



Via Facsimile

October 27, 2009

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

The Honorable Spencer Bachus
Ranking Member, House Committee on
Financial Services
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Paul E. Kanjorski
Chairman, Subcommittee on Capital
Markets, Insurance, and Government
Sponsored Enterprises
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Scott Garrett
Ranking Member, Subcommittee on
Capital Markets, Insurance, and
Government Sponsored Enterprises
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Frank, Subcommittee Chairman Kanjorski, Ranking Member Bachus and
Subcommittee Ranking Member Garrett:

I am writing on behalf of the Council of Institutional Investors (“Council”), a nonprofit
association of public, union and corporate pension funds with combined assets that exceed \$3
trillion. Member funds are major shareowners with a duty to protect the retirement assets of
millions of American workers.

It is our understanding that at tomorrow’s scheduled Committee on Financial Services’ mark-
up of the discussion draft of the Investor Protection Act of 2009, one or more amendments
will be offered that would further defer or exempt many public companies from fully
implementing the internal control requirements of Section 404 of the Sarbanes-Oxley Act of
2002 (“SOX”). The purpose of this letter is to register the Council’s strong opposition to
those amendments.



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Section 404 is a “key provision” of SOX and plays a vital role in ensuring high quality financial reporting and enhancing investor confidence in the markets.¹ Consistent with the language and intent of Section 404,² we have long held the view that any company tapping the public markets to raise capital should be required to have appropriate internal controls in place that have been subject to a meaningful review and attestation by external independent auditors.³ The need for strong internal controls is particularly important for the generally riskier smaller public companies that would be the beneficiaries of any exemption or further deferral.⁴

If, after more than seven years since the enactment of SOX and the issuance of volumes of implementation guidance, a public company and its external auditors have not yet been able to properly plan for a cost-effective and efficient auditor attestation of their internal controls, we believe it is in the best interests of investors and all capital market participants that those companies and their external auditors be excluded from accessing the many benefits derived from participating in our public markets. For all of the above reasons, we again respectfully request, that you oppose any amendments to further defer or exempt public companies from fully implementing this critical investor protection.

¹ See, e.g., Office of Economic Analysis, United States Securities and Exchange Commission, Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements 86-92 (Sept. 2009), http://www.sec.gov/news/studies/2009/sox-404_study.pdf (describing the many benefits realized by investors and other users of financial reports from compliance with the Section 404 requirements).

² See, e.g., S. Rep. No. 107-205, at 54 (July 3, 2002), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_reports&docid=f:sr205.pdf (indicating that Congress intended that “[a]nnual reports filed with the SEC must” comply with all of the Section 404 requirements).

³ E.g., Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to Nancy M. Morris, Secretary, Securities and Exchange Commission 1 (Sept. 14, 2006), <http://www.sec.gov/rules/proposed/s70603/s70603-58.pdf>.

⁴ See Carlo di Floria, COSO Study on Fraud in Financial Reporting 4 (Oct. 1999), http://9iacc.org/papers/day3/ws7/d3ws7_cdfloria.html (noting that most frauds in financial reporting are “committed by smaller corporations”); see also, Lord & Benoit White Paper, The Tipping Point: Collision of Relaxed Regulation, Small Business and the Economy 14 (Feb. 9, 2009), <http://www.section404.org/news.php?id=34&news=Lord-&-Benoit-White-Paper:-The-Tipping-Point:-Collision-of-Relaxed-Regulation,-Small-Business-and-the-Economy> (“History and experience suggest that these smaller companies are particularly susceptible to fraud.”).



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If you should have any questions regarding our views on this matter, please feel free to contact me at (202) 261-7081 or jeff@cii.org, or Council analyst Jonathan Urick at (202) 261-7096 or jonathan@cii.org.

Sincerely,

A handwritten signature in cursive script that reads "Jeff Mahoney".

Jeff Mahoney
General Counsel