

March 15, 2006

On behalf of The International Association of Small broker-Dealers and Advisors, www.IASBDA.com, we submit the following comments on the SBCP's

We want to focus on three specific areas Sarbanes-Oxley, Finders and the SEC staff commitment to small business. Before addressing specific areas, One general observation is paramount. The commission must extend its exemption of SOX 404 to small firms until it has had time to adequately consider the committee's recommendations. Failure to do so may kill a number of firms before a final decision is made and the committee's effort

deserves serious study beyond the end of the current exemption. IF THE

COMMISSION DOES NOT PROVIDE TEMPORARY RELIEF AT THIS TIME IT MAY KILL A WHOLE GENERATION OF ASPIRING STARTUPS WITHOUT ANY EVIDENCE OF THEIR HISTORY OF ACCOUNTING FRAUD. AS WAS ONCE SAID OF RACE IN AMERICA, APPLICATION OF SOX

404 TO SMALL COMPANIES WILL RESULT IN TWO ECONOMIC SOCIETIES. The AFL-CIO HAS NOTED THAT IT DOES NOT WANT BROKERS CALLING ITS MEMBERS TO INVEST IN NON-SOXED COMPANIES.- THAT INDEED WILL HAPPEN IF THESE COMPANIES ARE FORCED TO THE PINK SHEETS SOX WAS ALSO NOT INTENDED TO FORCE COMPANIES TO GO PRIVATE OR TO DETER FOREIGN COMPANIES FROM LISTING. See FORBES 3/13/06 quoting Thompson Financial that firms going private are up tenfold in three years and Nasdaq CEO Greifeld's comments in the Wall Street journal. The commission cannot judge small firms as problematical unless it has made a record for that finding that includes enforcement actions, investor complaints and number of investors in this Universe.

1) SOX- The Committee recommends that small firms be relieved of their SOX

404 burdens and many including former SEC Chairmen Levitt, Breeden, Pitt, Donaldson and FED Chairman Volcker (The Chairmen) have already spoken in opposition claiming that the small firms are more problematic. A NY Times columnist makes the same assertion. however the only reference in the report to a basis for such assertion is in the Schacht dissent which notes that a 1998-20003 study finds they make up 75% of the fraud cases. But if they make up 80% of the entire universe that number is not definitive. Furthermore we suggest that more harm was done to investors in Enron alone than in all the cases in that study.

The Committee, Commission and PCAOB (The Regulators) need to address this argument in a more systematic way by analyzing what is problematic. The Chairmen contend that there are more restatements (75%) among companies with less than \$500 in revenue but the committee recommends exempting those with less than \$128 million in revenue. Interestingly the chairmen do not recommend extending SOX to the least regulated entities, the Pink Sheets. A recent study by Glass Lewis fails also to note that the number of rising restatements is a small proportion of the 9,428 stock universe which goes to 15,000 if the pink sheets are included. The real issue however is losses to shareholders and there is strong evidence that this has been more true for the large issuers like Enron, Worldcom, Adelphia, Quest, Global Crossing and Refco. Thus while it is self evident and admitted that small firms have higher proportionate compliance costs, it is not self evident that their

shareholders have suffered more even if there are more restatements and enforcement cases. Those restatements may well be honest mistakes and those cases may result in small losses or none at all.. Moreover the demise of many small firms for business reasons should not be confused with fraudulent accounting.SOX was not intended to fix unsuccessful business practices but rather fraudulent business practices.

One commentator explains "Sarbanes-Oxley's focus on internal controls -- the systems put in place to make sure factual financial and other important information actually reaches top management -- has led to an environment of second-guessing by auditors, where even a minor accounting error can mushroom into a wholesale investigation of a company's accounting procedures. The law put the onus on chief executives to certify they have taken all reasonable efforts to make sure that the numbers are correct and that their companies are fraud-free. The result, experts say, is a rush to get every possible error, no matter how small, identified and disclosed.

"I think what [Sarbanes-Oxley] did, it created an environment where companies aren't allowed to make honest mistakes," said Colleen Sayther Cunningham, president of Financial Executives International, a trade group of 15,000 chief financial officers and other financial executives. "You're seeing companies wounded by errors that in the past wouldn't have required a restatement but would have been fixed going forward." Wash Post January 30 2006.

The SEC'S former Chief Accountant Donald Nicolaison noted that not all material weaknesses will be viewed with equal significance "some material weaknesses may have a greater or lesser impact on an investor's decision-making process.In many cases, this decision will likely be influenced by the fullness of management's disclosure ,the underlying causes of the material weakness,and management's actions to address the material weakness.This is intended to be an open process whereby investors can evaluate both the weakness as well as management's actions to improve controls." speech at 11th Annual Midwestern Financial Reporting Symposium

The Regulators have to resolve this debate through an independent study of small firm accounting enforcement actions and should arrange for one to be done by a University.At the very least the accounting enforcement actions against small firms should be publicly considered as there are very few of them. It should not impose the costs of SOX on small firms until it has proof that the costs justify the remedy.Alternatively it could do a pilot study of the OTCBB to see how many shareholders are harmed by accounting irregularities over a short period of time. The argument for not imposing the same regulatory burden on small firms is one of proportionality. The small firms are hurt more by the auditing costs and may not present the same danger to shareholders.

The small firms that trade on the OTCBB need an alternative to individual audits. One solution might be allowing them to share the auditing costs that the bigger firms can individually absorb. They might therefore be allowed to form an association that would provide

auditors whose costs were shared by numerous small firms under the oversight of the PCOAB. Firms choosing not to join would be bound by SOX. Such an association might also provide the accounting assistance suggested by both the Chairman and the Committee.. The Commission under its SOX authority could allow an association of small issuers to pool their resources into an auditing coop overseen by the PCAOB. The coop would hire a force of auditors to perform the internal controls audit under the PCAOB. The association would be supported by yearly fees based on revenue.. The Association might also receive additional funding from educational seminars and small business supporters and perhaps even NASDAQ . It would to some degree replace the extra SEC small business staff that has been suggested by the Chairmen. These association auditors would gain expertise over time in internal controls and become more efficient and more effective and as the companies grew they would move on to a regular SOX audit. Finally whatever is decided, should meet the fundamental principle of medical ethics; "First do no harm."

2) Finders- The Committee proposes to fix this problem by adopting an American Bar Association Proposal to create a new registration category for individuals who source capital so called private placement brokers. That category already exists in the form of Investment advisor registration which is less complex than broker-dealer registration and was recently applied to hedge funds. It is a simple fix that can be adopted immediately.

A registered advisor with authority over client funds could at this time invest those funds by purchasing securities directly from an issuer. A finder who chose to register as an advisor could do the same. what could easily be clarified is that an ia registered finder could approach investors on behalf of an issuer for an investment and then obtain authority over the funds. The finder would have no authority to purchase other than directly from an issuer and would not be able to resell to another customer.. The commission should then clarify that this is the only way a finder can operate. this could be implemented as a pilot program and the staff could study its effect. as with the rationale used for hedge funds it would give the staff an insight into the finder business. It would also relegate most of the new registrants to the states as these advisor finders would be doing less than 25 million dollars per year, although the commission might lower that threshold for these advisers.

3) Staff- The committee's initial summary proposal speaks of an ombudsman or help desk function for additional SEC staff and Chairman Levitt speaks of the need for a small group of accountants to answer questions. We initially suggested that the Commission needed a separate and independent office for small business including small broker-dealers and an increase in staff from the current small business section of the Corporate Finance Division. This staff should have at least three missions. First, they must answer questions and do so expeditiously. Second they must independently assess the effect of new rules on small business. Third , they should independently suggest new rules designed to keep small business on a level playing field. Most importantly they must be the Commission's sole advisors on small

business and not be influenced by other interests within the Commission.

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