

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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## PROCEEDINGS

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

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MR. WANDER: Before we begin the substantive

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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 --

14 MR. WANDER: Introduce --  
15 MR. COOLIDGE: I was born in 1943 --  
16 (Laughter.)  
17 MR. WANDER: We don't want your grammar school.  
18 MR. COOLIDGE: Ted, why don't you introduce  
19 yourself.  
20 MR. SCHLEIN: Ted Schlein, capital formation.  
21 MR. LEISNER: Richie Leisner, capital formation.  
22 MR. HERSTEIN: Jack Herstein, capital formation.  
23 MR. CONNOLLY: Drew Connolly, on capital formation.  
24 MR. WANDER: And then we will go over to you,  
25 Leroy.

1 MR. DENNIS: Leroy Dennis, accounting standards,  
2 and I have with me today the most important committee member,  
3 and that is Pat Barry, of our accounting standards committee.  
4 That is all we have here today.

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

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

8 MR. WANDER: And Steve?

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

13 MR. WANDER: Okay. Janet slipped out for a minute

14 but who would like to introduce your committee? Why don't  
15 you, Kurt?

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

18 MR. BROUNSTEIN: And I am Rick Brounstein.

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

21 MR. JENSEN: I'm Mark Jensen.

22 MR. DAVERN: Alex Davern, with National  
23 Instruments.

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

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

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

8 With those introductory remarks out of the way,  
9 what we would like to do today is hear reports from the  
10 subcommittees to now tell us after they met privately  
11 yesterday afternoon and this morning what their latest  
12 thinking is on recommendations, so that the full committee  
13 can consider these and hopefully we will probably try at the

14 end of today to schedule an additional meeting sometime  
15 before the end of the year, when all of these will be in  
16 written form and brought before the committee for discussion  
17 and adoption or rejection.

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

20           (No response.)

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

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

25           We made a lot of progress and we have had a very

1 substantive several hours in our subcommittee. We are not at  
2 this stage ready to make specific recommendations to the  
3 whole committee, but what I will do is tell you where we are,  
4 what we are looking toward doing, what we hope to get done,  
5 and if we can then we think we are aligned around that  
6 recommendation, and if we can't then we'll tell you what we  
7 will probably be doing in the alternative.

8           I want to begin by setting a few framework  
9 comments. I would reiterate some of what we said yesterday,  
10 which is we would reiterate that we think many of the  
11 sections of Sarbanes-Oxley and the recommendations that they  
12 made for all companies have been and are very effective and  
13 should continue for small companies and clearly the

14 whistleblower, clearly the role of independent directors,  
15 clearly the 302 certifications.

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

21           What we are about is trying to create a solution  
22 that we think will actually continue to provide what the  
23 creators of Sarbanes-Oxley and what the public and what the  
24 investors want, and yet will make it a workable framework,  
25 404 framework for small companies -- so that is what we are

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

7           What happened was there is no real framework for  
8 what is a good internal control environment for small  
9 companies. There is no guide by which they could determine  
10 that they in fact had the appropriate internal controls. The  
11 only standard that was set was AS-2, which is really an  
12 auditing standard, and so that became the de facto standard  
13 for everybody.

14                    Much of what we have heard in all of the testimony  
15 we have taken is that framework is too complex for small  
16 companies. It simply isn't the right size for small  
17 companies, and so what we are aimed at is can we do  
18 something, can we create something that will in fact bring  
19 the spirit of 404 to smaller companies but do it in a way  
20 that gives them the right size framework by which they can in  
21 fact, both management and -- that management can in fact  
22 fulfill their requirement with regard to 404. And we are  
23 not there yet, but we are getting very close.

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

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

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

13                    Our caveat is if we can in the next few weeks, and

14 we will take that on as our goal, to work with COSO or others  
15 to see if we could actually make a recommendation about how  
16 would we go about creating that framework for micro and small  
17 cap companies. If we could create that framework where  
18 everyone felt that is a cost effective reasonable framework  
19 and standard by which I can hold myself to, we will then  
20 recommend that.

21 We will recommend that for micro cap companies it  
22 would be the management's obligation to assert their adequacy  
23 of their controls based on that framework. We would then  
24 look at stepping up as we move up the size of the companies  
25 into the smaller companies, bigger than micros but still

1 within our smaller design. They would have the same  
2 obligation. Management would assert the adequacy based on  
3 the same framework. We are trying to keep this as simple as  
4 possible.

5 They would make the same assertion against the same  
6 framework, but for that size company, as we indicated  
7 yesterday -- we were looking at a role. We would now bring  
8 in the auditor's role, but their role would not be to attest,  
9 as it is under AS-2, but it would be as part of their  
10 auditing function. It would be to issue, to actually review  
11 the design and the implementation. And this would require an  
12 accounting standard, and we are looking at the viability of  
13 that, recognizing -- and as I said, we have an ongoing

14 concern about recommending new standards -- whether that is a  
15 good idea or whether we should try to live within the  
16 standards we have.

17           So that is why I say we are not ready to make a  
18 recommendation because there are obviously issues here around  
19 this, but this is the framework that we are looking at now,  
20 which is to say having good internal controls is something  
21 that investors have told us is important. Having management  
22 take a positive role in terms of their assertion is a  
23 valuable element of the internal control framework, but only  
24 if we can create a cost effective framework by which everyone  
25 feels this performs an important value for investors but

1 doesn't create an undue burden on small companies that isn't  
2 justified as a cost benefit relationship.

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

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

13           We are asked to look at some of these special

14 exceptions, and we do want to reiterate that we think the  
15 governance committee should look at if we create exemptions,  
16 as we are recommending exempting micro caps and small caps  
17 from the full AS-2 attestation requirement, requiring some  
18 trade-offs, and for the micro caps, especially the Pink  
19 Sheet companies, that would be as a condition of the  
20 exemption, they have to take on some governance obligations  
21 like independent directors, whistleblower and other  
22 requirements that some of us who are listed companies have as  
23 a result of our listing standards. That is not within our  
24 purview. We are just asking the governance committee to work  
25 in tandem with us, that if we start recommending and ultimately

1 do recommend exemptions, we have some trade-offs that we  
2 would put in place to keep raising the bar for improved  
3 corporate governance and improved confidence of the public in  
4 those smaller companies in exchange for the exemption.

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

13           First, I would invite any other members of our

14 committee -- I will say we have a strong minority view in our  
15 committee that if we can't do this, then exemption is the  
16 better course of action, so I want to make that clear.

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

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

1 beyond just 302.

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

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

12           We are trying to actually do something we all think  
13 perhaps should have been done before 404 was ruled out, which

14 is to right size it based on the size of companies, then to  
15 set reasonable cost effective standards, and then come along  
16 and audit to those standards, but we are where we are, so we  
17 are trying to create that guidance for small companies so  
18 they know what it is they need to do, and then you can come  
19 along as they get bigger and add the auditing of it.

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

22 Again, thank you so much. Sure, Drew.

23 MR. CONNOLLY: Janet --

24 MR. WANDER: It's Drew Connolly.

25 MR. CONNOLLY: This is Drew Connolly. Thank you

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

5 I am interested in hearing about the dichotomy  
6 within the subcommittee between -- where the struggle is.  
7 Obviously we are on a calendar where we are trying to get it  
8 right, but we are also trying to get it in some form of soft  
9 concrete as early as possible.

10 So the struggle within the subcommittee is what?  
11 Full exemption across the board and some attempts at -- what  
12 is the nature of the struggle?

13 MS. DOLAN: I think the struggle is trying to

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

24                   So it isn't so much a struggle in the committee of  
25 is this what we want to do, but there is a struggle in the

1 committee of can we actually do it in a simple,  
2 straightforward way that really will work, and our first step  
3 is going to be to review that report. Our second step is  
4 probably going to have a private -- schedule a meeting with  
5 the COSO team and see if with the clarity we are bringing to  
6 it in terms of what we are looking for, can they help us get  
7 there.

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

12                   MS. DOLAN: I have not seen it, but we have heard  
13 that.

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

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

23 MR. WANDER: It's Mark Jensen.

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

1 (Laughter.)

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

4 The issue that we have been struggling with, and I  
5 think -- frankly I think this is what the implementation of  
6 404 has been struggling with -- to kind of reiterate  
7 something Janet said -- there's two parts to 404. One is the  
8 part that the company does, and the other part is what the  
9 auditor does.

10 I will analogize it to a financial statement audit.  
11 In a financial statement audit, you have GAAP, and the  
12 company understands GAAP and the auditor does, so they apply  
13 GAAP to their financial statements, give it to an auditor,

14 and their auditor applies GAAS, Generally Accepted Auditing  
15 Standards, to arrive at a report on it. When you get to  
16 auditing internal controls, there's no equivalent to GAAP, so  
17 when the PCAOB issued AS-2, Auditing Standard 2, they told  
18 auditors how to audit internal controls, but it was never  
19 really that -- it was never defined "Here's what internal  
20 controls look like inside a company for an auditor to audit  
21 it," so basically that is why you hear so much angst about  
22 auditor involvement, because people believe auditors drove  
23 that cost.

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

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

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

12                   MR. CONNOLLY: You certainly have brought clarity.

13                   MR. WANDER: Leroy.

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

18 I am -- I guess my auditor in me is coming out  
19 somewhat skeptical as to what the conclusion will be, because  
20 when I look at internal controls for the micro cap companies,  
21 the concerns I have are management's ability to override the  
22 system. That goes to things like audit committee and tone at  
23 the top and whistleblower and those kind of protections that  
24 404 does not necessarily address.

25 I wonder if you guys have talked about those kinds

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

8 MS. DOLAN: Yes. That is why I said we really need  
9 to work in tandem with the governance committee, because we  
10 are certainly looking at the auditor attestation part going  
11 away, and that the -- as a requirement -- or as a condition  
12 for that going away, we would look at putting more certainty  
13 into the mechanisms that appear to help most in small

14 companies, particularly for those that aren't required to do  
15 them now, and that is, 302 and whistleblower and the  
16 independence of the directors and the independent directors  
17 on the audit committee, and perhaps even financial acumen on  
18 the audit committee.

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

25           And I know your reservations are well-founded.

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

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

12           I'm a little concerned. I'd just ask that you  
12a address

13 this in your communication. When an auditor is involved in  
14 just the design, we need to make sure that the expectation is  
15 set right in the public's mind so that there isn't an  
16 expectation that that's going to find all fraud when that's  
17 not what the work is going to do.

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

1 below that.

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

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

11 So we think that has to be done first, get the cart  
12 back behind the horse again, and get an equivalent of GAAP

13 out there for these companies.

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

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

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

25           We also -- we're triangulating against -- another

1 factor was, well, why don't we just exempt everything under  
2 404, but we'll just create kind of a more complete and more  
3 robust financial statement audit.

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

8           And we decided that isn't a good idea because you  
9 really want -- you want a very standard definition of what a  
10 financial audit is for everybody. You don't want to start  
11 creating sort of different kinds -- so we sort of avoided  
12 that one.

13                   And then the third one is the price-value  
14 relationship. I mean, that ultimately is the real question.  
15 Can you do this and make it something that's valuable for the  
16 marketplace, and yet cost effective for the company?

17                   So we're trying to juggle all three of those. And,  
18 as I say, if we can't get there, we won't get there, but we  
19 think we're getting close enough so that we can at least try  
20 to formulate that as a framework that people can really look  
21 to.

22                   MR. WANDER: Sure, Ted.

23                   MR. SCHLEIN: Ted Schlein. Whatever type of  
24 certification or attestation you come up with for the auditor  
25 side, especially between the \$100 million and \$700 million,

1 trying to stick to that area, are you also considering  
2 opening up the ability for a certified consultant to do that  
3 certification, to create a market dynamic to help drive costs  
4 down, so it's not purely an auditing function.

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

9                   MS. DOLAN: The answer is no, we haven't considered  
10 it. It isn't, no, we won't consider it, but that we haven't  
11 talked about -- we, first of all, want to -- I hate to use  
12 the word -- define the word "it" first, and then we can go on

13 to further issues about who might do that and things like  
14 that. So --

15 MR. WANDER: Rick?

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

18 It would seem like there's such a interrelationship -  
-  
19 if we're going to cut back to what you've gleaned from the  
20 financial audit, that my first reaction is, it would be very  
21 difficult to have someone come in who hasn't been associated  
22 with the company otherwise to look at the design and the  
23 implementation of those controls in a vacuum.

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

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

4 MR. JENSEN: Steve Bochner wants to --

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

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

10 MR. BOCHNER: Sure. Steve Bochner. I was going to  
11 wait till my presentation, but I'd be happy to.

12                   So our subcommittee has been doing some thinking  
13 about this also, and we applaud the effort. It sounds like a  
14 lot of progress has been made in addressing the cost burdens  
15 associated with 404. And we think to the extent that you  
16 head towards a solution which eliminates the auditor  
17 attestation in some way, shape or form, we do think that it's  
18 an appropriate quid pro quo to that to have some sort of  
19 increased hygienics, increased protection for investors  
20 consistent with our mandate.

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

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

7                   So increased disclosure would be one leg of the  
8 stool. And then, even for microcap companies that don't have  
9 it today, to opt out of the attestation. We would think you  
10 would want to apply additional governance requirements, for  
11 example, audit committee independence.

12                   Secondly, would be audit committee financial  
13 expertise so that the investing public that doesn't have the  
14 attestation because it costs so much at least can feel like  
15 there is an audit committee, they are independent, and there  
16 is some financial expertise. I think the CEO-CFO  
17 certifications are a good idea, to impose that as well.

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

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

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

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

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

11                   MR. WANDER: Any comments back to Steve from Janet,

12 you, or any members of your committee? Do those seem to fit  
13 within what you've been looking for?

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

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

18 MS. DOLAN: Increased disclosure, right.

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

21 MR. JAFFEE: Herb, a question.

22 MR. WANDER: Yes, Dick.

23 MR. JAFFEE: And I apologize for my --

24 MR. WANDER: Dick Jaffee.

25 MR. JAFFEE: Dick Jaffee, and I apologize for my

1 late arrival, and maybe this has already been asked and  
2 discussed.

3 If we didn't have the auditor attestation -- and  
4 it's my understanding that there's really two of them - they  
4a have to make  
5 an opinion on the internal controls and then on the company's  
6 appraisal of their own internal controls. So you end up with  
7 a financial statement -- three different attestations. Is  
8 that correct?

9 MR. BOCHNER: That is, I think.

10 MR. JAFFEE: Okay. So I'm assuming that if we

11 opted out of that, we'd be back to one, as we traditionally  
12 used to have.

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

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

22           MR. DENNIS: This is Leroy, Leroy Dennis. I think  
23 they would be available to help under the PCAOB guidance, but  
24 I still don't think that the auditor is going to be involved  
25 in designing and implementing systems, that it's eventually

1 going to audit financial statements that are created by those  
2 systems.

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

9           MR. JAFFEE: See, because I --

10           MR. GOELZER: Yes, I would agree. I think even --

11 I'm sorry, Dan Goelzer. I think even without the element of  
12 the auditor having to opine on the system or on management's  
13 assessment -- because the auditor inherently uses the  
14 controls -- relies on the controls as part of the audit, that  
15 there would still be limits on the ability of the auditor to  
16 create the controls for the company.

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

22 MR. JAFFEE: Yeah, Dick Jaffee again. It just -- I  
23 think the sequence of events, the way this thing was  
24 implemented, I know in our own case, we got going before the  
25 PCAOB guidance, and so we had to bring in -- somebody asked

1 about getting a consulting firm in to help you.

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

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

10 MR. GOELZER: Dan Goelzer again. If I could just

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

18 MR. WANDER: Hoorah. Yes, David?

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

25 And this came up earlier in some of our discussions

1 about whether some of the bright line rules that define  
2 independence could be relaxed a little bit from a materiality  
3 standpoint so that these companies could -- you know, they'd  
4 kind of be out of the frying pan into the soup if they get  
5 rid of attestation.

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

10 MR. BOCHNER: Yeah, Dave, I think that's a good

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

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

24           Or maybe the audit committee composition could be  
25 smaller than three. As long as you have independent

1 individuals with perhaps some safe harbor about other  
2 compensation that would -- you know, that would allow some  
3 flexibility there. But we don't have that thought through  
4 yet.

5           MR. BROUNSTEIN: Can I add on to that? One of the  
6 pieces we got was -- I don't know if it was an ABA-generated  
7 piece, but it was what a group presented that was associated  
8 with ABA, and they talked about, for smaller companies, the  
9 notion of a strategic investor, and maybe, you know, when you  
10 look at the definition of independence, somebody like that

11 that wouldn't -- that, again, big companies and little  
12 companies are different, and we need to take a look at the  
13 sizes.

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

16           MR. WANDER: Drew?

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

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

24           All of a sudden we've created this major demand for  
25 independent directors, and we've created this major demand

1 for financial experts.

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

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

9           MR. BOCHNER: Yeah, I appreciate those comments,  
10 Drew, and I think we do have to be realistic about what a

11 microcap pink sheet company can do in attracting directors.

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

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

24 But I do think -- I do think the elements of it  
25 would include some aspects of governance assurance might be

1 better than what exist today for those companies, whatever  
2 that is, and some enhanced disclosure that allows a peek  
3 behind just the material weaknesses to the actual control  
4 environment to provide that enhanced disclosure.

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

8 MR. WANDER: Rick?

9 MR. BROUNSTEIN: Okay, Rick Brounstein. Among many  
10 hats I wear one of them is I'm active in an organization

11 called Financial Executives International. I have a document  
12 here about FEI. And there are other organizations out there.

13 But I would push back on that and say, you know,  
14 there is -- we maintain a registry at the national level for  
15 CFOs who are interested in filling those kind of roles, and  
16 that registry is actually fairly long and not very often  
17 tapped, so -- and there are others out there that I'm aware  
18 of, too.

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

22 MR. CONNOLLY: Once again, Drew Connolly. Rick,  
23 I'm happy to hear that. I was unaware of that registry, and  
24 I can assure you that if that registry exists, and there are  
25 folks who are prepared to act in a reasonably compensatable

1 way, there are dozens of microcap companies I'm familiar with  
2 who will be looking to tap into it.

3 MR. WANDER: I think I was going to comment, Steve,  
4 that if your committee -- subcommittee looks at the COSO  
5 study that was done on fraudulent financial reporting, the  
6 11-year study -- this was before, obviously, 404 -- but they  
7 identified the weaknesses that caused the fraudulent  
8 financial reporting, or at least seemed to cause them.

9 And you are in sync with them, but you may want to  
10 re-look at that just to see if there's anything else they

11 noticed, particularly the ineffectiveness of audit committees  
12 and lack of independence, and the fact -- as I recall in that  
13 report -- the audit committees hardly met, even, so --

14 I think the landscape has changed with the  
15 strengthened governance for all companies. But that might be  
16 sort of a good model for you to check against.

17 Leroy?

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

23 But I also wanted to ask the internal control  
24 committee -- and I thought of this as Dick was talking about  
25 the different levels of attestation that are done by the

1 auditor -- have you thought about, for the microcap  
2 companies, maybe splitting that baby a little bit and looking  
3 at whether or not we'd ask management to opine on design and  
4 implementation only, but not the operating effectiveness of a  
5 control system in their attestation for the microcap?

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

11 all this.

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

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

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

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

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

7 Now, of course, if we'd do away with attestation.  
8 This is relatively a moot point so I withdraw the suggestion.  
9 But to the extent that some level of attestation or  
10 certification is necessary, I'm saying open it up to

11 qualified people -- and "qualified" to be defined -- to allow  
12 any number of people to be able to say, yes, you have met  
13 this level of controls, and we agree.

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

18           That's really the basis of my comment.

19           MR. WANDER: Jim?

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

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

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

4           MR. THYEN: Okay, all right.

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

10           And I think the conclusion is that we've heard a

11 significant amount of testimony that, as implemented for  
12 small companies, that just doesn't produce a price-value  
13 relationship.

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

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

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

25           MR. THYEN: It does. Thank you.

1           MS. DOLAN: Okay.

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

9           Although they can't attest to it, they can sort of  
10 help us all the way through to do management's piece of the

11 404 work, and pretty much make sure we're compliant with what  
12 the auditors were going to look for.

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

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

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

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

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

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

7 MR. DAVERN: And I would agree, and that's been a  
8 strong recommendation of the American Electronics Association  
9 I've been associated with for over a year now, that we would  
10 do that.

11                   Having said that, I think that Rick's point is also  
12 true, and that certainly if we eliminate the auditor  
13 attestation requirement for microcap companies, it becomes a  
14 moot point, as you said.

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

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

1                   MR. WANDER: Sure. Dick?

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

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

11 different approach would have a better outcome?

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

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

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

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

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

4 MR. WANDER: Rick?

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

9 So we're talking about, for the most part,  
10 not absolute, but for the most part -- these are the

11 8,000 companies that have not had to go through 404 yet and  
12 have a very different makeup to them. We think there's a lot  
13 of reasons why they are different than bigger companies.

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

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

25 MR. DAVERN: Alex Davern. That's correct. The

1 perception was that it would have a minor positive effect on  
2 reducing the cost rather than a significant effect. And  
3 that's been certainly my personal experience -- I haven't  
4 gone down that road -- that software does add some  
5 reusability in year two, et cetera.

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

9 So it's unfortunately not a silver bullet that will  
10 make a significant difference, in my opinion. Thank you.

11 MR. SCHLEIN: Ted Schlein. As somebody that's  
12 financed a couple of these compliance software companies,  
13 just if you're interested, a lot of what Alex said is quite  
14 accurate.

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

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

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

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

8 But the commitment to an integrated operating  
9 system standardized worldwide, which brought with it a  
10 commitment to prevention and pushing all the decisions up

11 front, not making decisions -- the authorizations on the back  
12 end, really putting emphasis on the contracts entered into,  
13 the purchase orders, and all those controls up front,  
14 definitely lowered our costs and increased our productivity.

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

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

23           But that is the only way that we found that we  
24 could greatly reduce the cost of our certification. And it  
25 so happened we did it for better operations, and to be able

1 to better serve our customers. We didn't necessarily drive  
2 it totally from internal control, but we embraced that  
3 internal control concept in doing it.

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

5           MR. WANDER: Yes. Mark?

6           MR. JENSEN: It's Mark Jensen. To kind of react to  
7 all of that, one of the things we've debated a lot in -- or  
8 talked about a lot -- and you're going to see how strongly I  
9 view this -- is -- we're back to this issue of who's the  
10 final word on what is enough and what needs a threshold for

11 management to be comfortable, making the assertions, and  
12 basically taking on criminal liability when they do that.

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

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

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

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

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

8           Today that doesn't exist, and I think that's a big  
9 hole in our system. Because COSO, as we pointed out in  
10 San Francisco, is -- it's basically a virtual organization.

11 It doesn't have an employee. Even the CEO is only part-time.  
12 And to my knowledge, they've never been authorized as a  
13 standard-setting body. It's been something that was created  
14 and kind of endorsed, and doesn't really have any  
15 standard-setting authority.

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

18 MR. THYEN: Yes.

19 MR. SCHLEIN: In San Francisco, right?

20 MR. THYEN: Mark, in a way, I agree with what  
21 you're saying, and there's that gap that's got to be filled.

22 But when I look at it from my viewpoint, the  
23 ultimate arbiter becomes the customer in the market, because  
24 if we just keep driving controls with no concern for cost, we  
25 can be absolutely perfect and out of business.

1 MR. JENSEN: No, I agree. I agree with that.

2 Yeah, we did hear from the guy at COSO. He's a  
3 college professor.

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

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

10 MR. SCHLEIN: So relying on that as the basis for

11 whatever we're going to come up with for our \$700 million and  
12 below threshold does not seem to get the relief that I  
13 thought you were alluding to, Janet.

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

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

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

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

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

7 And we're not saying that what they have and are  
8 delivering tomorrow is it. What we're saying to them is, are  
9 we comfortable enough -- if we asked and made a  
10 recommendation that the SEC look to you to deliver this, get

11 this done and get it delivered, would you be able to do it?

12 That's what we want to find out.

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

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

22 MR. WANDER: Drew?

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

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

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

10 So the one thing I'd caution you to do when

11 speaking with the professor from COSO and the representatives  
12 of COSO, and this is not meant in any disrespectful way to  
13 those august, well-intentioned, and thoughtful people, but  
14 they have not had the benefit of the testimony that we've  
15 had. They have not had anything more than an anecdotal  
16 belief that maybe there's a problem.

17 I hate to, just as you hated to define it, what is  
18 the nature of it, I'd hate to say that they may not have felt  
19 our pain or the pain that we have, in fact, been privy to.

20 So while I certainly would pay attention to what  
21 they have to say, I think we've already drilled down deeper  
22 to some of the impacts than their mandate called for.

23 MR. WANDER: Alex?

24 MR. DAVERN: Yeah.

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

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

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

8 And I personally am more attuned towards making --  
9 drawing bright lines around standards that are already known,  
10 and Janet is obviously very familiar with my opinions on

11 this.

12                   But I do think we should try and see where that  
13 goes, but it is a nervousness on my part that we might end up  
14 with a recommendation that another body solve the essence of  
15 the problem at some point in the future, when we really can't  
16 predict exactly what that outcome would be.

17                   So thank you.

18                   MR. WANDER: Rick?

19                   MR. BROUNSTEIN: Yeah.

20                   Just to sort of chime in, I think you've hit the  
21 essence of what is the minority opinion back and forth in the  
22 group, is can you accomplish this cost effective solution?

23                   We think we owe it to ourselves to give it a try,  
24 and I think that's where we're heading, and, you know if it's  
25 something that the SEC selects a group, we want to talk to

1 COSO, but it doesn't -- and there's several groups that, you  
2 know, may be the logical groups that could do that.

3                   If they can't do it cost effectively, then, you  
4 know, that's when the exemption starts to become more  
5 logical.

6                   MS. DOLAN: And I would just conclude on behalf of  
7 our subcommittee, an answer to your question, Drew, is we  
8 still are trying to say it's easy to say just exempt, and we  
9 may end up there, but we feel that we have the duty to try to  
10 create a solution that really works.

11                   We think this is what should have been done first,  
12 we think this should have been done first, which is create a  
13 standard where everybody knows what it is, and then come in  
14 and determine whether you've met it, but it wasn't.

15                   So -- but we're just trying to say, can we now find  
16 a way to try to recommend how to do that? We may conclude we  
17 can't.

18                   We may conclude it just can't be done, and then  
19 we'll look at our options at that point.

20                   MR. WANDER: Dick, did you --

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

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

25                   I mean, it seems to me that, you know, in simple

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

7                   Is that what you're saying?

8                   MS. DOLAN: Well, we live in a world now in which,  
9 through 404, we have said that you really need auditor  
10 attestation that you have the proper internal controls, and

11 so we've created a world in which people feel that's kind of  
12 a necessary element of good business.

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

15 MR. JAFFEE: Yeah.

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

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

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

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

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

6 And one way you would do that is to say we're going  
7 to have the management actually assert that they have the  
8 appropriate internal controls in place where you can rely on  
9 their financial statements, but we don't tell them what that  
10 is.

11                   And we're trying to say can we create actually, you  
12 know, a framework? And that's what a COSO or some other body  
13 might be able to do.

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

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

24                   So we're just trying to see is there a standard  
25 where everybody can look at an assertion and say, I know what

1 that means." That's what we're trying to do, and we not get  
2 there.

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

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

8                   And I guess the analogy in the financial statement  
9 world would be that when you make the 302 assertion that  
10 you're asserting that the statements are correct according to

11 the GAAP standard, is that what it is, and so going back to  
12 what Mark said at the very beginning, there is no such  
13 standard in the audit world.

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

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

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

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

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

10 The dynamic is you have to change that so that they

11 could look to something not necessarily as a safe harbor, but  
12 they could look to a standard that would say, "This is  
13 adequate for me to make an assertion."

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

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

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

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

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

4 MR. WANDER: Rick?

5 MR. BROUNSTEIN: Rick Brounstein.

6 Let me just take it to other extreme.

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

11 comfortable in making a management assertion.

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

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

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

25           MR. GOELZER: '77.

1           MR. WANDER: '77.

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

10           There was a big brouhaha about these certificates

11 at that time, and I will try and go back and recall it and  
12 maybe share that with you, just to see what somebody else  
13 thought some time ago.

14 Am I on target there or not?

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

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

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

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

1 of exercise in those days.

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

4 MR. WANDER: Yeah, actually, the original COSO does  
4a deal with  
5 smaller and mid-cap businesses, and in my reading of it does  
6 talk about applying different standards.

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

10 standard to apply to that report.

11 Mark?

12 MR. JENSEN: One other thing to think about -- this  
13 is Mark Jensen -- or to look at, Herb, is in the original,  
14 one of the original drafts under COSO, there was a complete  
15 section on small companies and how it would be applied in  
16 smaller companies, and that was eliminated in the final  
17 draft, was taken out because of the concerns primarily of the  
18 then Big Eight that we were creating two sets of standards.

19 So what was left within the final draft of COSO was  
20 this principles based framework with a few paragraphs thrown  
21 at the end of each one of the components that says, "Here's  
22 what it might look like in a smaller company."

23 I think that one of the areas for us to start is to  
24 go back, because there was a lot of work done on that, and  
25 then it was eliminated because of the concern of the Big

1 Eight accounting firms not to have dual standards out there.

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

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

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

9 And again, I want to thank Janet and everyone on

10 the subcommittee, because you really have devoted your time  
11 and attention and come up with, I think, a very sound  
12 analysis, and whether we can get the next step, we will all  
13 see.

14 But I think we're all cheering for you, at least.  
15 Let me put it that way.

16 Any other comments before we move on?

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

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

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

24 MR. BOCHNER: Steve Bochner.

25 I guess this will be a little anti-climatic after

1 the 404 Subcommittee.

2 (Laughter.)

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

4 MR. BOCHNER: I'll forge ahead.

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

8 I think, Herb, unless you tell me otherwise, I'm  
9 not going to reiterate the areas of alignment that I covered

10 yesterday unless you'd like me to go through those again.

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

13 MR. BOCHNER: Okay.

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

18 We've discussed further this idea of the  
19 accommodations provided under Regulation S-B, which are  
20 modest but, you know, rather than three years audited  
21 financials, two years, and a few other accommodations, and a  
22 suggestion was made actually by Leroy, who was visiting our  
23 subcommittee meeting this morning, that maybe we should  
24 consider extending those accommodations not only to micro-cap  
25 companies, but if we're really looking at trying to reduce

1 costs and increase efficiency without impairing investor  
2 protection, should we extend those to all smaller public  
3 companies?

4 In other words, would it somehow impair investor  
5 protection if we allowed smaller public companies to not have  
6 -- I think under that construct you would still have five  
7 years financial results in summary form, but in terms of  
8 getting the auditors in the loop, is a financial statement  
9 three years ago really necessary for a smaller public

10 company, or is two years income statement and two year  
11 balance sheet sufficient?

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

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

19           MR. DENNIS: Steve, this is Leroy.

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

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

5           MR. BOCHNER: Yeah. Thank you.

6           MR. WANDER: Rick?

7           MR. BROUNSTEIN: Yeah, Rick Brounstein.

8           Just a quick reiteration that I've been filing  
9 under an S-B for a while, and we've always filed two and two,

10 and that's -- there's no more work to be done to do it that  
11 way, so why wouldn't you?

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

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

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

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

3           You know, another topic that has surfaced is you  
4 now, and perhaps this may not be popular with the SEC, we'll  
5 have to let them decide this, but today if you miss a filing,  
6 even if it's attributable to, say, problems with 404 that  
7 we've identified, you are put in an S-3 penalty box for a  
8 year, so instead of being able to use the short form, you now  
9 have to use the long form.

10                   And I guess we have questioned that within our  
11 subcommittee, you know, why -- does the punishment fit the  
12 crime?

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

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

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

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

7                   MR. BOCHNER: And I think today, Herb, under 302,  
8 you're required to talk about designing disclosure controls,  
9 and I think if you're missing SEC filings, I would question

10 whether you can take the position that your disclosure  
11 controls are effective, so you may even have a context in  
12 which to address your point today.

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

16 Good idea.

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

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

25 The only other area that I think we want to talk

1 about is this beneficial record holder issue, and we did  
2 continue to discuss that.

3 This is the problem with the form over the  
4 substance.

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

10 beneficial holders.

11           So the idea is perhaps to move to less of a form  
12 over substance construct and move to beneficial holders, so  
13 you actually look at the real shareholders for purposes of  
14 determining at what point do you cross a threshold and you're  
15 large enough that you should be filing reports with the SEC,  
16 and similarly, when is the real number of shareholders small  
17 enough that you should no longer have to file reports?

18           So the question is, where do you draw that line?  
19 And we have had some thoughts about that.

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

1           We're very mindful, as we say that, of the impact  
2 this could have on a lot of companies, and so we need more  
3 data on that impact, and I think the SEC is going to try to  
4 help us to, as best they can, get that data, and if we do do  
5 something along those lines, we're certainly going to have to  
6 have a phase-in period for issuers on both sides to be able  
7 to plan for it, to see it coming, and not just put something  
8 in place immediately.

9           So I think that, unless members of my subcommittee

10 have other thoughts they want to talk about, I think that  
11 summarizes our discussions.

12 MR. WANDER: Dick or Pastora? Any --

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

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

24 So my guys said, "Why don't you ask for a safe  
25 harbor with a specific dollar limit under which you would

1 still be independent and over which you would be deemed to be  
2 unindependent?"

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

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

7 MR. WANDER: Pastora?

8 MS. CAFFERTY: Let me say that I think this  
9 argument of the difficulty of finding independent directors

10 is a red herring, but it's a very dangerous red herring  
11 because the whole idea of independence is that the company  
12 will be forced to go outside those people that they know.

13           And I must say the most salutary effect in the  
14 boardroom, and again I'm talking about mid and large sized  
15 companies, is that for the first time, really, in the last  
16 five years many companies who have basically recruited  
17 directors based on who the CEO knew or the board members  
18 knew, you know, sat down, very good faith efforts -- I'm not  
19 -- but it's who we all know, and we come down with a short  
20 list and then we make it shorter. We interviewed them. We  
21 took it very seriously. But there was no stranger in the  
22 room.

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

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

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

8           It doesn't mean the CEO is not included in some of  
9 the interviews, but the boards have really taken a very

10 aggressive stand on this, and to me the benefit is that you  
11 have people who are not familiar with the company, who are  
12 not familiar with everybody sitting in the room, asking  
13 questions, and the beauty of this is that you get a very  
14 refreshing, different point of view.

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

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

25 I also have a lot of trouble, and Dick knows this,

1 with the exception from fees.

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

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

7 There's a lot of status and privilege serving on a  
8 board, and I'm old enough to remember where \$25,000 for a  
9 Fortune 100 company was a very acceptable fee.

10                   Now, I'm not suggesting in today's world -- this is  
11 25 years ago -- but you didn't go on it just for the fee.

12                   So I urge all of us on the committee to take a wider  
13 view of independent directors and a wider view of a certified  
14 financial expert.

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

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

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

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

5                   (Laughter.)

6                   MR. CONNOLLY: -- I'd like to have an opportunity  
7 to just explain a little bit about my herring.

8                   The fact is that for many, many, many micro-caps,  
9 the intersection of directors' fees and the D&O insurance

10 that we have not really talked about here too terribly tough,  
11 but in my micro-cap community, it becomes a significant  
12 number, and has obviously increased as Sarbanes-Oxley has  
13 come to the fore and the fear of the insurers, maybe justly,  
14 about potential claims has obviously market priced and D&O  
15 up.

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

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

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

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

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

8 MS. CAFFERTY: Drew, we could go on, and we have to  
9 have this discussion, but it's only throwing out there

10 something for the committee to think about, and in my  
11 experience, financial experts on boards are not paid any more  
12 than any other director.

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

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

23           MR. CONNOLLY: I absolutely hear what you're  
24 saying, and I guess maybe I'm not aware of what directorial  
25 compensation is in the real world, but I know that I doubt

1 that I could find a director for \$25,000 for my companies,  
2 and I don't think I'd be insulting enough to offer them that.

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

10 MR. WANDER: Well, let's move on.

11 Leroy?

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

13 Leroy Dennis.

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

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

21 Maybe the issue we need to address is similar to  
22 the issues that Janet has brought up about auditor liability  
23 concerns and how that's driving the process, and maybe we  
24 need to think about board liability and how should that be  
25 construed in a legal context of what is the liability

1 appropriate for a board member that gives best efforts, not  
2 fraudulent, but is there some kind of relief that we can  
3 recommend or provide to audit board members that are giving  
4 their best efforts?

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

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

8 MR. WANDER: Certainly, Dick.

9 MR. JAFFEE: You know, I think that is a very, very

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

15           And it's very analogous to what Mark said about the  
16 404 thing. They don't really know precisely what that  
17 standard is, so everybody is around hawking best practices.

18           There's going to be a thing on compensation in a  
19 couple of days on a webcast where a bunch of well-known  
20 directors are going to talk about compensation.

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

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

1           MR. JAFFEE: Yeah, sure.

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

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

9           When the financial expert provision became

10 effective, the board of this particular client said, you  
11 know, "Do any of the members presently satisfy that  
12 requirement or meet that standard?" And in fact, they did.

13 But the board sort of said to itself, and this was  
14 an open discussion, that they thought for board protection  
15 the board should make sure there was a financial expert on  
16 the audit committee that was frankly not a retired audit  
17 partner of an audit firm, but rather a currently sitting CFO  
18 who knew how to operate in the trenches, and the board felt  
19 that that was more protection for the other members, which  
20 -- if we're looking for to be helpful.

21 So let's move on, though.

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

24 MR. JENSEN: Yeah.

25 I just kind of want to come back to this point

1 again, because it comes up over and over again, and I feel  
2 like there's another participant on this committee that you  
3 can't talk to, and that's the plaintiffs' bar, because every  
4 time something comes up, we actually are talking about the  
5 plaintiffs' bar and what happens and how to protect  
6 ourselves.

7 And I'm wondering, is there nothing that can be  
8 done out of this committee in that area? I mean, even to  
9 take a minor step, I think would be important as basically

10 getting a ball rolling and trying to stop this endless  
11 discussion around, "Well, if we do that, we've increased  
12 people's liability."

13           You know, because it seems like --

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

16           MR. JENSEN: No, thank you.

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

19           MR. CONNOLLY: Loser pays.

20           MR. WANDER: That was Drew who said "Loser pays."

21           Jim and I will think about how we could insert that  
22 at this frankly late date here.

23           I'm not trying to minimize the issue. Congress  
24 went through this when they passed the Securities Reform Act,  
25 what, seven, eight years ago, and it's a highly charged area,

1 et cetera, and there may be particular reasons, I personally  
2 believe, in the accounting profession that it might be  
3 appropriate.

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

8           Well, you know, if you're the director, you sort of  
9 say, "I can do 80, but I can't do 101."

10                   And the result is, it's sort of a piling on, and I  
11 think frankly the -- both the SEC and the PCAOB criticized  
12 the accountants for not using enough judgment in their May  
13 releases.

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

18                   Yes, Janet.

19                   MS. DOLAN: Herb, this coming from the committee  
20 that wants to solve a problem, I'm not sure we can solve that  
21 problem, but I do think it would be good for us in the  
22 preamble that we start connecting some things like  
23 competitiveness, risk aversion, and saying that those are the  
24 things you do not want to happen in your capital markets, is  
25 to become risk adverse, that it is a really important element

1 of the success of our capital markets that we understand that  
2 risk is an element of it, and in this competitive world,  
3 capital can move in a nanosecond.

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

8                   MR. WANDER: Drew.

9                   MR. CONNOLLY: Janet, I'd be delighted to work with

10 you on drafting that language, and I'm sorry that you jumped  
11 that comment that I was hoping to make today, because the  
12 reality is that you cannot legislate out all fraud, all  
13 fraud, bringing it down to the point where we're, you know,  
14 implementing a marketplace that's not possible.

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

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

24           I got a statistic that was very interesting the  
25 other night. Every micro-cap company, as we've defined them,

1 in terms of total market capitalization equals one Worldcom.

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

7           So risk assumption is something we should actually  
8 be encouraging.

9           That's the basis of this country. It's how the

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

12 MR. WANDER: Jim?

13 MR. THYEN: Yeah. This is Jim Thyen.

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

17 MR. BOCHNER: Jim, I think we still continue to  
18 very much like and support that idea, that clearly there will  
19 come a time -- and I think we are suggesting maybe it's now,  
20 and I think the SEC in the securities reform release took  
21 baby steps in this direction with respect to the final  
22 prospectus delivery -- there will become a time when we say,  
23 okay, Internet accessibility is widespread enough that we  
24 don't need to stuff mailboxes all across the country with  
25 proxy statements and annual reports, that most of us actually

1 go on line, subject to having appropriate protections for  
2 those shareholders that still desire paper copies.

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

5 But at some point, you know, if our mantra here is  
6 reduce costs without impairing investor protection, while  
7 this isn't an area of great cost, we've identified it as an  
8 area where smaller companies are disproportionately affected  
9 by having to do all this printing, you know, this printing

10 job, which largely ends up in recycling bins, we think.

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

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

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

18 MR. WANDER: Certainly. Certainly.

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

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

25 But there is some suggestion now that, you know,

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

6 But shouldn't there be some easier mechanism,  
7 through e-mail or a common format or something, that allows  
8 companies to more cost effectively get their SEC filings done  
9 without having to seek outside help to simply transmit a

10 document that they've already got internally.

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

18           MR. WANDER: Okay.

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

21           One of the things, I was concerned enough about  
22 this, as recently while in San Francisco, went to a banking  
23 conference, ran into an executive from EDGAR Online, and  
24 asked them -- Susan Strausberg's company -- asked them would  
25 they, under any other circumstance, be able to extract the

1 data, this new XBRL language, which allows financial report  
2 information to be extracted, manipulated, spreadsheeted, et  
3 cetera, would that, under a non-EDGAR circumstance, would  
4 they be able to do that?

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

6           And I know that that has been raised to us here by  
7 Kathleen, so there must be somebody within the organization  
8 here who might be able to give us both the cost overall to  
9 comply with EDGAR, and also whether or not the technology

10 exists to do something other than EDGAR.

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

13 (No response.)

14 MR. WANDER: If not, it's about five minutes to  
15 12:00. Why don't we break until 1 o'clock -- is that enough?  
16 -- come back for the last two reports, and then discuss next  
17 steps? Is that all right with everyone?

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

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

21 MR. WANDER: It's now a few minutes after 1  
22 o'clock, and we're missing a few people who I know are still  
23 here.

24 So why don't we wait just a couple of minutes, and  
25 those of you who are listening on the web page, we'll start

1 as soon as we get a few more people around the table.

2 (A brief recess was taken.)

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

6 (A brief recess was taken.)

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

9 Kurt was here a minute ago. We keep losing and

10 gaining people.

11 Okay, here's Rick.

12 Why don't we begin, however. A few members have  
13 had to leave, primarily Janet Dolan, for those of you who are  
14 listening, and Dick Jaffee will be here in a minute.

15 Has anybody else left? I don't think so.

16 Oh, Alex Davern, yes.

17 So I think we should move on, and the next  
18 subcommittee, why don't we go to you, Leroy?

19 MR. DENNIS: Okay. Leroy Dennis from the  
20 Accounting Subcommittee, and I've got Patrick here with me.

21 We basically talked around the four or five areas  
22 that we still have some divergence on, and so I'll go through  
23 those real quick.

24 SAB-74, when we discussed that, we decided there  
25 really was no need for revisions to that standard to be in

1 compliance, or with the spirit of our recommendation to  
2 extend the implementation date for accounting standards for  
3 micro-cap companies, so we'll be making no recommendations  
4 there.

5 Steven has already talked about the predecessor  
6 auditor and the 10-Ks.

7 We really were addressing that issue on the three  
8 years versus two years financial statement requirement in an  
9 effort to increase the competition and reduce the cost to

10 change auditors, and we talked about whether we should change  
11 the requirements for predecessor auditor involvement in a  
12 10-K filing.

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

19           From the PCAOB registration standpoint and the  
20 comments I made yesterday requiring some minimum standards  
21 for registered accounting firms to practice in front of the  
22 SEC, the more we talked about that, I guess I got convinced,  
23 albeit with maybe some arm twisting, but convinced that we  
24 need to let the PCAOB do their job and not require any  
25 minimum standards from the auditors, but that the PCAOB will

1 do that through their inspection process, and that the market  
2 will eventually sort that out.

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

6           As you may or may not know, the AICPA quality  
7 centers require a certain level of training every year to  
8 audit a pension plan, they require a certain level of  
9 training to audit government entities under Yellow Book, but

10 as far as I know, there's no specific requirement to attend  
11 any kind of training to audit General Motors; so that seems a  
12 little bit of a disconnect there, that we ought to have some  
13 kind of minimum requirements for auditors.

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

18 And then we probably spent the majority of our time  
19 talking about materiality in financial statements and the  
20 number of restatements that are occurring.

21 Whether that's good for the market, whether it's  
22 good for investors, I think is subject to some debate.

23 Obviously, if the financial statements are  
24 materially wrong, they need to be fixed, but we think we're  
25 under a perfect standard right now for financial statements

1 as opposed to a materiality standard when it comes to looking  
2 at errors in prior financial statements, and we're also, we  
3 think, moved to a quarterly materiality level so that the  
4 real test is based on a materiality level on a quarter from a  
5 practical standpoint of what's going on in the market.

6 That's resulted in several restatements, that I  
7 think we all have a consensus that under the same set of  
8 rules five years ago would have not resulted in the same  
9 number of restatements that are going on today.

10                   We think that doesn't do well for investor  
11 confidence in the markets, that restatements should be  
12 reserved for things that are material enough to deserve that.

13                   We're not ready to make a recommendation in that  
14 area, but we did meet with the SEC staff.

15                   And Gerry, I just want to just interrupt for a  
16 second, because every time we've asked the SEC for anything,  
17 they have just been extremely, extremely helpful for us.

18                   You know, we arranged a meeting yesterday afternoon  
19 and got people -- you know, Scott Taub came down and met with  
20 us, and I know he's a busy guy, and that's just been -- I've  
21 experienced that over and over again, and I'm just really  
22 complimentary of your people here.

23                   But back on point a second.

24                   The two areas we want to look at are, it seems like  
25 there's been situations where an error is discovered in a set

1 of financial statements, and in each individual financial  
2 statement, be that quarterly or be that annual, the number is  
3 deemed not material, but when you try to correct the error  
4 that the cumulative catchup of that is material to any one  
5 quarter.

6                   And so we want to explore that as to what is the  
7 right answer for the markets, and how that should be treated  
8 in a financial statement, whether that -- I think right now  
9 those financial statements are being restated for

10 theoretically immaterial amounts in each quarter.

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

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

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

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

1           MR. BARRY: (Shaking head)

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

7           MR. WANDER: Any comments, questions?

8           Dave.

9           MR. COOLIDGE: Yeah. Dave Coolidge.

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

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

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

25                   MR. DENNIS: Yeah, we agree.

1                   I think the other thing that we need to look at  
2 with this is the format of quarter restatement.

3                   Is it appropriate to re-file prior financial  
4 statements every time you change a number in a quarterly Q,  
5 or can, if you're just doing comparative statements, can you  
6 just correct in your current quarter with appropriate  
7 disclosure of what's going on and is that a better method for  
8 the Qs, anyway, to deal with that?

9                   I think we all agree that if we have an error in an

10 annual filing that's material on that annual financial  
11 statement, that we got to re-file the Ks and make  
12 everything right.

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

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

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

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

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

3           MR. DENNIS: That would be great.

4           MR. WANDER: And, in fact, then they could perhaps  
5 even make a written submission to the whole committee so we  
6 can have that available to the committee and the public,  
7 because they're very interested, and they have done a lot of  
8 work and have a big database, and have formed some judgments  
9 on restatements.

10 MR. DENNIS: That would be great, if we could get  
11 that, so if you want to arrange that --

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

13 MR. DENNIS: Thank you.

14 MR. WANDER: Rick.

15 MR. BROUNSTEIN: Rick Brounstein.

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

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

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

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

24 If you look at the little accounting firms that all  
25 these smaller companies are relying on, if they want to get

1 it right, and then they have four or five public companies,  
2 they're stretched.

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

8 I don't know if it's within our purview or how one  
9 would go about it, but it seems to me that that organization

10 would not only help qualify these people, but give them the,  
11 you know, the help in tackling a lot of the more complicated  
12 accounting rules that are coming out that they probably can't  
13 get right on their own.

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

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

25 MR. BROUNSTEIN: I mean, to me, it's not simple,

1 because there's liability issues.

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

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

7 I don't believe the old Andersen, I forget the name  
8 of the consulting firm, but they will not advise people on  
9 public companies because of the liability around it, but at

10 least on private companies, I know they will advise on  
11 accounting standards and implementation and give their  
12 advice.

13 I don't believe they do that for public companies,  
14 but that is -- those type of services I believe are out  
15 there. They are not cheap for people to subscribe to, but  
16 they are out there.

17 MR. WANDER: Mark.

18 MR. JENSEN: This is Mark Jensen.

19 Leroy, a couple of questions.

20 I want to go back to materiality and then I want to  
21 come back to another question I have.

22 But have you thought at all -- I tell you, I'm a  
23 little worried about redefining materiality again. I kind of  
24 think materiality is pretty well understood.

25 It seems to me the issue is more around, when there

1 is an event, how that ultimately gets communicated to the  
2 marketplace.

3 And have you thought at all about having maybe  
4 different requirements for different size companies?

5 And the reason I say that is, materiality, I always  
6 like to say materiality with a client, whenever we got into  
7 those arguments, was, immaterial means neither you nor I  
8 care.

9 So if you don't care, then that's fine, and maybe

10 we should just do it right.

11           If you do care, then it means it's material to you,  
12 now it's material to me, and we got another debate going on.

13           And that really is what materiality comes down to  
14 in the end. That's what the word means. It's -- you know,  
15 forget how you define it. It means it's immaterial.

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

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

1 want to make them.

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

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

7           MR. DENNIS: Well, we've talked about -- and I  
8 would characterize what we talked about as not redefining  
8a materiality, but

9 clarifying whether or not materiality should be based  
10 quarterly or annually, and there is some disagreement as to  
11 if you have something that's potentially material to a  
12 quarter number, whether or not that it rises to the level of  
13 materiality on an annual basis.

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

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

25 So we talked a lot about process, and does that

1 work.

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

7 And we're really just -- I mean, Steve handed us  
8 this late last week, and so we've had about an hour to talk

9 about it, so we're really just kind of scratching the surface  
10 a little bit on this.

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

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

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

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

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

25 We talked a lot about that, went back and forth

1 between members of our committee, spoke a lot to auditor  
2 representations around the firm, around the company, or I'm  
3 sorry, around the United States, talked to people from the  
4 PCAOB.

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

8 I think to the extent you had two different

9 independent standards it would become very, very confusing  
10 for the public, and so now I'd have, I'm independent here but  
11 I'm not independent if you grow to a certain size, and it  
12 just became -- it seemed like it was very confusing to get  
13 to.

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

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

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

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

9 registration statement is filed.

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

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

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

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

20 But I feel like, especially with the SEC's up and  
21 over rules, that in the private equity - venture capital  
22 industry, it is very difficult for auditors to kind of  
23 monitor their independence all the time in that world,  
24 because you have to be sure you're independent for those  
25 three years, which means you've got to look at an entire

1 portfolio of companies, what you're doing with them, and what  
2 you're doing at the PEI level, and it's a conundrum.

3 I know that there's been some action trying to get  
4 the SEC to maybe give a little more guidance in that area,  
5 but it just seems to me it's a big issue with providing  
6 services to companies that are private and then getting --  
7 but trying to monitor them as if they were public. It's  
8 quite difficult.

9 MR. DENNIS: I don't disagree.

10 MR. JENSEN: Okay.

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

14 MR. JENSEN: Okay.

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

16 Yes, Rich.

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

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

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

25 Anyway, just my two cents.

1 MR. WANDER: Any other observations?

2 (No response.)

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

5 MR. COOLIDGE: Dave Coolidge, Capital Formation  
6 Committee.

7 Thank you.

8 We have a number of items that we've talked about

9 previously.

10 Let me give just a little color commentary, I  
11 guess, into why we're focused on these issues.

12 First being ending the prohibition against general  
13 solicitation and advertising for transactions.

14 With certain purchasers, this would be a private  
15 placement, and what we're trying to create here is an  
16 opportunity for private offerings to occur with certain types  
17 of investors, obviously, wealthy, sophisticated investors,  
18 where you wouldn't be running afoul of the private placement  
19 rules by making it a broad solicitation, but only to this  
20 group of people that would be able to take the risk, and  
21 presumably, when the transaction closed, you would have a  
22 very sophisticated and wealthy group of investors, and that  
23 should be a decent standard not to -- if you achieve that,  
24 that you shouldn't be penalized for having conducted an  
25 offering that, you know, perhaps had a fairly broad

1 solicitation effort.

2 So that's a kind of an idea that we have that would  
3 help certain companies in their private offerings.

4 I know this is a subcommittee or this is a  
5 committee on public, smaller public companies, but to the  
6 extent that the public markets are not available to someone  
7 for whatever reason, that this opens up the private markets a  
8 little more broadly for them.

9                   Another issue is the issue of private placement  
10 broker dealers.

11                   The concept here is to again assist private  
12 companies by creating a broader pool of people who can assist  
13 them in raising capital.

14                   The NASD registration process, as it currently  
15 exists, is something that certain finders or brokers, you  
16 know, find to be a little bit onerous, and the concept here I  
17 believe is to create a, I don't know if I want to call it an  
18 amnesty program, but a way of having a broader group of  
19 people be qualified, go through a streamlined registration  
20 process, and thereby be in a position to help smaller  
21 companies.

22                   Thirdly, private placement exemption adjustments.  
23 I won't go into all the details here. I talked about a few  
24 of them yesterday.

25                   But the idea here again is to make private

1 placement activity more accessible for smaller companies,  
2 easier to process and to succeed at.

3                   We did have a fair amount of debate about the going  
4 private or de-registration process, and I think we have come  
5 up with a concept, when we talked about this yesterday, and  
6 you mentioned the Ziegler situation, that they decided to  
7 de-register but had an undertaking with their shareholders  
8 that they would continue to provide them with information,

9 proxy statements, annual reports, a package of information  
10 that investors would find acceptable.

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

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

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

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

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

3 Trading markets, we've talked about that  
4 previously, our belief that the Bulletin Board market is an  
5 important place and we want to make sure that someone is  
6 encouraging the NASDAQ and the NASD in their arrangement now  
7 where the NASD in fact is responsible for the Bulletin Board  
8 but NASDAQ sort of runs it on a contract basis.

9                   We want to make sure that, I think, someone at the  
10 SEC take this on as a, I don't want to call it an oversight  
11 responsibility, but a cheerleading responsibility to make  
12 sure that that market is maintained and it's a good market  
13 for companies that, you know, are not listed on one of the  
14 major exchanges or on the NASDAQ as it's presently  
15 constructed with listing standards.

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

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

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

1                   compensation to broker dealers for providing the market  
2 making service?

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

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

8                   I think what we want to recommend there is for

9 resale purposes it would be, the S-3 could be used for resale  
10 purposes, not necessarily for registration purposes, and that  
11 would be for Bulletin Board securities that meet the market  
12 cap test that S-3 now applies to.

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

18           There's two points of view on this, and I'm not  
19 exactly sure where we come out on it, but that would  
20 obviously be a burden that you could take off of a group of  
21 600 small cap companies that they presently have. When they  
22 want to sell securities, they have to register with the  
23 various states that require it.

24           Research is an area that we've had a lot of  
25 discussion about trying to make sure that research is

1 encouraged and supported for small cap companies.

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

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

9 payments for research.

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

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

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

16 These would be what we call compensatory stock  
17 options.

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

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

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

1 list.

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

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

7 I'd love to hear before we leave what other  
8 activities are going on out there with respect to

9 Sarbanes-Oxley reform.

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

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

17           I'd like to think that this committee is going to  
18 be in the vanguard and the most influential, but it sounds  
19 like there's other people who are dealing with the same  
20 subject and issue and taking the initiative on it, and I  
21 don't know who is keeping track of everything that's going  
22 on, but I think it would be interesting for us to know who  
23 else is doing this stuff, and maybe, if possible, coordinate  
24 with them so that they can have the benefit of all our  
25 testimony and all our thinking and discussion and debate, and

1 try and get coordinated, as opposed to having five different  
2 isolated efforts going on to address this subject.

3           MR. WANDER: Okay. Gerry?

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

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

7           MR. LAPORTE: Yeah, I'm sorry, this is Gerry  
8 Laporte.

9                   People on the Hill are actually listening to this  
10 webcast today, I know, to try to coordinate their efforts  
11 with our efforts, and we're in contact.

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

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

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

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

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

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

6                   As best I can tell, we've both been finding the  
7 same information, and I don't know what their  
8 recommendations, if any, will be.

9                   So it's hard to tell. Yes.

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

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

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

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

20                   MR. WANDER: Drew.

21                   MR. CONNOLLY: Just two quick things.

22                   Dave, since I was the proponent of the 15c2-11  
23 broker compensation discussion, there really is a support in  
24 the marketplace for this, and that is that the NASD  
25 arbitrarily made a determination a number of years ago that

1 compensation for the due diligence work, not for making a  
2 market, but for going through the sometimes arduous,  
3 multi-back-and-forth tiered comments and questions, was not a  
4 method to be compensated for, and that perhaps made sense  
5 when the markets traded in eighths and quarters and the  
6 compensation given to a market maker was a 30-day exclusive  
7 to trade that security once it traded.

8                   That 30-day exclusive is no longer relevant, and in

9 a decimalization world, there's literally no way for a broker  
10 dealer to receive compensation adequate to cover the expenses  
11 subject to the due diligence.

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

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

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

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

7 So it's probably worthwhile to look at. I'm not  
8 sure we ought to take on every issue in the world, because

9 having a rifle approach, I think at the end of the day we  
10 will be far more effective on those big issues that I think  
11 are really driving the marketplace.

12 But that is an issue --

13 MR. CONNOLLY: Of access to capital.

14 MR. WANDER: Yes.

15 Pat.

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

20 MR. COOLIDGE: Excuse me. Dave Coolidge.

21 We have discussed it. I guess we're welcoming  
22 comments to improve the process, but I don't think that we --  
23 the PIPE activity has been pretty significant, and if done  
24 right, seems to be working for a lot of companies, and there  
25 is an SEC issue, I think, with the conduct of certain

1 practitioners in the PIPE markets, and we think that's an  
2 appropriate concern. Certain people are abusing information,  
3 et cetera.

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

9 suggestions.

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

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

21           MR. COOLIDGE: Yeah.

22           MR. WANDER: Yes. Richie and then Rick.

23           MR. LEISNER: Richie Leisner.

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

1 registration.

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

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

7           And so our request, when it gets done up finally,  
8 would be a request and recommendation that the SEC step out

9 in front and head a multi-agency effort in this regard.

10 Otherwise, this is -- we are afraid this will just  
11 stay as a recommendation that will be around for even a  
12 little bit longer, and no one is willing to get to the head  
13 of the parade and start the process.

14 MR. WANDER: Rick.

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

17 The comment I would make on PIPEs, just to finish  
18 that off, is if you've looked at all at integration rules.

19 Having done a lot of PIPEs, we get caught up in  
20 those all the time.

21 There seems to be, you know, the strict  
22 interpretation and what is really, you know, the SEC going to  
23 look at or not look at, and it seems to me they can be  
24 awfully limiting if taken to their extreme, you know, from  
25 six month, you know, safe harbor rules to, you know, can you

1 close one out and do another one and should you be able to,  
2 and oftentimes you can, but strictly you can't.

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

6 MR. COOLIDGE: One of the private placement -- one  
7 of the safe harbor issues that we are going to recommend is  
8 shortening that six month period down to 30 or 60 days.

9 MR. BROUNSTEIN: Okay. That should help.

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

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

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

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

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

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

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

9 on the technicalities here.

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

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

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

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

1 be wrong.

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

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

8 MR. BROUNSTEIN: Okay, so if you can carry that

9 thought, the way we're heading now with some of the  
10 discussion here, with some corporate governance rules that  
11 would affect the Pink Sheet companies, some minimum standards  
12 for the micro-caps, whether they trade on the Pink Sheets or  
13 the Bulletin Board, if they meet those standards, then they  
14 ought to be entitled to take advantage of today's Internet  
15 world and incorporate by reference, rather than exclude.

16 In other words, if we're going to put on  
17 requirements on the Pink Sheets, then they ought to have the  
18 advantages and not have to onerously file some document.

19 Really, the only difference is you're pasting  
20 everything into one document and having to update it once a  
21 year.

22 MR. LEISNER: Richie Leisner again.

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

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

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

8 MR. BROUNSTEIN: So you make, yeah, so it may make

9 sense to, rather than simply define Bulletin Board, define  
10 those requirements so that whatever we come out here, if we  
11 broaden those requirements and that is accepted, then they  
12 would fall in.

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

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

25 It would seem like we should determine as a -- you

1 know, put our committees together as a group and decide what  
2 are the minimum standards that make sense for these smallest  
3 of companies, and not allow them to get out for, you know,  
4 some other reason, like as I understood your de-registration,  
5 you're saying they would have to apply certain financial  
6 statements, but we're suggesting that they need more than  
7 just to file audited financial statements, that they're  
8 going to have to do a few other not necessarily onerous

9 things, but a few other things that would give some  
10 visibility to those shareholders.

11 MR. CONNOLLY: Can I respond?

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

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

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

23 MR. COOLIDGE: Correct.

24 MR. WANDER: Okay.

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

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

3 Now, maybe we're going to find out 9,000 other ways  
4 to rid them of these onerous costs, but 13e-3, I think  
5 that's the right -- yeah -- which is the de-registration  
6 regime that currently exists, is a very expensive -- I  
7 thought we in our committee talked about \$1 million or  
8 something to go through that.

9                   And people just say, "Well, you know, I'm trying to  
10 save money, but you tell me I got to spend all this money to  
11 save this money, it doesn't make any sense." So if they want  
12 to save the money, go through the process without filing that  
13 form, but make an undertaking to continue to supply  
14 information to shareholders.

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

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

21                   MR. COOLIDGE: Whatever they may be --

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

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

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

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

8                   This is somebody who says, "I'd like to go," and it

9 would be the standards -- it would be in the micro-cap world.  
10 We would not be talking about, you know, a Fortune 100  
11 company that would do this.

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

14 MR. BROUNSTEIN: Stop filing with the SEC?

15 MR. LEISNER: Yeah.

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

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

20 MR. WANDER: The form that you file. Okay. I  
21 think I understand now. Okay.

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

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

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

5 In other words --

6 MR. COOLIDGE: Maybe if this is the only one we get  
7 through, this is the way out for everybody. If we fail, then  
8 all other --

9 (Laughter.)

10 MR. WANDER: Drew, and then Bob.

11 MR. CONNOLLY: Drew Connolly.

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

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

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

25 MR. BARRY: My issue was just more of a general

1 question in terms of timing --

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

4 Starting tomorrow at the Waldorf in New York there  
5 is the annual PIPEs conference, and some of the largest law  
6 firms in the country, and certainly some of the major broker  
7 dealers and over 100 companies that are involved in the PIPE  
8 marketplace, the hedge funds, and those folks will be in

9 attendance, so I might actually know more about this subject  
10 when we get there.

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

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

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

1 a private company.

2           But if his top tier as described to me is reporting  
3 companies who are doing what's determined here to be all of  
4 the material requirements to meet these tests, and that is  
5 his top tier within the pink sheets, I think that may blur  
6 somewhat the distinction between the bulletin board and the  
7 pink sheets, and the net impact of what we've done here  
8 defining microcaps may very well create some level of

9 investor or speculator respectability that is heretofore not  
10 available through pink sheet securities.

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

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

1 So I found that revealing. But the one element of  
2 testimony I don't think we've received or had access or  
3 visibility to would be regulators. We've had no testimony,  
4 despite the efforts within the subcommittee here of probably  
5 one of the best securities regulators I've ever run into from  
6 the state of Nebraska, we've had no testimony from the area.

7 And I know from a capital formation standpoint,  
8 most of what we come up against is obviously the gentlemen,

9 ladies and gentlemen of corporate finance who are both our  
10 hopes and the progenitors of this committee, but we're  
11 running up against virtually in many of our recommendations,  
12 certainly the finders, private placement, broker-dealer  
13 recommendations and certainly some of the trading practice  
14 recommendations, right smack up against the purview of the  
15 Division of Market Regulation here within the SEC.

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

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

25           So that constitutes my comment.

1           MR. WANDER: Okay. Bob?

2           MR. ROBOTTI: I guess I had a couple of questions,  
3 because when you described the going private transaction. It  
4 seems to me of course today a company would only file a  
5 13E-3 if they were going to do a reverse split, or if they  
6 were doing a tender offer and it was in conjunction with  
7 that.

8           If you had, you know, the idea of eliminating the

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

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

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

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

5           MR. LEISNER: 13e-3, right.

6           MR. WANDER: Any other, Steve?

7           MR. BOCHNER: I've got a couple of comments. I  
8 think the first is to get a bit more granular on this general

9 solicitation prohibition. You know, the 33 act is  
10 constructed so that you've got, if you're going to solicit  
11 generally, you've got to file a registration statement for  
12 the most part. If you're not going to solicit, if you're  
13 going to rely on a private placement exemption, that  
14 purchasers need to be accredited. You need to have -- in  
15 general need to not solicit generally.

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

22           And I'm wondering really how salable that is here  
23 at the SEC, this idea of limiting general prohibition without  
24 some checks and balances as to who those purchasers are, how  
25 they get qualified. Is there any contours around this idea

1 of eliminating general solicitation that you can help me  
2 with?

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

8           This is a bold suggestion. But there are places in

9 the securities laws right now under the exemptive structure  
10 where you can have all the general solicitation you can  
11 handle, like in Rule 144A, for example.

12 MR. WANDER: Subject to protections about  
13 private --

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

21 But I think those things are all doable. I think  
22 that there's a lot of, you know, at the one end of the  
23 spectrum, some people would say, oh, we already have that  
24 definition. We call them accredited investors. And at the  
25 other end of the spectrum, people say, well, no, that's no

1 good. Maybe they should be QUIBS, you know, Qualified  
2 Institutional Buyers or something much, much, much, much  
3 higher.

4 There's a big gulf in between there that we need to  
5 talk about. And the issue about qualifying would be equally  
6 applicable to accredited investors now. Some guy comes in  
7 off the street. He says I'm a millionaire. He checks the  
8 box, and you have a private placement. And that was a

9 scandalous thought 20 years ago or a little more than 20  
10 years ago, but it seems to work pretty well.

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

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

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

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

6 MR. LEISNER: Well, no, that's a terrific concern,  
7 but it's just a challenge to the people who sit down and do  
8 the detail work. The question is whether you're willing to

9 sit down at the table and talk about the concepts with an  
10 open mind. All of those concerns are perfectly legitimate.

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

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

21 (Laughter.)

22 MR. BOCHNER: All right.

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

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

4 Obviously, from the one side, if the financial  
5 qualifications are such that, you know, you only need -- such  
6 that you got to be worth a jillion dollars to qualify, that's  
7 not going to be so terrific. And we'll have to talk about  
8 the means by which you do stuff.

9 MR. WANDER: So the devil is in the details.

10 MR. LEISNER: Thank you, Mr. Chairman.

11 MR. BOCHNER: Okay. Good. Well, I'll agree with  
12 him on that and look forward to hearing that --

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

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

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

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

3 The NASDAQ small cap companies have the same  
4 governance standards. They file reports with the SEC. These  
5 are smaller companies, and yet I have a hard time seeing what  
6 value it is to make those companies simply because their  
7 market cap isn't 75 million, it's 50 million or their trading  
8 price, you know, is at a different level, why those companies

9 ought to pay when they're doing securities offerings the  
10 state blue sky registration fees, and the larger companies, by  
11 virtue of their somewhat higher market caps, should not.

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

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

1           MR. WANDER: Jack?

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

7           The problem is now there's two tiers to the NMS.  
8 You have -- or two tiers to NASDAQ. You have the NMS, which

9 is your upper level companies, which is about, what, 3300, I  
10 believe. Then you have the small cap companies, which is  
11 about 578 right now.

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

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

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

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

8 I think the only thing that's different today, and,

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

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

24 MR. HERSTEIN: I don't disagree the cost -- the  
25 cost is not that great. There would be a cost savings. The

1 problem is, you know, I'll flip it the other way, name one  
2 small cap company that the states have stopped from  
3 registering again. I don't believe -- I don't think I've  
4 seen a small cap company registered in Nebraska in the last  
5 18 months.

6 Now either they're bypassing Nebraska, which I  
7 would doubt, or they're just not making the IPO or the  
8 listing filings in the states. But I guess I have not heard

9 like years ago how the states were hindering capital  
10 development, capital formation, don't hear those arguments  
11 any more. So I guess if I'm wrong on that, let me know.

12 But also -- one more thing. I do agree with your  
13 previous comment on the private capital. It is bold. I will  
14 agree with that.

15 (Laughter.)

16 MR. WANDER: Rick?

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

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

6 And if you're -- you know, we're kicking around the  
7 S-3. If you're eligible to do that whether you're on the  
8 bulletin board or the pink sheets or you're at a certain

9 level and you have to meet certain corporate governance and  
10 404 standards then, you know, you shouldn't have to do all  
11 this other, you know, stuff. My opinion.

12 MR. WANDER: Okay. Further comments? Questions?

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

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

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

2 So this is a capital formation problem.

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

9 by having a short selling problem.

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

16 MR. WANDER: Okay.

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

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

21 Any other questions, comments?

22 It's now about 2:25.

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

24 MR. JENSEN: I have one.

25 You were so close to escaping.

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

2 MR. WANDER: No, no.

3 I'm going to next turn --

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

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

6 MR. JENSEN: Okay.

7 This is for Gerry.

8 The comment letters on internal control and the

9 Commission's rules on internal control are due on the 31st.

10 Can we get copies of those letters, at least in the  
11 404 Subcommittee, at some point?

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

14 MR. JENSEN: They are?

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

17 MR. JENSEN: Oh, okay.

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

22 MR. JENSEN: Okay.

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

25 MR. JENSEN: Because I think those comments will be

1 important for our subcommittee.

2 Thanks.

3 MR. WANDER: This is an announcement.

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

8 So those who have the time availability, please

9 attend.

10 I think Jim and I would like to move on to, really,  
11 next steps, which I think we made a lot of progress today.

12 I think the discussion with the full committee  
13 being presented with each of the subcommittees'  
14 recommendations or observations so far to date and having the  
15 comments, I think is a good start to finalizing our  
16 recommendations.

17 And we've probably slipped a month in the basic  
18 calendar that we had established, and I think that what we  
19 have to do to sort of catch up or catch up is to schedule  
20 another meeting here in Washington, the week of December  
21 12th.

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

24 But I don't, Jim and I don't know really any other  
25 way to address this issue, other than getting together, and

1 that means having the subcommittee recommendations to us  
2 before then.

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

7 So it's the week of the 12th. I don't know -- the  
8 14th or the 15th are the days, I think, right, Jim, that we

9 could get this room probably and meet again.

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

12 Yes, Pastora.

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

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

17 MR. WANDER: One-day meeting.

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

19 MR. WANDER: Wednesday is the 14th.

20 A PARTICIPANT: The 14th is my vote.

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

22 Going once, going twice -- fine.

23 We probably will make telephone arrangements for  
24 those of you who couldn't make it, but I hesitate to say that  
25 because it's so much more valuable to have everybody in the

1 same room to discuss these issues.

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

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

8 And the recommendations have to be in enough detail

9 so that you don't have to ask questions about what you're  
10 going to do.

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

14 Yes, Rick.

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

18 MR. WANDER: I'm not sure --

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

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

1 But that's a good suggestion.

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

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

5 MR. WANDER: What?

6 We'll get you format.

7 MR. DENNIS: And then timing, Herb, of when you  
8 want those recommendations?

9 MR. WANDER: Well, if we have it the 14th, why  
10 don't you try and get it to Jim and I the 7th or the 8th.  
11 We'll try and get it to you before the weekend, so you'll  
12 have the weekend to review it.

13 Does that make sense?

14 MR. SCHLEIN: And very specific --

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

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

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

22 So that's the plan.

23 Any other comments, business?

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

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

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

6 We're meeting on January 9th, review the whole  
7 report up or down, and then it will be published for public  
8 comment a week later in the Federal Register and on our web

9 page.

10 And then I think we're caught up on our schedule,  
11 which would be send it out for -- is that right?

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

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

16 MR. BROUNSTEIN: The meeting --

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

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

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

25 MR. WANDER: No. And in fact, I will say this,

1 that Chairman Cox thought that we might want to actually  
2 present the report to the full Commission, rather than by  
3 mail, live, so that we can not only present it in writing,  
4 but describe it and answer any of the commissioners'  
5 questions.

6 Rick.

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

9 MR. WANDER: Yes.

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

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

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

18 Dick.

19 MR. JAFFEE: Dick Jaffee.

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

24 And then I think at the end, if there are such  
25 things, we can perhaps have a look forward of emerging

1 issues, if we know if there are any.

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

8 And somehow, it would be very nice if the SEC could

9 tell us, or somebody could tell us a few years into the  
10 future about which of the recommendations were not only  
11 adopted but what was the impact of it.

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

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

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

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

3 MR. CONNOLLY: Dick, I think we're going to be able  
4 to find out the impact of our work by looking at the health  
5 of the capital markets, particularly the tiers that we're  
6 working very hard to preserve, protect, and enhance.

7 And I don't know if the metric is going to be the  
8 number of additional public companies that are able to enter

9 the space because of our efforts or the market value of those  
10 companies, whether they're graduating from the pinks to the  
11 small cap.

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

15 MR. WANDER: Okay. I want to thank each member of  
16 the committee for your really dedicated service and  
17 participation, and look forward to continuing the progress.

18 Thanks. The meeting is adjourned, so those of you  
19 on the Internet can turn it off.

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

22

23

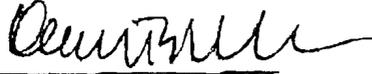
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CERTIFICATION

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



Herbert S. Wander  
Committee Co-Chair

1/12/00

Date

## Index of Written Statements Received

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, Willlamson & 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