

January 19, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via email: rule-comments@sec.gov

File Number S7-29-10 *Study Required by Section 989G(b) of the Dodd-Frank Act Regarding Compliance with Section 404(b) of the Sarbanes-Oxley Act*

Dear Ms. Murphy:

The American Bankers Association (ABA¹) appreciates the opportunity to comment on the *Study Required by Section 989G(b) of the Dodd-Frank Act Regarding Compliance with Section 404(b) of the Sarbanes-Oxley Act* (Study). The request asks for comment regarding the Study on how the Commission could reduce the burden of complying with the auditor attestation requirement of Section 404(b) of the Sarbanes-Oxley Act (“SOX”, or “the Act”) for companies whose public float is between \$75 million and \$250 million, while maintaining investor protections for such companies, pursuant to Section 989G(b) of the Dodd-Frank Act.

In summary, we strongly support extending the exemption of SOX Section 404(b)² to publicly held companies whose public float is between \$75 million and \$250 million. While the costs of compliance have gone down over the past few years compared to when requirements of the Act were first implemented, they still are unreasonably large, especially in relation to the size of these companies. Most importantly, however, we believe that the benefits derived by investors from this requirement are not clear and do not exceed the costs of compliance.

There have been various studies over the last few years examining SOX-related costs. As noted in the SEC’s own *Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements (SEC Study)*, for example, the costs of implementation of section 404(b) are high, and compared to larger companies, the burden is staggering for smaller companies. The study estimates that the long-term cost burden on smaller companies is more than seven times greater than

¹ ABA represents banks of all sizes and charters and is the voice for our nation’s \$13 trillion banking industry and its two million employees. The majority of ABA’s members are banks with less than \$165 million in assets. ABA’s extensive resources enhance the success of the nation’s banks and strengthen America’s economy and communities.

² In practical terms, section 404(a) of the Act requires management to assess the company’s internal controls over financial reporting, whereby section 404(b) requires an external audit and opinion on these controls. An exemption related to requirements under section 404(a) is not in question with regard to the SEC’s request.

those imposed on large firms.³ We acknowledge that there have been strides made to enhance the effectiveness and efficiency of the evaluations of internal control over financial reporting (ICFR) and that costs of compliance with section 404(b) have declined over the past few years. But the costs are still unreasonably high and we are convinced that these costs are hindering the market for initial public offerings.⁴

All the while that the costs are burdening smaller companies, we note in the SEC Study that the benefits investors receive appear to be nominal. For example, as the SEC Study notes, the majority of respondents recognize no effect of Section 404 compliance on the company's ability to raise capital, investor confidence in the company's financial reports, the company's overall firm value, and the liquidity of the company's common stock.

Certain studies have been cited by others to assert that the quality of financial reporting has greatly increased due to compliance with section 404(b). However, we urge the SEC to review those studies in detail. For example, a November 2009 report notes that restatement rates for companies that comply only with section 404(a) are 46% higher than for companies that comply with both sections 404(a) and 404(b). Detail in the report, however, explains that 5.1% of the companies that have had the auditor attestations required in section 404(b) have been required to restate their financial statements, as compared to 7.4% that had no auditor attestation.⁵ While 7.4% is indeed 46% higher than 5.1%, the relatively small 2.3% difference does not convince us that the auditor attestation process reduces restatements in a cost-beneficial manner.

In conclusion, we support extending the exemption of SOX Section 404(b) to publicly held companies whose public float is between \$75 million and \$250 million and urge you to make the same recommendation.

Thank you for your attention to these matters and for considering our views. Please feel free to contact me (mgullette@aba.com; 202-663-4986) if you would like to discuss our views.

Sincerely,



Michael L. Gullette

³ Securities and Exchange Commission, Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements, OFFICE OF ECONOMIC ANALYSIS, September 2009.

⁴ See 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>.

⁵ AuditAnalytics.com, Restatements Disclosed by the Two Types of SOX 404 Issuers: (1) Auditor Attestations Filers and (2) Management-Only Report Filers, November 2009.