

RECORD OF PROCEEDINGS

SECURITIES AND EXCHANGE COMMISSION

ADVISORY COMMITTEE
on
SMALLER PUBLIC COMPANIES

First Day of Meeting

June 16, 2005

1:00 p.m.

Columbia Law School
435 West 116th Street
New York, N.Y.

The following individuals were present in person:

Committee Members:

Patrick C. Barry

Steven E. Bochner

Richard D. Brounstein

C.R. "Rusty" Cloutier

James A. "Drew" Connolly III

E. David Coolidge, III

Alex Davern

Joseph "Leroy" Dennis

Janet Dolan

Richard M. Jaffee

Mark Jensen

Robert E. Robotti

Scott R. Royster

Kurt Schacht

Ted Schlein

James C. Thyen

Herbert S. Wander

Committee Observers:

George J. Batavick

Daniel L. Goelzer

Jack E. Herstein

SEC Staff:

Cindy Alexander

Anthony G. Barone

Mark W. Green

Gerald J. Laporte

Kevin M. O'Neill

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PROCEEDINGS

1 MR. WANDER: Good afternoon, everyone, and
2 welcome to I guess our second public meeting of the SEC
3 Advisory Committee on Smaller Public Companies. I'm
4 co-chair of the Advisory Committee, Herb Wander, along with
5 my co-chair James Thyen, who is sitting next to me and we,
6 as I say, welcome all of you.

7 I'd like to start off by thanking our hosts
8 from Columbia Law School for their hospitality, which has
9 been fabulous. We had subcommittee meetings this morning,
10 and they were in very nice locations with coffee and rolls
11 and everything else, and we had this very nice meeting room

12 for this afternoon and for tomorrow morning's hearings and,
13 again, thank you to everyone at Columbia for all their help.

14 I think it would be appropriate if we went
15 around the room and just introduced ourselves to our
16 audience, and it's not only our audience here in the meeting
17 room, 105, but it's also the audience that is on the web
18 page.

19 So I'm going to start with Dick Jaffee, if you
20 could just give us your name, your company affiliation and
21 city, I think that would be helpful to everyone.

22 MR. JAFFEE: Sure, Richard Jaffee --

23 MR. WANDER: Excuse me, you have to press the
24 button.

25 MR. JAFFEE: Richard Jaffee, Dick Jaffee. I'm
1 chairman of the Board of the Oil-Dri Corporation, a New York
2 Stock Exchange smaller publicly traded company and we're
3 located in Chicago, Illinois.

4 MR. JENSEN: I'm Mark Jensen, I'm a partner
5 with Deloitte & Touche.

6 MR. BATAVICK: I'm George Batavick, I'm a
7 member of the board of the Financial Accounting Standards
8 Board, Norwalk, Connecticut.

9 MR. DAVERN: My name is Alex Davern, Chief

10 Financial Officer at National Instruments, audit committee
11 of SigmaTel, Inc.

12 MR. BROUNSTEIN: I'm Rick Brounstein, I'm
13 Executive Vice President and Chief Financial Officer of
14 Calypte Biomedical out in northern California, in
15 Pleasanton.

16 MR. BARRY: I'm Pat Barry, I'm the CFO of
17 Bluefly.com.

18 MR. GOELZER: I'm Dan Goelzer, I'm a board
19 member of the Public Company Accounting Oversight Board in
20 Washington, D.C..

21 MR. ROYSTER: Scott Royster, Executive Vice
22 President, Chief Financial Officer Radio One, NASDAQ-listed
23 company located in Washington, D.C.

24 MR. SCHACHT: I'm Kurt Schacht with the CFA
25 Centre for Financial Market Integrity, previously in
1 Charlottesville, Virginia, but as of two weeks ago we're now
2 in New York City.

3 MR. CLOUTIER: I'm Rusty Cloutier from
4 Lafayette, Louisiana. I run a small bank called MidSouth
5 Bankcorp. We're located in Louisiana and in the State of
6 Texas.

7 MR. SCHLEIN: I'm Ted Schlein, one of the

8 managing partners of Kleiner Perkins Caufield & Byers, a
9 venture capital firm in Menlo Park, California.

10 MR. CONNOLLY: I'm Drew Connolly, President of
11 IBA Capital Funding, a capital funding specialist firm in
12 Perrineville, New Jersey and the Executive Director of the
13 CEO Council.

14 MR. ROBOTTI: Bob Robotti from New York City
15 with Robotti & Company. We're registered broker dealers,
16 investment advisers, investing in small cap, microcap
17 companies.

18 MR. HERSTEIN: Jack Herstein with the Nebraska
19 Securities Bureau, Department of Banking, and here as an
20 official observer.

21 MR. DENNIS: Leroy Dennis, Executive Partner of
22 Audit Services for McGladrey & Pullen, a CPA firm
23 headquartered in Minneapolis, Minnesota and I also serve on
24 the Executive Committee for the AICPA Center for Public
25 Company Audit Firms.

1 MR. BOCHNER: Steve Bochner, a partner at
2 Wilson Goodrich, Sonsini & Rosati, a law firm located in
3 Palo Alto, California.

4 MR. THYEN: Jim Thyen located in Jasper,
5 Indiana, President and Chief Executive Officer of Kimball

6 International, a diversified manufacturing company.

7 MS. DOLAN: Janet Dolan, President and CEO of
8 Tennant Company, a NYSE-listed company headquartered in
9 Minneapolis, Minnesota.

10 MR. COOLIDGE: Dave Coolidge, Vice chairman of
11 William Blair & Company, investment brokers and money
12 managers located in Chicago.

13 MR. LaPORTE: I'm Gerry Laporte, I'm Chief of
14 the Office of Small Business Policy, which is providing
15 staff support for the Advisory Committee.

16 MR. WANDER: Thank you all. And I'm now going
17 to call on my co-chair Jim Thyen for some introductory
18 remarks.

19 MR. THYEN: Thanks, Herb. Some building
20 thoughts from what Herb said.

21 We were formed about 45 days ago, 50 days ago.
22 Our activity has been high since then, it's been very
23 meaningful, very focused. I believe our structure of
24 subcommittees is working effectively and it's easy to see
25 the teamwork and collaboration that we are building. We're
1 a diverse group, diverse in experience and background,
2 diverse in viewpoint, yet our professionalism has blended
3 well and that's really why we were asked to serve, so I

4 really want to thank you for your time, the talent and the
5 mind share you've given to this very important activity.

6 Another comment about sponsorship. As
7 expected, any journey has changes, it has challenges. I
8 believe when you're leading a journey of change like we are,
9 we're actually leading a committee and we're going to be
10 faced with unexpected changes and they can be viewed as a
11 cause of concern or a source of opportunity. Clearly, we're
12 going to lose one of our committed sponsors in Chairman
13 Donaldson, but the indications are we will gain an equally
14 committed sponsor.

15 We know the desire, the continued commitment of
16 our other sponsors, Director Allen Beller and Chief Gerry
17 Laporte, remains very high and very strong, so we should be
18 grateful for Chairman Donaldson's role in bringing us into
19 existence and let us remember that our charter is
20 established, our agenda is framed and our end goals and our
21 priorities remain unchanged. And so we're going to continue
22 with your leadership and with your constructive mind share
23 to do this productive work, regardless of what change is
24 above us.

25 A few comments about the size committee.

1 You're aware that from the communication that we are formed,

2 we are organized, we are active. We are composed of members
3 of the subcommittees. Our activities have been shared with
4 the subcommittees and the subcommittee chairs. Besides
5 being a member of each subcommittee, Herb and I are serving
6 on the size committee. Our intent will be to adjourn the
7 size committee upon completion of our assignment and we
8 believe that is a recommendation to this full Advisory
9 Committee of a solution for determining the definition of a
10 smaller public company. That's the course we're on.

11 We believe there's an additional outcome, which
12 is to provide the deductive reasoning that supports the
13 recommendation and the logic points that will support the
14 recommendation for definition of a smaller public company,
15 and we believe the work to date is starting to give you a
16 framework with some clarity that you can use in your
17 subcommittees to calibrate against for the regulatory change
18 recommendations that you will bring forth to this committee.
19 So we're engaged in moving in and hopefully that
20 communication is flowing, and you've got a framework of
21 where we are headed. We know that's an important foundation
22 for the work each subcommittee is doing.

23 Thank you.

24 MR. WANDER: Thanks, Jim.

25 As Jim said, we began our work in April of this
1 year. We have divided the full committee into four
2 substantive subcommittees who will each give a report
3 shortly to the full committee and to those in attendance.
4 And those are the Capital Formation Committee, the
5 Accounting Standards Committee, the Corporate Governance and
6 Disclosure Committee and finally the Internal Control Over
7 Financial Reporting Committee.

8 These subcommittees meet by themselves, Jim and
9 I try and attend and there's an observer from the SEC to
10 help them as well, and all of the members and all of the
11 chairs of the subcommittees meet with Jim and I on a
12 periodic basis to go over open issues, direction, focus and
13 to keep in touch so that we have a lot of communication
14 among us.

15 I will say that I think we're still in the
16 initial stages of our journey. I think we're making very,
17 very substantial progress based on the reports that we've
18 already been given, as well as the reports that you will
19 hear today, and from attending some of the subcommittee
20 meetings this morning. So we are making a lot of progress.
21 We hope to keep on our time schedule that has been published
22 and we hope that our next meeting, which will be in Chicago,

23 Illinois on August 9th and 10th, we will have actually some
24 formal recommendations for the whole committee to consider.

25 We will also be meeting in September in San
1 Francisco. We hope to hold hearings again both in Chicago
2 and in San Francisco, because we want the broadest public
3 comment to us on both our agenda, items that we have perhaps
4 not included in the agenda and get as much input as we can.

5 And now I'm going to move into a review of the
6 comments received on our agenda.

7 As you know, we published our agenda in the
8 Federal Register and we have received approximately 30 plus
9 comment letters. Each of these has been posted on our web
10 page. We hope to be very transparent, and so all of you can
11 monitor those comment letters. We believe they're very
12 valuable and we continue to solicit comments from interested
13 parties on our agenda, as well as interested parties who
14 might like to appear and provide oral testimony or oral
15 observations to us. We have a number scheduled tomorrow
16 morning and those are listed on our agenda, and we will hear
17 more in Chicago and in San Francisco.

18 Of the comment letters that we did get back, I
19 just would like to raise some highlights with you, not to
20 take you through all of these. But I will start with the

21 fact that a number of I think the responders felt that our
22 agenda was too ambitious, that perhaps we should prioritize
23 those areas that are in higher need of refinement, and focus
24 our efforts in those areas, and we will take these comments
25 into consideration and we in fact have essentially talked
1 with our subcommittees to make sure that they have focus on
2 three or four items at most so we do not try to be too
3 ambitious and only skin deep in our analysis.

4 A number of the commentators also reported on
5 what they believe the definition of a smaller public company
6 should be, and those will be very helpful in determining the
7 recommendation that our special ad hoc size committee under
8 Jim's direction will make recommendations hopefully that we
9 can adopt and those letters were extremely helpful, and
10 interestingly, without knowing what's been on our internal
11 agenda on those issues, they are very close in point to what
12 we've been thinking about.

13 A second area that I want to mention is
14 coverage by analysts. There will be a couple of people
15 testifying tomorrow about that issue. We're greatly
16 concerned that there is enough independent, first-class
17 research about public companies, including smaller public
18 companies, if that's at all possible. And indeed, yesterday

19 morning I was awakened by some research that came on my fax
20 machine all the way from Russia, touting a particular
21 company. This is not necessarily the kind of research that
22 we're trying to encourage, but that's an agenda item that I
23 think we will be examining.

24 The next area, of course, is the sort of
25 blockbuster, the internal controls under Section 404. We
1 received letters from a number of company executives, we've
2 received letters from a number of the Big Four accounting
3 firms, as well as BDO Seidman. Again, I think those have
4 been helpful not just in dealing with the direction that we
5 might take in terms of internal controls over financial
6 reporting under 404, but also dealing with accounting
7 standards, how they're adopted, when they're implemented,
8 and whether there should be differential accounting for big
9 companies versus small companies or whether there should be
10 any special recognition of the needs of smaller public
11 companies.

12 Capital formation for very small companies, and
13 I say very small companies, most of the comment letters that
14 we have received in this area really deal with sort of mini
15 microcap companies and the need to continue to have those
16 companies as viable players in our economy, but also to have

17 them provide investors with the kind of information that
18 helps nurture a good capital market and provide protection
19 for investors under the SEC's mandate under the securities
20 laws.

21 We also, Rusty had a couple of comment letters
22 from smaller community banks, who not only talked about
23 their size, their needs, but also indicated a fact that
24 they're regulated by a number of other sources and perhaps
25 they're overregulated in the sense of having double, triple,
1 quadruple regulation and some sort of regulations by the
2 banking authorities, for example, suffice or fill some of
3 the void of regulation.

4 I went through just briefly these letters to
5 tell you, to make sure that you realize that we are reading
6 them and trying to analyze them and they will go into our
7 thinking, and to continue to encourage people to provide us
8 with additional information, either through testimony or
9 through comment letters. And again, as I said, those will
10 be all posted on our web page.

11 Having finished that, I would like to move to
12 the real heart of our meeting here today, which is a
13 discussion of the reports on the activities of our
14 subcommittees, and I'm going to start with Janet, to talk

15 about internal control over financial reporting.

16 MS. DOLAN: Thank you very much, Herb.

17 First of all, I want to thank all the members
18 of our subgroup, as well as, we have terrific representation
19 both from the PCAOB and the SEC and I think their
20 involvement in our work is very helpful. We avoid the "we
21 have a discussion then we go find someone and then we come
22 back." It's very helpful having everybody in the room
23 together.

24 We have had very what I would call spirited and
25 not yet unanimous debates and discussions, but we are on
1 exactly the path that we laid out when we were at our first
2 meeting, and that is, we laid out as our charge that we want
3 to see if we can provide advice and guidance and
4 recommendations in such a way that we insure and maintain
5 the investor confidence that 404 was intended to produce,
6 and yet can we make recommendations that will significantly
7 reduce the cost and the time that companies, particularly
8 small companies, are incurring in order to fully implement
9 404 as it is in its current status.

10 So it's that trying to strike the right balance
11 between both of those that we consider our charge. And we
12 laid out as a framework for how we would go about this

13 looking at factors which we would call risk factors; are
14 there ways that we could provide some guidance and
15 recommendations whereby we would bring some risk assessment
16 to bear so that 404 does not continue to be a one size fits
17 all, but can we provide some guidance whereby we keep the
18 emphasis on what's most important, but help highlight what
19 is less important and do it in some way that reduces the
20 implementation burden.

21 So we divided ourselves into four subgroups but
22 three that actually go to the risk factor and that is, first
23 of all, just a subgroup looking at what are some different
24 ways that we could segregate different controls that require
25 to be attested and segregate them into different buckets
1 depending upon the risk factor.

2 The second is could we do something around the
3 timing, which is could we have a variable implementation in
4 some way that less important or less critical controls might
5 be evaluated and attested to on a more periodic basis or
6 perhaps we divide the work in such a way that all the work
7 doesn't have to be done at the end of the fiscal year. So
8 are there things around when things happen that we can
9 spread the work around and therefore reduce the cost and
10 burden.

11 The third factor we call autonomy, but it goes
12 to are there ways that we can identify things that could be
13 done more by the company and relied on by the audit firms as
14 opposed to requiring the audit firms to, again, test and
15 attest to all controls as though they were all the same.

16 So as you can see, there are kind of three
17 different elements of the whole risk factor. And so we have
18 three groups working on that. We heard from them today and
19 we're all working together to support them, but we have
20 three separate groups leading the charge on each of those
21 three.

22 Our fourth one is actually more of a separate
23 one, which is are there any particular special needs
24 situations, just as a company is going public or it's in its
25 first year or two of being public, are there just certain
1 circumstances in which a company, while it may fall into a
2 certain size category should be treated differently because
3 of some other factors or circumstances surrounding it.

4 So we heard today and we are looking at
5 different opportunities in each of these areas.

6 We are also very interested and cognizant of
7 the SEC and PCAOB pronouncements that came out in mid-May
8 subsequent to our meeting in April in Washington, and we're

9 very interested in looking at those and seeing whether they
10 have provided some of the relief that we're looking at or
11 can we build on what they've done to more fully define and
12 perhaps give more concrete foundation to the work done so
13 far by both the SEC and PCAOB in this effort to try to
14 create more of a risk assessment and more guidance for the
15 audit firms in terms of what is the appropriate level of
16 auditing that should be done, based on the needs of a
17 particular company.

18 We also identified additional meetings which we
19 will have, we will be advancing our work significantly by
20 the time we meet in August in Chicago. We identified
21 additional information which we need which the SEC will be
22 providing and other organizations that we will look to to
23 provide us more input.

24 Then the last thing we did is that we also
25 discussed whether we should take a position on extending the
1 current moratorium that exists for very small companies.
2 There still are about 4,000 companies that have not done
3 their, been required to have their 404 certification yet.
4 Our recommendation is that no more companies be required
5 until we finish our work and until we have greater clarity
6 on the results of this team as well.

7 So we are just as a subgroup, we're making that
8 recommendation to our bigger group that we at least consider
9 that. And I think that is a roundup of what we got done in
10 our short but lively meeting this morning.

11 MR. WANDER: The recommendation I believe was
12 unanimous that in effect the postponement continue for
13 another year while we can get our hands around 404 and as
14 well as the COSO committee could get its report out, they
15 have a special committee dealing with small companies.

16 We will probably bring this to a vote in
17 August. We do not plan to bring this to a vote today, but
18 we thought it appropriate to say where the subcommittee has
19 decided to seek relief at least on this temporary basis and
20 let you all know about it so that you can be thinking about
21 it, we will probably be discussing it among ourselves prior
22 to our August meeting.

23 Are there any questions or further comments
24 concerning the internal control of the financial reporting?

25 MR. JAFFEE: I just want to nail down what
1 you're saying. We're going to bring to a vote in August to
2 recommend to the SEC that those people under 75 million get
3 another year or delay implementation until we complete our
4 deliberations or what, do you think? Or do you know?

5 MR. WANDER: I don't think we had really
6 decided. I think that's really based on the subcommittee
7 recommendation, but our life is probably over early next
8 year, so I would think a one-year postponement would be more
9 appropriate than an indefinite, but that's something really
10 for the committee to really discuss and debate and
11 determine. But we thought it appropriate just to mention
12 it, because it's coming up very fast and a number of people
13 in their comment letters have clearly asked for that
14 postponement.

15 MR. CONNOLLY: Herb, just very quickly. So I'm
16 clear on that, the non-accelerated filers who are due to be
17 phased in are going to be getting, based on our
18 recommendation presumably to be passed, a full one-year
19 phase-in period beginning -- and that's going to be a quasi
20 recommendation, not currently voted on but certainly floated
21 to the top with the new chairman being sworn in July 1st
22 being aware of that?

23 MR. WANDER: What I would expect is, let's
24 assume it's asked for a one-year delay from what is it, July
25 15th of this year to, for the first fiscal year ending after
1 July 15, 2006. If we make a formal recommendation, it will
2 be written up and we'll have some basis for making the

3 recommendation and it will be delivered to the five
4 Commissioners, assuming that there will be five SEC
5 Commissioners at that time, and how many ever are sitting,
6 and we will also, obviously, give a copy to our friends at
7 the PCAOB and then we would hope that the SEC, the ball
8 would be in their court. We hope they would act favorably
9 on it if we recommend it.

10 Any other questions of Janet? Any other
11 thoughts on internal controls?

12 If not, let's go to Dave Coolidge and Capital
13 Formation.

14 MR. COOLIDGE: We met this morning and again,
15 thanks to everybody for attending and participating. We've
16 had a lively discussion. I think we have some specific
17 thoughts. These aren't in the form of formal
18 recommendations, but things that we are thinking about.
19 There are a number of items that really do pertain to other
20 subcommittees and so many of this comes in the form of a
21 suggestion to the other subcommittees to think about our
22 thoughts.

23 Number one is with respect to the independent
24 director issue for companies. These are primarily listing
25 standards. Our committee's feeling is that the pool of

1 qualified people has shrunk and is shrinking due to a
2 variety of items, one of which has to do with the definition
3 of an independent director. Now, I know these definitions
4 were wrestled out and agreed to, but there's a feeling that
5 they might be reviewed again to loosen up a little bit so
6 that more people could be qualified as independent
7 directors, so that the pool would be expanded as opposed to
8 shrunk as a result of past work.

9 We also, I think, feel that the definition of a
10 financial expert is very tight and tough, and perhaps that
11 could be looked at again for the purpose of qualifying as a
12 financial expert on the board.

13 One issue that we are somewhat mystified about
14 is why affiliates defined generally as 10 percent
15 shareholders or greater are not deemed to be independent
16 directors for the purpose of audit committee attention. It
17 just seemed to us that that was a difficult -- we couldn't
18 quite understand the logic of that, and whether that ought
19 to be revisited or not, either have a higher threshold or
20 just ignore it altogether, what is the conflict between
21 being independent and owning a lot of shares, we can't see
22 it, so that's for discussion at a later date.

23 With respect to the size committee, we have a

24 feeling that a revenue test, an asset test ought to be
25 looked at very hard, in addition to a market capitalization
1 test, which has been sort of the traditional approach the
2 SEC has used to defining break points for whatever filing
3 regimens or other size-related issues. We think that
4 revenue and assets reflect the complexity of a business,
5 especially as it relates to 404 type of attestation issues,
6 revenue and assets reflect really the complexity of business
7 much better than the market capitalization definition, and
8 it doesn't mean that they have to be mutually exclusive,
9 perhaps there could be both a market capitalization test or
10 a revenue test so that you could qualify for relief based on
11 either one.

12 In terms of trading activities and markets for
13 stocks, I think there is a concern in our committee's part
14 that a lot of the small companies are in a position where if
15 they don't qualify for the New York Stock Exchange or for
16 the NASDAQ listing, they are generally on the bulletin
17 board. The bulletin board as we understand it, is an
18 activity that the NASDAQ maintains, really because of an SEC
19 mandate. It's something that the NASDAQ would probably like
20 not to have to run and that's because they're a for-profit
21 entity and this is not a for-profit undertaking for them.

22 There are no listing fees coming from the companies that are
23 traded on the bulletin board, and I guess we're wondering
24 whether or not it wouldn't make sense to ask if we're going
25 to continue to force the NASDAQ to keep this market going
1 and the SEC, perhaps they should be compensated for that
2 with a modest listing fee from the companies themselves.

3 We know the NASDAQ and we'll hear from one of
4 the NASDAQ representatives tomorrow, we can quiz him on
5 that. They were looking at forming something called BBX
6 which would have been a listing activity. They went out to
7 Bulletin Board companies, surveyed them to find out whether
8 they would be interested in supporting such an exercise and
9 they were underwhelmed by the response, and we suspect
10 that's because if you're trading on the Bulletin Board as a
11 company you don't have to pay anything, but if you were to
12 go on BBX you would have to pay something and the companies
13 said "Why would I want to do that" and perhaps subject
14 yourself to some more oversight by the NASDAQ.

15 But this is something that we think is an
16 issue, because if the Bulletin Board were to go away, the
17 only other venue is really the Pink Sheets and that is not
18 an electronic activity and it's more cumbersome and would
19 reduce trading and increase liquidity. So I think we're

20 thinking about seeing whether or not there's a way of making
21 the Bulletin Board a more viable business enterprise, which
22 probably means some kind of a listing fee from those that
23 are traded on the Bulletin Board.

24 With respect to, and this really gets into
25 Janet's committee's work and it's along the lines of the
1 timing of especially attestation and 404, our thought was
2 that for small companies, however we defined them in our
3 size committee, that this only has to be done every three
4 years. This would reduce the cost pretty dramatically if a
5 company went through the process, and didn't get the 404
6 attestation and they corrected whatever deficiencies were
7 cited, that they be given a two-year pass, have to come back
8 at it subsequently. We think this would reduce the cost and
9 burden tremendously, but the benefits to the investors would
10 be there, because everybody would have to go through it
11 initially, and then control systems would probably be
12 improved, which is good, but is it really necessary to ask
13 these small companies to do this every year.

14 So that's an idea.

15 Also, along the lines of materiality, we think
16 that not only is materiality important with respect to
17 bringing the 404 look-see at everything in terms of internal

18 control, should be a materiality test, but it should also be
19 consistent. I think we've got some evidence that there's
20 inconsistency between auditing firms and, frankly, between
21 offices of the same auditing firm as to what's material and
22 what's not material, and hopefully we can get to tests with
23 respect to materiality and also consistent across all the
24 auditors.

25 There was another thought and we don't know if
1 this is feasible or not, but whether or not competition for
2 404 attestation could be developed. At the present time the
3 auditing firm that audits the books of the company does the
4 404. Is it possible to define the 404 auditor to include
5 someone else other than your own auditor, which would
6 perhaps allow you to perhaps bid the 404 attestation work
7 out, introduce a little bit of competition. Don't know if
8 that's really feasible or not, may not be practical, but
9 it's a thought to, again, on the cost side, to try and
10 reduce the cost of that process.

11 Some fairly minor -- actually I shouldn't say
12 minor, because to some people they're really important, but
13 we found some rules we think we're going to come forward
14 with on rule change ideas. Rule 701, which has to do with
15 companies being required to provide financial statements to

16 employees who exercise options if there are more than 5
17 million a year of options granted, there was an idea perhaps
18 the 5 million threshold was too low and it ought to go up.
19 We're thinking about 10 million, but that's to be debated.

20 There's a rule, 12g5.1, which counts
21 shareholders of record for the purpose of being a public
22 company. There was a thought that the current threshold of
23 500 shareholders was a little low and also that the concept
24 of counting shareholders of record is not necessarily the
25 right way to do it, because you have beneficial shareholders
1 behind those shareholders of record and people can game the
2 system and shrink down their number of shareholders if they
3 want to stop reporting, so the idea would be to adjust the
4 levels of shareholders, but through the beneficial
5 shareholders, as opposed to continuing to look at
6 shareholders of record.

7 Another point and I should have brought this up
8 actually under the 404 discussion in terms of materiality,
9 the expensing of stock options as we know has been a very
10 widely debated subject, but in smaller companies where this
11 becomes a material expense item, it lowers net income,
12 perhaps, for these companies, by a reasonable amount, and
13 then you start judging materiality as a percentage of net

14 income for the purposes of 404 looks.

15 We thought it might be a good idea to add back
16 stock option expense to the earnings stream and then
17 determine whether something is material, because these
18 charges can be and have been pretty material to some
19 companies, but it lowers their net income by such an amount
20 that then for other materiality tests everything becomes
21 material because their net income has been reduced by a lot,
22 but the thought was perhaps to add back stock option expense
23 to whatever metric is being used for determining what's
24 material and what's not.

25 An additional subject that we've talked about
1 is the whole area of Regulation SB. It has a \$25 million
2 market cap threshold now, which makes it available to small
3 companies. In our view that's a very small company, and if
4 we redefine what a small business is in terms of this
5 committee, should we be thinking about applying Regulation
6 SB to all additional companies or some subset of all these
7 additional companies, presuming that we're looking at the
8 definition of small companies which is much larger than the
9 \$25 million number.

10 So that's a whole different subject to get into
11 and debate, but if we're going to define small business in

12 this committee for a variety of purposes, we all agree, the
13 Commission agrees, should we be using that same test for
14 other small business rules within the Commission, especially
15 the registration statement process which has now Regulation
16 SB and Regulation SK and should the SB registration option
17 be available to everybody that we define as a small business
18 for purposes of this committee.

19 And there is another small rule issue that we
20 looked at, Rule 15c2-11 which involves brokers being
21 required to file what's known as a 211 statement in order to
22 start trading in a stock, and those are disclosure
23 statements with respect to those companies, and I think that
24 the view is if you're going to allow brokers to trade these
25 stocks and they are going to be actively traded, that those
1 disclosure statements be made available to the public, and
2 as we understand it, they're currently not available, and to
3 ask the companies that are involved in that activity to
4 update those filings on an annual basis.

5 That's a long list, some of which are much more
6 impactful than others, but these are the things we looked at
7 and are discussing. No final recommendations, but just want
8 to get them on the table for everybody's consideration.

9 Thanks.

10 MR. WANDER: Sounds like you were very busy
11 this morning. Are there any additional comments or
12 questions?

13 MR. DENNIS: I have a question. This is Leroy
14 Dennis. Just on the size comments that you made. Our
15 committee has also discussed a lot along the size with our
16 representative from the size committee. Our thoughts are
17 aligned with yours in that we believe that, we actually
18 believe there ought to be three levels of companies that
19 have different rules applied to them; one being larger
20 public companies, the other being what I'll call the middle,
21 which maybe we would allow some relaxation in the rules, but
22 then you look at the traditional SB company filers, which
23 are 25 million and whether that's 25 million or whether
24 that's 50 million, but what I would call very small
25 companies, I think we could, with a size breakdown like
1 that, we can maybe get much more aggressive, at least on my
2 committee, with the accounting recommendations for a company
3 with 25 or \$50 million market cap as opposed to a company
4 with 500 or \$700 million market cap, because those are
5 clearly different levels of expertise and different levels
6 of needs by the users of those financial statements, and I
7 think if we just went from a 700 million or a 500 million

8 down, and put that all in one bucket, we'd have a whole lot
9 of really smaller SB filers that would still be overly
10 burdened for what their users want and need.

11 So we would support you and I would ask that
12 the size committee look at whether there should be,
13 effectively should we take the SB filer to keep that SB in
14 place, take that to a certain level, whether it's 25, 50
15 million, whatever that number is, and then have a middle
16 tier that maybe is more of the focus of this committee.

17 MR. THYEN: This is Jim Thyen. Leroy and David
18 both, we hear you, and we will take that under advisement
19 and discuss it at our next meeting.

20 MR. JAFFEE: I had a question for Dave, because
21 I think he's in a very good position to respond to this.
22 This is a question that we discussed this morning. Capital
23 formation. Are you seeing a reduced number of companies
24 wanting to go public or willing to go public because of
25 these regulations or are IPO's going on apace, and is that a
1 bad thing if it is reduced?

2 MR. COOLIDGE: I think the average size of the
3 company going public has increased in terms of market
4 capitalization, certainly the average size of the
5 transactions has been increasing. This is driven in part by

6 the marketplace. Institutional investors on average have a
7 lot more capital to invest, so they're not interested in
8 looking at very small companies, very small deals, so that
9 there's just sort of a market push for larger companies and
10 larger deals.

11 I think also, though, on the issuer side there
12 are companies without question who are reluctant to go
13 public because of the additional cost burdens of going
14 public, so they have to be bigger, it has to be a better
15 value proposition before they're willing to jump into the
16 public markets. There's just a lot more hurdles to get over
17 and there's a lot more expense to be incurred in order to
18 become a public company today as opposed to five years or
19 ten years ago.

20 So the answer to your question is yes, I would
21 say there are fewer -- it's hard to say, there are fewer
22 companies, because when the markets are receptive, there's
23 lots of companies going public and when the markets are not
24 receptive, there are very few companies going public, so you
25 can't look at annual data and get any real feel that because
1 a regulation went in, that stopped companies from going
2 public. It's primarily driven by the marketplace and the
3 demand for new issues.

4 But I'd say that in general the size of a
5 company going public today in terms of market cap or revenue
6 or whatever is much bigger than it was five or ten years
7 ago, because of the increased costs of entering the public
8 market and also because the public market, especially if
9 you're going to have a full blown institutionally supported
10 deal, requires a bigger deal, more float is being required
11 by the Investors, so that means a bigger deal, that means a
12 bigger company.

13 MS. DOLAN: This is Janet Dolan. I just want
14 to make a followup comment on the size. I think each of the
15 subcommittees did spend time this morning responding to some
16 of the proposals coming out of the size committee, but I
17 think our committee and I would suspect the other committees
18 probably had the same reaction, which is while we could
19 generally give feedback on what we think a general size
20 limit might be, until we see the proposals that come out
21 from each subcommittee, we can't agree that that's the "one
22 size fits all," if you would say, standard.

23 There might be some recommendations that we
24 like, but we would only apply them to a much smaller
25 category. So I think all the subcommittees are sort of

1 dealing with the same thing, which is until we see all the
2 recommendations, we can't say that we would agree that those
3 recommendations should all apply to only one size of
4 company. There might be some exceptions.

5 MR. WANDER: Any further comments? Yes,
6 Leroy.

7 MR. DENNIS: Herb, one other comment I'd like
8 to make. On your comment on competition, and I'm not sure
9 it's part of this Committee's agenda, but I want to make it
10 anyway. As far as increasing the competition for 404
11 auditors and driving the pricing down on that, it seems like
12 the bigger issue I think we've got to deal with in the
13 United States is we have something above 700 registered
14 public accounting firms in the U.S. and effectively four do
15 97 percent of the public companies out there, and there
16 needs, if there's a way we can get more acceptability of
17 those smaller companies to accept smaller local firms that
18 are registered, and inspected by the PCAOB, that provides a
19 lot more capacity into the system than there is today and a
20 lot more competition in the system than there is today, than
21 we have right now.

22 I don't know where exactly that gets addressed
23 or if it should be addressed by this Committee, but I see

24 that as the bigger issue in the competition side of the 404
25 side of things.

1 MR. CONNOLLY: Just to respond to that very
2 quickly, it's not what I was going to say, but we did think
3 about that in terms of the potential 404 auditor attestation
4 role, and it's pretty clear that the public company
5 executives and certainly the marketplace participants are
6 almost unanimous that they will not see a situation where a
7 company that currently isn't a Big Four would voluntarily --
8 in fact, I think we heard the comment, we'd pay more money
9 not to have to switch off because the marketplace perception
10 were you to change auditors is so universally negative that
11 your stock is going to tank.

12 So the only way we saw to induce or introduce
13 competition was to potentially bifurcate the role of one's
14 auditor and one's attestation auditor, if you will. So we
15 worked hard to find a way to make it fair, but also make it
16 feasible.

17 Very quickly, to try to answer your question,
18 Dick, I am not knowledgeable as Dave is on the IPO side of
19 the marketplace, but I can tell you that the reverse merger
20 business is very much alive and well, and those companies
21 are largely very small, often exceedingly small, with the

22 possible exception of Archipelago and the New York Stock
23 Exchange, which have just completed a reverse merger,
24 interestingly enough. And in fact, it is the entry point,
25 or almost the universal entry point for, for example,
1 Chinese companies who are listing on the Bulletin Board are
2 almost all reversed into what are shells.

3 So that's a whole different segment of this
4 marketplace that I'm hoping to get some data from. I know
5 that Dr. James Angel, who was on the Bulletin Board
6 Committee, I haven't spoken to him for many years, at one
7 point had that data on Bulletin Board-listed shells.

8 MR. WANDER: Those are all helpful comments.
9 Any other comments?

10 MR. ROBOTTI: I did have a question or two.
11 One of the comments you made about the potential phaseout of
12 the Bulletin Board and the Pink Sheets as an alternative was
13 the Committee's observation that the Pink Sheets is not an
14 electronic forum. Maybe I misunderstood that. What did you
15 mean by that? How do you understand the differentials
16 between those two marketplaces?

17 MR. COOLIDGE: I probably shouldn't have said
18 that. There are two different venues and there is some
19 overlap, Bulletin Board stocks and Pink Sheet stocks are

20 often the same company.

21 Our concern was that the Bulletin Board, the
22 Pink Sheets as we understand is a viable business, they do
23 make money and so they're going to be around. The Bulletin
24 Board, that's our understanding is that it's not the case
25 and that the NASDAQ would like to exit that business, and so
1 that's really our concern, is that, you know, to have two
2 venues is better than to have one and we're worried that the
3 Bulletin Board is maybe not going to survive unless
4 something is done.

5 I mean, it can continue to function by virtue
6 of the SEC mandate that they keep it alive, but that is
7 really what the comment was intended to --

8 MR. ROBOTTI: I wanted to confirm that of
9 course the Pink Sheets over the years have clearly
10 significantly changed, and the form today, since we're
11 active investors in both Pink Sheets and Bulletin Board
12 securities, the trading mechanisms, the quotes, realtime
13 reporting is relatively comparable between the two markets.
14 It's a transparent market, the Pink Sheets today, which is
15 vastly different.

16 Dick mentioned his company at one time was a
17 Pink Sheet company and at that time the Pink Sheet was

18 actually a physical system; telephone calls, subject bids
19 and offers, a market that was very nebulous. And that's not
20 the fact today. As a marketplace and trading mechanism the
21 two are relatively comparable. There's not a loss of
22 liquidity, there may be a perception issue.

23 MR. COOLIDGE: Our view, we may be dead wrong,
24 is that if the Bulletin Board were to go away, that would
25 not be a good thing for capital markets. Maybe you
1 disagree.

2 MR. ROBOTTI: On the -- you mentioned the 500
3 shareholder account, so I guess you're also potentially
4 looking at the 300 shareholder account.

5 MR. COOLIDGE: They're linked together, right.

6 MR. ROBOTTI: Do you have, in that regard you
7 say those numbers, 500 and 300 you're concerned about being
8 potentially too low a threshold. Could you give me some
9 kind of more feeling on that? Being an investor in that
10 marketplace, I'm kind of of the opposite opinion that those
11 are relatively good thresholds. A 500 shareholder account,
12 300 shareholder account are pretty broadly distributed
13 securities with a lot of passive investors in them, so
14 there's a logic for, gee, why that is a logical size. So I
15 was curious about the thinking.

16 MR. COOLIDGE: The thinking went along the
17 lines of, they're now shareholders of record, so you have a
18 number of companies that are arguably below the 500, so
19 they're not reporting, or they're not deemed to be public
20 and not forced to publish. If we switch to a beneficial
21 shareholder account, that would draw in a lot of companies
22 now that are not reporting and perhaps don't want to, so if
23 we were going to say we're going to go from shareholders of
24 record to beneficial shareholders, wouldn't we move up the
25 300 and the 500 so as not to disadvantage those companies
1 that aren't reporting and don't want to report to that
2 extent.

3 Because we'll get pushed back clearly if we go
4 from shareholders of record to beneficial shareholders, how
5 do you balance that. I mean, you'd like them all to
6 report--

7 MR. ROBOTTI: Not necessarily. Of course, I
8 would say we probably have a huge problem on that part
9 because the 300-500, that's a legislative issue, right, so
10 we'd have to recommend some change. The definition of
11 account is an SEC determination as to how to do account as
12 opposed to the number itself is I think in the legislation.
13 So I think there would be issues with that.

14 I still kind of think that 300 and 500 are
15 pretty broad numbers that if we counted accurately that's
16 probably a relatively broad standard that probably is good
17 today, but that's a different issue.

18 MR. COOLIDGE: It's okay, you can come to our
19 next committee meeting.

20 MR. ROBOTTI: The last issue is you did
21 reference the Rule 15c2-11 deal and the concept of
22 attestation on the part of dealers. I'm curious what your
23 thoughts are on that area, because again, it's a subject
24 area of some issue and concern to us. It is a little bit of
25 a difficult issue.

1 Obviously, the companies would have no mandate
2 over them to force disclosure of information and I think the
3 SEC, their first mandate here, of course, is to protect
4 shareholders and to enable companies to not provide data and
5 therefore avoid a market transpiring in their security or to
6 chill, doesn't serve a beneficial effect to shareholders.
7 So I'm kind of, how do you, what's your thought on that
8 subject and what do you think about that rule and what are
9 you looking for in that area?

10 MR. COOLIDGE: Well, as we understand the rule,
11 the dealers are filing these 211 forms which do contain

12 disclosures about the companies they're going to trade in,
13 and then before they're permitted to trade, the NASD has to
14 say, okay, you've got enough here to begin a market. The
15 idea was for those disclosures to be made public and for
16 them to be updated annually and probably by the companies
17 themselves.

18 Now, that may not be feasible, but that would
19 be preferable to the system that they have today, which is
20 the market gets started, yes, the broker has some
21 information in his possession, but it may never get updated
22 subsequent to the market being initiated, and nobody sees
23 it. So I think we're on the same side of that question.

24 MR. ROBOTTI: The problem I have is there are
25 shareholders who have a security who are interested in
1 buying and selling the security. The company, we have no
2 control over it, can't mandate disclosure on their part so
3 essentially the companies can really chill any trading in
4 their security at all by refusing to give information. I
5 hear what you say, however, to terminate the marketplace,
6 just like NASDAQ determining we're going to terminate the
7 Bulletin Board marketplace because we don't know how to
8 regulate it and it's a problem for us, to therefore
9 eliminate the regulation of it doesn't serve the purpose. I

10 think that is the intent of the rule.

11 MR. CONNOLLY: Bob, this is Drew Connolly.

12 Just to feed into the thinking with Dave, on the 15c there
13 are two places, as you know, where that data is maintained;
14 it's the initiating broker dealer and then the NASD. The
15 NASD has consistently refused to release that information
16 and they simultaneously have a rule that brokers are
17 supposed to maintain current financial data.

18 So the question is where is the current
19 financial data. So we're looking at whether or not some
20 nudge towards broker-dealers being compelled to follow the
21 rule that exists, but also to give the companies some form
22 of obligation of annual disclosure, short of full reporting
23 and I certainly understand a lot of these illiquid
24 securities and smaller public companies.

25 We're very concerned that not raising that
1 number and not counting the number that are in DTC or Cede &
2 Company towards that rule is allowing a host of companies to
3 essentially buy back their stock, go private and
4 disadvantage the current stockholders. So we are concerned
5 about that and that really, I think, speaks to why we pretty
6 much unanimously would like to think about that.

7 MR. WANDER: Any further discussion? We're

8 going to have the General Counsel of the NASD tomorrow
9 morning, as well as late tomorrow morning the CEO of the
10 Pink Sheets, so think of all your questions and have them
11 ready for Ed Knight and Cromwell Colson, because I think it
12 is important both to have a market and to have information
13 out there, and how to deal with that, as it's been pointed
14 out, somebody will become a loser in either case, no matter
15 what we do.

16 Why don't I go on.

17 Leroy, do you want to go next, please?

18 MR. DENNIS: Sure. Thank you. Our group, I
19 think, had a very good meeting this morning. We've met
20 several times via conference call since we last got together
21 in Washington, D.C. I want to thank also the group that has
22 been putting a lot of hard work in, and George and Patrick
23 have done a great job and Tony and Alison from the SEC have
24 been great support for us in our recommendations. So --

25 Kind of the same thing where Dave was headed,
1 preliminary thoughts not yet to a recommendation stage, but
2 I'll give you some ideas on what we're thinking about.

3 I talked a little bit about the size and we do
4 believe that if we could bifurcate the size into three
5 sections, where we really had a very small company and a

6 middle sized company and a larger company, would allow us
7 from our accounting recommendations to make some possibly
8 more aggressive recommendations on disclosure and accounting
9 for those smaller companies than, say, if we had just a
10 two-tiered system.

11 We'd also recommend that, if we went to a
12 three-tiered, that we considered things like the quarterly
13 reporting for a very small company, is that useful to the
14 shareholders of a \$25 million market cap company, or can
15 there be some limitation on the disclosures that are done on
16 a quarterly basis with a more robust disclosure and
17 reporting on a semi annual basis for those companies.

18 Overall, we are not, we're pretty much, well,
19 we are 100 percent in agreement that we would not recommend
20 any different recognition criteria as it relates to
21 accounting for small versus large companies. We think it
22 does a disservice to the U.S. economy and is confusing to
23 users to have different kinds of levels or different kinds
24 of GAAP, so that a company that is smaller would report
25 certain levels of net income versus a company that's larger.

1 To some extent GAAP is GAAP and I think we need to have some
2 kind of consistent application across all companies in the
3 U.S. in order to do a service for investors and allow

4 comparability.

5 Having said that, we think, and some comment
6 was made in the comment letters regarding the same thing.
7 We've clearly gotten into a system where simplicity is less
8 of a consideration as opposed to possibly theoretical
9 correctness in the accounting standards and we think that
10 simplicity ought to be something not only in the accounting
11 side, but I'd look to the size committee also and although I
12 would agree that assets and revenues are a good measurement
13 along with market cap, I think we have to weigh putting
14 three or four factors into place with the simplicity and the
15 ease of implementation.

16 A market cap measurement may not be perfect for
17 everyone, but it's easy. And I think we need to move a
18 little bit more towards simplicity or maybe a lot more
19 towards simplicity in at least the accounting side of things
20 and I think there's a lot of benefits that come out of that.

21 Some of the recommendations we're thinking
22 about is that there be different transition rules for larger
23 versus smaller companies as it relates to new accounting
24 standards, and certainly new effective dates, or different
25 effective dates, effectively allowing companies that would,
1 the larger companies adopting it first would have the

2 resources to do things. The smaller companies having the
3 benefit of those larger companies and their auditors going
4 through that process the first year before they have to
5 tackle that, something similar to what we're doing with the
6 404 that's going on right now.

7 Probably one of the biggest areas we spent a
8 lot of time with, we feel that the biggest amount of pain
9 that's being felt by the system as it relates to the newer
10 accounting standards out there are not so much that, with
11 the requirements of the standard as they are with the
12 newness of the standard, and I know 123R is a favorite
13 topic of everyone. When we look at 123 that was issued four
14 to five years ago, and our belief is that people today have
15 a pretty good understanding of how that works and are able
16 to do that on their own, but maybe there needs to be some
17 transition rules for smaller companies that allow greater
18 auditor involvement in assisting in the design and
19 implementation of new standards that would not impair
20 independence nor impair a company's certification under 404.

21 So we're kind of thinking that for the smaller
22 companies there would be a, I'll say relaxation, that's
23 probably a bad word, of the independence rules related to
24 implementation of new standards, and for some period of

25 time. Having said that, we would also, again, if we went to
1 a three-tiered system of smaller companies, for the very
2 small companies there may be even a greater recommendation
3 to have even greater auditor involvement in the design and
4 implementation of their accounting, recognizing that they
5 probably don't have the talent internally to do that, and
6 going outside is an expensive process for them.

7 From a structure standpoint of how the FASB and
8 EITF work together, we talked this morning, thinking about a
9 recommendation to have the SEC and the FASB look at that
10 structure. We missed the quickness that the EITF used to
11 operate under in addressing accounting issues that come up
12 and we'd like to get back to a system where they can be
13 slightly more independent and allow a quicker reaction to
14 one-off accounting issues that come up, and then allow the
15 FASB to address the broader principles and let the EITF
16 handle the more implementation issues and one-off type
17 accounting questions that come up.

18 Again, we believe that the disclosure and
19 measurement requirements are where we can provide some
20 recommendations and especially as it relates to SB filers
21 and smaller public companies. Our initial thoughts as you
22 think through the -- if you went through a three-tiered

23 structure, is possibly the SB filers might align themselves
24 with private companies as it relates to disclosure and
25 measurement issues. There are, certainly the FASB staff has
1 allowed certain things to be adopted later or different
2 measurement criteria, and certain different disclosure
3 criteria for private companies and should those smaller,
4 very small public companies take advantage of that, and Jim,
5 that's where I kind of get to on the size committee, we
6 probably wouldn't make that recommendation if we were
7 looking at a two-tiered system. If we were looking at a
8 three-tiered system I could see us looking along those
9 lines.

10 We will bring some recommendations for specific
11 accounting issues, but it's going to be more of a, you know,
12 we believe FASB has a full plate the way it is today with
13 some of the projects that they have in place. I think our
14 bigger goal here is to recognize a modified approach on a
15 go-forward basis and then we'll make some recommendations
16 that the FASB or the SEC look at certain accounting
17 pronouncements in due time under those same rules, so
18 hopefully they'll have some relaxation over time and a
19 different approach to those.

20 Again, I think overall if I could get two

21 things into the system to get done, I would like to have
22 greater auditor involvement in smaller companies, because I
23 think that's the biggest piece of the pain that companies
24 feel right now, is, and there's been some guidance just
25 released from the SEC and the PCAOB that I think is helpful,
1 but I think even for very small companies there could be a
2 lot more assistance provided that I don't think jeopardizes
3 the system and the ability for auditors to issue opinions on
4 financial statements, and I think we need to get into the
5 system a simplicity standard that allows companies to be
6 more consistent, ease of adoption that would make it, again,
7 would take a lot of pain out of the system and not hurt the
8 financial reporting that's being done.

9 MR. WANDER: Steve, did you have a comment?

10 MR. BOCHNER: Steve Bochner. I was just
11 curious what you thought about Dave's comment on
12 materiality. In one of the comment letters we received,
13 there was a suggestion that materiality be measured on an
14 annual basis, not a quarterly basis, perhaps for smaller
15 public companies, sort of getting into this issue of -- and
16 I'm talking now about for financial statement purposes. I
17 don't think we proposed to get into the case law definition
18 of materiality for disclosure purposes, but from a financial

19 statement, restatement reporting point of view, have you
20 thought about wading into the materiality issue?

21 MR. DENNIS: We have not really addressed
22 materiality as it relates to quarterly versus annual
23 statements. I know that is an issue and I know that there
24 are thoughts that I think the SEC is looking at producing a
25 paper on materiality that I hope would address that
1 question. You know, I think as far as eliminating stock
2 option accounting and determining materiality, you know,
3 that's a good concept and I understand where it's coming
4 from. I can name four or five other areas that, well, why
5 not goodwill, or why not some other non-cash measures and so
6 I think we have to think through all of that in a
7 determination of materiality.

8 I would tell you one of the things we have
9 talked about materiality as it relates to independent
10 standards with public accounting firms and their clients.
11 As it sits right now, there is, materiality is not a
12 consideration in determining an auditor's independence, and
13 so I think that's tended to make auditors very conservative,
14 which puts them in more of an adversarial role with their
15 public companies. If we could have some kind of materiality
16 threshold. Right now, if an auditor is judged to be not

17 independent, it's a very severe penalty for the client,
18 because potentially their prior three years financial
19 statements are no longer valid. And a very small
20 independence violation that may not have an impact on the
21 company's reporting is potentially just as severe as I own
22 30 percent of the company's stock, which would actually be
23 very, very severe.

24 So one of the things we talked about is whether
25 we should have some kind of materiality in determining
1 independence and it all relates around how much auditor
2 involvement we should have in the financial statements. We
3 spent a fair amount of time talking about it in our group.

4 MR. CLOUTIER: Rusty Cloutier. I wasn't going
5 to ask this question, and then you mentioned goodwill. It
6 is something that hits home with me and George and I have
7 discussed it. One of the problems is, is when they change
8 the rules, you can become very negative and I'll use my
9 business as an example. The rules have changed in goodwill
10 in purchase accounting on acquisitions. They have made the
11 rules that a regional bank can never become a major bank
12 now. I mean, if you went back and you cost structured
13 BankAmerica they would be insolvent today, if you put all
14 the goodwill in, the regulators would rule they couldn't

15 exist because of all the goodwill they sucked up.

16 So when you change the rules, there is a major
17 impact to competitive situations. The same thing if FASB
18 goes to mark to market, there are going to be some major
19 changes. You look at it as not one fits all. In my
20 business, I am limited to do a deal that doesn't give me
21 over a billion dollars. Three years ago I could have done a
22 deal that could have gotten me to, you know, be a major
23 player.

24 So the rules do change. Now, I know FASB's
25 comments, oh, that's not us, that's the federal regulators,
1 but I mean, it's the rules in the game and the games change.
2 I don't think always, as I mentioned in my committee this
3 morning, one of my new directors asked me, "Well, exactly
4 who regulates me?" When I finished giving him a list, he
5 went, "You must be kidding."

6 There are consequences to all of these things
7 that come about, and goodwill is a good example. Goodwill
8 changed our business dramatically. It is going to stop M&A
9 activity in the banking business very shortly because you
10 can't afford to suck up the goodwill any more. Yet the
11 companies that built themselves, like Wells Fargo,
12 BankAmerica and so forth, they don't have to go back and

13 restate that, because they would be in a serious bind today,
14 because they have tons of goodwill on the books. When they
15 change the rules, there are consequences to that, and maybe
16 they all thought about it, I don't know, but it did change
17 the competitive situation drastically in the industry and
18 maybe it did in some other industries or not.

19 The other thing I would mention just from a
20 banking standpoint, and I find we're getting this more and
21 more. I think accrual is trying to get back at what we go
22 through. It's amazing in the banking business, we take an
23 accrued statement, we take it all apart and get back to cash
24 accounting. As a bank analyst told me one day, you can't
25 pay a note with an accrued income account.

1 So we must remember that, too, that at the end
2 of the day you want to know how much cash is being made.
3 Often we're having to go through all these rules to figure
4 if a company can pay us or not. We could have a nice
5 statement, but if it doesn't have cash flow it could become
6 a real problem, so that's something else that I would just
7 encourage you all to think about and continue to give
8 thought to. George knows I encourage FASB to do that often,
9 so thank you.

10 MR. DENNIS: I agree with your -- clearly any

11 time the rules change it changes the competitive landscape.
12 I think what you're talking about a lot is not necessarily a
13 small business issue, but really an issue in the whole
14 standards setting process. Goodwill is one of my favorite
15 subjects because I think we spend a lot of time on a
16 theoretical, I've had this discussion with George also,
17 theoretical correctness, because it probably is
18 theoretically a very correct standard. I'm not sure anybody
19 cares. And I think we need to, it probably has more
20 relevance to larger companies, but in smaller companies we
21 need to be cognizant that the users of those financial
22 statements are people like yourself as a banker, you know,
23 you tear those financial statements apart. Well, long term,
24 should the accounting get to where you're already -- you
25 have them how you want to see them, and I know different
1 users have different needs.

2 I don't see us going to a purely cash basis
3 method of accounting down the road, although cash flow is
4 obviously real important for any company and that's what
5 ultimately makes a company survive or not survive. I
6 believe, Rusty, that we're going to have -- we'll have some
7 recommendations that the FASB look at standards, goodwill
8 will certainly be one of those because it's on the top of my

9 list that we ought to look at, and again, I would go to, I'd
10 like us to look longer, as we look at standards, that's a
11 very complicated standard to apply, and it allows a lot of
12 inconsistency between, and inability to compare companies,
13 and I would like us to at least be able to make it a simpler
14 standard to apply so that it is easier for companies to
15 implement and therefore more consistently applied.

16 As far as your regulatory issue, I sympathize
17 with you, because I know your list is a mile long of all the
18 regulators that you have to deal with, and I would hope that
19 the FASB and the SEC when they're looking at adopting new
20 rules takes into account through their testimony and through
21 their comment letter period the effects on regulatory
22 issues. A perfect example is the S&L industry and the
23 changes. In goodwill that happened there. I don't have a
24 solution for you on that part of it.

25 MR. SCHLEIN: Leroy, this is Ted Schlein. I
1 just urge you not to dismiss the whole stock option piece
2 with other non-cash oriented accounting rules, just because
3 of what a disproportional disadvantage it could put a small
4 cap company in on the materiality issues and incremental
5 costs that could be associated with it, so it was a quick
6 comment that you made and I just would ask you to spend a

7 little bit more time thinking about that one in particular.

8 MR. DENNIS: I think where we struggle with on
9 the stock option issue is, I believe our committee believes
10 it's compensation. The rub becomes how do you measure it,
11 and it just so happens that smaller companies tend to use a
12 lot of stock options in their business model. But we do, it
13 took us, literally not very long to say we don't believe we
14 ought to have different recognition criteria mechanisms or
15 accounting standards in small and large companies which kind
16 of gets you on the stock option side of things of FASB,
17 would you like to readdress stock options, again. My sense
18 is they would not. And from a timing standpoint, Ted, by
19 the time we get through our committee with recommendations,
20 it's going to be implemented.

21 So I'm not sure from a stock option standpoint
22 we're going to have a lot of input in what's already done,
23 but what I would hope is the next time the stock option
24 issue comes along, whether it's stock options or something
25 else, that we could have some input with our recommendations
1 that would allow maybe some measurement or disclosure
2 forgiveness on smaller public companies that allows an ease
3 of implementation, but I believe and I think other people in
4 our committee believe that we should not have just because

5 you're smaller you should have a different net income
6 reported.

7 MR. SCHLEIN: I'm not suggesting that. Purely
8 for the measuring materiality was the discussion. Not
9 asking about different net income, I'm not even debating the
10 merits of expensing stock options. That's not the debate.
11 It's centered on one particular point of measuring
12 materiality.

13 MR. DENNIS: It may be just a one year
14 implementation rule that has to be dealt with as we get this
15 thing adopted.

16 MR. WANDER: Any other questions? Yes, Al.
17 I'm sorry --

18 MR. DAVERN: Go ahead, Mark, I'll go after you.

19 MR. JENSEN: I just had a couple of quick
20 comments. One is, I wanted to speak a little bit about
21 auditor independence and the reliance on auditors. I've
22 been an auditor for a long time, and most of that I've
23 labored in obscurity and I've enjoyed that better than the
24 spotlight that seems to be on us today. I don't think we
25 have to remind registrants that just because things aren't
1 audited doesn't mean they're wrong or the standards have to
2 be lower and I also have to remind them there's a difference

3 in relying on an auditor for answers versus seeking
4 assistance in solving things. Companies have to acknowledge
5 they do need to be to some extent self sufficient in how
6 they interpret accounting rules. So that leads me to my
7 comment.

8 I don't believe we're going to see the FASB
9 slow down. Their list of projects is a mile long, and
10 they've got a backlog of projects that people are begging
11 them to look at. It is endless the kinds of things that are
12 in front of them and I'm sure the SEC's list is probably
13 longer than that. The only way I can see us stopping that
14 is to tell everybody you have a quota you get to 20 rules,
15 you're don't for the year and can't do any more. That might
16 be a good idea. I think, certainly, letting small companies
17 implement these rules at a slower pace makes more sense.
18 Usually the rule is designed for some large situation,
19 anyway, doesn't really have that much impact on smaller
20 companies.

21 I also, the issue on some of the things we
22 talked about, the FASB is moving to try to align U.S.
23 accounting principles with international accounting
24 standards, that's going to continue. If we don't allow
25 small companies to have some different rules, then they're

1 going to align themselves with international accounting
2 standards as well. Frankly, as an accountant I think that's
3 not a bad thing. So what I'm saying with all of that, I
4 don't think we're going to see a decline in the amount of
5 rule making. I would like to think that, but I know we
6 won't.

7 I think the issue is the opinions that come out
8 tend to be arcane, they tend to be written for other
9 accountants, they tend not to have much practical
10 application. There are very few FAQ's that go out, the SEC
11 from time to time puts FAQ's out, but by and large there are
12 very few companies, so you don't see a lot of work being
13 done by the FASB or the SEC in many cases coming out with
14 FAQ's aimed at here's how a smaller companies and
15 transactions more relevant to smaller companies being part
16 of that FAQ's, part of it because they're being written by
17 -- I'm looking for the chairman of BDO's comments tomorrow,
18 because he's got the secret society comment, and I'm anxious
19 to hear that. I'd like the -- I think it's true, by the
20 way, I absolutely think it's true. Some of these accounting
21 rules are written in such a way that the only people who
22 possibly could figure them out are the people that wrote
23 them and they may not be able to figure it out if they had

24 to apply a real life example to the opinion. I would point
25 to 133 as an example of that.

1 So, I would just suggest looking at maybe two
2 things. One is encouraging the standard setting bodies to
3 have FAQ's that are directed at smaller issuers. Secondly,
4 I think we've got to start to think about in this country,
5 there's got to be a technology solution to all of this
6 adoption, all of the adoption issues to help companies
7 comply with the accounting rules. I don't know what this
8 is, maybe there's intelligent software we can use or what
9 that all is, but there has got to be something different
10 than what's between my ears to help try to figure these
11 transactions out.

12 MR. JENSEN: Thank you.

13 MR. DENNIS: We've had very similar
14 discussions, and I appreciate your comments. I agree with
15 your comments about the FAQ's. I think the technology
16 solution, where we were headed down the road of if we
17 allowed smaller companies to use their auditors more,
18 management still has to take responsibility, they still have
19 to understand it, it's still their numbers, but if we could
20 use the auditors in that transition more, then that would
21 take some of the pain out of the system in the transition to

22 adopt and I use again the 123 example of when I asked

23 Patrick, I said, "Do you understand 123?"

24 He said, "Sure, I understand it all." I'm

25 probably putting words in his mouth. "But do I understand

1 123R? No, I don't understand any of it."

2 If we could get him through that first four to

3 five years, then does that help with the implementation, you

4 know, so that's kind of where we were headed as a group,

5 whether there's a technology solution or not, I don't know.

6 I think the complicated nature of the

7 statements -- I jokingly told George that we ought to limit

8 the FASB to fifteen pages. If they can't write it in

9 fifteen pages, it's too complicated. That's a joke, but it

10 has some seriousness to it, in that the standards are so

11 complicated and they're meant to be what I think is all

12 encompassing, because we're trying to think of every

13 possible way someone could violate the rules set in place

14 and if we go to the SEC's paper on the accounting, maybe we

15 move to more of a principles base with the EITF dealing with

16 the implementation issues, but -- I don't have an answer,

17 but somehow we have to make the system easier for

18 practitioners and preparers to use and implement and users

19 to understand, because right now I challenge a lot of people

20 to understand the disclosures that are in a public company's
21 filings.

22 Alex?

23 MR. DAVERN: Thank you, Leroy. I had a comment
24 and a question. The comment is to David. It's Alex Davern
25 here, by the way.

1 I think when we consider the impact of stock
2 option expensing and other non-cash charges, a system of
3 materiality for 404 reporting purposes I think is something
4 the 404 subcommittee should consider. I do agree with Leroy
5 in terms of pure accounting recognition, I'm not sure it
6 makes sense, but in relation to 404 specifically I think
7 it's an idea that should at least be considered, because it
8 can dramatically change the scope and expense of the process
9 and so we should put that on the table for our discussion.

10 I also have a question for Gerry. In terms of
11 somebody mentioned, I'm not sure who it was, that, is the
12 SEC looking at a paper on materiality? I hadn't heard that,
13 So I wanted to just pursue that question.

14 MR. LaPORTE: A paper on -- I'm sorry I didn't
15 understand.

16 MR. DAVERN: Materiality. One of the speakers
17 mentioned perhaps the SEC was considering publishing a paper

18 on materiality.

19 MR. LaPORTE: I think the reference may have
20 been to a paper from the Office of the Chief Accountant, and
21 I'm not sure if that's under consideration or not. I really
22 don't know the answer to your question.

23 MR. DAVERN: If it is, I think it would be
24 useful for the 404 committee to have some idea of what's
25 going to be in that when it does come out. Thank you.

1 MR. CONNOLLY: This is Drew Connolly. All
2 kidding aside, Mark, I credit you with this thinking, and it
3 really has helped frame my thinking to be on this committee.
4 The first person I went to speak with after being appointed
5 to this committee, I happened to be in San Jose, I looked up
6 Mark in his office, he was kind enough to spend an hour with
7 me. I emerged shaken, largely because you're talking to a
8 senior partner representing the venture capital industry,
9 one of the largest accounting firms in the country, and I'm
10 down here trying to represent little microcap companies and
11 there's clearly a chasm between the two.

12 But Mark give me what has framed a lot of my
13 thinking ever since, and I do credit you with that, as
14 opposed to -- and that is when I talked about well, why
15 wouldn't we want to try and make this standard less or why

16 wouldn't we want to try and find -- he said he was concerned
17 about permanently ghettoizing small issuers. Such that if
18 we were to have three standards, three tiers, we would
19 effectively be creating, the, quote, equivalent of the
20 permanent Pink Sheets and my hope is that we would -- the
21 old days Pink Sheets, because they've clearly improved.

22 My hope is in the exemptive relief we
23 recommend, my sense is every microcap CEO is a midcap CEO
24 waiting to burst out, is that we don't create this tier that
25 by definition is a disincentive to investors to invest or
1 somehow telegraphs that it is a more speculative security, a
2 higher risk just because of its size.

3 So I would be prepared to give up some of that
4 ease or simplicity of reporting requirement for, quote, the
5 respectability of being able to attract capital from the big
6 guys. We are supposedly encouraging capital formation, and
7 I'd hate to disincen that.

8 MR. BARRY: Can I just make a comment to that?
9 I think that part of the recommendation would actually do
10 the opposite, wouldn't ghettoize it. Basically taking the
11 smaller companies and saying, hey, I'm a \$25 million market
12 cap company, I don't have the expertise, I believe I should
13 live by the rules of the big guys. We're not saying

14 different accounting standards, we want the same standards.
15 We want to go to the auditors and say we want your
16 professional help to make sure we're up to the same level
17 that the big guys are in, so I think it actually
18 professionalizes the smaller companies and puts them on a
19 more level playing field, saying we want the same
20 regulations, we just don't have the resources to go out and
21 get them. PCAOB lighten up, let our auditors playing by the
22 same rules, what's the risk of letting our auditors helping
23 us implement 123R? I don't have the ability to do it myself
24 anyway, I have to go out and spend 50 or \$60,000 from a
25 Mercer Consulting or somebody like that. I'd rather have my
1 auditors do it. They're more familiar with it, they need to
2 in the end opine anyway.

3 It's one of the things, that, I sort of I live
4 in the world and want to get to the next step and I need
5 some help sometimes.

6 MR. WANDER: Janet?

7 MS. DOLAN: This is Janet Dolan.

8 Drew, I think your point is a very good one,
9 which is I think that everyone on our subcommittee has to
10 wrestle with it be ready to address. Are we making
11 recommendations that stigmatize a particular group because

12 we've somehow lead the public to believe that if you're on
13 one side of the line you're a lesser security for investment
14 or are we creating what we would call sort of "managed
15 implementation differences" so that we can say, the fact
16 that we are treating smaller companies differently in terms
17 of how we choose to implement or the timetable we ask to be
18 implemented or anything else doesn't undermine the security
19 that you should be able to, or the confidence you should
20 have in these companies. It simply acknowledges their size
21 and their resources and other things.

22 I think all of us when we finally get around to
23 evaluating any of these recommendations we are going to have
24 to take that into consideration saying what message are we
25 sending by the work we are putting forth.

1 MR. CLOUTIER: One other comment. We made in
2 our committee, and I'd like to make it here for a moment.
3 In smaller companies you have true independent auditors.
4 Because in my company, in most small companies, we don't pay
5 the auditor enough not to be independent. I mean, they're
6 not going to put their career on the line. The larger the
7 company gets, and the more money they pay, it may be an
8 interesting question of independence, when you are a big
9 hunk of the business as it was with Enron and some of those

10 guys.

11 I think when you're talking about smaller
12 companies, and Deloitte Touche are my auditors, I think
13 they're very independent, I pay them about \$82,000 a year.

14 MR. JENSEN: Make sure the record shows that.

15 MR. CLOUTIER: I am sure that for \$82,000 a
16 year, no partner is going to put their career on the line.
17 Nothing against my good accounting firm, because they're
18 excellent, but if I was paying 12 million a year in auditing
19 fees, I might get a little more attention. That's all I'm
20 saying, is that you got to remember, small companies have
21 very independent auditors, because we don't have enough to
22 not have totally independent auditors and we don't spend a
23 lot of time looking for loopholes and this is the other
24 thing I wish to point out.

25 The large companies, when FASB makes a ruling,
1 they automatically sit down for weeks and figure out where
2 the loopholes are, okay? So it's a different playing field,
3 and I think we need to realize that in this room that it is
4 not the same at a \$600 million bank as it is at Citicorp at
5 1.3 trillion. They have a lot more expertise, a lot more
6 people, they maybe figure out a loophole that they can go
7 through the back door that I haven't figured out or

8 whatever.

9 So the independence of auditors are very
10 independent in small companies because they'll walk in a
11 minute.

12 MR. DENNIS: That's a very, very good point and
13 one that I frankly hadn't thought of before, so thanks for
14 bringing that up. That's kind of where we're headed as far
15 as recommendations is that there ought to be more ability
16 for auditors to assist companies like yourself in adopting
17 these standards, because our sense is that doesn't impair
18 independence and maybe the difference is, like you said, a
19 company that pays \$10 million in audit fees to its auditor,
20 maybe it's got to live by a separate set of rules than
21 somebody that pays \$80,000.

22 MR. WANDER: I'll tell you a short story about
23 that. I was flying to a board meeting with some clients
24 around the time the Arthur Andersen indictment came down,
25 and being from Chicago, which is Arthur Andersen's home and
1 headquarters, and Chicago was an Arthur Andersen city for a
2 great many years, I said, "Well I'm surprised, because
3 Arthur Andersen audits a number of my clients and they're
4 really very strict. In fact, I think they're stricter than
5 some of the other firms."

6 And one of the directors said to me, "But Herb,
7 none of your clients are the size of Enron."

8 That somewhat proves that point. I would like
9 to make one other observation, dealing with the financial
10 statements are the companies and management prepares them
11 and make this observation from an audit committee
12 standpoint. One of the very frustrating things that's going
13 on today is there will be an issue, and management says it
14 should be X and the audit committee says, turns to the
15 independent auditors and says, "Well, do you agree?"

16 "Well, no, we'd really like to see management
17 fully flesh out that position, and then we'll look at it."

18 So the company goes back and does a position
19 paper. It's presented to the audit committee. Audit
20 committee says, "It sounds reasonable to us," and the
21 independent auditor says, "Well, I've got to go to
22 headquarters for this one."

23 So you go to the black box, and the black box
24 comes back and says, "No." You sort of sit back and say
25 well, why did I go through all this trouble, you knew it
1 would be no from day one. Why did I have to go through all
2 this work and everything else, and to that extent they
3 aren't my financial statements.

4 I must say it's one of the reasons I think that
5 tensions have built up between audit committees and the
6 independent auditors. It's interesting if you look at
7 Sarbanes-Oxley the section mandating independent audit
8 committees specifically says that the audit committee should
9 be the arbitrator and decision maker between management and
10 the outside auditors, which in practice is not true.

11 MR. DENNIS: Herb, I agree with you, on top of
12 which you'll probably get a qualified opinion on your 404
13 for having a wrong accounting error under our current system
14 and that's kind of where I'm at. If the auditors can help,
15 for lack of a better word going back to where we were, I'm
16 not sure for smaller public companies that we had a lot of
17 failures that occurred because the auditors assisted in a
18 123R or assisted in a disclosure matter on a financial
19 statement. Still has to be management's, management still
20 has to take responsibility for it, but I think there's just
21 a different set for companies that are smaller public
22 companies, as opposed to the large cap.

23 MR. JENSEN: Just a quick comment on this. I
24 think all the accounting firms are in alignment with that
25 recommendation. I don't think any of the accounting firms
1 like where we've been. I think Dan can speak to this, if

2 he's comfortable, I would encourage him to. I think that
3 PCAOB has opened this up, accounting firms have loosened up
4 their ability to work with clients. I think there still is
5 an issue, and I think it is a good solution now, that
6 clients have to be actively involved. The point that the
7 PCAOB has made is, you can't sit back and tell the auditor,
8 "Okay, just do it to me and tell me what it is." You've got
9 to work with the issue a little bit.

10 To your point, I think everybody is frustrated
11 with national office and I think that speaks to the issue of
12 arcane accounting principles, that even people around them
13 all the day can't figure out what's going on.

14 MR. GOELZER: I think we tried to make as
15 strong a statement as we could in the May 16th paper about
16 the fact that it's a desirable thing for clients large or
17 small to consult with their auditors about difficult
18 accounting issues and for that matter about internal control
19 issues, for example, simply asking a question or having a
20 discussion shouldn't lead to either a material weakness or
21 to an impairment of independence. That's something we
22 issued quite recently. Now we'll see how it works out in
23 practice, but I think we're pretty much on the same wave
24 length as this discussion.

25 MR. DENNIS: I think the paper issued by the
1 SEC and the PCAOB is very good and we'll see how that gets
2 fleshed out in this discussion. One of the things we need
3 to think about as a group is, again, if you cross the line
4 on independence, is crossing the line the same for every
5 violation or should we allow some levels of materiality --
6 maybe materiality is a bad word, but levels of significance
7 in crossing that line on independence, because right now I
8 think we still have the audit firms that want to err on the
9 side of cautiousness as it relates to independence, because
10 the penalties for going over that line are very severe, not
11 only for the audit firm but for the company itself, and
12 again, something I think we want to think about in our group
13 as we continue on here, Herb.

14 You know, that would go to allowing firms and
15 companies to be more aggressive in adopting what I think the
16 intent of the PCAOB and the SEC is.

17 MR. WANDER: To Dan's credit, I think Dan has
18 always said that you should be able to consult with your
19 outside accounting firm. I think, unfortunately, not
20 everybody was on board with that and it was very interesting
21 at the round table the SEC held on 404 that the gentleman
22 from GE said, you know, I've got, I don't know, 2,000

23 accountants working for me, but I need outside help, because
24 the large firms see different situations with other
25 companies. So I think there is a great need and I do hope
1 that the releases that came out on May 16th will go a long
2 way in solving that problem.

3 This has been a terrific discussion. Is there
4 anything else people would like to raise on accounting
5 standards before we move on to our last subcommittee report?
6 Steve?

7 MR. BOCHNER: Thank you, Herb.

8 I want to start by giving Rusty, who is on my
9 subcommittee, a piece of advice, which is that it's
10 dangerous to tell your audit firm that if you paid them \$12
11 million they would pay more attention to you, because I'm
12 sure Mark was thinking that could be arranged.

13 MR. JENSEN: That's absolutely true, by the
14 way.

15 MR. CONNOLLY: He's Blackberried that already.

16 MR. CLOUTIER: As a matter of fact, they
17 already sent me my increases for next year, they're headed
18 in that direction.

19 MR. BOCHNER: I, too, would like to thank the
20 members of my subcommittee. We've had several meetings and

21 they approached the issues with sensitivity and intelligence
22 and I'd like to thank the SEC for the help we've got on our
23 subcommittee and our Committee Chairs as well. We're the
24 Corporate Governance and Disclosure Subcommittee and if you
25 look at the sheer numbers of reforms under Sarbanes-Oxley,
1 the NASDAQ, the New York Stock Exchange and the SEC changes
2 in rules, regulations and the statute itself, really, this
3 is where the most number of changes have occurred.

4 Having said that, I think it really is the 404
5 area, which is outside of our purview, that has received the
6 most attention, because that seems to be where most of the
7 costs complaints, if you will, are centered.

8 We have various points of emphasis and focus
9 that we have narrowed down to and I think it's an ambitious
10 group of topics that we've been asked to take a look at, and
11 we were approaching this from the standpoint of where can we
12 make recommendations to the SEC where we could reduce costs,
13 while not unduly jeopardizing investor protection, so that
14 has also been the way we've looked at things, and these are
15 preliminary.

16 I want to have all of us keep an open mind.
17 We're going to hear testimony tomorrow, we're going to have
18 a couple of other follow-on meetings where we're going to

19 hear testimony where we're going to continue to get a lot of
20 good comment letters and responses to questionnaires, so we
21 look forward to getting those and those do have an impact on
22 our thinking.

23 So the first area that we've looked at is all
24 of the non-404 governance provisions, if you will, and these
25 would be things like audit committee independence, board
1 independence, comp and nominating committee independence,
2 code of ethics, whistleblower provisions, just the range of
3 items of governance reform that have fallen on public
4 companies as a result of Sarbanes-Oxley and SEC and SRO rule
5 making.

6 I think our initial reaction, based largely on
7 the comments we've received to date, as I said earlier, this
8 is not where a lot of the problems seem to be. We're not
9 hearing a lot of complaints out there yet that people are
10 having problems complying with code of ethics and audit
11 committee charter requirements and so on. Having said that,
12 we do want to take a hard look and receive input on the
13 independence issue that Dave has commented on.

14 For example, if you had independent, fully
15 independent nominating compensation and auditing functions,
16 would it be okay for smaller public companies to not have

17 the majority of the board be independent, question. Or is
18 it that where smaller companies are not having a problem in
19 this regard?

20 One of the rationales, perhaps, for considering
21 that is that smaller public companies have a different
22 problem set, fewer resources and therefore the directors
23 that they need to hire may need to have more operational
24 experience and many of the individuals that they tap for
25 that operational experience at the director level sometimes
1 conflict with the independence notions have been developed.
2 But we want to approach that gingerly we want to get some
3 feedback and see whether that's a problem.

4 In the area of the definition of independence,
5 I think our initial reaction was that these have been pretty
6 well thought out, although we're open to that as well,
7 whether the definitions are too restrictive. So we look
8 forward to getting more comments on that area.

9 The other area we've looked at is the whole
10 topic of the acceleration of '34 Act reports combined with
11 the new 8-K reporting requirements and we're cognizant of
12 the fact that public companies in general and smaller public
13 companies in particular are really getting squeezed by a
14 combination of having more processes, disclosure controls,

15 CEO CFO certification processes, internal control issues and
16 so on, while at the same time the amount of disclosure
17 that's required has increased and the time frames are
18 shortened, so that's a big squeeze coming from two different
19 directions, and so we would like to take a look at whether
20 the final phase-down in the accelerated reporting down to 60
21 and 35 days, 60 days for a 10-K filing and 35 days for a
22 10-Q filing maybe should be postponed, relaxed, not applied
23 to smaller companies on the theory that perhaps having more
24 time might reduce costs or if it doesn't reduce costs
25 perhaps it would improve disclosure.

1 We want to get more feedback on that. We have
2 gotten some feedback letters and several of the comments did
3 suggest this and so we're looking to getting more feedback
4 on those topics.

5 The next area is Regulation S-B and this does
6 get a little bit to the stigma issue that Drew mentioned.
7 S-B filers sometimes feel by identifying themselves as such
8 there's a little bit of a stigma here. We're wondering
9 whether there's a need to have a separate set of
10 regulations. In other words, is one possibility to reduce
11 the amount of overall regulation and maybe help reduce the
12 stigma is maybe not have an S-B, have an S-1, S-3, 10-Q,

13 10-K for everybody and have a new set of rules under item
14 S-K, which simply provides whatever relief smaller companies
15 as we define them get. Is that a good idea or not? We want
16 to get feedback on that.

17 Then associated with that, in addition to the
18 relief that's provided to small business issuers today, and
19 that 25 million threshold we think is too low, should there
20 be other types of relief such as the executive compensation
21 disclosure has gotten so complex, is that degree of
22 complexity and the cost associated with complying with that
23 appropriate for a smaller public company or should there be
24 some different set of provisions that don't require the same
25 number of accountants and lawyers and internal folks to
1 comply with that disclosure.

2 In the SEC's reform proposal, securities reform
3 proposal, there is some suggestion about broader
4 incorporation by reference and we think that's a good thing
5 and we want to look at encouraging a recommendation around
6 encouraging that where appropriate. For example, even for a
7 smaller company that might not be able to incorporate by
8 reference, you know, refer to already filed SEC documents,
9 should that be considered. In other words, would it reduce
10 costs, eliminate duplication to allow companies that have

11 been public for some period of time regardless of size, to
12 be able to reference already filed information rather than
13 having to repeat it in '34 Act filings. So we want to look
14 at that just from a cost of capital raising/cost of
15 compliance, perspective.

16 Connected to that, we're also intrigued by the
17 direction in the thinking in the securities reform proposal
18 concerning this concept of access, the increasing access
19 among our population to the Internet and documents filed
20 electronically and this idea that maybe it's now time for
21 the presumption to shift and to assume that the U.S.
22 investing public does have access to the Internet and
23 perhaps reduce the amount of paper, which is I think
24 particularly burdensome for smaller public companies, the
25 amount of paper that's produced with respect to not only the
1 capital raising process as suggested in the securities
2 reform proposal, proxy statements and annual reports, many
3 of us get big stacks of this stuff and if you get it
4 electronically you don't need stacks and we'll turn the
5 presumption around, we presume people have access, but if
6 you want a paper copy, there's also a way to get that in a
7 way that isn't overly costly to people who don't have access
8 to the Internet or otherwise want it in paper version.

9 Will that save money? Is that a good idea? We
10 want to continue to explore that.

11 And of course these costs are
12 disproportionately higher for smaller public companies which
13 have lower revenue.

14 The loan prohibition in Sarbanes-Oxley is
15 something we have talked about. We would approach that very
16 gingerly because universally people feel that's a good idea
17 in our subcommittee, but there are some problem areas for
18 issuers out there, just interpretive types of issues, like
19 certain types of cashless exercise mechanisms alone, what
20 about relocation loans? If you're moving from Minnesota to
21 where I live, it's tough to recruit unless you help somebody
22 buy a home, things like that, that, like I said, in our view
23 would be very limited and perhaps conditioned by approval of
24 independent directors.

25 We talked about materiality, so I won't raise
1 that again.

2 We also would love to receive input, we're
3 going to do some more thinking about the idea of whether or
4 not there should be a safe harbor for forward-looking
5 information for companies going public. The safe harbor
6 that exists today does not apply to IPOs and as a result you

7 have companies going public where there's no research
8 coverage at all, no research done arguably at a time when
9 the investing public most needs outlook information and is
10 that a good thing or will that open the floodgates to
11 companies recklessly providing forecasts out there that
12 don't have any basis. So we want to take a look at that,
13 whether the safe harbor should be extended to IPO's. Is
14 that a good thing? Will it help the capital raising process
15 or not?

16 Then we're also anxious to receive other kinds
17 of input. We're going to continue to explore whether there
18 are other aspects of '34 Act disclosure, the 8-K
19 requirements, information in 10-Q's and 10-K's, accounting
20 requirements and general disclosure requirements that should
21 be rolled back for smaller public companies, whether what's
22 there today, sort of a one-size-fits-all in most respects,
23 really is appropriate or should other types of relief be
24 extended to smaller public companies.

25 So that's our agenda.

1 MR. WANDER: Thanks, Steve, very much. Any
2 questions or comments? Yes, Kurt.

3 MR. SCHACHT: Hi, Steve. Kurt Schacht from the
4 CFA institute.

5 I was just a little curious about your comment
6 about executive compensation. Most of what we are hearing
7 about executive compensation, we heard from Chairman
8 Donaldson four weeks ago at one of our events, I listened to
9 former Chairman Arthur Levitt just last week saying
10 executive compensation is still sort of the elephant in the
11 living room and there needs to be more transparency and more
12 information associated with executive compensation and how
13 it's calculated and processed.

14 I think I heard you say that we should look at
15 this in the small company context as being too burdensome
16 and maybe cutting back on that.

17 MR. BOCHNER: I'm not going to contradict both
18 of those distinguished individuals, but I think that a lot
19 of this was the kind of, you know, corporate jet usage of
20 that kind of thing being disposed and I think a lot of that
21 doesn't exist at the smaller company level. A lot of that
22 is directed at larger company hidden perks, I think that's
23 the kind of thing the comments were focused on. I know
24 you've looked at those tables, but they're very complex
25 today. So I think we're just raising the question whether
1 smaller public companies, that's really, that problem that's
2 been identified really applies to smaller public companies

3 or do those smaller public companies really not provide that
4 many perks because their margins are thin and they don't
5 have corporate jets and so on.

6 MR. DENNIS: And you're not proposing to
7 eliminate the disclosures completely, just pull out certain
8 things and make it easier for them to comply.

9 MR. BOCHNER: Yes.

10 MR. WANDER: Any further questions, comments?
11 As you can see, there's some overlap among our various
12 subcommittees, which I don't think can be avoided. I think
13 it's actually quite healthy, but we have organized ourselves
14 on this basis so that we could try and do the maximum job
15 possible with the resources that are available to us, so
16 that's why we've organized that way.

17 Before we move on to the next agenda item, I
18 wonder if any of the subcommittee chairs or any of the
19 committee members have any comments or questions to one
20 another or would like to say something they didn't say in
21 their remarks?

22 Yes, Mark.

23 MR. JENSEN: Mark Jensen. One thing I think we
24 as a group need to think about, I don't want to distract
25 from the main agenda, but increasingly what we're seeing is

1 what I'll call the intersection of public companies with
2 private companies and the impact of Sarbanes at the public
3 company level now impacting what private companies need to
4 do, and I'm specifically thinking about partnerships between
5 private companies and public companies where because of
6 internal control requirements of a public company they're
7 looking for comfort around internal control systems in
8 smaller private companies. I think we're quickly seeing in
9 this country that Sarbanes and the governance provisions of
10 Sarbanes are quickly becoming best practices for corporate
11 governance. I think you're going to see a lot of increased
12 litigation coming up in the private company sector because
13 this is the best practice that companies need to aspire to.

14 I just don't think, for Ted's purpose, I told
15 the venture community I think we're going to see litigation
16 against venture capitalists because some smart plaintiff's
17 layer is going to say this is what best practices are and
18 you're not following it in the private company. This is the
19 way things work in the U.S. When we think about doing
20 things here, this transcends the public environment and it
21 does flows down hill to private companies, so I ask people
22 to keep in the back of their mind when they come up with
23 recommendations.

24 We're already seeing it. Companies are being
25 acquired, Steve can probably speak to companies being
1 acquired by public companies, require private companies to
2 have almost 404 like systems in place. More and more we're
3 seeing that is becoming shorthand in corporate America for
4 this is how companies do things. I think we do have to, if
5 we're going to make the changes, we have to make some
6 changes now, we need to get this course corrected now.

7 MR. CLOUTIER: I would like to, if I could, add
8 to Mark's point. As an SEC attorney told me, in my
9 industry, the bank thrift financial industry, what regulator
10 is going to go before Sarbane's Senate committee or Oxley's
11 House committee and say I didn't have these good governance
12 principles in the financial industry. I don't care if your
13 bank did 18 million or 1.3 billion, it is called good
14 governance principles now and it is being enforced right
15 down the line and I think that is very, very important to
16 look at.

17 And I think, you know, I'm back to a comment
18 Mark made earlier. I certainly hope people would slow down
19 a little bit and study things. I know FASB has this long
20 agenda of things they're dying to do and all of these groups
21 have these agendas. As a person who is an economist by

22 education, we are in a very good economy right now and
23 things are very good, but all of these costs come home to
24 roost when things turn a little sour. And I'm back to my
25 original statement.

1 I've never had a company default on me that had
2 cash. I mean, you know, I'm back to that again, that, you
3 know, let's when we look at all doing these things, are you
4 really improving the ability of the company to survive? And
5 as a person who went through the crisis in Louisiana and
6 Oklahoma and Texas in the late 1980's and went through some
7 of that, I can tell you, and i'm not trying to be a
8 pessimist, but if we get back there again, the kind of costs
9 we're talking about, is this going to make it better? Did
10 reserves for loan losses keep the banks strong? I can tell
11 you very clearly, it didn't.

12 These are some things we talk ought to
13 question, all these good governance procedures put on
14 private companies, is that going to help the country in the
15 long run?

16 I'm agreeing with what Mark said. Sometimes we
17 need to slow down a little bit and say: "What was the
18 problem?" As I said this morning, Herb, you were in the
19 meeting, we need to spend a little time on what really

20 happened with Enron and Worldcom and where the money came
21 from. I'm of the theory follow the money and you know what
22 happened.

23 We've got a lot of corporate governance things
24 coming up, but we're still not tracing what really happened
25 and if you trace the money I think you know what happened.

1 That's the only thing. I'm agreeing with Mark,
2 this is happening in my industry big time. The regulators
3 are in the banks like you wouldn't believe.

4 MR. CONNOLLY: If I may, I would like to agree
5 with my good friend Rusty, who is agreeing with his good
6 friend Mark and we're going to have comity here among the
7 colleagues. Mark obliquely touched on something that I
8 perhaps was going to wait until tomorrow to speak about, but
9 I think it's really critical we recognize that the capital
10 formation aspect of this, one of the four elements in our
11 charter was to encourage capital formation. I'm afraid that
12 in some senses we're being a little too timid. We're acting
13 in the world of, you know, watching out for investor
14 protection.

15 I assure you, the Enforcement Division Market
16 Regulation and 4200 lawyers at the SEC view that as their
17 mandate, and I know for one that my mandate is to help the

18 little companies that come to me attract capital so they can
19 grow, become taxpayers, employers, and somehow find their
20 way through this mine field of thickets of regulation and
21 concern that are being put in place allegedly for their
22 investors to be protected.

23 So my hope is, as you referenced, here in the
24 U.S., I am aware and I expect to meet tomorrow afternoon
25 with the marketing representatives of AIM, the alternative
1 investment market from London, because they're here in New
2 York and they're approaching U.S. companies right now to
3 come off of U.S.-listed exchanges to move overseas, and I am
4 very concerned that unless we get this right, more of that
5 will be happening, and that we will in fact be outsourcing
6 our capital funding opportunities here and encouraging small
7 business growth.

8 So I would just request that our friends here
9 and the folks who may or may not be listening in the broader
10 world come up with some "art of the possibles" to assist the
11 companies not only just containing costs, because that's
12 clearly part of the game, but how do we bring the investors
13 back? How do we provide the confidence levels and the
14 enthusiasms to make the United States have their investors
15 take stock in America, and I'd like to try and figure out

16 how to do that.

17 MR. WANDER: Any other --

18 MR. JAFFEE: I would like to try to make a
19 comment. I've been sitting here struggling to try to figure
20 out how to communicate this. Let me take a whack at it.

21 It seems to me as I've stepped back from all
22 these problems, and I got my CPA before there was word
23 processing and we were adding numbers up by hand, okay? So
24 things were a hell of a lot simpler in 1957. And it seems
25 to me that much of the problems we've been struggling with
1 are because we have moved from principle-based accounting to
2 rule-based accounting. The rules are so complicated and are
3 so many that a person who wants to find a way around them
4 does and I won't bother to waste time with all the examples
5 of how that's happened.

6 So then our committee is now sitting here
7 talking about making some, what I consider to be pretty
8 modest, changes in rules. So we're stuck within the rule
9 sort of base, and I understand that's what we started out to
10 do and probably is the only thing we can do, but I'm
11 wondering if as we give our recommendations if we shouldn't
12 spend some time in putting together a preamble that is not
13 so specific rule-based, but deals with principles that have

14 been talked about in the room here, so that at least we get
15 on the record for future generations that we're not
16 satisfied with the principles.

17 What do I mean by that? First of all, the FASB
18 thing being so complicated, so difficult, that reasonably
19 intelligent people are asking for a couple of years so I can
20 understand implementation. That seems to be crazy. There
21 ought to be a statement that they ought to come out with
22 stuff that people can understand.

23 I think reiterating the idea of the auditors
24 about being advisers without being compromised for
25 independence is a principle that ought to be there. I think
1 there are other things and I'm not smart enough to come up
2 with them, but I just think the more I think about what
3 we're doing, make little bitty changes on rules is only part
4 of the job. That's what I'm trying to communicate.

5 MR. THYEN: Dick, I think you are absolutely
6 right. I think a huge cancer is when you become so rules
7 based that you drive the leadership of a company to do
8 nothing but focus inside, and to be so concerned about doing
9 something wrong, and that mind share cost, that opportunity
10 cost is a huge cancer on successful growth in the
11 marketplace, which is really the basis for capital formation

12 and healthy public capital markets. And it is stifling,
13 particularly, you can debate micro, you can debate small,
14 but it is absolutely stifling what we're doing to executive
15 leadership teams of companies that are fighting and
16 struggling to stay focused on their customers, focused on
17 serving their markets in this global competitive world.
18 It's a cancer that's driving us inside.

19 And Rusty, I agree with you. The cash, we've
20 always said, you keep that balance sheet healthy, a local
21 saying is when you go into a famine, a fat man gets skinny,
22 a skinny man dies, and cash is very important. And I think
23 this internal focus is just consuming the cash and the
24 capital and the mind share that is so important for all of
25 our companies to be healthy. Because we're driving inside,
1 the more rules we write, the more we're forced, how do we
2 get around these rules to stay competitive and it's a
3 cancer. We have to get more aggressive.

4 MR. JAFFEE: I remember when the Enron thing
5 first surfaced in my consciousness and somebody said to me,
6 a special purpose entity, if you have 3 percent outside
7 equity, you don't have to consolidate it. And I said to
8 myself, I don't believe that. That can't be possible. When
9 I went to accounting school, you know, if you owned more

10 than 50 percent of something you consolidated. I called up
11 my accounting firm at that time, which was a smaller firm,
12 we subsequently moved to a bigger one after this, I said
13 what about this special purpose entity, this 3% thing. I
14 couldn't get an answer because they didn't have any clients
15 that dealt with that sort of stuff.

16 This is the point you were making, Rusty, is
17 that we smaller people are struggling to deal with a problem
18 that was not of our own making. There was a few very large
19 companies that found their way around these very complex
20 rules. It's just a lot of frustration. I don't know what
21 the answer is, but it's a lot of frustration.

22 MR. DAVERN: I'd like to make one comment, Alex
23 Davern here. I have perhaps a slightly unique background to
24 bring to bear on this question in that I qualified as a CPA
25 in the United States when I moved to the States in the early
1 '90s, but I also qualified as a chartered accountant in
2 Ireland and the UK in the mid-'80s when I came out of school
3 in Dublin. When I moved to the States the accounting
4 standards body in the UK and Ireland was on GAAP standard
5 was number 22 and the United States was on, I think it was
6 FAS 109, so I was quite flabbergasted for want of a better
7 word when I came to the United States and looked at the

8 rules and the number of rules and the length of the
9 documents that we were required to apply versus what is
10 going on in the UK and Ireland, and it was such a gap that
11 it was hard to credit.

12 Now, when you come and qualify as a CPA in the
13 United States you get absolutely no credit for having
14 qualified anywhere else in the world, so you start from
15 scratch, given there are so many more rules, I guess that
16 makes sense. I would echo Dick's comments and, again, this
17 is probably way outside the purview of this committee and I
18 don't mean to beat on George here, but it is quite
19 staggering when we compare the complexity of the accounting
20 rules here. I don't think anybody would argue that the UK
21 securities industry is one that people don't have confidence
22 in. I think the UK securities industry has proved to be
23 very successful, very robust, very internationally
24 competitive, and I echo what Drew said, one of the key
25 messages of the AeA group, is that the burden of regulation,
1 especially 404, is going to drive certainly foreign
2 companies to leave the U.S. markets and go elsewhere.

3 I would urge us to consider this. I want to
4 make one anecdote, which is probably completely
5 inappropriate, but I'll make it anyway. The U.S.

6 Constitution is a pretty simple document, I don't know how
7 many pages are in it exactly, but it's a fairly thin
8 document. The European constitution they tried to get past
9 was about 300 pages long and people didn't understand it, so
10 they didn't vote for it, and when I took a first look at FAS
11 123R, I nearly fell off my chair because I printed it out on
12 my printer and it's a stack about this thick. So if we can
13 run a country with a constitution of 20 pages, surely we can
14 figure out something a little simpler than that.

15 MR. BATAVICK: I would like to add something.
16 I take all the comments as very constructive criticism of
17 standard setting in the United States, but if you look at
18 the history of standard setting in the United States, it's
19 that we would love to have started on a principles-based
20 path, but given the environment that we have been in, that
21 we continue to be in, every time we go down the path of
22 trying to set a general principle and general standard, our
23 open due process allows for our constituents to come in and
24 provide a lot of comments. And whether it be the preparer
25 community, whether it be the user community or even the
1 auditor community, it's always, well, what about this, what
2 about that, what about this situation, surely this shouldn't
3 be covered and then what happens is that you start making

4 exceptions to the general principle that you're trying to
5 accomplish.

6 If you look at, let's say Statement 133, which
7 is now 875 pages. We started off by saying that derivatives
8 should be measured at fair value, simple. Everybody said,
9 wait a minute, if I'm hedging my oil inventory, you surely
10 don't mean I have to mark that before I sell my inventory
11 are you? Okay, well, what do you want, then? I want cash
12 flow hedge accounting. So once you introduce cash flow
13 hedge accounting -- that's an example.

14 If you look at Statement 115 where we could
15 have very easily said, if you have a marketable security and
16 the value changes, then mark that through earnings and
17 people said no, we can't do that we're not in a business.
18 So we created three tiers, we had the available for sale,
19 held to maturity. So what I'm saying is that our efforts to
20 try to appease and try to give what we thought constituents
21 wanted has actually ended up creating so many exceptions and
22 so many rules and every time we try to go out with even the
23 simplest of standards somebody says, you know what, we would
24 like to have at least five more implementation examples in
25 the back or we would like to have this paragraph include
1 this or include that.

2 So perhaps maybe we have tried to incorporate
3 too many of our constituents' views to try not to have any
4 type of unintended consequences of our standards, but by
5 doing that, you're right, we probably have created monsters
6 when it comes to certain standards, so I think the criticism
7 I hear is very constructive.

8 I think that one of the things both the report
9 of the SEC on Sarbanes-Oxley and most recently yesterday
10 when they released their off balance sheet report they very
11 clearly said we have to move towards more principles-based
12 standards. If we set a principle in Norwalk and if General
13 Electric interprets it one way and is very grounded in how
14 they interpret that, and a smaller public company interprets
15 it that way, and they're all right, what we have to have is
16 a system that allows for both of those transactions being
17 accepted as reported.

18 And right now I think that you have auditing
19 firms that wouldn't allow that and I think you'd probably
20 have a regulator in Washington that probably wouldn't allow
21 that.

22 So I think it's going to take not only us to
23 move to more principles-based, but I think it's going to
24 have to have a sea change in the way people think about

25 things. Of course, the back course of this is also in the
1 backdrop of our litigious society that we have right now.
2 If you back off, get a little relief on tort and if we could
3 get the preparers and the auditors and the regulators on the
4 same page, then I think we have a very good chance of going
5 to more principles-based.

6 MR. JENSEN: I want to say something about
7 that. I appreciate your comments. I didn't start in 1977.

8 MR. JAFFEE: I started with your firm,
9 incidentally.

10 MR. JENSEN: When I started practicing public
11 accounting, we were on FASB 19, so it's been a few years,
12 although not that many, I'm amazed at that. And typically
13 as a young accountant, when we had an issue with a client,
14 you'd walk in and sit down with a partner, who almost always
15 was male and almost always smoked a cigar, which I hated,
16 and you'd ask the question and they would lean back in their
17 chair and draw upon what I considered to be extreme wisdom
18 and experience, it was probably BS, but he basically worked
19 through the economics of the situation and basically tried
20 to apply common sense to it, and tried to apply the real
21 economics of the situation and let the books and records
22 reflect that. So you had a disparity in practice, because

23 people saw things differently.

24 To your point, what changed in the United
25 States, when I started practicing public accounting, if an
1 accounting firm had a lawsuit, it was not discussed openly
2 inside, you were forbidden to talk about it inside the firm.
3 The only people who knew about it were the senior partners.
4 It was considered to be an embarrassment it was assumed
5 somebody made a mistake and that person was going to get
6 punished and we all knew it. What changed in this country
7 is open season on accountants by lawyers. Not to -- it's
8 always my favorite profession and since we had an accountant
9 focus, we can shift it on the lawyers, because we can blame
10 them for everything.

11 As litigation in the country grew, accounting
12 fees went up to cover that litigation cost, the rules,
13 because accountants were trying to protect themselves had to
14 move away from principle-based, I thought they were
15 principles-based back then, because it was largely figure it
16 out and do what's right.

17 I think I would agree with your comment. It's
18 outside the purview of this committee, but maybe not. I
19 absolutely believe you're not going to see movement on the
20 part of the accounting firms backing away from the kind of

21 low threshold on materiality, the kind of judgments that's
22 being applied without some kind of meaningful tort reform.
23 There's a group of us in the room, there's a few of us in
24 the room that every day bet our houses about five hundred
25 times a day that somebody in our firm got it right and if
1 they didn't we've got enough capital to cover what the
2 damage is going to be.

3 MR. DENNIS: Mark, I want to add a couple of
4 things. I heard your CEO talk one time and I think his
5 comment was if your client lost a half a percent on its
6 market cap and they blamed the auditors you're out of
7 business.

8 In support of FASB staff, the comment I would
9 make is I don't think there's very many pronouncements that
10 were issued that are not in response to something. To some
11 extent we're our own worst enemy here. We wouldn't have
12 issued FIN 46, which is a fairly simple standard, it says
13 don't do what Enron did. But it's I don't know how many
14 hundreds of pages long trying to figure out, because what
15 everyone wants to do is Wall Street comes in and says, well,
16 what about this, here's a way I can do this, so the FASB
17 staff says here's a way I'm going to stop you from doing
18 this.

19 To some extent we're our own worst enemy with
20 trying to develop ways around the rules, and you can't write
21 enough rules to do that.

22 I would love to get to principles-based
23 standards. I think we have to have management, Wall Street
24 and the accountants all with the guts to stand up and say
25 we're going to be a principles-based economy.

1 And I wonder as I hear some of the comments
2 here, if we've tried to write rules to protect the 1 percent
3 of the companies that are dishonest at the expense of
4 punishing the 99 percent that are honest people and just
5 trying to do good for the shareholders.

6 MR. CONNOLLY: Hear, hear.

7 MR. DENNIS: The problem is the 1 percent that
8 are dishonest are probably extremely dishonest, but I'm not
9 sure if anything we've done with SOX or anything else is
10 going to stop that, because if they're dishonest, they'll
11 figure out a way around it and hopefully the lawyers and
12 Wall Street will try not to associate with those people. A
13 lot of theory, and I don't know if it means anything, Herb,
14 but it's a couple of comments I heard from here.

15 MR. CLOUTIER: Herb, let me mention a couple of
16 things just from my experience, put things a little bit in

17 perspective, to go back to Chicago, 1989, Continental
18 Illinois Bank. Continental Illinois today would be a
19 community bank. The country has changed dramatically in
20 fifteen years, dramatically, and I think we need to realize
21 that. When we talk about, well, we don't want different
22 standards from small companies and large companies. You're
23 not talking about a little large company now, you're talking
24 about humongous companies. Companies that can write a check
25 for \$2 billion for the involvement in Enron and not even
1 take a blip in their stock price, just walk right by it and
2 say yeah, we were engaged, okay?

3 Two billion fifteen years ago would have shut
4 down any company in this country, so it is really, really
5 different.

6 As someone told me the other day, try to think
7 of an industry that is not totally becoming consolidated and
8 we're talking about the smallest part of the industry down
9 here at the 500 million market cap and under. I mean, I'm
10 sure Deloitte has more than 500 million in capital, so those
11 can go bankrupt every day, it wouldn't bother them. We have
12 changed, again, so dramatically in this country by
13 consolidation that it is a different game. I mean, if you
14 want to talk about retail, you want to talk about food

15 services, you want to talk about banking, you want to talk
16 about oil, you want to talk about agriculture, any of those,
17 it has become a totally consolidated industry with fewer and
18 fewer players and the small people are just trying to make
19 their way into it.

20 I'm not sure there's not already a difference
21 perceived in the market between the large and the small and
22 maybe we're kidding ourselves by saying that we put S-B or
23 something on them or we have different accounting standards
24 the market is going to treat them differently. Everybody
25 understands that the bank regulators recently came out with
1 something that I think was very good, that is complex and
2 non-complex banks. I'm a non-complex bank. In other words,
3 I'm in the banking business, I'm not in options trading,
4 derivatives and all this other stuff and they regulate you
5 different. I think that's important for us to think about.
6 It's a different country than it was fifteen years ago.

7 MR. SCHLEIN: In an effort to bring this back
8 to the SOX conversation, the macroeconomics, I'm sure are
9 not lost on anybody, and just doing the math as a cost
10 benefit analysis for the country, or for the economy, 8,000
11 public companies, average of \$2 million per public company,
12 put a 20X multiple on it. I can't do the math in my head,

13 but I'm sure it's in excess of a trillion dollars in market
14 value. That's what you're trading off for some of these new
15 reforms or these new rules.

16 Is it worth it, is it not worth it? That's to
17 me the macroeconomic view of this.

18 MR. THYEN: I think one other thing, building
19 on that, Ted, what we're trading off is any smaller company,
20 building off of Rusty's comment of consolidation, is that
21 all smaller companies compete on skill, they don't compete
22 on scale, and the very large companies compete on scale,
23 they leverage the entire supply chain. Maybe you call it
24 complex, non-complex and the regulations, the rules, when
25 they're specific to the general, one Enron, therefore, apply
1 it to all, kills skill. It kills innovation, it kills
2 flexibility and it stifles all of the things that grow
3 smaller public companies. It takes away all of the skill
4 that we compete on in the marketplace.

5 MR. WANDER: And you don't have the cushion of
6 the \$2 billion settlement. It's interesting. A friend of
7 mine said "It's unbelievable that someone could pay
8 \$2 billion on the JP Morgan Chase settlement and nothing
9 happens, nobody goes crazy or the stock doesn't drop or
10 anything else."

11 I think this discussion has been healthy. I
12 don't want to really cut it off, we don't get a chance to
13 get together that often, but everybody's views I think are
14 extremely valuable.

15 Jan?

16 MS. DOLAN: I wanted to follow up on Ted's
17 comment. I thought what we heard in the last 45 minutes,
18 the level of frustration you hear, I think you can magnify
19 that by thinking of the frustration of everyone we
20 represent, the public companies. We're not going to change
21 our litigious society overnight, but we can say what can we
22 do, working on Ted's comment. We can first of all put the
23 cost value relationship in front of people and come up with
24 practical pragmatic recommendations that address it.

25 We can't make the SEC or PCAOB or anybody else
1 do it, but at least we can do our job, which is to say
2 here's some very practical proposals that match what should
3 be regulated with the scale and value that it creates for
4 small companies.

5 So I just think we've got to stay very focused
6 on not getting too far afield in terms of all the reasons
7 why it wouldn't work and stay very focused on what we really
8 can do to make a difference and it can make a difference if

9 we stay very focused on what can we do to try to make this a
10 much more rational reaction rather than the overreaction
11 one-size-fits-all that we've been living with for about two
12 years.

13 MR. CONNOLLY: My final remark, I know it's a
14 little hard to believe --

15 MR. WANDER: It's not, I'm sure.

16 MR. CONNOLLY: You're probably right.

17 Drew Connolly. The one part, speaking to that,
18 Janet, to the art of the possible, what's feasible, without
19 having to be scope-free, because frankly we managed to get
20 it on the initial agenda, there is a whole lot of pushback,
21 firstly, I guess to make this fully encompassed. We
22 obviously need to thank Gerry and Allen, the folks within
23 the Small Business and Corporate Finance Division of the
24 Commission, but there's a whole lot of pushback in a couple
25 of the other divisions to the issues of small business, and
1 I don't know how many of us have interacted with them or
2 have concerned ourselves with them, but I'll take Market
3 Regulation, because Enforcement is for another day, right?

4 Market Regulation, as I understand it, has a
5 real problem with small business generally and with a very
6 specific issue fundamentally and that issue is of finders,

7 and just a quick anecdote. Last week I was in Bellevue,
8 Washington, a client of mine is headquartered there. We
9 were standing around, a securities attorney was sitting
10 around talking, saying, "You know what, my client is the
11 largest Mercedes-Benz dealer in town. His customers come to
12 him all the time and say, 'We got some money, you got any
13 great companies we can put it in here?'"

14 The Mercedes dealer knows three or four
15 companies that need capital. He wants to figure out how to
16 get paid and he can't get paid under the current scenario
17 without becoming a either a registered advisor or a broker-
18 dealer. I've spoken to our observer, who is the securities
19 regulator for the State of Nebraska, as to what would
20 satisfy on an unofficial basis the state regulator's
21 concerns about finders. I have not had access to the Market
22 Regulation people as to what would satisfy their concerns,
23 but it seems to me that a very simple registration; name,
24 address, phone number, Social Security, education, some of
25 the issues that go into a CRD filing with the Securities and
1 Exchange Commission so they know who is doing what to whom
2 and more importantly if you're a little company looking for
3 money you have a central database of people who
4 professionally raise money might not meet that test and help

5 in the capital formation issue.

6 MR. WANDER: Gerry.

7 MR. LaPORTE: I don't know if you realize this,
8 but the American Bar Association appointed a task force on
9 finders about three or four years ago and they did issue
10 their report last week. I'm sure the SEC staff is going to
11 take a careful look at that report, so you may see some
12 traction on that issue from the SEC in the future. I'm not
13 promising anything, but one of the outstanding issues was
14 what position is the American Bar Association was going to
15 take.

16 MR. CONNOLLY: I hate to ask this in the middle
17 of a law school but are the lawyers on our side?

18 MR. WANDER: I've read the report. Yes, I
19 think so. It's for, what you say, sort of a mini-
20 registration so you have jurisdiction over people, hopefully
21 you clean up the marketplace. You probably can get it on
22 the web page, the Business Law section of the American Bar
23 Association, and if you can't, let me know and I'll get you
24 a copy of it. It's actually got some very prominent names
25 that have signed it. I mean, people you would think would
1 not be involved in this very small mini-cap finders arena.

2 MR. CLOUTIER: Herb, Rusty Cloutier. Just one

3 comment back to Janet's comment, I wanted to mention, I
4 think it's very important to write a preamble, like James
5 said. I think that is critical. We've got to get that
6 message out.

7 Let me say one thing, having represented small
8 companies the last five years, and the job I had on the
9 board of independent community bankers, believe me, they
10 spend a lot of time making sure that small bankers have a
11 difficult life. When we put out there changes for the small
12 companies, they're going to show up immediately saying no,
13 no, no, no, no, we don't want them to have any advantages.

14 I'll give you one example, this is almost
15 laughable, but with the Federal Reserve Bank, we just have
16 got them and the OCC to agree to raise CRA from 250 million
17 to a billion dollars. The financial services round table
18 representing the fifteen largest bankers in the country,
19 smallest member is \$600 billion, said that it would be
20 competitors to them and they're not sure they could stay in
21 business if the small banks were given this opportunity. So
22 that's why you have to have a preamble, because the large
23 companies are going to show up and say you shouldn't cut
24 them anything. They work very hard, don't think they don't
25 spend a lot of time on these rules thinking how much of a

1 problem it is to them and how much of a problem it is their
2 competitor. If you don't think those two thousand people
3 they have are not working every day, they are.

4 So, I think a preamble is very important to set
5 the tone before you come with the changes, because I think
6 otherwise there's going to be a lot of comments that the
7 changes aren't needed.

8 MR. WANDER: Jim and I, we call that the me-too
9 complex. It exists, there's no question about it.

10 There's a famous Alan Jackson song about the
11 big guy drove the little guy out of business. In fact,
12 that's in large part what's happening in the country as
13 evidenced by the consolidation and so we are the finger in
14 the dike, hopefully we'll be even more important.

15 Again, I don't want to cut off comments. Are
16 there any others? If not, why don't we go on?

17 The next item on the agenda is the discussion
18 of factual input, and first hearings. We are having
19 hearings tomorrow morning. We would propose to have
20 hearings in Chicago and San Francisco. It really would be
21 helpful if each of you would let us know, Jim and I and
22 Gerry, what subjects you would like to have covered, where
23 we need further input, who would be a good witness, because

24 this is a great opportunity for us to get sort of one-on-one
25 with many of these people, ask them questions and have
1 presentations by them. I have talked, for example, to the
2 person who designs the Russell Indexes who will be in
3 Chicago, he wasn't available to come here, and what their
4 thought process is and how they do that, because very
5 interestingly, one of the initial ideas we had on the size
6 was picking something like the Russell 2000 and now I
7 understand Russell is going to have a new index that's
8 coming out June 23rd which is really, they were going to
9 call it the microcap but it's actually the bottom thousand
10 of the Russell 2000 and the next one thousand companies
11 which I think they say represents about 8 percent of the
12 market cap.

13 So think of people like that that you'd like to
14 come in and provide information for us.

15 The second area is questionnaires. I know
16 Steve has sent one in, of questions that he would like to
17 publish that we can ask for public comment on, and I would
18 hope that each of the subcommittees could get us a list of
19 questions, because time is fleeting, really, we'd like to
20 get them out. They have to be in a certain format under the
21 SEC rules, but I think if you get us the questions we'll be

22 able to format them so that it's appropriate.

23 The next is the SEC Office of Economic
24 Analysis, and Cindy has been here this morning, she's from
25 that office, she's been extremely helpful, and Alex must
1 talk to you every day, I guess, asking for additional
2 information, Cindy Alexander, so we have good support there
3 and each of the subcommittees or any particular member if
4 you think that there is something that she could be helpful
5 with, let us know.

6 And we're also going to try to get some
7 additional help from the SEC's Office of Risk Assessment,
8 because I think they are looking at how should the
9 Commission view companies, how should it be proactive ahead
10 of the next bubble that breaks and what are the risk
11 profiles that we may need more regulation or at least more
12 disclosure, et cetera, so we think that would be helpful.

13 If there are any other areas that you'd like us
14 to look into, let me know and in fact it was interesting,
15 Drew, that you mentioned AIM. I have a set up an
16 appointment to conference them by telephone to see what
17 other countries are doing about alternative trading markets.

18 MR. CONNOLLY: One of your witnesses tomorrow,
19 John O'Shea, was kind enough to allow me to come down to his

20 office to meet with the AIM folks, but he is, without
21 telegraphing his story, is enroute over to Dubai. He is a
22 member of multiple exchanges and has offices in various
23 parts of the world, but there is about to be a fairly
24 vibrant Middle Eastern exchange in Dubai and I think there's
25 a tier being created over there for their smaller type
1 companies.

2 MR. WANDER: We actually saw in one of the
3 magazines, San Paolo is setting up a small cap trading desk,
4 in effect, a trading floor. The information we have on AIM
5 is very sketchy, at least going through sort of the
6 Google-type searches and other information, but we're
7 looking into that as well. So time is somewhat limited and
8 our resources are somewhat limited, but if you give us some
9 ideas on other areas to look at, we will try and find
10 experts or get information.

11 Any comments?

12 MS. DOLAN: Herb, I just would say I think the
13 answer we got on whether there is some definitive work being
14 done on the SEC materiality was incomplete. That's a fairly
15 significant issue, so I would say that you or Jim, something
16 is owed in answer to that shortly, so we're not off in one
17 direction if we find out there's actually some substantive

18 work going on in another.

19 MR. DENNIS: There is. I am fairly confident
20 there is something going on at the SEC, in I'm not sure
21 which division, on materiality, but I'm not sure they know
22 the timetable as to when, and I think, I thought that was
23 common knowledge, quite frankly. I can follow up Herb if
24 you want.

25 MR. WANDER: I think, isn't it the Chief
1 Accountant's office?

2 MR. JENSEN: It's Alan Beller, and Alan
3 announced at our last meeting that they're working on that,
4 so it's public knowledge.

5 MR. DENNIS: I think their big issue is
6 transition, as I understand it, as to how to deal with
7 transitional issues.

8 MR. JENSEN: Having said that, I thought to
9 myself "good." The last time the SEC added rules on
10 independence, we added 30 percent to the audit fees. Just to
11 kind of help the SEC out. We've been nice to them this
12 afternoon.

13 MR. WANDER: That is one of the problems.
14 Speaking for lawyers, we're one of the worst offenders as
15 well, because we say we want bright lines. When a regulator

16 draws bright lines, they are always in the wrong place.

17 Right?

18 MR. JENSEN: They're always up here, never down
19 here.

20 MR. WANDER: So we want all these rules and we
21 want all this direction. I would, somebody asked this
22 morning, actually, I'm going to send out the Trumbell report
23 which is the English version of COSO. It's 12 pages, it's
24 not AS2. Somebody said, "What's the liability? Is the
25 liability greater under those circumstances than it is if
1 you had a 380-page document?" And I personally think that
2 liability would be less, but because you're less apt to trip
3 over things than you are if you have all these rules.

4 And really what Mark said earlier about, when
5 he first came into the business, well, what are the
6 economics of the situation and you should account for it
7 that way.

8 So in any event, that's something that we all
9 bring on ourselves, I guess, the Chinese proverb.

10 I put on the agenda, "reaffirm or revise
11 committee agenda," and I only did that so that if any of the
12 comment letters moved us to such an extent that we should
13 revise our agenda, I thought it would be appropriate to at

14 least explore that issue. I'll be blunt to say I don't
15 think -- I think the comment letters were very helpful, but
16 I don't think they have shown us some different direction
17 other than probably don't be too ambitious, do a good job on
18 the areas you're dealing with.

19 Is there any thought about revising or adding
20 to or subtracting from our agenda?

21 MR. DENNIS: Herb, on the accounting principles
22 area, one of the things we've talked about is emphasize
23 importance of cash in smaller companies. Okay, it's
24 important. I'm not sure what else we should say as far as
25 work that we need to do. It's important, we all recognize
1 it's important. I'm not sure we're apt to take off into a
2 different measurement criteria for cash in the accounting
3 world, so I'm not sure what we're going to do around that
4 item, other than to say yes, it's important.

5 MR. WANDER: Didn't Don Nicholaisen suggest
6 that he liked the other cash flow statement than the one
7 that's generally used? I'm not smart enough to go any
8 further than that.

9 MR. BATAVICK: I think the direct method as
10 opposed to the indirect method? He may have said that on
11 occasion and that is on our agenda in phase B of our

12 financial performance project that we have with the IASB, so
13 I would say it's probably within the year that that issue
14 will be addressed and so far the initial reaction is
15 pushback.

16 MR. WANDER: That's interesting. That's
17 interesting. But the analysts, too, I mean, if you looked
18 at some of these companies when the bubble burst, if you
19 sort of said what was their reported net income, and then
20 you looked to see what they paid out in dividend and then
21 you'd see what was my increase in net worth, it didn't jive.
22 Something was missing, and it was cash from there.

23 But very few analysts pointed that out, in my
24 view. In any event, I'm going to go on.

25 Discussion of our timetable. Jim and I
1 actually discussed this with our leaders at the SEC staff,
2 whether, frankly, the change of leadership at the SEC might
3 suggest to us that we either speed up or slow down our
4 timetable, and I think our conclusion, which we submit to
5 all of you, is that we stay on course with our timetable
6 that's out, to have our job done in thirteen months, but I
7 did want you to know that we looked at it and if any of you
8 have any comments or suggestions, we're obviously open to
9 them.

10 The next item is next steps, planning for the
11 August meeting. We will try and have the August meeting out
12 very soon, the agenda, et cetera. List of witnesses, please
13 get those to us as quickly as possible. It will probably be
14 another day and a half meeting. One of the reasons I sort
15 of scheduled it in Chicago at that time is it's at the
16 conclusion of the American Bar Association annual meeting
17 which will be in Chicago, and as a result we probably will
18 have a number of people we can get to stay over who I think
19 would be very helpful as witnesses in our hearings. So
20 that's one of the reasons we chose Chicago.

21 Hopefully, the weather will be great, Dave,
22 right? Not too hot, not too cold.

23 MR. DENNIS: Herb, we were wondering if the
24 Cubs were in town.

25 MR. WANDER: Well, since I'm a White Sox fan--

1 MR. THYEN: Those tickets are half price,
2 right?

3 MR. WANDER: The White Sox are in town that
4 previous weekend. I don't think the Cubs are. We have the
5 best record in baseball, but no attendance.

6 Are there any other items to be brought before
7 the Committee? If not, we would adjourn, we can adjourn,

8 but I would like to make one comment.

9 Having spent so far all day today and our
10 previous meeting with all of you, I am enormously impressed
11 by the dedication and skill and experience that you all
12 brought to the table here, and can't thank you enough for
13 really volunteering to be on this committee. I think our
14 discussion that we just had shows you the importance of this
15 for essentially the country, the economy, and I must tell,
16 say to each of you that you're just doing a superb job, at
17 least I thank you and I'm sure Jim does, too.

18 MR. THYEN: I would like to echo that. I said
19 earlier in our opening comments that we are diverse in our
20 experience, our background and our points of view, and yet
21 the caring, committed way in which we're approaching this
22 professionally and to keep the problems on the center of the
23 table and focus on the problem rather than on our
24 differences I think is very, very commendable.

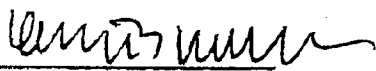
25 Thank you for your time.

1 MR. WANDER: Hearing nothing else, we're
2 adjourned. Thanks.

3 (Time noted: 3:53 p.m.)

CERTIFICATION

I hereby certify the accuracy of this record of the proceedings of the SEC
Advisory Committee on Smaller Public Companies.


Herbert S. Wander
Committee Co-Chair

September 12, 2005
Date

Exhibit A: List of Members of the Public Who Provided Written Statements and Presentations

- Jun. 17, 2005 Professor William J. Carney; see also slide presentation
- Jun. 17, 2005 Edward S. Knight, Executive Vice President and General Counsel, The Nasdaq Stock Market, Inc.
- Jun. 16, 2005 Murray S. Cohen, CEO, Epolin
- Jun. 16, 2005 John P. O'Shea, President, Westminster Securities Corp
- Jun. 16, 2005 David L. Cox, Chairman, President and CEO, Emclaire Financial Corp., Farmers National Bank
- Jun. 15, 2005 Opening Statement of David N. Feldman, Managing Partner, Feldman Weinstein LLP
- Jun. 14, 2005 Gayle Essary, Managing Director, Investrend Research and CEO, Investrend Communications, Inc.
- Jun. 13, 2005 Andrea Psoras, Principal, Strategic Advisory; Member, New York Society of Security Analysts
- Jun. 12, 2005 Samuel J. Yake, Paoli, Pennsylvania
- Jun. 10, 2005 R. Cromwell Coulson, Chief Executive Officer, Pink Sheets
- Jun. 08, 2005 William (Bill) A. Loving, Jr., Executive Vice President and Chief Executive Officer of Pendleton County Bank on behalf of the Independent Community Bankers of America
- Jun. 08, 2005 Stephen J. Nelson, The Nelson Law Firm LLC
- Jun. 08, 2005 Philip V. Oppenheimer, Oppenheimer & Close, Inc.
- Jun. 08, 2005 Steve Nagel, President, Kolorfusion International, Inc.
- Jun. 08, 2005 Karl Kurwan
- Jun. 08, 2005 Victoria Duff, CEO, Bold Ventures Group
- Jun. 07, 2005 Michael Ramos, CPA
- Jun. 07, 2005 Karl P. Barrickel, Barbara Blackford, Linda K. Wackwitz, Subcommittee on Smaller Public

Jun. 06, 2005 Richard D. Brounstein, Chairman of the Small Public Company Task Force, Financial Executives International and Member of the SEC Advisory Committee on Smaller Public Companies

Jun. 06, 2005 Richard D. Brounstein, Chairman of the Small Public Company Task Force, Financial Executives International

Jun. 01, 2005 Deloitte & Touche LLP

May 31, 2005 Karen Kerrigan, President & CEO, Small Business & Entrepreneurship Council, Washington, District of Columbia

May 31, 2005 Robert J. Kueppers, Chair, Center for Public Company Audit Firms

May 31, 2005 Ernst & Young LLP

May 31, 2005 Charles W. Barkley, Attorney at Law, Charlotte, North Carolina

May 31, 2005 Ronald J. Simpson, Chief Financial Officer, Minefinders Corporation Ltd.

May 31, 2005 Debra Fiakas, CFA, Managing Director, Crystal Equity Research, New York, New York

May 31, 2005 Stephen M. Brock, CEO & President, Public Company Management Corporation, www.PublicCompanyManagement.com , www.PubcoWhitePapers.com

May 31, 2005 Joel Jameson, President, Silicon Economics, Inc., Cupertino, California

May 31, 2005 BDO Seidman, LLP

May 31, 2005 KPMG LLP

May 30, 2005 Michael T. Williams, Esq., Williams Law Group, P.A., Tampa, FL

May 30, 2005 David N. Feldman, Managing Partner, Feldman Weinstein LLP

May 26, 2005 Peter Chepucavage

May 26, 2005 Steven J. Sharp

May 26, 2005 Phillips W. Smith, Ph.D., Paradise Valley, Arizona

May 24, 2005 Kathryn Burns, Vice President and Director of Finance, Monroe Bank

May 24, 2005 John B. Williamson, III, Chairman, President and CEO of RGC Resources, Inc.: RGCO; Director and Audit Committee Chairman of Optical Cable Corporation: OCCF; Director and Audit Committee Chairman of Botetourt Bankshares Inc.: BORT.OB

May 24, 2005 Gayle Essary, Managing Director, Investrend Research (<http://www.investrendresearch.com>), CEO, Investrend Communications, Inc. (<http://www.investrend.com>)

May 24, 2005 Brad Smith, President, WBS&A, Ltd.

May 23, 2005 Scott Shaw

May 17, 2005 James A. Brodie, Managing Director, Carr Securities

May 11, 2005 Frederick D. Lipman, Blank Rome LLP, Philadelphia, Pennsylvania