To: **SEC Advisory Committee on Smaller Public Companies**

Subj: **Comments on the Recommendations**
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The 1000th company listed on the Fortune Magazine 1000[i] is Watsco, Inc. (NYSE: WSO). Watsco has a market capitalization of $1.6-billion and revenues of $1.7-billion. Being only the 1000th biggest public company in the United States, it still has over 200% the market capitalization and 680% the revenues of the largest public company that will receive any lenient consideration under the Recommendations put forth by the SEC Advisory Committee on Smaller Public Companies.

The Russell 3000 provides another historical perspective:

Russell 3000 Index[ii]	1995	2005
Median Market Capitalization	$389 million	$944.7 million
Smallest Market Capitalization	$103.9 million	$182.6 million

Another interesting way to look at the relative size of public companies is the Russell 1000, with its largest company having a market capitalization of $386.9-billion and its smallest company having a market capitalization of $1.8-billion. The Russell 1000 makes up 91% of the Russell 3000's total market capitalization even though it accounts for only a third of the companies.

It is clear that a company at the upper limit of $787.1-million recommended for lenient consideration by the Advisory Committee is arguably not even a mid-size company by today's standards.

Some seem to be shocked at the thought that the Advisory Committee recommends lenient consideration in the application of Sarbanes-Oxley to 80% of the public companies in the country. In fact, if one includes companies traded on the Pink Sheets, significantly more than 80% of the public companies will be exempted from certain provisions of Sarbanes-Oxley. However, they are not the companies that created the corporate scandals prompting the Sarbanes-Oxley Act of 2000.

While it is true that approximately 75% of SEC enforcement actions are against companies under $787.1-million in market capitalization, and it is true that those companies make up more than 80% of public companies, it must also be true that 25% of SEC enforcement actions are against the largest companies that make up significantly less than 20% of public companies. Further, it can be argued that most of the restatements from the smaller companies are the result of simple errors and compliance errors stemming from difficulties small companies have in hiring compliance professionals and they don't amount to much money, unlike the restatements coming out of the large public companies. The danger to investors presented by smaller public companies is significantly less than that presented by the largest companies that have many subsidiaries and overseas operations where they can hide unattractive facts, as did Enron.

This is not to say all small public companies are paragons of virtue, but in my experience working in this capital space for the last decade (after more than 2 decades in top-tier Institutional Investment Banking creating complex strategies for the largest companies in the United States) the problem is not one of internal controls as much as it is a problem of external influence. Entrepreneurs who start and run these small companies know how to make their products and run their companies. They don't usually know much about corporate finance and are often taken advantage of by unprofessional promoters claiming to be investment bankers. For this reason, I believe the Recommendation that will have the most positive influence in terms of protecting the investor and promoting capital formation in this market space is:

> **Recommendation IV.P.6**: Spearhead a multi-agency effort to create a streamlined NASD registration process for finders, M&A advisors and institutional private placement practitioners.

Regarding the posted Exposure Draft of the Advisory Committee's Recommendations, I have read the Recommendations and have read the dissenting comments and find that I agree with the logic behind everything said. Unfortunately, logical comments don't apply neatly in the real world.

While it is true that better internal controls, increased transparency, and more thorough monitoring of corporate activities help protect investors, it is also true that PCAOB Auditors quite reasonably are more inclined to prioritize the application of their billable hours to the service of their most loyal and profitable clients. This often means that the smaller public company finds itself in the unhappy position of being late with its reporting and receives the dreaded 'E' on the end of its stock symbol. Then short sellers destroy the company's stock price and its stockholders' investments, all because the Auditor understandably did not have the time to devote to an inexperienced and low-priority client.

It does seem a little strange to require that a PCAOB Auditor applies elite in-depth scrutiny to a company where the Chairman/CEO can easily monitor the entire operation of his enterprise by leaving his office door open and every once in a while taking a gander into the other room where his six employees are all busy working.

For most small companies, the Section 404 requirements impact shareholders in at least two ways:

- **They sap company funds that can better be used to grow the company and**
- **They sap company management's time that can better be used to run the company.**

But for financial institutions that fall under Section 404 requirements, the impact is even greater because these governance standards are less relevant and exacting than financial industry regulators already require, so compliance is not only expensive and time consuming, it is also redundant.

- Our public securities markets provide liquidity to those investors who prefer to finance new companies and new industries.
- The creation of new companies and new industries is vital to the continuing economic strength and Global dominance of the United States' capital system.
- The SEC is charged with keeping these securities markets trustworthy and efficient in order to protect the investors.
- The SEC should be looking at ways to use technology to expand the liquidity of our corporate finance system rather than create a greater bureaucracy to limit it.

In conclusion, though I can't help agreeing with everything said on both sides of these Recommendations, I am left with one firm conviction:

Shareholders of smaller public companies would probably be better served by a little less protection.

I believe all the Recommendations are appropriate, well conceived, and beneficial. I am in favor of the adoption of all. However, in view of the dissention, I believe the Advisory Committee should be retained and expanded and it should continue to examine the subject for another year, carefully considering the positive and negative implications of all proposed actions and attempting to answer the questions that have arisen since the Examination Document was first circulated.

Let's take this chance to avoid yet another flawed bureaucratic system that makes life difficult for this country's entrepreneurs.

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[i] Source: Fortune (http://money.cnn.com/magazines/fortune/fortune500/)

[ii] Source: Russell (http://www.russell.com/us/Indexes/US/reconstitution/cap_ranges.asp)