Rule Comments – File Number 265-23

Final Report of Advisory Committee on Smaller Companies

Dear Committee Members and SEC Commissioners: April 2006

1.) Our company has worked in the front lines for many years investing in smaller capitalization companies. The added financial and time burden of Sarbanes Oxley to the companies we follow is significant. We can point to several companies that are spending over 20% of their profits on added accounting, auditing and related SOX expenses. We shudder to think about the opportunity costs of spending so much additional time on paperwork that has no added benefit to the operations of the company. These companies went public in one environment and are now trapped in an environment where the cost to be public greatly outweighs the benefits. In addition, SOX has created an environment where everyone involved in the process of being a public company is scared of their own shadows. Companies are choosing to stop reporting. Directors are afraid to sign. Audit committees to full investigations over small items. This hurts shareholder value. We do not believe that you can legislate honesty.

Of course, transparency and disclosure are rewarded in the market and should be encouraged. Even the most honest public companies that have been doing a good business for many years with transparency and good public disclosure are being hurt. This is hurting shareholders.

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2.)The advisory committees recommendations are certainly an improvement over the status quo or where it's headed. Unfortunately, their cut off point for exemption from Sarbanes Oxley is not based on economic cost/benefit analysis since the benefits have not been quantified. The cutoff point for exemption from Sarbanes Oxley could be quite higher - say $750 million in market capitalization. The advisory committee might have undertaken the following activities:

- Reviewed the economic literature on the cost/benefits of the 1930s Securities Acts since inception and subsequent securities legislation with special emphasis on cross-country comparisons and cross state (as in the 50 United States) comparisons.
- Looked at how fraud, investor confidence, capital formation, and job creation varied with various changes and state, federal, and international securities law.
- Spoken with Milton Friedman as to what regulatory functions currently being performed by the SEC would be best left to the private sector.
- Examined different enforcement strategies to deter fraud (i.e. increased penalties and increased probability of getting caught). See the literature from Economics and Sociology in criminal deterrence.

- Looked at the work by Audit Integrity in Los Angeles which can predict with a high degree of accuracy which group of companies with overaggressive accounting and governance practices will have litigation risk or restatement risk. GAAP leaves room for many games. Focus enforcement and SEC audit activity on those 10 to 15% of the public companies that are going to account for over 85% of the money lost from fraud. Identify bad actors and watch them closely to make sure they get caught if they commit fraud again. Do experiments with different state securities agencies on different types of enforcement.

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