

109TH CONGRESS
2D SESSION

S. 2824

To reduce the burdens of the implementation of section 404 of the Sarbanes-Oxley Act of 2002.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2006

Mr. DEMINT (for himself, Mr. ENSIGN, Mr. MARTINEZ, Mr. INHOFE, Mr. BURNS, and Mr. ALLEN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To reduce the burdens of the implementation of section 404 of the Sarbanes-Oxley Act of 2002.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Competitive and Open
5 Markets that Protect and Enhance the Treatment of En-
6 trepreneurs Act” or the “COMPETE Act”.

1 **SEC. 2. IMPLEMENTATION OF INTERNAL CONTROL RE-**
2 **PORTING AND ASSESSMENT.**

3 Section 404 of the Sarbanes-Oxley Act of 2002 (15
4 U.S.C. 7262) is amended—

5 (1) in subsection (a), by striking “The Commis-
6 sion” and inserting “Subject to subsections (c) and
7 (d), the Commission”;

8 (2) in subsection (b), by inserting “, subject to
9 subsections (c) and (d),” after “for the issuer shall”;
10 and

11 (3) by adding at the end the following new sub-
12 sections:

13 “(c) **SMALLER PUBLIC COMPANY EXEMPTION.**—The
14 rules of the Commission under subsection (a) shall permit
15 an issuer to elect voluntarily not to provide the assessment
16 described in subsection (a)(2) and the attestation thereof
17 described in subsection (b), if the issuer—

18 “(1) has a total market capitalization for the
19 relevant reporting period of less than \$700,000,000;

20 “(2) has total product revenue for that report-
21 ing period of less than \$125,000,000;

22 “(3) has fewer than 1500 record beneficial
23 holders of securities;

24 “(4) has been subject to the requirements of
25 sections 13(a) or 15(d) of the Securities Exchange

1 Act of 1934 for a period of less than 12 calendar
 2 months; or

3 “(5) has not filed, and was not required to file,
 4 an annual report pursuant to section 13(a) or 15(d)
 5 of the Securities Exchange Act of 1934.

6 “(d) DE MINIMUS STANDARD; ADDITIONAL GUID-
 7 ANCE; INDEPENDENCE.—In implementing the require-
 8 ments of this section, the Commission and the Board—

9 “(1) shall alter the standard for review from a
 10 remote likelihood standard for noting weaknesses
 11 under this section to a 5 percent de minimus mate-
 12 rial weakness criteria (based on 5 percent of net
 13 profits);

14 “(2) shall establish specific guidelines for meas-
 15 uring the terms ‘reasonable’, ‘significant’, and ‘suffi-
 16 cient’ in the context of internal control over financial
 17 reporting for issuers, including—

18 “(A) reference to specific examples of the
 19 appropriate application of those terms; and

20 “(B) establishment of a means for timely
 21 response by the Commission or the Board, as
 22 applicable, to requests by issuers and registered
 23 public accounting firms for guidance as to the
 24 appropriate application of those terms; and

1 “(3) shall modify the rules concerning the inde-
2 pendence of registered public accounting firms to
3 perform assessments under subsection (b) to allow
4 prudent interaction between such firms and internal
5 consultants.”.

6 **SEC. 3. BRITISH ACCOUNTING SYSTEM STUDY AND RE-**
7 **PORT.**

8 The Securities and Exchange Commission and the
9 Public Company Accounting Oversight Board shall jointly
10 conduct a study comparing and contrasting the principles-
11 based Turnbull Guidance under the securities laws of the
12 United Kingdom to the implementation of section 404 of
13 the Sarbanes-Oxley Act of 2002. The Commission and the
14 Board shall submit a report on the results of such study
15 to Congress not later than 1 year after the date of enact-
16 ment of this Act.

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