



September 1, 2005

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

Re: Request for Comments
File Number 265-23 - 88

Dear Mr. Katz:

We appreciate the opportunity to provide our comments to the Commission on important factors affecting the efficiency of capital formation by small public companies. The United States has been recognized as having the most robust securities markets in the world. The Commission's effort to solicit feedback through the SEC Advisory Committee on Smaller Public Companies (the "Advisory Committee") on ways to improve the current regulatory system for smaller companies under the securities laws of the United States, including the Sarbanes-Oxley Act of 2002 ("SOX"), is an indication of the Commission's appreciation of the need to promote efficiency, competition, and capital formation as well as the protection of investors.

We suggest the Advisory Committee give careful consideration to recommending the Commission provide exemptive relief from the provisions of SOX Section 404 for at least certain classes of companies, if not on a broader scale. Alternatively, the process of assessment of internal controls should be tailored to the operational nature of issuers taking into account the risk level of internal controls and the need, if any, for periodic assessment of one or more controls. Such steps may be taken in appropriate circumstances without diminishing the protection of investors.

For example, the business activities of development and production of certain natural resources frequently occur through the organization of limited partnerships from time to time for the purpose of engaging in such activities managed by the same drilling program manager and operator (the "Manager/Operator"). Interests in each such partnership may be offered and sold to subscribers through offerings registered with the Commission. Such registrants fall within the

SOX definition of "issuer," and are subject to its provisions, including those of Section 404. However, the characteristics of such registrants differ in significant ways from the typical public company subject to SOX. To illustrate, the partnership activities are typically confined to a particular activity, such as participation in a drilling program managed by the Manager/Operator to establish long-life oil and gas reserves by drilling wells. In contrast, the typical public company may engage in a broad scope of activities of varying nature over time dependent upon the discretion of management. The partnership interests are sold to investors by prospectus and are highly illiquid, and identified as such to prospective investors, in contrast to liquidity of shares of most listed issuers. As such the investor partners do not make any significant investment decisions post investment unlike investors in other public entities which must rely on information from the company to make continual buy or sell decisions. After the partnership acquires interests in prospects for the purpose of drilling, wells are drilled which prove to be productive or are abandoned. Continuing operations may be characterized as routine, and similar from partnership to partnership.

The internal controls and auditor attest functions required by SOX 404 produce significant unnecessary costs to the type of partnerships described above. By design, the partnerships are self liquidating such that once the partners' initial capital is expended drilling wells there is no continued investment and so the partners simply receive the income from the wells as they naturally deplete. As such, the increasing cost of the SOX 404 audit certifications is borne by an entity with declining assets and income. These inefficiencies create a situation where the life of the partnership and the ultimate economic return to the investors is impacted significantly by audit costs which simply do not return commensurate value. Specifically, the estimated annual costs to certify the internal controls under SOX 404 (not including the significant costs of initial compliance) could reduce the overall economic return to investors by 5% -15% depending on individual partnership performance and could be as much as 66% of the otherwise distributable cash flow in the later years of a partnership.

In addition, we offer the following comments on other questions asked by the Advisory Committee:

- The impact of SOX 404 and the fact that except for these public partnerships the Manager/Operator would be exempted, has caused us to reconsider whether the sponsorship of these investment opportunities is worthwhile.
- I believe SOX 404 has harmed smaller companies by forcing them to divert focus and limited resources from growing and enhancing the business.
- While any good business should be based on sound internal controls the time and money spent documenting these controls to an auditor's satisfaction clearly detracts from the culture of entrepreneurship.
- There is no level of internal control evaluation and documentation which would eliminate the possibility of an error, however small, being in a reported financial statement. This unfortunately appears to be the current goal of public accountancy.

Jonathan G. Katz, Committee Management Officer
September 1, 2005
Page 3

- For smaller companies that demonstratively evaluate and test internal controls, the auditor should be permitted to rely on management's testing and documentation.
- I would clearly support total exemption from SOX 404 requirements for smaller companies. The finances and operations of most small companies are straightforward and elementary compared to those of large multinational corporations. To require the same level of audit certification under the goal of financial transparency and accuracy is not reasonable.
- Allowing a company's accountants to advise on unusual or infrequent transactions would certainly not impair their independence. Not allowing them to do so most certainly creates confusion and inconsistencies as smaller companies try to determine proper treatment in the absence of their advice.
- In our instance, since the agreements under which these partnerships are sold require that we send annual audited and semi-annual unaudited statements to the investors, I do not believe the 10Q's filed are of any meaningful benefit to the investors. This is further supported by the fact that the statements could not be of any use for the purpose of making an investment decision since all investment decisions are made at the time of investment upon review of the prospectus.

The steps we recommend would remove current inefficiencies in the market that impose unnecessary costs on such partnerships. Removal would promote capital formation and competitiveness in our markets and at the same time allow the reduced costs to flow through to investors as increased revenues. The investors in the partnership interests would not be harmed by such measures as they would remain protected by the full panoply of other measures afforded by the federal securities laws.

Very truly yours,