

May 13, 2010

The Honorable Harry Reid
Majority Leader
U.S. Senate

The Honorable Mitch McConnell
Republican Leader
U.S. Senate

The Honorable Chris Dodd
Chairman, Committee on Banking
Banking U.S. Senate

The Honorable Richard Shelby
Ranking Member, Committee on
U.S. Senate

Dear Leaders Reid and McConnell, Chairman Dodd and Ranking Member Shelby:

As associations and companies representing nearly every sector of the U.S. economy, as well as nonprofits interested in fostering entrepreneurship, we are writing to express our strong support for amendment No. 3785 filed by Senator Kay Bailey Hutchison and Senator Mary Landrieu to the *Restoring American Financial Stability Act of 2010*. The Hutchison/Landrieu Amendment will provide a permanent exemption from Section 404(b) of the Sarbanes-Oxley Act for smaller issuers, defined as those companies with less than \$150 million in public float.

The Sarbanes-Oxley Act of 2002 placed important new financial reporting requirements on public companies. While many of the requirements included in the bill are considered to have been in the interest of investors and companies alike, Section 404 continues to place a disproportionately negative cost burden on smaller public companies. These cost burdens have the effect of redirecting scarce resources away from job creation and investment.

Section 404(a) of Sarbanes-Oxley requires a public company to include in its annual report management's assessment of the effectiveness of the company's internal control structure and procedures for financial reporting. Section 404(b) requires the company's auditor to attest to and report on management's assessment. While Section 404 is intended to prevent future accounting improprieties, the implementation of 404(b) has resulted in substantially greater than expected compliance costs, particularly for smaller companies. In fact, according to a 2009 U.S. Securities and Exchange Commission study, Section 404 costs companies an average of \$2.3 million each year in direct compliance costs. Moreover, the study found that the long-term burden on companies with less than \$150 million in public float is greater than seven times that imposed on large firms.¹

The higher costs incurred by public companies have also had a detrimental impact on initial public offerings (IPOs). According to a 2009 Renaissance Capital report, IPO issuance in 2008 and 2009 is lower than any period since the 1970s when business creation struggled against inflation, high interest rates and the Vietnam War.² Additionally, data compiled by Jay Ritter of the University of Florida show the number of U.S. IPOs were lower in every year after SOX was

¹ Securities and Exchange Commission, Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements, OFFICE OF ECONOMIC ANALYSIS, Table 12, September 2009
http://www.sec.gov/news/studies/2009/sox-404_study.pdf.

² Renaissance Capital, How to Heal the IPO Market and Get the Economy Moving,
<http://www.renaissancecapital.com/IPOHome/Review/HealingIPOs.pdf>

enacted in 2002 (2003 to present) than in every year of the decade from 1991 to 2000, including the early '90s recession years. For instance, in the boom post-SOX year of 2006, there were 162 U.S. IPOs. Yet in 1991, a year when the U.S. was mired in recession but did not have SOX, there were 295 U.S. IPOs.³

As you know, the House of Representatives passed H.R. 4173, *Wall Street Reform and Consumer Protection Act of 2009*, which includes a provision to permanently exempt smaller companies from Section 404(b). In fact, 101 Democrats voted with their Republican colleagues against an amendment to strip this job creation language from the bill on the House floor. Although there have been arguments made to exempt companies with public floats of up to \$700 million, we believe that given the data from the SEC study and the recent lackluster level of IPOs, the exemption should include companies with public floats of at least \$150 million.

We urge you to permanently exempt smaller companies from Section 404(b) in S. 3217, the “Restoring American Financial Stability Act of 2010.” For this reason, we ask for your support of smaller public companies by voting YES on the Hutchison/Landrieu Amendment No. 3785.

Sincerely,

Biotechnology Industry Organization
Competitive Enterprise Institute
TechAmerica
Association for Competitive Technologies
Advanced Medical Technology Association
TechNet
Property Casualty Insurers Association of America
Independent Community Bankers of America
American Bankers Association
NYSE Euronext
NASDAQ OMX

cc: Members of the United States Senate

³ 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>