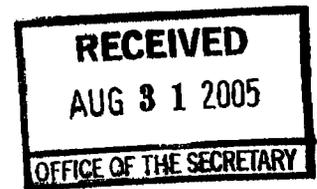


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August 31, 2005

Mr. Jonathan G. Katz
Committee Management Officer
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-9303

Re: Advisory Committee on Smaller Public Companies
File No. 265-23
Release Nos. 33-8599; 34-52189
Request for Public Input



Dear Mr. Katz:

In response to the request for public input on ways to improve the current regulatory system for smaller public companies under the securities laws of the United States, including the Sarbanes-Oxley Act of 2002 ("SOX"), we surveyed several clients and local public companies and have compiled their responses. The companies we surveyed are based in the San Antonio, Texas, area and have market capitalizations ranging from \$15 million to \$200 million. Our full-service firm represents various public company issuers in securities offerings as well as in their periodic and other reporting obligations.

Diversion of Attention of Company Management. A recurring comment was that SOX has resulted in a great diversion of attention of company management from operational activities, not only in terms of direct compliance but also in dealing with the timing of system changes and upgrades as well as acquisitions. One client described the effect of management diversion from operations as "devastating."

Remaining a Public Company. Overall, the companies surveyed felt that SOX benefits were minimal and did not justify the additional, high SOX compliance costs. Several companies have considered going private to avoid the higher compliance costs from SOX, but the initial costs required to go private and the loss of access to the capital markets have led these companies to remain public. Nevertheless, these companies are concerned that they may be forced to consider merging with larger competitors to relieve themselves of SOX compliance costs.

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Costs and benefits of SOX Section 404. There was unanimous agreement that the costs far outweigh the benefits for smaller companies, especially because smaller companies do not have the staff to perform the internal audit function in a way that is economically feasible and that leaves them with a competitive advantage in the marketplace. These companies would support an exemption from Section 404 for smaller companies, and they feel this would not have a negative impact on investors because such companies likely have simple organizational structures and the review by the external auditors should be sufficient to mitigate any risks.

Frequency of assessment of internal controls. Several companies agreed that high-risk controls should be tested every year but that lower-risk controls should be tested less frequently, such as every two or three years or over a two to five-year period. High-risk internal controls were viewed as those involving areas of management judgment or estimation, high volume of transaction accounts, or significant accounts based on a percentage of revenues or total assets. If low-risk controls are tested every year, it was felt that many procedures may be found repeatedly to be effective. Such a requirement would seem to involve increased costs with little benefit. One company suggested that a company's internal and external auditors should develop a plan for testing controls covering several years and that the plan should be approved by the company's audit committee. This company felt that the auditors and the board should have discretion to decide which controls should be tested and how often to test them. Another company felt that once internal controls have been assessed, they should not be re-assessed unless there is a change in those controls.

Testing by external auditors. There was agreement among all the companies surveyed that external auditors should not be required to conduct a second assessment that is completely redundant with management's assessment of internal controls. External auditors should be able to rely on management's testing and documentation and, as in other areas of auditing, perform sample testing.

SOX Section 404 as a deterrent to going public. One company argued that Section 404 should not be designed as a deterrent to smaller companies going public -- it should be the marketplace that weeds out unfit companies, not a particular section of the securities laws.

Effect on mergers and acquisitions. One company felt that SOX has greatly increased the level of investigation a company must perform on any potential merger or acquisition target before making an offer and that SOX Section 404 does not give adequate time to resolve any weaknesses discovered in a takeover target. This has increased the costs of merger and acquisition activities and reduced the potential benefits to buyers and/or combined entities. This company felt that SOX has had a chilling effect on the merger and acquisition activities of smaller companies, in part because officers may be worried about the consequences of signing certifications following an acquisition if a problem that went undiscovered during due diligence is later uncovered.

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Effect on Entrepreneurship and Global Competition. SOX Section 404 was viewed by one company as having a negative effect on entrepreneurship, due to the costs involved. Another company felt that its foreign subsidiaries suffer from a competitive disadvantage because they must endure the expense of SOX compliance while their competitors do not.

Accelerated reporting deadlines. Several companies expressed concern that accelerated reporting deadlines would increase the risk of less accurate data for smaller companies because they typically do not have the staff or the technological advances to obtain immediate data and quickly prepare disclosure documents while attending to normal business operations.

In summary, the companies we surveyed felt that SOX imposed high costs on smaller companies and diverted the attention of management from operational activities and that these costs outweighed the benefits of SOX. These companies believe SOX Section 404 is a primary reason for the high costs, and they would support an exemption from SOX Section 404 for smaller companies.

Respectfully submitted,