

SECTION 4
PRACTITIONER'S
CORNER



THE SOX 404 PROCEDURE; IS IT STILL SO REPELLING TO
FOREIGN ISSUERS?

*Marina Stefou**

Abstract

The need for effective and competitive financial markets is reflected in the internal control procedures of listed companies. The recent banking crises and the famous financial scandals have revealed the need for strong internal control mechanisms. Such mechanisms improve firms performance, reduce information asymmetry and are expected to raise firms value. However, due to the inherent limitations of internal control achievement of the financial reporting objectives cannot be absolutely ensured. A great reform in the internal control mechanism was introduced by the controversial Article 404 of Sarbanes-Oxley Act of 2002. This paper lays out the internal control provision described in Sarbanes-Oxley Act, presents the extraterritorial effects on foreign issuers, compares and summarizes overall findings towards ensuring a better financial environment with regard to the international and European corporate governance framework applied.

Keywords Corporate Governance, Sarbanes-Oxley Act 2002, internal control mechanism, extraterritoriality, foreign issuers and effective implementation

**ECGTN Marie-Curie Fellow Researcher, ECGI, University of Genoa-Genoa Centre for Law and Finance (CLFGE), Ph.d Candidate Panteion University of Athens, LL.M 2005, LL.B 2003 Law School of Athens*

Via Balbi 22, 161 26 Genoa, Italy

marina.stefou@unige.it,

I would like to thank Professor Guido Ferrarini for his important comments and guidance. This paper was accomplished under the scope and the financial support of the European Corporate Governance Training Network (ECGTN) research project.

Introduction

The Sarbanes-Oxley Act of 2002, also known as the Public Company Accounting Reform and Investor Protection Act of 2002 or 'SOX', is a much-discussed and controversial law of the United States. It was issued as a rather strict yet prompt response of the American Congress to scandals like Enron and WorldCom, that caused the decline of public trust in

accounting and reporting practices¹⁵⁵. The Sarbanes-Oxley Act includes provisions for the financial instruments and their trading as well as requirements on additional disclosure. It has been characterized as

¹⁵⁵ "This failure of corporate governance, [compounded by] an enduring bear market, approaching mid-term elections and uncertainty about terrorism and war, placed the federal government under extraordinary pressure to act" according to Greene, E. & Boury, P.M., (2003) 'Post Sarbanes Oxley Corporate Governance in Europe and the USA: Americanisation or Convergence?', 1 *INT L J. Disclosure and Governance* 21,22.

the “most far-reaching reform of American business practices since the time of Franklin Delano Roosevelt”¹⁵⁶.

SOX established new law, amended the existing one and created the Securities and Exchange Commission (hereinafter “the SEC”) rule making and stock market listing standards. The passing of the SOX marks the departure from the lenience that foreign issuers had enjoyed in the past towards the general trend consisting in making the U.S. capital markets more attractive to foreign issuers¹⁵⁷. The Act’s implementation, as *Armour* and *McCahery* outline¹⁵⁸, aims at restoring the integrity of the audit process by strengthening the oversight of accounting profession while, at the same time, it establishes measures especially designed to address corporate governance counter failures. The Act contains 11 articles ranging from additional corporate board responsibilities to criminal penalties and requires SEC to implement rulings on the requirements related to the compliance with the new law. It includes many reforms aiming at improving and enhancing financial reporting, as well as at regulating the accounting and auditing profession. One of the major key provisions of the Act is the creation of the Public Accounting Oversight Board (hereinafter ‘PCAOB’), a quasi-public accounting board¹⁵⁹ that oversees audits of public companies, subject to the securities laws¹⁶⁰. Its principal purpose is to protect the interests of investors and to safeguard public interest in the preparation of “informative, accurate and independent audit reports”. Another key provision, article (or section) 404 of SOX, became effective on November 15, 2004 for domestic issuers whereas for non-US

issuers, it became effective on July 15, 2007¹⁶¹ (after SEC’s permission for expansion¹⁶²). Section 404 is SOX’s most controversial new provision and it is so much-discussed that it has become a synonym for SOX itself¹⁶³.

The enactment of Section 404 requires SEC registrants to report on the effectiveness of the internal controls over financial reporting, the management to assess and evaluate the annual internal financial reports and lastly, the auditors to attest the validity of these reports. Section 404 requirement for management evaluation and reporting on the internal controls had also been proposed by the SEC (to be later withdrawn) in 1979 in the Securities Exchange Act Rel.¹⁶⁴. At that time -as the case is presently- this requirement for management assessment was faced with wide controversy and criticism. Objections concerning Section 404 derive from the compliance costs that companies had to bear during the first two years, as a minimum, of the implementation of the Act. However, as research has shown¹⁶⁵, after three years of enforcement, the resulting financial burden is greater for small companies, whereas as regards large companies, Section 404 is claimed to be a much needed reform that generates more accurate internal company control which finally supports a cost-effective internal control procedure.

An important aspect concerning internal control requirements is that, whether federal or state, these requirements are incoherent unless and until it is well-defined for whose benefit they exist and to what

¹⁵⁶ Finch, J. (2002), “US clean-up angers Hewitt”, *Guardian* October 8, available at: www.guardian.co.uk/0,3858,4517263-103676,00.html

¹⁵⁷ Shin, S.J., (2007), ‘The effect of the Sarbanes-Oxley Act of 2002 on foreign issuers listed on the U.S. capital markets’, 3 *NYU J. Law and Business*, 706

¹⁵⁸ Armour J. and McCahery, J. ‘ After Enron: Improving Corporate Law and Modernizing Securities Regulation in Europe and the US, *Amsterdam Center for Law and Economics Working Paper 2006-07* available also at : <http://ssrn.com/abstract=910205>

¹⁵⁹ According to Prof. Cunningham, the PCAOB reveals a flaw in the corporate governance system as a result of a mixture of state and federal law regulations, see Cunningham, L. , (2004), ‘ A new Product for the State Corporation Law Market: Audit Committee Certifications’1 *Berkeley Bus. L. J.* 327, 331. Also for a legal criticism for the process of PCAOB standard setting see Nagy, D., (2005). ‘Playing Peekaboo with Constitutional Law: The PCAOB and its Public/private Status’, 80 *Notre Dame L. Rev.* 975

¹⁶⁰ ‘The PCAOB is a sort of a new federal watchdog for regulation of the accounting profession’, see Eisenberg, M., (ed), (2004), *Corporations and Other business organizations statutes, rules, materials and forms*, Foundation Press, 747.

¹⁶¹ SEC 404 Release. Non domestic private issuers are considered non-accelerated filers, where accelerated filers are defined in 1934 Act, and because they had greater difficulty in preparing the management report on internal control over financial reporting at first they were expected to fill in the 404 report by the end of July 15, 2006. But finally the SEC permitted one more year of expansion in order for them to meet all the necessary requirements.

¹⁶² See Securities and Exchange Commission Releases Nos.33-8760;34-54942, Internal Control over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies, (Dec 15, 2006), 71 FR 76580 (Dec 21, 2006).

¹⁶³ Congress reached the conclusion that executive certification would be more meaningful and persuasive to investors if those executives had reasonable grounds to believe that the internal financial controls on the process are solid.

¹⁶⁴ Securities Exchange Act Rel. No. 15772,44 Fed. Reg. 26702 (April 30, 1979).

¹⁶⁵ Prentice, R.A., (*forthcoming*), ‘Sarbanes-Oxley: The Evidence Regarding the Impact of Section 404’, *Cardozo L. R.*, available at : <http://ssrn.com/abstract=991295>, also Skouvakis, A. (2005), “Exiting the Public Markets: A difficult choice for Small Public Companies Struggling With Sarbanes-Oxley”, 109 *PENN.St. L. R.* 1279. As it is commonly expressed, the small companies at the time SOX was issued were not expected to be able to afford the cost of compliance and therefore, they might have preferred to go private or dark.

end¹⁶⁶. Shareholders should be the beneficiaries of internal accounting controls legislation and it is claimed that the Act was released in accordance to their needs¹⁶⁷. Another difficult question to answer is the extent to which controls relating to reporting blur into controls over general legal compliance or operational decision making¹⁶⁸.

This paper presents in brief the basic provisions of Section 404, as already applied in practice; Section 404 benefits are balanced against costs, while an effort shall be made to answer the question whether the wide controversy raised with regard to foreign issuers listed in US is well-justified. Simultaneously, three main objectives are emphasized:

- i) the main aspects of internal control procedures after implementation of Sarbanes-Oxley Act 2002 from a legal and a critical perspective,
- ii) the extraterritoriality of the internal control provision for foreign issuers listed in the US and their reaction to the Sarbanes-Oxley provision after the first year of its implementation and
- iii) the positive and negative aspects of the effectiveness of internal controls, the measures undertaken by foreign issuers and the possible ways in which European firms can benefit from a strong internal control regime.

A. Section 404 Procedure

1. Section 404 Provisions ni General

Regardless of their size, companies are exposed to risks in order to realize high profits¹⁶⁹; It is self-evident that the larger and more complex a firm is, the more are the risks that the firm is faced with. Firms are also required to manage the risks involved in their long-term operation. To efficiently manage these risks, companies must firstly assess the risks taken, then measure and control them and finally, monitor them¹⁷⁰. Risk management is the company tool for assessing risks. Financial reporting render risk management possible and reveals eventual material weaknesses of the company. Revealing and reporting material weaknesses is one of Sarbanes-Oxley's Act primary concerns¹⁷¹. In Statement on Auditing

Standards No. 60 'material weakness' is defined as a reportable condition in which the design or operation of one or more of the internal control components doesn't reduce to a relatively low level the risk that misstatements caused by errors or frauds in the amounts that they would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions¹⁷². The SEC hasn't taken any position whatsoever on how many significant deficiencies constitute a material weakness; this is left entirely to the companies and their auditors to judge on a case-by-case basis depending on the particular facts and circumstances. However, the PCAOB, through the new Auditing Standard No. 5, which replaced the much-discussed Auditing Standard No. 2 (*see analysis below*), tries to limit the meaning of material weaknesses to the most evident weaknesses that can seriously affect the company's performance and lead to a 'non-depicting the reality' financial reporting of the firm.

Section 404 vested the management with the obligation to assess the financial report, certify the disclosure and control the reliability of periodic financial reports. Issuers are required to publish in their annual reports information concerning the scope and adequacy of the internal control structure and the financial reporting procedures. The effectiveness of such internal controls and procedures is also assessed. In the same report, following management's assessment, the registered public accounting firm attests and reports on the assessment of the effectiveness of the internal control structure and the financial reporting procedures. The relevant procedures used by most companies are IT-based, while companies rely on electronic management of the data, documents and key operational processes. Therefore, it is obvious that Information Technology plays a vital role in internal control evaluation. To determine the IT control system which should first be included in the procedure, management must identify and document control at process level. Companies tend to adopt evaluation criteria in order to improve comparability between the standard used by the companies to conduct their annual internal control evaluations. Chief Information Officers ("CIO's") are responsible for the security, the accuracy and the reliability of the data analysing systems.

The scope of Section 404 is to ensure that management is efficient when assessing internal controls and is informed in detail on the internal control procedures, adopted by the internal control committees, the auditors and the IT section.

¹⁶⁶ Langevoort, D.C., (2005), 'Internal Controls After Sarbanes-Oxley: Revisiting Corporate Law's Duty of Care as responsibility for systems' available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=808084.

¹⁶⁷ Clark, R.C., (1986), *Corporate Law*, Little Brown (ed.)

¹⁶⁸ *Ibid.*

¹⁶⁹ Deloach, J., (2004), *The new risk imperative – an enterprise wide approach*, Handbook of business strategy.

¹⁷⁰ Selim, G. and McNamee, D., (1999), 'The risk management and internal auditing relationship: Developing and validating a model', 3 *Int. J. of Auditing*, 163

¹⁷¹ According to SEC, material misstatements is one of the principal ways of inducing readers of financial reports in taking wrong decisions concerning investments in a company, lending money to the company or any other

financial decision, *see* <http://www.sec.gov/rules/pcaob/34-49544.htm>

¹⁷² *See also* PCAOB release 021/ 2006-2007 (19/12) available at: http://www.pcaobus.org/Rules/Docket_021/2006-12-19_Release_No._2006-007.pdf

According to Section 404, the evaluation of internal control financial reporting and the identification of any material weaknesses must be assessed by the management. The elimination of any material weaknesses which could keep the company away from meeting the financial targets set at the beginning of the year constitutes the management's responsibility. In order to avoid such misstatements at an early stage, management must gather sufficient evidence, so as to address the risks related to:

- i. each financial reporting element, and
- ii. controls underlying each element¹⁷³.

2. Internal Control over Financial Reporting (ICFR)

(i) Definition of Internal Control over Financial Reporting (ICFR)

Internal control concerns the accuracy of the financial statements produced¹⁷⁴ and the provision of greater assurance to the investors regarding the integrity of the firm's management. The definition of internal control was traditionally focused on the accounting profession. Under Section 404, it received a broader meaning focused on clarifying the company's internal control that an auditor should consider when planning and performing an audit of the company's financial statements.

According to Section 404, internal control over financial reporting (hereinafter "ICFR") is: " a process designed by, or under the supervision of, the registrant's principal executive and principal financial officers, or persons performing similar functions, and effected by the registrant's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- i. Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the registrant
- ii. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and

expenditures of the registrant are being made only in accordance with authorizations of management and directors of the registrant and

- iii. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the registrant's assets that could have a material effect on the financial statements".

The definition of ICFR is in accordance with the description of accounting controls in Section 13 (b) 2 B of the 1934 Securities Act¹⁷⁵. The procedure includes, at first, the financial reporting whereby the financial statements of the company are certified and any existing weaknesses, material and trivial ones, are depicted. Consequently, the management's task involves the assessment of this financial reporting that specifically covers the matters referenced in Section 103 of SOX. Then, the company's public registered accounting firm attests and reports over the financial statements. The reference made to the assurances regarding the use of disposition of a company's assets in clause (iii) clearly proves that the safeguarding of assets constitutes an element of ICFR.

The company's management, with the assistance of the CEO and CFO, evaluates the effectiveness of the company's internal control over financial reporting as of the end of every fiscal year. The annual 404 report on ICFR should include¹⁷⁶:

- a statement of the *management's responsibility for establishing and maintaining adequate internal control* over financial reporting for the company;
 - a statement identifying the *framework* used by the management in order to perform the required evaluation of the effectiveness of ICFR as of the end of the company's most recent fiscal year;
 - the management's assessment of the effectiveness of ICFR as of the end of company's most recent fiscal year, including a statement as to whether the company's internal control over financial reporting is indeed effective. The assessment must include disclosure of any material weaknesses in the ICFR detected by the management¹⁷⁷.
 - a statement that the registered public accounting firm that audited the financial statements included in the company's annual report has issued an attestation report on the management's assessment of the company's internal control over financial reporting¹⁷⁸.
- The role of the management is crucial for the compliance with Section 404. The management is responsible for including in its annual statement (usually the 20-F for foreign and domestic issuers and

¹⁷³ Gaynor, M., 'Improving Sarbanes-Oxley Section 404 Implementation', SEC, available at www.sec.org

¹⁷⁴ Empirical studies confirm this theory by indicating that firms with poor internal controls tend to restate earnings more often, be the subject of more SEC accounting and auditing enforcement releases, face more frequent SEC enforcement actions and be worse performers and systematically riskier than comparable firms, see Bryan, S. & Lilien, S., (2005), 'Characteristics of Firms with Material Weaknesses in Internal Control: An Assessment of Section 404 of Sarbanes Oxley 24' available at : <http://ssrn.com/abstract=682363> . See also, Prentice, R. supra fn.11.

¹⁷⁵ As also mentioned in SEC's 404 release.

¹⁷⁶ According to Item 308 of Regulations S-K and S-B.

¹⁷⁷ If there is at least one material weakness the management is not allowed to conclude that the company's overall internal control over financial reporting is effective.

¹⁷⁸ 17 C.F.R §§228.308 and 229.308, Item 15 of Form 20-F, 17 C .F.R. §249.220f (2005) and Form 40-F, 17 C.F.R. §249.240 f, General Instruction B (6) (2005)

the 10-K for domestic issuers¹⁷⁹) an internal control report that:

- states the responsibility of the management for establishing and maintaining an adequate internal control structure and procedures for financial reporting
- includes the assessment of the most recent fiscal year of the issuer on the effectiveness of ICFR.

To fulfil these requirements, the management should undertake a comprehensive approach that includes thorough planning and evaluation of its internal controls system. There are a number of methods that a company can choose in developing and fulfilling the aforementioned responsibilities. The company's relevant documentation varies as Section 404 does not prohibit any form of documentation, thus, enabling use and combination of many different forms of documentation which could guarantee a more complete internal control and an accurate and up-to-date assessment of the management. The SEC hasn't provided any checklist to follow as it encourages flexibility in the documentation and the reporting procedure, in general. The form of the documentation depends on the company's size, complexity and documentation approach policy. Some indicative forms of documentation are:

- the company's policy manuals
- the accounting models
- process models
- memoranda
- flow charts
- procedural write-ups
- self-assessment reports
- job descriptions
- forms and decision tables and generally, any other item that the company considers as appropriate documentation.

This evidence should document the company's controls while its effectiveness should also be tested. It is important that management allows sufficient time for the completion of this process, so that the appropriate basis may be created in view of ensuring an assessment which responds to any identified deficiencies. Early identification of deficiencies provides the management with sufficient time to correct them and determine the operating effectiveness of the controls prior to year-end reporting.

For the evaluation of the evidence of ICFR, it is proposed that evidence is gathered from on-going

monitoring activities whereas the internal control is deemed more effective when there is centralized operation of controls and the number of the personnel involved is limited¹⁸⁰. Apart from the documentation itself, the language used should be more generally understandable in order to avoid possible problems arising from foreign filers¹⁸¹.

(ii) The Auditing Standards used for the ICFR

In 2004, PCAOB issued Auditing Standard No. 2 (hereinafter 'AS-2'), which requires auditors to perform their own independent assessment related to internal controls over financial reporting and issue a report verifying the management's prior assessment over ICFR. AS-2 defines auditor obligations with respect to the opinion and evaluation of management's ICFR. AS-2 also sets "de facto standards"¹⁸² with respect to management's own evaluation, since should the management fail to adhere to these standards, this would result in a negative auditor opinion. AS-2 was very expansive in breadth and depth of the internal controls audit¹⁸³ as testing was expanded on all base-level data, generated by daily business operations, as well as on the corporate governance process. It is clear that internal control must have a broad and in-depth operation; however, there has been question on whether limits should be set in testing, since AS-2 provides for the execution of all kinds of internal control testing, thus, generating overwhelming costs for the companies¹⁸⁴. As a reaction to compliance costs and the burdensome application of Audit Standard AS-2, PCAOB recently adopted Audit Standard-No.5 (hereinafter 'AS-5') with the aim to guide auditors towards verifying more effectively internal control weaknesses during financial statement audits, and at the same time, eliminate unnecessary costly procedures. The SEC

¹⁸⁰ Supra. fn.9.

¹⁸¹ The language used may also create a problem in the documentation of 404 as accelerated filers with locations outside US have experienced challenges in addressing languages differences, see Deloitte's report on Sarbanes-Oxley Section 404: Compliance Challenges for Foreign Private Issuers (2005).

¹⁸² Supra fn.5.

¹⁸³ Ibid.

¹⁸⁴ As Langevoort analyzes : "Perhaps the key sentence in the entire standard, however, comes in paragraph 9 of AS-2: a significant deficiency in controls arises when there is one or more flaws in the control system such that "there is more than a remote" likelihood that a misstatement of the company's annual or interim financial statements that is more than inconsequential. Something is considered remote only when chance of its occurrence is "slight"- amore than a remote risk, then, is anything more than a slight one. According to paragraph 10 of AS-2, a material weakness is one or more significant deficiencies that create a "more than remote" likelihood that a material misstatement in the financials will not be prevented or detected", supra fn.12.

¹⁷⁹ The management's assessment in practice is usually placed near the management's discussion and analysis (MD&A) disclosure or immediately preceding the financial statements. Most companies include the report either in Item 9A of form 10-K or in their glossy annual report either immediately before or after the financial statements or immediately after MD&A. Section 404 does not require the assessment to be signed by the CFO and CEO of the company. However, some companies are having their CFO-CEO's sign their management report.

was much in favour of the new auditing standard¹⁸⁵ as it makes audit scalable, it eliminates unnecessary controls and, consequently, costs less, since it detects only significant deficiencies. The PCAOB observed that the audit of internal control had significant benefits under AS-2, including higher quality of financial reporting, while it also noted that the effort to conduct an effective audit appeared greater than necessary.

As a result, AS-5 is now designed to achieve the following objectives:

- to have the audits on internal control focused on *the most important matters*, i.e. evaluating the areas where there is reasonable possibility of containing a material misstatement, pointing out the significance of fraud risk and anti-fraud measures and explaining the impact that entity-level controls can have on the evaluation of other controls
- to include only the most necessary requirements for an effective audit, i.e. focusing on the multi-location of risk rather than risk coverage, risk assessment at assertion rather than at control level and finally, not requiring auditors to evaluate the management's assessment process
- to have audit properly fitted to the size and the complexity of the company audited
- to simplify the text of the Standard, by providing more general principles rather than detailed requirements in English language for ensuring general understanding of the meaning of the key terms and of important concepts.

Consequently, due to the experience gained until the present day and the cost-related complaints about over-controlling and exceeding costs, PCAOB issued the new standard, so as to enable auditors and management to focus on the most important matters that have to be tested, i.e. those matters which could eventually lead to material weaknesses. The provision of general principles instead of detailed guidance is also in favour of the companies, since it is strongly connected with the size, the complexity, the internal function of the company and its perception of the control system. The ultimate goal of the new standard is to eliminate unnecessary work and "right-size" the audits of internal controls, thus, succeeding in making them more cost-effective.

The 404 internal control procedure renders the management responsible for the picture drawn by the internal control testing of the company. The purpose of the procedure is to increase the reliability of financial reporting and to improve the balance between compliance costs and benefits. The efficiency of the internal control is promoted by allowing management to focus on material control items, including the role of entity-level and general information technology controls.

¹⁸⁵ See SEC Release 144-2007, 'SEC Approves PCAOB Auditing Standard No. 5 Regarding Audits of Internal Control Over Financial Reporting; Adopts Definition of "Significant Deficiency'.

3. Management's Assessment and Evaluation of The Preferred Frameworks

The decision on the evaluation framework to be used lies on the management. This is a key-element for management's assessment and it is important that the control framework on which the evaluation was based is clearly specified. The Management is responsible for using a suitable and well-recognized, commonly accepted control framework, established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment¹⁸⁶. The appropriate documentation concerning the management's decision and assessment of ICFR will enable the independent auditor to understand the management's process as well as to plan and perform the related audit procedures. Although every firm can, based on its size and objectives, apply whichever control framework seems more appropriate for it, provided that it is widely recognized as trustworthy, the SEC did note that the Committee of Sponsoring Organizations of the Treadway Commission's Internal Control Integrated Framework (1992), also known as COSO framework-report), satisfies the SEC's criteria. In addition, SEC noted that there are also other suitable and acceptable evaluation standards outside the US, such as The Guidance on Assessing Control, published by the Canadian Institute of Chartered Accountants, and the Turnbull Report, published by the Institute of Chartered Accountants in England and Wales. An evaluation framework is suitable when:

- it is free from bias
- it permits reasonably consistent qualitative and quantitative measurement of a company's internal control
- it is sufficiently complete and more specifically, the factors that could alter a conclusion about the effectiveness of the company's internal controls are not omitted from the evaluation framework
- it is relevant to an evaluation of internal control over financial reporting.

Moreover, Section 404 rules do not purposely specify the method or the procedures which should be followed for an accurate evaluation. The SEC recognizes that these methods should vary from company to company. The assessment of ICFR must be based on procedures sufficient to evaluate firm's design and test its operating effectiveness.

In September 2004, COSO released a draft of a document entitled "Enterprise Risk Management Framework". This framework doesn't replace the commonly used 1992 COSO report; it incorporates it. It is designed to raise a consistent risk and control awareness throughout the enterprise and to become a commonly accepted model for discussing and evaluating the organization's risk management processes. "The Enterprise Risk Management

¹⁸⁶ E.g. 17 C.F.R. §§240.13^o-15 (c) and 240.15 (d)-15 (c) (2005).

Framework expands on internal control providing a more robust and extensive focus on the broader subject of enterprise risk management. While it is not intended and does not replace the internal control framework but rather incorporates the internal control framework within it, companies may decide to look to this enterprise risk management framework both to satisfy their internal control needs and to move toward a fuller risk of management process”¹⁸⁷.

B. The Debate about Section 404 and The Foreign Issuers

1. Do They Finally Deregister Because of 404?

Listing in the US used to be, among other reasons, a matter of prestige¹⁸⁸ for EU issuers. The main benefits consisted briefly in:

- the increased liquidity¹⁸⁹
- the decreased expose to domestic market risk¹⁹⁰
- the increased visibility¹⁹¹
- the reduction of the cost of capital (with uncertain duration of this effect though)¹⁹²
- obtaining acquisition currency
- the financial benefits offered by US public market and
- the notion that listing in a stricter disclosure environment than that of the home country exchange could guarantee future earnings¹⁹³.

Section 404 is the cornerstone of internal control for US-listed companies. Companies have reported that SOX 404 improved the accuracy of their financial statements, while it also increased their reliability, thus, protecting investors’ and shareholders’ interests.

¹⁸⁷ Enterprise Risk Management Framework-Integrated Framework, Executive Summary, released by COSO in September 2004, available at : http://www.coso.org/Publications/ERM/COSO_ERM_ExecutiveSummary.pdf.

¹⁸⁸ Jackson, H. and Pan, E.,B(*forthcoming*) ‘Regulatory Competition in International Securities Markets: Evidence from Europe in 1999- Part II ’, *Bus.Law* and Pagano, M. et al, (2001) ‘ The Geography of Equity listing: Why do companies list abroad? ’ *Centro Studi in Economia e Finanza* , W.P. No 28.

¹⁸⁹ Karolyi, A., (1996), ‘ What happens to stocks that list Shares Abroad? A survey of the evidence and its managerial implications’, 34 *NYSE W.P.* N096-04.

¹⁹⁰ Karolyi, A., *ibid* and , Foerster,S.R., and Karolyi, A., (1999) , ‘ The effect of market segmentation and Investor Recognition on Asset Prices: Evidence from Foreign Stock Listing in the United States’, 54 *J. FIN.* 981

¹⁹¹ Baker, K. et al., (1999), ‘ International cross-listings and visibility’

¹⁹² Errunza, V.R. and Miller,D.P., (2000), ‘Market Segmentation and the Cost of Capital in International Equity Markets’, 35 *J.Fin & Quantitative Analysis* , 577, Stulz, R. M., (1999), ‘Globalization of Equity Markets and the Cost of Capital’ *NYSE W.P.* No. 99-02

¹⁹³ Cheung, S. and Lee, J., (1995) ‘Disclosure environment and Listing on Foreign Stock Exchanges’, 19 *J. Banking and Finance*, 347

It involves rationalizing internal controls and evaluations, i.e. which controls are important to keep and which to remove, standardizing and centralizing key controls in view of increasing efficiency and redesigning the control structure.

As much-discussed in theory and in practice, Section 404 created new control environment requirements for companies without, however, setting, in a direct manner, clear discriminations depending on the company size. Indirectly, it reveals the dilemma for a company whether it is large enough to bear the costs of the new internal control requirements or whether it is small enough and stay private or even go dark. Section 404 was, at first, a threat to the companies’ annual costs but, as time has shown, this is not the one and only reason that companies delist from NYSE or do not go public or prefer another stock market for issuing an IPO.

The controversy about Section 404 shed light to the deregistrations from NYSE and NASDAQ. Yet the results are still not clear enough in order to support that SOX and Section 404 are the primary reasons for which companies prefer other public markets or delist from US exchanges.

There has been significant research about the impact of SOX on companies. What seems to be evident in more research papers is the fact that the companies which delist from the US exchange are the smaller and the weaker ones, i.e. the ones which cannot bear the costs created by SOX. SOX 404 undoubtedly imposed new compliance costs to the firms; Zhang¹⁹⁴ concludes that SOX has imposed significant net costs on firms. However, the picture is far more vague with regard to the companies which go private or dark following SOX’s implementation. It should be noted, however, that NYSE and NASDAQ had already changed their requirements by the time SOX was passed as well as that many changes to US corporate practices would have taken place independently of the enhancement of SOX , due to the market pressures and the changes caused by the scandals.

According to Kamar *et al.*¹⁹⁵, it is clear that the burden imposed by SOX mainly induced small companies to go private, while large companies were little affected. Small firms are expected to have more ineffective internal controls than larger companies¹⁹⁶ and lack of in-house staff to respond to more complex

¹⁹⁴ Zhang, I., (2007), ‘The Economic Consequences of the Sarbanes-Oxley Act of 2002’, *Carlso School of Management W.P.*, University of Minnesota.

¹⁹⁵ Kamar, E. et al., (2006), ‘Going Private Decisions and the Sarbanes/Oxley Act of 2002: A Cross Country Analysis, *Univ. S. Calif. Ctr. In Law, Econ & Org. Research Paper* No. C06-05 *also available at:*<http://ssrn.com/abstract=901769>

¹⁹⁶ Doyle, J. et al, (*forthcoming*), Determinants of weaknesses in internal control over financial reporting and the implications for earnings quality’, *Journal of Accounting Research*.

internal control procedures. *Leuz et al*¹⁹⁷ show that going dark firms are smaller, more distressed, have weaker performance and governance than public and private companies. As *Leuz et al* show, the increase in SEC deregistration after SOX is primarily driven by firms that went dark rather than private and this was much a result closely linked to the extension of the compliance with the 404 procedure. On the other hand, there is no significant increase shown in going private in the months after the passage of SOX.

Moreover, *Litvak*¹⁹⁸ outlined that SOX reduced the value of cross-listed firms, especially in the event of small ones, while lower returns to cross-listed firms regardless of the firm size were observed. However, the major weakness of the research on the impacts of SOX is the difficulty to separate the effect of SOX, and especially of Section 404, from that of contemporaneous factors, such as the financial market liquidity as *Kamar et al.* mention in a recent paper¹⁹⁹. As a result, the multitude of reasons affecting the deregistration decisions of the firms makes it difficult to cite SOX as the only factor of deregistrations. The concerns about the results that 404 would have were smoothed over with time; immediately after the release of SOX, small firms went private in order to avoid the initial compliance costs, while investors, shocked by the innovative nature of the Act, reacted with fear, especially during the first year of its implementation. For foreign issuers though, the experience of US companies and the foreseen expansion time contributed to ensure adequate preparation for the 404 filing and better scheduling of internal control mechanisms. The reaction to the 404 implementation is also relative; the higher the firm's level of disclosure and corporate governance regime is, the less benefit from externally imposed regulation. However, European cross-listed companies did not state that they already had the same disclosure level with the level required by SOX, while US had, traditionally, even before SOX, through the Securities Acts and the class action enforcement, better investor protection. *Berger et al*²⁰⁰ show that stock market reaction to SOX is more positive for firms from countries with poor enforcement of investor rights underlining that SOX improves the protections of outside investors in those firms.

¹⁹⁷Leuz, C., Triantis, A. and Wang, T., (forthcoming). 'Why Do Firms Go Dark?' Causes and Economic Consequences of Voluntary SEC Deregistrations, *Journal of Accounting and Economic*

¹⁹⁸ Litvak, K., (2007), 'Sarbanes-Oxley and the cross-listing premium' 105 *Michigan Law Review*.

¹⁹⁹Kamar, E. et al., (2007), 'Sarbanes-Oxley's Effects on Small Firms: What is the Evidence?', *In the Name of Entrepreneurship? The Logic and Effects of Special Regulatory Treatment for Small Business*, S. Gates and K. Leuschner (eds.) RAND 2007.

²⁰⁰ Berger, P.H., Li, F. and Wong, M.H.F., (2006) 'The Impact of Sarbanes-Oxley on Cross-listed Companies', *W.P. University of Chicago and University of Michigan*

After SOX's implementation, auditor industry specialization constrained the significant increase in audit fees that arose during the first year of SOX's implementation²⁰¹. Auditor industry specialization reduced the cost burden of SOX during the first year of implementation and consequently, lead industry expertise to efficiencies. The American experience gained until the present day was valuable for foreign issuers. Moreover, according to *Prentice* arguments, "the harshest criticism of SOX are overblown"²⁰² as empirical studies so far indicate that together Sections 302 and 404 are providing investors in US markets with the most reliable financial statements in history which benefits issuers by reducing their capital costs and benefits investors by reducing their risk.

The establishment of Section 404 enables achievement of the goals of SOX, aiming at diminishing managerial opportunistic behaviors, by interposing independent directors on audit committees, company lawyers and other parties in this process²⁰³.

2. Challenges to Foreign Issuers

Since the passage of SOX, *Karmel*²⁰⁴ pointed out two possible directions; either foreign issuers deregister and move to London or corporate governance standards converge into US models, something which could lead to a worldwide harmonization of standards. It could be maintained that until the present day, foreign issuers have taken, for different reasons, both directions. Nevertheless, the latter scenario seems more likely. The fact that the majority of foreign issuers did fill in the 404 management assessment over internal control report reflects their will to stay in the US stock markets and bear the costs, anticipating, probably, long-term benefits. Firms have, by now, the knowledge, the background and the proper in-house staff to implement a timely and accurate internal control procedure, while it should also be underlined that 404-related costs are significantly lower after the first year of implementation. On the other hand, delisting from NYSE and NASDAQ or preferring to launch an IPO in a stock market outside the US should not be considered as SOX's only consequence. The Paulson Committee's Interim Report of 2006 concluded that US is losing its competitive leading position as compared to stock markets and financial

²⁰¹ Fleming, D.M. & Romanus, R.N., (2007), 'Auditor Industry Specialization and Audit Fees Surrounding Section 404 Implementation', *Texas Review*

²⁰² Supra fn. 3.

²⁰³ Hazard, G. & Rock, Ed., (2004), 'A New Player in the Boardroom: The Emergence of Independent Directors' Counsel', 59 *Bus.Law* 1389, Fisch, J. & Gentile, C., (2003), 'The Qualified Legal Compliance Committee: Using Attorney Conduct Rules to Restructure the Board of Directors', 53 *Duke L.J.* 517.

²⁰⁴ Karmel, R., (2004), 'The Securities and Exchange Commission Goes abroad to Regulate Corporate Governance', 33 *Stetson L. REV.* 849

centers abroad and the main reason is the 'shift of regulatory intensive balance' towards what might be deemed 'excessive' regulation of US markets²⁰⁵. According to this report, the 404 compliance costs have been excessive and have reduced US markets competitiveness. The picture is mixed and that is supported by *Kamar, Berger and Litvak*.

Firms with strong internal controls reduce their capital costs significantly. It is noted that the disclosure regime should not strive for breadth and completeness, since these costs are unnecessary and are simply targeted towards problems in the framework of which transparency helps overcome principal-agent problems. As a result, the benefits of the internal control system are measured based on how well it helps monitor and control the behavior of the firm's senior managers²⁰⁶. Furthermore, due to its various benefits, additional investment in internal controls may be justified²⁰⁷.

Until issuance of Section 404, small firms, in particular, did not use to report their internal control weaknesses. SOX enables the creation of a compliance culture in modern financial reporting methods. However, according to *Kahan*, if the law tries to change accepted norms too significantly, this hard shove may well be self-defeating where a gentle nudge it might have been the best solution²⁰⁸. Under Section 404, there are challenges for foreign issuers; for SOX supporters, the overall Act constituted a chance to enhance financial reporting and disclosure and to render executives more accountable towards the shareholders. Before Section 404, the management did not require extensive internal control expertise and, thus, companies were much exposed to possible financial risks and frauds.

With respect to foreign issuers, the beneficiaries of the internal control procedures should be specified. Independent directors are responsive mainly to the current generation of shareholders contrary to debtholders or outside investors. The beneficiaries of a strong system of internal control include outside investors interests, to whom neither the directors nor the management have any loyalty whatsoever. As it was noted in paragraph 6 of AS-2 PCAOB's standard, government regulators are specific beneficiaries of internal control system as well.

The challenges that foreign issuers are faced with regarding 404 have been diminished after foreign

issuers first 20-F filing. However, it is significant to introduce appropriate audit committees, independent from the management overseeing financial reporting as required by AS-2. Another significant issue is that IT and internal control mechanism and evaluation framework be designed in such a way so as to respond to the geographical multi-location of a foreign issuer's subsidiaries. Nevertheless, what is more crucial about foreign issuers is the duplicative reporting standards for foreign firms. The SEC requires all listed corporations to report in conformity with US GAAP or to reconcile IFRS with US GAAP if they use IFRS as many foreign chartered corporations and all EU-based corporations do. As a result, foreign companies bear also significant additional reporting or reconciliation costs. The SEC recently proposed that foreign issuers be allowed to file financial statements, prepared in accordance with IFRS, without any reconciliation with US GAAP and has issued a 'concept release' on allowing US firms to do the same²⁰⁹.

The SEC has taken many steps in order to keep foreign issuers in US markets, with the AS-2 and the concept for IFRS and US GAAP being its most significant steps until the present day. The gained experience on SOX 404 and the fear of losing its competitiveness made SEC and PCAOB react in a timely manner. Another proposal of financial economists group roundtable²¹⁰ is the adoption of a statutory amendment for turning 404 into a voluntary provision; if a company chooses not to comply with the market, its explanation of non-compliance and the value of the company will be assessed accordingly. Then, it is estimated that investors will put a lower value on a non-compliant company, a fact which will constitute an incentive for the company to meet the 404 requirements if the expense is worthwhile²¹¹.

Conclusion

Listing in US is not as much prestigious as it used to be in good old times. US competitiveness was not exempted from the latest financial banking crisis. The decline in US stock markets should not be attributed only to SOX and especially to Section 404. There is evidence that foreign issuers delist, do not go public at all or go dark; although there is evidence that the compliance costs were higher than expected, a company's decision to deregister is driven to a great extent by many financial and strategic management reasons rather than merely by SOX. The SEC is by now well-aware of the situation and is now prone to

²⁰⁵ Committee on Capital Markets Regulation (Paulson Committee) Report of 30 November, 2006.

²⁰⁶ However, this system is far narrower than the system proposed by PCAOB's AS-2 standard, though the standard has an agency cost embedded in it.

²⁰⁷ The question of whether securities regulation affects non-investor constituencies as well as investors is shown in Williams, C., (1999), 'The Securities and Exchange Commission and Corporate Social Responsibility', 112 *Harvard L. Rev* 1179.

²⁰⁸ Kahan, D.M, (2000), 'Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem, 67 *U. Chi. L. REV.* 607, 614

²⁰⁹²⁰⁹ SEC Concept Release 'Allowing US issuers to Prepare Financial Statements in Accordance With International Financial Reporting Standards, Release No. 33-8831 (August 7, 2007) available at: <http://www.sec.gov/rules/concept/2007/33-831.pdf>

²¹⁰²¹⁰ Financial Economists Roundtable (FER), Statement on the International Competitiveness of US Capital Markets, September 7, 2007.he

²¹¹ *Ibid.*

more regulatory openness and flexibility with regard to foreign issuers. SEC's international strategy should draw a distinction between the healthy aspects of regulatory competition and regulatory arbitrage²¹². The next challenge should be the transatlantic regulatory dialogue in accounting and auditing. As marked by *Khachaturyan and McCahery*²¹³, measures should be left sufficiently flexible in order to accommodate the wide range of firms and corporate law regimes; the more innovative and adaptable a legal system is, the more likely it will be to supply firms with measures that they require while ensuring an adequate level of investor protection.

Deregistration in 2003, after the implementation of SOX, was much observed in London as well as in other stock exchanges. LSE gained a relevant competitive advantage as a pioneer of the 'comply or explain rule' in corporate governance, however NYSE and NASDAQ offer the advantage of better enforcement of the rule, public and private. In the EU, there is considerable wariness about giving regulators strong powers in the area of corporate governance as this could lead to rigidity and destroy flexibility²¹⁴.

Section 404 of SOX is the Act's most criticized article; however, if the internal control is carefully scheduled in advance following performance of thorough tests and use of the necessary mechanisms, the financial disclosure of the firm is of high quality, and, consequently, of better corporate governance. The aim related to maximizing the firm's value and having an efficient market is met as market efficiency has profound implications on disclosure policy. It is also argued that the real benefits of disclosure are better depicted in the process of capital allocation among firms²¹⁵.

There is much literature on 404 SOX and it will continue to be, as the need for obtaining a clearer picture on its benefits is well discernable. Every change is costly, even for large capitalization companies. 404 created many costs, however, the firms which have complied with SOX enjoy a valid and accurate internal control system, which can be beneficial for the market performance of the firm,

while the sound application of SOX seems to turn into a benefit also for foreign issuers.

References

1. Armour J. and McCahery, J., (2006), 'After Enron: Improving Corporate Law and Modernizing Securities Regulation in Europe and the US', *Amsterdam Center for Law and Economics Working Paper 2006-07* available also at : <http://ssrn.com/abstract=910205>
2. Baker, K. et al., (1999), 'International cross-listings and visibility'.
3. Berger, Ph., Li, F. and Wong, M.H.F., (2006), 'The Impact of Sarbanes-Oxley on Cross-listed Companies', *W.P. University of Chicago and University of Michigan*
4. Bryan, S. & Lilien, S., 'Characteristics of Firms with Material Weaknesses in Internal Control: An Assessment of Section 404 of Sarbanes Oxley', April 14, 2005, available at : <http://ssrn.com/abstract=682363>
5. Cearns, K. and Ferran, E., (2008), 'Non-Enforcement Led Public Oversight of Financial and Corporate Governance Disclosures and of Auditors', *ECGI W.P. No. 101*.
6. Cheung, S. and Lee, J. (1995), 'Disclosure environment and Listing on Foreign Stock Exchanges', 19 *J. Banking and Finance*, 347
7. Clark, R.C., (1986), *Corporate Law*, Little Brown (ed.)
8. Cunningham, L. (2004), 'A new Product for the State Corporation Law Market : Audit Committee Certifications', 1 *Berkeley Bus. L. J.* 327, 331.
9. Deloach, J. (2004), *The new risk imperative –an enterprise wide approach*, Handbook of business strategy
10. Deloitte's report on Sarbanes-Oxley Section 404: Compliance Challenges for Foreign Private Issuers (2005).
11. Doyle, J. et al, (forthcoming), 'Determinants of weaknesses in internal control over financial reporting and the implications for earnings quality', *Journal of Accounting Research*.
12. Eisenberg, M. (ed), (2004), 'Corporations and Other business organizations statutes, rules, materials and forms', 747 Foundation Press.
13. Errunza, V.R. and Miller, D.P., (2000), 'Market Segmentation and the Cost of Capital in International Equity Markets', 35 *J. Fin & Quantitative Analysis*, 577
14. Finch, J., "US clean-up angers Hewitt", *Guardian* October 8, 2002, available at : www.guardian.co.uk/0,3858,4517263-103676,00.html
15. Fisch, J. & Gentile, C., (2003), 'The Qualified Legal Compliance Committee: Using Attorney Conduct Rules to Restructure the Board of Directors', 53 *Duke L.J.*
16. Fleming, D.M. & Romanus, R.N., (2007), 'Auditor Industry Specialization and Audit Fees Surrounding Section 404 Implementation', *Texas Review*
17. Foerster, R. and Karolyi, A., (1999), 'The effect of market segmentation and Investor Recognition on Asset Prices: Evidence from Foreign Stock Listing in the United States', 54 *J. FIN.*
18. Fox, M., (1997), 'Securities Disclosure in a Globalizing Market: Who Should Regulate Whom?', 95 *Mich. L. Rev.*
19. Gaynor, M., 'Improving Sarbanes-Oxley Section 404 Implementation', SEC, available at www.sec.org
20. Greene, E. & Boury, P.M., (2003), 'Post Sarbanes Oxley Corporate Governance in Europe and the USA: Americanisation or Convergence?', 1 *INT L J. Disclosure and Governance* 21,22.

²¹²Tafara, E. and Peterson, R. (2007), 'A Blueprint for Cross-Border Access to US investors: A new International Framework', 1 *Harvard International Law Journal*, Vol. 48

²¹³ Khachaturyan, A. and McCahery, J. (2006), 'Transatlantic Corporate Governance Reform: Brussels Sprouts or Washington Soup?', *Amsterdam Centre for Law and Economics W.P. 2006-02* also available at : <http://ssrn.com/paper=893790>

²¹⁴ See Ftn. 149 in Cearns, K. and Ferran, E. (2008), 'Non-Enforcement Led Public Oversight of Financial and Corporate Governance Disclosures and of Auditors', *ECGI W.P. No. 101*.

²¹⁵ Fox, M., (1997), 'Securities Disclosure in a Globalizing Market: Who Should Regulate Whom?', 95 *Mich. L. Rev.* For a contrary argument see Stout, L. (1988), 'The Unimportance of Being Efficient: An economic analysis of Stock Market Pricing and Securities Regulation', *Mich. L. Rev.* 613.

21. Hazard, G. & Rock, Ed., (2004), 'A New Player in the Boardroom: The Emergence of Independent Directors' *Counsel*, 59 *Bus.Law*
22. Jackson, H. and Pan, E. (forthcoming), 'Regulatory Competition in International Securities Markets: Evidence from Europe in 1999- Part II', *Bus.Law*
23. Kahan, D.H., (2000), 'Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem, 67 *U. Chi. L. REV.*
24. Kamar, E. et al., (2006), 'Going Private Decisions and the Sarbanes/Oxley Act of 2002: A Cross Country Analysis, *Univ. S. Calif. Ctr. In Law, Econ & Org. Research Paper* No. C06-05 also available at: <http://ssrn.com/abstract=901769>
25. Kamar, E. et al., (2007), 'Sarbanes-Oxley's Effects on Small Firms: What is the Evidence?', *In the Name of Entrepreneurship? The Logic and Effects of Special Regulatory Treatment for Small Business*, Gates, S. and Leuschner, K. (eds.) RAND
26. Karmel, R., (2004), 'The Securities and Exchange Commission Goes abroad to Regulate Corporate Governance, 33 *Stetson L. REV.*
27. Karolyi, A., (1996), 'What happens to stocks that list Shares Abroad? A survey of the evidence and its managerial implications' 34 *NYSE W.P.* N096-04.
28. Khachaturyan, A. and McCahery, J., (2006), 'Transatlantic Corporate Governance Reform: Brussels Sprouts or Washington Soup?', *Amsterdam Centre for Law and Economics W.P.* 2006-02 also available at : <http://ssrn.com/paper=893790>
29. Langevoort, D.C., (2005), 'Internal Controls After Sarbanes-Oxley: Revisiting Corporate Law's Duty of Care as responsibility for systems', available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=808084.
30. Leuz, C., Triantis, A. and Wang, T., (forthcoming), 'Why Do Firms Go Dark?' Causes and Economic Consequences of Voluntary SEC Deregistrations', *Journal of Accounting and Economic*
31. K. Litvak, 'Sarbanes-Oxley and the cross-listing premium' (2007), 105 *Michigan Law Review*
32. Nagy, D., (2005), 'Playing Peekaboo with Constitutional Law: The PCAOB and its Public/private Status', 80 *Notre Dame L. Rev.* 975
33. Pagano, M. et al, (2001), 'The Geography of Equity listing: Why do companies list abroad?' *Centro Studi in Economia e Finanza*, W.P. No 28
34. Prentice, R.A., (forthcoming) 'Sarbanes-Oxley: The Evidence Regarding the Impact of Section 404, *Cardozo L. R.* available at : <http://ssrn.com/abstract=991295>
35. Selim, G. and McNamee, D., (1999), 'The risk management and internal auditing relationship: Developing and validating a model', 3 *Int. J. of Auditing*
36. Shin, S.J., (2007), 'The effect of the Sarbanes-Oxley Act of 2002 on foreign issuers listed on the U.S. capital markets', 3 *NYU J. Law and Business*
37. Skouvakis, A., (2005), 'Exiting the Public Markets: A difficult choice for Small Public Companies Struggling With Sarbanes-Oxley', 109 *PENN. St. L. R.*
38. Stout, L., (1988), 'The Unimportance of Being Efficient: An economic analysis of Stock Market Pricing and Securities Regulation', *Mich. L. Rev* 613
39. Stulz, R.M., (1999), 'Globalization of Equity Markets and the Cost of Capital', *NYSE W.P. No.* 99-02
40. Tafara, E. and Peterson, R., (2007), 'A Blueprint for Cross-Border Access to US investors: A new International Framework', 1 *Harvard International Law Journal*, Vol. 48
41. Williams, C., (1999), 'The Securities and Exchange Commission and Corporate Social Responsibility', 112 *Harvard L. Rev.*
42. Zhang, I., (2007), 'The Economic Consequences of the Sarbanes-Oxley Act of 2002' *Carlso School of Management W.P., University of Minnesota*