Testimony of James A Connolly III representing the CEO Council before the Subcommittee of Oversight and Investigations of the House Committee on Financial Services

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Good morning Chairwoman Kelly and members of the Subcommittee. First, allow me to thank you for the opportunity to appear before you to present a somewhat different perspective on small business capitalization as experienced by the over 7000 publicly traded companies currently listed on either the OTCBB or the Pink Sheets. We are gratified that our efforts to communicate with the Congress and the relevant Federal agencies, under your leadership as advocates for small business, result in my appearance here today.

My name is James Andrew Connolly III. I am a native New Yorker and am here as a founding member of the CEO Council, a Maryland chartered 501c6 organization of small public company executives, with both a growing network of local chapters and an expanding membership base throughout the country. Our stated purpose is to enhance the public markets for investors and couple this with affordable financing options for smaller public companies. We are seeking to achieve these goals with both a member driven advocacy effort along with supplementing the information available to the markets as to the opportunities open to investment in these "engines of economic growth, job creation and innovation." Our market space of 7000 companies includes hundreds of million of dollars in market capitalization, tens of thousands of employees, and likely hundreds of thousands of stockholders. We are the "dirty" little secret of the securities markets, much maligned, over regulated and often referred to as "penny stocks" in the same sentence as "scam".

I can state with certainty that the perception of fraud is not the same as fraud, and the substantial majority of these companies are operated in an ethical and businesslike manner. They are responsive to their customers, good employers and contributors to their communities along the way. They operate in all 50 states and probably in most Congressional districts. They range from start-ups to well-seasoned enterprises who all share the competitive challenges of a global marketplace, a recovering economy and the burden of often unaffordable compliance costs.

It is frequently the case when apportioning resources that a microcap CEO is compelled to choose between expanded reporting costs and new hiring, payroll and benefits or audits and expanded legal advice. Public transparency costs whether as traditional investor relations or fully compliant research dissemination; director indemnification or liability coverage, without which many of these companies cannot attract qualified outside directors compete for scarce corporate resources and are therefore often lacking. Heretofore our microcap colleagues have had to compete without being able to collectively represent their interests as significant contributors to the economic well being of The United States – not to mention often very good investments without running the gauntlet of regulatory indifference at best and outright hostility to our continued existence at worst. This has not occurred in a vacuum; there clearly have been many instances of abuse, we hear of them in the press when advised to avoid "penny stock" investments and unfortunately with regular and necessary enforcement actions that become highly publicized. Taken cumulatively these facts explain both the virtual impossibility of obtaining either startup or expansion capital on terms that are rational, as well as diminished liquidity in secondary trading.

Undoubtedly modern era of instant execution, online trading and affordable transaction costs, combined with the relative lack of substantive reliable data on many microcap securities has led to an overall lack of transparency, and created multiple opportunities for both fraud and market manipulation. The CEO Council was formed with these challenges in mind and has worked deliberatively over the past 3 years to effect what we hope are progressive changes.

We took an early and active role in opposing the BBX as envisioned by Nasdaq. They like all profit motivated organizations hoped to escape the costs of regulating the OTCBB without provision for the thousands of companies who either would not, could not or chose not to list thereby relegating them to Pink Sheet status which demonstrably would lead to a major loss of market capitalization and reduced investor liquidity.

The Council has maintained an active presence at the annual "Government Business Forum on Small Business Capital Formation" held every year since Congress mandated it in 1980. We have contributed to its agenda and suggested several of the hundreds of recommendations that small business owners, regulators and industry practitioners have suggested for implementation. Sadly, far too few have been adopted or implemented. It often seems that that the various divisions of the SEC are in conflict with each other when responding to our concerns. The perception of Enforcement appears to be guilty until examined innocent, Corporate Finance clearly has a Fortune 1000 focus and it is left to the Small Business Ombudsman, Mr. LaPorte to represent our interests within the bureaucracy – often to no avail. I have included with my written testimony for the Subcommittee's review the recommendations from 2002 and 2003.

The NASD has had some significant negative effects on our marketplace as well. In their determination to disallow broker/dealers to receive ANY compensation for filing form 15c211 despite substantial costs to fully due diligence a listing the 200+ market makers in Pink Sheet listed companies shrink to 40 active submitters creating less than a fully open and competitive marketplace. If the attorneys and accountants have no problem being paid for rendering professional services are fully registered, licensed market makers who, through their due diligence prior to filing, are the first line of defense against fraud any less deserving?

Time does not permit me to cite many other obstacles microcap companies encounter in a full discussion here today, but with your indulgence I will cite 3 other significant proposals that the CEO Council would recommend. Firstly I am aware that there is interest at both the American

Stock Exchange in New York, and the Pacific Coast Exchange in San Fransisco in the development of a specialist based “new venture” or “microcap” exchange. This should be fully explored at both the SEC and the NASD as its potential for small company access to capital is very promising.

Secondly we would like to propose a new regulatory regime for Small Business Issuers. This might include consultative roles for organized participation by ALL elements of the capital markets with investor advocates, institutional investors, regulators issuers and other interested parties operating in a framework to create what some have called the “Enterprise Exchange”. There are opposing views on whether a specialist or dealer market is a better solution, but we believe this is worth exploring.

Finally we believe that regulation 15c211 should be improved and streamlined. Such that non-reporting issuers should provide financial information to the marketplace and that Reg 15c211 should be right sized to fit this goal. Additionally, despite multiple efforts some with Congressional support the information on this form which could form the basis of informed investor interest is maintained by the NASD and has been refused by them to be fully disseminated to the public as filed. There are data vendors who would gladly supply this information, several free of charge as transparency we all agree is a paramount goal.

Investor protection and Small Business capitalization need not be mutually exclusive and hopefully this dialog today will add to the efforts expended by many of us who are deeply concerned that without both regulatory changes and a more fully informed investor base though increases in financial literacy coupled with enhanced disclosures, the microcap marketplace can once again thrive and be a hotbed of innovation and growth for our economy.

Thank you for hearing our concerns today as well as your willingness to address them. I know the members of the CEO Council are pleased to be a resource. We hope you will call on us in your future efforts to keep our markets the most efficient and transparent in the world.

We would like to add to the record in the allotted time with your permission Chairwoman Kelly.