

May 31, 2005

Security and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

**Re: Comments for the SEC Advisory Committee on Small Public Companies
File No. 265-23**

Dear Committee Members:

The Small Business & Entrepreneurship Council (SBE Council) is providing the following brief comments in response to the Security and Exchange Commission's (SEC's) effort to seek input on the agenda of the SEC Advisory Committee on Small Public Companies. On behalf of the SBE Council and our nationwide membership of small business owners and entrepreneurs, we thank the SEC for this opportunity.

I applaud the Committee's listing of its "principles" to guide its important work. After all, maintaining a culture of entrepreneurship, encouraging capital formation, and seeking cost/benefit inputs are central to protecting the investor, which the Committee lists as its first priority. A healthy and vibrant small public company sector serves investor interests. And, ensuring that entry into the public sector market is kept reasonably open is critically important to the competitiveness of the U.S. markets as well as the future of innovation and economic growth.

Measuring and Evaluating Costs: With respect to Sarbanes-Oxley and Section 404, we of course support the Committee's efforts to quantify and evaluate the disproportionate costs/burdens the new internal controls and reporting requirements have imposed on smaller firms. Weighing these costs against the intended benefits, particularly as they relate to small firms channeling scarce resources into burdensome compliance processes rather than building profitable, vibrant businesses, can undermine shareholder value. This is a critically important task. The Committee has outlined a range of mechanisms for seeking and evaluating input.

One of the specific ways the Committee will seek to acquire such information is through the roundtable process. The Committee has written it will conduct "one or more" of such roundtables. The SBE Council strongly suggests that the Committee try to do as many of these roundtable sessions as possible. Properly facilitated, they serve as an effective means for documenting "real stories" and developing solutions based on the dialog and open discussions that occur at these sessions. We would be disappointed if the Committee only conducted one or two additional roundtables. We would also be disappointed if the Committee did not travel outside-the-beltway to meet with small public companies in their cities and communities using the roundtable model.

(Based on the number of comments that the SEC has received as of May 31, 2005 on the issue of the Committee's agenda, it may serve the interest of the agency to initiate a more

aggressive outreach effort aimed at the small business community to increase the volume, breadth and diversity of comments. This may become more important during the Committee's work in seeking detailed information on specific costs, economic impact, what's working and not, and finally, solutions.)

To the extent that the SEC can measure the broader economic impact (specifically focused on small firms) of Sarbanes-Oxley and the decisions by firms to stay clear of the public sector option for raising capital would be helpful. It is also important that the Committee look at the downstream impact of Sarbanes-Oxley with respect to audit cost increases for small privately held firms (or, privately held firms in general), and how it is impacting access to capital and business activity related to mergers, acquisitions and the like. We increasingly hear that Sarbanes-Oxley is vastly raising standards (thus costs) and its impact extends well beyond public sector companies and those companies whose business dealings require compliance.

Size Standards & Extensions: In the spirit of "keeping it simple" as the Committee has expressed it hopes to do, the SBE Council believes that the definition of "small" should be scaled to the public company sector and that reporting, filing, and compliance requirements should be scaled to size. As expressed by other parties in their comments, there is a great deal of difference between a \$70 million company and a \$700 million one, let alone a multi-billion dollar public company. When was the last time, for example, the SEC altered its size standard to account for inflation? The SBA is currently undergoing a major, and contentious, revision of its size standards for government procurement purposes. There may be something to learn from their process and experiences.

With respect to the extensions of time provided to small companies and accelerated filers (Sarbanes-Oxley), it is the SBE Council's view that it should be sooner, rather than later, that the SEC announce another extension if they in any way believe that potential recommendations from the Committee could require business operation changes. An extended "time-out" period would serve investor interests as the current state of uncertainty only adds to decision-making complexity. Some may argue that the dragging out and indecision by regulators in establishing firm rules for small public companies may hurt the prospects for more companies going public. Well, the bottom line is that the current costs and risks associated with Sarbanes-Oxley has been a huge deterrent for companies considering the public markets— and, "going private" or "dark" is being pursued by many small public companies.

Other issues: Two issues stand out with respect to other priorities the Committee should vigorously pursue. We agree with those who have commented that the stock options issue is an important one for small firms. The SBE Council is on record opposing the expensing of stock options. We have supported bipartisan solutions in the U.S. Congress that would preserve stock options for small firms and their workforce. These proposals do offer scaled consideration for small firms. Because stock options is intrinsically linked to several other issues the Committee is pursuing, I believe it is an issue that falls within the jurisdiction of the Committee.

Small firms in particular are sensitive to media or analyst reports, or blog room “chatter” that negatively reflect on their companies even when such reports are categorically untrue. In many cases, just the mention of a “SEC investigation” or some other ugly “leak” may trigger an irreparable stock price dive that could permanently damage a firm’s chance for survival. Being that the key function of the SEC is to protect the investor, it very well may be that the SEC has a role to play in educating shareholders about what such investigations actually mean. In fact, disclosing annual or regular data with respect to how many firms are investigated, for what reason, what triggered such an investigation and the big picture of how many of these investigations actually lead to no serious action by the SEC would put such investigations into perspective. Such statistical transparency, along with disclosure by individuals who provide “tips” as to whether they have a financial interest in reporting a tip could well help to alleviate the hyper-sensitivity and flaws in the system that lead to often unwarranted and artificial drops in stock value. The manipulation of stock prices is particularly damaging for small firms. We know that the SEC continues to strive to provide investors with the best tools on which to base investment decisions – the SBE Council believes the agency has a role to play in helping investors understand that SEC investigatory power does not necessarily mean the end of small, promising companies in particular.

Thank you for the opportunity to comment on the proposed agenda of the Advisory Committee on Small Public Companies. Do not hesitate to call upon the SBE Council, if we can be of assistance in your efforts.

Sincerely,
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