

September 14, 2010

Mary Schapiro, Chairman
Securities and Exchange Commission
Washington DC 20549

Re: Investor concern over exemptions from section 404(b) of the Sarbanes-Oxley Act

Dear Chairman Schapiro:

The Council of Institutional Investors (CII)¹ and the Center for Audit Quality (CAQ)² are writing to advise the Commission that, according to a recent CAQ survey, 65 percent of individual investors are concerned that non-accelerated filers have been exempted from section 404(b) of the Sarbanes-Oxley Act, and 81 percent of investors are concerned about the possibility that the Congress may extend the exemption to larger companies.

We believe this information is pertinent to the study the Commission is performing under section 989G(b) of the Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which directs the Commission to conduct a study to determine how it could reduce the burden of complying with section 404(b) for companies whose market capitalization is between \$75 million and \$250 million, while maintaining investor protections for such companies.

CAQ Main Street Investor Survey

On September 9th the Center for Audit Quality released its fourth annual “Main Street Investor Survey.” This survey of 1,001 individual investors³ was conducted by the Glover Park Group from July 14-22, 2010 via telephone using a standard random digit dial methodology. The margin of error for the survey is +/- 3 percent.

¹ CII is a nonprofit association of public, union and corporate pension funds with combined assets that exceed \$3 trillion. Member funds are major long-term shareowners with a duty to protect the retirement assets of millions of American workers.

² The CAQ is an autonomous public policy organization dedicated to enhancing investor confidence and public trust in the global capital markets. The CAQ fosters high quality performance by public company auditors, convenes and collaborates with other stakeholders to advance the discussion of critical issues, and advocates policies and standards that promote public company auditors’ objectivity, effectiveness and responsiveness to dynamic market conditions.

³ To be considered “investors,” respondents had to be adults (18+ years) who are the primary decision-makers for handling their household’s savings and investments (or share this role equally with another household member) and have at least \$10,000 or more in investments – including stocks, bonds, mutual funds, IRAs, 401k, etc. A subsample of high net worth investors were identified as those investors with \$100,000 or more in investments

Importantly, for the third year in a row, 75 percent of investors say they have confidence investing in U.S. public companies. Similarly, investor confidence in audited financial information released by public companies remains strong at 70 percent, unchanged from last year. These survey results are particularly striking in light of steep market fluctuations experienced during the past several years. A summary of the key findings from the 2010 CAQ Main Street Investor Survey is enclosed for your information.

Exemption from Section 404(b) of the Sarbanes-Oxley Act

The survey was conducted during the week the Dodd-Frank Act was signed into law. Investors were informed that the President had just signed legislation exempting companies with market capitalization under \$75 million from having to comply with section 404(b) of the Sarbanes-Oxley Act that requires independent auditors to attest to management's assessment of the effectiveness of its internal controls over financial reporting.⁴

When asked about the new exemption, *65 percent of investors expressed "concern," half of whom are "very concerned,"* that smaller companies will not be required to have their company's auditor attest to, and report on, management's assessment of the effectiveness of its internal control over financial reporting.

Even more investors say they would be concerned should Congress expand this exemption to companies with market capitalization of \$75 million or more. Approximately 24 percent are "concerned" about the possibility of extending the exemption and 57 percent are "very concerned" about this possibility (*a total of 81 percent of investors have concerns in this area*). Investors' concerns about changes to section 404(b) were high regardless of the amount of their investments.

CII and the CAQ believe that all investors should receive equal protections with respect to the effectiveness of internal control over financial reporting by publicly traded companies and remain firmly committed to retention of 404(b) to the fullest extent.⁵

Thank you for the opportunity to share this information about the importance of section 404(b) to U.S. investors. We look forward to working with the Commission as it performs its study over the next few months. In the meantime, if you have questions about the survey or how the CAQ can contribute to the Commission's study please call Cindy Fornelli at (202) 609 8060, or Angela Desmond, Senior Director for External Relations, at (202) 609 8055. If you have questions how the CII can contribute to the study please call Jeff Mahoney at (202) 261-7081.

⁴ The question wording was modified during the field period as outside events warranted. At the start of fielding it read, "Congress is considering..." On the second day of fielding and after the Senate passed the final financial regulatory reform legislation, the wording was changed to "Congress just passed..." And just prior to the end of our field period and after the President signed the legislation into law, the wording was changed to "The President just signed..."

⁵ See, e.g., Letter from Cindy Fornelli, Jeff Mahoney & Kurt Schacht to House and Senate Conferees 1 (June 15, 2010) (on file with authors), [http://www.cii.org/UserFiles/file/resource%20center/correspondence/2010/06-15-10%20FINAL%20CAQ%20CII%20CFA%20Institute%20letter%20to%20Conferees%20RE%20SOX%20404\(b\).pdf](http://www.cii.org/UserFiles/file/resource%20center/correspondence/2010/06-15-10%20FINAL%20CAQ%20CII%20CFA%20Institute%20letter%20to%20Conferees%20RE%20SOX%20404(b).pdf) (includes attachment summarizing pertinent research on the benefits of Section 404(b)).

Sincerely,



Jeff Mahoney, General Counsel
Council of Institutional Directors



Cindy Fornelli, Executive Director
Center for Audit Quality

Enclosure

cc: Commissioner Luis A. Aguilar
Commissioner Kathleen L. Casey
Commissioner Troy A. Paredes
Commissioner Elisse B. Walter
James Kroeker, Chief Accountant