The Sarbanes-Oxley Act at a Crossroads

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I. Introduction

The history of US federal securities regulation can best be characterized as one of gradual expansion of regulatory scope within, in essence, a disclosure regime. The regulatory approach that the landmark federal legislation of the 1930s took is one of disclosure, in contrast to the then substantive regulatory approach of most states' securities laws, which prohibited the sale of securities not meeting state regulators's approval. The greatest expansion thereafter occurred in the 1960s, when stock traded in the over-the-counter market and cash tender offers were brought under the federal ambit.[2] But Congress periodically has revisited the scope of federal regulation, requiring, in the 1970s, public companies to maintain accurate books and records, in the wake of the revelation of US companies having made questionable payments to foreign officials,[3] and increasing the sanctions against insider trading in the 1980s, after a series of high profile cases of insider trading involving hostile takeovers.[4]

By the 1990s, however, the regulatory imperative took another turn, as Congress focused on class actions and enacted legislation restricting private civil litigation for securities violations.[5] The Securities and Exchange Commission ("SEC"), by contrast, has consistently increased required disclosures, action it can undertake without the need for congressional authorization. The only instances in which the SEC has cut back on its regulatory reach have occurred where it has experienced competitive pressure from other regulatory jurisdictions, such as in adoption of shelf registration rules, that sought to curb the exodus of US debt offerings into the unregulated Eurobond market, or in limiting the disclosures required of foreign private issuers.

Following a number of spectacular corporate failures in 2001-02, Congress once again expanded the reach of federal regulation with the near unanimous enactment of the Sarbanes-Oxley Act ("SOX").[6] SOX increased the regulation of accounting firms as well as of issuers, by creating a new regulator for the accounting profession, the Public Company Accounting Oversight Board ("PCAOB"), and by imposing substantive governance mandates on public companies. The corporate governance requirements include management attestation of internal controls and financial statement accuracy, mandates regarding audit committee composition and functioning, forfeiture of CEO incentive compensation upon issuance of an accounting restatement, and prohibition of executive loans and the purchase of non-audit services from auditors. In addition, a small number of the provisions in SOX followed the conventional federal approach to securities regulation, by enhancing disclosure requirements and criminal penalties for securities violations.

Only a few years post-enactment, however, widespread dissatisfaction has been expressed over the regulatory burden imposed by SOX. In particular, calls for rolling back the most burdensome provision of SOX have been occurring with increased frequency, receiving the endorsement of prominent government and private commissions. The commissions's recommendations have been informed by a perceived weakening in the competitiveness of US capital markets and the disproportionate impact of SOX on smaller public firms. Their reports point, with varying degrees of emphasis, to a significant decrease in the number of new foreign listings and public offerings on US exchanges, and a commensurate increase in foreign delistings and domestic going private transactions, post-SOX.

The sea change in the perception of the value of SOX and the willingness to advance an agenda of lightening its regulatory burden is truly astounding given the overwhelming support for the legislation when enacted. SOX's advocates now find themselves increasingly in a politically defensive posture, having to justify, and stave off attempts to dismantle, key components of the legislation. They are, of course, in a formidable defensive position, as it is a daunting task to adopt legislation: a supermajority - 60 Senate votes - is necessary for all practical purposes to alter the status quo. But the widespread criticism of SOX has, in fact, led the SEC to revisit its implementation, action in part taken no doubt preemptively to deflect efforts by members of Congress to revamp the legislation. Even in the midst of the subprime mortgage crisis and credit crunch of 2007-08, there has been neither a revival of praise for SOX nor backtracking by its critics.

The case history of the pushback on SOX is the subject of this chapter. The first section introduces the post-SOX policy debate concerning the statute, framed by four commissioned reports that call for alteration in SOX's implementation given its burdening of small firms and US capital markets. The second section of the paper summarizes media and congressional responses to the critiques of SOX voiced in the reports. The rationale for this approach is that it facilitates gauging the political support for, and opposition to, revamping SOX and the form any congressional reform effort would take, as the media attempts to inform and shape the debate: an empirical political science literature has identified a connection between the saliency with which an issue is reported in the media and policy change. The chapter concludes with a prognosis of SOX's future.

II. Post-SOX Pushback

Two key developments have framed the post-enactment debate over SOX. The first is the substantial expenditures firms have incurred to comply with section 404, which requires management to certify the adequacy of its internal controls and the outside auditor to attest to management's certification, and the disproportionately larger expected costs for smaller firms.[7] The second development involves capital market trends indicating a decline in the competitive position of the New York stock exchanges compared to foreign exchanges, particularly the London stock exchange. These developments have been the focus of four prominent commissioned reports.[8]

A. Pushback Related to Small Firm Costs

The Advisory Committee on Smaller Public Companies to the SEC ("SEC Advisory Committee") was established in early 2005 by then SEC Chairman William Donaldson, in response to complaints by small firms regarding the expenses that were being incurred in order to comply with SOX, and in particular, section 404. Its mission was to advise the SEC on how to assure that the costs of regulation for smaller companies would not be greater than the benefits. The committee held public hearings across the country, a decision that undoubtedly generated heightened awareness of and support for small firms's concerns. It issued an interim report in August 2005, whose recommendation to delay implementation of section 404 and real-time filing of periodic reports for small firms was adopted, and a final report in April 2006. The principal recommendation in its final report was to exempt small firms from section 404. The recommendation, which was not unanimous, would have exempted a far larger number of firms than the small firms for whom section 404 compliance was deferred: 78.5 versus 44 per cent of public companies.

As a key rationale for the need for exemptive relief, the report emphasized that studies of section 404 compliance had found that actual expenditures were wildly in excess of the amount originally anticipated by the SEC to cover compliance (in the millions of dollars versus $91 000), and that even with a reduction in costs incurred in the second year of compliance, average expenditures were still considerable ($900 000 for smaller firms).[9] Compliance costs for smaller firms were expected to be higher and, of course, a much larger percentage of revenue. While not yet having to comply with section 404, audit fees had tripled from 2000-04 (before and after SOX) as a percentage of revenue for smaller public companies and, as the committee noted, best estimates of section 404 compliance costs placed external audit fees at only one-quarter to one-third of the total cost (Advisory Committee on Smaller Public Companies, 2006, p. 34).[10]

The SEC Advisory Committee further noted that SOX had introduced additional ongoing increased expenditures for smaller firms, that were insignificant for large firms, apart from internal controls. For example, small firms were less likely than large firms to have a sufficient number of independent directors to meet the stock exchange requirements adopted in conjunction with SOX along with SOX's audit committee mandate, and the expenses from an increased board size are recurring. A recent study by Linck, Netter and Yang (2007) lends support to the Advisory Committee's contention, indicating that director compensation costs have risen dramatically, and disproportionately, for small firms post-SOX.

Besides documenting that small firms would bear far greater costs than large firms, the Committee further emphasized the disproportionate burden section 404 imposes on smaller firms because of their organizational structure, as well as more limited resources, personnel and revenue to offset implementation, compared to large firms. Transaction cost economics suggests that the cost of implementing a system of internal control is related to the tradeoff between incentives and control that determines firm size (the degree of vertical integration of production) (e.g., Williamson, 1975, 1985). Specifically, decisional authority is more concentrated in top management in smaller public companies, while their span of control is greater, and there are fewer personnel among whom tasks can be segregated to achieve internal controls than would be considered effective under the standard implementing section 404, which is geared to large organizations. Furthermore, features considered to be the hallmark of small compared to large firm operations -- greater fluidity and flexibility of processes and individual tasks that are frequently shifted to meet changing business needs as a business grows -- render SOX compliance difficult because such firms do not have static processes with well-defined boundaries that can be easily documented in an internal controls system. Accordingly, in the Committee's judgment, the "one-size-fits-all" mentality embodied in the legislation and its implementation by the SEC was a profound misunderstanding of what internal controls would be appropriate for small firms.

By the time the Committee completed its study there was a new SEC Chairman, Christopher Cox, a former Republican congressman who had been a member of the conference committee that enacted SOX. Chairman Cox's response to the SEC Advisory Committee's recommendation was an announcement that the agency would not exempt small firms from the statute but that it would review the implementation of section 404 to reduce the regulatory burden imposed on all companies and delay yet again its implementation for small and foreign issuers (with the auditor attestation component being deferred one year further). The rationale for ignoring the committee's recommendation and instead postponing compliance for another year was that by then new guidance would be in place and the provision's regulatory burden would be reduced, making compliance "doable" for smaller firms.

B. Pushback related to Market Competitiveness

In contrast to the SEC Advisory Committee's focus on SOX's regulatory burden on smaller firms, the other three commissioned reports were directed at the impact of SOX on the global competitiveness of US firms and markets. The Committee on Capital Markets Regulation ("Paulson Committee") was a private group formed in September 2006 for the purpose of studying issues, and recommending policy changes, related to 'maintaining and improving the competitiveness of the US capital markets' (Committee on Capital Markets Regulation, 2006, p. vii). The group is often referred to as the "Paulson Committee" because in the press release announcing its formation, Treasury Department Secretary Henry M. Paulson praised its creation and the committee's co-chair and director, a Harvard law professor, stated that Secretary Paulson had requested a November date for the committee's report so that the recommendations 'could be considered at post-election meetings of Congress' (Norris, 2006). Their working assumption no doubt was that the Republicans would continue to control Congress, which did not occur.

The committee's report presented data indicating that the competitive position of U.S capital markets has eroded: a decline in foreign company initial public offerings ("IPOs"), increase in foreign firms's private equity issues, increase in domestic going private transactions and in venture capital exits by private sales rather than IPOs and decline in the listing premium for cross-listed foreign firms. It identified several causes of the perceived decline in competitiveness, including litigation costs and not solely SOX. In contrast to the SEC Advisory

Committee, the Paulson Committee did not recommend exemption of small firms from SOX. Instead, it recommended three modifications in section 404's implementation that would reduce its burden on all firms: a redefinition of materiality, increased guidance by the PCAOB for auditors so as to reduce their demands on management, and multi-year rotational testing for low-risk components of internal controls, which it thought would resolve the provision's compliance burdens.[11] As those suggested changes could be accomplished by SEC rule-making, it concluded that there was no need for legislative revision. By the time of the report's release, the Paulson Committee was aware not only of Chairman Cox's opposition to the SEC Advisory Committee's recommendations and legislative revision of SOX, but also of the new political reality in which the Democrats would be in control of Congress. Advocating that relaxation of SOX should be left to SEC rulemaking was regulatory relief that the Republican administration could accomplish on its own.

The Paulson Committee took a different tack to foreign firms' SOX compliance problems. It advocated exempting foreign firms from section 404 if they were subject to equivalent home-state regulation of internal controls. These firms' concern were of primary interest to the New York Stock Exchange ("NYSE"), which viewed SOX as adversely affecting its competitive position for foreign listings. The NYSE has long campaigned for permitting foreign issuers to be governed by home regulators in order to improve its market position against its principal competitor, the London Stock Exchange, because home rule would reduce the cost of those firms' listing in the United States (e.g., Cochrane, 1994).

At approximately the same time that the Paulson Committee was being formed, Senator Charles Schumer and New York City Mayor Michael Bloomberg commissioned a study through the city's Economic Development Corporation from the consulting firm McKinsey and Co. to ascertain why foreign firms were increasingly raising capital outside of New York. McKinsey's study, released at a January 2007 media event attended by the Senator, Mayor and then New York Governor Eliot Spitzer, paralleled the Paulson Committee's report regarding the diagnosis of the problem and solution: it highlighted SOX and litigation as principal causes of the declining competitiveness of New York's stock markets and recommended modifications in the implementation of section 404 to provide clearer guidance, including a revised definition of materiality, and a "top-down" (i.e., management not auditor controlled) "risk-based" approach.

The McKinsey study did differ in one respect from the Paulson Committee's report regarding the qualification offered for small firms' treatment: it recommended that the SEC consider permitting small firms to opt out of section 404 entirely (with disclosure of this choice to investors), if the agency's proposed guidance did not lower small firms' compliance costs, and not simply from the auditor attestation requirement. It also recommended that the agency consider exempting foreign firms that complied with foreign regulatory regimes receiving SEC approval, paralleling the Paulson Committee's position. No doubt, given its sponsorship by elected officials, the study was intended to advance an important political objective, to dramatize the relative deteriorating condition of a major contributor to New York's economy, and thereby mobilize support for concerted government action at the local, state and federal levels to rectify the situation.

The third reporting group studying US capital markets's competitiveness, the Commission on the Regulation of Capital Markets in the 21st Century ("Chamber Commission"), was created by the US Chamber of Commerce in February 2006. Although its report, issued in

March 2007, voiced similar concerns to the other two reports, the recommendation on SOX differed in one important respect, an insistence on congressional action. It advocated legislation incorporating SOX into the Securities Exchange Act of 1934, in order to clarify that the SEC's exemptive power[12] was applicable to SOX's section 404. It advanced this approach as a mechanism to provide flexibility for the agency's implementation of SOX, so that it could vary section 404's requirements for differently sized public companies and exempt foreign firms. Advocacy of an approach permitting flexibility in small firms's regulation is consistent with the position the Chamber of Commerce took when SOX was moving through the legislative process: the Chamber lobbied at the time for differential treatment for small firms regarding provisions restricting auditor services (Romano, 2005, p.1565).

To promote its agenda (which also advocated dramatic reorganization of the SEC), in conjunction with the report's release the Chamber held a summit, which was attended by SEC Chairman Cox and members of Congress. In a speech delivered at that meeting, Chairman Cox rejected the Chamber Commission's recommendation regarding SOX, stating 'We don't need to change the law; we need to change the way the law is implemented, [and] the SEC has all the power and flexibility we need' (McTeague and Hill, 2007, p. 266). The key Democratic lawmakers present, Congressman Barney Frank and Senator Christopher Dodd, who chaired their chambers's committees with jurisdiction over the SEC, concurred with that judgment (McTeague and Hill, 2007).

III. The Media and Congress Respond to SOX's Consequences

Corporate scandals can make good copy for the news media, and the media frenzy surrounding the 2001-02 corporate accounting scandals most surely helped fuel the political dynamic that produced SOX. One measure of gauging the political climate for revisiting SOX is the frequency of news coverage of the legislation's critiques, such as the concerns expressed in the commissioned reports over SOX's impact on small firms and market competitiveness. This approach is buttressed by a political science literature finding, across policy and geographical space, that legislators and agency officials respond to issues whose salience is heightened by the media.

A. The Relation between the Media, Issue Saliency, and Public Policy

A theoretical and empirical literature examining the relation between the media and government policies suggests that the media can and does influence policy outcomes by affecting the saliency of an issue. That thesis is derived from agency models in which citizen-principals are imperfectly informed about the actions of their agents (politicians and government officials). In the models's setup, the news media provides information that alters an issue's salience and thereby facilitates citizen monitoring, resulting in officials adopting policies that citizens prefer (Besley, Burgess and Prat, 2002). There are also models in which media publicity concerning elected officials's positions shifts the salient issues in an election, and thereby affects election outcomes, along with policy outcomes, as politicians focused on reelection adopt policies preferred by voters (Besley, Burgess and Prat, 2002). The functioning of the media in these models can be analogized to a Williamsonian governance mechanism that enables citizens to monitor whether politicians are fulfilling commitments, and thereby renders such commitments more credible (see generally Williamson, 1996).

Empirical studies bolster the models's plausibility, finding a significant correlation between issue saliency in the media (proxied by, for example, newspaper circulation or article word counts) and the implementation of government policies or election outcomes (e.g., Besley and Burgess, 2002; Ferraz and Finan, 2007; Yates and Stroup, 2000). Moreover, the relation identified in the studies between issue salience and policy and election outcomes is robust controlling for factors known to affect outcomes.

B. Post-SOX Media Coverage

Media coverage post-SOX of the statute's impact was investigated through three lenses: reporting by leading national business journalists, regional and national newspapers.[13] Table 1 tracks the coverage of these three sources of the critiques of SOX regarding small firm costs and market competitiveness, along with the four commissioned reports, over time. A central finding is that press coverage mentioning critiques of SOX has steadily increased, although it is trivial by comparison to coverage of the Enron scandal.[14] In addition, market competitiveness issues tend to receive far more attention than small firms's costs in all three news sources, although many of the untabulated stories (the "Total SOX" line in the tables) report on SOX compliance costs, an overlapping concern.[15]

An increase in reporting of criticism of SOX over time should not come as a surprise. The initial articles appeared two years after SOX's enactment, at about the time when large firms had to implement the internal controls attestation required by section 404. The steady increase in coverage of the SOX critiques over the surveyed period is consistent with both firms's continuing to find SOX compliance onerous, and the progression of commissioned reports identifying the burdens the statute was imposing on corporations and markets.

There is a key, marked difference in emphasis across the national journalists and national newspapers, and the regional newspapers's coverage of the two principal critiques of SOX, an adverse effect on capital market competitiveness and imposition of significant and disproportionate costs on small firms. Competitiveness is the object of far greater attention by the national journalists and national newspapers than small firm costs. By contrast, regional newspapers referred about equally to SOX's impact on small firms and on capital markets, and thus comparatively more frequently, to costs borne by small firms than the national press.[16] For all sources, however, references to small firm costs have dropped off in the first half of 2007.

A difference in perspective, informed by financial considerations, regarding what are the most important business issues to report between regional and national newspapers, would seem to provide a reasonably plausible and straightforward explanation for the observed difference in coverage. Small firm issues have a local dimension, as small firms typically comprise the largest number of businesses in a locality, and their issues would therefore be of greater interest to regional than national newspaper readers. Such a local connection would be encountered throughout the country, as small firms are ubiquitous. In support of this conjecture, there is no discernible difference in the relative coverage of small firm costs versus market competitiveness across the regional newspapers, indicating that a paper's geographic location did not affect coverage.[17] The significant difference in coverage across national and regional newspapers is consistent with industry trends regarding competition between national and regional newspapers, in which the latter increase their emphasis on local stories when a national paper enters their market (George and Waldfogel, 2006, pp. 445-446).

A declining trend in IPOs or foreign listings is also, obviously, of particular importance to stock exchanges and the financial services industry, whose profitability is in no small part effected by such transactions. That financial sector is heavily concentrated in New York, where the national journalists' publishers and two of the three principal national newspapers are headquartered, providing a compelling, complementary explanation for competitiveness to be a particular focus of their attention. One in nine jobs in New York City is in the financial services industry and that sector generates over one-third of the city's business tax income and at 15 per cent of its gross domestic product, is second only to real estate in importance (McKinsey and Co., 2007, p.10). Editors and reporters for those newspapers would no doubt be attuned to this specific competitiveness issue.[18] Although not separately tabulated in the table, the non-New York based paper included in the national newspaper group, the Washington Post, published far fewer stories on market competitiveness than did either the New York Times ("NYT") or Wall Street Journal ("WSJ"), and had a lower ratio of competitiveness to small firm cost stories, paralleling the coverage of the regional papers. In fact, the Washington Post's coverage of the critiques cannot be distinguished from that of the regional papers, whereas its reporting differs significantly (as does the regional newspapers's) from that of the NYT and WSJ on the SOX critiques.[19]

The news coverage of the four commissioned reports differed across the three media sources, typically tracking differences in emphasis accorded the SOX critiques. For example, although all newspapers reported on the SEC Advisory Committee, it was ignored by all national journalists save one. But nearly all of those journalists covered the Paulson Committee. This pattern parallels the journalists's overall lack of coverage of SOX's imposition of costs on small firms: they were more inclined to cover a committee whose report emphasized market competitiveness issues than one that focused on small firms. Similarly, the national newspapers provided more coverage to the McKinsey study than did the regional newspapers.[20]

The differential relative coverage of issues relating to the SOX critiques by regional and national newspapers has important ramifications for predicting how Congress, and hence the SEC, will respond to SOX, as well as for understanding recent congressional votes. Media impact studies of Indian state and Brazilian city elections imply that coverage by regional newspapers, as opposed to national newspapers, has electoral consequences (Besley and Burgess, 2002; Ferraz and Finan, 2007). The coverage differential in light of those studies would suggest that mitigating SOX's burden on small firms – the issue mentioned relatively more often by regional than national newspapers – has a higher likelihood of being front and center on Congress's agenda than resolving market competitiveness issues, than as might be inferred from examining solely the New York-based national newspapers. This would be particularly so as elections draw near, as legislators, to improve their electoral prospects, respond more attentively to constituents whose specific priorities are more often picked up in regional, not national, newspapers. This hypothesized behavior is, in fact, consistent with what we observe.

C. Congressional Efforts to Respond to the Critiques of SOX

There was no activity by legislators to loosen SOX's strictures until 2005, mirroring the media coverage of the SOX critiques. In the 109th Congress (2005-06), seven bills were introduced to reduce compliance and in the first six months of the 110th Congress, eight such bills have been introduced. Paralleling the relative emphasis in coverage of the issues by the regional newspapers, compared to the national newspapers, most bills have focused on reducing the regulatory burden for small firms. Although the vast majority of bill sponsors and co-sponsors are Republicans, who are in the minority, their number is consequential.[21] Because cosponsorship is conventionally interpreted as a signal of legislative support (e.g., Wilson and

Young, 1997), this development is noteworthy. There has also been an uptick in hearings in which legislators have expressed concern over SOX (from a handful of hearings in 2004-05 to eight in 2006 and five in the first six months of 2007).

In addition to bill introductions and hearings, there have been three floor votes (two in the Senate and one in the House) which not only convey legislators's increasing unease with SOX's aftereffect, but also a shift in legislators's sentiment since SOX's virtually unanimous enactment. In April 2007, the Senate began consideration of a bill entitled the "America Competes Act," which had broad bipartisan support: it authorized several billion dollars of spending on research in science and technology and on math and science teachers. Although the congressional leadership, no doubt, did not have SOX in its sights when advancing the legislation, it was packaged as an effort at "maintaining competitiveness." Senator Jim DeMint, a Republican from South Carolina and sponsor of a separate bill to exempt small firms from section 404 and revise implementation standards to reduce costs for complying issuers, introduced the small firm exemption as an amendment to the "American Competes Act."

A vote on the DeMint amendment was avoided by the Democratic majority by a strategic maneuver in which Senator Dodd, the banking committee chairman, supported by the committee's ranking member, Senator Richard Shelby, offered a competing amendment, that procedurally took precedence. It took the form of a resolution that consisted of a set of findings on SOX that (i) it had enhanced corporate governance, (ii) the SEC had determined it burdened small firms and (iii) the SEC Chairman had said the law did not have to be changed, and concluded with a sense of the Senate that exhorted the SEC and PCAOB to 'complete the promulgation of the final rules implementing section 404.'[22] The Dodd-Shelby amendment was adopted unanimously, and its sponsors then moved to table Senator DeMint's amendment, as inappropriate while the agency was working to come up with a fix for the problem. The maneuver succeeded, but over two-thirds of Republicans, constituting somewhat more than one-third of the Senators (35), voted against tabling the DeMint amendment.[23]

The procedural vote on the DeMint amendment is notable because it suggests that the core of the Republican party was willing to go on record in support of rolling back a significant chunk of SOX. With that vote, the legitimacy of a significant piece of SOX, in contrast to other landmark federal securities legislation such as the 1933 and 1934 Acts, has been put in question not just in academic circles but also in the political arena. Moreover, the Senate leadership apparently deemed a competing resolution of value for damping support for the DeMint amendment. The DeMint amendment would most certainly not have been enacted had there been no counter-proposal, as Senate voting procedures require a supermajority to stop debate by the cloture mechanism and Senator Dodd was dead set against revising SOX. The maneuver can therefore be understood to have offered two obvious advantages to Senator Dodd over a straight up or down vote on the DeMint amendment. It permitted him, and other colleagues, both to express empathy over SOX's impact on small firms and to reduce the possibility of having to exercise senatorial prerogative to block the amendment, or voting against it, and thereby being on record as opposed to revamping SOX. This behavior is consistent with the proposition that the political support for SOX has dramatically eroded. Indeed, converting a substantive vote into a procedural motion is a well-recognized Senate maneuver to avoid a controversial vote (Oleszek, 2007, p. 234).

A vote in the House of Representatives is of even greater consequence than that in the

Senate. On 28 June 2007, the House passed the 2008 fiscal year appropriations bill for financial services and general government. That bill contained an amendment that prohibited the SEC from expending any of the appropriated funds on enforcing section 404 against small firms (the non-accelerated filers who would otherwise have to start complying with the section in 2008 because of the SEC's refusal to extend the postponed implementation for those firms beyond the current year). The amendment, offered by Representative Scott Garrett, a Republican from New Jersey, garnered bipartisan support as it was adopted by a vote of 267 to154.[24]

Three factors plausibly explain the difference in voting support for revisiting SOX across the chambers. The House, the more frequently elected chamber, tends to be more closely attuned to concerns of the electorate than the Senate; the House vote was substantive and not procedural, so that the import of a negative vote would be more transparent to constituents rendering party discipline more difficult to enforce; and the provision upon which the House voted was more modest than the Senate's, as it called for a further delay in, rather than elimination of, in SOX's application to small firms. Given the amendment's bipartisan support, it is not surprising that, in view of this vote, Chairman Cox, in testimony to the House Small Business Committee in December 2007, stated that he would propose postponing small firms's compliance with section 404's required auditor attestation on internal controls for an additional year to permit the agency's staff to undertake a study of the costs and benefits of section 404's implementation (Manickavasagam, 2007).[25]

IV. Prognosis on SOX's Future

If history is a guide, Congress is typically unable to move rapidly to alter statutes regulating financial markets widely perceived to be flawed. It is instructive, for instance, that it took over sixty years to repeal the Glass-Steagall Act, which separated commercial and investment banking, although efforts were made to do so over the intervening decades. The law was only revamped in the aftermath of the banking debacle of the 1980s and awareness that the regulatory setup had contributed to the crisis and reduced competitiveness of US banks, with the accumulation of research indicating that banks's combined activities had not been responsible for the financial difficulties of the 1930s and that universal banking did not adversely affect the economies of the many nations permitting it (Barth, Brumbaugh and Wilcox, 2000, p.192).

Another pertinent illustration that is most apt as a template for prognostication on SOX involves the Foreign Corrupt Practices Act ("FCPA") of 1977, a statute with a regulatory objective similar to that of SOX, the adequacy of public companies's internal controls. Paralleling SOX, the FCPA was adopted with little opposition following an accounting scandal, the revelation that hundreds of firms had paid foreign officials hundreds of millions of dollars, not disclosed in their financial statements, in order to do business abroad (Fremantle and Katz, 1989, p. 755). The FCPA made illegal all but certain de minimus payments to foreign officials, including payments to third parties that ended up in government hands, imposed an accurate reporting and internal controls system requirement on public companies, and criminalized "slush fund" disguised accounting as well as the payment of bribes.

Shortly after the FCPA was enacted, however, the business community began voicing concern over ambiguity in the statutory language regarding what constituted illegal conduct, and questions were raised about the cost of the new accounting requirements along with uncertainty in the scope of enforcement. Small firms were the most seriously disadvantaged by the statute: because they did not have the resources to operate abroad directly, small exporters used foreign agents and were therefore exposed to liability for actions by third parties whom they did not control. Efforts to revise the legislation began in earnest with the election of President Reagan, as improving US firms's global competitiveness was a core concern of his administration and revising the FCPA became a key feature in that agenda. The departing chairman of the SEC attempted to mitigate the objections to the FCPA by releasing a policy statement in January 1981 emphasizing "reasonableness" in implementation and enforcement (SEC, 1981), a move strikingly replicated by the contemporary SEC's issuance of clarifying guidance on section 404's implementation. That effort failed, however, to resolve firms' perceived problems with the statute.

Immediately after taking office in 1981, the Reagan Administration began seeking congressional amendment of the FCPA, advocating not only redrafting to eliminate uncertainty but also repeal of criminal penalties.[26] Senator John Chaffee, who had introduced legislation to revise the FCPA prior to the election, reintroduced his bill in February 1981, which did not go as far as to eliminate criminal sanctions, and a similar bill was introduced simultaneously in the House. The Republican-controlled Senate passed that bill (by voice vote) in November 1981, but it stalled in the Democratic-controlled House (where a key legislator, the chairman of the subcommittee with jurisdiction, was unalterably opposed to tampering with the FCPA).

Bills to amend the statute to resolve business's concerns were introduced in each succeeding Congress (1983, 1985, 1987) with one approved again by the Senate only to be stalled in the House, and the revision was finally accomplished as an amendment to omnibus trade legislation in 1988 (Fremantle and Katz, 1989, p. 759). The amendment revised the FCPA's accounting and bribery provisions, addressing concerns regarding recordkeeping costs and third party payment liability, revisions that resolved difficulties the FCPA created for all firms but that were, as legislators noted in supporting the amendments, of especial importance to small firms.[27] Although the Republicans by then no longer controlled the Senate, support for recrafting the legislation was so overwhelming that the amendment could not be stopped by its few, albeit influential, Democratic opponents, who included the Senate banking committee chairman (a chief sponsor of the FCPA) and the former House subcommittee chairman who, after years of successfully bottling up the statute's amendment in the House, had recently been elected to the Senate.

If revision of SOX is not to take a similarly glacial course as that of the two illustrations, a major shift in the political environment would appear to be necessary. The recent congressional votes indicate that a substantial block of the Republican party is willing to revise a key provision of the statute, but not yet a majority of Democrats, and given the multiple veto points in the legislative process, the Republicans would not only need to retain the executive branch but also to recapture both chambers of Congress to ensure with substantial certainty that revising SOX moved up on the legislative agenda. Such a scenario would seem improbable given the political environment.[28] The Reagan administration did accomplish a revision of the FCPA under a Democratically-controlled Congress but, as earlier mentioned, it took two terms to forge bipartisan support, along with a fortuitous event, the departure from the House to the Senate of a key Democrat who was said to have had single-handedly blocked the initiative in that chamber.

A key variable for predicting whether a significant revision could be accomplished without Republican political control is the state of the economy. Were the economy to deteriorate dramatically, if the downturn could be linked to SOX, then it could be politically perilous for legislators of any party to oppose SOX's revision, even though casual empiricism would suggest that congressional activity in response to economic declines or crises more often produces the precise opposite effect, an increase, not decrease, in regulation (Romano, 2005, pp. 1591-1594). However, drawing a link between SOX and an economic downturn, particularly issues of concern to voters in that context, such as deteriorating employment or wage levels or increasing inflation, would seem to be problematic, as those factors are not easily connected to the financial position of small firms and stock exchanges. There is no self-evident connection, for example, between SOX and the cascading credit crunch that has followed the subprime mortgage crisis, an absence of linkage that has a double-edged import: the crisis has not generated a backlash against the critiques of SOX, but it may well decelerate congressional effort to revise SOX by redirecting legislators' attention to banking issues.[29]

The most plausible scope of congressional action on SOX, absent Republican control of both the legislative and executive branches of the government, would seem to be a narrowly crafted elimination of the statute's applicability to the smallest firms. The number of Senators willing to support such a revision can be expected to increase if the SEC's interpretive guidance on section 404 does not have the agency's hoped for reduction in compliance costs for small firms.[30] That is, in my judgment, a probable scenario because much of the implementation problem involves external auditors's decisions (see, e.g., Grundfest and Bochner, 2007), and auditors have been loathe to cooperate in implementing a more flexible interpretation of the regulations. The accounting firms's comment letters to the SEC's proposed guidance, for instance, suggest that they might well not cooperate with the stated goal of a more flexible internal controls attestation process.[31] They would appear to prefer having employees follow mechanical rules and procedures rather than exercise judgment, especially when doing so would relax the audit standard, as implied by the revised guidance's suggestion that auditors use judgment and consider a firm's size and complexity.

No doubt, a primary reason for that cautious reaction is that accounting firms have adopted a decidedly risk averse approach to liability risk in response to the collapse of Arthur Andersen and the devastating financial losses sustained by that firm's members. But the firms have also been a principal beneficiary of section 404, and maintenance of the lucrative revenue stream from internal control audits under the existing standard may be an additional motivation for their resistance to the revised guidance. To the extent that such financial self-interest is a factor, if the revised guidance fails and a legislative move to exempt small firms from all of section 404 or the auditor attestation component materializes, then the threat to revenues might induce accounting firms to alter their approach to section 404 and reduce costs, similar to the SEC's accommodation to the House's appropriations bill amendment regarding section 404.

The politics of the issue also make small firm relief the most probable scenario for possible change to SOX. In addition to the influence on legislators of the constituent connection of small firms being numerous and located in all districts, evident in the relative coverage of regional newspapers of the SOX critiques, public opinion in the United States has historically been decidedly more supportive of small rather than big business (Lipset and Schneider, 1987). For example, support levels persistently differ across opinion poll questions where the differences involve using the phrase "big business" instead of "business" or "small business." Rolling back regulation whose cost unduly burdens small firms would more easily resonate with the public than broad-based reform benefitting large firms and stock exchanges, and therefore is likely to be a politically more attractive position, which could be more credibly explained to constituents who might question the need for reform.[32] Of course, were the probability of enactment of regulatory relief for small firms to increase dramatically, then the SEC could well act preemptively and exempt small firms from part or all of section 404 in order to avoid the rebuke of a legislative directive, as illustrated by its action to delay further the applicability of section 404 to small firms following the House vote prohibiting agency expenditures to implement it.

All of this is not to say that the market competitiveness concerns raised by the reports of the Paulson Committee, McKinsey study and Chamber Commission with respect to SOX will necessarily be ignored by Congress.[33] The New York metropolitan area that is most adversely impacted by the issue has legislators in key congressional leadership positions. But the rubric of "market competitiveness" issues is amenable to diverse SEC initiatives. The SEC, for instance, recently held a roundtable to explore the concept of "selective mutual recognition" under which it would cede its regulatory jurisdiction to selected home country regulators of foreign firms listed on US exchanges (SEC, 2007b).[34] As Congress explicitly mandated that SOX apply to foreign firms, for such an initiative to work most effectively congressional action to revise SOX's language regarding foreign firms would presumably be necessary (whether undertaken on its own or at the behest of the agency).

Mutual recognition could be a dramatic development in SEC regulation, although the more selective - that is, the more the foreign regulatory regime must match that of the United States – the less meaningful the impact. If it resulted in specific SOX provisions being inapplicable to foreign issuers whose home regimes lacked the provisions, as is true of section 404, then there would surely be increased domestic political pressure for repeal of the provision for all US issuers to remove the asymmetry in regulation. That is because the competitive disadvantage of US firms compared to foreign firms would be exacerbated by such a policy, albeit the competitive position of US exchanges would be improved.

There are, of course, more US corporations than US stock exchanges. In this context, the foreign competitiveness issue would become more diffused across states: large domestic issuers, while perhaps not as ubiquitous as small public companies, are geographically spread out across the nation, compared to the stock exchanges and financial services industry voicing the current competitiveness concerns regarding SOX, which are concentrated in New York and a few other major urban areas. Moreover, US issuers might successfully reincorporate abroad and return as foreign cross-listed issuers to avoid SOX under a mutual recognition regime, and that would only further aggravate, rather than relieve, the stock exchanges' difficulties. Of course, this entire scenario is highly speculative, as it is not at all apparent that the concept of selective mutual recognition will ever go beyond the current Commission's drawing board.

V. Conclusion

As the post-SOX pushback illustrates, the critiques of SOX relating to adverse economic consequences for small firms and capital markets have gradually seeped into the political arena and have received increased media attention. This has resulted in several congressional votes conveying legislators's unease with the statute despite its virtually unanimous approval only a few years earlier. Readers of this chapter familiar with Oliver Williamson's seminal work on transaction cost economics would have had no difficulty anticipating the difficulties that are being experienced. Transaction cost economics emphasizes the importance of taking a microanalytic approach to firms and matching governance institutions to the specifics of organizational requirements and emphasizes that different forms of organization persist because they have different efficiency properties that determine their structure and form. From the perspective of transaction cost economics, SOX's mandate of uniform governance mechanisms for starkly different economic organizations is self-evidently wrong-headed, for a "one-size-fits-all" regulatory setup is oblivious to the microanalytic context of organizational choice.

The US political system of separation of powers and checks and balances renders political power diffuse and the regulatory status quo, accordingly, quite difficult to recalibrate. Expansions of federal securities regulation have therefore occurred only sporadically, often after major business crises that focused public attention on firms and financial markets and galvanized legislators with reelection concerns to take action. Modification of poorly conceived securities regulation enacted in response to such crises has occurred even more episodically, taking many years to accomplish despite recognition in the academic and business community of the legislation's flaws. Consequently, despite the increasingly expressed dissatisfaction with SOX, absent a dramatic change in the political environment, it could well take considerable time before the statute's most severe shortcomings are adequately addressed.

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Notes

1. Oscar M. Ruebhausen Professor of Law, Yale Law School and Director, Yale Law School Center for the Study of Corporate Law, Research Associate, National Bureau of Economic Research, and Fellow, European Corporate Governance Institute. Gregory Ruben, YLS '08 provided superb research assistance. I have also benefitted from helpful suggestions by Claude Menard and a referee.

2. Securities Acts Amendments, Pub. L. No. 88-467, 78 Stat. 565 (1964); Williams Act, Pub. L. No. 90-439, 82 Stat. 454 (1968).

3.Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (1977).

4. Insider Trading Sanctions Act, Pub. L. No. 98-376, 98 Stat. 1264 (1984); Insider Trading and Securities Fraud Enforcement Act, Pub. L. No. 101-704, 102 Stat. 4677 (1988).

5. Private Litigation Securities Reform Act, Pub. L. No. 104-67, 109 Stat. 737 (1995); Securities Litigation Uniform Standards Act, Pub. Law No. 105-353, 112 Stat. 3227 (1998).

6. Pub. L. No. 107-204, 116 Stat. 745 (2002). The Senate vote was unanimous; 3 members of the House voted against the legislation.

7.Compliance with the section has been postponed for the smallest of firms, those with a public float under $75 million ("non-accelerated filers" under 17 C.F.R. 240.12b-2).

8. In May 2007 the Financial Services Roundtable, the trade association for the largest financial services companies, created a fifth commission, as a follow-up to the issues raised by the three reports discussed in the text, with the objective of developing a "competitiveness" regulatory agenda for the industry, and its report was issued in November 2007.

9. The SEC estimated that the average annual internal cost of compliance for section 404 would be $91 000 over the first three years in its 2003 regulatory release implementing the provision

(Advisory Committee on Smaller Public Companies, 2006, p.39). The compliance figures noted by the SEC Advisory Committee are from a study commissioned by the big four accounting firms. Sneller and Langendijk (2007) compile several studies' estimates of compliance costs along with an actual case study, all of which indicate stunning underestimation of the cost, by several orders of magnitude, by the SEC (whether one uses the SEC estimate they report of $34 300, or the $91 000 reported by the SEC Advisory Committee).

10. Several studies (e.g., Eldridge and Kealey, 2005; Linck, Netter and Yang, 2007; Sneller and Langendijk, 2007), along with surveys by the Financial Executives Institute and the law firm Foley and Lardner, have reported dramatic increases in audit fees, in addition to the SEC Advisory Committee's data derived from an SEC report. Throughout the period, the percentage of revenues that audit fees represent for smaller companies is much higher than it is for large companies.

11. It did add a caveat: if the SEC found, after adopting the report's proposed modifications, that compliance with section 404 was still too burdensome for small companies (firms that had not yet had to comply, and not those considered small under the more expansive definition of the SEC Advisory Committee), then the committee recommended that the agency should seek legislation to exempt those firms from the auditor attestation requirement of the statute along with revision of management's required certification language, so that the language would accord with the lower level of certainty regarding internal controls that would accompany a lack of auditor attestation.

12. Section 36 of the 1934 Act, 15 U.S.C. §78mm. Some scholars contend that the SEC's exemptive authority is inapplicable to section 404 because Congress did not cast that provision as

an amendment to the 1934 Act (e.g., Cox, 2006).

13. The journalists and their newspapers for which searches were conducted are: Alan Abelson of Barrons, Holman Jenkins and Alan Murray of the Wall Street Journal ("WSJ"), Gretchen Morgenson and Floyd Norris of the New York Times ("NYT"), and Allan Sloan of Newsweek. The editorial page of the WSJ, the leading business newspaper, is also included in the individual journalist category, as it is a national editorial page that is thought not only to possess a distinctive editorial voice but also to wield clout. The tracked national newspapers are the NYT, WSJ and Washington Post. The four tracked regional papers are the Birmingham News, Boston Globe, Houston Chronicle and San Francisco Chronicle. Those newspapers were chosen to provide diverse geographical, as well as ideological, coverage. According to a measure of "media slant" constructed from a comprehensive newspaper database by Gentzkow and Shapiro (2006), the Boston and San Francisco papers, along with the NYT and Washington Post, are on the left of the political spectrum and the Birmingham and Houston papers, along with the WSJ, are on the right. For a detailed discussion of the data see Romano (2007).

14. As indicated in table 1, the 2007 entries are from slightly less than six months of coverage (through June 10), compared to full years of coverage for 2005 and 2006, and the 2004 coverage is for only the month of December. To gauge the persistence of the relative salience of Enron, a search was conducted for news stories containing the word "Enron." The tally is crude because many of the identified stories had nothing to do with Enron's accounting scandal. The term has entered the vernacular so that an article might be discussing accounting problems at a company or school board and refer to the situation as being - or not being - another "Enron."

15. In addition, articles discussing the increased cost of IPOs due to SOX are counted as 'market

competitiveness' and not 'small firm cost' stories, even though such costs principally affect small firms, on the rationale that the SEC Advisory Committee's report emphasized compliance, rather than IPO, costs as the critical problem for small firms while the other three reports that did not focus on small firm issues did discuss IPO costs, in relation to affecting adversely US stock markets' competitiveness. But as discussed in Romano (2007), the relative coverage of the two critiques remains the same when the count of 'market competitiveness' stories excludes potential small firm cost concern overlaps by including only articles that refer specifically to foreign firms or foreign capital markets.

16. A chi-square test of the cross tabulation of article type (reference to small firm or market competitiveness criticisms of SOX) and newspaper type (national versus regional) was statistically significant at less than 1 per cent.

17. A chi-square test of the cross tabulation of article type against the four regional newspapers was insignificant. The similarity of coverage is not due to a simple syndication effect, whereby regional newspapers with limited resources and expertise in analyzing complex business issues directly reproduce the reporting of syndicated columnists. The regional newspaper business editors are, in fact, highly selective when republishing articles from wire services and other newspapers, and do not just replicate those sources' coverage. For example, the same search described in table 1 for the Associated Press ("AP") identified 128 SOX-critique related stories, of which 31 concerned small firm costs and 75 concerned market competitiveness. The regional newspapers, however, not only published less than 10 per cent of those AP articles, but also selected for republication far more small firm cost articles than market competitiveness ones, compared to their relative representation in that source (Romano, 2007).

18. For instance, slightly over half of the NYT's circulation is national, with the New York metropolitan area accounting for the rest. Because the WSJ is the leading financial newspaper, forgoing publishing when the stock exchange is closed, reporting on the stock exchanges's financial condition would plausibly be expected to be of particular interest to its readers.
19. Cross tabulations by type of critique (small firm costs or market competitiveness) of the national newspapers are significantly different, and the source is the Washington Post (see Romano, 2007). The cross tabulation of those stories in the Washington Post versus the regional newspapers is, however, insignificant, whereas it is significant for the NYT and WSJ versus the regional newspapers, just as it was for the aggregate of the three national newspapers against the regional ones.
20. Cross tabulations of the reports (tallying the four reports separately or grouping together the three reports focused on competitiveness) by newspaper type coverage (national versus regional) are not significant. There is, however, a significant difference in coverage when the national journalists are compared to national newspapers and the four reports are tallied separately, and when the national journalists are compared to regional newspapers and the three reports focused on competitiveness are grouped together.
21. Adjusting for overlapping sponsorship and cosponsorship across bills, 93 legislators signed on to the eight bills introduced in 2007, with a high of 52 cosponsors (48 being Republicans) on a House bill delaying section 404's implementation for small firms.
22. Section 5002, America Competes Act, S. 761, 110th Cong., 1st. Sess, as amended 24 April 2007. The bill passed the Senate but an alternative bill that originated in the House was enacted.
23.One Democrat voted against tabling the motion.

24. All but one Republican voted for the amendment (eight not voting) along with 74 Democrats, which is almost one-third of the party's caucus.

25. The amendment was dropped in conference and, as is common with appropriations legislation (Kirst, 1969), in the accompanying explanatory statement, the Chairman's decision to postpone the section's implementation to small firms was approvingly noted, along with instructions to the agency to take small firms' concerns into account. (US House of Representatives, 2008). The Chairman fulfilled his pledge in February 2008, as the agency noticed a year-long extension of the deferred application of section 404 to small firms (SEC, 2008).

26. In contrast to his predecessor, John Shad, the Reagan administration's nominee for SEC chairman, supported congressional legislation to revise the statute (Gerth, 1981, p. D6).

27. See, e.g., 134 Cong. Rec. S 10654 (Aug. 3, 1988) (remarks of Sen. Sanford) ("...the bill brings some much needed clarification to the operation of the Foreign Corrupt Practices Act. This clarification is essential if companies, particularly small businesses, are to behave competitively, but legally, in foreign markets."); id. at 10585 (Aug. 2, 1988) (remarks of Sen. Dixon) ("The only thing that is added [by the conference report regarding the FCPA] is greater clarity. The only thing missing is the chilling effect that currently prevents many small businesses from even attempting to do business overseas.")

28. For instance, the common political wisdom in the spring of 2008 is that the Democrats will retain, if not increase, their control of the Senate, because there are more Republican seats up for election, and many are thought to be contestable, along with their control of the House.

29. Policy change appears to be importantly related to legislators's 'selective attention,' because

of the limits on the capacity of human cognitive processes that permit us to 'attend to only limited elements of the environment at any given time' (Jones and Baumgartner, 2005, p. 16). The reform proposals variously mentioned have been directed at regulation of the residential mortgage lending process or provision of financial assistance to homeowners and banks. In addition, the Treasury Department's blueprint for financial regulation reform that would consolidate myriad regulatory agencies and rearrange them into a limited number of agencies defined by regulatory function, is another source of diversion for legislators away from focusing on SOX. Although it was released in the midst of the subprime mortgage meltdown, the administration indicated that it was not directed at alleviating the crisis, but meant to serve as the starting point for future consideration of regulatory reform, not only because it had been in the works for a long time, but also, no doubt, because it was being advanced at the end of the administration's term of office. Indeed the core of the plan broadly mirrors the financial services industry's advocacy of a far more simplified regulatory regime in order to enhance competitiveness, change more comprehensive in its implications than any of the bills put forth with regard to revising SOX.

30. It is not at all apparent that supporters of revision could reach the magic number of 60 Senators, as the deference to the SEC expressed in the Dodd-Shelby amendment might have been an example of symbolic politics for some legislators, through which they could express sympathy to constituents regarding small firms's plight without intending to act.

31. In the comment letters, the firms persistently objected to proposed modifications to loosen audit standards, and advocated that the SEC conform its proposed definitions to more restrictive PCAOB definitions (see SEC, 2007a). It should further be noted that accounting members of the

SEC Advisory Committee were also the dissenters from its recommendation to exempt small firms.

32. In his landmark study of Congress, Richard Fenno notes that for the vast majority of votes, legislators are not constrained by constituent preferences and can vote 'as they wish,' provided that they can satisfactorily explain their votes to constituents. (Fenno, 1978, p.151). In addition, recasting the issue in terms of small firm costs instead of accounting fraud or investor protection shifts the legislative debate to a new venue - the House and Senate small business committees rather than the committees with jurisdiction over the SEC - a move to which political scientists studying policy change assign crucial importance for legislative success as an issue's existing venues typically represent vested interests and are resistant to altering the status quo (Jones and Baumgartner, 2005, p.5).

33. The America Competes Act also included a resolution, sponsored by Senators Schumer and Mike Crapo and added to the bill by unanimous consent, expressing the sense of the Senate that US capital markets were losing their 'competitive edge,' referencing the McKinsey study (section 5007, S.761, American Competes Act, supra note 19). It both urged state and federal regulators not to 'impose regulatory costs that are disproportionate to their benefits' and to ensure regulation protected investors. The ambiguously-phrased sentiment, paralleling that of the Dodd-Shelby amendment, suggests it was an exercise of symbolic politics, in which legislators expressed empathy for constituents's problems without having to take any concrete steps to alleviate them.

34. The SEC also just abandoned the requirement that foreign firms reconcile their financial statements with US accounting principles, as long as the firms comply with international

accounting standards (Marcy, 2007). Although this action does not alleviate the costs of those issuers's SOX compliance, it undoubtedly will improve US stock markets's relative competitive position, as the substantial expense entailed in reconciliation has long been considered an important reason why small foreign firms do not list on US exchanges (e.g., Cochrane, 1994).

Table.1. Media Coverage of SOX Critiques, Dec. 1, 2004 - June 10, 2007

	2004	2005	2006	2007
National business journalists:				
Commissioned reports	0	1	17	4
Small firm costs	0	3	6	0
Market competitiveness+	0	8	15	5
Total SOX	2	18	32	7
Regional newspapers:				
Commissioned reports	0	6	19	3
Small firm costs	0	7	21	2
Market competitiveness+	1	4	23	11
Total SOX	8	35	60	24
Enron references	38	1782	936	156
National newspapers:				
Commissioned reports	3	16	50	23
Small firm costs	2	16	21	4
Market competitiveness	4	22	75	36
Total SOX	12	91	162	67
Enron references	86	1103	1328	322

Notes: 'National business journalists' are Alan Abelson, Holman Jenkins, Gretchen Morgenson, Alan Murray, Floyd Norris, Allan Sloan, and Wall Street Journal Editorial page; 'Regional newspapers' are the Birmingham News, Boston Globe, Houston Chronicle, and San Francisco Chronicle; 'National newspapers' are the New York Times, Wall Street Journal and Washington Post, and their counts exclude articles by national business journalists tallied in the table, except for the counts in 'Enron references.' 'Commissioned reports' aggregates references to the Advisory Committee on Smaller Public Companies to the SEC, Committee on Capital Markets Regulation, Commission on the Regulation of Capital Markets in the 21st Century and their reports, and to the McKinsey & Co. study commissioned by Senator Charles Schumer and Mayor Michael Bloomberg. 'Small firm costs' tallies articles referring to SOX's impact on small firms' costs. 'Market competitiveness' includes articles referencing capital market competitiveness issues such as the number of initial public offerings, private placements, acquisitions of private firms rather than public offerings, going private transactions and stock market delistings. 'Total SOX' includes articles that had some reference to costs and/or benefits of SOX, or issues involving internal controls provision, obtained from the following Lexis searches: (i) for the newspapers: (sarbane w/5 oxley) or section 404 or (conflict of interest w/5 account! or audit!) or (option! w/5 executiv!) or (small w/3 business w/5 cost!) or (small w/3 company w/5 cost!) or (accounting w/3 regulation) or (accounting w/3 legislation) or (transparency w/5 financial statement! (for the newspapers); and (ii) for the journalists: journalist's name with "byline or by" ("editorial" for Wall Street Journal editorials), and "regulat! or legis!". Articles referencing other SOX issues included in the search, such as accounting disclosure and analyst conflicts of interest, are excluded from the 'Total SOX' count. The counts for the specific topics do not add up to 'Total SOX' because some articles might reference more than one topic (which are double counted) and some articles included in 'Total SOX' discussed costs without referencing small firms in particular. Because the regional newspapers did not systematically include in Lexis wire stories or columns acquired from other newspapers, relevant articles by such sources were further identified for the Boston Globe and San Francisco Chronicle from equivalent searches kindly run in those newspapers' internal databases by Lisa Tuite and Richard Geiger, those respective newspapers' librarians, and for the Birmingham News and Houston Chronicle, by manually reading their business sections for the entire sample period. 'Enron references' are all articles, including letters to the editor, obtained from the Lexis search: "enron and not enron field and not sports." The tally includes many articles that have no connection to the Enron accounting scandal, e.g., an article might include a reference to an individual who worked for Enron or analogize another entity's financial difficulties to Enron.