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Wednesday, October 5, 2006

Ms. Nancy Morris
Secretary
UNITED STATES SECURITIES AND EXCHANGE COMMISSION
100 F Street, NW
Washington, D.C. 20549-9303

RE: File No. 4-526

Dear Ms. Morris:

We understand that the U.S. Securities and Exchange Commission (the Commission) is seeking "additional public input in connection with its annual Government-Business Forum on Small Business Capital Formation, to be held Friday, September 29, 2006, beginning at 9:00 a.m. EDT, at its Washington, DC headquarters."

We are writing to provide general comments on the Forum. We support the Commission's efforts in this area.

It is our belief that capital market practices, in general, are deeply flawed. It is our hope that the Commission will begin to review market practices from a systemic, global perspective, since defective practices in one sector have been shown to be linked to faulty practices in other capital market sectors:

- In multiple cases, corporate management used fraud and deceptive practices to unfairly transferred value from outsider to insider shareholders.

- Investment analysts issue biased research reports to curry favor with management.

- Rating agencies issue defective research reports. These institutions are supposed to "base their ratings largely on statistical calculations of a borrower's likelihood of default," but one news report noted that:

> "Dozens of current and former rating officials, financial advisers and Wall Street traders and investors interviewed by The Washington Post say the (NRSRO) rating system has proved vulnerable to subjective judgment, manipulation and pressure from borrowers. They say the big three are so dominant they can keep their rating processes secret, force clients to pay higher fees and fend off complaints about their mistakes."[1]

- Pension consultants are, also, conflicted and compromised. "Many pension plans rely heavily on the expertise and guidance of pension consultants in helping them to manage pension plan assets," but, according to a Commission report[2],

> "Concerns exist that pension consultants may steer clients to hire certain money managers and other vendors based on the pension consultant's (or an affiliate's) other business relationships and receipt of fees from these firms, rather than because the money manager is best-suited to the clients' needs."

Together these practices threaten the integrity of securities markets. Individuals and market institutions with the power to safeguard the system, including investment analysts and rating agencies, have been compromised. Few efficient, effective and just safeguards are in place. Statistical models created by the firm show the probability of system-wide market failure has increased markedly over the past eight years.

Investors and the public are at risk.

Background

William Michael Cunningham registered with the U.S. Securities and Exchange Commission as an Investment Advisor on February 2, 1990. He registered with the D.C. Public Service Commission as an Investment

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[1] "Borrowers Find System Open to Conflicts, Manipulation" by Alec Klein, The Washington Post, Monday, November 22, 2004; Page A1.

[2] *Staff Report Concerning Examinations of Select Pension Consultants*. The Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission. May 16, 2005.

Advisor on January 28, 1994. Mr. Cunningham manages an investment advisory and research firm, Creative Investment Research, Inc. The firm researches and creates socially responsible investments and provides socially responsible investment advisory services.

Mr. Cunningham's understanding of capital markets is based on first hand knowledge obtained in a number of positions at a diverse set of major financial institutions. He served as Senior Investment Analyst for an insurance company. Mr. Cunningham was an Institutional Sales Representative in the Fixed Income and Futures and Options Group for a leading Wall Street firm. Mr. Cunningham also served as Director of Investor Relations for a New York Stock Exchange-traded firm. On November 16, 1995, his firm launched one of the first investment advisor websites.

The firm and Mr. Cunningham have long been concerned with the functioning of the securities markets. We note the following:

- On Monday, April 11, 2005, Mr. Cunningham spoke on behalf of investors at a fairness hearing regarding the $1.4 billion dollar Global Research Analyst Settlement. The hearing was held in Courtroom 11D of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York. *No other investment advisor testified at the hearing.*

Summary Comments

According to the Agency, "This year's Forum program will include two roundtable discussions in the morning. The first roundtable will discuss the advantages to smaller public companies of filing interactive data with the SEC. The second roundtable will discuss current issues in capital raising techniques for small business, such as the status of the IPO (initial public offering) market and PIPE (private investment in public equity) offerings."

We appreciate this effort, but note the following:

Repeatedly over the past twenty five years, signal market participants abandoned ethical principles in the pursuit of material well being.[3] By 2006, marketplace ethics reached a new low. The following are the simple facts:

- On April 28, 2003, every major US investment bank, including Merrill Lynch, Goldman Sachs, Morgan Stanley, Citigroup, Credit Suisse First Boston, Lehman Brothers Holdings, J.P. Morgan Chase, UBS Warburg, and U.S. Bancorp Piper Jaffray, were found to have aided and abetted efforts to defraud investors. The firms were fined a total of $1.4 billion dollars by the SEC, triggering the creation of a Global Research Analyst Settlement Fund.

- In May, 2003, the SEC disclosed that several "brokerage firms paid rivals that agreed to publish positive reports on companies whose shares..they issued to the public. This practice made it appear that a throng of believers were recommending these companies' shares." This was false. "From 1999 through 2001, for example, one firm paid about $2.7 million to approximately 25 other investment banks for these so-called research guarantees, regulators said. Nevertheless, the same firm boasted in its annual report to shareholders that it had come through investigations of analyst conflicts of interest with its 'reputation for integrity' maintained."

- On September 3, 2003, the New York State Attorney General announced he has "obtained evidence of widespread illegal trading schemes, 'late trading' and 'market timing,' that potentially cost mutual fund shareholders billions of dollars annually. This, according to the Attorney General, "is like allowing betting on a horse race after the horses have crossed the finish line."

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[3] We refer to the following, abbreviated list of market related ethical lapses:

- The National Association of Security Dealers was found by the U.S. Securities and Exchange Commission to be "failing to police wrongdoing the NASDAQ Stock market, the second largest stock market in the world." The Washington Post (August 8, 1996. Page A1.)
- The failure of Long-Term Capital, an investment partnership started in 1994, was "laid on the kind of capitalism .. where a closed, secretive and incestuous elite held absolute sway over politics, the economy and finance, where banks lent to cronies and crooks, and the state miraculously came to the rescue when the time came to balance (or cook) the books." From "LTCM, a Hedge Fund Above Suspicion," by Ibrahim Warde, *Le Monde Diplomatique,* November 1998.

- On September 4, 2003, a major investment bank, Goldman Sachs, admitted that it had violated anti-fraud laws. Specifically, the firm misused material, nonpublic information that the US Treasury would suspend issuance of the 30-year bond. The firm agreed to "pay over $9.3 million in penalties." On April 28, 2003, the same firm was found to have "issued research reports that were not based on principles of fair dealing and good faith .. contained exaggerated or unwarranted claims.. and/or contained opinions for which there were no reasonable bases." The firm was fined $110 million dollars, for a total of $119.3 million dollars in fines in six months.

- On December 18, 2003, the Securities and Exchange Commission "announced an enforcement action against Alliance Capital Management L.P. (Alliance Capital) for defrauding mutual fund investors. The Commission ordered Alliance Capital to pay $250 million. The Commission also ordered Alliance Capital to undertake certain compliance and fund governance reforms designed to prevent a recurrence of the kind of conduct described in the Commission's Order. Finally, the Commission found that "Alliance Capital breached its fiduciary duty to (it's) funds and misled those who invested in them."

- On October 8, 2004, the Securities and Exchange Commission "announced..enforcement actions against Invesco Funds Group, Inc. (IFG), AIM Advisors, Inc. (AIM Advisors), and AIM Distributors, Inc. (ADI). The Commission issued an order finding that IFG, AIM Advisors, and ADI violated the federal securities laws by facilitating widespread market timing trading in mutual funds with which each entity was affiliated. The settlements require IFG to pay $215 million in disgorgement and $110 million in civil penalties, and require AIM Advisors and ADI to pay, jointly and severally, $20 million in disgorgement and an aggregate $30 million in civil penalties."

- On November 4, 2004, the Securities and Exchange Commission "filed a settled civil action in the United States District Court for the District of Columbia against Wachovia Corporation (Wachovia) for violations of proxy disclosure and other reporting requirements in connection with the 2001 merger between First Union Corporation (First Union) and

Old Wachovia Corporation (Old Wachovia). Under the settlement, Wachovia must pay a $37 million penalty and is to be enjoined from future violations of the federal securities laws."

- On November 17, 2004, the Securities and Exchange Commission announced "charges concerning undisclosed market timing against Harold J. Baxter and Gary L. Pilgrim in the Commissions' pending action in federal district court in Philadelphia." Based on these charges, Baxter and Pilgrim agreed to "pay $80 million – $60 million in disgorgement and $20 million in civil penalties."

- On November 30, 2004, the Securities and Exchange Commission announced "the filing..of charges against American International Group, Inc. (AIG) arising out of AIG's offer and sale of an earnings management product." The company "agreed to pay a total of $126 million, consisting of a penalty of $80 million, and disgorgement and prejudgment interest of $46 million."

- On December 22, 2004, "the Securities and Exchange Commission, NASD and the New York Stock Exchange announced..enforcement proceedings against Edward D. Jones & Co., L.P., a registered broker-dealer headquartered in St. Louis, Missouri." According to the announcement, "Edward Jones failed to adequately disclose revenue sharing payments that it received from a select group of mutual fund families that Edward Jones recommended to its customers." The company agreed to "pay $75 million in disgorgement and civil penalties. All of that money will be placed in a Fair Fund for distribution to Edward Jones customers."

- On January 25, 2005, "the Securities and Exchange Commission announced the filing in federal district court of separate settled civil injunctive actions against Morgan Stanley & Co. Incorporated (Morgan Stanley) and Goldman, Sachs & Co. (Goldman Sachs) relating to the firms' allocations of stock to institutional customers in initial public offerings (IPOs) underwritten by the firms during 1999 and 2000."

- According to the Associated Press, on January 31, 2005, "the nation's largest insurance brokerage company, Marsh & McLennan Companies Inc., based in New York, will pay $850 million to policyholders hurt by" corporate practices that included "bid rigging, price fixing and the use of hidden incentive fees." The company will issue a public apology calling its conduct "unlawful" and "shameful," according to New York State Attorney General Elliott Spitzer. In addition, "the company will publicly promise to adopt reforms."

- On Feb. 9, 2005, the Securities and Exchange Commission "announced the settlement of an enforcement action against Columbia Management Advisors, Inc. (Columbia Advisors), Columbia Funds Distributor, Inc. (Columbia Distributor), and three former Columbia executives in connection with undisclosed market timing arrangements in the Columbia funds. In settling the matter, the Columbia entities will pay $140 million, all of which will be distributed to investors harmed by the conduct. The SEC also brought fraud charges against two additional former Columbia senior executives in federal court in Boston."

- On March 23, 2005, the Securities and Exchange Commission "announced that Putnam Investment Management, LLC (Putnam) will pay $40 million. The Commission issued an order that finds Putnam failed to adequately disclose to the Putnam Funds' Board of Trustees and the Putnam Funds' shareholders the conflicts of interest that arose from..arrangements for increased visibility within the broker-dealers' distribution systems."

- On March 23, 2005, the Securities and Exchange Commission (Commission) "announced that it instituted and simultaneously settled an enforcement action against Citigroup Global Markets, Inc. (CGMI) for failing to provide customers with important information relating to their purchases of mutual fund shares."

- On April 19, 2005, the Securities and Exchange Commission "announced that KPMG LLP has agreed to settle the SEC's charges against it in connection with the audits of Xerox Corp. from 1997 through 2000." As part of the settlement, KPMG paid a fine totaling $22.475 million.

- On April 12, 2005, the Securities and Exchange Commission "instituted and simultaneously settled an enforcement action against the New York Stock Exchange, Inc., finding that the NYSE, over the course of nearly four years, failed to police specialists, who engaged in widespread and unlawful proprietary trading on the floor of the NYSE." As part of the settlement, the "NYSE agreed to an undertaking of $20 million to fund regulatory audits of the NYSE's regulatory program every two years through the year 2011." On that same date, the Commission "instituted administrative and cease-and-desist proceedings against 20 former New York Stock Exchange specialists for fraudulent and other improper trading practices."

- On April 19, 2005, the Securities and Exchange Commission announced "that KPMG LLP has agreed to settle the SEC's charges against it in connection with the audits of Xerox Corp. from 1997 through 2000. As part of the settlement, KPMG consented to the entry of a final judgment in the SEC's civil litigation against it pending in the U.S. District Court for the Southern District of New York. The final judgment..orders KPMG to pay disgorgement of $9,800,000 (representing its audit fees for the 1997-2000 Xerox audits), prejudgment interest thereon in the amount of $2,675,000, and a $10,000,000 civil penalty, for a total payment of $22.475 million."

- On April 28, 2005, the Securities and Exchange Commission announced "that it has instituted settled enforcement proceedings against Tyson Foods, Inc. and its former Chairman and CEO Donald "Don" Tyson. The SEC charged that in proxy statements filed with the Commission from 1997 to 2003, Tyson Foods made misleading disclosures of perquisites and personal benefits provided to Don Tyson both prior to and after his retirement as senior chairman in October 2001."

- On May 31, 2005, the Securities and Exchange Commission "announced settled fraud charges against two subsidiaries of Citigroup, Inc. relating to the creation and operation of an affiliated transfer agent that has served the Smith Barney family of mutual funds since 1999. Under the settlement, the respondents are ordered to pay $208 million in disgorgement and penalties and to comply with substantial remedial measures, including an undertaking to put out for competitive bidding certain contracts for transfer agency services for the mutual funds."

- On June 2, 2005, the Securities and Exchange Commission "filed securities fraud charges against Amerindo Investment Advisors, Inc., Alberto William Vilar and Gary Alan Tanaka, Amerindo's co-founders and principals, for misappropriating at least $5 million from an Amerindo client."

- On June 9, 2005, the Commission announced that "Roys Poyiadjis, a former CEO of AremisSoft Corporation, which was a software company with offices in New Jersey, London, Cyprus, and India, agreed to final resolution of fraud charges brought against him by the Securities and Exchange Commission in October 2001. In documents filed with the federal district court in Manhattan, Poyiadjis consented to disgorge approximately $200 million of unlawful profit from his trading in AremisSoft stock -- among the largest recoveries the SEC has obtained from an individual."

- On July 20, 2005, the Securities and Exchange Commission "announced a settled administrative proceeding against Canadian Imperial Bank of Commerce's (CIBC) broker-dealer and financing subsidiaries for their role in facilitating deceptive market timing and late trading of mutual funds by certain customers. The Commission ordered the subsidiaries, CIBC World Markets Corp. (World Markets), a New York based broker-dealer, and Canadian Imperial Holdings Inc. (CIHI), to pay $125 million, consisting of $100 million in disgorgement and $25 million in penalties."

- On August 15, 2005, the Securities and Exchange Commission "charged four brokers and a day trader with cheating investors through a fraudulent scheme that used squawk boxes to eavesdrop on the confidential order flow of major brokerages so they could 'trade ahead' of large orders at better prices."

- On August 22, 2005, the Securities and Exchange Commission “filed civil fraud charges against two former officers of Bristol-Myers Squibb Company for orchestrating a fraudulent earnings management scheme that deceived investors about the true performance, profitability and growth trends of the company and its U.S. medicines business.”

- On August 23, 2005, the Securities and Exchange Commission “filed charges against two former top Kmart executives for misleading investors about Kmart's financial condition in the months preceding the company's bankruptcy.”

- On November 2, 2005, the Securities and Exchange Commission “filed enforcement actions against seven individuals alleging they aided and abetted a massive financial fraud by signing and returning materially false audit confirmations sent to them by the auditors of the U.S. Foodservice, Inc. subsidiary of Royal Ahold (Koninklijke Ahold N.V.).”

- On November 28, 2005, the Securities and Exchange Commission announced “that three affiliates of one of the country’s largest mutual fund managers have agreed to pay $72 million to settle charges they harmed long-term mutual fund shareholders by allowing undisclosed market timing and late trading by favored clients and an employee.”

- On December 1, 2005, the Securities and Exchange Commission “announced settled enforcement proceedings against American Express Financial Advisors Inc., now known as Ameriprise Financial Services, Inc. (AEFA), a registered broker-dealer headquartered in Minneapolis, Minn., related to allegations that AEFA failed to adequately disclose millions of dollars in revenue sharing payments that it received from a select group of mutual fund companies. As part of its settlement with the Commission, AEFA will pay $30 million in disgorgement and civil penalties, all of which will be placed in a Fair Fund for distribution to certain of AEFA's customers.”

- On December 1, 2005, the Securities and Exchange Commission “announced a settled administrative proceeding against Millennium Partners, L.P., Millennium Management, L.L.C., Millennium

International Management, L.L.C., Israel Englander, Terence Feeney, Fred Stone, and Kovan Pillai for their participation in a fraudulent scheme to market time mutual funds. The respondents will pay over $180 million in disgorgement and penalties and undertake various compliance reforms to prevent recurrence of similar conduct."

- On December 19, 2005, the Securities and Exchange Commission "announced that it filed and settled insider trading charges both against an accountant and a former executive of Sirius Satellite Radio, Inc. who illegally profited from advance knowledge of radio personality Howard Stern's $500 million contract with Sirius."

- On December 21, 2005, the Securities and Exchange Commission "sued top executives of National Century Financial Enterprises, Inc. (NCFE), alleging that they participated in a scheme to defraud investors in securities issued by the subsidiaries of the failed Dublin, Ohio company. NCFE, a private corporation, suddenly collapsed along with its subsidiaries in October 2002 when investors discovered that the companies had hidden massive cash and collateral shortfalls from investors and auditors. The collapse caused investor losses exceeding $2.6 billion and approximately 275 health-care providers were forced to file for bankruptcy protection."

- On January 3, 2006, the Securities and Exchange Commission announced "that it filed charges against six former officers of Putnam Fiduciary Trust Company (PFTC), a Boston-based registered transfer agent, for engaging in a scheme beginning in January 2001 by which the defendants defrauded a defined contribution plan client and group of Putnam mutual funds of approximately $4 million."

- On January 4, 2006, the Securities and Exchange Commission "filed securities fraud charges against McAfee, Inc., formerly known as Network Associates, Inc., a Santa Clara, California-based manufacturer and supplier of computer security and antivirus tools. McAfee consented, without admitting or denying the allegations of the complaint, to the entry of a Court order enjoining it from violating the antifraud, books and records, internal controls, and periodic reporting provisions of the federal securities laws. The order also requires that

McAfee pay a $50 million civil penalty, which the Commission will seek to distribute to harmed investors pursuant to the Fair Funds provision of the Sarbanes-Oxley Act of 2002."

- On January 9, 2006, the Securities and Exchange Commission "announced that Daniel Calugar and his former registered broker-dealer, Security Brokerage, Inc. (SBI), agreed to settle the SEC's charges alleging that they defrauded mutual fund investors through improper late trading and market timing. As part of the settlement, Calugar will disgorge $103 million in ill-gotten gains and pay a civil penalty of $50 million."

- On February 2, 2006, the Securities and Exchange Commission "announced that it filed an enforcement action against five former senior executives of General Re Corporation (Gen Re) and American International Group, Inc. (AIG) for helping AIG mislead investors through the use of fraudulent reinsurance transactions."

- On February 9, 2006, the Commission announced "the filing and settlement of charges that American International Group, Inc. (AIG) committed securities fraud. The settlement is part of a global resolution of federal and state actions under which AIG will pay in excess of $1.6 billion to resolve claims related to improper accounting, bid rigging and practices involving workers' compensation funds."

- On March 16, 2006, the Securities and Exchange Commission "announced a settled enforcement action against Bear, Stearns & Co., Inc. (BS&Co.) and Bear, Stearns Securities Corp. (BSSC) (collectively, Bear Stearns), charging Bear Stearns with securities fraud for facilitating unlawful late trading and deceptive market timing of mutual funds by its customers and customers of its introducing brokers. The Commission issued an Order finding that from 1999 through September 2003, Bear Stearns provided technology, advice and deceptive devices that enabled its market timing customers and introducing brokers to late trade and to evade detection by mutual funds. Pursuant to the Order, Bear Stearns will pay $250 million, consisting of $160 million in disgorgement and a $90 million penalty."

- On April 11, 2006, the Securities and Exchange Commission announced "charges against individuals involved in widespread and brazen international schemes of serial insider trading that yielded at least $6.7 million of illicit gains. The schemes were orchestrated by..a research analyst in the Fixed Income division of Goldman Sachs, and a former employee of Goldman Sachs."

- On September 27, 2006 CFO Magazine reported that:

> "A subcontractor hired on Monday by the Securities and Exchange Commission to work on its new, interactive regulatory filing system..is under formal investigation by the SEC because of the company's poor internal controls over financial reporting. BearingPoint, an international management and IT consulting company, was identified by SEC Chairman Christopher Cox on Monday, as being one of the subcontractors working on the technology project aimed at converting existing, and possibly future, regulatory filings from a static electronic format to an interactive XBRL format. XBRL, an Internet-language method of tagging financial data, has been championed by Cox, who has argued it would make the financial statements of public companies easier for investors to examine and compare."

Envy, hatred, and greed continue to flourish in certain capital market institutions, propelling ethical standards of behavior downward. Without meaningful reform there is a small, but significant and growing, risk that our economic system will simply cease functioning.[4]

Fully identifiable entities engaged in illegal activities. They have, for the most part, evaded prosecution of any consequence. We note that the aforementioned Goldman Sachs, fined $159.3 million by the Commission for various efforts to defraud investors, subsequently received $75 million in Federal Government tax credits.[5]

We also note that the aforementioned Alliance Capital Management, fined $250 million by the Commission for defrauding mutual fund investors,

[4] Proportional hazard models created by the firm and reflecting the probability of system wide market failure first spiked in September, 1998. The models spiked again in January and August, 2001. They have continued, in general, to increase.

[5] The tax credits were awarded under the U.S. Department of the Treasury New Markets Tax Credit (NMTC) Program. (See: http://www.cdfifund.gov/programs/nmtc/).

received a contract[6] in August, 2004 from the U.S Department of the Interior (DOI) Office of Special Trustee for American Indians, to manage $404 million in Federal Government trust funds.[7]

Recently, we have observed several cases where corporate management unfairly transferred value from outsider to insider shareholders.[8] These abuses have been linked to the abandonment of ethical principles noted earlier. Faulty market practices mask a company's true value and misallocate capital by moving investment dollars from deserving companies to unworthy companies.

We understand that, given any proposed rule, crimes will continue to be committed.[9] These facts lead some to suggest that regulatory authorities may have been "captured" by the entities they regulate.[10] We note that under the "regulatory capture" market structure regime, the public interest is not protected.

We favor efforts to increase fairness in our capital markets while opposing

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[6] Contract number NBCTC040039.

[7] The contract was awarded despite the fact that placing Alliance Capital Management in a position of trust is, given the Commission's enforcement action, inconsistent with common sense, with the interests of justice and efficiency and with the interests of Indian beneficiaries. Alliance is also in violation of DOI Contractor Personnel Security & Suitability Requirements.

[8] Including, but not limited to, Adlephia Communications, the aforementioned Alliance Capital Management, American Express Financial, American Funds, AXA Advisors, Bank of America's Nations Funds, Bank One, Canadian Imperial Bank of Commerce, Canary Capital, Charles Schwab, Cresap, Inc., Empire Financial Holdings, Enron, Federated Investors, FleetBoston, Franklin Templeton, Fred Alger Management, Freemont Investment Advisors, Gateway, Inc., Global Crossing, H.D. Vest Investment Securities, Heartland Advisors, Homestore, Inc., ImClone, Interactive Data Corp., Invesco Funds Group Inc., Janus Capital Group Inc., Legg Mason, Limsco Private Ledger, Massachusetts Financial Services Co., Millennium Partners, Mutuals.com, PBHG Funds, Pilgrim Baxter, PIMCO, Prudential Securities, Putnam Investment Management LLC, Raymond James Financial, Samaritan Asset Management, Security Trust Company, N.A., State Street Research, Strong Mutual Funds, Tyco, UBS AG, Veras Investment Partners, Wachovia Corp., and WorldCom. Accounting firms, including Arthur Andersen and Ernst & Young aided and abetted efforts to do so. We believe there are hundreds of other cases.

[9] We assume that "employees are 'rational cheaters,' who anticipate the consequences of their actions and (engage in illegal behavior) when the marginal benefits exceed costs." See Nagin, Daniel, James Rebitzer, Seth Sanders and Lowell Taylor, "Monitoring, Motivation, and Management: The Determinants of Opportunistic Behavior in a Field Experiment, *The American Economic Review*, vol. 92 (September, 2002), pp 850-873.

[10] See George J. Stigler, "The Theory of Economic Regulation," in *The Bell Journal of Economics and Management Science*, vol. II (Spring 1971), pp. 3-21.

reform for reform's sake.

We cite the following:

"Falsification and fraud are highly destructive to free-market capitalism and, more broadly, to the underpinnings of our society. Above all, we must bear in mind that the critical issue should be how to strengthen the legal base of free market capitalism: the property rights of shareholders and other owners of capital. Fraud and deception are thefts of property. In my judgment, more generally, unless the laws governing how markets and corporations function are perceived as fair, our economic system cannot achieve its full potential. "

> Testimony of Mr. Alan Greenspan, Chairman of the Federal Reserve Board, Federal Reserve Board's semiannual monetary policy report to the Congress. Before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate. July 16, 2002.

We agree.

We support the Commission's efforts to address the capital formation concerns of small business. We are specifically concerned with small, minority-owned businesses, an underrepresented sector. We note that, while the Government-Business Forum on Small Business Capital Formation, held Friday, September 29, 2006, included two roundtable discussions, no persons of color or minority businesses were represented on either.

Most investment banking firms cannot correctly evaluate investment opportunities in minority markets, since they have virtually no senior level minority employees. Many investment banking firms simply collect good business plans and ideas, which they then develop by forwarding to firms in which they already have an investment.

According to one report,

> "Minority firms have long shrunk from pursuing private financing, and equity financing has largely seemed—and been—a near impossibility for them."[11]

[11] THE NEW AGENDA FOR MINORITY BUSINESS DEVELOPMENT. Prepared by The Boston Consulting Group, June 2005. Online at: http://www.kauffman.org/pdf/minority_entrep_62805_report.pdf

Most minority firms are refused both debt based and public market equity financing. Our experience[12] and third party data on minority business financing confirms this:

> "Ethnic minorities seeking financing were denied loans twice as often as were white-owned firms. African-American and Hispanic companies experienced the greatest disparity in financing, with respective denial rates 2.6 and 2.2 times higher than those of whites. Moreover, even when minorities succeeded in securing loans, the interest rates charged them ranged from 0.9 percent to 1.7 percent higher than rates charged to white-owned firms."[13]

According to the same report cited above, "minority firms as a whole have seen their revenue rise by about 10 percent annually, have created 23 percent more jobs, and have enjoyed an overall growth rate three times higher than that of traditional businesses."

As with unfair and unethical business practices, discriminatory business practices impede economic growth.

Our recommendation for government and private action to facilitate small business capital formation is detailed below.

We suggest using a fairness-enhanced, Dutch-auction style system to allocate and price initial and secondary public offerings (IPOs.)[14] The network of prescreened buyers, already well known to Wall Street, could easily be moved to this system. The system would be designed to meet certain security and performance standards.

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[12] We have been offering on-line help to small, minority-owned businesses since 1995 at www.minorityfinance.com and www.ari.net/cirm. We have received business financing inquiries from over 12,000 minority businesses and individuals.

[13] David G. Blanchflower, Phillip B. Levine, and David J. Zimmerman, *Discrimination in the Small Business Credit Market* (Hanover, New Hampshire: Dartmouth College, 2002).

[14] We have developed a fairness-enhanced Dutch-auction style system to allocate and price securities, our Fully Adjusted Return[tm] Auction System. The system is proprietary and a trade secret. As such, it is beyond the scope of this comment.

An Internet based, XBRL-enhanced, on-line system, allowing for the issuance of securities, will significantly lower the cost of raising capital.[15] We believe this lowered cost will result in more companies coming to market. More companies coming to market, including small and minority companies, will result in higher levels of economic activity, lower unemployment and lower inflation.

We detail our reasons below.

Prior to the creation and adoption of high speed, massively networked public computer systems, providing a new method to facilitate small business capital formation was a costly proposition. This is, however, no longer the case. Internet technology was specifically designed for this type of problem.

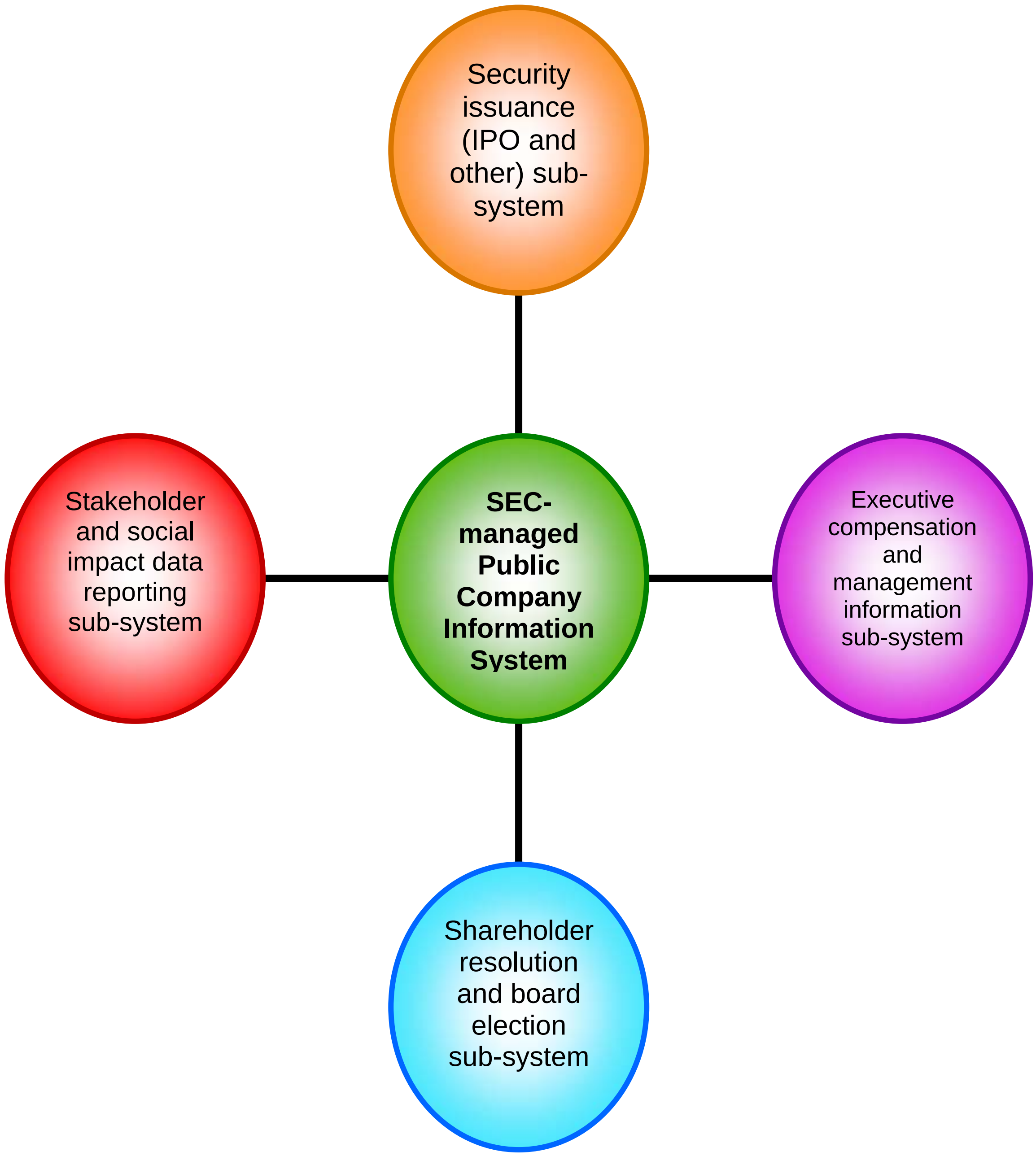
We are, however, concerned that the Agency has not gone far enough. More significant action is required. We note such action can be constructive, especially in light of the market malfeasance cited above.

For example, public companies should be required to conduct Board elections on-line, via the Internet. Candidates could be nominated by shareholders on-line and a fair, efficient candidate screening procedure could be established.

Relevant XBRL-tagged information could be submitted using a secure, tamper resistant, management-independent website. Data would be tabulated in real time. The proposed executive and director compensation database could be tied to a Board member nomination and vote tabulation system and a shareholder accounting system. Once collected, executive and director compensation information could be easily incorporated into on-line proxy materials that are the subject of other proposed amendments. We also believe public companies should be *required* to disclose executive and director compensation via the Internet.

[15] On average, investment banks appropriate seven percent (7%) of the capital raised via traditional Initial Public Offerings. We estimate the cost will, over six years, fall from 7% to 1%.

Graphically, the system would look as follows:



We also believe such a system will be fairer. Currently, not only are small and minority firms prohibited from raising capital via equity markets, but members of the public pay, unfairly, for the privilege of purchasing IPO shares: they can only purchase shares at an excessively high price in the after issuance market. We believe a non-proprietary, SEC-owned and managed IPO Dutch auction system will eliminate the short term run up observed in the after issuance IPO market.[16]

We suggest these systems be phased in over three years. In the first year, corporations would simply be offered the option of holding Board elections, disseminating executive and director compensation data, other corporate governance data, and securities on-line. After two years, companies would be required to describe why they chose to use or not to use the system. They would have to report certain information to shareholders. Corporate management would be required to report the cost differential between the proposed system and other methods. Over time, say, after three years, all Board elections, executive and director compensation data, other corporate governance data, and corporate security sales would be conducted and issued through the on-line system.

In summary, we believe the use of on-line, XBRL enhanced, internet-based reporting and capital access tools will significantly reduce costs and increase the flow of capital to all sectors in society. This increase in capital access will, in turn, result in significantly increased general economic activity. We estimate, using proprietary economic models, this increased economic activity at $6 trillion dollars over ten years. (This assumes an internet based Board election, executive and director compensation and capital access system that is gender and racially neutral, operating without significant falsification and fraud.)

The internet is a powerful tool. We understand both the potential benefits and the potentially disruptive nature of this technology better than most.[17]

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[16] This run-up was, according to one source, 16 percent (for IPO stocks issued between 1960 and 1987).

[17] The firm launched its first website in 1995. We appreciate the nature of the task facing regulators. Implementing the proposed modifications is very much like performing surgery on a marathon runner - during a race. Corporate fraud and malfeasance threaten the entire system, just as cholesterol clogged arteries threatens the health of the aforementioned runner. To make matters worse, (and to extend this analogy far too long) not only is a malpractice lawyer standing nearby, but the nature of the technology is such that it significantly improves the performance of every runner in the race.

Capital market regulators in other regions of the world will, at some point, enhance their ability to access capital using internet-based tools. They will also expand their ability to provide capital to what are considered, in this country, minority owned firms. Thus, competitive advantage with respect to capital access is available to any country with significant economic potential and a modest communications infrastructure.

We do not know which countries will be winners over the long term. We know with certainty, however, that without the full set of internet-based and XBRL enhanced information and capital access tools outlined above, given both the excessive executive compensation and the corporate fraud and malfeasance cited, it is unlikely that the United States will long maintain its current advantage.

We look forward to reviewing the Commission's continuing efforts to carry out its mission. We appreciate the time and effort the Commission has devoted to this task. Thank you for your leadership.

Please contact me with any questions or comments.

Sincerely,

William Michael Cunningham
Social Investing Adviser
for William Michael Cunningham and Creative Investment Research, Inc.