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United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP
WASHINGTON, DC 20510–6350

October 26, 2005

The Honorable Christopher Cox
Chairman
U.S. Securities and Exchange Commission
Room 6100
Washington, DC 20549

Dear Chairman Cox:

I would like to congratulate you on your recent appointment as Chairman of the U.S. Securities and Exchange Commission, and express my strong support for the important and timely work of the SEC's Advisory Committee on Smaller Public Companies. As you know, in 2002 Congress enacted the Sarbanes Oxley-Act, which I supported, in response to abusive corporate accounting practices. The Act promotes good corporate governance and protects shareholders. However, as Chair of the Senate Committee on Small Business and Entrepreneurship, I have heard from small business owners about the unintended consequences of the Act on their competitiveness, access to capital, and ability to continue as publicly traded companies.

Because of these concerns, last October Senator Michael Enzi and I asked the Government Accountability Office to study the Act's effects on small businesses' access to capital, and to determine if the Act places a disproportionate compliance burden on small businesses. This important study will be available by year end.

I believe that the best way to develop rules that impact small businesses is to actively involve the businesses in the regulatory formation process. Consequently, I would like to continue to work closely with the SEC and the Advisory Committee to ensure that the concerns of small businesses are addressed as the Act is fully implemented. I hope that by working together we can allow small businesses to continue to harness the power of U.S. capital markets to drive innovation and create jobs.

I am delighted that the Advisory Committee's current study focuses on the effects of the Act, and other SEC regulations, on small publicly traded companies. This important study should help the SEC find regulatory solutions for protecting shareholder value that are both effective and practical for small companies. I am pleased that the Advisory Committee, as part of the study, posted on its website for comment questions asking for detailed responses about the effects of SEC regulations on small businesses. My staff met with SEC staff recently to, among other topics, urge the SEC to ensure that small businesses are actively participating in this study.

While the Act has improved publicly traded companies' corporate governance, I believe strongly that it is necessary to consider whether the Act is creating unintended burdens on small businesses. For example, there is evidence that Section 404 of the Act imposes dis-proportionately high compliance costs on small companies in comparison to large companies. These high costs can eliminate small businesses' profitability and threaten their survival. I am particularly concerned that some of the Act's provisions are diverting many small business owners' focus, and limited resources, away from innovation and growth opportunities and towards a concentration on documenting accounting measures and internal controls. While compliance and controls are needed, the SEC must strike an appropriate balance for small companies.

Therefore, I believe that the SEC decision issued on September 25, 2005, delaying the implementation of Section 404 for public companies with market capitalization under $75 million, wisely gives these small businesses more time to comply with internal control requirements. This delay also provides the SEC an opportunity to offer small public firms more guidance and assistance implementing Section 404.

I believe it is necessary to consider carefully whether the best way to prevent fraud and enhance shareholder value is through one-size-fits-all regulations. I am pleased that the Advisory Committee is looking for ways to "right size" the Act's requirements, and other SEC regulations, based on company size. I understand that the Advisory Committee's final recommendations, which are scheduled for early 2006, will influence SEC small business regulatory policy.

I know that many small public companies are desperately waiting for the Advisory Committee's recommendations because they need more concrete guidance on how to implement section 404's internal control requirements. I join these public companies in hoping that the final recommendations will prove practical and cost effective. I also hope that the Advisory Committee will provide insight on how to coordinate Section 404, and other SEC regulations, with other accounting standards with which these small businesses must comply.

In order to gauge the depth of the small business involvement in the regulatory process, I would like the SEC to respond to the following questions:

1. What steps are the SEC taking to facilitate ongoing communication between the SEC, the Advisory Committee, and small public companies that are affected by SEC regulations?

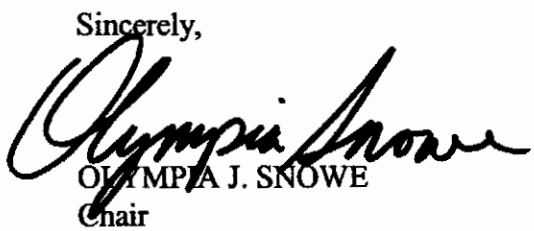
2. After the Advisory Committee publishes its findings, how will the SEC assure that going forward the views and concerns of small businesses are considered during the regulatory formation process?

3. How is the SEC working with organizations like the Committee of Sponsoring Organization of the Treadway Commission (COSO) and the Financial Accounting Standards Board, as well as others, to coordinate small business regulatory standards and issue timely and practical guidance to small companies?

4. What is the SEC's opinion of tiered compliance and regulatory measures that would impose a lower compliance burden on the smallest public companies, with compliance and regulatory requirements increasing as company size increases?

I am confident that this thorough study will enable the SEC to protect investors without imposing a regulatory burden that impedes small business growth, innovation, and efficiency. I look forward to working with the SEC to strengthen the vitality of small companies and am grateful for your attention to this request. I would appreciate a reply to this letter by November 18, 2005. If you would like to discuss this matter, please contact me, or your staff can call Greg Wach on the Committee at (202) 224-5175.

Sincerely,



OLYMPIA J. SNOWE
Chair