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
# TABLE OF CONTENTS

Discussion of Witness Presentations and Written Statements Received for Meeting

Reports of Subcommittee Activities
- Internal Control Over Financial Reporting, Janet Dolan Page 10
- Capital Formation, E. David Coolidge Page 26
- Accounting Standards, Leroy Dennis Page 31
- Corporate Governance and Disclosure, Richard M. Jaffee Page 38

Report of Recommendation of Subcommittee on Internal Control Over Financial Reporting on Extending Compliance Date for Certain Companies to Meet Sarbanes-Oxley Section 404 Requirements
- Janet Dolan, Richard D. Brounstein Page 20

Report of Recommendation of “Size” Task Force on Definition of “Smaller Public Company”
- James C. Thyen, Alex Davern Page 65

Report of Recommendation Regarding Acceleration of Filing Dates For Annual and Quarterly Reports of Smaller Public Companies
- Rusty Cloutier Page 104

Next Steps Page 117

Adjournment Page 121

Certification of Accuracy of Record of Proceeding Page 121

Exhibit A -- List of Members of the Public Who Provided Written Statements and Presentations Page 123
MR. WANDER: I'd like to welcome everyone to our third public meeting of the Advisory Committee on Smaller Public Companies, welcome our guests, and welcome all of those who are listening to the webcast.

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

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

Are there microphones over there?

MR. O'NEILL: We're fine.

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

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

And the first item on our agenda is any discussion that any of the Advisory Committee members or observers would like to make concerning the presentations we heard yesterday afternoon, as well as some of the responses to the questionnaires that have already been received or other
written presentations made to the subcommittee -- or to the committee. Any comments, suggestions, suggestions for the future?

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

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

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

And it sort of revalidated the position that I've come to -- and I sent an e-mail to Herb and Jim a couple of days ago -- which is that many of the things in Sarbanes-Oxley people can discuss and have pros and cons about the various aspects of corporate governance, independence of directors, certifications, whistle-blower provisions. But, in general, none of those things broke enormous new ground for corporate America, particularly small businesses.
When we got to 404, that was a major departure for all of us who had to comply. And I don't want to paraphrase what they said again, but I can speak for myself, the cost benefit of 404 for a small public company just doesn't seem to be there. And the cost is enormous.

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

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

MR. WANDER: Any other comments?

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

I know I've had some privately -- some private ones. But we'd also like to hear from the committee members on who you'd like to hear from in San Francisco in addition
to those people that Mark is lining up for us, particularly from Silicon Valley.

Any other comments, suggestions? Good.

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

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

Gerry Laporte?

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

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

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

MR. CONNOLLY: Mr. Chairman, I left myself just 30
seconds to state that the witnesses yesterday were incredibly diverse. And I'm very pleased to know that in addition to the issues on Sarbanes-Oxley, which were clearly the compelling and overriding ones that pulled us together, we are commencing testimony, commencing looking at some of the other federal securities regs, some of the rules, some of the applicability.

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

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

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

And we are also, at the conclusion of her report, moving up item number four on our agenda so Janet can make the recommendation that the committee adopt a resolution recommending to the SEC that they approve for another year the implementation of internal controls over financial
So, Janet, we're ready for your report and then for
the discussion on the resolution, which, by the way, you
should all have at your place. And those of our guests, if
you need a copy of the resolution, just put up your hands and
someone will give you one.

Janet?

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

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

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

I also want to thank all of those who have sent
written comments throughout this process, particularly in
anticipated of this Chicago meeting being the meeting devoted to 404. So for all of you who have submitted your written comments, we appreciate them very much.

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

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

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

Third, a major driver of the cost of 404 for
smaller companies has been driven by the scarcity of resources for small companies to comply with 404. And this is driven by a number of factors. I’ll just cite two of the ones we hear the most about.

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

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

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

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

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

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

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

Number one: In the current auditing environment, to consider what some of the factors are in the current
auditing environment and how it is implemented -- impacting
the implementation of 404 for small companies.

Some of the factors that we will be looking at are:
auditors risk aversion, auditors tort liability, auditors
guidance versus compliance practice, and the scarcity and
cost of audit services.

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

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

The fourth area is micro companies, small -- the
smallest of the small -- micro companies and their special
needs. Again, should there be a special consideration about
the implication of revenue size within our definition, which
is based on market cap, the appropriateness of 404 for these
companies, and the unique nature of their investors.

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

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

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

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

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

That's the report of the 404 committee.

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

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

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

MR. WANDER: Leroy?

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

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

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

16
there's going to be some overlap.

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

But maybe the two Chairs want to comment on that.

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

Dick Jaffee, please?

MR. JAFFEE: Dick Jaffee.

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

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

What we hope to do -- And I want to say that I think everyone who ever serves on one of these advisory
committees always recognizes that you want to avoid the boiling of the ocean as your goal.

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

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

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

But there's another category which all producers of potentially -- materials that could be potentially dangerous -- are familiar with. It's called GRAS status, g-r-a-s. It means "generally regarded as safe." And so if you put out a
product, you as a producer can declare -- and there are
certain criteria’s for this obviously -- that your material is
generally regarded as safe.

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

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

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

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

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

MS. DOLAN: Okay. I'll be very brief because I think our recommendation is probably pretty self-explanatory. But on June 5, 2003, the SEC established the compliance dates for the nonaccelerated filers and form drive issuers regarding control over their financial reporting requirements. And it set a date for those companies whose first fiscal year fell on or after July 15, 2005. It had subsequently on March 2, 2005, extended that deadline one year to those whose first fiscal year fell after July 15, 2006.

We are recommending that we -- to the SEC that they extend that deadline one more year to those companies whose first fiscal year is on or after July 15, 2007, or that they adapt it -- if there are other timing considerations, but that they extend it for a full year.
And the reasons for this I think are, as I said, probably self-explanatory.

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

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

And then, finally, we certainly understand that with any process the more time that elapses the more opportunity there is for guidance and learning and best practices and just the more opportunity for the latest filers to learn from those who have gone before them. So extending
another year will certainly give more time for those
companies to learn as much as they can and hopefully reduce
the first-year impact on them as much as we can.

So those are three major reasons to support the
recommendation.

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

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

MR. DENNIS: Second.

MR. CONNOLLY: I'll second.

MR. WANDER: Leroy Dennis seconded it.

Any discussion?

MR. JAFFEE: Just a question. Dick Jaffee.

Maybe this is an implementation step that goes
beyond our resolution. Are you saying, Janet, that for those
companies who got the extra year they are getting another
year or are you saying that we're going to recalibrate based
on changed market prices and shares outstanding and the new
group of companies get another year? Or have we not thought
about that? It's an implementation question really.

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

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

MR. WANDER: Okay. Any other discussion?

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

MR. WANDER: Actually, if you look at the reasons
supporting the written resolution, the last one says, "The
Advisory Committee believes that the Commission should take
action and implement this recommendation as soon as
possible."

MR. CONNOLLY: Okay. All right.

MR. WANDER: Yes, Rick?

MR. BROUNSTEIN: Rick Brounstein.

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

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

Any other discussion? If not, since Jim and I
talked about this before, since we're on -- webcasting this,
we probably ought to have everybody go around the room and
everybody vote individually so people who are listening know those voting.

So I will vote in favor of that.

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

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

MR. COOLIDGE: Dave Coolidge. Yes.

MR. CONNOLLY: Drew Connolly. Yes.

MS. LAMBERT: Debbie Lambert. Yes.

MR. BROUNSTEIN: Rick Brounstein. Yes.


MR. SCHACHT: Kurt Schacht. Yes.

MR. BARRY: Pat Barry. Yes.

MR. DAVER: Alex Davern. Yes.

MR. JENSEN: Mark Jensen. Yes.

MR. ROBOTTI: R. Robotti. Yes.

MR. CLOUTIER: Rusty Cloutier. Yes.

MS. CAFFERTY: Pastora Cafferty. Yes.

MR. DENNIS: Leroy Dennis. Yes.

MS. DOLAN: Janet Dolan. Yes.

MR. THYEN: James Thyen. Yes.

MR. WANDER: Thank you. The motion passes unanimously.
And I will tell you that Alan Beller at an ABA meeting Monday morning said that Commissioners are looking for interim recommendations. And so here's one that they can put their teeth into.

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

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

The first is with respect to listing standards. One of the issues that has been raised has been the pool of qualified available directors having shrunk somewhat due to definitional issues and also some folks who aren't as anxious to be directors as they might have been in the past.

I think our view is that this issue has overlapped with the Governance Committee. And we are going to defer to the Governance Committee's recommendations in this particular area with the thought that perhaps some of the definitional areas be loosened somewhat, cooling-off periods for the purpose of becoming independent be reduced somewhat, but believe that the Governance Committee ought to take whatever thoughts we have and put it into the considerations that they take and make a determination.
So we had the discussion. We have some mild feelings that it might be helpful to loosen up somewhat the definition of independent directors and allow a few more people perhaps to qualify.

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

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

And I think we feel that the NASD should devote time and resources to making the bulletin board market a viable market. There are issues of companies leaving the bulletin board market because of failure to file their documents with the SEC. Perhaps the NASD can nurture this market. Perhaps there's some things that the NASD can do to make it a viable market because this is where lots and lots of smaller public companies trade. And to see that market be diminished in any way we think would not be helpful to capital formation. So we will be addressing hopefully the
NASD and perhaps even dialoguing with them to see what plans they may have in mind.

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

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

So we're trying to preserve what we have. The marketplace will have to come back from where it's gone. But hopefully we can sustain what is out there in terms of research for smaller public companies.
The next item on our agenda was the issue of Regulation S-B. We have some thoughts on how to either incorporate that into Regulation S-K or do some other things. We have a size definition before us later in the agenda I believe. And any recommendations we make with respect to the Regulation S-B will be dovetailed with the size definition. So that's something that we will get back to once we have the size criteria figured out.

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

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

I mentioned at our previous meeting thoughts on 404
attestation. I believe in this case we're going to defer to Janet's committee again. We have some thoughts on how to make it less of a burden if it's going to, you know, be a fact of life of smaller public companies how we can adjust either the frequency of filing or the depth of the review. But, again, our thoughts will be shared with Janet's committee to have that figured out at that committee level. Some smaller items. Rule 701, which is a limitation on stock option grants before you have to start disclosing certain information. Thoughts on raising that threshold from the current $5 million, thoughts on -- I think we'll probably refer this to our Accounting Subcommittee -- thoughts on how to treat stock option expense when it comes to 404 reviews and materiality, and I think a whole series of thoughts on the present private placement rules that need to be updated so that folks can function successfully in the private placement arena, and not run afoul some current regulations that probably need some updating. That's what we discussed and what our tentative thinking is. And we will try and bring it to a conclusion when the committee is ready to deal with formal recommendations.

MR. WANDER: Are there -- Is there any discussion
of David's report, questions, recommendations, additional
thoughts?
Hearing none, we will move on to Leroy Dennis and a
report of the subcommittee on accounting standards.

MR. DENNIS:  Thank you, Herb.  Leroy Dennis, the
Accounting Standards Subcommittee.
I would say our group is beginning to formulate
some recommendations in their mind. We're still in the
process of doing some research and are very much interested
in the testimony that we will receive next time in September.
And we can talk about this later on.
I think we heard a lot, this last testimony, about
the 404 relationship with auditors. We'd like to hear a
little bit from -- a little bit more from maybe the investor
side in the future as to what their feelings are.
But our committee is right now looking at the
attributes of what I call the microcap companies, the
smallest public companies, and whether they -- whether the
attributes of those company align more closely with private
companies versus public companies and looking at the needs of
the stakeholders of those -- of those companies and which
group they better align with.
Depending on the results of that research, we are
looking at and exploring recommendations around the ideas of going to the FASB and the SEC staff with recommendations around implementation time lines for smaller public companies, for transition rules, for new standards for smaller and microcap companies, and, again, depending on the results of our research, whether or not it is beneficial for shareholders as well as users of the statements to have the accounting standards more closely aligned with the private company standards versus the public companies standards for accounting.

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

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

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

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

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

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

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

And whether there's some additional guidance to help in that and help accelerate that, we're in the process of exploring.

Finally, I think in the area of independence we also are exploring whether or not we can be out of this black-and-white rule on independence and put a little bit more judgment in the process so that auditors may be willing, more willing, to -- I hate to use the words "take a risk,"

but the penalties for making an honest mistake are less severe than a complete lack of independence. And so that a company's filings would still be valid. And is there some areas of judgment that we can put into that process that helps us get to the right answer but also doesn't allow us to be so rigid that maybe we follow the rule and get to the wrong answer.
And so I don't know where all that will come out, but that is clearly one of the biggest struggles we have right now is that last area in our subcommittee.

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

MR. JENSEN: This is Mark Jensen.

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

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

MR. JENSEN: I was thinking more along the lines of
is there -- would there be improvements in the area of
accessibility of small companies with the staff, some kind of
a pre-clearance review or various things that might help
smaller companies just comply with the law in a more
efficient fashion I guess is --

MR. DENNIS: We have not looked at that, Mark.

That's something we could take up. I don't think that was on
necessarily our agenda. But that's something we could take
up if we think that's appropriate to add.

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

MR. BROUNSTEIN: Hi. Rick Brounstein.

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

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

MR. BATAVICK: Yes. I'm on that subcommittee along
with fellow -- this is George Batavick.

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

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

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

MR. WANDER: Any other discussion?

MR. CONNOLLY: Mr. Chairman?

MR. WANDER: Yes, Drew.

MR. CONNOLLY: Drew Connolly.

I'm delighted to hear that Mark made that suggestion. I wasn't quite sure where in the committee structure this would fit.
But the truth is that the interaction between a potential issuer with the 15c2-11 process, the 10-K, the 10-K, the interaction with the SEC and/or the NASD, that the entire process of either getting or staying public has a lot of regulatory interaction with issuers and major delays and major expense items which go toward capital formation. So perhaps finding where the bottlenecks are or taking a look at that process maybe up to and including the recommendation that broker dealers be allowed to receive compensation to file those. All of those issues are intertwined. And I don't necessarily know that they're being spoken about.

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

MR. CONNOLLY: I'll make my case.

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

Further questions? Suggestions?

Okay. Moving right along, the last subcommittee report we have is Corporate Governance and Disclosure. The chair of that subcommittee is on vacation, and in Steve's place Richard Jaffee has filled in.
MR. JAFFEE: I'm Dick Jaffee. Thank you, Herb.

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

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

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

And it's interesting because we're down to a list of ten, but we're not at all ready to recommend in the ten areas. And I was reminded of when I went to the University of Wisconsin and they always talked about a process of "sifting and winnowing." And that's what's been going on with our deliberations. We've been sifting and winnowing.
And in a couple cases I think we've talked ourselves out of recommending in this area.

But let me quickly run over the ten areas.

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

And there doesn't seem to be any purpose to it. In fact, it almost seems to us to be counter-directional because the faster we do something the more likely we are to have either incomplete information or inaccurate information. It seems to me all our mothers used to say "haste makes waste."

And I think that's the case here with this recommendation. So we don't see any particular measurable benefit to investors, and we would encourage that we not have this phase-down or acceleration.

One last item to point out here is that there seems
to be more and more filings, at least in my company, of 8-Ks.

Whenever anything happens, that legal counsel says, "Oh, we ought to file an 8-K." So if there is any big deals going on, we think that the investor will know about that through the 8-K process.

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

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

You've heard Rusty talk about it, and other people from the community banking area, that their area has a special problem of being very regulated already by a number of -- by the Fed, by FDICIA, by the Comptroller of the Currency. And so if there were a way to avoid duplicate
filings for those people, that would be something that we might take a look at.

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

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

And so what we've been sort of kicking around is maybe a phase-in where over -- particularly for a new issuer, that maybe there would be some time limit where the company
would have an opportunity to attract and orient independent
directors, particularly, you know, a financial expert and so
forth, which sometimes can be tough to find.

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

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

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

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

Kevin, what's an SAB?
MR. O'NEILL: Staff Accounting Bulletin.

MR. WANDER: Staff Accounting Bulletin.

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

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

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

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

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

I know from my point of view I've always encouraged our people when in doubt disclose because then you get the
information out there. I think it's in defense for the
company. And I think it's a good thing for the investor to
be able to then make his own -- his or her own judgment about
a company based on what he's heard.

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

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

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

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

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

MR. JAFFEE: So that was one of the issues that we,
you know, have got on our list. I don't think we have any
specific recommendations. I think it would be highly
technical, but it is something that should be I think
addressed because I checked with a person in our company
who's very competent and she was explaining to me the
difficulties of doing these EDGAR filings.
Another area that was on the list --

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

MS. DOLAN: And it adds times.

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

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

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

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

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

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

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

I sent to Herb and Jim an e-mail the other day, and I attached what we call a regulatory snapshot that I asked our general counsel to prepare for me. And I won't read it
to you. But it's got, I don't know, 30 or 40 federal and
state agencies that my company complies with on a daily,
weekly, monthly, and yearly basis.

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

I think that while, you know, we're losing jobs
outsourcing to lower labor costs, I think, going forward, the
regulatory burden in this country is going to become a
competitive disadvantage. And to whatever extent this
committee can lean against that I think would be a good thing
So and then, finally, I would just make the obvious comment if we're here to protect the investor and we take the investor's money away from him in the form of a confiscatory tax and cost of all this regulation, we're not protecting him too well.

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

MR. WANDER: Thank you very much, Dick.

Rusty's hand, I see that.

MR. CLOUTIER: Yes. Dick, just a technical point.

I guess this morning when we were meeting I did not have a copy of the proposed resolution. But certainly I think our committee would be happy to move ahead one item, and that would be item number one, which does kind of go with the resolution about, you know, not accelerating filings for small business.

And I certainly don't know where at the Securities and Exchange Commission and this rule currently is sitting, on accelerating that, I mean I know it was -- we all agreed that it should not be accelerated this morning. And I think if the people from the SEC think it would be appropriate we might want to add that as a resolution to say we also agree
don't accelerate that either, just like we talked about the
accelerating filing situation.
So just kind of a technical point. But when I read
it this afternoon after this made me think about that, you
know.
MR. JAFFEE: Rusty, I think it's a very good
suggestion. I don't know whether we can do that. But if
they're really look for interim recommendations, could we put
one of those together?
MR. JENSEN: Herb, this is Mark Jensen. I think --
you know, I really know what they're saying. I think this is
an issue that needs to be acted on quickly. You know,
companies are setting up their plans for year-end right now.
And if they are not going to have to accelerate, that is
going to influence on how they set their work flows up.
MR. WANDER: We had actually thought of putting
this on the September agenda, but I don't see any reason for
not addressing it now if there's so much universal support
for it, which would be essentially to continue the filing
schedule as is without accelerating the filing schedule for
issuers coming up next year.
Pastora?
MS. CAFFERTY: If Rusty will make that as a motion,
I would be happy to second it. There was very clear unanimity on our committee. And I think it would be appropriate.

MR. CLOUTIER: So moved.

MR. CONNOLLY: But one second --

MR. WANDER: Could we get a second first?

MR. DENNIS: I second it.

MR. WANDER: Well, Pastora --

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

MR. CONNOLLY: This is Drew Connolly.

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

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

But one of the problems is that I think we ought to make it clear that we don't want them to accelerate anything right now because, if they accelerate it, then it gets very
difficult, no matter what the size is, to go back.

So I think it is that we can send the intent of

this committee, understanding we haven't dealt with all the

size questions, that the intent is we don't want to

accelerate the file because, unlike Mark, a lot of companies

are getting ready to do things and we want to get a clear

message that this committee is not in favor of acceleration,

understanding that the size question is still under there,

but under the current rules not accelerating anything.

That's what my motion is.

MR. CONNOLLY: So we're opposing accelerating even

for the accelerated filers?

MR. WANDER: The nonaccelerated filers.

MR. CLOUTIER: Nonaccelerated.

MS. CAFFERTY: Nonaccelerated.

MR. CLOUTIER: The acceleration that we have today.

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

MR. JENSEN: Could you clarify for everybody what

an accelerated filer is? It's $75 million --

MR. WANDER: Nonaffiliated market float.

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

There are phase-in rules for them and phase-in for

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

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

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

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

What I'm concerned about is people who have not
accelerated already, and there are plenty of them, that are preparing to accelerate that we say just if you could hold off, Commission, until we get further down the road, but let's not accelerate anyone else that is not accelerated already. That's my motion.

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

MR. CLOUTIER: What's that, sir?

MR. WANDER: All issuers.

MR. CLOUTIER: Yes.

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

MR. COOLIDGE: No.

MR. WANDER: Leroy?

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

MR. CLOUTIER: I would yield to the people of the
SEC because I mean I don't know what the Commission's time frame is.

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

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

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

MR. JENSEN: I think --

MR. WANDER: Mark. And then Dick.

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

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

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

MR. JAFFEE: Dick Jaffee.

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

Now, how the SEC chooses to interpret that, define it, and enforce it or implement it, they're going to have to do the same kind of thing with our earlier recommendation, to think through, well, is it going to be those we gave a pass
to last year or are we going to give another evaluation date.

And you said you talked to them about the problem of having a mid-year evaluation.

But I think if we just pass this, they then can deal with it. If they want to make it for all filers, that's fine. If they want to make it for smaller publicly-traded companies and define who they are in that context of this resolution, I think we ought to do it and that's then up to them to decide how they implement it.

MR. CONNOLLY: It puts it on their calendar.

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

Because clearly -- and that's one of the ambiguities of our role I think is we have an obligation to express -- it's kind of like raising children -- tell them what you think but not how to do everything. And so we're telling them what we think. We shouldn't accelerate. But how you're going to do it, you're in the business of figuring that out.

MR. WANDER: That's been my problem I guess raising children. I didn't know that rule.

MR. DENNIS: I do want to go on the record as I did not call the SEC a child in this.

MR. WANDER: Yes, Rick?

MR. BROWNSTEIN: Just one comment, in coming back
maybe to the first resolution that we passed. We specifically passed it for the nonaccelerated filers, and we didn't want to get into the issue of we're going to make a suggestion to redefine a small -- a smaller public company. And then we got all our work to do with what we're going to do in that definition.

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

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

MS. CAFFERTY: I think that was our intent, Dick, to really --
MR. BROUNSTEIN: Okay.

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

MR. BROUNSTEIN: Yes.

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

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

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

MS. CAFFERTY: Well --

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

MR. DENNIS: So, this, Herb -- this is Leroy Dennis -- this would mean that companies over 75 million in public float yet under the $700 million threshold would be
subject to acceleration?

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

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

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

MR. JENSEN: That's correct.

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

MR. JENSEN: But I'm presuming then, you know, they're still just in the normal filing cycle. So why --

They're not ones that are stuck doing this under the acceleration.

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

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

MR. CONNOLLY: The motion was made and seconded.

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

Dave?

MR. COOLIDGE: Yes. Dave Coolidge.

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

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

MR. WANDER: We can handle this, it seems to me, in
two ways. One, we can table this until after we discuss the
csmaller company size definition and then address this
resolution to fit whatever action we take there. Or we can
keep it the same as I've read it, in effect, for the
nonaccelerated filers but ask the Commission that it give
consideration to an across-the-board delay.

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

MS. CAFFERTY: I think --

MR. WANDER: Pastora?

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

MR. WANDER: Is there any disagreement with that?

If not -- Was there a second to the tabling? I think --

MR. DENNIS: This is Leroy Dennis.

Second.

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

(Chorus of ayes.)

MR. WANDER: Opposed? I saw a hand in the back of
the room.
MR. CLOUTIER: Herb, when we agree to table it, I just want to be clear that I think we'll end up with three things going to the Commission from what I'm looking at right now.

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

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

MR. CLOUTIER: What that definition ends up being.

Okay?

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

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

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

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

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

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

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

And we were formed -- Our objective was simple. We
were formed in May as a subcommittee. We really wanted to
bring to the full Advisory Committee a recommendation
defining smaller public company. And we used the overarching
principles, the guiding principles for the entire Advisory
Committee to guide our work.

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

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

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

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

So our purpose here today in this presentation is

we are really seeking your approval of our recommendation.

And we want you to be well grounded in our work. We want you
to understand the supporting facts so that when we leave this
forum, leave this body, we can be united even when we're not
together.

And the purpose of the subcommittee's

recommendation is really to provide an umbrella definition

that would be used to guide each of the subcommittee's work,

whether it's Capital Formation, Corporate Governance and

Disclosure, Accounting Standards, or Internal Control. We

also want to alert the SEC of our definition strategy and our
direction. This will be guiding the way we go.

I think, with that, Alex Davern is going to walk us

through the logic and bring us up to the recommendation.

MR. DAVERN: Thanks, Jim.

As Jim said, many of you guys have already received

a copy of this presentation. And much of the information

that we're going to share with you was provided to us by the

SEC staff. And many of you have seen this information

already. And it may be quite obvious to you and information

you're very familiar with. So I don't intend to take a lot
of time on dwelling on the data today.

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

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

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

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

So in looking at this, we'll just walk through some
of the factors that we considered, which many of are you
familiar with.

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

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

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

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

It was also our observation that, in general --

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

general, most institutional fund managers consider and

discuss and talk about companies with a market capital of

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

Other observations we made from different members

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

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

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

considered. We considered the input of all the various

different subcommittees may be causing American companies to

seek to register outside the United States. And certainly

there's been much public comments and press reporting on

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

same reason.

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

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

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

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

revenues, we use number of locations, lots of different

factors.

And we tried to come back and our overriding
consideration to some of the key guiding factors that have
been laid down to this committee. One is to keep it simple,
and the other is to keep the investor protection of the SEC
at the forefront of our mind.

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

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

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

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

If you look at this chart here, at the left-hand
index we have the number of public companies that fall within
a particular market capitalization range. And that market
capitalization range is on the bottom. So you can see
there's about 2700 companies that have a market
capitalization between zero and $25 million.

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

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

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

The second conclusion we reached is that the regulatory burden is not proportional for smaller companies as they're currently defined. And we looked at lots of
different inputs on this and from many of the subcommittee members. There's a couple of simple data points to share with you today.

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

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

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

The AEA also did a study, and in their estimation companies that have market caps less than $100 million are
spending about 2 and a half percent of revenue on 404 compliance. Companies with more than $5 billion in revenue are spending about 0.0 -- or .05 of 1 percent, 1/20th of 1 percent, on SOX 404 compliance.

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

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

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

The fourth thing we looked at is the market conditions in the public markets for smaller companies. And the conclusion here is that the market conditions are
different and that the markets are inherently less efficient for smaller companies.

Some of the data we looked at is trading volume. As you would expect, there's an enormous difference between the daily trading volume of smaller companies to very large companies. No shocking data there.

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

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

When you get above $100 million, you start to get some other coverage. And when you get over $700 million, you start to get a significant amount of coverage. And this is obviously the phenomenon that was also observed by the SEC in determining the well-known seasoned issuer criteria.
Another aspect we looked at was just institutional ownership. To take a look at the different criteria, and you clearly have very little institutional ownership at the very small levels. You have this mid group where the institutional ownership starts to rise. And then you have these large companies over $700 million where you have a very substantial portion of the shares held by institutions.

A couple of other observations -- again, some of this is repetitive -- but relative to capital formation we did feel and felt there was a lot of substantive information related to the proportionally greater cost of regulation for smaller companies having an impact on capital formation. We saw this yesterday in discussing companies that might delay their IPO, companies that may choose to merge instead of going public, companies that may choose to merge instead of staying public.

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

Now, I think it's also clear from the press reports
and from other information received that domestic issuers are starting to consider the possibility of listing overseas at the very small capital, market capital level, and that foreign issuers are looking to withdraw from the U.S. markets.

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

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

We came up with six guiding principles.

Number one is that we felt that the definition of a
smaller public company should be determined by total market
capitalization. As I said, we had a lot of public debate as
to whether that should be public float, whether that should
be revenue. And we came down, as I'll discuss in a few
minutes, on total market capitalization as the best metric
for us to use.

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

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

I should also mention that we did deal with the
issue of is our role to provide a high level general guidance
to the Commission and -- in going about their work and
recommendations or should we get into the minutiae of
determining the exact implementation rules and legalese
around how all of these various different things and mechanisms would work.

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

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

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

And in looking at the data behind that, when we saw the distribution of market caps and number of companies, microcap companies by this definition would make up 50 percent of all U.S. public companies, but they would account for only 1 percent of the total market cap of all public companies in the United States. So 99 percent would be not microcap and 1 percent would be microcap
The approximate cutoff, this changes every single day so that we did not try to keep this up-to-date. But the approximate cutoff when we did our work was about $100 million. And that obviously would have to be determined on the measurement date by the SEC annually going forward.

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

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

And this is our recommendation.

In terms of practical implementation of this, we would look to the SEC to determine on an annual basis to come up with a measurement date on which day they will determine
the dollar value of each capitalization threshold and they
would determine on that measurement date that microcap
companies are companies under a certain dollar market cap
level as of that date and that smaller public companies are
also companies under a certain market capitalization as of
that date, using the 1 percent and 6 percent guidance that we
have provided.

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

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

We did discuss extensively the use of public float
versus market capitalization and ultimately decided as a
group that we would use market capitalization because we felt
that it was a simpler, clearer definition, more easily understood by the public. We also felt that since we were using a scaling metric and picking a 1 percent level and a 6 percent level that that would provide the correct scaling to all companies.

We picked a measurement that scales as opposed to a dollar figure. We wanted to avoid a fixed dollar definition. We wanted to allow a measurement that would apply uniformly to all companies and one that they could easily understand. We wanted the measurement measure metric to be self-calibrating. We did not want it to have to rely on continual reenactment of additional provisions, continual new action by the Commission or staff. We wanted it to be a recommendation that would have longevity and that would not be obsoleted by changes in the market, be it upward or downward.

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

We would like to see a very simple market capitalization
metric be applied to determination so that all companies can very easily determine the category for themselves.

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

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

While we did not want to specify a transition mechanism for the Commission, I think it was the general view of all the members of the Size Subcommittee that we would like to see a measurement metric in terms of transition that looked beyond just one measurement date. And we wanted it to be a measurement philosophy that would take into consideration at least two annual measurement dates to determine whether a company has moved down below a threshold or has moved up beyond a threshold.
To simplify that, if you are moving from a small company to a large company and at the first measurement date that you trip over the large company metric, we would consider it appropriate to continue to treat that company as a smaller public company until it has exceeded that threshold two years consecutively. And, vice versa, moving from large to small.

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

MR. THYEN: Okay. Thank you, Alex.

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

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

The recommendation is designed to do these two things: Again, provide that umbrella so that the other subcommittees can work toward their specific end goals; and
to alert the SEC of our strategy and direction here in this Advisory Committee in terms of the definition of a smaller public company.

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

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

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

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

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

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

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

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

We did drive pretty clearly I think for clarity, for simplicity. We debated heavily all of the factors that Alex brought up, float, revenue, and we converged on total capitalization. At the same time, when we looked at the subcommittee end goals, if you go back to when we were formed
and the end goal and the agenda that we committed to, there
are different end goals for Capital Formation versus Internal
Control versus Governance and Disclosure and Accounting
Standards. And our role was to provide an overarching
definition and to enable each one of those subcommittees to
come forth with their recommendation for changing regulation.

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

MR. CONNOLLY: Jim?

MR. THYEN: Yes, Drew?

MR. CONNOLLY: This is Drew Connolly.

Jim, first of all, an incredible camel. Your
committee has designed a field ready, speed-ready for speed
camel from the different distinctive needs and assessments.
And I'd also like to offer Alex as a public speaker
for any effort I'm watching because it was clear, concise,
and incredibly persuasive.

I'm grateful, speaking from my perspective in
helping to try and finance little microcaps all my life and
also looking at the investor side of trying to develop
clarity in and among the Pink Sheets, the Bulletin Board, the
NASDAQ, Small Cap, where do you go, how do you find the
information.

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

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

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

And the other aspect -- those determinants were
really designed around allowing companies to be able to
determine their direction, given the fact that the standard
for being public has raised and it's got to be well grounded
in the investor protection mandate, how that all came
together.

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

MR. THYEN: Thank you for your kind words.

Anybody? Yes? Kurt?

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

Okay. Kurt?

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

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

MR. THYEN: It was discussed a lot. But it was not
discussed in terms of a lower standard for being a U.S.
public company. But it was discussed heavily in terms of
when we look at what drove the legislation and the
one-size-fits-all, we did discuss heavily the unintended
consequences of specific to the general. When we look at the few companies that really led the violation of integrity and the impact that has on the majority, that was the way we talked about it. But we didn't talk about it in terms of if you are a certain size and you participate in U.S. public capital markets that you are entitled to a lesser standard, if you will. We didn't approach it that way.

Leroy?

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

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

Dick?

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

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

The argument for public float, however, is that
affiliated shareholders do not require or should not require
the protection by the SEC because they are essentially the
insiders who are running the business. I think that's the
logic of why the SEC currently takes total capitalization and
then subtracts the insider holdings to come to the public
float calculation.

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

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

Now, I had asked when this finally dawned on me --
and I certainly voted for it and I'm not backing away from
that -- but when it dawned on me that that was going to be
the outcome of this, I asked the folks, Cindy in the Office
of Economic Analysis, to get us some information. I just
checked with her again, and she said they're working on it
but they haven't come up with the data as yet.
So it troubles me that we're going to come up with a definition that is going to end up -- the effect of which is going to reduce the number of companies that can get relief, quite frankly, if it were adopted as proposed.

MR. THYEN: Yes, Herb?

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

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

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

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

For example, both the New York Stock Exchange and the NASDAQ provide different rules for controlled companies.
And so you could say that if there is a controlled company that's 50 percent owned by a person or a group that, in effect, you could use that definition so that those people would not be subject to the -- subject to going into a higher class.

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

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

MR. DAVERN: If I could add, Dick, two things. One is that obviously we picked a level that 1 percent today -- not exactly today, but as of a couple weeks ago -- comes out to about $120 million, so we're using approximations here. When you look at that versus the current public float metric of 75 and you also categorize and take into account that it's a scaling percentage that will adjust over time as we go into the future, personally I find it highly unlikely that we're actually looking at less companies that would qualify regulatory relief as we go forward. I think that's quite unlikely.

Secondly, I would support Herb's comment that affiliates and insiders are different things, and those who have inside knowledge and operation of the business, and many
times affiliates are not in that position. And I think that
to ignore that when we consider the SEC investor protection
mandate, you know, I don't think would be the best decision.

MR. JAFFEE: I'm persuaded that total cap is the
right answer. I'm still sort of struggling with the level.
Could I ask my friend, Mr. Coolidge here, in the
business what do you think of as a microcap company? Do you
have a number?

MR. COOLIDGE: Dave Coolidge.
Under 100 million I think is about right. I know
that's -- it's all in the eyes of the beholder. But I know
mid cap definitions are -- sometimes start higher than a
billion dollars, a billion and a half.
We have a mid cap fund I think we define it as a
billion and a half to 5 billion in market capitalization.
So, in that case, anything under a billion and a half would
be considered a small cap company, not microcap.
But it's -- I'd say that this captures kind of what
the small cap universe is to a large extent, maybe not
completely. If you're talking about a $700 million cutoff or
so.

MR. JAFFEE: I'll second the motion.

MR. THYEN: Any others from the committee? Pat
Barry, you got anything? Richie Leisner, anything to add?

MR. ROBOTTO: On that point.

MR. THYEN: Yes. Bob?

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

Small cap funds normally would measure themselves against the Russell 2000. So, therefore, indicating that small cap fund kind of sees the universe as the Russell 2000.

And Airspan market cap, as I said, is 182 million.

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

That's all I would mention.

MR. CONNOLLY: Jim, the only thing to respond to that is that I don't believe that there are any Pink Sheet components in the Russell calculus. Right? So that the
entire -- that tier, however many several thousand companies are there, are never calibrated in those indexes. Right?

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

MR. CONNOLLY: Right.

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

MR. THYEN: Rusty?

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

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

So, you know, you've got to look at what they control, you know, not how many of them are there. Because, you know, out of a lot of the small companies, they just don't control very much. And I think this chart very, very clearly shows it.
And the problem is the number at the top is getting much smaller. I think if you would project this out maybe another 4, 5 years you may be down to 150 companies controlling 75, 80 percent of the market caps in the country because we are a consolidating country very, very fast. So I just wanted to make that point. When you look at the numbers, you've got to look at it both ways.

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

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

MR. JENSEN: Jim, I have a question.

MR. THYEN: Yes, Mark.

MR. JENSEN: This is Mark Jensen. Did the committee think about or talk about what I'm going to call special situations, meaning hyper-growth companies that I think you had said, Alex, that the
definition spans a two-year period, so you take your average market capitalization over a two-year -- for two years before you decide what classification you're in?

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

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

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

MR. DAVERN: Perhaps I could -- This is Alex
Perhaps I could deal with that. We did, Mark, consider that as one of the factors we considered in our thought processes. And, number one, we wanted to keep it simple. And, number two, the number of companies that fit into the category you're talking about tends to be relatively small.

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

And having considered those points, we opted to go with the provision of keeping it very simple for all companies and feel like each subcommittee, obviously if they feel there's an exception in their area related to issues such as the one you rightly bring up, that they could carve out an exception at the subcommittee level as we go forward
MR. THYEN: I would add, Mark, that we consciously did not include a time line in our determinants. We set clear and firm transition rules. And we talked about is that two years, is that three years, or what is that? But in terms of a definition of size, it was deliberate that we didn't define further those rules for that kind of flexibility.

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

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

MR. THYEN: It is.

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

I mean there are issues that need to be wrestled with. And I'm sure the SEC will do that. I'm just raising them.
MR. THYEN: Economics is a great leveler.

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

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

Yes, Pastora?

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

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

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

Having said that, I'm wondering if the subcommittee
would encourage the other subcommittees to really very
seriously try to adhere to this definition while in no way --

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

MS. CAFFERTY: Yes, they are.

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

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

MS. CAFFERTY: Absolutely.

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

MS. CAFFERTY: Absolutely.

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

MS. CAFFERTY: Thank you.
MR. DAVERN: Jim, I think we're going to lose another committee member in just a minute.

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

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

MR. THYEN: Do we have a second?

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

MR. THYEN: Drew. All right.

Any further discussion? All in favor -- well, let's see. I think, Herb, picking up on your webcast, this is an important vote, maybe we should do a roll call vote.

And we'll start and go around clockwise.

And, myself, I vote yes, affirmative.

MR. DAVERN: Alex Davern. I vote yes.

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

MR. BROUNSTEIN: Rick Brounstein. I vote yes.

MR. LEISNER: Richie Leisner. I vote yes.
MR. SCHACHT: I pass.

MR. THYEN: Okay.

MR. BARRY: Pat Barry. Yes.

MR. JENSEN: Mark Jensen. Yes.

MR. ROBOTTO: Bob Robotti. Yes.

MR. CLOUTIER: Rusty Cloutier. Yes.

MS. CAFFERTY: Pastora Cafferty. Yes.

MR. WANDER: Herb Wander. Yes.

MR. DENNIS: Leroy Dennis. Yes.

MR. JAFFEE: Dick Jaffee. Yes.

MR. COOLIDGE: Dave Coolidge. Yes.

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

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

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

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

The first I'm going to turn to is the tabled motion that smaller public companies not be subject to faster filing dates.
During the break, all of the legal scholars in the room went to the Internet and figured out that nonaccelerated filers do not have faster filing dates. So that if we want this recommendation to have, in effect, teeth in it to be effective, it should really be smaller public companies, as we have defined it in our previous motion, should not be subject to faster filing dates.

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

MS. CAFFERTY: Can we do that?

MR. WANDER: Yes.

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

MR. CLOUTIER: Yes. I second it.

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

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

MR. WANDER: Sure. Sure.

MR. BROUNSTEIN: So what we've done now is -- Rick Brounstein, sorry -- is propose a formula, but it has not
been implemented by the SEC. We don't know what the date
will be, what the size will be.

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

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

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

MR. CONNOLLY: Good point.

MR. CLOUTIER: Herb?

MR. WANDER: Yes, Rusty.

MR. CLOUTIER: You know, I just wish to remind
everybody that the name of this committee is Advisory
Committee. So it is to advise and consent. What we do here
holds no regulatory law per se. That does not happen -- My
understanding, I'm not a legal scholar, but until the
Commission votes on it does it become official.

I think what my motion states very clearly is we're
recommending that they not increase the accelerated filing.

We have also sent a motion to them, a recommendation, on the
Size Committee of what they should consider.

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

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

And I think 30 days is important. I mean, you
know, I think some movement here is important, what comes out
of this meeting. And, you know, we are not setting policy.

I don't want anybody to think that all of a sudden we have
decided that 600 -- 700 million and they're not going to be
accelerated filers. All of this goes to the Commission who
may or may not accept it.

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

MR. WANDER: So that's -- Dick?
MR. JAFFEE: Dick Jaffee.

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

MR. WANDER: WKSI.

MR. JAFFEE: WKSI. Okay.

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

MR. WANDER: Yes. They've already adopted it.

It's not effective until December I think.

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

And unless there's some relief now, I'm fearful that the accounting firms are going to start to have to say, "I have so much personnel, I have so much time available, and
I can't do this," and, therefore, they'll start firing or discharging clients now.

MR. BROUNSTEIN: Again, Rick Brounstein.

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

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

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

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

MR. BROUNSTEIN: Okay.

MR. JENSEN: Herb, I just wanted to react to what Rick said, too. I mean I do think it's best left in the hands of the SEC. We'll just be stuck in the mud if we try to resolve every issue.
No one around the table is an expert in all the SEC rules. Well, some people are, but they're not voting members.

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

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

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

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

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

(Chorus of ayes.)

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

Now I'm going back on our agenda.

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

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

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

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

MR. CONNOLLY: And, Herb, this is Drew Connolly.
As a corollary to that, because we are webcast, because this is essentially the first indication that the constituents, be they the public companies, the practitioners, or the investors are going to have that this is the basis of our work product, we are open for public comment letters.

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

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

And Leroy's is a very good point.

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

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

MR. BROUNSTEIN: Yes. Rick Brounstein again.

It now feels like minor stuff compared to what we've just been through.
But on the corporate governance, the 10 points raised, I just had a couple inputs I just wanted to get on the table for the subcommittee.

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

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

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

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

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

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

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

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

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

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

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

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

MR. DENNIS: Herb?

MR. WANDER: Yes, Leroy?

MR. DENNIS: Leroy Dennis.

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

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

MR. WANDER: Well, it's not so much a consent. I think, look, all the firms are very professional. So they're
going to -- they're going to stick by their old clients and

stick by their profession.

But the problem is twofold at least. There may be

more. One is I haven't been in there, and you're filing a

10-K. And I want to know what's going on. And so they may

have to do more than just sort of go back.

And, secondly, they're under such pressure to get

their own client's work done, where do you get on their time

schedule. And that's not a criticism. It's just I think a

fact of life.

MR. DENNIS: And I agree that it is an issue. But

I will tell you at least in our experience if you properly

plan and notify and meet your commitments I've not seen a

situation where they have said, "Well, we've got our client

to do and so, therefore, we're going to not meet your

deadline for filing. " They have been very cooperative.

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

I mean I don't think any of the firms are holding

their clients hostage to not signing consents where they've

already signed off on financial statements. I would agree

with you there's probably more work that is done. It is time

consuming. It is difficult. Everybody is under a lot of

pressure. It's not something people want to do. But it is a
fact of life.

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

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

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

MR. JENSEN: That's right.

MR. WANDER: I think that's --

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

MR. WANDER: Any other discussion for Dick Jaffee?

Okay. We're on the next item on our agenda, San
Francisco meeting, which will be in conjunction with a small business forum. It will be at the Hyatt Wharf. I suspect we'll probably have to get there Sunday night. Is that correct?

MR. LAPORTE: This is Gerry Laporte.

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

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

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

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

MR. SCHACHT: What's the location?

MR. WANDER: It's the Hyatt Wharf.

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

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

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

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

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

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

MR. WANDER: Well, but I hate to do this housekeeping, but you're all here, the Monday meeting is in conjunction with the small business forum. So there will be items going on during the day that are outside really our committee, although they're very related. So will that be enough time to have hearings, subcommittee meetings, and a committee meeting?
MR. LAPORTE: Right. The hearings are scheduled, we call them round tables, for Monday morning. Okay? The subcommittee meetings are scheduled for Monday afternoon. And the business session, like the session we just had of the full Advisory Committee, is scheduled for Tuesday morning. So that's our proposal.

MR. WANDER: Thank you for the --

Since I have family living out there, I'm going to stay.

Pastora?

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

MR. WANDER: It is still on the schedule.

MR. JAFFEE: It is? This is when my assistant --

Dick Jaffee.

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

MR. LAPORTE: She didn't talk to the right person at the SEC.
MR. JAFFEE: Okay. What's the date of that?

MR. WANDER: The 24th and 25th.

MS. CAFFERTY: Right,

MR. JAFFEE: Of October. Okay.

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 p.m.)

CERTIFICATION

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

[Signature]
Herbert S. Wander
Committee Co-Chair

[Date] 10/28/05
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. 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. 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  David L. Cox, Chairman, President and CEO, Emclaire 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  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. 01, 2005  Deloitte & Touche LLP
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  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  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