U.S. Chamber of Commerce

1615 H Street, N.W.
Washington, D.C. 20062-2000

www.uschamber.com

68

FACSIMILE TRANSMITTAL

Deliver to: Committee Management Officer

Tel:
Fax: (202) 772-9324

From: David Chavern

Tel: (202) 463-5500
Fax: (202) 463-3129

Date: 8/31/05

Pages: 4 (including cover sheet)

Comments:

File Number 265-23

The U.S. Chamber of Commerce welcomes the opportunity to provide the SEC Advisory Committee on Smaller Public Companies with input on ways to improve our regulatory system for smaller companies. We have answered those questions which relate to issues on which we have received frequent and consistent feedback from our smaller member companies.

Regards,
David Chavern

1) There is anecdotal evidence to suggest that the cost of complying with SOX has caused some small public companies to think about delisting to avoid costs, or, if the company is private, raising capital in another fashion (e.g. selling the company) or listing on a foreign market. We would also suggest that the increasing attractiveness of private equity funds – and their activity in taking public companies (or parts of public companies) private – is not unrelated to the increasing costs and legal burdens associated with accessing public capital markets.

2) In general, we believe that the broader business community is supportive of the reforms in SOX, but that shareholders of companies of all sizes are concerned with the costs associated with Section 404.

3) On the whole, we believe that SOX has had a positive affect on the broader business community, with the notable exception of Section 404. This provision - in addition to being financially burdensome - requires companies to expend substantial time and effort away from important strategic and operational matters. We believe that this weighs particularly heavily on small companies that are attempting to grow and expand rapidly.

4) While we note the generally positive affects of SOX, there is anecdotal evidence to suggest that the cost of listing on U.S. markets is increasing and that Section 404 is negatively influencing the relative attractiveness of U.S. capital markets. The drop in new listing by foreign companies is of particularly serious concern. More costly -- and less competitive -- markets will raise the core cost of capital across the entire economy. In sum, we do believe the new regulatory measures will be harmful for our markets and investors over the long term.

5) We are concerned that as our markets continue to evolve in size and complexity, our regulatory system – currently a patchwork of state and federal regulation – has not kept pace. In addition, we also believe that the present regulatory environment, most particularly Section 404, "governmentalizes" the way businesses operate, placing an emphasis on process over results and productivity. While process is of paramount importance in government in order to ensure transparency and fairness, good companies must sometimes act quickly and take very large risks in an uncertain environment. In fact, the investing public in the U.S. has historically expected – and greatly benefited from – just such qualities. If process in public companies is continually emphasized over results, then the United States will end up with significantly

slower economic growth – much closer to that of other, less competitive economies around the world.

6) Please see our answers to #3 and #5 above.

7) In general, we support full company disclosure, including general information about new product development and business strategy. We also note, however, that there are natural limits to this as complete disclosure would undermine the competitiveness of a company. In short, complete disclosure would be very bad for investors.

8) Securities litigation is a tremendous burden on public companies of all sizes that greatly increases costs of our capital markets. In many cases this litigation simply results in the transfer of funds from one set of shareholders (via the company) to another set of current or former shareholders, with the primary beneficiaries being the plaintiffs' trial bar. We have long urged for policy makers to undertake reforms that reduce the tremendous negative impacts of such litigation. It is a huge burden for small and mid-sized public companies.

With respect to the current regulatory environment, there are many ways in which securities regulations support the expansion of private securities litigation. As a key example, the frequency with which companies are pressed to waive the attorney-client privilege has subjected organizations of all sizes to much more litigation. This dangerous trend also discourages personnel within companies from consulting with their lawyers, thereby impeding the lawyers' ability to effectively counsel compliance with the law. This, in turn, not only harms businesses, but also investors and the public as a whole.

9) SOX has clearly increased the cost of being a public company, as well as the cost of being acquired by a public company. As a corollary, it has greatly reduced the prices that public companies are willing to pay to acquire private companies. In addition, SOX has caused companies to place more emphasis on those transactions that do not require access to public capital.

11) Greater flexibility needs to be provided in the assessment of internal controls for companies of all sizes. For example, testing that is done at the beginning of the year may not have to be repeated if certain standards are met. Further, entire areas of control should be examined to determine if, in fact, they need to be assessed annually as opposed to less frequently. Annual testing could be based on identified risk factors, such as system changes, significant turnover, previous control deficiencies and the nature of controls.

Consideration should also be given to addressing these conditions on a basis other than "pass/fail" that would contemplate reliance on earlier work product.

13) Section 404 is clearly a deterrent to some companies accessing the public capital markets. Whether a company should or should not go public should not be determined by Section 404. Section 404 is a blunt and poorly designed tool for regulatory management of market forces. The statement "they shouldn't have gone public anyway" would constitute an extremely weak rationalization for the impact of Section 404 on emerging companies.

14) While the burdens of SOX may affect smaller companies to a greater degree, large and mid-cap companies face similar issues. We would, first and foremost, support measures that ease the burdens on companies of all sizes.

15) SOX has resulted in a negative change in the relationship between auditors and companies of all sizes. Despite the great increase in auditor frees, Section 404 has resulted in a chilling effect, and companies now receive substantially less support and advice from their independent auditors. This change has been negative for all stakeholders, who benefit when companies and their auditors are able to productively work together to identify and solve real problems.

17) Extending the effective dates for new standards makes sense and would be an easy way to ease the cost of compliance for smaller companies. This would, in our opinion, have a generally negligible effect on investors and U.S. markets.