



## Conspiracy Against 404 Exemptions?

**A member of the SEC's small business committee charges that a former SEC official is orchestrating public opposition to 404 exemptions.**

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A member of the Securities and Exchange Commission's Advisory Committee on Smaller Public Companies has accused former SEC chief accountant Lynn Turner of coordinating a media campaign opposing the committee's proposals to scale down Section 404 of Sarbanes-Oxley for small companies.

"We do know and can factually point out that the former chief accountant of the SEC, who is quoted in virtually every newspaper article I've seen, is organizing this commentary and has requested some of this commentary," stated committee member James "Drew" Connolly, president of IBA Capital Funding, during the committee's final public conference call Wednesday. Connolly said commentaries opposing the committee's proposals were solicited by Turner and "is not a groundswell of individuals coming together in opposition."

Connolly added: "We should be aware there is a relatively broad-based coordination in and among these attacks on our work. And I for one resent it."

Although he never mentioned Turner by name, Connolly's diatribe was clearly aimed at the former SEC chief accountant. Turner is now a managing director of research at Glass, Lewis, an investment advisory firm that has published research on various corporate-governance issues, including the surge of material-weakness reports in 2005 compared with 2004, when Section 404 became effective for many public companies. Turner has also noted publicly that smaller companies may be more at risk for weaknesses in internal controls.

Asked by CFO.com for his reaction to Connolly's statements, Turner cited a broad range of individuals and groups that oppose the committee's recommendations, including four former SEC chairmen, Vanguard founder John Bogle, the largest accounting firms, pension plans, the Council of Institutional Investors, and groups representing retired persons. All, he said, "have weighed in strongly against the recommendations of the [SEC's] Small Business Advisory Council."

Turner also said that "a large group of well-known legal scholars have concluded that the SEC doesn't have the authority to carry out the committee's recommendations." He added that he would leave it to others to "conclude whether one person controls and influences all of these individuals and their views, or in reality Mr. Connolly simply wishes to ignore their views."

During the conference call, Connolly also criticized Turner's former boss, ex-SEC chairman Arthur Levitt, who also opposes a small-company exemption from Sarbox 404. Levitt, complained Connolly, "was kind enough not to [send his comments] in a letter, but rather in a piece in *The Wall Street Journal* on the day we were to expose our draft."

That's a reference to a letter penned by Levitt that appeared in the *Journal* on January 27, opposing the proposed exemptions. On February 13, Levitt submitted his *Journal* Op-ed as an

attachment to a formal comment letter that he co-signed with Bogle, former TIAA-CREF CEO John Biggs, former U.S. Comptroller General Charles A. Bowsher, and former Federal Reserve chairman Paul Volcker.

Former SEC chairmen William Donaldson and Richard Breeden have also publicly opposed the idea of exempting small companies from the internal-controls requirements of Section 404.

Herbert Wander, co-chair of the committee and a partner at Katten Muchin Zavis Rosenman, suggested that Levitt's comments be read carefully. "He acknowledged the problem, the need for nurturing small business for job creation and innovation. Where we differ is the suggested solutions that he has," said Wander.

Wander said that although current SEC commissioners have voiced public opinions on the committee's approach, they have not taken formal positions. He also noted that there are questions about whether SEC chairman Christopher Cox's statements on 404 were reported accurately in the media. In early April, Cox said at a public forum that small businesses should not expect a waiver from 404, according to Bloomberg. Furthermore, Wander said that based on previous conversations with Cox, he believes that he would be receptive to the committee's report.

The committee will present its final report to the commission by April 23. There is no deadline for a final ruling.

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