

Panel Considers Exemptions To Sarbanes-Oxley

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by Bill Swindell, with George E. Condon Jr. contributing

With White House backing, the House Financial Services Committee appears ready to exempt some small businesses from complying with reporting provisions in the 2002 Sarbanes-Oxley Act, despite opposition from SEC Chairwoman Mary Schapiro.

As it considers an underlying investor-protection bill, the panel will vote Wednesday on an amendment sponsored by Reps. **Scott Garrett**, R-N.J., and **John Adler**, D-N.J., that would exempt companies with a market cap of less than \$75 million from having to comply with a provision known as Section 404. That section requires public companies to establish and maintain internal controls and financial reporting procedures, which must be certified by an outside accounting firm.

"We should strike the right balance of enough regulation to protect investors [and] to protect consumers without so overburdening businesses that they don't grow," Adler said.

Adler initially sponsored an amendment that would exempt companies with market caps of less than \$700 million from Section 404 regulations until the SEC modifies its regulations based on the size of the company. He then reworked the measure in consultation with White House Chief of Staff Emanuel, who met with him three times last week, Adler said.

White House Deputy Press Secretary Jen Psaki defended the administration's outreach.

"Our focus must be on addressing the threats posed to investors and consumers by large, interconnected companies rather than placing an undue burden on small businesses," she said in a statement. "We are working closely with Congress to determine the best vehicle for getting that accomplished."

But the bill's sponsor, Financial Services Capital Markets Subcommittee Chairman **Paul Kanjorski**, D-Pa., noted the provision is opposed by the SEC, which has given small caps an extension from complying with the rules until June. Schapiro has vowed she will oppose additional extensions and that the companies and auditors should move "with deliberate speed" toward complying with the law.

"I do not think we should grant exemptions. I think this is exactly the wrong time in our economy to historically decide that we want to lessen responsibility of reporting and lessen information that the American investor can get," said Kanjorski, who noted that 43 percent of reporting problems come from small-cap companies.

House Financial Services Chairman **Barney Frank** agreed and argued the exemption could serve to restrain companies from expanding. "You may be deterring people from growing," Frank said.

But many Democrats appear willing to give small companies a break, despite complaints from consumer groups that compliance costs for the rule have been exaggerated and that Sarbanes-Oxley has not forced companies to go overseas for their initial public offering. Rep. **Bill Foster**, D-Ill., said compliance burdens are a "real consideration" for small companies.

The panel is expected to approve the underlying bill Wednesday after voting on seven amendments, including one by Rep. **Maxine Waters**, D-Calif., that would codify SEC authority to issue rules on shareholder proxy access.

The bill would place the same fiduciary duty on investment advisers as well as on broker-dealers, who are held to a lower threshold. It also proposes to double the SEC's funding over the next five years, in part with a new fee on investment advisers, and create an independent study of securities regulation that would make recommendations.