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May 19, 2010

The Honorable Christopher J. Dodd  
Chairman  
United States Senate Committee on Banking,  
Housing, and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Richard Shelby  
Ranking Member  
United States Senate Committee on Banking,  
Housing, and Urban Affairs  
304 Russell Senate Office Building  
Washington, Dc 20510

**Re: Amendment No. 3785—Sarbanes-Oxley Section 404(b)**

Dear Senators Dodd and Shelby:

CFA Institute is writing to express our strong opposition to Amendment No. 3785 to S. 3217, which would permanently exempt companies with a market valuation of less than \$150 million from the requirements of section 404(b) of the Sarbanes-Oxley Act. We also wish to state that this amendment would not simply “maintain the status quo” but would expand the exemption beyond what is accepted today.

First, this proposed amendment clearly does not maintain the status quo. Currently, all companies with a market capitalization of more than \$75 million must comply with section 404(b). This proposed amendment, on the other hand, would change this by permanently exempting those companies with market caps of less than \$150 million from section 404(b) requirements. This type of change would inject additional confusion into the debate about section 404(b) compliance by setting what appears to be an arbitrary market capitalization limit.

As we have expressed through numerous channels, CFA Institute does not support efforts to weaken the internal controls requirements for companies based on a certain market cap. On the contrary, we strongly believe that all companies must be held to the same requirements of section 404(b). Exempting certain companies from such basic internal controls not only creates a bifurcated compliance system, but also undermines the trust investors need in the financial reports of these companies. This trust is critical at a time when U.S. capital markets are attempting to regain investor confidence. The strength and integrity of our marketplace has long stood on uniformity of requirements and creation of a level playing field among market participants. These important foundations must not be weakened, especially during such a vulnerable time in our capital markets system.

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We have heard much about the desire to exempt particularly smaller companies from section 404(b) to lower compliance costs and thus provide these companies with resources they can allocate to research and development efforts. On two distinct levels, we find this argument faulty and not in investors' interests.

First, several recent reports indicate that smaller reporting companies are particularly susceptible to fraud. Section 404(b) helps combat this potential by requiring assessments that discourage instances of fraud in the financial reports of public companies. Removing this requirement, on the other hand, may eliminate the one independent financial reporting safeguard that serves to benefit the investors in these companies. Sacrificing important investor safeguards undermines needed attempts to restore integrity to the marketplace.

Second, when investors do not trust that the financial reporting system of a company has appropriate safeguards, they will demand higher rates of return before risking their capital. Ultimately these investor demands will lead to higher long-term capital costs for issuing companies that exceed the cost of assuring investors of the quality of their internal controls.

We strongly encourage you to maintain the strength of the U.S. capital markets system by requiring all public companies to comply with section 404(b) requirements, regardless of size. We would be happy to discuss this position with you further or answer any questions you may have. Please feel free to contact me at [kurt.schacht@cfainstitute.org](mailto:kurt.schacht@cfainstitute.org) or by phone at 212.756.7728.

Sincerely,

A handwritten signature in black ink that reads 'Kurt N. Schacht'. The signature is written in a cursive, flowing style.

Kurt N. Schacht, CFA, JD  
Managing Director  
Division of Standards and Financial Market Integrity  
CFA Institute

Cc: All U.S. Senators