

For Immediate Release:
February 23, 2007

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Snowe, Kerry Urge Sarbanes-Oxley Extension for Small Firms

WASHINGTON – Today Senators Olympia J. Snowe (R-Maine) and John Kerry (D-Mass.) called for a delayed implementation of the Sarbanes-Oxley Section 404 requirements for small public firms to ease the burden on complying with the expected new auditing standards. Section 404 requires firms to establish internal control frameworks and to file internal control reports. The Securities and Exchange Commission (SEC) and the Public Company Accounting Oversight Board (PCAOB) proposed rules and guidance late last year addressing this section and are accepting public comments through Monday, February 26th.

“Requiring small public companies to institute strong internal controls to ensure the accuracy of their financial reporting is appropriate,” Snowe said. “At the same time it is also prudent to allow small companies a year to work with the SEC and PCAOB guidelines before they are evaluated on the effectiveness of these controls. The delay in issuing final guidance to small public companies has created substantial hardships.

Senator Kerry and I believe we should allow the necessary time for small companies to understand the rules by which they will be evaluated.”

“We can have strong corporate accountability standards while also reducing the burden for small firms who spend more time and money earned than big companies to comply with Sarbanes-Oxley,” said Kerry. “We must do everything possible to appropriately reduce red tape in order for small firms to grow and become dynamic public companies.”

A recent Government Accountability Office (GAO) report requested by Senators Snowe and Mike Enzi (R-Wyo.) found that small public companies spend considerably more on implementing Sarbanes-Oxley, particularly Section 404. The report found that firms with less than \$75 million in market capitalization were spending 877 percent more than larger counterparts -- \$1.14 in audit fees per \$100 of revenue, compared to just \$.13 per \$100 for firms with greater than \$1 billion in market capitalization.

Kerry and Snowe, the Chairman and Ranking Member of the Committee on Small Business and Entrepreneurship also urged the panels to carefully consider all comments from small public companies, especially those worth less than \$75 million.

“Independent Community Bankers of America applauds the Senate Small Business and Entrepreneurship Committee for requesting up to a one year delay in the Section 404 due dates for non-accelerated filers so the calendar year filers will have at

least until the due date for their 2008 annual report to file their management internal control reports and the due date for their 2009 annual report to file the auditor's attestation report," said Chris Cole, regulatory counsel for ICBA.

"The American Bankers Association fully supports the delay of the effective date of Section 404 for small companies. It is important to be sure that the changes being made to the Section 404 process are effective prior to asking small businesses to implement them, and we appreciate the leadership that Chairman Kerry and Ranking Member Snowe are taking with this effort," said Floyd Stoner, executive director of congressional relations for the ABA.

Following is the text of the letter:

February 23, 2007

The Honorable Christopher Cox
Chairman
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

The Honorable Mark W. Olson
Chairman
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006

Dear Chairmen Cox and Olson:

Just a few years ago, the trust and confidence of the American people in their financial markets was seriously eroded by the emergence of a series of corporate accounting scandals. The Sarbanes-Oxley Act of 2002 helped restore confidence in our capital markets and increasing accountability to the corporate governance of public companies.

We support the efforts of the U.S. Securities and Exchange Commission (SEC) and the Public Company Accounting Oversight Board (PCAOB) to ease the regulatory burden of Section 404 of the Act by issuing new interpretative guidance on internal controls for small public companies. We believe these final proposals will help to reduce the costs, and the time, that small public companies spend complying with Sarbanes Oxley Act of 2002.

However, as these rules have not yet been finalized, we respectfully request that the implementation date of Section 404 for small public companies be delayed for up to one

additional year from the date that both the SEC and the PCAOB issue their final Section 404 guidance. We believe this extension will provide small public companies the appropriate amount of time needed to comply with these new compliance and auditing standards.

If the SEC chooses to defer these implementation dates for an additional year, it is our understanding that calendar year filers would have until the 2008 annual report to file their management internal control reports and until the 2009 annual report to file the auditor's attestation report. This additional time would make it easier for many small businesses to make the transition to the new internal controls requirements.

Additionally, we also request that the SEC and PCAOB carefully consider all comments by small public companies, especially non-accelerated filers, before setting a final implementation date for the new auditing standards. We believe the comments made by small businesses concerning the proposed rules will give the SEC and the PCAOB the best guidance as to the amount of time non-accelerated filers will require to appropriately implement the new compliance and auditing standard.

In making these requests, we acknowledge the SEC's previous postponement of the date by which smaller public companies were required to comply with the Act's internal control reporting requirements. We believe this extension was wise and appreciate the SEC's willingness to respond to the needs of small issuers.

Small public companies are vital participants of U.S. capital markets as well as critical components of future economic growth and high-wage job creation. However, according to a recent United States Government Accounting Office study, the cost of compliance and the time needed for small public companies to comply with the Sarbanes-Oxley regulations has been disproportionately higher than for large public companies.

While most large companies are effectively dealing with Sarbanes-Oxley's changes, many small public companies continue to have difficulties in complying with the Act's moving auditing standards. Published reports show the number of restatements of financial results for large companies declined by approximately 20 percent in 2006.

Inversely, small public companies, with assets of less than \$75 million, saw the number of restatements increase by 42 percent in 2006. This increase demonstrates the additional costs and burdens small businesses face as they continue to update their internal control processes while they await the final SEC and PCAOB guidance governing these controls.

We urge the SEC to consider giving small public companies this much needed extension.

We believe this process will help reduce the costs and increase the attractiveness for small public companies to participate in United States capital markets. Ultimately, our sensitivity to the needs and concerns of smaller public companies will help promote the strength of the U.S. economy and enable dynamic private firms to grow by helping them become thriving, innovative public companies.

Thank you in advance for your consideration of this request.

JOHN F. KERRY
Chair

OLYMPIA J. SNOWE
Ranking Member