August 2, 2005

Advisory Committee on Smaller Public Companies
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Attn: Jonathan G. Katz
Committee Management Officer

VIA EMAIL (rule-comments@sec.gov)

Re: File No. 265-23

Ladies and Gentlemen:

Thank you for the opportunity to provide comments to the Committee in advance of its public meetings to be held August 9 and 10, 2005, in Chicago. I am an attorney in the Indianapolis office of the law firm of Ice Miller who concentrates his practice in corporate and securities law matters. The views expressed in this letter are my own, and not those of the firm of which I am a partner or of any of the firm's clients.

In the course of my representation of smaller public companies over the past 28 years, I have applauded the adoption by the Commission of various initiatives that have recognized and responded to the burdens of the Commission's rules and regulations upon smaller businesses. The time has now come, as the Commission has recognized by establishing this Committee, to review the impact upon the smaller public company of the rules of the Commission, the Public Company Accounting Oversight Board, the exchanges and The Nasdaq Stock Market that have been adopted in response to the Sarbanes-Oxley Act of 2002 ("SOX").

I write to express my views as to certain items on the Committee's agenda that result in a burden on smaller companies that is particularly severe. I do not comment upon SOX Section 404, although that is a matter of obvious importance to smaller public companies, as that is adequately addressed by the comments of other commentators that are on file with the Committee.

"Smaller Public Company" Definition

I request that the Committee urge the Commission to take action to define a greatly-expanded universe of "smaller public companies" for purposes of the expanded disclosure and governance requirements of SOX. While this definition would be useful for multiple purposes, I focus in these remarks upon the burdens of the "accelerated filer" status and the eligibility for reporting as a "small business issuer" under Regulation S-B.

Many smaller public companies that are now treated as "accelerated filers" and are subjected to the more demanding disclosure regimen of Regulation S-X are not followed widely, if at all, by analysts, and are not included in any of the broad market indices. The securities issued by these smaller public companies are therefore generally not held by institutional or professional investors. The public's needs for enhanced and accelerated public disclosures with respect to the securities of these issuers is obviously much less than its needs with respect to the securities of issuers that are widely followed by analysts and held by institutions.

Therefore, I urge that the Committee recommend to the Commission that its rules be changed to increase, by a significant multiple, the size parameters within which an issuer might claim "small business issuer" status under Regulation S-B, and might avoid the timing problems with respect to filing its 1934 Act filings that are being caused, and will continue to be caused, by the accelerated timetable mandated by SOX. The Comment Letter dated June 7, 2005, addressed to the Committee by Karl R. Barnickol, Barbara Blackford, and Linda K. Wackwitz (writing as the Subcommittee on Smaller Public Companies of the Securities Law Committee of the Society of Corporate Secretaries & Governance Professionals) (the "SCSGP Letter") addresses these issues comprehensively, and suggests certain increased size parameters for defining a "small public company", which I endorse.

Form 8-K Disclosure Requirements for Smaller Public Companies

As mandated by SOX, the Commission during 2004 expanded the current reporting required by all Commission-reporting companies to include multiple new items, and required that most events be reported within four business days. These near real-time disclosure requirements burden smaller public companies disproportionately, and (for the reasons stated above) are of limited benefit to investors compared to the benefit that is derived from disclosures to securities issued by larger-cap companies that are followed by the market and held by institutions. I urge that only accelerated filers (of the increased sizes contemplated by the SCSGP Letter) be required to file current reports to report these types of additional events (the fundamental events underlying Form 8-K prior to its 2004 amendment should still be reportable on a current basis, regardless of size), and that all other reporting companies be required to disclose this information only on a quarterly basis.

Further, the Commission, in my view, should amend Form 8-K to require that only accelerated filers (of the increased sizes contemplated by the SCSGP Letter) must report as "material definitive agreements" under Item 1.01 of Form 8-K those plans or arrangements relating to executive compensation that are currently reportable solely by reason of the last two sentences of Instruction 1 to Item 1.01. These requirements are at best burdensome and confusing to apply, and at worst may tend to lead smaller public companies that do not engage full time HR consultants to defer action on needed mid-year compensation adjustments and to otherwise alter their compensation planning procedures due to the disclosure implications that they might entail. Annual proxy statement disclosure of prior year's remuneration (including compensatory plans,

contracts and arrangements) is adequate for investors in smaller public companies, and the Form 8-K requirements under Item 1.01 relating to executive compensation as applied to smaller public companies are therefore unnecessary, even on a quarterly basis.

Thank you for your consideration of these recommendations.

Very truly yours,

MARK B. BARNES