

I would make the following comments on the “Exposure Draft of the Final Report of Advisory Committee on Smaller Public Companies”.

Scaling of SOX 404 Requirements

I am strongly in favor of a reduction in application of the SOX 404 requirements for smaller companies. Our company saw its audit costs roughly double in the first year under SOX and, unfortunately, the costs in the coming year are about the same. Our best control comes from being small. Smallness enables us to communicate high ethical standards throughout the company. We start by hiring good, honest people, we encourage candor, and we limit the opportunity and incentive for dishonesty. Senior executives are expected to understand how lower level employees do their jobs and, generally, what goes on in the company. Lower level employees have ready access to the company’s senior executives if something untoward is being encouraged.

We have seen minimal benefits from documenting the controls required in SOX 404. However, the additional expense (at approximately 5% of pre-tax operating income) has been significant. Adding a scaling mechanism to the requirement would reduce the disproportionate impact of the rule on small companies.

Market Capitalization as Metric for Scaling

The way you define market capitalization for our company is critical to our company benefiting from the proposal. Charter Financial is 80% owned by a mutual holding company (First Charter, MHC) whereby only 20% of the shares are available to be traded (80% of the shares are unregistered). This unusual structure arises out of the thrift stock conversion process where the ownership of the company is acquired by public shareholders from the depositors of the savings bank or savings and loan association. The proceeds are then contributed to the company rather than paid to the mutual holding company or distributed to the thrift’s depositors. Charter Financial has not received any capital for the 80% of the stock held by the mutual holding company. The board of directors and management are identical for both companies.

Typically, the MHC ownership distinction is not made by the reporting services. Bloomberg, for example, shows a market capitalization of \$752 million for Charter Financial based on 19.8 million total shares. However, 15.8 million shares are held by First Charter, MHC and should not be included in our market capitalization for scaling purposes for the reasons stated above. In addition, with revenue of approximately \$35 million and net operating profitability of less than \$10mm, the size and complexity of the company are consistent with a market capitalization of approximately \$150 million. This is the approximate result of multiplying our stock price by the registered shares.

We request that you consider this distinction as you draft your rules.

Thank you for your efforts to reduce the burden on smaller companies and for giving me the opportunity to comment.