

June 15, 2010

The Honorable Barney Frank
Chairman, Committee on Financial
Services
2129 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

The Honorable Christopher Dodd
Chairman, Committee on Banking,
Housing and Urban Affairs
U.S. Senate
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Spencer Bachus
Ranking Member, Committee on Financial
Services
B371a Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

The Honorable Richard C. Shelby
Ranking Member, Committee on Banking,
Housing and Urban Affairs
U.S. Senate
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Conferees:

As associations and companies representing nearly every sector of the U.S. economy, as well as nonprofits interested in fostering entrepreneurship, we are writing to request your support of Section 989G of the House Offer in providing a permanent exemption for non-accelerated filers from Section 404(b) of the Sarbanes-Oxley Act of 2002. During floor consideration of House passed H.R. 4173, *Wall Street Reform and Consumer Protection Act of 2009*, 101 Democrats joined 170 of their Republican colleagues in supporting Section 7606, an identical provision to Section 989G of the House Offer, in providing a permanent exemption from Section 404(b) for smaller public companies.

While the Sarbanes-Oxley Act placed important new financial reporting requirements on public companies, Section 404 continues to impose a disproportionately negative cost burden on smaller public companies. For example, although the U.S. Securities and Exchange Commission (SEC) initially estimated the costs of 404 to be \$91,000 per year, a 2009 SEC study found that Section 404 costs companies an average of \$2.3 million each year in direct compliance costs. Moreover, the study revealed that the long-term cost burden on smaller companies is more than seven times greater than those imposed on large firms.¹

The higher costs incurred by public companies have also had a detrimental impact on initial public offerings (IPOs). According to a 2009 Renaissance Capital report, IPO issuance in 2008 and 2009 was lower than any period since the 1970s when business creation struggled against inflation, high interest rates and the Vietnam War.²

¹ Securities and Exchange Commission, Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements, OFFICE OF ECONOMIC ANALYSIS, Table 12, September 2009 http://www.sec.gov/news/studies/2009/sox-404_study.pdf.

² Renaissance Capital, How to Heal the IPO Market and Get the Economy Moving, <http://www.renaissancecapital.com/IPOHome/Review/HealingIPOs.pdf>

Additionally, data compiled by Jay Ritter of the University of Florida show the numbers of U.S. IPOs were lower in every year after SOX was enacted in 2002 (2003 to present) than in every year of the decade from 1991 to 2000, including the early '90s recession years. For instance, in the boom post-SOX year of 2006, there were 162 U.S. IPOs. Yet in 1991, a year when the U.S. was mired in recession but did not have SOX, there were 295 U.S. IPOs.³

Sarbanes-Oxley was intended to prevent future accounting improprieties, particularly at the largest U.S. companies with sophisticated revenue streams whose failure could have a systemic impact on the market. However, the implementation of Section 404 has resulted in substantially greater than expected compliance costs that limit companies' access to the public markets until they are large enough or profitable enough to sustain the cost burden.

We urge you to accept the House Offer to permanently exempt smaller companies from Section 404(b) during the Conference Committee's mark-up of H.R. 4173. A permanent exemption will help give smaller companies the certainty they need to access the public markets. The absence of a permanent exemption will result in new compliance costs being imposed on smaller public companies in 2010.

Sincerely,

Biotechnology Industry Organization
Competitive Enterprise Institute
TechAmerica
Association for Competitive Technologies
Advanced Medical Technology Association
TechNet
Independent Community Bankers of America
American Bankers Association
National Council of Farmer Cooperatives
NYSE Euronext
NASDAQ OMX

³ Ritter, Jay R., Cordell Professor of Finance, University of Florida, Some Factoids about the 2009 IPO Market, <http://bear.warrington.ufl.edu/ritter/IPOs2009Factoids.pdf>