

PUBLICATION

Dodd-Frank Wall Street Reform And Consumer Protection Act, Part 2

July 28, 2010

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act). The Act contains several provisions which amend provisions of the Sarbanes-Oxley Act of 2002. These provisions both expand the scope of Sarbanes-Oxley and provide relief for some issuers from the auditor attestation requirement contained in Section 404(b). A summary of the key provisions of the Act relating to Sarbanes-Oxley is below.

Expansion of Coverage. The Act amends Sarbanes-Oxley to expand its reach over foreign public accounting firms, including requiring production of certain documents by such firms and by registered public accounting firms that rely on foreign public accounting firms in performing audit work. The Act also amends Sarbanes-Oxley to include audits by accounting firms of brokers and dealers, and not just audits of issuers. The Act expands the scope of the Public Company Accounting Oversight Board (PCAOB) to include "audits of companies," not just public companies, and gives the PCAOB authority to require a program of inspection to assess the degree of compliance of public accounting firms that provide audit reports for a broker or dealer. This is similar to the authority the PCAOB currently has with respect to firms that provide audit reports for issuers.

Section 404(b) Exemption. The Act amends Section 404(b) of Sarbanes-Oxley to exempt issuers that are neither large accelerated filers nor accelerated filers from the auditor attestation of internal controls requirements of that subsection. The Act requires the SEC to conduct a study on ways to reduce the burden of complying with Section 404(b) for companies with market capitalization between \$75 million and \$250 million. The study will examine whether reducing this burden of compliance will encourage companies to list on U.S. exchanges as opposed to conducting private offerings in the alternative.

The Act further requires the Comptroller General to conduct an additional study within three years on the impact of the above amendment to Section 404(b). The study will include:

- An analysis of whether issuers exempt from Section 404(b) have fewer or more restatements of published accounting standards than those that are required to comply with this section;
- A comparison of the cost of capital among those who do and do not have to comply;
- A comparison of the confidence of investors in the integrity of the financial statements of issuers that do and do not have to comply;
- A determination of whether issuers who do not receive the attestation required under Section 404(b) should be required to disclose the lack of such attestation; and
- An analysis of the costs and benefits to issuers exempt from Section 404(b) but who voluntarily obtain auditor attestation.

If you have questions about this or any other securities-related issues, please contact one of the attorneys listed below or your Baker Donelson attorney.

Baker Donelson is pleased to present a series of Alerts related to the Dodd-Frank Wall Street Reform and Consumer Protection Act. To read the complete series, [click here](#).

