

BIOTECHNOLOGY INDUSTRY ORGANIZATION (BIO)
NATIONAL VENTURE CAPITAL ASSOCIATION (NVCA)
TECHNET
CALIFORNIA HEALTHCARE INSTITUTE (CHI)
SEMICONDUCTOR EQUIPMENT AND MATERIALS INTERNATIONAL (SEMI)
ADVANCED MEDICAL TECHNOLOGY ASSOCIATION (ADVAMED)

December 8, 2005

Advisory Committee on Smaller Public Companies
Security and Exchange Commission
100 F Street, NE
Washington DC 20549

Dear Advisory Committee Members:

On behalf of the biotechnology, healthcare technology, high technology, and venture capital industries of the United States, we urge the Securities Exchange Commission (SEC) and the SEC Advisory Committee on Smaller Public Companies (Committee) to embrace the following Section 404 reform proposals as the work continues on Section 404 requirements for smaller companies.

For most of the smaller public companies in our industries, the efforts to comply and maintain certain Section 404 requirements have been increasingly costly and burdensome. Although we recognize the many benefits that arise from certain internal control reports and disclosures, the disproportionate cost burdens arising out of a “one-size-fits-all” approach of section 404 requirements continue to hamper the companies’ ability to invest in research and development, to gain access to public capital markets, and jeopardize the competitiveness of smaller companies that are the growth engines of the U.S. economy.

To ensure continued innovation and vitality of our industries, we recommend the following proposals:

- (1) **The definition of a smaller public company** should be established as 1) the **bottom 6%** (based on a quarterly average) **of the total U.S. public market capitalization**, as defined by the SEC, or 2) a **revenue threshold set by the average revenues of companies at the bottom 6% of total market capitalization**. Many smaller biomedical companies have very low revenues comparable to their market capitalization rates; and thus, the revenue test is critical for many start-up companies. For instance, a biomedical or a high tech company with a market capitalization of \$800M could have less than \$3M in annual revenues.
 - a. **Smaller public companies as defined in (1) should not be subject to an accelerated filer status**. For smaller companies who are already strapped for resources due to section 404 requirements, additional time provides additional relief.
- (2) **Smaller public companies as defined in (1) should be exempted from Section 404 external auditor attestation requirements** if they have complied with all other aspects of SOX and SEC regulations. For many smaller companies, including biomedical, high technology, and venture capital companies, the external auditor expenses cost upwards of \$1M, often doubling their overall operating costs.
- (3) **Smaller public companies should be allowed to take a risk based approach to prioritizing their key financial controls and be allowed to alternate the frequency of control testing to every second or third year**. The prescriptive nature of the Public Company Accounting Oversight Board (PCAOB)’s Standard No.2 deters both management and auditors from taking a risk based approach to prioritizing their key financial controls under Section 404. The standards fail to recognize the value of cumulative knowledge and the importance of staggering internal control assessments for many of the smaller public companies.

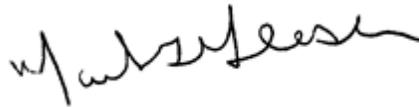
- (4) **Smaller public companies should be provided with clear guidance on valuation methods for stock based compensation.** The existing FASB rules on certain stock option expensing methods create uncertainty and added compliance burdens for smaller companies in their efforts to provide accurate and transparent financial reports while meeting the increased demands of additional reporting requirements under section 404.

As the engines of U.S. economic growth, our ability to innovate and increase productivity in the biotech, medical tech, high tech and venture capital sectors are inextricably linked to our ability to compete in the marketplace and invest in the future. The above mentioned proposals are critical in providing such opportunities. We appreciate your consideration of our proposals and urge you to embrace them as you continue your work on section 404 reforms for smaller public companies.

Sincerely,



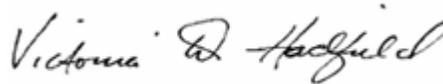
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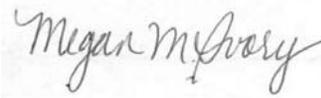
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