RECORD OF PROCEEDINGS

SECURITIES AND EXCHANGE COMMISSION

ADVISORY COMMITTEE

on

SMALLER PUBLIC COMPANIES

Second Day of Meeting
October 25, 2005

10:00 a.m.

Securities and Exchange Commission
Multi-Purpose Room L006
100 F Street, N.E.
Washington, D.C.
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The following Members were present in person:

Patrick C. Barry
Stephen E. Bochner
Richard D. Brounstein
Pastora S.J. Cafferty
James A. “Drew” Connolly, III
E. David Coolidge, III
Alex Davern
Joseph "Leroy" Dennis
Janet Dolan
Richard M. Jaffee
Mark Jensen
Richard M. Leisner
Robert E. Robotti
Scott R. Royster
Kurt Schacht
Ted Schlein
James C. Thyen
Herbert S. Wander

The following Members were absent:

C.R. "Rusty" Cloutier
Deborah D. Lambert
John B. Veihmeyer

The following Official Observers were present in person:

Daniel L. Goelzer

Jack E. Herstein

The following Official Observer was absent:

George J. Batavick

The following SEC personnel were present in person:

Anthony G. Barone

Mark W. Green

William A. Hines

Gerald J. Laporte

Kevin M. O’Neill

1                       ***************
2             MR. WANDER:  Before we begin the substantive
3   agenda, a couple of people called in from listening to the
4   webcast and were not absolutely clear on who was who and
5   what the makeup of the various subcommittees are, so I think
6   maybe the appropriate thing to do to begin today's session is
7   to have each of the subcommittee chairs introduce the members
8   of their subcommittee who are here so the people listening
9   and not seeing could try and identify them better.
10             Since, Dave, you have everybody at your table, why
11   don't you begin?
12             MR. COOLIDGE:  I am Dave Coolidge, chair of the
13   subcommittee on capital formation. Do you want more --
MR. WANDER: Introduce --

MR. COOLIDGE: I was born in 1943 --

(Laughter.)

MR. WANDER: We don't want your grammar school.

MR. COOLIDGE: Ted, why don’t you introduce yourself.

MR. SCHLEIN: Ted Schlein, capital formation.

MR. LEISNER: Richie Leisner, capital formation.

MR. HERSTEIN: Jack Herstein, capital formation.

MR. CONNOLLY: Drew Connolly, on capital formation.

MR. WANDER: And then we will go over to you, Leroy.

MR. DENNIS: Leroy Dennis, accounting standards,

and I have with me today the most important committee member,

and that is Pat Barry, of our accounting standards committee.

That is all we have here today.

MR. WANDER: And John Veihmeyer from KPMG, who was here yesterday.

MR. DENNIS: That’s correct and had to go away today.

MR. WANDER: And Steve?

MR. BOCHNER: Steve Bochner, the governance and disclosure subcommittee. And we have got Bob Robotti here, Pastora Cafferty, and hopefully Dick Jaffee will join us, and Rusty Cloutier can't be here today.

MR. WANDER: Okay. Janet slipped out for a minute
but who would like to introduce your committee? Why don't you, Kurt?

MR. SCHACHT: Good morning. We are the 404 subcommittee. I am Kurt Schacht from CFA Institute.

MR. BROUNSTEIN: And I am Rick Brounstein.

MR. GOELZER: I am Dan Goelzer from the PCAOB. I am an observer member.

MR. JENSEN: I'm Mark Jensen.

MR. DAVERN: Alex Davern, with National Instruments.

MR. WANDER: And Janet Dolan will be here any minute, and Jim Thyen is my co-chair, and I am Herb Wander,

and from the staff, sitting around the table we have Gerry Laporte and Kevin O'Neill, plus there are a number of other staff members here in attendance.

And Debbie Lambert is a member of the 404 subcommittee and she had some travel problems yesterday, but based on an email, I think she will be here today, so we are looking forward to having her.

With those introductory remarks out of the way, what we would like to do today is hear reports from the subcommittees to now tell us after they met privately yesterday afternoon and this morning what their latest thinking is on recommendations, so that the full committee can consider these and hopefully we will probably try at the
end of today to schedule an additional meeting sometime before the end of the year, when all of these will be in written form and brought before the committee for discussion and adoption or rejection.

So with that as an agenda, are there any other opening remarks by anyone?

(No response.)

MR. WANDER: And Janet, we will start with you, which is the 404 subcommittee.

MS. DOLAN: Good morning, everyone, and to all of those who are tuning in.

We made a lot of progress and we have had a very substantive several hours in our subcommittee. We are not at this stage ready to make specific recommendations to the whole committee, but what I will do is tell you where we are, what we are looking toward doing, what we hope to get done, and if we can then we think we are aligned around that recommendation, and if we can't then we'll tell you what we will probably be doing in the alternative.

I want to begin by setting a few framework comments. I would reiterate some of what we said yesterday, which is we would reiterate that we think many of the sections of Sarbanes-Oxley and the recommendations that they made for all companies have been and are very effective and should continue for small companies and clearly the
whistleblower, clearly the role of independent directors,
clearly the 302 certifications.

What we have been wrestling with, and I think we
have been very clear to this committee and to the public, is
that we think we understand and can articulate what some of
the fundamental problems were with the implementation of 404
as it is currently laid out for small companies.

What we are about is trying to create a solution
that we think will actually continue to provide what the
creators of Sarbanes-Oxley and what the public and what the
investors want, and yet will make it a workable framework,
404 framework for small companies -- so that is what we are

about, and we think what happened, one of the most
fundamental things that happened, is that the 404
requirement, and there are two separate parts to it,
management is required to make their acknowledgement and
auditors are required to make their attestation with regard
to internal controls.

What happened was there is no real framework for
what is a good internal control environment for small
companies. There is no guide by which they could determine
that they in fact had the appropriate internal controls. The
only standard that was set was AS-2, which is really an
auditing standard, and so that became the de facto standard
for everybody.
Much of what we have heard in all of the testimony we have taken is that framework is too complex for small companies. It simply isn't the right size for small companies, and so what we are aimed at is can we do something, can we create something that will in fact bring the spirit of 404 to smaller companies but do it in a way that gives them the right size framework by which they can in fact, both management and -- that management can in fact fulfill their requirement with regard to 404. And we are not there yet, but we are getting very close.

What we are proposing at this point, what we are trying to shape at this point, and it is preliminary -- I

know there were news reports out yesterday -- I want to say this is preliminary. We are in the preliminary stages of our recommendations, but what we are looking at is we are clearly aligned, and as we said yesterday we are clearly aligned that we would not require the auditor attestation for micro caps. We have complete alignment in our committee around that.

We would like to maintain the management's obligation to assert to the adequacy of their internal controls. If we can help push forward and see that there is a framework created that they can look at and say this is what I am supposed to have, and if I can have this, then I can make my assertions -- we don't have that now.

Our caveat is if we can in the next few weeks, and
we will take that on as our goal, to work with COSO or others
to see if we could actually make a recommendation about how
would we go about creating that framework for micro and small
cap companies. If we could create that framework where
everyone felt that is a cost effective reasonable framework
and standard by which I can hold myself to, we will then
recommend that.

We will recommend that for micro cap companies it
would be the management's obligation to assert their adequacy
of their controls based on that framework. We would then
look at stepping up as we move up the size of the companies
into the smaller companies, bigger than micros but still
within our smaller design. They would have the same
obligation. Management would assert the adequacy based on
the same framework. We are trying to keep this as simple as
possible.

They would make the same assertion against the same
framework, but for that size company, as we indicated
yesterday -- we were looking at a role. We would now bring
in the auditor's role, but their role would not be to attest,
as it is under AS-2, but it would be as part of their
auditing function. It would be to issue, to actually review
the design and the implementation. And this would require an
accounting standard, and we are looking at the viability of
that, recognizing -- and as I said, we have an ongoing
concern about recommending new standards -- whether that is a
good idea or whether we should try to live within the
standards we have.

So that is why I say we are not ready to make a
recommendation because there are obviously issues here around
this, but this is the framework that we are looking at now,
which is to say having good internal controls is something
that investors have told us is important. Having management
take a positive role in terms of their assertion is a
valuable element of the internal control framework, but only
if we can create a cost effective framework by which everyone
feels this performs an important value for investors but
doesn't create an undue burden on small companies that isn't
justified as a cost benefit relationship.

We have every intention of seeing if we can develop
this recommendation shortly, but if not then we will look at
whether it is important or necessary if our only choice then
is to exempt, and that is why I laid out we continue to look
at is there nothing between exemption and complete compliance
with AS-2.

We continue to look at some other areas. They are
for us further down on our priority list right now, but we do
continue to look at some of the special areas, companies that
have just gone public, companies that are in distress.

We are asked to look at some of these special
exceptions, and we do want to reiterate that we think the
governance committee should look at if we create exemptions,
as we are recommending exempting micro caps and small caps
from the full AS-2 attestation requirement, requiring some
trade-offs, and for the micro caps, especially the Pink
Sheet companies, that would be as a condition of the
exemption, they have to take on some governance obligations
like independent directors, whistleblower and other
requirements that some of us who are listed companies have as
a result of our listing standards. That is not within our
purview. We are just asking the governance committee to work
in tandem with us, that if we start recommending and ultimately
do recommend exemptions, we have some trade-offs that we
would put in place to keep raising the bar for improved
corporate governance and improved confidence of the public in
those smaller companies in exchange for the exemption.

So that is where we are. I know some of the other
committees are far enough along that they are making their
recommendations and they are ready for full committee
discussion. We certainly are open to committee questions. I
just don't want anyone, either in this room or in any sort of
media coverage of this, to think that we are ready to make
recommendations or are at all final in terms of what we are
recommending.

First, I would invite any other members of our
committee -- I will say we have a strong minority view in our committee that if we can't do this, then exemption is the better course of action, so I want to make that clear.

We have made that clear all along. We are struggling with the "let's exempt" or "let's find something in between exemption and AS-2."

MR. BROUNSTEIN: This is Rick Brounstein -- just to clarify. The whole exemption for 404 as a backdrop is really what we are talking about just for the micros. We hope to find this interim solution that has a reasonable standard that a company could do without -- you know, that would be cost effective that would allow them to make an assertion beyond just 302.

MR. WANDER: Okay. Any other -- thank you very much. I know that you have labored long and hard and you have the most difficult challenge facing, I think, our whole committee, so we all greatly appreciate --

MS. DOLAN: Well, we believe you don't have these advisory committees very often, and so it's easy to identify what's broken. It is not so easy to say so how do you fix it. I think from all the questions we have asked all the witnesses, through this process it is very clear. That is what we are trying to do.

We are trying to actually do something we all think perhaps should have been done before 404 was ruled out, which
is to right size it based on the size of companies, then to
set reasonable cost effective standards, and then come along
and audit to those standards, but we are where we are, so we
are trying to create that guidance for small companies so
they know what it is they need to do, and then you can come
along as they get bigger and add the auditing of it.

MR. WANDER: Any other subcommittee members who
would like to comment?

Again, thank you so much. Sure, Drew.

MR. CONNOLLY: Janet --

MR. WANDER: It's Drew Connolly.

MR. CONNOLLY: This is Drew Connolly. Thank you

very much for both a straightforward articulation of the work
product and also the work product. You folks are as a
subcommittee certainly putting in the hours. No doubt about
it.

I am interested in hearing about the dichotomy
within the subcommittee between -- where the struggle is.

Obviously we are on a calendar where we are trying to get it
right, but we are also trying to get it in some form of soft
concrete as early as possible.

So the struggle within the subcommittee is what?

Full exemption across the board and some attempts at -- what
is the nature of the struggle?

MS. DOLAN: I think the struggle is trying to
determine is there a way to expeditiously and realistically create a standard by which small companies know what constitutes adequate internal controls for purposes of management's assertion. As you may or may not know, the COSO report, which we have all heard all through our process, is -- right now the COSO framework is the only framework that anybody looks to, even though I think there's been plenty of concern about whether it really does meet the needs of small companies. Their report is only coming out I believe tomorrow.

So it isn't so much a struggle in the committee of is this what we want to do, but there is a struggle in the committee of can we actually do it in a simple, straightforward way that really will work, and our first step is going to be to review that report. Our second step is probably going to have a private -- schedule a meeting with the COSO team and see if with the clarity we are bringing to it in terms of what we are looking for, can they help us get there.

MR. CONNOLLY: Just a quick follow-up. Is it true -- I think I heard yesterday that the AICPA is now out with some kind of recommendation on exemptions for micro caps?

MS. DOLAN: I have not seen it, but we have heard that.
MR. DENNIS: I have seen the draft of the letter, Drew. This is Leroy Dennis. I believe the recommendation says that they support -- and I have to pull this out -- something like they support a full 404 for all companies but that if the SEC determines that for micro cap companies that it is not cost beneficial for them, then they would support exemption, so it is a conditional.

MR. JENSEN: Drew, let me try to frame this for the committee a little bit.

MR. WANDER: It's Mark Jensen.

MR. JENSEN: I'm sorry. It's Mark Jensen, and I am sure I'll be very successful in clearing it up.

(Laughter.)

MR. JENSEN: And when I don't, Alex will correct me.

The issue that we have been struggling with, and I think -- frankly I think this is what the implementation of 404 has been struggling with -- to kind of reiterate something Janet said -- there's two parts to 404. One is the part that the company does, and the other part is what the auditor does.

I will analogize it to a financial statement audit. In a financial statement audit, you have GAAP, and the company understands GAAP and the auditor does, so they apply GAAP to their financial statements, give it to an auditor,
and their auditor applies GAAS, Generally Accepted Auditing Standards, to arrive at a report on it. When you get to auditing internal controls, there's no equivalent to GAAP, so when the PCAOB issued AS-2, Auditing Standard 2, they told auditors how to audit internal controls, but it was never really that -- it was never defined "Here's what internal controls look like inside a company for an auditor to audit it," so basically that is why you hear so much angst about auditor involvement, because people believe auditors drove that cost.

They did, because we were the de facto -- "we" speaking as a profession -- we were the de facto group that

had to go tell companies what to do so that we could audit it. What we are trying to do now is get that clarified and get an equivalent of GAAP for these smaller companies, that there is a standard a company could apply to itself and be confident that it had fulfilled its obligations under that standard without having to be, if you will, held hostage by an audit firm saying this is what you have to do in order for me to be able to audit this thing.

So we think that there is a way to do that, working with COSO and some other groups, to find that equivalent -- the equivalent of GAAP for internal controls.

MR. CONNOLLY: You certainly have brought clarity.

MR. WANDER: Leroy.
MR. DENNIS: Leroy Dennis. Janet, I certainly appreciate the process that you are going through and I agree with talking to COSO and seeing if there is a middle ground somewhere for small companies.

I am -- I guess my auditor in me is coming out somewhat skeptical as to what the conclusion will be, because when I look at internal controls for the micro cap companies, the concerns I have are management's ability to override the system. That goes to things like audit committee and tone at the top and whistleblower and those kind of protections that 404 does not necessarily address.

I wonder if you guys have talked about those kinds of things in your committee and whether -- I mean does that -- it seems to me that leads me more towards maybe not full exemption but 90 percent exemption with some add-ons to some other pieces of this, and I fully support going to talk to COSO to see if we can come up with something. I just don't know, as Herb said, if the book is this big I doubt it is very light.

MS. DOLAN: Yes. That is why I said we really need to work in tandem with the governance committee, because we are certainly looking at the auditor attestation part going away, and that the -- as a requirement -- or as a condition for that going away, we would look at putting more certainty into the mechanisms that appear to help most in small
companies, particularly for those that aren't required to do
them now, and that is, 302 and whistleblower and the
independence of the directors and the independent directors
on the audit committee, and perhaps even financial acumen on
the audit committee.

But that's exactly what we're suggesting. We're
really -- what we're trying to work with COSO, and Mark keeps
reiterating it so I think we want to keep reiterating. There
are two parts to 404, and we're already talking about
exempting the auditor attestation part. What we're talking
about is on the management side.

And I know your reservations are well-founded.

That's what we've been struggling with. If we can't get
there, we will get to the issue of complete exemption from
404. But we're trying to maintain that management part,
because we do think it's important. We think it's an
important sign of confidence -- that builds confidence in the
investor marketplace.

MR. DENNIS: The other thing I'd ask your committee
to take a look at -- you know, and Mark and I live in the
auditor world, so we live in this world of auditor
expectation gap between what a financial statement audit does
and what it is expected to do in the public markets.

I'm a little concerned. I'd just ask that you
dress
this in your communication. When an auditor is involved in
just the design, we need to make sure that the expectation is
set right in the public's mind so that there isn't an
expectation that that's going to find all fraud when that's
not what the work is going to do.

MR. JENSEN: Leroy, that's clearly -- that's
exactly the crux of the whole argument, is -- it really --
this time we believe -- and I'm speaking for the committee --
that if -- just having PCAOB -- asking the PCAOB to adopt a new
standard on -- which would basically be design and
implementation, and probably some walk-throughs, but would
not -- you would not look to the effectiveness of the
controls. There would be none of the detail testing down

below that.

The reason that COSO needs to be involved is that
that has to be well understood, what that's going to look
like, before that standard gets adopted, or, you're right,
we're going to be right back to where we started from, and
that is, the audit firms basically telling people de facto
here's how that's going to look.

And then basically the public accounting profession
is going to be back in the gunsights of all the companies for
driving all this cost.

So we think that has to be done first, get the cart
back behind the horse again, and get an equivalent of GAAP
out there for these companies.

And you're absolutely right. In a smaller company environment, the biggest reason to exempt them in the micros is, the auditor's not relying on those controls anyway, I mean, because of management override and some of the other issues.

MS. DOLAN: And I would say I think it's probably been obvious to everybody on the entire committee, but we are trying to triangulate between some very strong forces.

One is this issue of creating a liability, either regulatory or legal liability, and this concern that no matter what you do, you're creating a liability.

We also -- we're triangulating against -- another factor was, well, why don't we just exempt everything under 404, but we'll just create kind of a more complete and more robust financial statement audit.

I mean, you know, we looked at, well, why don't -- do you build from the floor up or do you take from the ceiling and take off? I mean, that's kind of what you're doing.

And we decided that isn't a good idea because you really want -- you want a very standard definition of what a financial audit is for everybody. You don't want to start creating sort of different kinds -- so we sort of avoided that one.
And then the third one is the price-value relationship. I mean, that ultimately is the real question. Can you do this and make it something that's valuable for the marketplace, and yet cost effective for the company? So we're trying to juggle all three of those. And, as I say, if we can't get there, we won't get there, but we think we're getting close enough so that we can at least try to formulate that as a framework that people can really look to.

MR. WANDER: Sure, Ted.

MR. SCHLEIN: Ted Schlein. Whatever type of certification or attestation you come up with for the auditor side, especially between the $100 million and $700 million, trying to stick to that area, are you also considering opening up the ability for a certified consultant to do that certification, to create a market dynamic to help drive costs down, so it's not purely an auditing function.

Whatever you end up with, it's kind of going to be a parallel track to always go down as you're continuing to refine what type of certification or attestation you're actually going to require for that group of companies or not.

MS. DOLAN: The answer is no, we haven't considered it. It isn't, no, we won't consider it, but that we haven't talked about -- we, first of all, want to -- I hate to use the word -- define the word "it" first, and then we can go on
to further issues about who might do that and things like
that. So --

MR. WANDER: Rick?

MR. BROUNSTEIN: Yeah, just to -- this is Rick Brounstein -- just to comment to Ted.

It would seem like there's such a interrelationship -

if we're going to cut back to what you've gleaned from the financial audit, that my first reaction is, it would be very difficult to have someone come in who hasn't been associated with the company otherwise to look at the design and the implementation of those controls in a vacuum.

But I don't think we've -- we've not specifically addressed that at this subcommittee.

MR. WANDER: Any other questions or comments for Janet or any of the members of the 404 committee? We're all looking forward --

MR. JENSEN: Steve Bochner wants to --

MR. WANDER: I'm sorry, was there --

MR. JENSEN: I was just wondering if Steve wanted to comment about corporate governance and how he feels about this area of microcaps and tightening up on corporate governance down there.

MR. BOCHNER: Sure. Steve Bochner. I was going to wait till my presentation, but I'd be happy to.
So our subcommittee has been doing some thinking about this also, and we applaud the effort. It sounds like a lot of progress has been made in addressing the cost burdens associated with 404. And we think to the extent that you head towards a solution which eliminates the auditor attestation in some way, shape or form, we do think that it's an appropriate quid pro quo to that to have some sort of increased hygienics, increased protection for investors consistent with our mandate.

And so the kinds of things we've been talking about would be imposing on those companies that we would allow to opt out of or escape from the auditor attestation, enhanced disclosure regarding the internal control framework within the company.

Today it's really at a material weakness level, and so we would be thinking about just an increased -- increased and much more robust disclosure perhaps in items 307 and 308 of S-K, where you'd actually have to perhaps get behind what's currently required and give a much fuller description of the control environment and the issues.

So increased disclosure would be one leg of the stool. And then, even for microcap companies that don't have it today, to opt out of the attestation. We would think you would want to apply additional governance requirements, for example, audit committee independence.
Secondly, would be audit committee financial expertise so that the investing public that doesn't have the attestation because it costs so much at least can feel like there is an audit committee, they are independent, and there is some financial expertise. I think the CEO-CFO certifications are a good idea, to impose that as well.

And then the final element that we've discussed would be whistleblower protection. There would be a report up to the audit committee.

I think there are some challenges we're going to have in formulating those, and there's some legal issues there. But we could either -- to the extent the SEC could do this, to impose those requirements on those set of companies that are able to, to not have the auditor attestation.

Or a fallback would be require disclosure of those governance items I mentioned as a fallback if we can't impose those governance standards directly -- the SEC can't impose those governance standards directly on companies.

But that's a legal issue that we'll be able to resolve along the way.

So we -- I think our thinking is very much aligned with yours in that regard, and those are sort of the elements that we've been talking about that would be the quid pro quo for no attestation.

MR. WANDER: Any comments back to Steve from Janet,
you, or any members of your committee? Do those seem to fit
within what you've been looking for?

MS. DOLAN: Yes. I mean, that's the usual list
that we talk about.

MR. WANDER: I think the only new one is this
increased disclosure --

MS. DOLAN: Increased disclosure, right.

MR. WANDER: -- which maybe -- maybe you can weave
that into your -- however you come out here somehow.

MR. JAFFEE: Herb, a question.

MR. WANDER: Yes, Dick.

MR. JAFFEE: And I apologize for my --

MR. WANDER: Dick Jaffee.

MR. JAFFEE: Dick Jaffee, and I apologize for my late arrival, and maybe this has already been asked and discussed.

If we didn't have the auditor attestation -- and it's my understanding that there's really two of them -- they have to make an opinion on the internal controls and then on the company's appraisal of their own internal controls. So you end up with a financial statement -- three different attestations. Is that correct?

MR. BOCHNER: That is, I think.

MR. JAFFEE: Okay. So I'm assuming that if we
opted out of that, we'd be back to one, as we traditionally
used to have.

If that were done then, one of the issues that I've
heard talked about a lot is, because the auditors had these
other two attestations to make, they couldn't help the
companies in designing the internal control system because
they then would be opining on their own work.

If we got rid of these other two attestations,
would the auditing firms be freed then to help the companies
put internal control systems together and work through this
thing? Still wouldn't?

MR. DENNIS: This is Leroy, Leroy Dennis. I think
they would be available to help under the PCAOB guidance, but
I still don't think that the auditor is going to be involved
in designing and implementing systems, that it's eventually
going to audit financial statements that are created by those
systems.

So I think we'd fall back to the PCAOB guidance that
was issued, which I think -- at least my reaction is working
and is getting to a desired result. But I don't think we'll
be in a mode where the auditor -- or the management will say
to the auditor, design for me an internal control system that
I can then implement and you can come in and audit later on.

MR. JAFFEE: See, because I --

MR. GOELZER: Yes, I would agree. I think even --
I'm sorry, Dan Goelzer. I think even without the element of the auditor having to opine on the system or on management's assessment -- because the auditor inherently uses the controls -- relies on the controls as part of the audit, that there would still be limits on the ability of the auditor to create the controls for the company.

But, as Leroy suggested, we tried to give a lot more latitude for discussion and back and forth between the auditor and the company in the statements we put out in May. And if this kind of change were made, then possibly that could be revisited and liberalized still further.

MR. JAFFEE: Yeah, Dick Jaffee again. It just -- I think the sequence of events, the way this thing was implemented, I know in our own case, we got going before the PCAOB guidance, and so we had to bring in -- somebody asked about getting a consulting firm in to help you.

We got outside people, not our auditors, and so they had such a learning curve, and such a costly one, to figure out what our business was and all that, that that's one of the reasons why all the costs blew up on this thing. So --

Anyway, it is what it is. I think liberalizing it, if the PCAOB would do it in light of this, if that's what's ultimately accepted, would be very helpful.

MR. GOELZER: Dan Goelzer again. If I could just
make a quick comment. Building on what Janet said, I think we envision that this proposal would only work if you could have a simple enough framework for management that -- there might still be cases where you'd need consultants, but by and large it would be something that management could do on its own, without having to bring in a lot of high-priced external talent.

MR. WANDER: Hoorah. Yes, David?

MR. COOLIDGE: Yes. A question on independent directors -- Dave Coolidge, excuse me -- independent directors and independent audit committees for microcap companies, which is -- and my concern there is the ability for those companies to attract the financial experts, the truly independent directors.

And this came up earlier in some of our discussions about whether some of the bright line rules that define independence could be relaxed a little bit from a materiality standpoint so that these companies could -- you know, they'd kind of be out of the frying pan into the soup if they get rid of attestation.

But then they have to completely rework their boards because everybody is deemed not to be independent because they -- it might be their, you know, consultant or advisor in some other regard. I'd worry about that.

MR. BOCHNER: Yeah, Dave, I think that's a good
point. We'll -- in formulating our recommendations along these lines, we'll take a look at that. I suppose we could look at whether -- I think the issue is helped along if these microcaps aren't subject to the full majority independence requirement. So you're really focused in on the audit committee. So at least from a numbers point of view, you're better off right away.

But to your point, maybe three fully independent, within the meaning of the current SEC rules, with no basically compensation and tolerant independence, which is what the audit committee requirements insist on today, maybe there could be some sort of relief with respect to that category of companies.

Or maybe the audit committee composition could be smaller than three. As long as you have independent individuals with perhaps some safe harbor about other compensation that would -- you know, that would allow some flexibility there. But we don't have that thought through yet.

MR. BROUNSTEIN: Can I add on to that? One of the pieces we got was -- I don't know if it was an ABA-generated piece, but it was what a group presented that was associated with ABA, and they talked about, for smaller companies, the notion of a strategic investor, and maybe, you know, when you look at the definition of independence, somebody like that
that wouldn't -- that, again, big companies and little companies are different, and we need to take a look at the sizes.

So I think there's some data out there that the committee can look at when they start to formulate this.

MR. WANDER: Drew?

MR. CONNOLLY: I'd just like to follow on -- Steve, if I -- this is Drew Connolly. I'd just like to follow on to Dave's issue.

And I think the concern I have is not only -- the issue of independence, I guess, will be settled one way or another. My concern is the availability of financial expert directors for microcap companies.

All of a sudden we've created this major demand for independent directors, and we've created this major demand for financial experts.

I can assure you that a number of the microcap companies I'm familiar with would find it very hard to compensate that director at a level that I think someone who's a financial expert and who would assume directorial liability would expect to be compensated.

So there's sort of a concern there as to how to make it work in the real world.

MR. BOCHNER: Yeah, I appreciate those comments, Drew, and I think we do have to be realistic about what a
microcap pink sheet company can do in attracting directors.

I think we're trying to figure out -- we're trying to do a balancing act here and say if we take away the 404 attestation and eliminate that protection because the costs are too high, what is the right counter-balance to provide that investor protection?

And you could say nothing, just eliminate the 404 attestation and go on with life. I think there is some sentiment around the table that says no, we ought to -- you know, there ought to be some sort of quid pro quo, and maybe we need to continue to discuss what that ought to be among those things I mentioned, none of which I think are in stone yet.

But I do think -- I do think the elements of it would include some aspects of governance assurance might be better than what exist today for those companies, whatever that is, and some enhanced disclosure that allows a peek behind just the material weaknesses to the actual control environment to provide that enhanced disclosure.

So I welcome all your thoughts about where we ought to draw that line and how far we ought to go in the governance area.

MR. WANDER: Rick?

MR. BROUNSTEIN: Okay, Rick Brounstein. Among many hats I wear one of them is I'm active in an organization
called Financial Executives International. I have a document here about FEI. And there are other organizations out there. But I would push back on that and say, you know, there is -- we maintain a registry at the national level for CFOs who are interested in filling those kind of roles, and that registry is actually fairly long and not very often tapped, so -- and there are others out there that I'm aware of, too.

So I think when we get into it, I think we may find that there's more of an appetite for people to get involved than you think on the surface.

MR. CONNOLLY: Once again, Drew Connolly. Rick, I'm happy to hear that. I was unaware of that registry, and I can assure you that if that registry exists, and there are folks who are prepared to act in a reasonably compensateable way, there are dozens of microcap companies I'm familiar with who will be looking to tap into it.

MR. WANDER: I think I was going to comment, Steve, that if your committee -- subcommittee looks at the COSO study that was done on fraudulent financial reporting, the 11-year study -- this was before, obviously, 404 -- but they identified the weaknesses that caused the fraudulent financial reporting, or at least seemed to cause them.

And you are in sync with them, but you may want to re-look at that just to see if there's anything else they
noted, particularly the ineffectiveness of audit committees and lack of independence, and the fact -- as I recall in that report -- the audit committees hardly met, even, so -- I think the landscape has changed with the strengthened governance for all companies. But that might be sort of a good model for you to check against.

Leroy?

MR. DENNIS: Leroy Dennis. I just want to support Rick also. And I would say, as far as the -- if getting audit committee independence allows the internal control subcommittee to be more aggressive in its recommendations on controls, I would wholeheartedly support that.

But I also wanted to ask the internal control committee -- and I thought of this as Dick was talking about the different levels of attestation that are done by the auditor -- have you thought about, for the microcap companies, maybe splitting that baby a little bit and looking at whether or not we'd ask management to opine on design and implementation only, but not the operating effectiveness of a control system in their attestation for the microcap?

And is that a way to take maybe a still more complicated framework that may come out of here, but require some kind of involvement of management to assert on its internal control, but maybe not engage outside consultants to test and all of the things that management has to do also in
all this.

    MS. DOLAN: No, we haven't. That's why these full committee meetings are very helpful. So we will certainly take that into consideration.

    MR. DENNIS: Something that Dick said that I just thought about, and so I would ask you to take a look at that, as to whether we should split that baby a little bit, too, at management's level.

    MR. SCHLEIN: Ted Schlein here. I just wanted to clarify my consultant comment because I think the -- at least my point of the significance has kind of got lost from Dick and Richard.

    My point is, the people that are telling you what you need to do being the only people that can tell you that you've done it, creates an unhealthy market dynamic.

And all I'm really saying is, create a marketplace for people that are able to at least tell you that you've done it. And if they're not good enough, then they'll go away in the marketplace, and if they're good at doing that, it should effect driving costs down. It's what creates competition for who can attest.

Now, of course, if we'd do away with attestation. This is relatively a moot point so I withdraw the suggestion. But to the extent that some level of attestation or certification is necessary, I'm saying open it up to
qualified people -- and "qualified" to be defined -- to allow
any number of people to be able to say, yes, you have met
this level of controls, and we agree.

And I think that will have the desired market type
effects, which is to drive the costs down, and obviously also
to take away maybe some of the antagonism between auditor and
company.

That's really the basis of my comment.

MR. WANDER: Jim?

MR. THYEN: Janet, perhaps the internal control
committee can share with us what all you discussed on the
apparent disproportionate focus on the process and
transactional aspect of 404 certification, and how that might
be or not be a detriment to preventing and detecting fraud.

MS. DOLAN: Well, you might have to repeat the

question. I think that I'll answer it as best I can. Then
you can tell me if I tell me if I get to really your
question.

MR. THYEN: Okay, all right.

MS. DOLAN: One of the, I think, reasons for
eliminating the auditor attestation is that right now the
only framework for the auditor attestation is AS-2, which is
very transaction-oriented. And so that's the only framework
right now.

And I think the conclusion is that we've heard a
significant amount of testimony that, as implemented for small companies, that just doesn't produce a price-value relationship.

So the idea of getting the auditor attestation off, but still focusing on the management assertion is that if we can actually create a -- sort of a best practice for good controls, internal controls, it may alleviate some of that, because it won't necessarily focus so much on the transactional.

It may focus on the ones that are most critical to the integrity of the financial statements, which is where it should be.

So we're hoping that we'll get there through that. I don't know if that answers your question.

MR. THYEN: It does. Thank you.

MS. DOLAN: Okay.

MR. BARRY: Pat Barry. On, Ted, what you said, I think those firms actually do exist. We're using -- have interviewed several firms as we were looking at 404, and they work with the big accounting firms to understand what their requirements are, and they would help us, not only design the process, but do management testing on those requirements, et cetera.

Although they can't attest to it, they can sort of help us all the way through to do management's piece of the
404 work, and pretty much make sure we're compliant with what
the auditors were going to look for.

I'm not sure if that totally gets to your point or
not, but there's a fair amount of firms out there that are
doing this work. They just can't do the attestation.

MR. DAVERN: Maybe I can reconcile the two views
here. I think what Ted is saying, Pat, is that you have a
different firm that gives you a financial statement audit
than gives you 404 audit attestation. Is that correct, Ted?

So you would have one firm that would do an audit
report on your financials and another firm that would have an
attestation on your 404 work.

MR. SCHLEIN: That's possible. My point is, make
that possible. That may not be what a company chooses to do,
for whatever reasons, but if you make that a possibility, I

think you'll find new industry segments rise up to the
challenge to be able to do that attestation, do it in a valid
manner, and as a result, drive costs down.

You may stick with your same auditing firm to do
both, but I bet the overall costs will have come down because
there's competition.

MR. DAVERN: And I would agree, and that's been a
strong recommendation of the American Electronics Association
I've been associated with for over a year now, that we would
do that.
Having said that, I think that Rick's point is also true, and that certainly if we eliminate the auditor attestation requirement for microcap companies, it becomes a moot point, as you said.

And if we're successful in creating a separate new set of auditor attestation related to design and implementation as opposed to attesting to the operating effectiveness of controls, I think it will also significantly reduce the burden.

But I think, in general, for 404, which may be beyond our remit, I think it would be a very good competitive step to bring down the costs for all companies, and I think would also help to create more competition in the market for audit services for public companies, in general, which is probably a good public policy end result. Thank you.

MR. WANDER: Sure. Dick?

MR. JAFFEE: Just one more question. Dick Jaffee. Janet, in your deliberations, you've obviously done a lot of good thinking and a lot of it focused around the cost-benefit relationship of this thing.

Did you have any time to think about whether -- even putting cost aside, whether or not the way 404 is being implemented in many small companies, that the end result is actually an improvement in internal controls, or whether perhaps it's been somewhat counterproductive, and that a
different approach would have a better outcome?

   MS. DOLAN: Well, I would kind of answer that the
   same way I answered Jim's question.

   MR. JAFFEE: Yeah, it's the same question --

   MS. DOLAN: Our goal is not to help management of
   small companies implement AS-2, and just not have
   attestation. We happen to think AS-2 requires too much focus
   on transactions that probably don't create enough value for
   small companies.

   So our goal is to try to say, can we create a
   standard for good internal controls that really is
   right-sized to small companies? That's what we're trying to
   do. So it isn't -- and cost is a factor, but we're trying to
   actually create an end product that will be useful, or ask
   that the SEC direct that somebody do it.

   We're not going to design it. We just want --
   we're going to advance it far enough that we think this is
   doable, and we're going to recommend that it be done.

   MR. WANDER: Rick?

   MR. BROUNSTEIN: Yeah, Rick Brounstein. Just --
   maybe it's obvious, but for the most part what we're talking
   about when we deal with the smallest of the small -- the
   microcaps -- is -- today the nonaccelerated filers.

   So we're talking about, for the most part,
   not absolute, but for the most part -- these are the
8,000 companies that have not had to go through 404 yet and have a very different makeup to them. We think there's a lot of reasons why they are different than bigger companies.

MR. WANDER: One other area you might consider exploring -- I don't say you should explore it -- and I've gotten half-a-dozen or so or more advertisements from software companies touting their software package, that it will reduce your 404 efforts and costs by significant numbers.

And I don't know whether that works. I do recall -- Alex, you'll probably remember this better -- that the NASDAQ recent survey asked company executives whether there was help on the way from the software companies, and, as I recall, the answer was rather negative.

MR. DAVERN: Alex Davern. That's correct. The perception was that it would have a minor positive effect on reducing the cost rather than a significant effect. And that's been certainly my personal experience -- I haven't gone down that road -- that software does add some reusability in year two, et cetera.

But in terms of automating this process, it's not effective. You have to physically go and check these controls, walk through them and test them with a person.

So it's unfortunately not a silver bullet that will make a significant difference, in my opinion. Thank you.
MR. SCHLEIN: Ted Schlein. As somebody that's financed a couple of these compliance software companies, just if you're interested, a lot of what Alex said is quite accurate.

There's usually two halves to it. There's the documentation of the policy that you want enforced. And every company has got to have a way to document that, print that out, hand it to their auditor, hand it to whoever's doing the attestation, and then there's the enforcement of this policy.

The enforcement of the policy is actually the harder portion of this. But there is progress being made on things like separation of duty, making sure separation of duty takes place, and tracking things like those payments, double account payments.

So from a financial system standpoint, we are getting better at automating some of those things, but there's a cost to even implementing that. So --

MR. THYEN: I know -- this is Jim Thyen. I know at Kimball we did experience, particularly in our electronics segment -- and here we're getting into a little bit higher size. We're above the micro.

But the commitment to an integrated operating system standardized worldwide, which brought with it a commitment to prevention and pushing all the decisions up
front, not making decisions -- the authorizations on the back end, really putting emphasis on the contracts entered into, the purchase orders, and all those controls up front, definitely lowered our costs and increased our productivity.

Now, there is -- and it helped us in 404 certification. But there clearly is a size threshold, that you have to be a certain size to be able to pay for the software, offer it, and make all the commitment to training and the whole mindset change.

And it's not down in the micro level. It's even not down in the lower levels of what we're defining as a smaller public company.

But that is the only way that we found that we could greatly reduce the cost of our certification. And it so happened we did it for better operations, and to be able
to better serve our customers. We didn't necessarily drive it totally from internal control, but we embraced that internal control concept in doing it.

I'll just offer that for what it's worth.

MR. WANDER: Yes. Mark?

MR. JENSEN: It's Mark Jensen. To kind of react to all of that, one of the things we've debated a lot in -- or talked about a lot -- and you're going to see how strongly I view this -- is -- we're back to this issue of who's the final word on what is enough and what needs a threshold for
management to be comfortable, making the assertions, and
basically taking on criminal liability when they do that.

And right now the final word on that is really the
auditor. And so the question is, is that the appropriate
place -- that's what makes the software difficult to develop,
because at the end of the day, it's still an auditor who has
to say, yeah, I can accept that.

And so I think pushing -- and one of the things
we're going to be working on over the next couple of weeks, I
hope, is, with COSO, to -- is there some role that COSO can
play in a more active -- or the SEC or the AICPA or some
standard-setting body that can start to put better clarity
around what does it look like when we're done.

What's the standard that we can hold that everybody
can agree to in these smaller companies, that isn't a

nebulous standard set by -- well, at this level you're going
to be talking about 100 firms with different standards. But,
really, is there a standard that we can all work to?

And I think if you get there, I think the software
products become much more -- you know, they're going to
reduce the cost a lot, because they will be a standard that
everybody's going to center on.

Today that doesn't exist, and I think that's a big
hole in our system. Because COSO, as we pointed out in
San Francisco, is -- it's basically a virtual organization.
It doesn't have an employee. Even the CEO is only part-time. And to my knowledge, they've never been authorized as a standard-setting body. It's been something that was created and kind of endorsed, and doesn't really have any standard-setting authority.

MR. SCHLEIN: Didn't we hear from the guy that ran COSO the last time we got together?

MR. THYEN: Yes.

MR. SCHLEIN: In San Francisco, right?

MR. THYEN: Mark, in a way, I agree with what you're saying, and there's that gap that's got to be filled. But when I look at it from my viewpoint, the ultimate arbiter becomes the customer in the market, because if we just keep driving controls with no concern for cost, we can be absolutely perfect and out of business.

MR. JENSEN: No, I agree. I agree with that. Yeah, we did hear from the guy at COSO. He's a college professor.

MR. SCHLEIN: Right, but my point for bringing it up, if I remember the testimony, or whatever that was, it was basically -- I thought that he was not proposing really any changes to SOX 404, or any easing of it --

MR. LEISNER: Your memory is aligned with some other folks.

MR. SCHLEIN: So relying on that as the basis for
whatever we're going to come up with for our $700 million and
below threshold does not seem to get the relief that I
thought you were alluding to, Janet.

So that's -- maybe I missed something there, but --

MS. DOLAN: Well, I think that's why we are not
ready to make a recommendation, because we're saying we have
to determine if this is possible.

One of the biggest barriers that -- I think we've
all heard the word, COSO-light, and the biggest barrier we
had for a long time is the auditors kept saying, you can't
make it any lighter than it is because we have to meet AS-2.

So now we're saying we'll take the auditor
attestation out of it. We're not asking people to be
required to do the AS-2 attestation, but just on something
significantly less than what they're used to doing.

So that's been a breakthrough. We'll take that
out. And now we will say to COSO, we hope to have a full day
meeting with him and his team. If we're not asking you to
try to water down AS-2 when AS-2 is the standard by which the
company's going to be held to, when we're really saying to you,
if you really could right-size this to small companies --

And we're not saying that what they have and are
delivering tomorrow is it. What we're saying to them is, are
we comfortable enough -- if we asked and made a
recommendation that the SEC look to you to deliver this, get
this done and get it delivered, would you be able to do it?

That's what we want to find out.

If they say we don't think we're able to do it,
then we'll decide is there some other body that can do it.
And that's why we're saying we're not ready to recommend.
Maybe we can't get there.

But everybody's who's come in, whether it's
investors or companies or anybody, has said, if you can get a
rational, reasonable standard to hold me to, then I can do
it. But right now you're holding me to a standard that just
doesn't work in the small company environment.

MR. WANDER: Drew?

MR. CONNOLLY: Janet, I'm happy to hear you say that.
I'm also, Ted, delighted that somebody recalled the
testimony, both of the fellow from COSO and the fellow who

used to be the chief accountant here at the SEC, who informed
us that they anticipated that Sarbanes-Oxley liked compliance
to cost $91,000 per company and be able to be done with in a
week.

So my concern is that there have been a lot of
judgments made which have resulted in us being here trying to
right-size this and work it out and fix it and respond to
both the investor community as well as the small company
community.

So the one thing I'd caution you to do when
speaking with the professor from COSO and the representatives of COSO, and this is not meant in any disrespectful way to those august, well-intentioned, and thoughtful people, but they have not had the benefit of the testimony that we've had. They have not had anything more than an anecdotal belief that maybe there's a problem.

I hate to, just as you hated to define it, what is the nature of it, I'd hate to say that they may not have felt our pain or the pain that we have, in fact, been privy to. So while I certainly would pay attention to what they have to say, I think we've already drilled down deeper to some of the impacts than their mandate called for.

MR. WANDER: Alex?

MR. DAVERN: Yeah.

I'd just like to add to what Drew said here.

I do think, certainly from my personal opinion, I think we should work with COSO. We should review their report. We should talk to them.

But I personally do have significant lingering, I guess not good feeling about the idea that we may end up with a recommendation which would rely on the future actions of another body to effectively execute once we've dismounted.

And I personally am more attuned towards making -- drawing bright lines around standards that are already known, and Janet is obviously very familiar with my opinions on
But I do think we should try and see where that goes, but it is a nervousness on my part that we might end up with a recommendation that another body solve the essence of the problem at some point in the future, when we really can't predict exactly what that outcome would be.

So thank you.

MR. WANDER: Rick?

MR. BROUNSTEIN: Yeah.

Just to sort of chime in, I think you've hit the essence of what is the minority opinion back and forth in the group, is can you accomplish this cost effective solution? We think we owe it to ourselves to give it a try, and I think that's where we're heading, and, you know if it's something that the SEC selects a group, we want to talk to.

COSO, but it doesn't -- and there's several groups that, you know, may be the logical groups that could do that. If they can't do it cost effectively, then, you know, that's when the exemption starts to become more logical.

MS. DOLAN: And I would just conclude on behalf of our subcommittee, an answer to your question, Drew, is we still are trying to say it's easy to say just exempt, and we may end up there, but we feel that we have the duty to try to create a solution that really works.
We think this is what should have been done first, we think this should have been done first, which is create a standard where everybody knows what it is, and then come in and determine whether you've met it, but it wasn't. So -- but we're just trying to say, can we now find a way to try to recommend how to do that? We may conclude we can't. We may conclude it just can't be done, and then we'll look at our options at that point.

MR. WANDER: Dick, did you --

MR. JAFFEE: Well, I think maybe Janet answered my question.

I was starting to get lost here in terms of what you're really looking for COSO or some other body to do.

I mean, it seems to me that, you know, in simple terms, if you want an internal control system, you want one that gives you the right answers to create your financial statement and protects the assets of the company, but you're looking for some much more elegant and comprehensive set of standards that a company could look to and say, "Okay, I've got a system and it fits their definition."

Is that what you're saying?

MS. DOLAN: Well, we live in a world now in which, through 404, we have said that you really need auditor attestation that you have the proper internal controls, and
so we've created a world in which people feel that's kind of
a necessary element of good business.

       We're saying that doesn't -- that's not
cost-effective for a small company.

       MR. JAFFEE: Yeah.

       MS. DOLAN: We have to start with where we are,
which is we're taking something away.

       We would like to be able to say to the marketplace,
good internal controls are really important, and in the world
before Sarbanes-Oxley, we would have said leave that to the
company to figure out what that is.

       But we're not in that world. We're in a world in
which the public thinks that, or has come to expect that
you're going to have an external force coming in and
certifying what that is.

We're saying that's just not cost effective for
small companies.

       But can we do something in which we actually say to
the investors, "But here's a level of confidence that you
should have in these small companies"?

       And one way you would do that is to say we're going
to have the management actually assert that they have the
appropriate internal controls in place where you can rely on
their financial statements, but we don't tell them what that
is.
And we're trying to say can we create actually, you know, a framework? And that's what a COSO or some other body might be able to do.

We may not get there. We may have to say we're just going to have to either exempt and live in the old world in which you don't have any assertion of this, or we have an assertion but we don't have a standard that you're holding people to.

But we're just trying to see can we create some kind of framework where we can help small companies say, "Okay, if I can create those kind of controls, then I should be comfortable with my assertion and the public should be comfortable that my assertion means this."

So we're just trying to see is there a standard where everybody can look at an assertion and say, I know what that means." That's what we're trying to do, and we not get there.

That's why I'm trying to say this is a work in progress at this point.

MR. JAFFEE: No, no, I understand how you're struggling with it, and I'm struggling to try and understand these nuances.

And I guess the analogy in the financial statement world would be that when you make the 302 assertion that you're asserting that the statements are correct according to
the GAAP standard, is that what it is, and so going back to
what Mark said at the very beginning, there is no such
standard in the audit world.

MR. JENSEN: Yeah. Let me try to help you with it, Dick.

If you go back to a lot of the testimony that we
heard, what I heard over and over again was that the auditor,
the public accounting profession was driving the cost because
of their need to meet a standard, an auditing standard,
AS-2, and the accounting firms believed that's what they've
audited to.

And I think what happened, and the dynamic that
grew out of that is that's how management got to the point
they were comfortable making their 404 assertion, because the
auditor was out there saying, "I need this to do the audit,"

and so management, out of that grew management's point of
view that, "Well, if I meet them, then I'm okay making this
assertion."

Once you take the auditor out of the picture and
you take AS-2 out of the picture, our fear is then the only
thing a smaller company could look to would be, even though
the auditor wasn't there, it would still be, "Well, this is
what they have to do in the larger companies so therefore,
this is what I would have to do down here."

The dynamic is you have to change that so that they
could look to something not necessarily as a safe harbor, but they could look to a standard that would say, "This is adequate for me to make an assertion."

I think, you know, we just have to see if we can get there or not. Otherwise, I think, you know, we haven't really done much for them other than remove the auditor --

MR. JAFFEE: I'll tell you, though, just to react to that, that I guess if I had my choice of devils to deal with, I might rather deal with the auditor attestation than this murky world.

And I don't understand COSO, but I have had, you know, just anecdotal comments about how thick the book is and how heavy it is, and knowing the banking business, it's been a big deal for a long time.

I'm thinking to small companies, at least you got

the auditors sitting in front of you to talk to them, but to have to have this amorphous thing running around there called COSO might be a big step backward.

MR. WANDER: Rick?

MR. BROUNSTEIN: Rick Brounstein.

Let me just take it to other extreme.

One of the presenters, Lynn Turner, a former chief accountant, very active in the -- you know, has come up with an aid that he claims that a CFO should be able to sit down and basically in a day go through this process and be
comfortable in making a management assertion.

Maybe that's too far to the other extreme, but I mean, to me, something along that line is very cost effective.

I think you need to give us a chance and see what's out there and see if we come -- you know, we clearly don't want the 800-pound gorilla to tell us, you know, what makes sense for a little company, a micro-company to do, or even a small company, or else we won't have achieved the cost effectiveness.

MR. WANDER: Actually, I'm going to show my age now, but I think probably 20, 25 years ago, and maybe it was actually -- and maybe, Dan, you'll remember this -- when the internal control requirement first came in was, what, '77?

MR. GOELZER: '77.

There was some effort or discussion as I recall about management, or at least a CEO signing some type of certificate, and in fact some companies over the years since that time have included in their annual report a management certificate telling the shareholders and/or the investing public that they have high standards and they're confident that the financial statements are prepared in accordance with GAAP, et cetera.

There was a big brouhaha about these certificates
at that time, and I will try and go back and recall it and
maybe share that with you, just to see what somebody else
thought some time ago.

Am I on target there or not?

MR. GOELZER: No, I think everything you've said is
correct.

I think the SEC had a proposal in the late '70s,
early '80s to require a management statement about controls,
and that's probably the brouhaha that you're referring to,
but I'm not aware of anybody having come up with any standard
or framework of the sort that we're talking about on the
subcommittee that would tell management how or on what basis
they ought to make that.

MR. WANDER: No, I see what you're saying.

MR. GOELZER: It was much more a free writing kind

of exercise in those days.

Then, of course, COSO a little later came into the
picture as the control framework.

MR. WANDER: Yeah, actually, the original COSO does
deal with
smaller and mid-cap businesses, and in my reading of it does
talk about applying different standards.

And I'll try and get that also for you, Steve,
because you might want to have, as you said, increased
disclosure; and I think you're right, Dan, it didn't have a
standard to apply to that report.

Mark?

MR. JENSEN: One other thing to think about -- this is Mark Jensen -- or to look at, Herb, is in the original, one of the original drafts under COSO, there was a complete section on small companies and how it would be applied in smaller companies, and that was eliminated in the final draft, was taken out because of the concerns primarily of the then Big Eight that we were creating two sets of standards. So what was left within the final draft of COSO was this principles based framework with a few paragraphs thrown at the end of each one of the components that says, "Here's what it might look like in a smaller company."

I think that one of the areas for us to start is to go back, because there was a lot of work done on that, and then it was eliminated because of the concern of the Big Eight accounting firms not to have dual standards out there.

So I think there is some work that's already been done in this area that we could take a look at.

MR. WANDER: Well, that's helpful. That's very helpful.

Well, I think we've had a really excellent, splendid discussion here. I think everybody has had an opportunity to ask questions and to probe.

And again, I want to thank Janet and everyone on
the subcommittee, because you really have devoted your time
and attention and come up with, I think, a very sound
analysis, and whether we can get the next step, we will all
see.

But I think we're all cheering for you, at least.

Let me put it that way.

Any other comments before we move on?

It's now 11:25. Why don't we hear from one other
committee and then take a short lunch break and then come
back.

Would that be all right with everybody? Is that
agreeable?

Who would like to go next? I'll take volunteers.

Steve.

MR. BOCHNER: Steve Bochner.

I guess this will be a little anti-climatic after

the 404 Subcommittee.

(Laughter.)

MR. WANDER: I'm glad we did yours first.

MR. BOCHNER: I'll forge ahead.

So I think we, you know, we spent actually a fair
amount of time on these governance issues relative to the 404
attestation issue, so I've already talked about that.

I think, Herb, unless you tell me otherwise, I'm
not going to reiterate the areas of alignment that I covered
yesterday unless you'd like me to go through those again.

MR. WANDER: No, but at the end of your remarks, why don't you ask if anybody has any comments on them, Steve?

MR. BOCHNER: Okay.

Maybe I will comment on the areas of alignment that we have had some dialogue on and invite the members of my subcommittee to chime in with additional or conflicting thoughts on this.

We've discussed further this idea of the accommodations provided under Regulation S-B, which are modest but, you know, rather than three years audited financials, two years, and a few other accommodations, and a suggestion was made actually by Leroy, who was visiting our subcommittee meeting this morning, that maybe we should consider extending those accommodations not only to micro-cap companies, but if we're really looking at trying to reduce costs and increase efficiency without impairing investor protection, should we extend those to all smaller public companies?

In other words, would it somehow impair investor protection if we allowed smaller public companies to not have -- I think under that construct you would still have five years financial results in summary form, but in terms of getting the auditors in the loop, is a financial statement three years ago really necessary for a smaller public
company, or is two years income statement and two year
balance sheet sufficient?

So I think that's -- I'm rolling that out to
describe some questioning and maybe some progression in our
thinking about just how aggressive we ought to be in looking
at those S-B accommodations.

I'll welcome it -- if anyone wants to chime in on
that, I'd welcome them. If not, I'll keep forging ahead
here.

MR. DENNIS: Steve, this is Leroy.

The one thing I think we also talked about was
whether, for investors, it made sense to provide comparative
balance sheets to those companies, so rather than the current
S-B standards, where you have one balance sheet, two income
statements, we'd go to a two and two standard, and I don't
think that would add any cost to complying with the S-X or

Regulation S-B, and certainly wouldn't require any further
auditor involvement than we require right now, and probably
provides better financial information for investors out there
at very little cost.

MR. BOCHNER: Yeah. Thank you.

MR. WANDER: Rick?

MR. BROUNSTEIN: Yeah, Rick Brounstein.

Just a quick reiteration that I've been filing
under an S-B for a while, and we've always filed two and two,
and that's -- there's no more work to be done to do it that way, so why wouldn't you?

The other thing, and maybe it ties into what you're doing, but some of the negative requirements on the S-B tend to do when you're doing registration statements, and the fact that you can't incorporate by reference and such as that.

So hopefully, we're going to keep the good and not some of the more onerous provisions.

MR. BOCHNER: Yeah, we have, as it's now formulated, a separate recommendation that we would extend S-3 availability and forward incorporation by reference privileges to smaller public companies on the theory that if Internet accessibility exists as widespread and the information is there, why should smaller public companies be deprived of referencing that and we only allow larger public companies to reference that?

So I think we're still interested and supportive of that idea.

You know, another topic that has surfaced is you now, and perhaps this may not be popular with the SEC, we'll have to let them decide this, but today if you miss a filing, even if it's attributable to, say, problems with 404 that we've identified, you are put in an S-3 penalty box for a year, so instead of being able to use the short form, you now have to use the long form.
And I guess we have questioned that within our subcommittee, you know, why -- does the punishment fit the crime?

In other words, why make -- if the information is already there, why are we making the company spend more of the shareholders' money to do a longer form rather than a shorter form?

Maybe there should be some other sort of remedy, if you will, and maybe it is time to get rid of the timely filed requirement and simply, you know, you're S-3 eligible if you've been reporting for a year, and as of the date you file the S-3, you're timely.

But, you know, we'll have to talk to -- I'm sure we may hear from Enforcement and the Division about whether or not that's a good idea and whether or not that penalty box is an effective stick that they use to make sure companies file.

MR. WANDER: Well, thinking about that, I mean, if you have some sort of increased disclosure, maybe the more appropriate standard would be some sort of satisfactory certifications under 302 might be, in fact, more helpful to investors than having timely filings, just as a timely filing.

MR. BOCHNER: And I think today, Herb, under 302, you're required to talk about designing disclosure controls, and I think if you're missing SEC filings, I would question...
whether you can take the position that your disclosure controls are effective, so you may even have a context in which to address your point today.

MR. WANDER: In fact, the certificate, as I recall, does say that you have controls that will permit you to timely report.

Good idea.

MR. BOCHNER: So I think on the areas of alignment, I'm not going to cover anything else there that I reiterated yesterday.

We have kicked, everybody will be happy to hear, the materiality issue over to the accounting subcommittee where it properly belongs, and I think actually Leroy has made some progress on that, and I'm going to leave that to him to talk about.

The only other area that I think we want to talk about is this beneficial record holder issue, and we did continue to discuss that.

This is the problem with the form over the substance.

If there's a number that's in place today that requires one to register, and also a different number of -- number of shareholders we're talking about -- and a different number that allows one to de-register, that number can be gamed if we're talking about record holders and not
beneficial holders.

So the idea is perhaps to move to less of a form over substance construct and move to beneficial holders, so you actually look at the real shareholders for purposes of determining at what point do you cross a threshold and you're large enough that you should be filing reports with the SEC, and similarly, when is the real number of shareholders small enough that you should no longer have to file reports? So the question is, where do you draw that line? And we have had some thoughts about that.

I think, just to throw some ideas out there, we've had discussions around the total asset number perhaps moving up from 10 million to something like 15 to 20, although those are just thoughts, and perhaps moving up the shareholder number, which would now be beneficial, not record, to something like 1,000 to 1,500.

We're very mindful, as we say that, of the impact this could have on a lot of companies, and so we need more data on that impact, and I think the SEC is going to try to help us to, as best they can, get that data, and if we do do something along those lines, we're certainly going to have to have a phase-in period for issuers on both sides to be able to plan for it, to see it coming, and not just put something in place immediately. So I think that, unless members of my subcommittee
have other thoughts they want to talk about, I think that
summarizes our discussions.

MR. WANDER: Dick or Pastora? Any --

MR. JAFFEE: Well, just to beat my dead horse to
death here a little bit, the director independence issue, and
Dave mentioned it -- you know, Steve keeps telling me that
the rules are clear and that if we tried to clarify them
further we'd run into the Delaware court issues, and I keep
thinking that the rules are kind of silly.

The part of it where you can't pay anybody anything
on a consulting fee -- first of all, you could game that by
just creating a board committee, if you wanted to, in the
name of whatever the consulting was and say it's a board fee,
but that doesn't really feel good.

So my guys said, "Why don't you ask for a safe
harbor with a specific dollar limit under which you would
still be independent and over which you would be deemed to be
unindependent?"

But Steve keeps telling me that it really isn't
doable that way, and I defer to his greater knowledge.

So I don't know, that's just an issue that we've
banged around a little bit.

MR. WANDER: Pastora?

MS. CAFFERTY: Let me say that I think this
argument of the difficulty of finding independent directors
is a red herring, but it's a very dangerous red herring because the whole idea of independence is that the company will be forced to go outside those people that they know. And I must say the most salutary effect in the boardroom, and again I'm talking about mid and large sized companies, is that for the first time, really, in the last five years many companies who have basically recruited directors based on who the CEO knew or the board members knew, you know, sat down, very good faith efforts -- I'm not -- but it's who we all know, and we come down with a short list and then we make it shorter. We interviewed them. We took it very seriously. But there was no stranger in the room.

Thanks to, I think, the push for truly independent directors, we've been forced to look outside whom we know, because there is a shortage of directors.

And this may be a boon for the search firms, but the fact is that it is very refreshing to have someone in the boardroom that you've never met before in your life after you've, you know, interviewed them, you're comfortable, they fit with the board, you know.

There's more proactive behavior on independent board members, outside board members.

It doesn't mean the CEO is not included in some of the interviews, but the boards have really taken a very
aggressive stand on this, and to me the benefit is that you have people who are not familiar with the company, who are not familiar with everybody sitting in the room, asking questions, and the beauty of this is that you get a very refreshing, different point of view.

I cannot believe that small cap or even micro-cap companies in the smallest towns in America cannot find perfectly intelligent people, knowledgeable people, good strategic thinkers who may be on a local high school faculty rather than sitting at another company, and may not be included in this, but can think and can ask questions.

So I'm very -- I think there's great salutary benefit to having independent directors well beyond the proscription. You really get different minds in the room and a variety of thought in the room.

I also have a lot of trouble, and Dick knows this, with the exception from fees.

You can game any system, but the fact is that the idea that no director is paid extra for whatever he performs for that company I that is again a very salutary thing.

Boards increasingly are going to retainers. They don't have to be huge retainers.

There's a lot of status and privilege serving on a board, and I'm old enough to remember where $25,000 for a Fortune 100 company was a very acceptable fee.
Now, I'm not suggesting in today's world -- this is 25 years ago -- but you didn't go on it just for the fee. So I urge all of us on the committee to take a wider view of independent directors and a wider view of a certified financial expert.

Someone who is experienced in drawing up budgets, who oversees a non-profit wisely as well as a for-profit can be a certified financial expert, and they're being certified on boards by outside counsels constantly of very large companies, so I'm sure it can be happening in a micro-cap, too.

So I just get a little uncomfortable when we focus so much on the difficulty of finding independent directors. The difficulty is finding independent directors whom we know, and that is a difficulty, but there's a lot to be said for going outside of this.

MR. WANDER: Yes, Drew, and then --

MR. CONNOLLY: Pastora, while I fully understand your position, I guess as the guy who carried the red herring into the room --

(Laughter.)

MR. CONNOLLY: -- I'd like to have an opportunity to just explain a little bit about my herring. The fact is that for many, many, many micro-caps, the intersection of directors' fees and the D&O insurance
that we have not really talked about here too terribly tough,
but in my micro-cap community, it becomes a significant
number, and has obviously increased as Sarbanes-Oxley has
come to the fore and the fear of the insurers, maybe justly,
about potential claims has obviously market priced and D&O
up.

I have no problem. Actually prior to being
appointed to this committee, I'm in roomful of people I
didn't know and I would be delighted to work with virtually
everyone here once the committee is over.

So I don't think we have a concern about working
with strangers, per se --

MS. CAFFERTY: I'm not suggesting you do.

MR. CONNOLLY: -- but I would have a real concern
if I had to recruit the high school basketball coach to help
me run my manufacturing business because he was -- you know,

the cost of a true financial expert director, given the
potential liability that everybody is now facing and the
experience they're having in being sued, I'm not sure what I
would have to pay that high school basketball coach, but if
he were informed as to his potential liability, I think he'd
probably price himself in a way that would be stressful to
me.

MS. CAFFERTY: Drew, we could go on, and we have to
have this discussion, but it's only throwing out there
something for the committee to think about, and in my experience, financial experts on boards are not paid any more than any other director.

And I wasn't suggesting a high school basketball coach, although there may be one out there that's wonderful for this, but all I'm saying is think this through very carefully, because we're not -- maybe we should just limit it to the audit committee so it's three, but I really think the value of credibility with the public of having truly independent directors is a real one.

But, you know, and I'll drop it for the time being, because I'm sure the committee will continue to consider this.

MR. CONNOLLY: I absolutely hear what you're saying, and I guess maybe I'm not aware of what directorial compensation is in the real world, but I know that I doubt that I could find a director for $25,000 for my companies, and I don't think I'd be insulting enough to offer them that.

So all I'm saying, and there's nothing about independence that's not healthful, and clearly that is one of the areas of Sarbanes-Oxley that I think any one of us who is interested in good clean markets would support, but while we believe that the universe of people who would be pleased to work as directors for companies, I don't see it in my end of the marketplace.
MR. WANDER: Well, let's move on.

Leroy?

MR. DENNIS: I just want to add two comments.

Leroy Dennis.

One is, I support what Pastora said. As far as from an auditor's standpoint, I can't think of any one thing that we've done over the past five years that has increased audit quality than having an independent board member that the auditors can go to.

The other thing I heard here in this banter back and forth is that maybe we're not addressing the issue.

Maybe the issue we need to address is similar to the issues that Janet has brought up about auditor liability concerns and how that's driving the process, and maybe we need to think about board liability and how should that be construed in a legal context of what is the liability appropriate for a board member that gives best efforts, not fraudulent, but is there some kind of relief that we can recommend or provide to audit board members that are giving their best efforts?

I'm not after to protect people that are bad, but how do we protect people that are trying to do a good job?

MR. JAFFEE: Herb, can I comment on that?

MR. WANDER: Certainly, Dick.

MR. JAFFEE: You know, I think that is a very, very
important point, and it's not just -- we've talked about it in terms of recruiting new directors, but I think maybe the bigger issue really is existing directors who now are in a world in which they know there's some higher standard out there that they may potentially be held to.

And it's very analogous to what Mark said about the 404 thing. They don't really know precisely what that standard is, so everybody is around hawking best practices. There's going to be a thing on compensation in a couple of days on a webcast where a bunch of well-known directors are going to talk about compensation.

But I think that's a hugely important area. Now, I don't know how you deal with that, again, because the real big gorilla in the room is the legal system.

MR. DENNIS: I was going to push that to you guys, so --

MR. JAFFEE: Yeah, sure.

But I can tell you, and I could name names of people who were perfectly comfortable in their roles five years ago, and today are real nervous and there hasn't been anything changed in the company's situation, it's in the external environment in which they feel they're operating.

MR. WANDER: I will give you one vignette from one of my clients.

When the financial expert provision became
effective, the board of this particular client said, you know, "Do any of the members presently satisfy that requirement or meet that standard?" And in fact, they did. But the board sort of said to itself, and this was an open discussion, that they thought for board protection the board should make sure there was a financial expert on the audit committee that was frankly not a retired audit partner of an audit firm, but rather a currently sitting CFO who knew how to operate in the trenches, and the board felt that that was more protection for the other members, which -- if we're looking for to be helpful. So let's move on, though.

Any other questions for Steve? Any other -- yes, Mark.

MR. JENSEN: Yeah.

I just kind of want to come back to this point again, because it comes up over and over again, and I feel like there's another participant on this committee that you can't talk to, and that's the plaintiffs' bar, because every time something comes up, we actually are talking about the plaintiffs' bar and what happens and how to protect ourselves.

And I'm wondering, is there nothing that can be done out of this committee in that area? I mean, even to take a minor step, I think would be important as basically
getting a ball rolling and trying to stop this endless
discussion around, "Well, if we do that, we've increased
people's liability."

You know, because it seems like --

MR. WANDER: Well, we could recommend another
advisory committee.

MR. JENSEN: No, thank you.

But I mean, it just seems like common sense goes
out the window, and --

MR. CONNOLLY: Loser pays.

MR. WANDER: That was Drew who said "Loser pays."
Jim and I will think about how we could insert that
at this frankly late date here.

I'm not trying to minimize the issue. Congress
went through this when they passed the Securities Reform Act,
what, seven, eight years ago, and it's a highly charged area,
et cetera, and there may be particular reasons, I personally
believe, in the accounting profession that it might be
appropriate.

I think the law on directors, I think what's
happened is all these seminars happen, and frankly, lawyers
go out and give scare tactics to their boards and tell them,
"If you do these 101 things, you'll be all right."

Well, you know, if you're the director, you sort of
say, "I can do 80, but I can't do 101."
And the result is, it's sort of a piling on, and I think frankly the -- both the SEC and the PCAOB criticized the accountants for not using enough judgment in their May releases.

Some of that rubs off on the lawyers, as well, in using judgment to tell people what their real risks are if you actually do pay attention, go to meetings, and try and come up with the best decisions.

Yes, Janet.

MS. DOLAN: Herb, this coming from the committee that wants to solve a problem, I'm not sure we can solve that problem, but I do think it would be good for us in the preamble that we start connecting some things like competitiveness, risk aversion, and saying that those are the things you do not want to happen in your capital markets, is to become risk adverse, that it is a really important element of the success of our capital markets that we understand that risk is an element of it, and in this competitive world, capital can move in a nanosecond.

So I mean, I do think in the preamble or something we should tie some of these bigger themes that we can't solve, but we should at least say are the environment in which we're making our recommendations.

MR. WANDER: Drew.

MR. CONNOLLY: Janet, I'd be delighted to work with
you on drafting that language, and I'm sorry that you jumped
that comment that I was hoping to make today, because the
reality is that you cannot legislate out all fraud, all
fraud, bringing it down to the point where we're, you know,
implementing a marketplace that's not possible.

It's part of -- it's kind of a perversity, but a
little bit of fraud, unfortunately, keeps everybody else
honest because of the ability to focus that question.

And I'm not buying into the idea that we should be
supporting that, but clearly, in the micro-cap section of the
world, every financial advisor who is prudent is dictating
that this is a risk-oriented portion of the market, whether
the risk is any more out-sized than some of the majors, as
we've seen over the years.

I got a statistic that was very interesting the
other night. Every micro-cap company, as we've defined them,
in terms of total market capitalization equals one Worldcom.

So the question of whose money is being lost and
where that money is being lost, one could argue that since
Worldcom qualified for pension fund investments and the
micro-caps, in most circumstances, do not, the impacts are
even more outsized.

So risk assumption is something we should actually
be encouraging.

That's the basis of this country. It's how the
country was settled. It's how the country was built. And
I'd be delighted to help you work on some of that language.

MR. WANDER: Jim?

MR. THYEN: Yeah. This is Jim Thyen.

Steve, does the committee have anything additional
to share with us on the access equals delivery area that I
know you've been debating and talking about a lot?

MR. BOCHNER: Jim, I think we still continue to
very much like and support that idea, that clearly there will
come a time -- and I think we are suggesting maybe it's now,
and I think the SEC in the securities reform release took
baby steps in this direction with respect to the final
prospectus delivery -- there will become a time when we say,
okay, Internet accessibility is widespread enough that we
don't need to stuff mailboxes all across the country with
proxy statements and annual reports, that most of us actually
go on line, subject to having appropriate protections for
those shareholders that still desire paper copies.

And you've got to have those protections. It's got
to be at no cost. You've got to build in time.

But at some point, you know, if our mantra here is
reduce costs without impairing investor protection, while
this isn't an area of great cost, we've identified it as an
area where smaller companies are disproportionately affected
by having to do all this printing, you know, this printing
job, which largely ends up in recycling bins, we think.

And therefore, you know, we really would like the SEC to consider extending the access equals delivery model to other SEC filings, so I think we're very much in favor of making that recommendation to the committee and then hopefully to the SEC.

MR. WANDER: Did you have -- thank you.

MR. BOCHNER: Jim, can I add one thing to that?

MR. WANDER: Certainly. Certainly.

MR. BOCHNER: So, Bob just reminded me, quite correctly, that we should also not forget to talk about EDGAR.

There is some suggestion -- you know, I think EDGAR has worked well. I think when it was adopted, it was, you know, very forward thinking, ahead of its time.

But there is some suggestion now that, you know,

why is it that public companies, particularly smaller ones, have to go to the printer and pay all this money to get EDGARized, and, you know, isn't -- and I'm going to be the last person in the world to suggest the technical solution to this.

But shouldn't there be some easier mechanism, through e-mail or a common format or something, that allows companies to more cost effectively get their SEC filings done without having to seek outside help to simply transmit a
document that they've already got internally.

So we haven't figured out exactly how to frame
that, but I think that's another element of this efficiency
idea, along with access equals delivery, the incorporation by
reference idea, and just trying to ease the system where it
doesn't -- where this seems like low-hanging fruit, where we
can make these changes, save some costs, and we really don't
think investor protection will be impaired.

MR. WANDER: Okay.

MR. CONNOLLY: Steve, that clearly is an overhead expense.

One of the things, I was concerned enough about
this, as recently while in San Francisco, went to a banking
conference, ran into an executive from EDGAR Online, and
asked them -- Susan Strausberg's company -- asked them would
they, under any other circumstance, be able to extract the
data, this new XBRL language, which allows financial report
information to be extracted, manipulated, spreadsheeted, et
cetera, would that, under a non-EDGAR circumstance, would
they be able to do that?

And actually, I don't think he knew the answer.

And I know that that has been raised to us here by
Kathleen, so there must be somebody within the organization
here who might be able to give us both the cost overall to
comply with EDGAR, and also whether or not the technology
exists to do something other than EDGAR.

MR. WANDER: Okay. Any other comments, questions, ideas for Steve?

(No response.)

MR. WANDER: If not, it's about five minutes to 12:00. Why don't we break until 1 o'clock -- is that enough? -- come back for the last two reports, and then discuss next steps? Is that all right with everyone?

We're adjourned until 1 o'clock. Thank you.

(Whereupon, at 11:55 a.m., a lunch recess was taken until 1:02 p.m.)

MR. WANDER: It's now a few minutes after 1 o'clock, and we're missing a few people who I know are still here. So why don't we wait just a couple of minutes, and those of you who are listening on the web page, we'll start as soon as we get a few more people around the table.

(A brief recess was taken.)

MR. WANDER: A few more of our committee members have arrived, so we can begin the meeting in a couple of minutes.

(A brief recess was taken.)

MR. WANDER: All right. I think we have a complement of everyone. Let's see.

Kurt was here a minute ago. We keep losing and
Okay, here's Rick.
Why don't we begin, however. A few members have had to leave, primarily Janet Dolan, for those of you who are listening, and Dick Jaffee will be here in a minute.
Has anybody else left? I don't think so.
Oh, Alex Davern, yes.
So I think we should move on, and the next subcommittee, why don't we go to you, Leroy?
MR. DENNIS: Okay. Leroy Dennis from the Accounting Subcommittee, and I've got Patrick here with me.
We basically talked around the four or five areas that we still have some divergence on, and so I'll go through those real quick.
SAB-74, when we discussed that, we decided there really was no need for revisions to that standard to be in compliance, or with the spirit of our recommendation to extend the implementation date for accounting standards for micro-cap companies, so we'll be making no recommendations there.
Steven has already talked about the predecessor auditor and the 10-Ks.
We really were addressing that issue on the three years versus two years financial statement requirement in an effort to increase the competition and reduce the cost to
change auditors, and we talked about whether we should change
the requirements for predecessor auditor involvement in a
10-K filing.

Given that we would go to a two-year -- recommend
going to a two-year standard versus a three-year requirement
for financial statements, we don't think that's much of an
issue anymore and would just recommend alignment with Steve's
recommendation on a two-year balance sheet income statement,
and nothing further on our part with that.

From the PCAOB registration standpoint and the
comments I made yesterday requiring some minimum standards
for registered accounting firms to practice in front of the
SEC, the more we talked about that, I guess I got convinced,
albeit with maybe some arm twisting, but convinced that we
need to let the PCAOB do their job and not require any
minimum standards from the auditors, but that the PCAOB will
do that through their inspection process, and that the market
will eventually sort that out.

I would -- I still want to explore the possibility
of some kind of annual education requirements for people to
practice in front of the SEC.

As you may or may not know, the AICPA quality
centers require a certain level of training every year to
audit a pension plan, they require a certain level of
training to audit government entities under Yellow Book, but
as far as I know, there's no specific requirement to attend any kind of training to audit General Motors; so that seems a little bit of a disconnect there, that we ought to have some kind of minimum requirements for auditors.

On the FASB structure with the small business, we're going to talk to George Batavick about these at and get his input before we make any recommendations on that, in that light.

And then we probably spent the majority of our time talking about materiality in financial statements and the number of restatements that are occurring. Whether that's good for the market, whether it's good for investors, I think is subject to some debate. Obviously, if the financial statements are materially wrong, they need to be fixed, but we think we're under a perfect standard right now for financial statements as opposed to a materiality standard when it comes to looking at errors in prior financial statements, and we're also, we think, moved to a quarterly materiality level so that the real test is based on a materiality level on a quarter from a practical standpoint of what's going on in the market.

That's resulted in several restatements, that I think we all have a consensus that under the same set of rules five years ago would have not resulted in the same number of restatements that are going on today.
We think that doesn't do well for investor confidence in the markets, that restatements should be reserved for things that are material enough to deserve that. We're not ready to make a recommendation in that area, but we did meet with the SEC staff.

And Gerry, I just want to just interrupt for a second, because every time we've asked the SEC for anything, they have just been extremely, extremely helpful for us. You know, we arranged a meeting yesterday afternoon and got people -- you know, Scott Taub came down and met with us, and I know he's a busy guy, and that's just been -- I've experienced that over and over again, and I'm just really complimentary of your people here.

But back on point a second.

The two areas we want to look at are, it seems like there's been situations where an error is discovered in a set of financial statements, and in each individual financial statement, be that quarterly or be that annual, the number is deemed not material, but when you try to correct the error that the cumulative catchup of that is material to any one quarter.

And so we want to explore that as to what is the right answer for the markets, and how that should be treated in a financial statement, whether that -- I think right now those financial statements are being restated for
theoretically immaterial amounts in each quarter.

The other probably more difficult question is should we go to an annual or a quarterly level of materiality for setting a materiality standard?

And I think there is divergence of views in our group. We have some thoughts as to which way we would want to go, and we need to get some more, probably some more input from the staff on that issue before we would make a recommendation.

In that same light, I would ask for input from anybody else on the committee if they have some thoughts on that issue, because it is kind of like the 404 comments of "Tastes great" or "Less filling," I think. It seems to be on one side or the other.

So that's where we're at, and Patrick, do you have anything else you want to add to our group?

MR. BARRY: (Shaking head)

MR. DENNIS: We will be working with the SEC to develop a recommendation surrounding materiality, and then as far as the two year versus three year statement, I assume we'll just let that go into your committee as far as a recommendation, but with our support.

MR. WANDER: Any comments, questions?

Dave.

MR. COOLIDGE: Yeah. Dave Coolidge.
On the materiality thing, at least this is just my general observation, is that you're right, there have been more and more of these restatements, and it does wreak havoc in the marketplace, because when it's announced, generally there's not an appreciation for the difference between what's really material and what's, you know, not so material.

But to the extent that you can get away from quarterly materiality, I think it's better, you know, that annual materiality clearly is something you have to deal with and flag it, but I think it's really created a lot of confusion in the marketplace as to, you know, what's really going on at these companies when they have a restatement.

Sometimes it's really a tempest in a teapot, and sometimes it's a big deal, but nobody can tell anymore what's a big deal and what's not a big deal.

MR. DENNIS: Yeah, we agree.

I think the other thing that we need to look at with this is the format of quarter restatement. Is it appropriate to re-file prior financial statements every time you change a number in a quarterly Q, or can, if you're just doing comparative statements, can you just correct in your current quarter with appropriate disclosure of what's going on and is that a better method for the Qs, anyway, to deal with that?

I think we all agree that if we have an error in an
annual filing that's material on that annual financial
statement, that we got to re-file the Ks and make
everything right.

There's a little bit less agreement on the Qs, on
how to deal with those.

MR. WANDER: I do know that when you have to
restate over a longer period of time you can get by with
restating them all together in one document rather than
re-filing a bunch of 10-Qs, which is, I think, actually
plainer and concise-er and more easily readable by the
investors.

We had asked Huron Consulting to appear in New York
two weeks ago.

Huron does the annual restatement studies. They
have quite a bit of knowledge base there. And unfortunately,
their top people were all very busy that day.

But if you would like to converse with them, Leroy,
I can put you in touch with them.

MR. DENNIS: That would be great.

MR. WANDER: And, in fact, then they could perhaps
even make a written submission to the whole committee so we
can have that available to the committee and the public,
because they're very interested, and they have done a lot of
work and have a big database, and have formed some judgments
on restatements.
MR. DENNIS: That would be great, if we could get that, so if you want to arrange that --

MR. WANDER: Yeah, I will do that tomorrow.

MR. DENNIS: Thank you.

MR. WANDER: Rick.

MR. BROUNSTEIN: Rick Brounstein.

I'm back on the first subject that you were talking about, minimum audit standards for practicing.

Just thoughts, and maybe I'm in the middle of it.

I don't know, I think we had talked a little bit about whether or not we could recommend some body be formed that would be some national level expertise.

I mean, if you take a look at the bigger accounting firms, they all have their national offices.

If you look at the little accounting firms that all these smaller companies are relying on, if they want to get it right, and then they have four or five public companies, they're stretched.

We have, you know, just personally, we have a small firm that happens to have an affiliate relationship with BDO, but BDO is the only company that I know that is willing to qualify, you know, a smaller company, and allow them basically access to a national office.

I don't know if it's within our purview or how one would go about it, but it seems to me that that organization
would not only help qualify these people, but give them the,
you know, the help in tackling a lot of the more complicated
accounting rules that are coming out that they probably can't
get right on their own.

MR. DENNIS: Yeah, I think there are other firms
out there that provide networks of like BDOs that do that,
but one of our recommendations at the SEC, I don't know
whether it needs to be inside the SEC or outside the SEC, but
some kind of help desk, like what you're saying, for both
smaller CPA firms and for registrants to avail themselves of
-- you know, where they have a place to ask questions.

My sense is something outside the SEC would be less
threatening to someone, and there may be less of a -- you
know, there might be a hesitancy to call the SEC with a
question. I don't know that.

MR. BROUNSTEIN: I mean, to me, it's not simple,
because there's liability issues.

I mean, you're actually looking to somebody, you
know, to give you the right answer.

MR. DENNIS: I mean, there are groups like the old
Andersen Accounting Research Manager -- they have a practice
called Accounting Research Manager.

I don't believe the old Andersen, I forget the name
of the consulting firm, but they will not advise people on
public companies because of the liability around it, but at
least on private companies, I know they will advise on accounting standards and implementation and give their advice. I don't believe they do that for public companies, but that is -- those type of services I believe are out there. They are not cheap for people to subscribe to, but they are out there.

MR. WANDER: Mark.

MR. JENSEN: This is Mark Jensen. Leroy, a couple of questions.

I want to go back to materiality and then I want to come back to another question I have. But have you thought at all -- I tell you, I'm a little worried about redefining materiality again. I kind of think materiality is pretty well understood.

It seems to me the issue is more around, when there is an event, how that ultimately gets communicated to the marketplace.

And have you thought at all about having maybe different requirements for different size companies? And the reason I say that is, materiality, I always like to say materiality with a client, whenever we got into those arguments, was, immaterial means neither you nor I care.

So if you don't care, then that's fine, and maybe
we should just do it right.

If you do care, then it means it's material to you, now it's material to me, and we got another debate going on. And that really is what materiality comes down to in the end. That's what the word means. It's -- you know, forget how you define it. It means it's immaterial.

So I -- but I'm sensitive to the fact, in smaller companies, going back and redoing financial statements, when you don't have an analyst following the company and you don't have this kind of, you know, treadmill that you're on in the bigger companies with analysts, that you got to make earnings, you got to make your number, and things like that, I think an auditor is going to have a hard time.

It's not my job to figure out how the market is going to react to an item, and I don't think we want the auditors making those decisions. I don't think the auditors want to make them.

But in smaller companies, it seems, you know, our first mantra should be, "Do no harm," and it seems to me there's no harm in maybe letting them have an easy way to catch up.

I mean, have you talked about it that way at all?

MR. DENNIS: Well, we've talked about -- and I would characterize what we talked about as not redefining materiality, but
clarifying whether or not materiality should be based quarterly or annually, and there is some disagreement as to if you have something that's potentially material to a quarter number, whether or not that it rises to the level of materiality on an annual basis.

We did talk quite a bit about process, and, you know, is there a different method of, quote, restating when you have a situation where something is maybe material to a quarter but not material to an annual financial statement.

We talked about whether or not you could catch up, you know, and does it make a lot -- does it really help the public to re-file a quarterly Q that's eight quarters old or seven quarters old, or are you better off just to discuss that in your annual filing and then when you're presenting current year 10-Q information, make sure that you compare it to accurate numbers.

So we talked a lot about process, and does that work.

We really didn't talk so much about whether big companies should have a different method of doing this than smaller companies. My guess is the more analyst coverage you have, the more you have to consider whether to re-file those Qs or not.

And we're really just -- I mean, Steve handed us this late last week, and so we've had about an hour to talk
about it, so we're really just kind of scratching the surface a little bit on this.

But all these things are things we've talked about, and we don't have any answers for yet.

And I would value a lot of your input, if you --

MR. JENSEN: Yeah. I'd be glad to talk to you about it.

The other question I have that I still think is -- I know you talked about it before, but I haven't hear you say anything about it today, is on this whole area of auditor independence and whether, in a smaller company environment, you know, kind of giving smaller companies maybe a little more of a break or the auditor an ability to do a little bit more, is that just off the table now?

MR. DENNIS: That's pretty much off the table right now as far as we're concerned.

We talked a lot about that, went back and forth between members of our committee, spoke a lot to auditor representations around the firm, around the company, or I'm sorry, around the United States, talked to people from the PCAOB.

As you drill down through it, we believe the PCAOB guidance is working, and we think that's ultimately where we need to go.

I think to the extent you had two different
independent standards it would become very, very confusing for the public, and so now I'd have, I'm independent here but I'm not independent if you grow to a certain size, and it just became -- it seemed like it was very confusing to get to.

And I think for the most part what we're talking about is the ability to implement standards, that I think even smaller public companies can implement -- you know, once they get the standard going and implemented, it's an easier process for them to have something worked out, and I think the PCAOB guidance does give the audit firms a lot of leeway as to what they can and can't do.

Now, can we go as far as Dick wants, where the auditors are going to do something for the client? I don't think so. But we can't do that under AICPA standards very much, either, so --

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

allowing, and this is more along the lines of accessibility to capital if you have an auditing firm who has been auditing a company for three years following AICPA independence guidelines, now the company wants to go public, now you have to apply for those prior three years the SEC independence guidelines, because they're now in a registration statement, and whether there isn't a breakpoint there where it would be okay for the auditor to follow AICPA rules until the
registration statement is filed.

MR. DENNIS: We talked a little bit about that, and again kind of gotten to the point to the point that we find it hard to believe that anybody wakes up tomorrow and decides to go public, and so that there's at least some period of time they have as an advance warning, and so they ought to be able to get prepared for that, and so we --

MR. JENSEN: Well, I was thinking again --

MR. DENNIS: We didn't dismiss that, but --

MR. JENSEN: Yeah. We can maybe talk about this off line.

But I feel like, especially with the SEC's up and over rules, that in the private equity - venture capital industry, it is very difficult for auditors to kind of monitor their independence all the time in that world, because you have to be sure you're independent for those three years, which means you've got to look at an entire portfolio of companies, what you're doing with them, and what you're doing at the PEI level, and it's a conundrum.

I know that there's been some action trying to get the SEC to maybe give a little more guidance in that area, but it just seems to me it's a big issue with providing services to companies that are private and then getting -- but trying to monitor them as if they were public. It's quite difficult.
MR. DENNIS: I don't disagree.

MR. JENSEN: Okay.

MR. DENNIS: And that is something -- we can reopen that in our committee discussions if the group would so desire that we do that.

MR. JENSEN: Okay.

MR. WANDER: Any other comments besides Mark's?

Yes, Rich.

MR. BROUNSTEIN: Just to chime in and encourage you to do that.

It seems like if we're not talking about creating a new standard, we're talking about keeping the AICPA rules for a larger level, right, for the smaller company, that seems to me pretty harmless.

We don't have to recreate the rule, right. It exists.

Anyway, just my two cents.

MR. WANDER: Any other observations?

(No response.)

MR. WANDER: All right. Thank you, Leroy and Pat, and we'll turn to David.

MR. COOLIDGE: Dave Coolidge, Capital Formation Committee.

Thank you.

We have a number of items that we've talked about
Let me give just a little color commentary, I guess, into why we're focused on these issues. First being ending the prohibition against general solicitation and advertising for transactions. With certain purchasers, this would be a private placement, and what we're trying to create here is an opportunity for private offerings to occur with certain types of investors, obviously, wealthy, sophisticated investors, where you wouldn't be running afoul of the private placement rules by making it a broad solicitation, but only to this group of people that would be able to take the risk, and presumably, when the transaction closed, you would have a very sophisticated and wealthy group of investors, and that should be a decent standard not to -- if you achieve that, that you shouldn't be penalized for having conducted an offering that, you know, perhaps had a fairly broad solicitation effort.

So that's a kind of an idea that we have that would help certain companies in their private offerings. I know this is a subcommittee or this is a committee on public, smaller public companies, but to the extent that the public markets are not available to someone for whatever reason, that this opens up the private markets a little more broadly for them.
Another issue is the issue of private placement broker dealers.
The concept here is to again assist private companies by creating a broader pool of people who can assist them in raising capital.
The NASD registration process, as it currently exists, is something that certain finders or brokers, you know, find to be a little bit onerous, and the concept here I believe is to create a, I don't know if I want to call it an amnesty program, but a way of having a broader group of people be qualified, go through a streamlined registration process, and thereby be in a position to help smaller companies.
Thirdly, private placement exemption adjustments. I won't go into all the details here. I talked about a few of them yesterday.
But the idea here again is to make private placement activity more accessible for smaller companies, easier to process and to succeed at.
We did have a fair amount of debate about the going private or de-registration process, and I think we have come up with a concept, when we talked about this yesterday, and you mentioned the Ziegler situation, that they decided to de-register but had an undertaking with their shareholders that they would continue to provide them with information,
proxy statements, annual reports, a package of information
that investors would find acceptable.

In that particular case Bob Robotti said that
actually the stock traded up because the investors liked the
program.

Yes, they were going to de-register, but they were
going to continue to provide a nice information flow to
investors and they were going to eliminate an $800,000 cost,
I believe was the number, so the stock went up on the basis
of that savings.

And we think that the idea here would be to have an
exemption from 13e-3 for micro-cap companies to de-register,
who were willing to provide -- were willing to, you know,
make a representation to their shareholders that they were
going to continue to provide information.

So that's a way of making it a little bit easier
for certain companies to de-register and save a lot of money,

but hopefully not harming investors in the process, maybe
benefitting investors.

Trading markets, we've talked about that
previously, our belief that the Bulletin Board market is an
important place and we want to make sure that someone is
encouraging the NASDAQ and the NASD in their arrangement now
where the NASD in fact is responsible for the Bulletin Board
but NASDAQ sort of runs it on a contract basis.
We want to make sure that, I think, someone at the SEC take this on as a, I don't want to call it an oversight responsibility, but a cheerleading responsibility to make sure that that market is maintained and it's a good market for companies that, you know, are not listed on one of the major exchanges or on the NASDAQ as it's presently constructed with listing standards.

Another one that we've talked about is 15-C-211 information, we want to make that public.

In conjunction with that, another ideas was put forward with respect to compensation to broker dealers by companies, and maybe we could have a chat about this.

I'm not sure how people around the table would react, but the idea is, just like we've said, that it's hard for small companies to get research analysts, it's hard for small companies to get broker dealers to trade their stock, and is there a way of allowing some company or corporate compensation to broker dealers for providing the market making service?

I'm not exactly sure what all the potential fallout from that might be, but it was an idea that we have recently raised.

Availability of Form S-3 available for Bulletin Board securities.

I think what we want to recommend there is for
resale purposes it would be, the S-3 could be used for resale purposes, not necessarily for registration purposes, and that would be for Bulletin Board securities that meet the market cap test that S-3 now applies to.

Debate on an issue with respect to national, or NASDAQ small cap stocks -- this is a group of about 600 companies that are traded, they do meet listing requirements -- and whether they should be deemed covered securities, in other words, exempt from state review.

There's two points of view on this, and I'm not exactly sure where we come out on it, but that would obviously be a burden that you could take off of a group of 600 small cap companies that they presently have. When they want to sell securities, they have to register with the various states that require it.

Research is an area that we've had a lot of discussion about trying to make sure that research is encouraged and supported for small cap companies.

I think that we feel like we're in pretty good shape there, that nothing that has come out of late or from the SEC seems to indicate that they're doing anything to discourage research or cut off payment flow for research.

It seems like, at least our sense is, that the attitude at the SEC is to encourage this, allow company sponsored research, continue the concept of soft dollar
payments for research.

So I think we're in pretty good shape there.

And then there's a technical issue, Rule 701, which has to do with stock options,].

And we have a concept there that would allow stock options to be granted and not be counted as securities holders for the purpose of becoming a public company.

These would be what we call compensatory stock options.

In other words, they're options to employees that wouldn't trip a registration requirement by a company just because they included too many people in their option pool.

And that is where I think we're in pretty much alignment or agreement on most of these subjects.

I don't know if people around the table have issues that are -- you know, they would take the other side of some of these issues or have others that they'd like to add to the list.

But that's kind of where we are, and we're getting ready to, you know, come forward with pretty formal recommendations on these.

Different subject. And I just want to, because I've got the microphone, bring it up.

I'd love to hear before we leave what other activities are going on out there with respect to
Sarbanes-Oxley reform.

The reason I ask this is I got a call from my Congressman, Mark Kirk, who wanted me to come over to appear at a forum to talk about Sarbanes-Oxley reform and revision, and this was yesterday. He was holding a big session in Chicago.

And so there are other movements afoot out there other than this committee.

I'd like to think that this committee is going to be in the vanguard and the most influential, but it sounds like there's other people who are dealing with the same subject and issue and taking the initiative on it, and I don't know who is keeping track of everything that's going on, but I think it would be interesting for us to know who else is doing this stuff, and maybe, if possible, coordinate with them so that they can have the benefit of all our testimony and all our thinking and discussion and debate, and try and get coordinated, as opposed to having five different isolated efforts going on to address this subject.

MR. WANDER: Okay. Gerry?

MR. LAPORTE: I don't know what that particular Congressman is doing. I know people on the Hill are --

MR. WANDER: This is Gerry Laporte, by the way.

MR. LAPORTE: Yeah, I'm sorry, this is Gerry Laporte.
People on the Hill are actually listening to this webcast today, I know, to try to coordinate their efforts with our efforts, and we're in contact.

And as most of you know, the GAO is also doing a study of Sarbanes-Oxley and small business, which we've talked to and some members of the advisory committee here have also spoken with the GAO, so we're trying to coordinate their study with our study to make sure that, to the extent possible, we're not bumping into each other.

MR. DENNIS: Gerry, do we know when the GAO is going to issue their report?

MR. LAPORTE: Originally, I think there was a December 2005 - January 2006 due date for that, but I'm not sure whether that's still a good due date.

I think that they don't -- they're trying to figure out whether it's -- I think whether they should ask for an extension of that. I'm really not sure where that stands.

MR. WANDER: I actually talked to the people from the GAO last week, and that's an accurate -- Gerry's is an accurate statement.

But it will be around the same time that we're going to at least go public with our recommendations.

As best I can tell, we've both been finding the same information, and I don't know what their recommendations, if any, will be.
So it's hard to tell. Yes.

I don't know of any other studies. People from the Small Business Administration have been sitting in on these meetings, and we've had contact with them, but I don't think they're out making any recommendations as far as I know.

MR. LAPORTE: They did send a letter to Chairman Cox, being very complimentary of this committee.

MR. WANDER: Well, why don't you circulate that?

MR. LAPORTE: I can see if the chairman is willing to do that. I think that's a -- I think he probably would be willing to do that.

MR. WANDER: Drew.

MR. CONNOLLY: Just two quick things.

Dave, since I was the proponent of the 15c2-11 broker compensation discussion, there really is a support in the marketplace for this, and that is that the NASD arbitrarily made a determination a number of years ago that compensation for the due diligence work, not for making a market, but for going through the sometimes arduous, multi-back-and-forth tiered comments and questions, was not a method to be compensated for, and that perhaps made sense when the markets traded in eighths and quarters and the compensation given to a market maker was a 30-day exclusive to trade that security once it traded.

That 30-day exclusive is no longer relevant, and in
a decimalization world, there's literally no way for a broker
dealer to receive compensation adequate to cover the expenses
subject to the due diligence.

So the thought was, since they are regulated
entities responsible for their conduct across the board, that
they are no less deserving of due diligence compensation than
the attorneys or the accountants working with these public
companies, and I think Cromwell Coulson on the Pink Sheets
gave me a statistic that of the 400 15c2-11 submitting brokers,
market makers a couple of years ago, that number is now down
to 80.

So the other thing is that the prohibition is
regularly breached by back-door arrangements to compensate
the non-regulated entity the consulting firm or what have
you.

So I'd like to find a way to put an end to that
practice.

MR. WANDER: I do know the Ziegler people did
mention that, and they thought that was the reason why their
spreads increased, is because the brokers didn't get paid for
due diligence and keeping the stock listed the brokers had to
pay for and not the issuer, which is the big difference on
those markets.

So it's probably worthwhile to look at. I'm not
sure we ought to take on every issue in the world, because
having a rifle approach, I think at the end of the day we will be far more effective on those big issues that I think are really driving the marketplace.

But that is an issue --

MR. CONNOLLY: Of access to capital.

MR. WANDER: Yes.

Pat.

MR. BARRY: Dave, in your earlier agenda, you had an item about adjusting the process for PIPE transactions. I was just curious to see if you guys had discussed PIPEs and what your thinking was there.

MR. COOLIDGE: Excuse me. Dave Coolidge.

We have discussed it. I guess we're welcoming comments to improve the process, but I don't think that we -- the PIPE activity has been pretty significant, and if done right, seems to be working for a lot of companies, and there is an SEC issue, I think, with the conduct of certain practitioners in the PIPE markets, and we think that's an appropriate concern. Certain people are abusing information, et cetera.

So we're going to just leave that in the SEC's hands in the Enforcement Division, or wherever it falls, but we think that the process is a valid one and it's a pretty good one, and we're not really thinking about making a recommendation in the area, but we're certainly open to
suggestions.

If people around the table that have had experience feel that the process can be improved by adjusting some rule, we're more than open to it, because we think it's a good process, we think it's something that, you know, is providing capital for lots of small companies that are public, and if there's a way of improving it or streamlining it, we'd be happy to listen, but we didn't come up with anything that we were too upset about as it currently is being done.

MR. WANDER: And it's not just small companies. I think if you look at the list that Drew passed out, you'll see that there are some sizable offerings.

MR. COOLIDGE: Yeah.

MR. WANDER: Yes. Richie and then Rick.

MR. LEISNER: Richie Leisner.

Just a footnote -- the recommendation that we've had on the list about the private placement broker dealer registration.

I think Jerry Niesar mentioned this. He was the ABA representative in San Francisco.

This is a proposal that's been around for a long time, and it involves, if it's to be done successfully, several different agencies.

And so our request, when it gets done up finally, would be a request and recommendation that the SEC step out
in front and head a multi-agency effort in this regard. Otherwise, this is -- we are afraid this will just stay as a recommendation that will be around for even a little bit longer, and no one is willing to get to the head of the parade and start the process.

MR. WANDER: Rick.

MR. BROUNSTEIN: I have three comments now, so I got a new one here.

The comment I would make on PIPEs, just to finish that off, is if you've looked at all at integration rules. Having done a lot of PIPEs, we get caught up in those all the time.

There seems to be, you know, the strict interpretation and what is really, you know, the SEC going to look at or not look at, and it seems to me they can be awfully limiting if taken to their extreme, you know, from six month, you know, safe harbor rules to, you know, can you close one out and do another one and should you be able to, and oftentimes you can, but strictly you can't.

So I guess I would say that's an area that -- do you want to comment on that, and then I'll go on to my other questions.

MR. COOLIDGE: One of the private placement -- one of the safe harbor issues that we are going to recommend is shortening that six month period down to 30 or 60 days.
MR. BROUNSTEIN: Okay. That should help.

The other -- so a question on the S-3 and then a comment on the de-registration.

But on the S-3, are you basically saying shelf registrations are being excluded but the other kind of registrations are okay, or are you more limiting than that?

MR. COOLIDGE: I think our recommendation is going to say Form S-3 -- now, this is only for Bulletin Board companies that meet the market cap test -- Form S-3 is available for resale purposes.

Is that the question, or are you asking another question?

MR. BROUNSTEIN: I thought the talk around here seemed to be to broaden the use of the S-3, right, because the big advantages are you can incorporate by reference and then once it's out there, you don't have to update it every time you do an annual audit.

And so it seems to me, other than maybe, you know, I can understand why you wouldn't want to -- if you don't have the market cap to do a shelf registration, that's, you know, to pre-register shares, but otherwise, I guess if you're excluding some, I'm wondering why you would exclude them.

MR. LEISNER: We may need to get Gerry to jump in here on -- this is Richie Leisner -- to get Gerry to jump in
on the technicalities here.

But I believe that S-3 is only available to NASDAQ or exchange listed companies on a resale basis, and so -- which would have made sense, because when the rule was propounded, you didn't have to be 34 Act registered to be on the Bulletin Board, which you now do. So it's sort of a technical expansion.

My recollection is that there's no float requirement to use S-3 for resale purposes, just that you have to be a 34 Act reporting company, and now you've got to be on some part of NASDAQ.

So the thought would be, since Bulletin Board companies have to be 34 Act filers, that it would be reasonable to look at expanding the availability of S-3 as a resale device.

My recollection is also that on the primary side, it's just a float test and you don't have to be on -- I could be wrong.

I'm looking at Kevin O'Neill on the other side of the room here, and he'll let me know if I'm wrong, or Gerry will.

But those are two sort of technical issues, the idea being, to go back into English, the idea being to make S-3 more available to more companies.

MR. BROUNSTEIN: Okay, so if you can carry that
thought, the way we're heading now with some of the
discussion here, with some corporate governance rules that
would affect the Pink Sheet companies, some minimum standards
for the micro-caps, whether they trade on the Pink Sheets or
the Bulletin Board, if they meet those standards, then they
ought to be entitled to take advantage of today's Internet
world and incorporate by reference, rather than exclude.

In other words, if we're going to put on
requirements on the Pink Sheets, then they ought to have the
advantages and not have to onerously file some document.
Really, the only difference is you're pasting
everything into one document and having to update it once a
year.

MR. LEISNER: Richie Leisner again.

Right, Rick, except when somebody says, "Oh, all
you have to do is X," if you can use the incorporation by
reference, of course, it is a far less costly undertaking.

Yeah, we hadn't seen any of that information, and
we were focused on this one narrow issue.

The rationale of it would be if there were -- if
the appropriate information were out in the marketplace and
it was accessible to the investing public, it certainly would
be logical to think about making incorporation by reference
available, which is what you could do using an S-3.

MR. BROUNSTEIN: So you make, yeah, so it may make
sense to, rather than simply define Bulletin Board, define those requirements so that whatever we come out here, if we broaden those requirements and that is accepted, then they would fall in.

Then my last question on de-registration maybe comes around to a similar point.

I'm not sure where that extra 800,000 we were talking about in the example is now, but, you know, we're talking about a system for the smaller companies, the micro-caps, that is going to require them to do some, depending on what we find out here as a committee on cost effective, maybe some attestation to, or assertion to 404, clearly some auditor independence in whistleblowing, I would think that, you know, and we're talking about maybe resizing the beneficial shareholders to try to catch people who are today going dark on us.

It would seem like we should determine as a -- you know, put our committees together as a group and decide what are the minimum standards that make sense for these smallest of companies, and not allow them to get out for, you know, some other reason, like as I understood your de-registration, you're saying they would have to apply certain financial statements, but we're suggesting that they need more than just to file audited financial statements, that they're going to have to do a few other not necessarily onerous
things, but a few other things that would give some
visibility to those shareholders.

MR. CONNOLLY: Can I respond?

MR. WANDER: Let me see if I understand it, and
then you can.

What you are suggesting this afternoon is that if
you still -- if you're not buying out the public
shareholders, which Bob has some question about, there would
be, if you made a commitment to continue to flow information
to investors, whatever that package is, that there would be
an easier way to do that.

But I take it you're not suggesting any sort of
rules where there's in fact a squeeze-out of the
shareholders?

MR. COOLIDGE: Correct.

MR. WANDER: Okay.

MR. COOLIDGE: This is a de-registration this is

not a buyout. This is to give smaller companies a way of
ridding themselves of these onerous costs.

Now, maybe we're going to find out 9,000 other ways
to rid them of these onerous costs, but 13e-3, I think
that's the right -- yeah -- which is the de-registration
regime that currently exists, is a very expensive -- I
thought we in our committee talked about $1 million or
something to go through that.
And people just say, "Well, you know, I'm trying to save money, but you tell me I got to spend all this money to save this money, it doesn't make any sense." So if they want to save the money, go through the process without filing that form, but make an undertaking to continue to supply information to shareholders.

And obviously they, at that point, they de-register. If they are on the Bulletin Board, they go off, they wind up in the Pink Sheets where de-registered securities do trade.

MR. BROUNSTEIN: So these are people that have below the minimum requirements, so they --

MR. COOLIDGE: Whatever they may be --

MR. BROUNSTEIN: And they may change. But today that would be 300 shareholders and $10 million in assets?

MR. LEISNER: No. No, because those people under the current -- Richie Leisner again.

If you fall below 300 stockholders, you can leave the system with a free pass, just by filing a notice. That's in the current law today.

We're talking about somebody who is not at 300 stockholders and doesn't want to game the system to get down to 300 stockholders, and doesn't want to go through a 13e-3 transaction where they have a buyout.

This is somebody who says, "I'd like to go," and it
would be the standards -- it would be in the micro-cap world. We would not be talking about, you know, a Fortune 100 company that would do this.

And so they would be -- they would undertake to provide this information package, and then they could --

MR. BROUNSTEIN: Stop filing with the SEC?

MR. LEISNER: Yeah.

MR. WANDER: I think that's a point that didn't come through, that you were going to enlarge the ability to, in effect, go through the 15(d), whatever the form --

MR. LEISNER: Whatever the heck it is, yes.


MR. BROUNSTEIN: So it seems like that's the opposite of what these two committees, Corporate Governance and 404, are talking about.

We're trying to widen the base, make it reasonable,

make it cost effective for these guys, but have more transparency for companies that have, you know, enough shareholders to be considered public, you know, and -- or not allow them to trade at all.

In other words --

MR. COOLIDGE: Maybe if this is the only one we get through, this is the way out for everybody. If we fail, then all other --
MR. WANDER: Drew, and then Bob.

MR. CONNOLLY: Drew Connolly.

Very quickly, Pat, to the discussion about PIPEs, we basically eliminated it, but I do recall there was some testimony in San Francisco, and it has been in the Small Business Forum.

The only issue, and I don't think it's one that necessarily rises to a full recommendation level, is somehow internally, and this is the entire form filing and review process within the Commission, we were assured yesterday that basically these documents come in and get examined in relatively quick order.

I guess there's been some concern about the turn-around time, and I think you have -- your firm has recently gone through a PIPE or going through one?

MR. BARRY: My issue was just more of a general question in terms of timing --

MR. CONNOLLY: And the other thing is, the timing is perfect, because I expect to be at one of these two days.

Starting tomorrow at the Waldorf in New York there is the annual PIPEs conference, and some of the largest law firms in the country, and certainly some of the major broker dealers and over 100 companies that are involved in the PIPE marketplace, the hedge funds, and those folks will be in
attendance, so I might actually know more about this subject when we get there.

Richie -- not Richie -- Rick, the issues surrounding, and I take your point very well. We are actually looking for the potential escape clause, which we also hope, based on the other subcommittee's work, not many people will feel -- not many companies will feel they need to avail themselves of that out.

But it's also true that the president of the pink sheets, Cromwell Coulson, has testified to us and very much aware that he is working every day to expand the quality of both disclosure and required information distribution on the pink sheets.

So it would make sense to me -- I take your point very strongly that the covered securities issues be extended from the bulletin board to potentially his top tier. And this -- I'm not asking for the SEC to work hand in glove with a private company.

But if his top tier as described to me is reporting companies who are doing what's determined here to be all of the material requirements to meet these tests, and that is his top tier within the pink sheets, I think that may blur somewhat the distinction between the bulletin board and the pink sheets, and the net impact of what we've done here defining microcaps may very well create some level of
investor or speculator respectability that is heretofore not available through pink sheet securities.

They are often spoken of in the same sentence as fraud. Penny stock fraud, pink sheet. And I'm trying to work very hard, as you may imagine, to decouple those terms. Because it's very clear to me that there are hundreds and hundreds and hundreds of little companies who don't meet the fraud test but are in fact penny stocks.

The only final remark I have is that I know that we've taken testimony and I'd like to thank our co-chairs for really giving an expanded vision of the marketplace out there and working very hard to bring balance to opposing points of view. And I can think of no better than the comment letters that we received this round where I guess perhaps predictably but also very interestingly, the AFL-CIO weighed in on one side of exemptive relief, and the U.S. Chamber of Commerce weighed in on exactly the opposite sides.

So I found that revealing. But the one element of testimony I don't think we've received or had access or visibility to would be regulators. We've had no testimony, despite the efforts within the subcommittee here of probably one of the best securities regulators I've ever run into from the state of Nebraska, we've had no testimony from the area. And I know from a capital formation standpoint, most of what we come up against is obviously the gentlemen,
ladies and gentlemen of corporate finance who are both our
hopes and the progenitors of this committee, but we're
running up against virtually in many of our recommendations,
certainly the finders, private placement, broker-dealer
recommendations and certainly some of the trading practice
recommendations, right smack up against the purview of the
Division of Market Regulation here within the SEC.

And my hope would be that we would be able to
elicit both some of their positions and some cooperation from
them in helping us do our mission.

Additionally, it would be insightful I think to be
given -- we bandy around a lot of statistics about the amount
of and the number of complaints in microcap fraud. I'd love
to hear somebody from the Enforcement Division give us some
overview of what that experience really is and what the
magnitude of those problems really are.

So that constitutes my comment.

MR. WANDER: Okay. Bob?

MR. ROBOTTI: I guess I had a couple of questions,
because when you described the going private transaction. It
seems to me of course today a company would only file a
13E-3 if they were going to do a reverse split, or if they
were doing a tender offer and it was in conjunction with
that.

If you had, you know, the idea of eliminating the
need to file the 13(e) kind of makes a lot of sense to me I think, especially if, you know, the quid pro is we're going to give you information on a go forward basis and therefore provide data to shareholders and information.

The other potential requirement that you'd really have I think would be a prohibition on the part of the company that there's no plans to proceed with a going private transaction within at least some, you know, a three-year period. Because otherwise, you could potentially have someone who files, provides information, you know, nine months later therefore proceeds with a going private transaction, which would have been subject to a 13E-3 filing, and potentially was even part of a plan or device that came apart in pieces but not in total.

So, you know, to give those two things -- and I think you give protection, shareholders protection information and, you know, some kind of safeguard.

But I guess I didn't get the full context of what you were saying. So what you're proposing to do would be to broaden who would be eligible for deregistration through that process, you know, beyond the 300 shareholder count?

MR. LEISNER: 13e-3, right.

MR. WANDER: Any other, Steve?

MR. BOCHNER: I've got a couple of comments. I think the first is to get a bit more granular on this general
solicitation prohibition. You know, the 33 act is constructed so that you've got, if you're going to solicit generally, you've got to file a registration statement for the most part. If you're not going to solicit, if you're going to rely on a private placement exemption, that purchasers need to be accredited. You need to have -- in general need to not solicit generally.

And I guess I'm having trouble with the idea that we would allow a -- let's say a private company that isn't making information widely available, to generally solicit out there and then have a purchaser come in and, what, merely by signing an attestation that they meet certain accreditation standards or net worth standards be able to invest.

And I'm wondering really how salable that is here at the SEC, this idea of limiting general prohibition without some checks and balances as to who those purchasers are, how they get qualified. Is there any contours around this idea of eliminating general solicitation that you can help me with?

Mr. Leisner: Richie Leisner. Yes. You sound like the same people who said when Regulation D was propounded, which did away with offeree suitability, that that was the biggest scandal since the sale of the Brooklyn Bridge as a stock interest.

This is a bold suggestion. But there are places in
the securities laws right now under the exemptive structure
where you can have all the general solicitation you can
handle, like in Rule 144A, for example.

MR. WANDER: Subject to protections about
private --

MR. LEISNER: Well, yeah. But it's not that
there's -- so when you say granular, we have had some
discussions with senior staff personnel about how we would --
and we need some more discussions -- to decide what those
qualifications would be in terms of wealth, sophistication or
relationship to the issuer, sort of those three general
categories.

But I think those things are all doable. I think
that there's a lot of, you know, at the one end of the
spectrum, some people would say, oh, we already have that
definition. We call then accredited investors. And at the
other end of the spectrum, people say, well, no, that's no
good. Maybe they should be QUIBS, you know, Qualified
Institutional Buyers or something much, much, much higher.

There's a big gulf in between there that we need to
talk about. And the issue about qualifying would be equally
applicable to accredited investors now. Some guy comes in
off the street. He says I'm a millionaire. He checks the
box, and you have a private placement. And that was a
scandalous thought 20 years ago or a little more than 20
years ago, but it seems to work pretty well.

And I think working with the regulators, we could
come up with -- I hope we could come up with a construct that
would be bold in response to what Herb and Jim asked us to
do. We have some work to do in that area.

MR. BOCHNER: Yeah. I don't mean to sound like the
detractors. I'm actually a fan of Reg D, and I think the
balance there is appropriate. I think it's different,
though, when we're going to solicit generally. I mean, if
we're really talking about reaching out there into the TVs
and newspapers with private, you know, advertisements focused
on people who -- and the recipients are going to be people
who are not accredited, I really do think you've got to think
long and hard about the protections there.

I mean, I think it worries me that coming out of
this committee we would sort of open up general solicitation

without making sure that there were checks and balances that
ensured that people who ultimately invested really were
people who could fend for themselves and didn't need the 34
Act information. So maybe I'll just let you guys debate this
fully and --

MR. LEISNER: Well, no, that's a terrific concern,
but it's just a challenge to the people who sit down and do
the detail work. The question is whether you're willing to
sit down at the table and talk about the concepts with an
open mind. All of those concerns are perfectly legitimate.

MR. BOCHNER: Okay. All right. I was just trying
to get behind -- I wasn't -- I didn't want to throw cold
water on it, too much cold water, but I just wanted to
understand whether there was some thinking about the details,
and maybe I'll just hold off till you guys --

MR. LEISNER: Well, Steve, I think that's -- but I
think that's very useful, because there's going to be --
there's going to be pushback. We might as well -- we expect
it, and you're -- I think you may be out of water balloon
distance on the other side of the room.

(Laughter.)

MR. BOCHNER: All right.

MR. LEISNER: But it's a perfect -- that's a
question we welcome, and we just have to get to the details
of it all. And initial discussions with the staff were I

think were encouraging, that this is a matter that we could
discuss and talk about and try to come up with some
parameters.

Obviously, from the one side, if the financial
qualifications are such that, you know, you only need -- such
that you got to be worth a jillion dollars to qualify, that's
not going to be so terrific. And we'll have to talk about
the means by which you do stuff.
MR. WANDER: So the devil is in the details.
MR. LEISNER: Thank you, Mr. Chairman.
MR. BOCHNER: Okay. Good. Well, I'll agree with
him on that and look forward to hearing that --

MR. WANDER: And without the details, it's hard to
sort of set the parameters. And it's also hard till you see
the whole construct.

MR. BOCHNER: Yeah. I mean, for example, a
marketplace with checks and balances where the people that
came into it were prequalified somehow, and then you could
solicit generally into that. I mean, that kind of an idea
makes sense to me, but.

All right. We'll look forward to that. The other
thing I wanted to comment on was the NASDAQ, the discussion
concerning the NASDAQ small cap exemption from the blue sky
laws. And today if you're a NASDAQ national market because
of the National Securities Market Improvement Act, you don't

have to comply with the state blue sky laws. Those laws have
been preempted.

The NASDAQ small cap companies have the same
governance standards. They file reports with the SEC. These
are smaller companies, and yet I have a hard time seeing what
value it is to make those companies simply because their
market cap isn't 75 million, it's 50 million or their trading
price, you know, is at a different level, why those companies
ought to pay when they're doing securities offerings the state blue sky registration fees, and the larger companies, by virtue of their somewhat higher market caps, should not.

So I guess where I come out in the balancing is this is an opportunity for us to reduce costs of smaller public companies, in my view, and I think Jack's probably going to disagree with me here, but in my view, I think we can do that without impairing investor protection, and I'd like to see some evidence that the absence of blue sky registration at the NASDAQ national market level has created some problems, or similarly, that the existence of that state regulation, that duplicative level of state regulation, in addition to the federal regulation, has helped somehow.

So I would encourage you to continue down that path and evaluate whether or not NASDAQ small cap ought to be treated as a covered security, and we should encourage the SEC to take some steps in that direction.

MR. WANDER: Jack?

MR. HERSTEIN: Jack Herstein. I'll disagree to disagree with you. You mentioned NISMEA back in 1995. I think at that time most states already gave NASDAQ the same exemption they give the American Stock Exchange and the New York Stock Exchange.

The problem is now there's two tiers to the NMS. You have -- or two tiers to NASDAQ. You have the NMS, which
is your upper level companies, which is about, what, 3300, I believe. Then you have the small cap companies, which is about 578 right now.

The problem is the listing standards. You have corporate governance for both at the same, and they have been the same. The problem is that listing standards, stockholders equity, price per share, well, basically every listing standard is somewhat different on the small cap compared to the NMS.

Now you have the listing standards for the New York Stock Exchange, which are greater than the NMS. Then you also have the listing standards for the American Stock Exchange, which are lower than the NMS. The problem that the states have, at least that I would have, is that if you give the small caps the same exemption that you do with the NMS companies, what will AMEX do, and will the small caps then still drop their listing standards?

You know, because the listing standards have been dropped over the years.

MR. BOCHNER: Well, I mean, there's always a risk, you know, I suppose there's a theoretical risk NMS will drop their listing standards, but they're not, you know, I think those governance thresholds, board independence, you know, all of those reforms apply to small cap companies.

I think the only thing that's different today, and,
you know, they have to comply with the 34 Act, so the only thing that's different is the size. And so I guess my question is, and maybe this is sort of an evidentiary thing that we ought to ask for more information, but what is it about size that suggests that we ought to have this additional layer of state regulation, which is an added cost to these companies that are least in the position to afford it? So this seems squarely in the mandate of our committee, which is finding ways to reduce costs and not impair investor protection.

So I want to -- I think the reducing costs issue is self-evident. Then the question is, how are we impairing investor protection if we do this? And I guess that piece of it isn't obvious to me that somehow this would create a problem.

MR. HERSTEIN: I don't disagree the cost -- the cost is not that great. There would be a cost savings. The problem is, you know, I'll flip it the other way, name one small cap company that the states have stopped from registering again. I don't believe -- I don't think I've seen a small cap company registered in Nebraska in the last 18 months.

Now either they're bypassing Nebraska, which I would doubt, or they're just not making the IPO or the listing filings in the states. But I guess I have not heard
like years ago how the states were hindering capital
development, capital formation, don't hear those arguments
any more. So I guess if I'm wrong on that, let me know.
But also -- one more thing. I do agree with your
previous comment on the private capital. It is bold. I will
agree with that.
(Laughter.)
MR. WANDER: Rick?

MR. BROUNSTEIN: Just to weigh in on blue sky, I
mean, I agree with Steve. It's -- first of all, the AMEX
standards are lower than the NASDAQ small cap standards, and
you have the exemption. It seems to me where we're heading,
we just need to converge on some of these things, to talk
about who should be eligible for an S-3, that with the new
standards we're talking about coming out of corporate
governance and coming out of the 404 committee on minimum
transparency that these companies have, that we ought to --

these other things that were sort of safeguards, and I'm not
sure why blue sky law was a safeguard at all, but assuming it
was, it seems to me we've now replaced it, and so we
shouldn't -- we ought to be converging around some of these
definitions.

And if you're -- you know, we're kicking around the
S-3. If you're eligible to do that whether you're on the
bulletin board or the pink sheets or you're at a certain
level and you have to meet certain corporate governance and
404 standards then, you know, you shouldn't have to do all
this other, you know, stuff. My opinion.

MR. WANDER: Okay. Further comments? Questions?

MR. CONNOLLY: Mr. Chairman, in speaking to the
mandate we were given in the beginning of our committee to
oversee or to look at the totality of federal securities
regulations, not just Sarbanes-Oxley, a large component of
the microcap community that I speak to continues to be deeply
disturbed at both the implementation and some of the elements
of regulation SHO.

The continued maintenance of threshold lists which,
by regulation are supposed to be self-collapsing by having
them regularized out, versus the fact that on many of these
securities, from Martha Stewart OmniMedia to Overstock, to
name, I guess, the two most famous ones, or the ones most
often talked about, those open short fails to deliver have

existed in excess of 100 days, and the regs call for 13.

So this is a capital formation problem.

Obviously, with open shorts and fails to deliver
and the possibility of naked short selling beyond the
outstanding issued, it makes it incredibly difficult to raise
capital if you're in the toilet of market cap as a result of
being put there by an aggressive either on-shore or
off-shore, whatever the net implications of how you got there
by having a short selling problem.

I'd just like us to think about possibly encouraging the SEC to reaffirm that 13-day solution in Regulation SHO, and then I'd probably question, I don't know if we're going to, but why excesses of the past were grandfathered into SHO and not, you know, open on a case by case basis to further examination and enforcement.

MR. WANDER: Okay.

We did receive a lot of comments on our questionnaire about short sellers.

I must tell you, unfortunately, I'm not a short seller expert, but we'll see if we can look into that.

Any other questions, comments?

It's now about 2:25.

If there aren't any, I think -- yes, Mark.

MR. JENSEN: I have one.

You were so close to escaping.

This is actually really quick, and it's for Gerry.

MR. WANDER: No, no.

I'm going to next turn --

MR. JENSEN: Oh, you've got --

MR. WANDER: -- go to another meeting. Next steps.

MR. JENSEN: Okay.

This is for Gerry.

The comment letters on internal control and the
Commission's rules on internal control are due on the 31st. Can we get copies of those letters, at least in the 404 Subcommittee, at some point?

MR. LAPORTE: Yeah. They are available on the Internet --

MR. JENSEN: They are?

MR. LAPORTE: As they come in, they're posted on the Internet.

MR. JENSEN: Oh, okay.

MR. LAPORTE: So you can just go to the release number on the SEC's web site, and it should have an icon there, link that you can -- it should say, "Comments on this release are available."

MR. JENSEN: Okay.

MR. LAPORTE: You click on that, and you can printout whichever ones you want.

MR. JENSEN: Because I think those comments will be important for our subcommittee.

Thanks.

MR. WANDER: This is an announcement. Don Nicolaisen's farewell reception is in this room at 4 o'clock today, and all of you who are going to still be in Washington are more than welcome to attend, and I'm sure Don would like to see all of you at that time.

So those who have the time availability, please
I think Jim and I would like to move on to, really, next steps, which I think we made a lot of progress today. I think the discussion with the full committee being presented with each of the subcommittees' recommendations or observations so far to date and having the comments, I think is a good start to finalizing our recommendations.

And we've probably slipped a month in the basic calendar that we had established, and I think that what we have to do to sort of catch up or catch up is to schedule another meeting here in Washington, the week of December 12th.

I know that it's difficult. People already have items on your calendar.

But I don't, Jim and I don't know really any other way to address this issue, other than getting together, and that means having the subcommittee recommendations to us before then.

I did check -- Janet, unfortunately, has left, but I did check with Kurt and Rick, and I think you should be on target to get us something for that date if I read you both right.

So it's the week of the 12th. I don't know -- the 14th or the 15th are the days, I think, right, Jim, that we
could get this room probably and meet again.

Is there any strong preference for one or another of those dates?

Yes, Pastora.

MS. CAFFERTY: I have a board meeting on the 15th. I could -- and the 14th. I can cancel the 14th, I can't cancel the 15th.

A PARTICIPANT: This will be a one-day meeting?

MR. WANDER: One-day meeting.

A PARTICIPANT: What's the day of the week?

MR. WANDER: Wednesday is the 14th.

A PARTICIPANT: The 14th is my vote.

MR. WANDER: All right, 14th it is.

Going once, going twice -- fine.

We probably will make telephone arrangements for those of you who couldn't make it, but I hesitate to say that because it's so much more valuable to have everybody in the same room to discuss these issues.

So what we would like to do is have subcommittee recommendations delivered to Jim and I and then we'll package the whole package and get it out to everybody beforehand.

We are going to start drafting some of the portions of our report in any event, which will be essentially introductory paragraphs, et cetera.

And the recommendations have to be in enough detail
so that you don't have to ask questions about what you're
going to do.

I don't think you have to get rule language or, you know, draft it as a rule, but I do think it should answer the questions about how it would be applied, et cetera.

Yes, Rick.

MR. BROUNSTEIN: So are we going to use a format similar to what you did on the Size Committee, or are you going to leave more discretion in there?

MR. WANDER: I'm not sure --

MR. DENNIS: Herb, maybe if you just get out some guidance on how you want us to format these recommendations, you know, like for the preparation of this committee was just a very brief outline. My sense is you want something a little more.

MR. WANDER: I think we want actually something more like what you actually submitted two weeks ago.

But that's a good suggestion.

So you don't have to guess, we will get something out to you.

MR. DENNIS: And then, Herb, could you --

MR. WANDER: What?

We'll get you format.

MR. DENNIS: And then timing, Herb, of when you want those recommendations?
MR. WANDER: Well, if we have it the 14th, why don't you try and get it to Jim and I the 7th or the 8th. We'll try and get it to you before the weekend, so you'll have the weekend to review it.

Does that make sense?

MR. SCHLEIN: And very specific --

MR. WANDER: Yeah, I think so. I think so.

I mean, if you're not specific, we have to do, you know, "What did you mean and how is it going to apply," you know, that means we have to go back to the drawing boards again.

I find writing things down, then you read them and then you see where the holes are and whether it works or not.

So that's the plan.

Any other comments, business?

MR. LEISNER: Could you walk us through the next few months?

MR. WANDER: Then we will put together a whole report, which we are going to meet January -- we have a scheduled meeting.

We'll try and have to you -- then I think we've caught up, Ted, to our regular schedule.

We're meeting on January 9th, review the whole report up or down, and then it will be published for public comment a week later in the Federal Register and on our web
And then I think we're caught up on our schedule, which would be send it out for -- is that right?

We'll send out the report the 29th, have a meeting the 6th, publish it the 17th.

We will have public comment -- this is January, January.

MR. BROUNSTEIN: The meeting --

MR. WANDER: January 9th. If I said the 6th, I apologize.

Public comment will be for a month, and we will review those public comments, respond to them, and have our, essentially our final meeting March 20th, to adopt or reject the plan.

MR. CONNOLLY: Why don't we have pictures taken handing over the final book?

MR. WANDER: No. And in fact, I will say this, that Chairman Cox thought that we might want to actually present the report to the full Commission, rather than by mail, live, so that we can not only present it in writing, but describe it and answer any of the commissioners' questions.

Rick.

MR. BROUNSTEIN: The rest of the meetings will be here in D.C.?
MR. WANDER: Yes.

Now, I know your subcommittee might want to meet in Chicago, and that's fine. That's fine. We have the facilities for any meeting.

And I will follow up with you, Leroy, with Huron.

And we all have considerable work to do, although I think we've come a long way in the past two days to move the program along to a place where I at least feel comfortable. Jim agrees.

Dick.

MR. JAFFEE: Dick Jaffee.

We talked about this yesterday, and just thinking ahead on the report writing, that I agree that a preamble which identifies issues and gives context to the recommendations, if we could do it, would be important.

And then I think at the end, if there are such things, we can perhaps have a look forward of emerging issues, if we know if there are any.

And then, finally, the last thing, which I think is the most difficult thing to do, it would always be nice, like we do this in the company when we make a major investment or a capital expenditure or something, to have some way of looking back and saying, "Well, we did all this, now what's -- you know, what happened?"

And somehow, it would be very nice if the SEC could
tell us, or somebody could tell us a few years into the
future about which of the recommendations were not only
adopted but what was the impact of it.

So I don't know. That's a much more difficult
thing to put down specifically, but it would be interesting.

MR. WANDER: No, I think that's a good idea, and I
do think the format will have, obviously, a preamble setting
the stage, and I do think issues that we think deserve
further attention should be mentioned, so that they're not
lost on people for the next advisory committee, or for the
Commission itself to address.

I think we're at a stage in the whole securities
law development where we're being forced, frankly, because of
the explosion in communications and Internet and everything
else, to really keep far more current and not have
regulations that are on the books 20 and 30 years without
some sort of sunset review as an automatic process.

With those parting remarks, any other comments, new
business, old business?

MR. CONNOLLY: Dick, I think we're going to be able
to find out the impact of our work by looking at the health
of the capital markets, particularly the tiers that we're
working very hard to preserve, protect, and enhance.
And I don't know if the metric is going to be the
number of additional public companies that are able to enter
the space because of our efforts or the market value of those companies, whether they're graduating from the pinks to the small cap.

I'm not sure about the metric we'll use, but we will know if the impact is in the right direction, I suspect by looking at the terrain.

MR. WANDER: Okay. I want to thank each member of the committee for your really dedicated service and participation, and look forward to continuing the progress. Thanks. The meeting is adjourned, so those of you on the Internet can turn it off.

(Whereupon, at 2:38 p.m., the meeting was adjourned.)

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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

[Signature]
[Date: 11/2/06]
Listed below are the written statements received by the Advisory Committee between its meetings of October 14, 2005 and October 25, 2005 and the dates of receipt.

Oct. 25, 2005
Gerald G. Morgan, Jr., Burdett, Morgan, Williamson & Boykin, LLP on behalf of Church Loans and Investments Trust
See also:
* M. Kelly Archer
* Jack R. Vincent
* Steve Rogers
* Bill R. McMorries
* Michael A. Bahn
* Larry G. Brown
* Michael W. Borger
* Alfred J. Smith

Oct. 21, 2005
A. John Knapp, Jr., President and CEO, ICO, Inc.

Oct. 17, 2005
Edmund M. Ruffin, Executive Vice President, Capital Formation Sector and Business Development, Biotechnology Industry Organization