



Consumer Federation of America

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Statement of CFA Director of Investor Protection Barbara Roper In Response to Jobs Council Recommendation to Roll Back Protections against Accounting Fraud

Yesterday, the President's Council on Jobs and Competitiveness released an Interim Report outlining what the report describes as "a series of practical proposals that can meaningfully accelerate job creation over the next five years as part of the nation's overall jobs agenda." Among them is a proposal to roll back protections against accounting fraud at all but the nation's largest public companies.

We see one major problem: The Council offers no explanation of how reducing protections against accounting fraud will produce sustainable job growth. Instead, there is the appearance here that long-time Sarbanes-Oxley (SOX) foes have simply hijacked the Interim Report of the President's Council as a platform for a pet issue, which, in this case, has no demonstrated connection to "meaningfully accelerat(ing) job creation." No one disputes the importance of more job creation, but reports promoting the same should not be loaded up with random special-interest agenda items.

Specifically, the report proposes to allow companies with market valuations below \$1 billion "to opt out at least of Section 404 compliance, if not to all of the requirements, of Sarbanes-Oxley; or, alternatively, exempt new companies from SOX compliance for five years after they go public." In short, the Jobs Council is not content with the extreme step of relieving companies of their responsibility to establish effective internal controls to prevent financial reporting fraud and errors and to have those controls independently assessed as part of the financial statement audit. They are going even farther by proposing that *all* of SOX compliance be either delayed or made voluntary. This would presumably include Sarbanes-Oxley Act provisions such as the requirement that the CEO and CFO take responsibility for the accuracy of the financial reports, that corporate boards have independent audit committees, and that bonuses based on fraudulent financial reporting be subject to claw-back.

The lack of any connection between the perceived problem and the proposed solution is evident from the report itself.

- The report identifies as a problem the decreased number of small "entrepreneurial" companies that choose to go public. In discussing this issue, it completely ignores

changes in the market that have made it possible for companies to raise large sums of money through private offerings, allowing them to delay going public until they are better established. And, with no basis for its recommendation, it proposes a solution that extends to all but the very largest public companies.

- The report justifies its recommendation on the grounds that “the share of IPOs smaller than \$50 million fell from 80 percent in the 1990s to 20 percent in the 2000s.” But SOX’s internal controls audit requirement was never implemented for companies under \$75 million in market capitalization. It cannot have been a factor. The fact that we were in the midst of a stock market bubble in the late 1990s probably is. In either case, it does not justify the broad roll-back proposed in the report.
- In perhaps its most cynical argument, the report notes that “in the past three years the number of new businesses launched each year has fallen by an unprecedented 23%” and that there were “fewer venture-backed IPOs in 2008 and 2009 than in any year since 1985.” This should hardly be surprising, since we are in the worst economic downturn since the Great Depression. The fact that this phenomenon is entirely unrelated to SOX is evident from the report’s own table showing the number of private-sector establishments launched from March 1994 to March 2010. As the chart clearly shows, the post-SOX implementation, pre-crisis period from 2005 through 2007 saw record levels of start-ups and, even in 2008, levels were roughly as high as in the go-go years from 1997 to 2001. If there is a lesson from this chart, it is that financial scandals and economic crises are bad for job growth. Relaxing protections against accounting fraud will make our problems worse, not better.

“The Jobs Council looks at job losses that are the direct result of a financial crisis brought on by weak financial regulation and proposes as a solution further weakening regulations – in this case the regulations adopted in response to an unprecedented wave of accounting fraud a decade ago at companies large and small,” said CFA Director of Investor Protection Barbara Roper. “Those accounting scandals, and the costly restatements that followed, were the job killers. If this proposal is adopted, we can expect a repeat of that painful lesson, with even worse consequences for our fragile economy. If Congress and the Administration care about jobs, they will reject this irresponsible recommendation.”

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Consumer Federation of America is a nonprofit association of nearly 300 consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education.