

COUNCIL OF INSTITUTIONAL INVESTORS

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Before the United States Senate Committee on Banking, Housing and Urban Affairs

The Implementation of the Sarbanes-Oxley Act and Restoring Investor Confidence

Dirksen Senate Office Building Room 538

On behalf of the Council's 300 members, I thank you for this opportunity.

The executive summary of this hearing, which examines the effects of the 14-month old Sarbanes Oxley Act, was actually written decades ago during President Nixon's historic trip to China. As I'm sure you recall, during a state dinner on that trip, Secretary of State Kissinger asked the legendary Cho En Lai what he thought of the 18th century French Revolution. Cho's response: "Too early to tell."

For many reasons it is similarly much too early to write the history of SOXA. But that hasn't stopped many from whining loudly to anyone who will listen—including all of you—that the act:

1. snuffs entrepreneurial spirit,
2. prevents board seats from being filled, and
3. forces companies to reincorporate on Mars to avoid killer compliance costs.

For example: law firm memos breathlessly warned companies that company **credit cards might now be illegal** because the act bars loans to executives. One CEO asked me what I thought of this and I responded, "Ditch the firm. Keep the cards. And tell everyone to get a grip."

Of course there are some new costs. But let's remember 5 key things:

1. **Any change will incur temporary change-over costs.** If the US converted to the metric system, we'd have huge changeover costs and that doesn't mean the metric system is bad; it just mean change takes time and costs money.
2. **Some costs arise from conflicting advice.** A major oil company chairman told me on Friday that his company's main SOXA costs came from conflicting advice from consultants, accountants and lawyers.
3. **Some costs are unnecessary.** Remember, consultants, lawyers and accountants make money if they advise companies that they need to be hired to revamp something or other. The CEO of a major pharmaceutical company told me last week that most of the compliance packages marketed to their company offered unnecessary bells and whistles.
4. **Many features of SOXA entail very few additional costs.**

5. **It is *GOOD* that some costs are up.** Companies that didn't have internal controls should spend money to adopt them. If the PCAOB costs a bit more because it does a better job, that is money well spent.

Finally, the whining we hear fails to ignore the **clear financial benefits** that SOXA is producing. Have we already forgotten that at the largest 1000 companies that lost over 75% of their value in the two years before SOXA, insiders nabbed fully \$66 billion of shareholders' equity and kept it? That is now much harder to pull off and the number of frauds is declining.

Boards are now acting better. Nearly everyone can tell you that. **Boards are also acting faster.** Does anyone believe the NYSE or Freddie Mac boards would have acted as fast before SOXA? **SOXA strengthens safety nets** so that when wrongdoers attempt to put a spanner in the spokes of our markets, they are stopped earlier.

SOXA could not cover everything in the short time it was enacted. It is essential that the SEC follow up with increased **shareholder access** to the corporate proxy. It is essential that **SROs** and **GSEs**, such as the New York Stock Exchange, get restructured so that their regulatory functions are aligned with investor interests. These are critical add ons.

But **SOXA has other value** besides its immediate effects.

I am sure everyone in this room agrees that the fact that our markets have been for the past many decades the cleanest and most efficient in the world has brought great wealth to most of us; even to Americans who hold no shares and have no pensions. People all over the world invest here because they believe that are markets protect their investments best; this creates jobs, pensions, and a vibrant economy.

But we are at very real risk of losing this edge. Increasingly special interests have been successful at rewriting the rules that govern our markets so that they benefit and investors suffer. Special interests visit Washington daily; average Americans cannot.

As soon as it is recognized that our markets are losing their integrity—they can and will flow almost immediately to any other country that maintains a better system. Markets can move overnight unlike other industries so this risk is very real.

What you all did here just over a year ago was to stem this erosion and take a bold stand in favor of clean, investor-protective markets. On behalf of my members' beneficiaries and on behalf of all of our children, who have the most to lose if our markets lose their edge, I ask you—no, I beg you—to stand firm. Our jobs, our pensions, our homes and our way of life depend on real protection of—not lip service to—clean markets. You hold the key—little else you do here has greater importance. Thank you.