April 3, 2006

The Honorable Christopher Cox
Chairman
Securities and Exchange Commission
100 F Street, NE.
Washington, D.C. 20549-1070

Re: *Securities and Exchange Commission (SEC) Advisory Committee on Small Public Companies* ***(File No. 265-23),*** *Exposure Draft of Final Report of Advisory Committee on Smaller Public Companies.*

Dear Mr. Cox:

We would like to echo the sediments of the committee in general, provide some perspective on SOX impact and comment specifically on a few of the recommendations. We encourage the SEC to move quickly and review, respond, and hopefully implement the committees' recommendations.

Experiencing the unintended consequence of SOX 404 sums-up the past few years as part of an accounting department for a small public company. The impact of this requirement, especially as it relates to smaller companies, has shifted focus from production and improving operations, to a culture of regulatory compliance. Senior management of small companies have dedicated an inordinate amount of time to compliance efforts, rather than to support the operations of their business.

The SOX effect is also felt at the staff level of smaller public companies, with limited personnel to operate a project management or implement a hierarchy that includes a lead SOX compliance office as large companies can more easily absorbed. The limit on small companies is not only in number of people, additional hours required but also the expanding knowledge base required of all regulations. This is occurring as the external auditors, once a resource to provide guidance, now are more of a police force. The burden of this work falls typically to finance employees already over-worked by their day-to-day job requirements and the increasing complexity of current accounting standards. This burden impacts the shareholders as company resources are being directed to compliance efforts rather than operational activities that might increase shareholder value.

Although the goals of internal controls over financial reporting are laudable the path to achieve these goals and its one size fits all approach is not realistic. There have been unverified reports that SOX and COSO is scalable to the size of the organization and in theory, it does seem plausible. However, in the real world, SOX seems to create needless uncertainty and fear overcastting all organizations lucky enough to be a public company. The reality of SOX, is that it's not scalable, in its present form.

If you look at the risks that public accounting firms have absorbed, it is obvious that they would be unwilling or unable to scale their engagements to the companies' size. While the PCAOB tries to communicate a more kinder and gentler side of SOX, their firm reviews has only instilled a greater need for more support and details.

I’m not convinced that an investor would lose sleep if “Linda” in A/P did not sign off on a payment for a $25.00 expenditure already approved via a purchase requisition. But there seems to be a significant amount of time spent in these small transactional areas, because we must. A change will not only be beneficial for the good of the company but also the investor. The costs involved to comply with 404 alone are significant let alone the productivity that is taken away. The other area that has been impacted is ideas or improvements not tried or implemented. There seems to be a new mindset of not changing the status quo because the proposed change might impact a SOX process.

Based on first hand observation and having been participants of SOX, since it was conceived we believe, as the Advisory Committee also does, the only sensible method to achieve some reasonableness is to stratify companies.

Another recommendation (III.P.2) seems to provide most of the benefits of SOX as it is today. It provides the investor the assurance of the CEO and CFO via their certification and assessment of internal controls. The affect of this is to instill the necessary tone at the top, and based on incidents that have been reported, this is probable most critical when it comes to accuracy in financial reporting.

The external auditors would still report on managements assessment of internal controls which gives management the ability and responsibility to scale there assessment to the company. This will eliminate the cookie cutter mentality that SOX is trending toward, and in larger organizations, one size fits all. But with the uniqueness of smaller organizations it’s saddling them with a requirement exponentially beyond their needs.

The recommendation eliminates the SOX audit but requires external auditors to report on items uncovered during their financial audit. This change will more readily allow materiality come into play, and let external auditors concentrate on, significant deficiencies, getting away from transactional control testing. In reviewing SOX issues that have been discovered/disclosed by the external auditors it appears a significant number of control exceptions are discovered via audit adjustments from the financial audits, not the SOX audit.

The areas that we have read in detail of the recommendations it does not seem to be reliving from a responsibility, but relieved from the uncertainty that SOX has unduly engulfed smaller public companies. Allow management the opportunity and responsibility to deicide what is best for their organization, the recommendation does not remove the repercussions to management. By adopting the recommendations in a timely manner, we hope the SEC can provide, what seems to be almost a unanimous conclusion that relief is necessary.

Respectfully,

Tim T. Hart, CFO
Vice President, Finance & CFO

Daniel Reineck,
Director, SEC Reporting & SOX Compliance

Maxwell Technologies, Inc.