

GOVERNANCE, RISK & COMPLIANCE GROUP

SOX ALERT

August 4, 2010

404 (B) EXEMPTION ANNOUNCEMENT

As expected, on July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). This new law imposes far-reaching regulations to control the financial services industry and will impact the way financial services firms operate going forward.

The Dodd-Frank Act also provides an exemption to Section 404 (b) of the Sarbanes-Oxley Act of 2002 (SOX) for smaller issuers (i.e., those with a market capitalization of less than \$75 million). Section 404 (b) requires that public companies obtain an external Auditor's Report on the effectiveness of company's internal control over financial reporting. In addition, the Securities and Exchange Commission shall conduct a study to determine how the Commission could reduce the burden of complying with Section 404(b) of SOX for companies whose market capitalization is between \$75 million and \$250 million for the relevant reporting period while maintaining investor protections for such companies. The study shall also consider whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance with such section would encourage companies to list on exchanges in the United States in their initial public offerings. Not later than 9 months after the date of the enactment of this subtitle, the Commission shall transmit a report of such study to Congress.

IMPLICATIONS OF THIS RULING

Although the external audit requirement will no longer be applicable for non-accelerated filers (possibly up to market capitalizations as high as \$250 million), public filers are cautioned that Section 404 (a) of SOX, which requires companies to conduct their own management assessment of internal controls, is still in effect. In addition, SOX Section 302 (RULE 13A-14(A) of the Exchange Act) is still applicable, which requires management certification that the company's internal control over financial reporting is effective. Since independent validation by the external auditors will not be required, the burden on CEOs/CFOs will now be even greater. Therefore, companies must still maintain an effective system of internal control over financial reporting, but will not have to undergo specific testing of management's assessment that internal controls are operating effectively by the external auditors.

If you have any questions please contact

Tom Basilo,
Practice Leader,
Governance, Risk &
Compliance Group
973.898.9494
tbasilo@withum.com

Ray Broek,
Team Leader, Corporate
Governance/SOX
Compliance
973.898.9494
rbroek@withum.com