



## Sarbox Rollback Report Due November 30

Treasury Secretary Paulson, and Sarbox 404 critics, await the findings of a blue-ribbon panel charged with dissecting the rules.

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Treasury Secretary Henry Paulson — who claims the Sarbanes-Oxley Act is having an ill effect on U.S. competitiveness and the nation's audit firms — could receive documented support for his theory next week from a blue-ribbon committee he formed earlier this year.

The Committee on Capital Markets Regulation, an independent group Paulson introduced in September, is expected to release a study on November 30 that promotes the rollback of Sarbox. The group's members include Donald Evans, a former Bush Administration economic adviser, and John Thornton, who reported to Paulson when they headed Goldman Sachs, as well as academics and professionals from the business, financial, investor, legal, and accounting communities. Their charge is to explain whether Section 404 of Sarbox, which requires management to assess internal controls over financial reporting, is forcing U.S. public companies to cede potential growth to foreign and private markets. Furthermore, the group is being asked to determine whether Sarbox creates a liability for public company "gatekeepers," such as auditors and directors.

During a speech given earlier this week at the Economics Club of New York, Paulson said executives won't find what they are looking for from the current regulatory regime. "Businesses and auditors are searching for something that doesn't exist in today's constantly changing world — a rules-based safe haven that still provides investors with an accurate portrayal of a company's financial performance," he said. Paulson also questioned whether Sarbox requirements result in the high-quality audits the law was set up to deliver.

In his speech, the Treasury Secretary also blamed Sarbox for not giving auditors enough latitude to make principles-based determinations. "Auditors should be able to focus on one fundamental objective — ensuring the integrity and economic substance of management's financial statements," he said. "To get there, we must recognize that accounting is not a science. It is a profession, requiring judgments that cannot be prescribed in a one-size-fits-all manner that undermines the usefulness of financial statements to investors." Indeed, during the presentation, Paulson called on regulators to amend Sarbox by taking a more principles-based approach. "New accounting and governance rules, which, while necessary, are being implemented in a way that may be creating unnecessary costs and introducing new risks to our economy," he asserted.

He warned regulators to avoid falling into the trap of thinking new rules translate into ethical behavior, noting that while "proper corporate governance processes increase the likelihood that well-intentioned people will do the right thing...they do not guarantee such an outcome. In my judgment, we must rise above a rules-based mindset that asks, 'Is this legal?' and adopt a more principles-based approach that asks, 'Is this right?'"

While Paulson has credited regulators for responding to Enron's collapse and other corporate scandals with new rules aimed at instilling investor confidence and playing a role in economic recovery, he has suggested the corrective measures were too onerous. "Often the pendulum swings too far and we need to go through a period of readjustment," [he said three weeks after taking over](#) as Treasury Secretary, a role that does not have the authority to change governance-related regulations.

Still, the findings of the report, which Paulson claims are a priority for him, are likely to garner plenty of press and pique the interest of the new Congress. As a result, Sarbox 404 critics are sure to make their case vigorously between now and December 13, when the Securities and Exchange Commission holds an open meeting to consider recommendations regarding the internal-controls provision.

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