
22 of the year-end audit cycle has driven up significantly the
23 cost of auditing and also created a scarcity of audit
24 resources.

25 Item number four, very small companies, or even
1 micros, have very special needs. The risk tolerance of their
2 investors and the scale of their operations really challenge
3 the cost benefit of applying a 404 audit requirement on them.

4 And, fifth, emerging companies, whether they're
5 IPOs, divestitures, or any other transaction that would
6 create a new public company, these new companies are
7 particularly burdened by having to expend all the effort
8 necessary for a 404 compliance in their first year at the
9 very same time that they are struggling with all the other

10 challenges of infancy in being a public company.

11 Now, as I say, we've heard a great deal of
12 testimony about a number of issues. But we think they all
13 kind of fall into these five major categories. And,
14 therefore, the approach of our subcommittee is going to be to
15 take on each of those five major concerns and see if we can
16 make recommendations that will continue to meet our guiding
17 principles, particularly continue to protect shareholders but
18 also perhaps provide a simpler, more cost-effective way to
19 implement the spirit of Sarbanes-Oxley for small companies.

20 So the way that we're going to approach this is we
21 are going to take on each of these areas and we are going to
22 focus on coming up with recommendations first in four of the
23 five areas. We're reserving the fifth area and we'll see if
24 we need to take that on as well, but it is dependent on our
25 work in the first four.

1 So my report today is to say that this is the
2 approach that we will be taking. You can expect that the
3 deliverable from our subcommittee is going to probably take
4 shape and look very much like a deliverable coming out of
5 each of these major efforts.

6 Number one: In the current auditing environment,
7 to consider what some of the factors are in the current

8 auditing environment and how it is implemented -- impacting
9 the implementation of 404 for small companies.

10 Some of the factors that we will be looking at are:

11 auditors risk aversion, auditors tort liability, auditors
12 guidance versus compliance practice, and the scarcity and
13 cost of audit services.

14 The second major area is tone at the top. Factors
15 that we will be considering are fraud prevention focus, the
16 unique nature of small companies and the impact of tone at
17 the top on them, and entity level controls and the focus on
18 tone at the top in the auditing process and disclosure.

19 The third area is internal control over financial
20 reporting for small companies. And our focus area will be:
21 What is the implication of revenue size within our definition
22 of small companies? What is the role of entity level
23 controls within the financial reporting arena, what are the
24 obligations of the company versus the obligations of the
25 auditor, and can we provide guidance for companies to help
1 them comply with the requirements?

2 The fourth area is micro companies, small -- the
3 smallest of the small -- micro companies and their special
4 needs. Again, should there be a special consideration about
5 the implication of revenue size within our definition, which

6 is based on market cap, the appropriateness of 404 for these
7 companies, and the unique nature of their investors.

8 These are the four major areas we will be looking
9 at in trying to develop good, sound recommendations for
10 change.

11 As I said, we have a fifth area, but we are tabling
12 it for right now. And that fifth area, which grows out of
13 the fifth area of concern we've heard about, is the special
14 needs of the emerging companies. And the reason that we are
15 tabling that at this time is that we want to, first of all,
16 complete our work in the other areas.

17 If our recommendations for change would
18 significantly reduce the burden of 404 compliance on all
19 small companies, then the burden of 404 on emerging companies
20 may be reduced to the level that special considerations for
21 them is no longer required.

22 So that is my report on the work of our committee,
23 the approach we're taking, and the framework of that you can
24 expect to see recommendations produced.

25 In closing, I want to thank the members of our 404
1 committee, Rich Brounstein, Alex Davern, Mark Jensen, Debbie
2 Lambert, and Kurt Schacht, all of whom are helping
3 significantly on our team. And I want to acknowledge all of

4 their efforts.

5 That's the report of the 404 committee.

6 MR. WANDER: Thank you for a very excellent and
7 thorough report, Janet.

8 Any discussion of Janet's report by members of her
9 subcommittee or any of the others?

10 MS. DOLAN: Yes. I would welcome any comments from
11 any subcommittee members.

12 MR. WANDER: Leroy?

13 MR. DENNIS: Thank you, Herb. Leroy Dennis.

14 Janet, on your comments about auditors, we, too, in
15 our subcommittee are dealing with the issue of auditor
16 relationship with their client companies. And I might
17 suggest that we may want to pool our resources a little bit
18 in that area. Because it seems like we may be dealing with
19 some of the same issues, you on the 404 side and us on the
20 accountant side.

21 MS. DOLAN: That's a good point. And I think Herb
22 and Jim are very cognizant that no matter how you try to make
23 clean divisions in the labor of a committee like this, these
24 issues that each of our subcommittees are dealing with are
25 very interconnected. And so we know that between capital
1 formation and governance and financial standards and 404

2 there's going to be some overlap.

3 My understanding is that we will shortly be
4 finding -- having a reconciliation process among the chairs
5 of the subcommittees to start to lay out the framework and
6 the proposals and start to see where there's overlaps or
7 gaps.

8 But maybe the two Chairs want to comment on that.

9 MR. WANDER: No. No. We will help -- We will help
10 you. But I think at this point on that particular issue the
11 two of you I think should probably get together and make sure
12 each of you know where you're going.

13 Dick Jaffee, please?

14 MR. JAFFEE: Dick Jaffee.

15 A question or comment. A question, Janet, is that
16 at the end of the day if you conclude that the legal system
17 or the environment in the legal arena today is such that no
18 matter how much we assure the auditors through guidance and
19 so forth that they're going to continue to take the path that
20 they have, would it not be a possibility for your committee
21 to recommend a total exemption from 404 at some level?

22 MS. DOLAN: Yes. That is always an option.

23 What we hope to do -- And I want to say that I
24 think everyone who ever serves on one of these advisory

25 committees always recognizes that you want to avoid the
1 boiling of the ocean as your goal.

2 So we recognize that there may be limitations as to
3 how to -- what we can do in the area of this risk-averse
4 audit climate which is certainly driven by the fear of civil
5 litigation and other liability. But we also feel that we
6 can't just assume that everyone understands what a big impact
7 that is having on this arena.

8 And we will certainly look at can we take some
9 steps to provide any kind of relief that can help move us
10 away from this totally risk-averse arena and at least point
11 out the issue. If we can't take any steps, if there's no way
12 to craft any kind of recommendation around liability, then
13 obviously we will look at other options.

14 MR. JAFFEE: No. I have a suggestion which just
15 occurred to me, so it probably hasn't been well thought
16 through, but in the area of health and safety, the federal --
17 the FDA has very rigorous criteria for approving new drugs,
18 and we all know about that from the news.

19 But there's another category which all producers of
20 potentially -- materials that could be potentially dangerous
21 -- are familiar with. It's called GRAS status, g-r-a-s. It
22 means "generally regarded as safe." And so if you put out a

23 product, you as a producer can declare -- and there are
24 certain criteria's for this obviously -- that your material is
25 generally regarded as safe.

1 Now, that doesn't give you a get-out-of-jail-free
2 card. It requires the company to keep information and have
3 testing that should a question arise, the company come
4 forward and say, "Here's the basis on which we declared that
5 this product was generally regarded as safe."

6 And I wonder if there isn't something like that for
7 404 rather than this rigorous thing imposed on us by the
8 accounting profession who is so afraid of their own
9 mortality, if we couldn't rely more on the companies to
10 document their own internal control systems without so much
11 auditor involvement. It's just a suggestion.

12 MS. DOLAN: That's exactly what we are looking at
13 is from the all or nothing from the option of exempt to the
14 option of don't make any change, what are the steps along the
15 way, what are the tradeoffs between the various factors you
16 want to take into consideration between simplicity and
17 between shareholder protection and the other guiding
18 principles we're working under and where is a point along
19 that line that we can make a recommendation and get our
20 support that we think will try to meet all of those needs.

21 So that's exactly what we're doing is looking where
22 along that spectrum can we fall.

23 MR. WANDER: Any other discussion, recommendations,
24 questions?

25 If not, Janet, why don't you move along to what was
1 item four on our agenda, and that is the recommendation
2 concerning the delay in implementation of 404 for
3 nonaccelerated filers.

4 MS. DOLAN: Okay. I'll be very brief because I
5 think our recommendation is probably pretty self-explanatory.

6 But on June 5, 2003, the SEC established the
7 compliance dates for the nonaccelerated filers and form drive
8 issuers regarding control over their financial reporting
9 requirements. And it set a date for those companies whose
10 first fiscal year fell on or after July 15, 2005. It had
11 subsequently on March 2, 2005, extended that deadline one
12 year to those whose first fiscal year fell after July 15,
13 2006.

14 We are recommending that we -- to the SEC that they
15 extend that deadline one more year to those companies whose
16 first fiscal year is on or after July 15, 2007, or that they
17 adapt it -- if there are other timing considerations, but
18 that they extend it for a full year.

19 And the reasons for this I think are, as I said,
20 probably self-explanatory.

21 But, number one, we're in the process of assessing
22 the impact of 404 on the companies that already have had to
23 comply. It just seems to make sense that we not bring
24 another group of companies into this current implementation
25 environment if we're going to be making changes and
1 recommendations that may, in fact, change the environment.
2 So it makes sense to hold off on bringing any more small
3 companies and the foreign companies in until we have
4 completed our work.

5 Also, as I indicated, one of the major concerns
6 we're hearing from the current audience of small companies is
7 that there's a great resource constraint and scarcity of
8 resources particularly at year-end already. Adding many more
9 companies in at this time when those issues have not been
10 addressed would, again, just put greater strain and drive the
11 cost up even higher.

12 And then, finally, we certainly understand that
13 with any process the more time that elapses the more
14 opportunity there is for guidance and learning and best
15 practices and just the more opportunity for the latest filers
16 to learn from those who have gone before them. So extending

17 another year will certainly give more time for those
18 companies to learn as much as they can and hopefully reduce
19 the first-year impact on them as much as we can.

20 So those are three major reasons to support the
21 recommendation.

22 MR. WANDER: I take it that I can consider that a
23 motion?

24 MS. DOLAN: I was going to say I will move the
25 motion that we recommend to the SEC that they extend the
1 current time line for compliance for the current time of
2 July -- for those companies who are filing after July 15,
3 2006, that they extend that one year to allow them a one-year
4 extension and that, therefore, it would be for companies
5 whose first fiscal year for filing falls after July 15, 2007.

6 MR. DENNIS: Second.

7 MR. CONNOLLY: I'll second.

8 MR. WANDER: Leroy Dennis seconded it.

9 Any discussion?

10 MR. JAFFEE: Just a question. Dick Jaffee.

11 Maybe this is an implementation step that goes
12 beyond our resolution. Are you saying, Janet, that for those
13 companies who got the extra year they are getting another
14 year or are you saying that we're going to recalibrate based

15 on changed market prices and shares outstanding and the new
16 group of companies get another year? Or have we not thought
17 about that? It's an implementation question really.

18 MS. DOLAN: Well, we thought for simplicity we
19 wouldn't tinker with what the SEC has done. If they choose
20 in taking our proposal to extend it a year and also make some
21 other definition changes or make some other changes around
22 that, we would leave that to them.

23 We're trying to make it as simple as possible. So
24 we're simply saying under the same circumstances as you
25 extended it once we would just recommend that you make a
1 second extension.

2 MR. WANDER: Okay. Any other discussion?

3 MR. CONNOLLY: Mr. Chairman, Drew Connolly.

4 The only thing I suggest since we've got a newly
5 constituted series of Commissioners and a new chair, is there
6 a way that, you know, given the exigencies and the time lines
7 that I think Mark had said at our last meeting, the auditors
8 are getting lined up for the next round right away. Is there
9 a way that we can ask that this recommendation be
10 fast-tracked and potentially put on the next Commissioners'
11 meeting?

12 MR. WANDER: Actually, if you look at the reasons

13 supporting the written resolution, the last one says, "The
14 Advisory Committee believes that the Commission should take
15 action and implement this recommendation as soon as
16 possible."

17 MR. CONNOLLY: Okay. All right.

18 MR. WANDER: Yes, Rick?

19 MR. BROUNSTEIN: Rick Brounstein.

20 More just a comment I guess on the implementation
21 side assuming we pass this thing and we turn it over to the
22 SEC to recommend, is one of the criteria that has always
23 bothered me on this one is it's a midyear determination date.
24 And so in fairness to the companies for 404, that doesn't
25 give you a lot of time to react. And so, you know, we didn't
1 try to address it in the proposal, but I just wanted you to
2 at least surface that one area for consideration as you look
3 at the implementation.

4 MR. WANDER: Yes. And we'll make that very clear
5 when we, in fact, discuss the recommendation with the
6 Commissioners and with the staff. But thank you very much
7 for pointing that out.

8 Any other discussion? If not, since Jim and I
9 talked about this before, since we're on -- webcasting this,
10 we probably ought to have everybody go around the room and

11 everybody vote individually so people who are listening know
12 those voting.

13 So I will vote in favor of that.

14 And why don't we go clockwise I guess. Dick Jaffee?

15 MR. JAFFEE: I vote -- Dick Jaffee. I vote in favor
16 of the resolution.

17 MR. COOLIDGE: Dave Coolidge. Yes.

18 MR. CONNOLLY: Drew Connolly. Yes.

19 MS. LAMBERT: Debbie Lambert. Yes.

20 MR. BROUNSTEIN: Rick Brounstein. Yes.

21 MR. LEISNER: Rich Leisner. Yes.

22 MR. SCHACHT: Kurt Schacht. Yes.

23 MR. BARRY: Pat Barry. Yes.

24 MR. DAVERN: Alex Davern. Yes.

25 MR. JENSEN: Mark Jensen. Yes.

1 MR. ROBOTTI: R. Robotti. Yes.

2 MR. CLOUTIER: Rusty Cloutier. Yes.

3 MS. CAFFERTY: Pastora Cafferty. Yes.

4 MR. DENNIS: Leroy Dennis. Yes.

5 MS. DOLAN: Janet Dolan. Yes.

6 MR. THYEN: James Thyen. Yes.

7 MR. WANDER: Thank you. The motion passes
8 unanimously.

9 And I will tell you that Alan Beller at an ABA
10 meeting Monday morning said that Commissioners are looking
11 for interim recommendations. And so here's one that they can
12 put their teeth into.

13 Moving along, the next subcommittee report is Dave
14 Coolidge on capital formation.

15 MR. COOLIDGE: We met this morning and had a number
16 of items on the agenda. Let me just mention them, what the
17 issue is, and some of our preliminary thinking.

18 The first is with respect to listing standards.

19 One of the issues that has been raised has been the pool of
20 qualified available directors having shrunk somewhat due to
21 definitional issues and also some folks who aren't as anxious
22 to be directors as they might have been in the past.

23 I think our view is that this issue has overlapped
24 with the Governance Committee. And we are going to defer to
25 the Governance Committee's recommendations in this particular
1 area with the thought that perhaps some of the definitional
2 areas be loosened somewhat, cooling-off periods for the
3 purpose of becoming independent be reduced somewhat, but
4 believe that the Governance Committee ought to take whatever
5 thoughts we have and put it into the considerations that they
6 take and make a determination.

7 So we had the discussion. We have some mild
8 feelings that it might be helpful to loosen up somewhat the
9 definition of independent directors and allow a few more
10 people perhaps to qualify.

11 The second issue was our trading markets. We did
12 at our last meeting have testimony from NASDAQ and from the
13 pink sheets.

14 One of the things that happened subsequent to our
15 last meeting was that the NASDAQ bulletin board market was
16 officially moved from under NASDAQ to the NASD with the
17 contract running back to the NASDAQ deck to run that market
18 from an electronic standpoint. But really the ownership of
19 the bulletin board now resides at the NASD.

20 And I think we feel that the NASD should devote
21 time and resources to making the bulletin board market a
22 viable market. There are issues of companies leaving the
23 bulletin board market because of failure to file their
24 documents with the SEC. Perhaps the NASD can nurture this
25 market. Perhaps there's some things that the NASD can do to
1 make it a viable market because this is where lots and lots
2 of smaller public companies trade. And to see that market be
3 diminished in any way we think would not be helpful to
4 capital formation. So we will be addressing hopefully the

5 NASD and perhaps even dialoguing with them to see what plans
6 they may have in mind.

7 The third area of discussion was the whole area of
8 research coverage for smaller public companies. As we all
9 know, research coverage has diminished and it's tougher and
10 tougher for those companies to get coverage. There really
11 isn't anything that our committee has considered seriously in
12 terms of mandates or SEC rules that would alleviate this
13 condition. It's really just kind of a marketplace
14 circumstance that I believe our view is that we don't want to
15 do anything to injure that situation more.

16 And if the SEC was thinking of promoting thoughts
17 like no more soft dollar payments for research, we would be
18 actively opposed to that because this is one way that
19 research can be sustained is to allow soft dollar payments
20 for it. Or any kind of a notion that company-sponsored
21 research should not be encouraged or allowed, we would
22 actively think that that shouldn't be an approach that the
23 SEC should take.

24 So we're trying to preserve what we have. The
25 marketplace will have to come back from where it's gone. But
1 hopefully we can sustain what is out there in terms of
2 research for smaller public companies.

3 The next item on our agenda was the issue of
4 Regulation S-B. We have some thoughts on how to either
5 incorporate that into Regulation S-K or do some other things.
6 We have a size definition before us later in the agenda I
7 believe. And any recommendations we make with respect to the
8 Regulation S-B will be dovetailed with the size definition.
9 So that's something that we will get back to once we have the
10 size criteria figured out.

11 Let's see. Regulation S-K, I believe that we did
12 talk about that and what issues there were surrounding that.
13 I think Janet alluded to earlier the time pressures for
14 filing, the costs of making timely filings. I think we're
15 quite concerned that accelerated filing or faster filing by
16 smaller public companies is very, very difficult because they
17 do not get the primary attention from the auditors who have
18 bigger clients. Getting their data together is a little more
19 difficult.

20 So I think our view on that is that forcing all
21 smaller public companies to file on a very accelerated basis
22 is counterproductive, very expensive, and probably not worth
23 it. So we're thinking along the lines of making sure that
24 they have sufficient time.

25 I mentioned at our previous meeting thoughts on 404

1 attestation. I believe in this case we're going to defer to
2 Janet's committee again. We have some thoughts on how to
3 make it less of a burden if it's going to, you know, be a
4 fact of life of smaller public companies how we can adjust
5 either the frequency of filing or the depth of the review.
6 But, again, our thoughts will be shared with Janet's
7 committee to have that figured out at that committee level.

8 Some smaller items. Rule 701, which is a
9 limitation on stock option grants before you have to start
10 disclosing certain information. Thoughts on raising that
11 threshold from the current \$5 million, thoughts on -- I think
12 we'll probably refer this to our Accounting Subcommittee --
13 thoughts on how to treat stock option expense when it comes
14 to 404 reviews and materiality, and I think a whole series of
15 thoughts on the present private placement rules that need to
16 be updated so that folks can function successfully in the
17 private placement arena, and not run afoul some current
18 regulations that probably need some updating.

19 That's what we discussed and what our tentative
20 thinking is. And we will try and bring it to a conclusion
21 when the committee is ready to deal with formal
22 recommendations.

23 MR. WANDER: Are there -- Is there any discussion

24 of David's report, questions, recommendations, additional
25 thoughts?

1 Hearing none, we will move on to Leroy Dennis and a
2 report of the subcommittee on accounting standards.

3 MR. DENNIS: Thank you, Herb. Leroy Dennis, the
4 Accounting Standards Subcommittee.

5 I would say our group is beginning to formulate
6 some recommendations in their mind. We're still in the
7 process of doing some research and are very much interested
8 in the testimony that we will receive next time in September.
9 And we can talk about this later on.

10 I think we heard a lot, this last testimony, about
11 the 404 relationship with auditors. We'd like to hear a
12 little bit from -- a little bit more from maybe the investor
13 side in the future as to what their feelings are.

14 But our committee is right now looking at the
15 attributes of what I call the microcap companies, the
16 smallest public companies, and whether they -- whether the
17 attributes of those company align more closely with private
18 companies versus public companies and looking at the needs of
19 the stakeholders of those -- of those companies and which
20 group they better align with.

21 Depending on the results of that research, we are

22 looking at and exploring recommendations around the ideas of
23 going to the FASB and the SEC staff with recommendations
24 around implementation time lines for smaller public
25 companies, for transition rules, for new standards for
1 smaller and microcap companies, and, again, depending on the
2 results of our research, whether or not it is beneficial for
3 shareholders as well as users of the statements to have the
4 accounting standards more closely aligned with the private
5 company standards versus the public companies standards for
6 accounting.

7 Those differences are not very great in today's
8 world, but we would ask the FASB -- if we make this
9 recommendation, we ask the FASB to look at those as they go
10 forward in any new accounting standards that they would
11 adopt.

12 We are also in the process of studying comment
13 letters and looking for common themes among smaller public
14 companies what issues in the accounting area has the SEC
15 staff identified as reoccurring problems, or reoccurring
16 issues that smaller public companies face, and is there
17 recommendations that we can make out of those common themes,
18 one of which may be as simple as an FAQ that the SEC would
19 release on -- or would recommend the SEC release on just

20 issues that smaller public companies face.

21 As far as the accounting standard process with the
22 FASB staff, we clearly align with the SEC recent positions on
23 less complex standards. We think that that is, you know, one
24 of the issues when we're dealing with the relationship
25 between auditors and their clients that is causing some grief
1 for the companies.

2 And also we firmly believe that the FASB staff
3 should not be considering any political overtones or
4 political pressures in setting accounting standards, that
5 they are charged with setting appropriate accounting
6 standards, and that it should not reflect public policy that
7 the tax law or like the tax law does. And that is not the
8 charge of that group.

9 Our final issue that we're dealing with, and quite
10 frankly struggling with quite a bit at this point, is the
11 relationship between the auditors and the accounting firm --
12 or the clients. And so I'm glad, Janet, you're taking that
13 on because I think we could use some additional brain power
14 in that arena.

15 I hear very diametrically opposed positions between
16 what we heard yesterday in testimony and what at least we
17 believe the regulators and the tone of Congress would be in

18 the areas of independence.

19 We do -- we have talked about what kind of
20 different things we can do and whether there's some
21 additional guidance that can be issued. I think there is a
22 belief by our committee that although the PCAOB guidance
23 didn't have any direct immediate benefit that we heard
24 yesterday but that it is working towards that. And we are in
25 the process of a new law. And clearly the pendulum swung
1 very far to the right, but that we believe it's coming back.
2 And whether there's some additional guidance to help in that
3 and help accelerate that, we're in the process of exploring.

4 Finally, I think in the area of independence we
5 also are exploring whether or not we can be out of this
6 black-and-white rule on independence and put a little bit
7 more judgment in the process so that auditors may be willing,
8 more willing, to -- I hate to use the words "take a risk,"
9 but the penalties for making an honest mistake are less
10 severe than a complete lack of independence. And so that a
11 company's filings would still be valid. And is there some
12 areas of judgment that we can put into that process that
13 helps us get to the right answer but also doesn't allow us to
14 be so rigid that maybe we follow the rule and get to the
15 wrong answer.

16 And so I don't know where all that will come out,
17 but that is clearly one of the biggest struggles we have
18 right now is that last area in our subcommittee.

19 MR. WANDER: Are there any questions, discussion,
20 questions? Yes, Mark?

21 MR. JENSEN: This is Mark Jensen.

22 Has your committee looked at -- I'm not, by the
23 tone of the question don't assume I think there's a problem
24 here. But I'm just curious whether you thought about taking
25 a look at the interaction of smaller companies with the SEC,
1 for instance, in the comment periods, review some 10-Ks,
2 10-Qs, if that's an efficient process for small companies, or
3 if there were recommendations on how that process can be
4 improved?

5 MR. DENNIS: We haven't really explored the area of
6 the interaction between the small companies and the SEC. We
7 are looking at areas of comment that the SEC writes in
8 looking at IPOs or reviews of 10-Ks or 10-Qs, and whether or
9 not we see some common themes in those areas that would
10 indicate additional guidance is necessary. Maybe a certain
11 disclosure is less important for a smaller company and
12 that --

13 MR. JENSEN: I was thinking more along the lines of

14 is there -- would there be improvements in the area of
15 accessibility of small companies with the staff, some kind of
16 a pre-clearance review or various things that might help
17 smaller companies just comply with the law in a more
18 efficient fashion I guess is --

19 MR. DENNIS: We have not looked at that, Mark.
20 That's something we could take up. I don't think that was on
21 necessarily our agenda. But that's something we could take
22 up if we think that's appropriate to add.

23 MR. WANDER: Any other discussion? Yes, Rick.

24 MR. BROUNSTEIN: Hi. Rick Brounstein.

25 Just more food for thought, but back to your first
1 point on the attributes of microcaps versus private
2 companies. Depending on where you come up for that, you
3 should be aware that the American Institute of CPAs, or
4 AICPA, does have a task force looking at GAAP for small
5 companies. And the last newsletter I read sounded like we
6 would see an exposure draft on that shortly.

7 MR. DENNIS: Yeah, we are aware of that committee's
8 work. And one of our subcommittee -- George on our
9 subcommittee sits on this committee I believe. Don't you,
10 George?

11 MR. BATAVICK: Yes. I'm on that subcommittee along

12 with fellow -- this is George Batavick.

13 In reference to the AICPA project that is trying to
14 identify whether or not there should be a separate set of
15 GAAP for private companies, a team has been formed with
16 people from the FASB as well as the AICPA. We've had a
17 number of meetings so far. We're trying to decide on a good
18 path forward.

19 But as far as an exposure draft in the near future,
20 no, that's not an expectation.

21 MR. DENNIS: Rich, just to let you know, very early
22 on our subcommittee was unanimous in its conclusion that GAAP
23 should be GAAP. There should not be variation of standards
24 for public companies. That there may be disclosure
25 differences or maybe we can offer some shortcuts or
1 measurement differences, but that the definition criteria
2 under GAAP should be the same for public companies.

3 MR. WANDER: Any other discussion?

4 MR. CONNOLLY: Mr. Chairman?

5 MR. WANDER: Yes, Drew.

6 MR. CONNOLLY: Drew Connolly.

7 I'm delighted to hear that Mark made that
8 suggestion. I wasn't quite sure where in the committee
9 structure this would fit.

10 But the truth is that the interaction between a
11 potential issuer with the 15c2-11 process, the 10-K, the
12 10-K, the interaction with the SEC and/or the NASD, that the
13 entire process of either getting or staying public has a lot
14 of regulatory interaction with issuers and major delays and
15 major expense items which go toward capital formation. So
16 perhaps finding where the bottlenecks are or taking a look at
17 that process maybe up to and including the recommendation
18 that broker dealers be allowed to receive compensation to
19 file those. All of those issues are intertwined. And I
20 don't necessarily know that they're being spoken about.

21 MR. DENNIS: And, Drew, I guess I'll defer to Herb
22 and Jim as to if that's an issue that the committee wants to
23 take up and, if so, which subcommittee you think should do
24 that. And we can study that as to, you know, at some time
25 later as to where that should go.

1 MR. CONNOLLY: I'll make my case.

2 MR. WANDER: And we will follow up on that.

3 Further questions? Suggestions?

4 Okay. Moving right along, the last subcommittee
5 report we have is Corporate Governance and Disclosure. The
6 chair of that subcommittee is on vacation, and in Steve's
7 place Richard Jaffee has filled in.

8 MR. JAFFEE: I'm Dick Jaffee. Thank you, Herb.

9 As Herb said, Steve Bochner, our chairman, had a
10 long scheduled family vacation, so he's out there cruising
11 somewhere in the Mediterranean. And I'm going to try and
12 stand in for him.

13 We've had a number of telephone meetings. Of
14 course we met in Washington and New York previously, and we
15 met again this morning. We've got a great committee I think
16 that represents the various aspects of constituents that are
17 interested in the questions that we're discussing: Pastora
18 Cafferty, Rusty Cloutier, Bob Robotti, and we've been happy
19 to have -- Kevin O'Neill's been with us and Cindy Alexander
20 from the Economic Analysis office.

21 We've been looking at a number of areas. I've
22 heard some of them touched on in earlier reports,
23 particularly a couple things that Dave just commented on
24 we're also looking at.

25 And it's interesting because we're down to a list
1 of ten, but we're not at all ready to recommend in the ten
2 areas. And I was reminded of when I went to the University
3 of Wisconsin and they always talked about a process of
4 "sifting and winnowing." And that's what's been going on
5 with our deliberations. We've been sifting and winnowing.

6 And in a couple cases I think we've talked ourselves out of
7 recommending in this area.

8 But let me quickly run over the ten areas.

9 I think the first one, the one that we don't have
10 any disagreement on amongst any of us, is that we think that
11 this acceleration or I guess what's called phase-down of due
12 dates for filing of 10-K and 10-Q is a bad idea and we don't
13 think it should be implemented by the SEC. We -- for all the
14 reasons that people have mentioned before, smaller companies
15 don't have internal staffs, don't have big legal departments,
16 don't have big finance and accounting departments, so they
17 have to depend on outside very scarce and expensive
18 resources.

19 And there doesn't seem to be any purpose to it. In
20 fact, it almost seems to us to be counter-directional because
21 the faster we do something the more likely we are to have
22 either incomplete information or inaccurate information. It
23 seems to me all our mothers used to say "haste makes waste."
24 And I think that's the case here with this recommendation.
25 So we don't see any particular measurable benefit to
1 investors, and we would encourage that we not have this
2 phase-down or acceleration.

3 One last item to point out here is that there seems

4 to be more and more filings, at least in my company, of 8-Ks.
5 Whenever anything happens, that legal counsel says, "Oh, we
6 ought to file an 8-K." So if there is any big deals going
7 on, we think that the investor will know about that through
8 the 8-K process.

9 The second recommendation is generally in the area
10 of looking at expanding incorporation by reference to other
11 filings that the company may have made. And it's an attempt
12 to eliminate duplicate filings.

13 Now we had an interesting discussion this morning
14 about some work that's already gone on in an attempt to
15 streamline procedures for follow on financial financings by
16 the larger companies and whether or not that might be
17 appropriate for smaller companies as well. I guess it would
18 be classified as saying: Would the S-3 be appropriate for
19 smaller companies? And we had some back and forth on that.
20 And so we're not ready to say that is an absolute. But it's
21 something we are discussing.

22 You've heard Rusty talk about it, and other people
23 from the community banking area, that their area has a
24 special problem of being very regulated already by a number
25 of -- by the Fed, by FDICIA, by the Comptroller of the
1 Currency. And so if there were a way to avoid duplicate

2 filings for those people, that would be something that we
3 might take a look at.

4 The whole area of the form S-B, which I guess
5 everybody agrees has a stigma to it, S-B companies -- and I
6 think this is something, David, your committee looked at --
7 we're sort of moving in the same direction of recommending
8 elimination of the S-B and maybe incorporating it with a new
9 or combining with a new S-K item.

10 One that we've had a lot of good back and forth on
11 is the issue -- again, David, you mentioned it -- of
12 independence of directors. And having gone through this
13 whole process myself, I'm particularly cognizant of the fact
14 that in the very smallest of companies that directors
15 frequently perform a consulting role to a greater extent than
16 they would in a larger company where their role is almost
17 exclusively governance. And yet a number of our subcommittee
18 members make a very strong case that this is one of the areas
19 of Sarbanes-Oxley that has been very beneficial to have
20 independent directors, particularly in the audit committee
21 and in the comp committee functions.

22 And so what we've been sort of kicking around is
23 maybe a phase-in where over -- particularly for a new issuer,
24 that maybe there would be some time limit where the company

25 would have an opportunity to attract and orient independent
1 directors, particularly, you know, a financial expert and so
2 forth, which sometimes can be tough to find.

3 So, again, we're talking about that, but we haven't
4 come to any -- but we certainly are not of a mind to backing
5 away from the importance of independent directors.

6 Our fifth area that we looked at is in the area of
7 electronic filing. And it's geared toward the reduction of
8 paperwork and cost. And this is one that Steve laid out for
9 us. And he feels that there should be a shift from -- a
10 shift to a presumption that if something is available on the
11 web that the access, therefore, would equal or be the same as
12 delivery unless a shareholder or whoever gets the information
13 would make a positive statement that they want to receive the
14 material in a written form.

15 And I think Bob Robotti says he owns a bunch of
16 Canadian stocks. And the Canadian companies sent out
17 annually and, you know, told everybody, "Do you want to get a
18 written copy or is the web adequate enough?" And so that's
19 another thing that we're talking about.

20 The sixth area was in the area of SAB 99 which is a
21 new term that I learned and forgot now.

22 Kevin, what's an SAB?

23 MR. O'NEILL: Staff Accounting Bulletin.

24 MR. WANDER: Staff Accounting Bulletin.

25 MR. JAFFEE: See, I didn't attend all my lectures in
1 law school, so some of this stuff is --

2 MR. WANDER: They weren't in existence then.

3 MR. JAFFEE: I'm glad to hear that I wasn't totally
4 asleep.

5 But Steve -- and Steve, you know, is an SEC
6 practitioner, and so he's very into the intricacies, and
7 appropriately so, of many of these issues. And he feels that
8 a more definite test for determining the materiality of
9 errors in financial statements and the MD&A would be a
10 helpful thing. And so I think you're going to hear more
11 about that.

12 We discussed and frankly decided not to pursue,
13 unless Steve wants to override us, but initially we had on
14 our list a reduction of items for the filing of 8-K reports
15 in the area of executive compensation and some issues
16 regarding when and why directors choose not to stand for
17 reelection. But I think it was the consensus of our group
18 that disclosure is a good thing.

19 I know from my point of view I've always encouraged
20 our people when in doubt disclose because then you get the

21 information out there. I think it's in defense for the
22 company. And I think it's a good thing for the investor to
23 be able to then make his own -- his or her own judgment about
24 a company based on what he's heard.

25 So I don't think we're going to be recommending
1 that, at least that's what was the consensus of what we
2 discussed this morning.

3 We talked a little bit about the cumbersome nature
4 of the EDGAR system. I thought somebody was going to testify
5 from that here, weren't they?

6 Yeah. That was on the early list. But, anyway, I
7 thought --

8 MR. WANDER: She -- this is Herb -- just to
9 interrupt, she at the last minute had another engagement, so
10 she had to cancel. But she will be invited to appear in San
11 Francisco.

12 And, indeed, I thought yesterday was interesting to
13 hear a little bit about the Canadian effort to make available
14 information in a much easier method. I do know the SEC is
15 frankly not totally happy with EDGAR. But it's a massive,
16 massive project to sort of change it. But I think one of our
17 charges would be to try and improve this system.

18 MR. JAFFEE: So that was one of the issues that we,

19 you know, have got on our list. I don't think we have any
20 specific recommendations. I think it would be highly
21 technical, but it is something that should be I think
22 addressed because I checked with a person in our company
23 who's very competent and she was explaining to me the
24 difficulties of doing these EDGAR filings.

25 Another area that was on the list --

1 MR. WANDER: If I could just say, I think what
2 happens, and I'll go through the EDGAR filing, you really
3 have to, like somebody said yesterday, go to a financial
4 printer and, you know, it costs you a couple thousand dollars
5 a pop. And even though there's software packages I
6 understand, people, unless you're a very large company, you
7 know tend to out-source that --

8 MS. DOLAN: And it adds times.

9 MR. WANDER: And it adds time. And, frankly, I've
10 been filing some Form 4s and you can't really read them in
11 the EDGARized form.

12 So I think that's an area that whether we can dive
13 in deeply or shallow I think does deserve some attention.

14 MR. JAFFEE: Another area that we had on the list
15 and I think we've sort of concluded that we don't want to
16 keep it on, but, again, I'll report all this to Steve, is in

17 the area of loan prohibitions.

18 We initially started to talk about whether are
19 there some kinds of loans that do make sense, you know,
20 relocation loans for employees, maybe loans for cashless
21 stock option exercise I guess is another one.

22 Another thing, that I've been surprised that we
23 haven't had somebody from the insurance industry testifying
24 here or wanting to testify about the impact on split-dollar
25 life insurance policies because of Sarbanes-Oxley. And I
1 don't know whether that's something anybody cares about or
2 wants to care about.

3 But our committee sort of has come to the same
4 conclusion on the loan front as we did on the disclosure
5 front. We're probably not going to push it. Even though one
6 could get into it, but it probably is not as important as
7 other things.

8 And, finally, just sort of a general comment to
9 encourage greater coordination and communication amongst
10 regulatory bodies to eliminate the duplicative compliance
11 burden and reduce costs.

12 I sent to Herb and Jim an e-mail the other day, and
13 I attached what we call a regulatory snapshot that I asked
14 our general counsel to prepare for me. And I won't read it

15 to you. But it's got, I don't know, 30 or 40 federal and
16 state agencies that my company complies with on a daily,
17 weekly, monthly, and yearly basis.

18 And the point of bringing this to the forefront is
19 that while we're focused on the cost of Sarbanes-Oxley and
20 particularly 404, that cost is coming on top of what I
21 considered to be an enormous and very expensive regulatory
22 burden for small companies in this country. And so if we
23 believe, as we are told frequently by the politicians, that
24 small companies generate most of the jobs and that our free
25 enterprise system is one of our great advantages in the
1 global marketplace, it pains me when you remember there was a
2 submission by a lawyer from the Carolinas who spends a lot of
3 time in China -- this is a month or two ago before our New
4 York meeting -- and he said it's much easier to form a
5 company and get the capital and get the product to market in
6 communist China than it is today in capitalist United States
7 of America.

8 I think that while, you know, we're losing jobs
9 outsourcing to lower labor costs, I think, going forward, the
10 regulatory burden in this country is going to become a
11 competitive disadvantage. And to whatever extent this
12 committee can lean against that I think would be a good thing

13 to do.

14 So and then, finally, I would just make the obvious
15 comment if we're here to protect the investor and we take the
16 investor's money away from him in the form of a confiscatory
17 tax and cost of all this regulation, we're not protecting him
18 too well.

19 That's my editorial, Mr. Chairman, and my committee
20 report.

21 MR. WANDER: Thank you very much, Dick.

22 Rusty's hand, I see that.

23 MR. CLOUTIER: Yes. Dick, just a technical point.
24 I guess this morning when we were meeting I did not have a
25 copy of the proposed resolution. But certainly I think our
1 committee would be happy to move ahead one item, and that
2 would be item number one, which does kind of go with the
3 resolution about, you know, not accelerating filings for
4 small business.

5 And I certainly don't know where at the Securities
6 and Exchange Commission and this rule currently is sitting,
7 on accelerating that, I mean I know it was -- we all agreed
8 that it should not be accelerated this morning. And I think
9 if the people from the SEC think it would be appropriate we
10 might want to add that as a resolution to say we also agree

11 don't accelerate that either, just like we talked about the
12 accelerating filing situation.

13 So just kind of a technical point. But when I read
14 it this afternoon after this made me think about that, you
15 know.

16 MR. JAFFEE: Rusty, I think it's a very good
17 suggestion. I don't know whether we can do that. But if
18 they're really look for interim recommendations, could we put
19 one of those together?

20 MR. JENSEN: Herb, this is Mark Jensen. I think --
21 you know, I really know what they're saying. I think this is
22 an issue that needs to be acted on quickly. You know,
23 companies are setting up their plans for year-end right now.
24 And if they are not going to have to accelerate, that is
25 going to influence on how they set their work flows up.

1 MR. WANDER: We had actually thought of putting
2 this on the September agenda, but I don't see any reason for
3 not addressing it now if there's so much universal support
4 for it, which would be essentially to continue the filing
5 schedule as is without accelerating the filing schedule for
6 issuers coming up next year.

7 Pastora?

8 MS. CAFFERTY: If Rusty will make that as a motion,

9 I would be happy to second it. There was very clear
10 unanimity on our committee. And I think it would be
11 appropriate.

12 MR. CLOUTIER: So moved.

13 MR. CONNOLLY: But one second --

14 MR. WANDER: Could we get a second first?

15 MR. DENNIS: I second it.

16 MR. WANDER: Well, Pastora --

17 MS. CAFFERTY: I seconded it. Yeah. We have a
18 second.

19 MR. CONNOLLY: This is Drew Connolly.

20 I don't dispute the need for it, and I will vote
21 it. But I'm just wondering if it doesn't need to fit within
22 the framework of the definition of the Size Committee that we
23 now need to hear from and vote the recommendation on because,
24 as accelerated, there's accelerated deadlines, presumably are
25 we going to recommend fit within the framework of smaller
1 public companies as we are hereby hoping to define them,
2 right?

3 MR. CLOUTIER: And, Drew, I thought about that.

4 But one of the problems is that I think we ought to make it
5 clear that we don't want them to accelerate anything right
6 now because, if they accelerate it, then it gets very

7 difficult, no matter what the size is, to go back.

8 So I think it is that we can send the intent of
9 this committee, understanding we haven't dealt with all the
10 size questions, that the intent is we don't want to
11 accelerate the file because, unlike Mark, a lot of companies
12 are getting ready to do things and we want to get a clear
13 message that this committee is not in favor of acceleration,
14 understanding that the size question is still under there,
15 but under the current rules not accelerating anything.
16 That's what my motion is.

17 MR. CONNOLLY: So we're opposing accelerating even
18 for the accelerated filers?

19 MR. WANDER: The nonaccelerated filers.

20 MR. CLOUTIER: Nonaccelerated.

21 MS. CAFFERTY: Nonaccelerated.

22 MR. CLOUTIER: The acceleration that we have today.

23 MR. CONNOLLY: Got it. Okay. That's the issue.

24 MR. JENSEN: Could you clarify for everybody what
25 an accelerated filer is? It's \$75 million --

1 MR. WANDER: Nonaffiliated market float.

2 MR. JENSEN: Right. So these are the very small.

3 There are phase-in rules for them and phase-in for
4 accelerated filers.

5 And I think that -- I would hope that the
6 recommendation is that, and I think, like Rusty said as well,
7 he said we will try to recommend that they try to continue a
8 moratorium on accelerating anything regardless of size, even
9 though that's --

10 MR. CLOUTIER: Let me read this I guess as a motion
11 because Steve wrote it so I'm sure it's correct legally. And
12 it would be a lot better than me trying to put that together.
13 And, that is: "Small public companies not be subject to
14 further acceleration of due dates of periodic reports to
15 Securities and Exchange Act of 1934 as amended, the 1934 act,
16 then in parentheses, i.e. no phase-down beyond the 75/40 days
17 of 10-K and 10-Q reports."

18 MR. WANDER: But I guess the question, Rusty, is
19 your motion directed to the nonaccelerated filers or to all
20 filers?

21 MR. CLOUTIER: My motion is directed to any
22 increase in acceleration that is not currently on an
23 accelerated schedule. I think it's going to be very
24 difficult to go back -- we maybe can discuss that in
25 September -- but I mean I would like to hear from some people
1 with the SEC.

2 What I'm concerned about is people who have not

3 accelerated already, and there are plenty of them, that are
4 preparing to accelerate that we say just if you could hold
5 off, Commission, until we get further down the road, but
6 let's not accelerate anyone else that is not accelerated
7 already. That's my motion.

8 MR. WANDER: And "anyone else" means all issuers?

9 MR. CLOUTIER: What's that, sir?

10 MR. WANDER: All issuers.

11 MR. CLOUTIER: Yes.

12 MR. WANDER: David? Did you have a question?

13 MR. COOLIDGE: No.

14 MR. WANDER: Leroy?

15 MR. DENNIS: Herb, I just wonder when we're trying
16 to figure out the definition here -- and I'd ask Mark and
17 Rusty, Drew, you know, does the 30-day time line between now
18 and September 20 or whatever it is we meet in San Francisco,
19 is it critical that we adopt this today or do we take our
20 time, study, get the recommendation right, and then bring
21 that recommendation to a vote in September. And I just ask
22 is that 30-day time frame critical enough that we need to act
23 on this today or do we -- or can we delay it and make sure we
24 get it right a month from now?

25 MR. CLOUTIER: I would yield to the people of the

1 SEC because I mean I don't know what the Commission's time
2 frame is.

3 But, you know, by the time you get to September
4 you're getting pretty late in the year for if you've got to
5 start doing things in November and December, to accelerated
6 file.

7 I know this is on the shelf and it's been there.
8 You know, I don't know when the Commission is planning on
9 moving ahead with it or not, and that is a question. I would
10 just want to send a clear message that we would ask them, as
11 we did on the first one, to give more time.

12 MR. CONNOLLY: And, Leroy, I would think that both
13 your good self and Mark are both in a position to answer the
14 question much more deliberately than I am because it's going
15 to be a function of your scheduling, it's going to be a
16 function of your clients, and that's going to be a function
17 of the impact on them by making a recommendation today, well
18 thought out, well discussed, or, in fact, deferred so that we
19 get additional comment letters or weigh-ins by the
20 Commissioners or FASB or whomever.

21 MR. JENSEN: I think --

22 MR. WANDER: Mark. And then Dick.

23 MR. JAFFEE: Go ahead, Mark.

24 MR. JENSEN: I think the answer to the question is,
25 yes, it does matter because we are scheduling everything
1 right now. There is a scarcity of resources in all the
2 accounting firms. Having another couple of weeks in there to
3 get work scheduled properly, to give companies the option to
4 have some little more flexibility in their schedule I think
5 is important. And I think it will matter.

6 I also, you know, frankly I don't see it as a huge
7 recommendation. It occurred last year. The SEC extended or
8 froze acceleration last year because it was a phase-in that
9 was coming in, and they froze that. So it's something that's
10 been done once before. We're not cutting new ground here.

11 MR. JAFFEE: Dick Jaffee.

12 I think, if I'm not mistaken, there's an analogy
13 here to the recommendation we just passed on the 404. I
14 think what we're saying is it is the sense of this committee,
15 and I hope it will be unanimous, that there be no -- and the
16 way Steve wrote it -- smaller public companies not be subject
17 to further acceleration.

18 Now, how the SEC chooses to interpret that, define
19 it, and enforce it or implement it, they're going to have to
20 do the same kind of thing with our earlier recommendation, to
21 think through, well, is it going to be those we gave a pass

22 to last year or are we going to give another evaluation date.

23 And you said you talked to them about the problem of having a

24 mid-year evaluation.

25 But I think if we just pass this, they then can

1 deal with it. If they want to make it for all filers, that's

2 fine. If they want to make it for smaller publicly-traded

3 companies and define who they are in that context of this

4 resolution, I think we ought to do it and that's then up to

5 them to decide how they implement it.

6 MR. CONNOLLY: It puts it on their calendar.

7 MR. JAFFEE: Yes. It puts it on their calendar.

8 Because clearly -- and that's one of the ambiguities of our

9 role I think is we have an obligation to express -- it's kind

10 of like raising children -- tell them what you think but not

11 how to do everything. And so we're telling them what we

12 think. We shouldn't accelerate. But how you're going to do

13 it, you're in the business of figuring that out.

14 MR. WANDER: That's been my problem I guess raising

15 children. I didn't know that rule.

16 MR. DENNIS: I do want to go on the record as I did

17 not call the SEC a child in this.

18 MR. WANDER: Yes, Rick?

19 MR. BROUNSTEIN: Just one comment, in coming back

20 maybe to the first resolution that we passed. We
21 specifically passed it for the nonaccelerated filers, and we
22 didn't want to get into the issue of we're going to make a
23 suggestion to redefine a small -- a smaller public company.
24 And then we got all our work to do with what we're going to
25 do in that definition.

1 So I'm a little uncomfortable in trying to set a
2 new definition. I'd rather if we were going to take this to
3 the SEC say whatever definition you're going to determine for
4 the nonaccelerated filer, whether you change it to the
5 beginning of an imaginary date or whatever or you reset it
6 one year later, but to go to any other company that's
7 nonaccelerated it seems to be a little bit beyond our purview
8 at this time.

9 MR. WANDER: Well, I'm going to interpret, subject
10 to the people who made the motion and seconded it, that by
11 reading Steve's language, which is "smaller public company",
12 I'm interpreting that as to the nonaccelerated -- the problem
13 is "accelerated" is used in a different -- two different
14 manners here. But it's those companies with public float of
15 less than \$75 million. That's the way I am interpreting it.

16 MS. CAFFERTY: I think that was our intent, Dick,
17 to really --

18 MR. BROUNSTEIN: Okay.

19 MR. WANDER: Which, Rick, I think satisfies your
20 question. Right?

21 MR. BROUNSTEIN: Yes.

22 MR. WANDER: And there was a question raised on,
23 you know, how far does the charter of our Advisory Committee
24 go. And while I think it's very broad, we may not want to
25 step into the admittedly large company regime.

1 So is there any other discussion on it? Otherwise
2 we will call for a vote on this.

3 MR. DENNIS: Can we have the motion re-read so, I'm
4 not sure I understand what we're --

5 MS. CAFFERTY: Well --

6 MR. WANDER: It would be nonaccelerated filers,
7 which, the definition of which is companies with less than
8 \$75 million on public float as presently defined and
9 determined, quote, not be subject to further acceleration of
10 the due date of periodic reports under the Securities and
11 Exchange Act of 1934 as amended; i.e., no phase-down for
12 these companies beyond 75/40 days for 10-K and 10-Q reports.

13 MR. DENNIS: So, this, Herb -- this is Leroy
14 Dennis -- this would mean that companies over 75 million in
15 public float yet under the \$700 million threshold would be

16 subject to acceleration?

17 MR. WANDER: That's correct. But the SEC let
18 them --

19 MR. JENSEN: Actually, if we think back to the
20 prior recommendation, there's probably no need for this vote
21 then because we've already -- on those companies we've
22 already said our recommendation is not to -- or to give it
23 one more year to comply with 404. So those companies that
24 we're talking about accelerated deadlines on right now we've
25 already made a recommendation to take the 404 burden off
1 their back.

2 MR. WANDER: Well, but that doesn't take the faster
3 filing of the --

4 MR. JENSEN: That's correct.

5 MR. WANDER: And that's what this is.

6 MR. JENSEN: But I'm presuming then, you know,
7 they're still just in the normal filing cycle. So why --
8 They're not ones that are stuck doing this under the
9 acceleration.

10 MR. WANDER: But, Mark, I will say that every
11 comment letter we've received has suggested this. Nobody
12 is --

13 MR. JENSEN: I think they're smaller public

14 companies. And I would probably say -- and I know we're
15 going to get to this definition of smaller companies -- maybe
16 we should just table this until we get through this
17 definition and then maybe this is something we can review and
18 come back to. Because I think most of the companies that are
19 raising the issue would be above the 75 million market cap, I
20 believe.

21 MR. CONNOLLY: The motion was made and seconded.

22 MR. WANDER: That I know. But I've forgotten my
23 Robert's Rules of Order. I do have a bunch of copies.

24 Dave?

25 MR. COOLIDGE: Yes. Dave Coolidge.

1 In our committee discussion -- and I mentioned in
2 the list of items we talked about -- it was our
3 recommendation that this type of relief be provided for
4 smaller public companies assuming we were going to have a
5 definition of up to, you know, 700 million or so after the
6 Size Committee.

7 So at least from our committee's standpoint we were
8 thinking of a larger group of companies to give this relief
9 to than the smaller group of companies that I think you're
10 implying by just saying it's nonaccelerated filers.

11 MR. WANDER: We can handle this, it seems to me, in

12 two ways. One, we can table this until after we discuss the
13 smaller company size definition and then address this
14 resolution to fit whatever action we take there. Or we can
15 keep it the same as I've read it, in effect, for the
16 nonaccelerated filers but ask the Commission that it give
17 consideration to an across-the-board delay.

18 So my question to you all is would you prefer
19 postponing this and tabling it until after the size
20 definition or -- and I'll take a straw vote -- or would you
21 prefer going forward with a resolution, with a suggestion to
22 the Commission that it consider how far it wants to do this.

23 MS. CAFFERTY: I think --

24 MR. WANDER: Pastora?

25 MS. CAFFERTY: I think we would like to table it
1 until after we have the size discussion.

2 MR. WANDER: Is there any disagreement with that?
3 If not -- Was there a second to the tabling? I think --

4 MR. DENNIS: This is Leroy Dennis.

5 Second.

6 MR. WANDER: Second. All in favor of tabling it?

7 (Chorus of ayes.)

8 MR. WANDER: Opposed? I saw a hand in the back of
9 the room.

10 MR. CLOUTIER: Herb, when we agree to table it, I
11 just want to be clear that I think we'll end up with three
12 things going to the Commission from what I'm looking at right
13 now.

14 First of all is the resolution we passed earlier.
15 The second is going to be what we are looking at as our
16 definition of "size." And then the third will be this, that
17 we will to not accelerate the filers. Understanding that we
18 will make a recommendation to them, but that doesn't mean
19 necessarily they're going to accept our size criteria. But I
20 think I would want to be careful that if they don't accept
21 our size criteria we still push for nonaccelerated filers no
22 matter --

23 MR. WANDER: I think that's a good point.

24 MR. CLOUTIER: What that definition ends up being.
25 Okay?

1 MR. WANDER: I think that's a very good point.

2 All right. We have -- any other discussion? We
3 have on our agenda a break at 2:30. It's now 2:29. So we
4 are really ahead of schedule in that we've already handled
5 item four. So why don't we take a 15-minute break, as
6 indicated on our agenda, and then come back and Jim will take
7 over the discussion of the Size Committee.

8 (Recess.)

9 MR. THYEN: Okay. Thank you. We're going to move
10 in to discussing the report of the Size Subcommittee.

11 And I want to thank you for your continued
12 attention, your mind share of this matter. This is an
13 important two days, and this is going to be an important
14 resolution that we're going to ask you to discuss and agree
15 with.

16 Alex and I will take about 40 minutes. We're going
17 to walk you through our presentation so you can understand
18 the recommendation and the logic. And then certainly we're
19 going to open it up for discussion to whatever degree that we
20 want and need to come to an understanding and agreement.

21 We really intend here -- our desire is that you be
22 well grounded in the approach that we took in our work, how
23 we arrived at our recommendation, the key factors that we
24 considered, and how we see the recommendation being applied.

25 And I know that you've discussed it in your
1 subcommittees. We have shared our work with you also in
2 writing. We sent you a copy of that just this last week for
3 your ease. And so this is kind of the attempt to kind of
4 bring it all together.

5 And we were formed -- Our objective was simple. We

6 were formed in May as a subcommittee. We really wanted to
7 bring to the full Advisory Committee a recommendation
8 defining smaller public company. And we used the overarching
9 principles, the guiding principles for the entire Advisory
10 Committee to guide our work.

11 These are the individuals that were designated to
12 work on this subcommittee. As you can see, each one of our
13 other four subcommittees was represented by voice.

14 We had SEC guidance. The process that we used was
15 we relied heavily on the SEC staff for analytical support,
16 and we got tremendous support in that regard.

17 We did a lot of independent work one on one,
18 fact-finding, reading all kinds of research. And then
19 through teleconferences, participation with all subcommittee
20 members, we kind of brought it together into a written
21 proposal that we presented to you.

22 I guess I would like to add when you look through
23 this list here, we really were a diverse team, diverse in
24 experience and in skill and in viewpoint. And while we
25 started out quite scattered in our opinion, we did quickly
1 become a pretty high performing team and we converged to our
2 recommendation. We came together in our judgment and we did
3 kind of on the move share all the work between each other,

4 verbally and written.

5 So our purpose here today in this presentation is
6 we are really seeking your approval of our recommendation.
7 And we want you to be well grounded in our work. We want you
8 to understand the supporting facts so that when we leave this
9 forum, leave this body, we can be united even when we're not
10 together.

11 And the purpose of the subcommittee's
12 recommendation is really to provide an umbrella definition
13 that would be used to guide each of the subcommittee's work,
14 whether it's Capital Formation, Corporate Governance and
15 Disclosure, Accounting Standards, or Internal Control. We
16 also want to alert the SEC of our definition strategy and our
17 direction. This will be guiding the way we go.

18 I think, with that, Alex Davern is going to walk us
19 through the logic and bring us up to the recommendation.

20 MR. DAVERN: Thanks, Jim.

21 As Jim said, many of you guys have already received
22 a copy of this presentation. And much of the information
23 that we're going to share with you was provided to us by the
24 SEC staff. And many of you have seen this information
25 already. And it may be quite obvious to you and information
1 you're very familiar with. So I don't intend to take a lot

2 of time on dwelling on the data today.

3 I did want to share it and that so that for public
4 record and also for those who are listening and watching
5 outside of the Advisory Board will have an opportunity to
6 understand some of the data that we considered in making our
7 judgment on size in companies.

8 We wanted to first start off with the task the
9 overall committee has been sent.

10 Number one, to look at recommendations as to how we
11 may draw a line between different types of public companies,
12 the needs of different types of public companies, the
13 regulatory burden on different types of companies, and try to
14 find some way to examine the possibility that the regulatory
15 burden is not proportional and that there may be an
16 opportunity to create different thresholds based on some size
17 metric that we can use to provide more scaled regulation to
18 different types of companies.

19 The SEC has also asked the Commission -- or the
20 Committee to consider whether the costs and benefits of
21 regulation are proportional and whether there's a way to
22 maximize those benefits while minimizing the cost and also
23 facilitate capital formation.

24 So in looking at this, we'll just walk through some

25 of the factors that we considered, which many of are you
1 familiar with.

2 It was obvious to us that, first off, smaller
3 companies don't have the same economies of scale as large
4 companies. It's not rocket science for anybody to figure
5 that out, but it's the single most important fundamental
6 point behind our decision to look at different categories of
7 companies based on size for regulation.

8 Secondly is that the regulatory burden may have a
9 negative effect and an increase on cost of capital for
10 smaller companies trying to raise capital. And that can be
11 an issue in the success of smaller companies in America.

12 A third key point that we all observed going
13 through our work is that investors do in their work,
14 especially large institutional investors, they do categorize
15 companies based on different sizes. And they use that as an
16 approximation of different types of risk as they evaluate
17 their stock portfolios.

18 Investors, as you are all well aware, currently
19 allocate companies to different classes based on size. You
20 have the S&P 500. You have the S&P Midcap. You have the S&P
21 Small Cap. You have the Russell Indexes. Very much scaled
22 in size. So it's a framework very understandable and

23 commonly used by the investing public.

24 It was also our observation that, in general --

25 there's obviously exceptions to every rule -- but, in

1 general, most institutional fund managers consider and

2 discuss and talk about companies with a market capital of

3 less than \$1 billion as being a small cap company.

4 Other observations we made from different members

5 of the committee is that -- the excessive regulatory burden,

6 and we've talked a lot about 404 today, and that's certainly

7 part of the issue but not the only regulatory burden which we

8 considered. We considered the input of all the various

9 different subcommittees may be causing American companies to

10 seek to register outside the United States. And certainly

11 there's been much public comments and press reporting on

12 foreign issuers seeking to leave the U.S. markets for the

13 same reason.

14 Now, we spent a lot of time talking about size and

15 not only where you draw the line but what metric you choose

16 to use. And there's a lot of vigorous debate as to whether

17 we use market capitalization, we use public float, we use

18 revenues, we use number of locations, lots of different

19 factors.

20 And we tried to come back and our overriding

21 consideration to some of the key guiding factors that have
22 been laid down to this committee. One is to keep it simple,
23 and the other is to keep the investor protection of the SEC
24 at the forefront of our mind.

25 A couple other observations we made, these are
1 relative to the risk not only to individual investors but to
2 the overall capital markets. It's pretty clear that small
3 companies provide a significantly lower threat to the
4 confidence of capital markets than large companies.

5 And then, as I said, one of our goals is to further
6 the Commission's investor production.

7 Now, some of the data we considered, and I'm not
8 going to go through it, all of it, but just some key points
9 that I'd like to cover and the conclusions.

10 One, it was our conclusion that at the micro level,
11 as I said, smaller companies provide less of a risk to the
12 overall capital markets than large companies. And this was
13 surprising to me the extent to which this was true.

14 If you look at this chart here, at the left-hand
15 index we have the number of public companies that fall within
16 a particular market capitalization range. And that market
17 capitalization range is on the bottom. So you can see
18 there's about 2700 companies that have a market

19 capitalization between zero and \$25 million.

20 On the right-hand index, you have the percent that
21 that category makes up out of the total market capitalization
22 of all public companies in the United States. And so you can
23 see that the 2700 companies that have market capital of less
24 than 25 million make up the impressive sum of one-tenth of 1
25 percent of the market capitalization of the U.S. public
1 markets. So you have 30 percent, roughly speaking, of the
2 companies make up one-tenth of 1 percent of the value that is
3 at-risk for investors.

4 And on the other extreme you can see there's about
5 300 companies or about 3 percent of the total issuers that
6 make up about 67 percent of the total market cap. So you
7 have about 3 percent of companies representing two-thirds of
8 the total market capitalization.

9 And then you have a scale in between as it tails
10 off as you can see. And it's very clear that there's a very
11 big difference between both the size at either ends of the
12 scale and the relative risk that failure of one of these
13 companies would pose to the overall capital markets.

14 The second conclusion we reached is that the
15 regulatory burden is not proportional for smaller companies
16 as they're currently defined. And we looked at lots of

17 different inputs on this and from many of the subcommittee
18 members. There's a couple of simple data points to share
19 with you today.

20 One is data provided to us by the SEC Office of
21 Economic Analysis on the median of external audit fees. The
22 average and mean is quite higher. But if you look at the
23 median, we see that there's two data points here. One is for
24 2000; the other is for 2004.

25 And we can see a number of things. One, there's
1 obviously a scale. And there's a significant differential
2 between the percentage of revenues spent on audit fees.
3 These are just external audit. It doesn't cover internal
4 regulatory burden of doing 404 or your audit work. It's
5 quite different for a very small company than it is for a
6 larger company. It can be anywhere around 30 to 40 times
7 more expensive as a percentage of revenue for a small company
8 than a large company.

9 And obviously we've also seen there's been a
10 significant increase in that regulatory cost over the course
11 of the last four years. We've discussed that, and so I won't
12 dwell on it.

13 The AEA also did a study, and in their estimation
14 companies that have market caps less than \$100 million are

15 spending about 2 and a half percent of revenue on 404
16 compliance. Companies with more than \$5 billion in revenue
17 are spending about 0.0 -- or .05 of 1 percent, 1/20th of 1
18 percent, on SOX 404 compliance.

19 So you're looking at a relative differential from
20 the smallest to biggest of about 50 times the greater cost
21 relatively for smaller companies than for larger companies
22 for compliance with this particular regulatory burden.

23 A third conclusion is that investors recognize that
24 smaller companies carry different types of risks. And I
25 think this is stating the obvious. Investors allocate
1 companies to different classes based on size. And companies
2 that are smaller are generally considered to have some higher
3 inherent business risk. They tend to have less scale, less
4 market power, tend to have perhaps more concentration of
5 customers. And, in general, investors see them as a
6 different category of risk than very large companies.

7 And, as we said before, most institutional fund
8 managers classify companies with less than a billion in
9 market cap as small cap.

10 The fourth thing we looked at is the market
11 conditions in the public markets for smaller companies. And
12 the conclusion here is that the market conditions are

13 different and that the markets are inherently less efficient
14 for smaller companies.

15 Some of the data we looked at is trading volume.

16 As you would expect, there's an enormous difference between
17 the daily trading volume of smaller companies to very large
18 companies. No shocking data there.

19 Similar with the mean effective spread. You have a
20 range of about 3 percent effective spread for the very small
21 companies down to 0.06 I think it was for the biggest of
22 companies. And so you have a gain orders of magnitude in
23 difference in your effective spread of trading in these
24 securities.

25 A third data point we looked at here was the mean
1 number of analysts. And you can tell for small companies
2 under \$100 million essentially there's basically no coverage.
3 That's obviously a summary. But, in general, there's no
4 analyst coverage for companies below \$100 million when you
5 look at it on an average basis.

6 When you get above \$100 million, you start to get
7 some other coverage. And when you get over \$700 million, you
8 start to get a significant amount of coverage. And this is
9 obviously the phenomenon that was also observed by the SEC in
10 determining the well-known seasoned issuer criteria.

11 Another aspect we looked at was just institutional
12 ownership. To take a look at the different criteria, and you
13 clearly have very little institutional ownership at the very
14 small levels. You have this mid group where the
15 institutional ownership starts to rise. And then you have
16 these large companies over \$700 million where you have a very
17 substantial portion of the shares held by institutions.

18 A couple of other observations -- again, some of
19 this is repetitive -- but relative to capital formation we
20 did feel and felt there was a lot of substantive information
21 related to the proportionally greater cost of regulation for
22 smaller companies having an impact on capital formation.

23 We saw this yesterday in discussing companies that
24 might delay their IPO, companies that may choose to merge
25 instead of going public, companies that may choose to merge
1 instead of staying public.

2 There is an increase I feel that's well
3 communicated from the e-mail we got during the week in terms
4 of a Foley and Lardner study that there's a significant
5 number of companies taking a hard look at whether or not they
6 should go private. And we heard testimony -- or go dark. We
7 heard testimony from one such company yesterday.

8 Now, I think it's also clear from the press reports

9 and from other information received that domestic issuers are
10 starting to consider the possibility of listing overseas at
11 the very small capital, market capital level, and that
12 foreign issuers are looking to withdraw from the U.S.
13 markets.

14 Some other observations, not meant to be conclusive
15 but generalizations, it is felt that smaller companies do
16 have a higher cost burden relative to complying with some of
17 the corporate governance regulations and that smaller
18 companies may benefit, as we heard today, from slightly
19 longer transition periods in terms of the implementation of
20 new accounting guidance to give time for that guidance to
21 stabilize and for them with their limited resources to
22 implement. And it may take longer for them to do that
23 efficiently and effectively than a very large public company.

24 So moving on to the definition itself, I'm going to
25 cover the guiding principles in the definition. Then I'm
1 going to cover the metrics and give you the illustration of
2 the companies it affects and talk about a practical
3 implementation in very simple terms, and then we'll go into
4 the background in these guiding principles.

5 We came up with six guiding principles.

6 Number one is that we felt that the definition of a

7 smaller public company should be determined by total market
8 capitalization. As I said, we had a lot of public debate as
9 to whether that should be public float, whether that should
10 be revenue. And we came down, as I'll discuss in a few
11 minutes, on total market capitalization as the best metric
12 for us to use.

13 The measurement metric should facilitate the
14 scaling of regulations, so it should be such that it be used
15 for making regulatory determinations. It should be one that
16 is self-calibrating, that adjusts itself annually without
17 need for new rule making, new regulation, and to eliminate
18 the possibility that the definition could become obsolete
19 over time.

20 We felt the standardized measurement and
21 methodology should be determined by the Commission, that
22 there should be a clear date set for when that total market
23 capitalization should be determined, and that there should be
24 clear and firm transition rules.

25 I should also mention that we did deal with the
1 issue of is our role to provide a high level general guidance
2 to the Commission and -- in going about their work and
3 recommendations or should we get into the minutiae of
4 determining the exact implementation rules and legalese

5 around how all of these various different things and
6 mechanisms would work.

7 Our conclusion that our job as an Advisory
8 Commission and my committee was to provide high-level
9 guidance based on sound factual and evidential data and
10 should leave the determination of the mechanics and the
11 execution, that that would be more suited to the work of the
12 Commission staff and the Commission itself.

13 So our recommendation is that any company that
14 ranks in the bottom 6 percent of total U.S. public market
15 capitalization as defined by the SEC when the capitalization
16 of all public companies is considered should qualify as a
17 smaller public company.

18 And any company ranking in the bottom 1 percent of
19 total U.S. public market capitalization would qualify as a
20 microcap company.

21 And in looking at the data behind that, when we saw
22 the distribution of market caps and number of companies,
23 microcap companies by this definition would make up 50
24 percent of all U.S. public companies, but they would account
25 for only 1 percent of the total market cap of all public
1 companies in the United States. So 99 percent would be not
2 microcap and 1 percent would be microcap

3 The approximate cutoff, this changes every single
4 day so that we did not try to keep this up-to-date. But the
5 approximate cutoff when we did our work was about \$100
6 million. And that obviously would have to be determined on
7 the measurement date by the SEC annually going forward.

8 Smaller public companies, which would include
9 microcap companies for completeness here, would make up 80
10 percent of public companies and make up 6 percent of the
11 total market cap of all U.S. public companies. So the
12 smaller category, if you separate it from microcap companies,
13 would end up being 30 percent of the companies, making up 5
14 percent of the total market cap. And the cutoff level there
15 is somewhere around 700 million and slightly over that today.

16 We then determined that we would categorize all
17 companies over the 6 percent level as large public companies.
18 These would make up 20 percent of the public companies
19 accounting for 94 percent of the total market cap and would
20 represent all companies over a cutoff level of approximately
21 \$700 million.

22 And this is our recommendation.

23 In terms of practical implementation of this, we
24 would look to the SEC to determine on an annual basis to come
25 up with a measurement date on which day they will determine

1 the dollar value of each capitalization threshold and they
2 would determine on that measurement date that microcap
3 companies are companies under a certain dollar market cap
4 level as of that date and that smaller public companies are
5 also companies under a certain market capitalization as of
6 that date, using the 1 percent and 6 percent guidance that we
7 have provided.

8 Issuers would then use these market capitalization
9 levels to determine the appropriate category that they would
10 fall into for their next fiscal year. It is our clear
11 objective that each public company should be able to
12 determine themselves which category they fall into at the
13 start of each fiscal year. And we believe that that's a
14 clear direction we would like to see the Commission follow.

15 In terms of implementation standards to get a bit
16 more detail as to why we picked the guidelines that we did,
17 why we picked market capitalization, we feel that this is the
18 best metric that can be used to acknowledge the relative risk
19 to investors and also to further the investor protection
20 mandate of the SEC.

21 We did discuss extensively the use of public float
22 versus market capitalization and ultimately decided as a
23 group that we would use market capitalization because we felt

24 that it was a simpler, clearer definition, more easily
25 understood by the public. We also felt that since we were
1 using a scaling metric and picking a 1 percent level and a 6
2 percent level that that would provide the correct scaling to
3 all companies.

4 We picked a measurement that scales as opposed to a
5 dollar figure. We wanted to avoid a fixed dollar definition.
6 We wanted to allow a measurement that would apply uniformly
7 to all companies and one that they could easily understand.

8 We wanted the measurement measure metric to be
9 self-calibrating. We did not want it to have to rely on
10 continual reenactment of additional provisions, continual new
11 action by the Commission or staff. We wanted it to be a
12 recommendation that would have longevity and that would not
13 be obsoleted by changes in the market, be it upward or
14 downward.

15 We want to see the Commission establish a
16 standardized metric and publish the official metrics on how
17 you calculate market capitalization so that every company can
18 clearly determine that without the need for a lot of legal
19 help, and without the need not to incur any kind of
20 interpretive legal bills on how to figure out the metrics.
21 We would like to see a very simple market capitalization

22 metric be applied to determination so that all companies can
23 very easily determine the category for themselves.

24 We'd like to see the Commission determine a date,
25 an annual date, on which the determination of size will be
1 made. Each company would then measure themselves on that
2 same date and would then be able to make a determination as
3 of their next fiscal year which category they fall into.

4 And then also very much so we wanted to have very
5 clear transition rules. And these needed to be clear, easy
6 to understand, easy to interpret. Companies needed to be
7 able to path or plan their future path. They need to
8 understand the implications of the scaling of their business,
9 and they need to be able to make this determination
10 themselves relatively simply.

11 While we did not want to specify a transition
12 mechanism for the Commission, I think it was the general view
13 of all the members of the Size Subcommittee that we would
14 like to see a measurement metric in terms of transition that
15 looked beyond just one measurement date. And we wanted it to
16 be a measurement philosophy that would take into
17 consideration at least two annual measurement dates to
18 determine whether a company has moved down below a threshold
19 or has moved up beyond a threshold.

20 To simplify that, if you are moving from a small
21 company to a large company and at the first measurement date
22 that you trip over the large company metric, we would
23 consider it appropriate to continue to treat that company as
24 a smaller public company until it has exceeded that threshold
25 two years consecutively. And, vice versa, moving from large
1 to small.

2 And I now turn it back over to Jim who's going to
3 close. And we'll both be open for questions.

4 MR. THYEN: Okay. Thank you, Alex.

5 So here you have the purpose of our presentation.
6 Again, we're seeking approval of our recommendation. And the
7 six determinants are very important. They're a very
8 important requirement of our recommendation.

9 We think this gives the subcommittees ample working
10 room, that this is a working definition. Hopefully you've
11 got a good awareness of our work, a sound understanding of
12 the facts that we based it upon, the support we got from the
13 Office of Economic Analysis of the SEC, and that you have a
14 good appreciation for our logic.

15 The recommendation is designed to do these two
16 things: Again, provide that umbrella so that the other
17 subcommittees can work toward their specific end goals; and

18 to alert the SEC of our strategy and direction here in this
19 Advisory Committee in terms of the definition of a smaller
20 public company.

21 Certainly we think this definition does not
22 preclude the subcommittees which perhaps have different end
23 goals than just what's appropriate just for a blanket group
24 of smaller public companies.

25 It does not preclude other metrics being used to
1 define criteria for those recommendations, although we do
2 urge that we should stay -- keep it simple, try to keep it
3 uniform, not get too many subdivides underneath.

4 A key final point, and then we'll open it up for
5 discussion, these are the individuals that voted, if you
6 will, on the Size Subcommittee to bring this recommendation
7 to you. And I want to emphasize that we were unanimous on
8 where we converged on the six determinants and the
9 recommendation itself.

10 So let's move to questions. And as we approach the
11 questions and discussion or any comments anybody has, I would
12 encourage Pat Barry, Alex Davern, Dick Jaffee, Gerry Laporte,
13 Richie Leisner and Herb Wander, we all served on that
14 committee, feel free to jump in for any comments or any
15 clarity that's needed. The floor is open.

16 Yes, Pastora?

17 MS. CAFFERTY: Jim, mine is really a question to
18 better understand the decision of the subcommittee to leave
19 it open so that I understand flexibility.

20 And perhaps this is a way of getting unanimity, but
21 it seems to me that applying different metrics and different
22 committees for different purposes may take away from the
23 clarity of the definition which I think is the beauty of the
24 definition. The clarity of definition is really I think its
25 strength.

1 So I'd like to hear further from you or any member
2 of the subcommittee what the reasoning was. You know, you
3 can encourage, but why allow or why encourage, because you do
4 the moment you put the parenths in there, why encourage the
5 subcommittees to come up with their own metrics?

6 MR. THYEN: I'll take a stab, and then anybody else
7 can jump in.

8 We did drive pretty clearly I think for clarity,
9 for simplicity. We debated heavily all of the factors that
10 Alex brought up, float, revenue, and we converged on total
11 capitalization.

12 At the same time, when we looked at the
13 subcommittee end goals, if you go back to when we were formed

14 and the end goal and the agenda that we committed to, there
15 are different end goals for Capital Formation versus Internal
16 Control versus Governance and Disclosure and Accounting
17 Standards. And our role was to provide an overarching
18 definition and to enable each one of those subcommittees to
19 come forth with their recommendation for changing regulation.

20 And so we merely said that we believe strongly in
21 total capitalization. But if Internal Control, for example,
22 would come forward and believe strongly that it should be
23 revenue that determines complexity or scope, we think it
24 should be debated here with the full committee. It's not
25 something the Size Subcommittee should have precluded. That
1 was our reasoning.

2 MR. CONNOLLY: Jim?

3 MR. THYEN: Yes, Drew?

4 MR. CONNOLLY: This is Drew Connolly.

5 Jim, first of all, an incredible camel. Your
6 committee has designed a field ready, speed-ready for speed
7 camel from the different distinctive needs and assessments.

8 And I'd also like to offer Alex as a public speaker
9 for any effort I'm watching because it was clear, concise,
10 and incredibly persuasive.

11 I'm grateful, speaking from my perspective in

12 helping to try and finance little microcaps all my life and
13 also looking at the investor side of trying to develop
14 clarity in and among the Pink Sheets, the Bulletin Board, the
15 NASDAQ, Small Cap, where do you go, how do you find the
16 information.

17 What you've done here is create an elegant, simple,
18 self-calibrating, being the real genius of the definition,
19 and you've removed in some way by raising the ceiling to 100
20 million the stigma, the ghetto-ization, if you will, of so
21 many of these little public companies and the entrepreneurs
22 driving them. They are now in a much bigger field and
23 competing hopefully on a more even playing field with the
24 regulatory relief we hope to avail to them.

25 So you have my thanks and, quite frankly, my
1 embarrassment that I'm not working as hard as you are.

2 MR. THYEN: Well, the whole committee worked very
3 hard. And it was consensus work holding it all together, a
4 lot of data support from the Office of Economic Analysis.
5 Really we allowed the data and the deductive reasoning to
6 drive us to the threshold.

7 And the other aspect -- those determinants were
8 really designed around allowing companies to be able to
9 determine their direction, given the fact that the standard

10 for being public has raised and it's got to be well grounded
11 in the investor protection mandate, how that all came
12 together.

13 MR. CONNOLLY: If I may say, you have created the
14 perfect 6 percent solution.

15 MR. THYEN: Thank you for your kind words.

16 Anybody? Yes? Kurt?

17 And does any other committee member want to comment
18 on Pastora's?

19 Okay. Kurt?

20 MR. SCHACHT: I'm Kurt Schacht. Thank you.

21 Just a quick question. Did it give anybody pause
22 in this discussion that you're talking about assuming the
23 next step is applying to this group a reduced level of 404
24 internal control reviews that we're talking about four-fifths
25 of the public companies traded in this country to be held to
1 a lower standard? Was that discussed or was that an issue at
2 all?

3 MR. THYEN: It was discussed a lot. But it was not
4 discussed in terms of a lower standard for being a U.S.
5 public company. But it was discussed heavily in terms of
6 when we look at what drove the legislation and the
7 one-size-fits-all, we did discuss heavily the unintended

8 consequences of specific to the general. When we look at the
9 few companies that really led the violation of integrity and
10 the impact that has on the majority, that was the way we
11 talked about it.

12 But we didn't talk about it in terms of if you are
13 a certain size and you participate in U.S. public capital
14 markets that you are entitled to a lesser standard, if you
15 will. We didn't approach it that way.

16 Leroy?

17 MR. DENNIS: Jim, if there's no further discussion,
18 I would move that we adopt --

19 MR. THYEN: Well, I think there's more discussion.

20 Dick?

21 MR. JAFFEE: Jim is anticipating what I'm going to
22 say. I think I agree with Drew's comments. I think it was a
23 wonderful job, well done. I think it is an elegant
24 framework.

25 I am troubled sort of with the outcome. And we
1 struggled back and forth on this public float versus total
2 capitalization. And I agree that total capitalization is a
3 much simpler metric. You don't have to get into affiliates
4 or non-affiliates.

5 The argument for public float, however, is that

6 affiliated shareholders do not require or should not require
7 the protection by the SEC because they are essentially the
8 insiders who are running the business. I think that's the
9 logic of why the SEC currently takes total capitalization and
10 then subtracts the insider holdings to come to the public
11 float calculation.

12 So what troubles me about the definition as
13 recommended for passage is going back to what we did an hour
14 ago in terms of giving another year for avoidance of 404. In
15 we were to adopt this as written, it will actually increase
16 the number of companies who have to file for 404 or,
17 conversely, will reduce the number of companies who get
18 another year because this no man's land between 75 million of
19 public float and 100 million of total cap is the problem.

20 I don't know if I'm making myself clear. But
21 that's the issue.

22 Now, I had asked when this finally dawned on me --
23 and I certainly voted for it and I'm not backing away from
24 that -- but when it dawned on me that that was going to be
25 the outcome of this, I asked the folks, Cindy in the Office
1 of Economic Analysis, to get us some information. I just
2 checked with her again, and she said they're working on it
3 but they haven't come up with the data as yet.

4 So it troubles me that we're going to come up with
5 a definition that is going to end up -- the effect of which
6 is going to reduce the number of companies that can get
7 relief, quite frankly, if it were adopted as proposed.

8 MR. THYEN: Yes, Herb?

9 MR. WANDER: Well, I think that conclusion is
10 correct. However, I think I don't buy into the fact that all
11 affiliates have the ability to get the information and to
12 have access inside the company.

13 And I say that particularly because as a lawyer,
14 and maybe some of the nonlawyers have run into this problem,
15 the definition of "affiliate" is a very flexible, elastic
16 definition, and it can be applied if you want to buy, if you
17 want to sell, et cetera.

18 And so I don't think you can make the jump between
19 saying affiliates have access to information that
20 non-affiliates don't. So that's -- that's one answer.

21 The second answer is to eliminate the problem of
22 some poor company that happens to be below 75 million today
23 because they've got a big affiliate holding. There are ways
24 of dealing with that as exceptions.

25 For example, both the New York Stock Exchange and
1 the NASDAQ provide different rules for controlled companies.

2 And so you could say that if there is a controlled company
3 that's 50 percent owned by a person or a group that, in
4 effect, you could use that definition so that those people
5 would not be subject to the -- subject to going into a higher
6 class.

7 And my own conclusion on that was that that's
8 really sort of the details that the SEC should go into.

9 So while it's a problem, I think it's a much more
10 manageable problem.

11 MR. DAVERN: If I could add, Dick, two things. One
12 is that obviously we picked a level that 1 percent today --
13 not exactly today, but as of a couple weeks ago -- comes out
14 to about \$120 million, so we're using approximations here.

15 When you look at that versus the current public
16 float metric of 75 and you also categorize and take into
17 account that it's a scaling percentage that will adjust over
18 time as we go into the future, personally I find it highly
19 unlikely that we're actually looking at less companies that
20 would qualify regulatory relief as we go forward. I think
21 that's quite unlikely.

22 Secondly, I would support Herb's comment that
23 affiliates and insiders are different things, and those who
24 have inside knowledge and operation of the business, and many

25 times affiliates are not in that position. And I think that
1 to ignore that when we consider the SEC investor protection
2 mandate, you know, I don't think would be the best decision.

3 MR. JAFFEE: I'm persuaded that total cap is the
4 right answer. I'm still sort of struggling with the level.

5 Could I ask my friend, Mr. Coolidge here, in the
6 business what do you think of as a microcap company? Do you
7 have a number?

8 MR. COOLIDGE: Dave Coolidge.

9 Under 100 million I think is about right. I know
10 that's -- it's all in the eyes of the beholder. But I know
11 mid cap definitions are -- sometimes start higher than a
12 billion dollars, a billion and a half.

13 We have a mid cap fund I think we define it as a
14 billion and a half to 5 billion in market capitalization.
15 So, in that case, anything under a billion and a half would
16 be considered a small cap company, not microcap.

17 But it's -- I'd say that this captures kind of what
18 the small cap universe is to a large extent, maybe not
19 completely. If you're talking about a \$700 million cutoff or
20 so.

21 MR. JAFFEE: I'll second the motion.

22 MR. THYEN: Any others from the committee? Pat

23 Barry, you got anything? Richie Leisner, anything to add?

24 MR. ROBOTTI: On that point.

25 MR. THYEN: Yes. Bob?

1 MR. ROBOTTI: Informationally I would say, of
2 course, the smallest company in the Russell 2000 is Airspan
3 with a \$182 million market cap. And, of course, Russell this
4 year introduced the new index called Microcap Index. So
5 definitionally they think that that's a reasonable number.

6 Small cap funds normally would measure themselves
7 against the Russell 2000. So, therefore, indicating that
8 small cap fund kind of sees the universe as the Russell 2000.
9 And Airspan market cap, as I said, is 182 million.

10 So in my mind definitionally the best definition
11 out there probably for a microcap really is where the cutoff
12 is for the Russell, and that's 182 million. So I would
13 really kind of think the microcap number is probably larger
14 than, you know, the 100 million which, you know, always has
15 kind of been the size it's been. But that's, you know, an
16 objective measurement that the investment community uses.

17 That's all I would mention.

18 MR. CONNOLLY: Jim, the only thing to respond to
19 that is that I don't believe that there are any Pink Sheet
20 components in the Russell calculus. Right? So that the

21 entire -- that tier, how ever many several thousand companies
22 are there, are never calibrated in those indexes. Right?

23 MR. ROBOTTI: That's true. However, even if you
24 were to consider them, there are very few that would be in
25 the index. It wouldn't really --

1 MR. CONNOLLY: Right.

2 MR. ROBOTTI: -- wouldn't change the number,
3 wouldn't change the composition.

4 MR. THYEN: Rusty?

5 MR. CLOUTIER: I just wanted to mention something.
6 You know, Kurt mentioned about, you know, taking, you know,
7 two-thirds of the companies and putting them in the small
8 business when this chart shows it very clearly.

9 I mean, you know, 200 companies in the United
10 States control 67 percent of the market cap. I would say at
11 least 100 of those most probably on the systemic list of the
12 fed systemic companies could not be allowed to fail due to
13 systemic risk to the country.

14 So, you know, you've got to look at what they
15 control, you know, not how many of them are there. Because,
16 you know, out of a lot of the small companies, they just
17 don't control very much. And I think this chart very, very
18 clearly shows it.

19 And the problem is the number at the top is getting
20 much smaller. I think if you would project this out maybe
21 another 4, 5 years you may be down to 150 companies
22 controlling 75, 80 percent of the market caps in the country
23 because we are a consolidating country very, very fast.

24 So I just wanted to make that point. When you look
25 at the numbers, you've got to look at it both ways.

1 MR. THYEN: The greater the disproportional burden,
2 the greater that consolidation will occur.

3 MR. CLOUTIER: Correct. And I mean, you know, we
4 can sit here the rest of the afternoon and I can make very
5 strong arguments that the people on the top of that curve
6 have no regulatory burden because of the systemic risk and
7 other reasons, that they are granted a lot of leeway that
8 other companies cannot have due to the fact that it is very
9 difficult to reign them in if they make a move because of
10 various considerations to public policies and other things.

11 MR. JENSEN: Jim, I have a question.

12 MR. THYEN: Yes, Mark.

13 MR. JENSEN: This is Mark Jensen.

14 Did the committee think about or talk about what
15 I'm going to call special situations, meaning hyper-growth
16 companies that I think you had said, Alex, that the

17 definition spans a two-year period, so you take your average
18 market capitalization over a two-year -- for two years before
19 you decide what classification you're in?

20 Without -- and I know we haven't really talked
21 about what kinds of disclosures would fit or what kinds of
22 activities would go to one level of these companies or the
23 other -- but I think one of the things we need to think about
24 are what I'm going to call hyper-growth companies that, you
25 know, grow exponentially in the marketplace and present, you
1 know, frankly a high degree of risk because of the way they
2 grow.

3 God love those companies we all want, we all want
4 to be associated with them. But, at the same time, they
5 present a different kind of risk profile both to auditors as
6 well as investors.

7 And so I think we've got to be cautious that when
8 we do something like this we don't automatically trigger the
9 fact that an audit firm would not want to take on one of
10 those companies because they have some kind of reduced
11 disclosure or some kind of reduced requirement that would
12 cause the audit risk to go too high as well as I think
13 watching -- being very cautious on investor protection.

14 MR. DAVERN: Perhaps I could -- This is Alex

15 Davern.

16 Perhaps I could deal with that. We did, Mark,
17 consider that as one of the factors we considered in our
18 thought processes. And, number one, we wanted to keep it
19 simple. And, number two, the number of companies that fit
20 into the category you're talking about tends to be relatively
21 small.

22 And I think, number three, is especially an issue
23 related to audit provisions, if there was some different
24 perhaps regulatory status of smaller or microcap companies
25 relative to 404 if that does emerge, I think if you see a
1 company that crosses that threshold and in practical terms if
2 the audit firm investment bankers or auditors have an issue,
3 I think they'll see the market determine that they would have
4 to apply themselves to higher standards. I think the market
5 is likely also to adjust and take account of some of those
6 differentials.

7 And having considered those points, we opted to go
8 with the provision of keeping it very simple for all
9 companies and feel like each subcommittee, obviously if they
10 feel there's an exception in their area related to issues
11 such as the one you rightly bring up, that they could carve
12 out an exception at the subcommittee level as we go forward

13 with our work.

14 MR. THYEN: I would add, Mark, that we consciously
15 did not include a time line in our determinants. We set
16 clear and firm transition rules. And we talked about is that
17 two years, is that three years, or what is that? But in
18 terms of a definition of size, it was deliberate that we
19 didn't define further those rules for that kind of
20 flexibility.

21 And we basically said if you're a company and
22 you're pursuing hyper-growth, if you know these things, you
23 ought to be able to look out and know exactly what you need
24 to do two years from now to comply with all laws, of being
25 public.

1 MR. JENSEN: Yeah. I think it's just something --

2 MR. THYEN: It is.

3 MR. JENSEN: And I will not disagree with you. But
4 it is something the accounting firms will wrestle with, will,
5 you know, potentially be in the position of telling a client
6 that they need to incur substantial fees even though by law
7 they might not need to.

8 I mean there are issues that need to be wrestled
9 with. And I'm sure the SEC will do that. I'm just raising
10 them.

11 MR. THYEN: Economics is a great leveler.

12 MR. JENSEN: Yes. But, actually, we're getting
13 used to telling them. Never mind.

14 MR. THYEN: Good discussion. I think it's
15 important we have this discussion as a full Advisory
16 Committee and get well grounded because the work that we're
17 doing is very important. And we're going to be converging in
18 each one of our subcommittees, and this will drive a lot of
19 our convergence.

20 Yes, Pastora?

21 MS. CAFFERTY: Jim, never wanting to let go of a
22 point, I understand why you did this I believe. But I do
23 think this is a very elegant analysis, extremely elegant,
24 extremely persuasive, extremely clear.

25 And I am wondering if the subcommittee would, while
1 not taking a position, be more likely than not to encourage
2 the other subcommittees to try to stay with this definition
3 because it seems to me that I would not want to, you know, to
4 question a resolution on this.

5 I think this is very important. As a matter of
6 fact, I think this may be the most important thing that is
7 done in this committee.

8 Having said that, I'm wondering if the subcommittee

9 would encourage the other subcommittees to really very
10 seriously try to adhere to this definition while in no way --

11 MR. THYEN: That would be my hope. And when we
12 look at the members of the Size Subcommittee, they are
13 members that are very much engaged in each one of the other
14 subcommittees. And they're very persuasive, very informed.

15 MS. CAFFERTY: Yes, they are.

16 MR. THYEN: And so, yes, it's up to them.

17 But, yeah, our hope here on these guiding
18 principles and where we're trying to go on the definition,
19 when we link it back to our overarching principles, we push
20 for simplicity, clarity, clear line of sight,
21 self-determination, all the components under there. But, at
22 the same time, we said one size does not fit all.

23 MS. CAFFERTY: Absolutely.

24 MR. THYEN: We have to provide some room for
25 flexibility.

1 MS. CAFFERTY: Absolutely.

2 MR. THYEN: But, yes, as Co-Chair of the full
3 Advisory Committee, I would hope we would not come with a
4 bunch of other metrics to get this all confused and hard to
5 administer.

6 MS. CAFFERTY: Thank you.

7 MR. DAVERN: Jim, I think we're going to lose
8 another committee member in just a minute.

9 MR. THYEN: Okay. This is the recommendation. Any
10 other discussion? If not, it's a unanimous recommendation
11 from the subcommittee, so I assume that's a first and second
12 motion. But however you want to handle that, Herb. Leroy I
13 guess made the motion.

14 MR. DENNIS: I'll make the motion again that the
15 Committee adopt this recommendation as drafted.

16 MR. THYEN: Do we have a second?

17 MR. CONNOLLY: I'll second it. This is Drew
18 Connolly.

19 MR. THYEN: Drew. All right.

20 Any further discussion? All in favor -- well,
21 let's see. I think, Herb, picking up on your webcast, this
22 is an important vote, maybe we should do a roll call vote.
23 And we'll start and go around clockwise.

24 And, myself, I vote yes, affirmative.

25 MR. DAVERN: Alex Davern. I vote yes.

1 MR. CONNOLLY: James A. Connolly. I definitively
2 vote yes.

3 MR. BROUNSTEIN: Rick Brounstein. I vote yes.

4 MR. LEISNER: Richie Leisner. I vote yes.

5 MR. SCHACHT: I pass.

6 MR. THYEN: Okay.

7 MR. BARRY: Pat Barry. Yes.

8 MR. JENSEN: Mark Jensen. Yes.

9 MR. ROBOTTI: Bob Robotti. Yes.

10 MR. CLOUTIER: Rusty Cloutier. Yes.

11 MS. CAFFERTY: Pastora Cafferty. Yes.

12 MR. WANDER: Herb Wander. Yes.

13 MR. DENNIS: Leroy Dennis. Yes.

14 MR. JAFFEE: Dick Jaffee. Yes.

15 MR. COOLIDGE: Dave Coolidge. Yes.

16 MR. THYEN: And Janet Dolan, who left earlier, told
17 me to inform everybody she's voting yes.

18 So I think it passes. Thank you. Our work is done
19 with the Size Committee. So the Size Subcommittee is
20 adjourned.

21 And Herb will move on to the next piece of
22 business.

23 MR. WANDER: Yes. All right. We have a couple of
24 items still on the agenda.

25 The first I'm going to turn to is the tabled motion
1 that smaller public companies not be subject to faster filing
2 dates.

3 During the break, all of the legal scholars in the
4 room went to the Internet and figured out that nonaccelerated
5 filers do not have faster filing dates. So that if we want
6 this recommendation to have, in effect, teeth in it to be
7 effective, it should really be smaller public companies, as
8 we have defined it in our previous motion, should not be
9 subject to faster filing dates.

10 So I think with that clarification, is it
11 necessary -- I think it is necessary to have a motion to take
12 it off the table. Is there a motion to do that?

13 MS. CAFFERTY: Can we do that?

14 MR. WANDER: Yes.

15 MS. CAFFERTY: I move to take it off the table.

16 MR. CLOUTIER: Yes. I second it.

17 MR. WANDER: And Rusty seconds it. So now it's
18 back on the table as defined, that it would be smaller public
19 companies, as we have just established the definition for our
20 purposes, not be subject to faster filing periodic reports
21 with the SEC. And I guess do we have --

22 MR. BROUNSTEIN: Can I make a comment on that?

23 MR. WANDER: Sure. Sure.

24 MR. BROUNSTEIN: So what we've done now is -- Rick
25 Brounstein, sorry -- is propose a formula, but it has not

1 been implemented by the SEC. We don't know what the date
2 will be, what the size will be.

3 It seems to be complicated if we try to today say
4 they're not accelerated, the next 30 days we're not going to
5 help anybody. You know, unless we pick the number today,
6 other than -- different than our definition. We don't -- We
7 don't have a definition that says as of today there's a
8 number. We said we have six guidelines --

9 MR. WANDER: Well, I guess if you would let it to
10 us to sort of modify it to say that's the sense of our
11 recommendation but that we recognize our defined term is not
12 something established in the law and so the SEC would have to
13 deal with that issue. Is that a fair way to handle that?

14 MR. BROUNSTEIN: But my only comment, just from a
15 practical standpoint, is, you know, if Mark's clients are
16 trying to figure out whether they're accelerated or not for
17 planning purposes, they won't know until someone sets a
18 criteria as of a date.

19 MR. CONNOLLY: Good point.

20 MR. CLOUTIER: Herb?

21 MR. WANDER: Yes, Rusty.

22 MR. CLOUTIER: You know, I just wish to remind
23 everybody that the name of this committee is Advisory

24 Committee. So it is to advise and consent. What we do here
25 holds no regulatory law per se. That does not happen -- My
1 understanding, I'm not a legal scholar, but until the
2 Commission votes on it does it become official.

3 I think what my motion states very clearly is we're
4 recommending that they not increase the accelerated filing.
5 We have also sent a motion to them, a recommendation, on the
6 Size Committee of what they should consider.

7 But all of this is up to the SEC to put a rule out
8 and to make it happen.

9 I think as far as Mark and his clients I think very
10 much would be watching this and watching to see, you know,
11 what will come about.

12 And I think 30 days is important. I mean, you
13 know, I think some movement here is important, what comes out
14 of this meeting. And, you know, we are not setting policy.
15 I don't want anybody to think that all of a sudden we have
16 decided that 600 -- 700 million and they're not going to be
17 accelerated filers. All of this goes to the Commission who
18 may or may not accept it.

19 So I do think the 30 days is important. That's why
20 I put it on the floor.

21 MR. WANDER: So that's -- Dick?

22 MR. JAFFEE: Dick Jaffee.

23 Isn't there another terminology that I've forgotten
24 now that is a well-seasoned issuer? And wasn't that 700
25 million of public float or something like that? What's that
1 term?

2 MR. WANDER: WКСI.

3 MR. JAFFEE: WКСI. Okay.

4 Could we pass this resolution then? Informally
5 when you discussed it with the SEC staff, it sort of
6 coalesces around the WКСI concept that they've already
7 adopted, haven't they?

8 MR. WANDER: Yes. They've already adopted it.
9 It's not effective until December I think.

10 I frankly don't see, Rick, this as a problem
11 because I view it somewhat like Rusty does. We're making a
12 recommendation and we're saying that, you know, the system
13 will not be able to handle these accelerated filings, and by
14 the system the resources available to the companies and the
15 resources available at their accounting firms won't be able
16 to do it.

17 And unless there's some relief now, I'm fearful
18 that the accounting firms are going to start to have to say,
19 "I have so much personnel, I have so much time available, and

20 I can't do this," and, therefore, they'll start firing or
21 discharging clients now.

22 MR. BROUNSTEIN: Again, Rick Brounstein.

23 Let me make sure I understand. It sounds like what
24 we're saying is the recommendation has nothing to do with the
25 size vote we just had, it says that if you are today on the
1 nonaccelerated path we're suggesting to the SEC that you
2 remain on that nonaccelerated for this next goal then?

3 MR. WANDER: Not -- the only reason I'm hesitant to
4 do that is our charter is to deal with smaller public
5 companies. And so while we can suggest that they consider
6 all public companies on this path, we are concerned with
7 smaller public companies.

8 I think that would be more in tune with our
9 charter. Okay?

10 I don't think it has any difference in effect at
11 the end of the day with the SEC. They understand what we're
12 doing.

13 MR. BROUNSTEIN: Okay.

14 MR. JENSEN: Herb, I just wanted to react to what
15 Rick said, too. I mean I do think it's best left in the
16 hands of the SEC. We'll just be stuck in the mud if we try
17 to resolve every issue.

18 No one around the table is an expert in all the SEC
19 rules. Well, some people are, but they're not voting
20 members.

21 MR. WANDER: But then if you saw we even had --

22 MR. JENSEN: And a few people are, I feel sorry for
23 you.

24 But I think the point I'm making is if we start
25 to get involved in the debate about what we've now made a
1 size recommendation but that hasn't been approved, we're
2 going to be stuck in that kind of quandary for months now
3 because I don't anticipate the SEC is going to immediately
4 move on that size recommendation. They'll have to study it.
5 Or maybe they will, things being clear.

6 So I just think I agree with you. It's a subtle,
7 maybe not so subtle message we think this needs to happen for
8 the good of these smaller companies. And if they see fit to
9 do it on the larger companies, that would be all the better
10 because it would just create more flexibility in the system
11 and allow everybody to comply in a timely fashion, in an
12 appropriate fashion, in a thoughtful fashion, which is what
13 we all want. So that's my point.

14 MR. WANDER: All right. Is there any other
15 discussion? If not, I think we can have a voice vote on

16 this. All in favor?

17 (Chorus of ayes.)

18 MR. WANDER: All opposed? Any opposed? Any
19 abstentions? All right. So it is unanimously passed.

20 Now I'm going back on our agenda.

21 MR. DENNIS: Herb, can I make one comment real
22 quick? This is Leroy Dennis.

23 Just following up on Rusty's comment, I think it's
24 important that people listening on the webcast or people
25 reading the text of this committee's minutes to emphasize
1 that these are just recommendations to the SEC, including the
2 delay of 404. So if companies are out there celebrating that
3 we have automatically changed the law under 404 and that they
4 no longer have to comply with the law, that is not the case.
5 I mean we have made a recommendation to the SEC to consider
6 it. Hopefully they do that. But it's clearly now in their
7 court.

8 And I hope that we don't read in the "Wall Street
9 Journal" tomorrow that all of a sudden this law has changed
10 because of this Committee's recommendation.

11 MR. WANDER: I wish it would. But you're
12 absolutely right. It hasn't.

13 MR. CONNOLLY: And, Herb, this is Drew Connolly.

14 As a corollary to that, because we are webcast,
15 because this is essentially the first indication that the
16 constituents, be they the public companies, the
17 practitioners, or the investors are going to have that this
18 is the basis of our work product, we are open for public
19 comment letters.

20 And I would hope that we would be encouraging them
21 in support of our work product because clearly these are our
22 recommendations. But I suspect that we're collectively
23 voicing the hopes and aspirations of a lot of people.

24 MR. WANDER: That's a very good point, Drew.

25 And Leroy's is a very good point.

1 These are only recommendations, that will be, I'm
2 sure, seriously considered. And that we are still looking at
3 valuable input from all the constituents.

4 I want to go back on the agenda because Dick Jaffee
5 made a report and Rusty made a motion and then we discussed
6 that motion, in fact now just passed it. But I didn't allow
7 for other discussion of Dick's report. And Rick has some
8 questions.

9 MR. BROUNSTEIN: Yes. Rick Brounstein again.

10 It now feels like minor stuff compared to what
11 we've just been through.

12 But on the corporate governance, the 10 points
13 raised, I just had a couple inputs I just wanted to get on
14 the table for the subcommittee.

15 And one had to do with Regulation S-B. I've been
16 involved down at the smaller level. And I would say most of
17 the companies that can qualify for Reg. S-B are trading on
18 the Bulletin Board or the Pink Sheets. So I'm not sure that
19 there's the "taint."

20 The flipside is as people have been forced to
21 switch accountants, especially the smaller companies, one of
22 the big advantages of Reg. S-B it's just two years of
23 reporting rather than three years. And if you're trying to
24 get a new auditor, the bigger auditors don't want to stay
25 with you and consent for another year. You really have to go
1 back and do, in many cases, catch-up audits. And another
2 year is a significant cost.

3 So I just wanted to raise that point before we
4 recommend we throw away S-B --

5 MR. JAFFEE: Let me just make an comment. I
6 certainly am not really familiar with the S-B situation. But
7 I think the thrust of what we're talking about was not so
8 much to throw away and not keep the benefits. We want to
9 keep its benefits, but then incorporate them upstream in an

10 attempt to remove the stigma that is viewed in the
11 marketplace.

12 So we weren't getting rid of the benefits. We were
13 just getting rid of the nomenclature is my understanding.

14 MR. BROUNSTEIN: But, again, that might be a tough
15 one to do. In other words, if you're part of S-K and it's
16 three years and two years, then it's going to be hard to make
17 it two and one.

18 MR. JAFFEE: I think the way Steve said it in his
19 writeup was a new S-K. Maybe he'll go to an SL or an SN --

20 MR. BROUNSTEIN: That's fine. That was just -- I
21 just wanted to at least raise that point.

22 The other one was on the 8-K and disclosures on
23 8-Ks, first I strongly support transparency. But the other
24 piece of the equation may be worth looking at is some of the
25 days deadlines, the time deadlines. I know we've been
1 looking at, you know, what's realistic for smaller companies.

2 And some of these new 8-Ks come with pretty accelerated
3 timing that make it difficult for smaller companies to get
4 their facts together and get them reported.

5 So before you dismiss it, maybe, you know, maybe
6 there should be some different timing.

7 MR. JAFFEE: Good point. Thank you.

8 MR. WANDER: I think both of those are very good
9 points, particularly the fact that if you're in a changing
10 accountants world, one of the real problems -- for those who
11 aren't familiar with it -- is you're still tagged with your
12 old auditor for two years which is an expensive and difficult
13 and time-consuming problem. So it's a very real problem and
14 I'm glad you raised it.

15 MR. DENNIS: Herb?

16 MR. WANDER: Yes, Leroy?

17 MR. DENNIS: Leroy Dennis.

18 I just want to comment that being in a middle
19 market CPA firm where we've had our fair share of
20 opportunities to succeed Big Four accountants, we've not had
21 any situations where the Big Four have not been willing to
22 consent. I agree it is a process that requires them to
23 review and consent again, and there are costs associated with
24 it.

25 But I've not seen an unwillingness by the large
1 firms to not consent to that. I suppose if there were
2 situations where the company was not on the up and up then
3 you might have some different answers with that.

4 MR. WANDER: Well, it's not so much a consent. I
5 think, look, all the firms are very professional. So they're

6 going to -- they're going to stick by their old clients and
7 stick by their profession.

8 But the problem is twofold at least. There may be
9 more. One is I haven't been in there, and you're filing a
10 10-K. And I want to know what's going on. And so they may
11 have to do more than just sort of go back.

12 And, secondly, they're under such pressure to get
13 their own client's work done, where do you get on their time
14 schedule. And that's not a criticism. It's just I think a
15 fact of life.

16 MR. DENNIS: And I agree that it is an issue. But
17 I will tell you at least in our experience if you properly
18 plan and notify and meet your commitments I've not seen a
19 situation where they have said, "Well, we've got our client
20 to do and so, therefore, we're going to not meet your
21 deadline for filing. " They have been very cooperative.

22 MR. JENSEN: And, Herb, this is Mark Jensen.

23 I mean I don't think any of the firms are holding
24 their clients hostage to not signing consents where they've
25 already signed off on financial statements. I would agree
1 with you there's probably more work that is done. It is time
2 consuming. It is difficult. Everybody is under a lot of
3 pressure. It's not something people want to do. But it is a

4 fact of life.

5 What Rick may have been referring to is in S-1s and
6 filing documents where there may have been several
7 accountants involved, usually one of the -- whoever the firm
8 is going to take the company public does go back and audit
9 those prior years. And there are obvious reasons for that.

10 But I'm not aware of any circumstance other than
11 where there was a good circumstance as to why you would sign
12 a consent to client, which the client knows the successful
13 auditor would know that, too, why that consent is not being
14 signed.

15 MR. WANDER: I think what Rick was saying is don't
16 take away the two-year requirement that exists in S-B because
17 it's costly to have another third year.

18 MR. JENSEN: That's right.

19 MR. WANDER: I think that's --

20 MR. BROUNSTEIN: That is a fair assessment. And my
21 anecdotal case was what Mark was talking about. It happened
22 to do with a reverse merger. And the bigger four didn't want
23 to get associated with that load public and they had to go
24 back and do two years versus three years worth of audits.

25 MR. WANDER: Any other discussion for Dick Jaffee?

1 Okay. We're on the next item on our agenda, San

2 Francisco meeting, which will be in conjunction with a small
3 business forum. It will be at the Hyatt Wharf. I suspect
4 we'll probably have to get there Sunday night. Is that
5 correct?

6 MR. LAPORTE: This is Gerry Laporte.

7 Yes. The meetings are scheduled to start at 9:00
8 o'clock on Monday morning. So I think that means that most
9 of the people, other than a couple people who live in the San
10 Francisco Bay area, probably will have to get there Sunday
11 night.

12 Although, Herb, as you correctly pointed out a
13 little while ago, you and Jim have not signed off on this
14 schedule yet. So I'm fully aware of that. So we have to
15 still reach --

16 MR. WANDER: We'll try and have the hearings on
17 Monday and subcommittee meetings and committee meeting on
18 Tuesday.

19 Those flying east, unless you want to take the red
20 eye, you'll have to spend Tuesday night on the West Coast. I
21 think that's what the travel plans will look like.

22 MR. SCHACHT: What's the location?

23 MR. WANDER: It's the Hyatt Wharf.

24 MR. CONNOLLY: Fisherman's Wharf.

25 MR. WANDER: Well, it's the Hyatt Wharf.

1 MR. CONNOLLY: Can I just ask a question? We're
2 having hearings, what, one day? Does that mean the typical
3 four-person panel or two four-person panels?

4 MR. WANDER: Well, I frankly would hope we'd have
5 probably three or four panels, and hurry them along a little
6 faster. This will be our last hearing date.

7 MR. CONNOLLY: So there's been no Dallas, no Miami
8 calendared? Is there some discussion later on?

9 MR. WANDER: I don't think so. We have a scheduled
10 meeting, somebody reminded me at lunch, in October. Gerry?

11 MR. LAPORTE: Herb, Tony Barone just accurately
12 corrected what I said. The current schedule that we're
13 proposing for the 20th is that the Advisory Committee would
14 meet only in the morning on Tuesday. So that people could
15 leave, you know, 12:30, 1:00 o'clock at lunchtime.

16 MR. WANDER: Well, but I hate to do this
17 housekeeping, but you're all here, the Monday meeting is in
18 conjunction with the small business forum. So there will be
19 items going on during the day that are outside really our
20 committee, although they're very related. So will that be
21 enough time to have hearings, subcommittee meetings, and a
22 committee meeting?

23 MR. LAPORTE: Right. The hearings are scheduled,
24 we call them round tables, for Monday morning. Okay? The
25 subcommittee meetings are scheduled for Monday afternoon.

1 And the business session, like the session we just had of the
2 full Advisory Committee, is scheduled for Tuesday morning.
3 So that's our proposal.

4 MR. WANDER: Thank you for the --
5 Since I have family living out there, I'm going to
6 stay.

7 Pastora?

8 MS. CAFFERTY: We had a discussion at lunch, this
9 is further housekeeping, and we were confused. Some of us
10 have in our schedules an October meeting in Washington. And
11 there was some confusion about whether that was still on the
12 schedule or not.

13 MR. WANDER: It is still on the schedule.

14 MR. JAFFEE: It is? This is when my assistant --
15 Dick Jaffee.

16 When my assistant called the SEC and inquired, she
17 was told it was taken off the schedule. So I think we better
18 get that straight.

19 MR. LAPORTE: She didn't talk to the right person
20 at the SEC.

21 MR. JAFFEE: Okay. What's the date of that?

22 MR. WANDER: The 24th and 25th.

23 MS. CAFFERTY: Right,

24 MR. JAFFEE: Of October. Okay.

25 MR. WANDER: Any other items of business?

1 Housekeeping, substantive, procedural?

2 Before we close, I would like to thank on behalf of

3 the whole Advisory Committee the John Marshall Law School and

4 actually the Chicago Bar Association who were kind enough to

5 provide us hospitality. It's very nice. I think this room

6 lent itself to our meetings.

7 And is there a representative from John Marshall in

8 the room today?

9 MR. O'NEILL: No.

10 MR. WANDER: No? If not, we will convey our thanks

11 to them and to the Chicago Bar Association.

12 Is there any other further business? If not --

13 MR. JENSEN: Herb, I have two points.

14 First of all, you were a very gracious host. And I

15 think we should all give you a round of applause.

16 (Applause.)

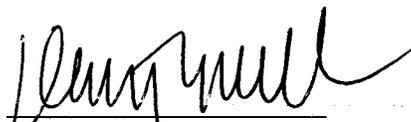
17 MR. JENSEN: And the second comment is whether that

18 was an expectation of what the people who live in the Bay

19 Area are going to expect?
20 MR. DENNIS: Absolutely.
21 MS. CAFFERTY: Absolutely.
22 MR. WANDER: Anything else? Motion to adjourn?
23 MR. CLOUTIER: So moved.
24 MR. WANDER: Second?
25 MS. CAFFERTY: Second.
1 MR. WANDER: All in favor?
2 (Chorus of ayes.)
3 MR. WANDER: Thank you all very much.
4 (Whereupon, the proceedings were concluded at 4:10
5 p.m.)

CERTIFICATION

I hereby certify the accuracy of this record of the proceedings of the SEC
Advisory Committee on Smaller Public Companies.



Herbert S. Wander
Committee Co-Chair

10/28/05

Date

**Exhibit A: List of Members of the Public Who Provided
Written Statements and Presentations**

Advisory Committee on Smaller Public Companies

1. Written Statements Received and Presentations Made

[Release Nos. 33-8560; 34-51417; File No. 265-23]

Aug. 10, 2005 Slide Presentation of Size Task Force, Alex Davern

Aug. 9, 2005 Bill Travis, Managing Partner, McGladery & Pullen LLP

Aug. 9, 2005 Donald S. Perkins, Chairman, Nanophase Technologies, Inc., Romeoville, Illinois

Aug. 9, 2005 David Bochnowski, Chairman and CEO, NorthWest Indiana Bancorp Munster, Indiana, and Member Government Affairs Steering Committee America's Community Bankers

Aug. 9, 2005 Joseph A. Stieven, Director, Stifel, Nicolaus & Company, Inc.

Aug. 9, 2005 James P. Hickey, CFR, Principal and Technology Group Head, William Blair & Company

Aug. 9, 2005 Charlotte M. Bahin, Senior Vice President, Regulatory Affairs, America's Community Bankers

Aug. 5, 2005 Cary J. Meer, Kirkpatrick & Lockhart Nicolson Graham LLP

Aug. 3, 2005 Charles J. Urstadt, CEO; Willing L. Biddle, COO and President; James R. Moore, CFO and Executive Vice President, Urstadt Biddle Properties Inc.

Aug. 3, 2005 Mark A. Schroeder, President & CEO, German American Bancorp

Aug. 2, 2005 Mark B. Barnes, Ice Miller, Indianapolis, Indiana

Aug. 2, 2005 James A. Clark, Chief Financial Officer, Critical Path, Inc.

Aug. 1, 2005 McAllister Consulting L.L.C.

Jul. 29, 2005 Vicki W. Li, Stevens & Lee, King of Prussia, Pennsylvania

Jul. 29, 2005 Michael K. Molitor, Assistant Professor, Thomas M. Cooley Law School, Grand Rapids, Michigan

Jul. 29, 2005 Geoffrey Grier, Senior Vice President, Marketing & Sales Proxy Service Division, Research Data Group, Inc.

Jul. 22, 2005 Benjamin Gettler, Chairman and CEO, Vulcan International Corp.

Jul. 19, 2005 Charlotte M. Bahin, Senior Vice President, Regulatory Affairs, America's Community Bankers

Jun. 30, 2005 Arnold Orlander

Jun. 29, 2005 Brian Small, Director of Finance, Amtech Systems, Inc.

Jun. 27, 2005 Merlin E. Zitzner, Chairman & CEO, The Baraboo Bancorporation, Inc.

Jun. 22, 2005 Gregory Pusey, President Advanced Nutraceuticals, Inc

Jun. 17, 2005 Professor William J. Carney; see also [slide presentation](#)

Jun. 17, 2005 Edward S. Knight, Executive Vice President and General Counsel, The Nasdaq Stock Market, Inc.

Jun. 16, 2005 Murray S. Cohen, CEO, Epolin

Jun. 16, 2005 John P. O'Shea, President, Westminster Securities Corp.

Jun. 16, 2005 David L. Cox, Chairman, President and CEO, Emclair Financial Corp., Farmers National Bank

Jun. 15, 2005 Opening Statement of David N. Feldman, Managing Partner, Feldman Weinstein LLP

Jun. 14, 2005 Gayle Essary, Managing Director, Investrend Research and CEO, Investrend Communications, Inc.

Jun. 13, 2005 Andrea Psoras, Principal, Strategic Advisory; Member, New York Society of Security Analysts

Jun. 12, 2005 Samuel J. Yake, Paoli, Pennsylvania

Jun. 10, 2005 R. Cromwell Coulson, Chief Executive Officer, Pink Sheets

Jun. 08, 2005 William (Bill) A. Loving, Jr., Executive Vice President and Chief Executive Officer of Pendleton County Bank on behalf of the Independent Community Bankers of America

Jun. 08, 2005 Stephen J. Nelson, The Nelson Law Firm LLC

Jun. 08, 2005 Philip V. Oppenheimer, Oppenheimer & Close, Inc.

Jun. 08, 2005 Steve Nagel, President, Kolorfusion International, Inc.

Jun. 08, 2005 Karl Kirwan

Jun. 08, 2005 Victoria Duff, CEO, Bold Ventures Group

Jun. 07, 2005 Michael Ramos, CPA

Jun. 07, 2005 Karl R. Barnickol, Barbara Blackford, Linda K. Wackwitz, Subcommittee on Smaller Public Companies, Securities Law Committee, Society of Corporate Secretaries & Governance Professionals

Jun. 06, 2005 Richard D. Brounstein, Chairman of the Small Public Company Task Force, Financial Executives International and Member of the SEC Advisory Committee on Smaller Public Companies

Jun. 06, 2005 Richard D. Brounstein, Chairman of the Small Public Company Task Force, Financial Executives International

Jun. 01, 2005 Deloitte & Touche LLP

May 31, 2005 Karen Kerrigan, President & CEO, Small Business & Entrepreneurship Council, Washington, District of Columbia

May 31, 2005 Robert J. Kueppers, Chair, Center for Public Company Audit Firms

May 31, 2005 Ernst & Young LLP

May 31, 2005 Charles W. Barkley, Attorney at Law, Charlotte, North Carolina

May 31, 2005 Ronald J. Simpson, Chief Financial Officer, Minefinders Corporation Ltd.

May 31, 2005 Debra Fiakas, CFA, Managing Director, Crystal Equity Research, New York, New York

May 31, 2005 Stephen M. Brock, CEO & President, Public Company Management Corporation, www.PublicCompanyManagement.com , www.PubcoWhitePapers.com

May 31, 2005 Joel Jameson, President, Silicon Economics, Inc., Cupertino, California

May 31, 2005 BDO Seidman, LLP

May 31, 2005 KPMG LLP

May 30, 2005 Michael T. Williams, Esq., Williams Law Group, P.A., Tampa, FL

May 30, 2005 David N. Feldman, Managing Partner, Feldman Weinstein LLP

May 26, 2005 Peter Chepucavage

May 26, 2005 Steven J. Sharp

May 26, 2005 Phillips W. Smith, Ph.D., Paradise Valley, Arizona

May 24, 2005 Kathryn Burns, Vice President and Director of Finance, Monroe Bank

May 24, 2005 John B. Williamson, III, Chairman, President and CEO of RGC Resources, Inc.: RGCO; Director and Audit Committee Chairman of Optical Cable Corporation: OCCF; Director and Audit Committee Chairman of Botetourt Bankshares Inc.: BORT.OB

May 24, 2005 Gayle Essary, Managing Director, Investrend Research (<http://www.investrendresearch.com>), CEO, Investrend Communications, Inc. (<http://www.investrend.com>)

May 24, 2005 Brad Smith, President, WBS&A, Ltd.

May 23, 2005 Scott Shaw

May 17, 2005 James A. Brodie, Managing Director, Carr Securities

May 11, 2005 Frederick D. Lipman, Blank Rome LLP, Philadelphia, Pennsylvania

Written Statements Regarding First Meeting

Apr. 12, 2005 James A. Brodie, Managing Director, Carr Securities Corporation, Port Washington, New York

Apr. 12, 2005 Catherine Connally, CIA, President, Issues Central Inc., Toronto, Canada

Apr. 08, 2005 Christopher Cole, Regulatory Counsel, Independent Community Bankers of America

Apr. 07, 2005 Richard D. Brounstein, Executive Vice President and Chief Financial Officer, Calypte Biomedical Corporation

Apr. 07, 2005 Nelson Obus, Wynnefield Capital, Inc.

Apr. 01, 2005 Financial Executives International

Mar. 31, 2005 Independent Community Bankers of America