Much Ado About Nothing: Looking Past the Drama of the Sarbanes-Oxley Act and Reevaluating the U.S. Delisting Trend Among Non-U.S. Firms

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Kalani A. Morse *

Done to death by slanderous tongue
Was the Hero that here lies;

Claudio
Much Ado About Nothing
Act V Scene III
William Shakespeare

I. INTRODUCTION

The one unifying thread that runs throughout the various plots and subplots of Shakespeare’s Much Ado About Nothing is the plethora of successive obstacles laid in the path of young lovers seeking to find love and marital bliss. The courting characters are forced to negotiate a series of complex political, social, and moral dramas that threaten to keep them apart. In particular, the play highlights the travails and challenges of Claudio and Hero, two well-intentioned lovers whose romantic plans are repeatedly frustrated by the constant intervention and scheming of others.

As the drama proceeds to climax, Claudio is duped into believing that Hero was untrue to him. Claudio publicly denounces Hero and shames her in front of the guests assembled to witness their wedding. After Claudio discovers that he has been deceived regarding Hero’s loyalty, calculating characters again trick him, this time making him believe that his slandered beloved has died from shame and heartache. In the penultimate scene of the last act of the play, standing over what he believes to be his beloved’s tomb, Claudio, in the quote above, expresses his frustration and

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grief over the slanderous lies that caused his lover to faint and die. The final scene of the play reveals that Hero in fact lives. The two lovers reunite and are finally able to marry.

Much like the dramas that interfered with Claudio and Hero’s pursuit of their desired union, the Sarbanes-Oxley Act of 2002 (SOX) has arguably overregulated cross-border investor relationships, causing more than its fair share of interference and drama. Just as in Claudio and Hero’s case, overreaction, limited information, misunderstanding, and fear of the unknown have all combined to stifle cross-border investor relationships. The SOX drama has recently begun interfering with relationships between non-U.S. firms and U.S. capital markets, hindering pursuit of otherwise financially rewarding relationships. Much like Claudio and Hero, U.S. regulators and non-U.S. firms, both well-intentioned parties, seek to establish and perpetuate mutually beneficial relationships. But alas, for some confusion prevails, resulting in delisting strategies and abandonment of U.S. capital market listings.

Shortly after the terrorist attacks of September 11, 2001, a steady wave of financial fraud disclosures began with the infamous Enron/Arthur Anderson Scandal. A flurry of corporate greed and fraud scandals at other U.S. based firms quickly followed. Financial scandals and bankruptcies at WorldCom, Adelphia Communications, Qwest Communications, XO Communications, Tyco International, and ImClone seized financial markets and investors with fear and panic. Investor confidence in U.S. corporations plummeted, resulting in a mass exodus of investors from U.S. securities markets, arguably leading to a sharp drop in securities prices. Investors and the U.S. public expressed outrage at how many corrupt executives possessed and ultimately exercised the ability to get away with brazen and rampant fraud.

The U.S. Congress reacted in an uncharacteristically swift manner, pushing extensive and dramatic corporate governance reform proposals through the legislative process. President George W. Bush announced his signature of the new SOX act on July 30, 2002, introducing it as “the most far-reaching reform of American

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2 Id.

3 Id.
business practices since the time of Franklin Delano Roosevelt.\textsuperscript{4}

Since then, firms and corporations subject to SOX compliance have complained heavily and heartily that the dramatic corporate governance overhaul amounted to a hastily drafted overreach of U.S. federal regulation into financial markets.\textsuperscript{5}

The drama resulting from the forbidding and dreaded requirements of SOX compliance measures caused many firms to reconsider their participation in U.S. capital markets. Financial media outlets and the investing public have made “much ado” about the small handful of non-U.S. firms who have recently elected to pursue delisting strategies as a means of avoiding SOX-based compliance costs. One notion gaining in popularity is that U.S. capital markets no longer offer sufficient benefits to justify additional SOX-based compliance costs. Many critics predict that the trickle of non-U.S. firm delistings will quickly grow into a flood as the purported enormity of SOX compliance burdens push more and more firms out of U.S. markets.

In the SOX drama, just as in Shakespeare’s drama, the passage of time, the addition of relevant information, and a renewed perspective on issues of true importance can all help well-intentioned parties look past the misconceptions and drama that hinder the pursuit of mutually beneficial relationships.

This article posits that the SOX drama has been somewhat beneficial by shocking the global community into heightened levels of accountability, fostering a strong and expanding culture of responsible and transparent corporate governance. Furthermore, many non-U.S. companies stand to benefit from SOX-type compliance initiatives. Accordingly, this article argues that non-U.S. firms should not allow the SOX drama to push them into delisting strategies that will inevitably carry high opportunity costs and unexpectedly high delisting expenses. This article provides both additional information and a renewed perspective on the SOX drama that has driven the delisting trend. Part II of this paper outlines a relevant and necessary background on basic SOX compliance issues and the non-U.S. firm delisting trend. Part III provides perspective by recharacterizing the “draconian” SOX regime as a subsiding but necessary knee-jerk reaction by U.S. lawmakers. With the primary short-term goals of restoring investor confidence and protecting the primacy and reliability of U.S.


capital markets well accomplished and behind them, U.S. regulators are more willing to let the knee-jerk reaction subside. Part III proceeds to show that in 2005, both public firms and U.S. regulators approached SOX compliance enforcement differently, with cooler heads and more flexible and pragmatic approaches. Part IV outlines important legal and compliance considerations for firms weighing delisting strategies: opportunity costs, decreased compliance cost mitigation, and other regulatory and pragmatic ramifications that weigh in favor of pursuing compliance initiatives that enable or preserve participation in U.S. capital markets. Part V explores the globally expanding culture of proactive corporate governance focused on increased accountability and transparency. It also highlights cross-cultural and cross-border expectations, and competitive and regulatory forces that will eventually disadvantage delisted firms. Consequently, Part VI proposes that firms embrace a proactive approach to corporate governance reform. By strategically leveraging compliance initiatives, firms may capture hidden value, operational efficiency, and overall market advantage by recharacterizing and leveraging compliance programs as proactive improvement initiatives.

II. BACKGROUND

A. Background on the Sarbanes-Oxley Act of 2002

SOX set forth a host of corporate governance and financial reporting requirements designed to revive investor confidence in the market and prevent future financial scandals. Its effects have been rather dramatic in some respects. While prior to SOX, many chief executive officers (CEOs) signed off on financial statements, section 906 of SOX boosts compliance and accountability by imposing criminal penalties for false certification of financial statements.6 In the wake of SOX legislation, some CEOs actually chose to resign rather than personally endorse financial statements.7 While such outcomes obviously grab the media’s attention, SOX

6 “Knowing violations” of SOX reporting requirements are punishable by up to $1 million in fines and ten years imprisonment. “Willful violations” are punishable by fines up to $5 million and twenty years imprisonment. SOX does not specifically distinguish between the two kinds of violations, and common law has yet to define the difference between “knowing” and “willful” violations. See Sarbanes-Oxley Act of 2002 § 906(c)(1)-(2), 18 U.S.C. § 1350 (2002), available at http://news.findlaw.com/hdocs/docs/gwbush/sarbanesoxley072302.pdf.

7 ROBERT PRENTICE, STUDENT GUIDE TO THE SARBANES-OXLEY ACT 25–26 (Thompson Publ’g 2005).
legislation carries subtler—but arguably more important implications—many of which carry high compliance price tags for firms falling within their scope.

Section 404 of SOX, which took effect in July 2005, requires managers of U.S. firms with market capitalization greater than $75 million to assess and, if necessary, upgrade the effectiveness of internal financial controls. In addition to internal audit costs, firms must also hire auditors to create and submit independent reports regarding the adequacy of internal controls and report any perceived material weaknesses.

More specifically, the internal control report required by section 404 must include a report of management’s personally endorsed assessment of the effectiveness of the company’s internal controls. In addition to the management’s internal control report, the report must also include a report of management’s personally endorsed assessment of the effectiveness of the company’s internal controls.


9 Id.

10 Section 302 of SOX requires CEOs and chief financial officers (CFOs) to certify that they have personally reviewed the quarterly and annual financial reports filed with the SEC. Such certification amounts to management’s personal endorsement that, based on their knowledge, the reports contain the truth and that the company’s financial position is fairly represented. See PRENTICE, supra note 7.

11 In August of 2003, the SEC clarified the definition of internal control as “internal control over financial reporting.” In what is clearly an effort to ensure that generally accepted accounting principle (GAAP) standards are adhered to in the preparation of financial reports, “internal control over financial reporting” was further defined as:

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:

(1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the registrant;

(2) 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
report, SOX requires external auditors to evaluate and submit independent reports evaluating the quality of the company’s internal controls and the accuracy of financial statements filed with the Securities and Exchange Commission (SEC).12 Previously, corporate management had the primary responsibility of ensuring the accuracy of financial statements. However, “progressive” accounting practices and “creative” reporting tactics in competitive capital markets had long since diminished the relative value of accuracy and honesty in financial reporting for investor relations purposes.13 Thus, the need for increased accountability at higher levels.

Since its inception, the costs and efforts required by SOX stricter compliance demands have rattled public corporations and raised a significant outcry that has not gone unnoticed by SEC regulators.14 During the summer of 2003, the SEC released its compliance requirements for section 404 but chose to stagger future compliance deadlines based upon differing firms’ respective market capitalization.15 Large firms with market capitalization greater than $75 million received earlier compliance deadlines for their annual reports that fiscal year while smaller companies with market capitalization less than $75 million received later compliance deadlines for filing their annual reports.16

Such concessions, however, failed to improve the mood among the firms required to comply with section 404. For most public firms, the task of documenting and testing their financial accounting processes to ensure the accuracy of reports proved as

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(3) 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.


13 PRENTICE, supra note 7, at 1–2.

14 According to some, including Congress, this rattling was long overdue and necessary to revive investor confidence and preserve the integrity of capital markets. Id. at 10.

15 Huffman, supra note 1, at 251.

16 Large cap firms had to begin compliance that next fiscal year, 2004. Smaller cap companies still within fiscal years were given until the first fiscal year ending on or after April 15, 2005. Id.
daunting as it was unwelcome. Complaints and calls for repeal reached a fevered pitch in the fall of 2004 when most large cap firms found themselves wading through the oppressive morass of internal control restructuring required by section 404.

In a continued effort to respond to firms’ needs, the SEC recently reviewed the first year of section 404 compliance efforts and fine-tuned the implementation of SOX legislation. As its primary goal, the review gauged SOX’s effect upon U.S. domestic public firms and the outside auditors attesting to the quality of their internal controls and management reports. This review resulted in the issuance of guidance statements from the SEC, offering tips and concessions to management and auditors, facilitating cost mitigation and promoting efficiency in section 404 compliance efforts. Section III.D. below discusses the relevance of such concessions and the impact of such guidance on a firm’s delisting and compliance strategies.

As regulator of the largest and most vigorous capital market in the world, the SEC has also taken steps to ease SOX compliance burdens for non-U.S. firms. Although all companies, whether U.S. or non-U.S., are subject to section 404 compliance by virtue of their listings on U.S. stock exchanges, the SEC specifically granted non-U.S. companies one extra year to comply with section 404.

More than 1,400 non-U.S. public companies access U.S. securities markets in one form or another. In 2003, Europe alone accounted for 305 of the non-U.S. firms required to file reports with the SEC by virtue of trading equity or debt in U.S. markets. Thus, the SEC’s choice to exempt non-U.S. companies from the first wave of section 404-implementation is no trivial concession. Furthermore, as this paper will show, the SEC continues to move towards easing international compliance burdens and preserving the global appeal of U.S. capital markets.

17 Stone, supra note 5.
18 See, e.g., Huffman, supra note 1, at 257–58.
20 Id.
B. Section 404 Costs

Section 404 audits cost more than traditional audits. The most costly components are tied to increased internal controls testing and generating an external auditors’ opinion on management's assessment of internal controls. A significant cost consideration for both of these functions is the fact that many firms must first create these new assessment and compliance programs before management can even begin to make a reasonable assessment of internal controls.

Because external auditors must now file an independent opinion regarding both financial statements and internal control reports, audit fees are rising significantly. Prior to section 404, auditors developed a basic understanding of a firm’s internal controls, just enough to facilitate the planning and implementation of financial statement audits. At the time, the auditors only concerned themselves with assessing the risk of material misstatements detected by internal controls. The Public Company Accounting Oversight Board (PCAOB), established by SOX, stated that evaluating financial statements based on an understanding of internal controls is insufficient to express a valid opinion on the integrity of controls themselves. Thus, auditors must delve much deeper, management must accommodate extensive auditor inquiries, and costs rise accordingly.

In addition to auditing costs, section 404 will also ensure that businesses spend a great deal on the development of internal control systems. Developing and assessing robust internal control systems requires the following components, all of which tend to boost compliance costs: external resources, staff hours, management’s time and attention, and new technology deployment. While it remains difficult to estimate exact out-of-

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24 The PCAOB was established by SOX to:
[O]versee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors.


26 Huffman, supra note 1, at 255 (two Fortune 500 CEOs estimated that their companies will need approximately 20,000 staff hours to comply with the internal control requirements).
pocket and opportunity costs for the latest round of section 404 measures, most firms have fairly good estimates of the logistical requirements associated with planned compliance efforts. A 2003 survey by Price Waterhouse Coopers found that executives believe most SOX compliance costs will arise from increased needs for internal resources rather than external auditing costs. Such needs include documentation, legal compliance, policy development, self-assessment, staff training, and the adoption of new tools and technology.\[27\]

Dire predictions of compliance challenges expected by U.S. firms provided more than ample ammunition for non-U.S. firms to fight SOX compliance; however, the first year of U.S. firms’ performance in the section 404 compliance arena largely lays to rest the dire scenarios predicted for U.S. firms. Approximately 282 U.S. firms listed on the New York Stock Exchange (NYSE) and the NASDAQ informed the SEC in the spring of 2005 that they would file their annual reports late.\[28\] While that seems to be a large jump from the fifty-nine late reports filed in the previous year, acknowledging that a total of 6,200 firms are listed on both exchanges provides perspective as the actual percentage of delays. Thus, the actual percentage is far smaller than earlier predictions that a third of the market would encounter problems with timely filings.\[29\]

C. The Non-U.S. Firm Delisting Trend

Widely varying compliance cost estimates justifiably concern non-U.S. firms. In late 2004, professional accounting publications surveyed 113 U.K. firms with dual listings in both the U.K. and the U.S., on NASDAQ or the NYSE, and reported that firms anticipate section 404 compliance efforts alone to cost them a total of £120 million or $241 million.\[30\] Financial Executives International

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\[29\] Id.

estimated compliance costs averaged around $3 million or £1.6 million per company, suggesting that the total figure could reach as high as £177 million or $315 million.\(^{31}\) Disparities of £57 million or $102 million between estimates fuels the trepidation and speculation that makes dual-listed corporations take a long, hard look at the relative value of their U.S. listings.

Despite the offer of one extra year to reduce the uncertainty surrounding compliance costs, and an opportunity to rely upon the experiences of U.S. firms and auditors to guide them, some non-U.S. firms are focusing less on getting the right systems and controls in place than on performing cost-benefit analyses for their U.S. listings. Citing the costs of SEC registration as disproportionate to the perceived benefits, O2, a U.K. wireless company, announced plans to delist from the NYSE and dissolve its American Depository Receipts program.\(^{32}\) U.K. media giant ITV also announced plans to delist in the U.S.\(^{33}\)

After performing their own cost-benefit analyses, other non-U.S. firms did not take long to reach similar conclusions and take action. The U.K. internet travel company—lastminute.com—withdrawed its NASDAQ listing in late 2004 and garnered significant media attention on both sides of the Atlantic. The trend has spread outside of the U.K. as well.\(^{34}\) Swedish tobacco firm Match, Nordic telecom group TeliaSonera, and German e-commerce software company Intershop Communications have all pulled out of U.S. markets and auditors lay much of the blame for the European delisting trend on section 404’s doorstep.\(^{35}\)

\section*{D. Delisting Challenges}

Notwithstanding the relative ease of delisting from the various U.S. exchanges, the more important and far more complex challenge of deregistering from the SEC will confound non-U.S. firms’ efforts to avoid SOX compliance. Many non-U.S. firms have shied away from pulling out of U.S. markets largely because of the 300-U.S.-shareholder rule, which exacerbates the logistical costs

\(^{31}\) Id.

\(^{32}\) Sherwood, \textit{supra} note 21.

\(^{33}\) Id.


\(^{35}\) Id.
and difficulty of deregistering from the SEC. To ensure U.S. shareholders are protected, once a firm registers with the SEC it cannot withdraw its registration if it has more than 300 U.S. shareholders. Additionally, all SEC registered firms must comply with SOX provisions, regardless of whether they are listed on a U.S. market or not.37

A closer look at the specific requirements and practical ramifications of the 300 U.S. shareholder rule reveals just how high the SEC has set the deregistration barrier. In addition to the financial, accounting, and public relations challenges associated with withdrawing from U.S. markets, firms must also deal with the logistical challenges related to tracking down all U.S. resident shareholders. The firm must then find a tactful way to compel their U.S. investors to sell their shares back to the company or put them on the market and ensure that only non-U.S. investors purchase them.38 Deregistration usually occurs ninety days after the firm certifies to the SEC that fewer than 300 U.S. residents hold shares, but the compliance issues do not stop there. Once the foreign firm surmounts all those challenges, the number of U.S. shareholders must remain below 300 for at least eighteen months after the completion of SEC deregistration or the SEC will again impose its reporting requirements upon the firm.39

When determining the number of U.S. shareholders, the SEC includes underlying individual shareholder accounts rather than brokers and banks.40 Thus, the costs associated with getting the number of U.S. investors below 300 can prove quite large, not to mention the costs of avoiding and settling legal disputes with shareholders forced to divest their shares.41 Finally, even after going through all the hassle of delisting and deregistering, conducting certain kinds or levels of business in the U.S. can bring companies back under the SEC's jurisdiction.42


38 Id.


40 Sherwood, supra note 21.

41 Id.

42 Id.
The challenges presented by the 300-U.S.-shareholder rule have not gone unnoticed by U.S. regulators and institutions. NYSE officials have called for reforms, calling the rule arcane and labeling it a significant delisting roadblock. The SEC has also publicly acknowledged that non-U.S. firms struggling with SOX compliance burdens should find it easier to delist from U.S. markets, characterizing the rule as an important regulation that it should reevaluate.

The SEC also publicly acknowledged the desire of all firms to come into and go out of markets as they wish but cited the challenges of balancing such freedom with the U.S. government’s mandate to protect investors and preserve the stability that makes U.S. capital markets so valuable. The future will show what kind of action will follow the SEC’s recent expressions of compromise and empathy. Whatever happens, firms should be aware that the SEC has reportedly taken the issue under “serious consideration.” Significant changes, however, are unlikely to come fast enough for firms looking to deregister.

European business groups, aware of the crucial distinction between delisting from a U.S. exchange and deregistering from the SEC, launched a campaign to urge the SEC to make it easier for companies to deregister. Although they have not indicated which proposals are under serious consideration, SEC commissioners reported leaning towards proposals that do not diminish protection for U.S. investors. Of the various proposals under consideration, the trading volume test has raised the most eyebrows as large firms with high trading volumes could easily have thousands of

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43 Sarbox Escape, supra note 30.
44 Alan Beller, Director of the SEC’s Division of Corporation Finance, was quoted as saying that the 300 shareholder rule should be relaxed to a certain degree. See SEC Open, supra note 36.
45 SEC Open, supra note 36.
46 Perry, supra note 39.
48 Sanchez, supra note 47.
U.S. shareholders while maintaining a relatively low U.S. trading volume by virtue of the sheer mass of shares traded globally.\(^49\)

When the SEC wrote the original rule in 1934, 300 shareholders fairly reflected a significant percentage of investors given the relative size of the market at that time. Accordingly, it comes as no surprise that another seriously considered proposal involves raising the U.S. shareholder limit to 3000 to better reflect the size of modern capital markets.\(^50\) Regardless of what form regulatory changes take, expectations are high that the SEC will loosen the rules to some degree. Thus, U.S. and non-U.S. firms alike should be aware of both the delisting/deregistering distinction and the probability of relaxed shareholder limits. It makes little sense to bear the direct and indirect costs of satisfying comparatively simple delisting requirements while ignoring the more costly and complex requirements of deregistering, thus incurring all the delisting costs and drawbacks without actually escaping SOX compliance costs or noncompliance penalties.\(^51\)

### III. THE KNEE-JERK SOX DRAMA AND OTHER CONSIDERATIONS FOR NON-U.S. FIRMS

The U.S. federal government has historically expanded its regulation of financial markets when times of significant economic turmoil have threatened the nation’s economic prosperity.\(^52\) SOX’s sweeping reach became an indication of the pressure on both financial markets and Congress in late 2001 and early 2002. Given the intense pressures of the day, one might arguably characterize SOX governance mandates, such as section 404, as window

\(^{49}\) Id.

\(^{50}\) Id.

\(^{51}\) Sarbox Escape, supra note 30.

\(^{52}\) For example, Congress enacted the Future Trading Act of 1921 in the wake of a severe recession after World War I when Europe’s presence in the world agricultural markets increased. Farm prices collapsed and farm foreclosure rates skyrocketed with the elimination of U.S. price controls. Similarly, after the stock market crashed in 1929, the Great Depression prompted far-reaching extensions of federal power over capital markets. Conspicuous among these was the enactment of federal securities laws in the 1930s as part of the New Deal. SOX is just one more instance of reactionary legislation. Roberta Romano, The Sarbanes-Oxley Act and the Making of Quack Corporate Governance, 114 YALE L.J. 1521, 1591–92 (2005), available at http://www.yalelawjournal.org/pdf/114-7/Romano.pdf (arguing that SOX provisions were the result of political considerations amid a free-falling stock market and media frenzy over corporate scandals shortly before congressional elections).
dressing, the adoption of which only made sense insofar as it calmed the media frenzy surrounding corporate scandals.\textsuperscript{53}

In a more stable climate, Congress might have sought a different balance between reform implementation costs and improvement in audit quality or other investor benefits.\textsuperscript{54} However, with the losses from the financial scandals of the day still stinging and fresh, future compliance costs seemed a trite concern as Congress quickly signed SOX into law.\textsuperscript{55} Three years later, with the pain and uncertainties generated by the Enron and WorldCom losses fading into history, the full extent of SOX compliance costs weigh heavily upon firms obligated to comply. Though predictions remain understandably dire, firms still cannot accurately predict exact compliance costs, largely because the SEC’s implementation of SOX mandates will determine the nature and extent of costs for both U.S. and non-U.S. firms.\textsuperscript{56} When the actual costs play out, however, U.S. legislators and regulators are likely to follow their knee-jerk reaction with a softened stance.

Regardless of just how aggressively the SEC plans to implement SOX standards, the handful of firms deciding to withdraw from U.S. capital markets reflects the skepticism some firms harbor regarding the value of their U.S. listings.\textsuperscript{57} Rather than delist and raise capital in non-U.S. markets, some firms choose to go private—especially some specific types of firms. Certain characteristics, such as small firm size, low share-turnovers, and large proportions of inside ownership, have factored heavily in the bulk of withdrawal decisions.\textsuperscript{58}

Unlike small, closely held firms, many large international firms clearly recognize the value of maintaining unfettered access to U.S. capital markets. In an effort to defray SOX compliance costs without delisting, the European business community rallied its executives and lobbyists to meet with SEC officials in late 2004 to

\textsuperscript{53}Id. at 1585. \textit{But see} Corporate Counsel, \textit{supra} note 28 (Edward Knight, General Counsel for The NASDAQ Stock Market Inc., arguing that SOX has accomplishing its main goal of restoring investor confidence in U.S. stock markets).

\textsuperscript{54}Romano, \textit{supra} note 52, at 1585. \textit{But see} Norris, \textit{supra} note 8 (roughly eight percent of SOX-affected companies reported material weaknesses in internal controls, many causing errors in financial statements, which strongly indicate that SOX indeed addressed a serious problem).

\textsuperscript{55}Romano, \textit{supra} note 52.

\textsuperscript{56}Id. at 1590.

\textsuperscript{57}In the first half of 2003, sixty-seven companies notified the SEC of their intention to go private, a dramatic increase over the seventeen-privatization notifications for the first half of 2002. Huffman, \textit{supra} note 1, at 255–56.

\textsuperscript{58}See Engel et al., \textit{supra} note 27.
advocate rule changes to ease the compliance burden for non-U.S. firms.\textsuperscript{59} Shortly thereafter SEC officials reassured business communities outside the U.S. that they were listening to foreign concerns about increasing compliance burdens\textsuperscript{60} and subsequently announced their consideration of the proposal to delay section 404 compliance deadlines for foreign registrants.\textsuperscript{61} The SEC eventually made the proposal official, announcing that non-U.S. firms would have one extra year, until July 15, 2006, to comply with SOX.\textsuperscript{62}

While foreign firms view the delay as a welcome concession, compliance concerns remain. Many of those involved in the system, including SEC officials, express concern that section 404 compliance initiatives will amount to little more than “expensive, short-term, check-the-box exercise[s], taking focus away from management and moving it to internal and external auditors.”\textsuperscript{63} The time and resource intensive requirements of section 404 have played a key role in branding overseas SOX compliance as a draconian U.S. response to the Enron scandals, especially in the European business community. In 2005 the SEC announced its intention to continue monitoring implementation of section 404 and its impact upon smaller public companies and non-U.S. issuers, signaling a willingness to deal far more flexibly with non-U.S. firms than merely extending the section 404 compliance deadline.\textsuperscript{64} Recognizing the need for additional concessions\textsuperscript{65} to revitalize global investment trends, the SEC also offered additional relief beyond section 404. For example, European firms struggling with massive International Financial Reporting Standards (IFRS) conversion projects can now anticipate overlaps of IFRS and U.S. Generally Accepted Accounting Principles (GAAP) requirements, resulting in easier compliance with both.\textsuperscript{66}

\textsuperscript{59} Carney, \textit{supra} note 23.
\textsuperscript{60} Sherwood, \textit{supra} note 21.
\textsuperscript{62} Delisting Trickle, \textit{supra} note 34.
\textsuperscript{63} Sherwood, \textit{supra} note 21.
\textsuperscript{64} SEC Flexibility, \textit{supra} note 19.
\textsuperscript{65} Also indicative of U.S. efforts to maintain efficient markets, the SEC is also in the process of considering new approaches to the deregistration process for foreign private issuers for whom SOX compliance costs outstrip the total value derived from maintaining listings in U.S. markets. Paul Grant, \textit{A Shift in US Foreign Policy}, \textit{ACCT. AGE}, Feb. 4, 2005, http://www.accountancyage.com/accountancyage/analysis/2040860/shift-foreign-policy [hereinafter Foreign Policy].
\textsuperscript{66} Id.
A. Changing Compliance Attitudes

Criticism abounds despite the SEC’s initial efforts to accommodate non-U.S. corporations looking to escape the long arm of SOX. David Howell, former Chief Financial Officer (CFO) of lastminute.com, which delisted from NASDAQ last year, blamed regulatory costs and called the SEC’s reform efforts too little too late. With high average compliance costs in general, and uncertainty over exactly how much they specifically risk paying, many firms claim to be on the verge of following lastminute.com. Nevertheless, of all the firms threatening to withdraw from U.S. exchanges, only the very smallest firms will have the ability to make good on the threat without incurring serious costs. SEC deregistration procedures will ensure that firms will still face significant compliance costs if they insist on withdrawing from U.S. markets.

While few managers feel excitement about the past few years of SOX regulation, mounting evidence indicates that the business community has gone beyond merely coming to terms with SOX; some see the potential for improving investor confidence. While most firms claim a net loss to investors, a handful of finance executives who actually perform the compliance work required by SOX recognize benefits from compliance efforts. A June 2005 survey of 200 financial executives found that forty-four percent of those polled thought the law resulted in a “net gain to investors.”

68 Id.
69 Section 404 has been estimated to cost U.S. business more than $30 billion. Stone, supra note 5.
71 Sarbox Escape, supra note 30.
72 Id.
73 Stone, supra note 5. But cf. Engel et al., supra note 27 (proposing a financial calculation to aid cost-benefit analyses of delisting, quantifying the firms’ compliance costs and SOX-induced benefits accruing to shareholders).
while forty-three percent called it a “net loss.” Any margin of positive response, regardless of how small, reflects a far more proactive perception of SOX legislation from what one would otherwise reasonably expect. Firms that do decide to pay the SOX compliance price admittedly have a lot of work ahead of them. U.K. petroleum giant BP recently reported assembling a large compliance team that will spend more than one year merely evaluating what measures they need for SOX compliance.

B. Voluntary Compliance

More than three years have passed since the first implementation of SOX, and most U.S. firms have only recently overcome the compliance challenges presented by section 404. While many firms still find little appreciation for SOX, some supportive voices back their words with action. Some private and non-U.S. firms, not required to comply with SOX, voluntarily adopt SOX-like practices for business-related reasons. Marvin F. Poer & Co., for example, found a business-related reason to document business processes thoroughly. Although Poer has no plans to go public, it does handle resources and assets for publicly listed firms. Consequently, Poer decided to document internal controls to enable issuance of a Statement on Auditing Standards (SAS) No. 70 report to clients. An SAS 70 audit or service auditor’s examination is a widely recognized indicator that a service organization has conducted a thorough audit of internal control activities, information technology, and related processes. Noting that clients need a certain level of comfort and confidence to comply with

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74 Stone, supra note 5.
75 This is all the more alarming because BP, which has done SEC filings for some time now, would be expected to face fewer compliance challenges than firms that have only recently begun filing in the U.S. Delisting Trickle, supra note 34.
76 Poer is the largest privately held property tax consulting business in the United States. Poer has offices around the country that provide property tax consulting, fixed-asset management, and cost-segregation services. See Marvin F. Poer & Company, http://www.mfpoer.com (last visited Nov. 15, 2005).
78 The SAS 70 is an internationally recognized auditing standard developed by the American Institute of Certified Public Accountants (AICPA). About SAS 70, http://www.sas70.com/about.htm (last visited Nov. 15, 2005).
79 Reed et al., supra note 77.
section 404, Poer reports that requests for SAS 70 reports have risen dramatically since section 404’s imposition. 80

Non-U.S. firms also voluntarily adopt and comply with SOX-type provisions for the sake of protection, safety, and flexibility. Hapag-Lloyd, Inc., a U.S. subsidiary of TUI AG, a publicly traded German firm not listed in the U.S., decided in 2004 that some compliance efforts made good business sense. 81 Using the Internal Control Integrated Framework of the Committee of Sponsoring Organizations (COSO), Hapag began reviewing its existing procedures and controls. They found many undocumented processes and subsequently remedied them. TUI AG recognized Hapag’s documentation efforts and subsequently mandated similar activities on a global basis for the parent company and all other subsidiaries. 82

C. Transnational Regulatory Influences over Compliance Costs

When SEC chairman William Donaldson asked the SEC Commission staff to consider delaying the effective date of section 404 compliance for non-U.S. companies, he stated, “It’s clear that we need to take a look at some of the details that can be improved.” 83 Given the timing of his remarks, which followed a period of intense lobbying from European business groups, his announcement illustrates the SEC’s willingness to reexamine SOX’s extraterritorial reach. 84 More importantly, his remarks also reflect the SEC’s compromising attitude regarding the non-U.S. implementation of SOX regulations. 85

In addition to giving non-U.S. companies more time to comply with section 404, the SEC also compromised in several instances to avoid conflicts with non-U.S. firms’ home-country requirements. In response to one such accommodation, the SEC now specifically accepts other independent statutory auditor structures where home-country rules provide for them. Japan and Italy, for example, require public firms to have an independent board of statutory auditors who serve a function nearly identical to that of SOX-

80 Id.
81 Id.
82 Id.
83 Rae, supra note 67.
84 Id.
85 While changes in the law itself are highly unlikely, U.S. business lobbyists believe that incoming SEC Chairman Chris Cox is likely to issue SEC regulations that ease some of the regulatory burdens imposed by SOX. Stone, supra note 5.
mandated audit committees. Once brought to their attention, the SEC rightly recognized that two audit committees would be costly and inefficient, not to mention a fertile source of potential conflicts of powers and duties. German corporate governance rules also mirror the intent of other SOX provisions. German law mandates that a representative of non-management employees serve on audit committees, and the SEC now considers such employee representatives independent for SOX purposes.

Non-U.S. firms also continue to do their share to find proactive solutions and devise overlapping measures to bridge the gaps between SOX mandates and the governance and reporting provisions of their home countries. German pharmaceutical outfit Altana recently found a solution to the facial conflict between the SOX requirement that a board’s audit committee hire external auditors and the German law’s grant of such authority to shareholders. Recognizing the right to hire external auditors as nonexclusive, Altana created an audit committee to oversee appointment, compensation, and oversight of external auditors. Thus, shareholders retained the authority to appoint outside auditors, as accorded by German law, while the SEC’s accommodation of corporate governance laws in other countries satisfied SOX requirements.

D. The Cost Implications of Reasonable Versus Absolute Assurance

Optimists predict that SOX adherence will lead to lower overall costs due to the streamlining and automation of activities that will result from comprehensive documentation of key processes and internal controls. Proponents further argue that SOX merely requires actions and policies that well-run companies should already have in place. They further maintain that a strong system of internal controls helps identify risks and inefficiencies that lead to stronger business operations.

Such long-term vision, however, does little to ease the current sting of section 404 compliance costs. Enter the concept of reasonable versus absolute assurance. Managers and external

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87 Id. at 31.
88 Id.
89 Id.
90 Huffman, supra note 1, at 253.
auditors should welcome the SEC’s recent exhortations to exercise reasoned judgment by implementing a top-down, risk-driven approach to their audit and compliance efforts rather than a one-size-fits-all, bottom-up, check-the-box approach. Indeed, a “check-the-box” audit has far less likelihood of actually improving internal controls than reasonable reliance upon professional judgment aimed at securing a reasonable assurance of relevant risks.\(^\text{92}\) The SEC reminded auditors, in particular, to acknowledge and tolerate a “zone” of reasonable section 404 conduct, recognizing that exhaustive audit activities aimed at securing absolute assurance of all conduct typically goes far beyond what section 404 should require.\(^\text{93}\)

While officials remain understandably reluctant to specify exactly how much costs should decline as a result of the changes and guidance announced by the SEC and the PCAOB, many firms will surely recognize significant savings as judgments improve over time and audits become more effective, focused, and cost-efficient.\(^\text{94}\)

1. PCAOB guidance

While new financial control audits give investors added confidence in the accuracy and reliability of financial statements, strict interpretation may have gone too far in some instances. Acknowledging that the first round of internal control audits costs too much, the PCAOB in May 2005 issued Auditing Standard No. 2, “An Audit of Internal Control over Financial Reporting Performed in Conjunction with an Audit of Financial Statements” (AS No. 2).\(^\text{95}\) AS No. 2 provides auditors with general and specific technical guidance to facilitate the conduct of effective and cost-efficient audits of public firms’ internal controls over financial reporting.\(^\text{96}\) When William J. McDonough, chairman of the PCAOB, announced the issuance of the new Auditing Standard, he highlighted the Boards’ commitment to seeing that AS No. 2 is “implemented in a manner that captures the benefits of the process without unnecessary and unsustainable costs.”\(^\text{97}\) Chairman

\(^{92}\) SEC Flexibility, supra note 19 (emphasis added).

\(^{93}\) Id.


\(^{95}\) Id.

\(^{96}\) Id.

\(^{97}\) Id.
McDonough justified the release of policy statements with cost-cutting interpretations of the rules by conceding “in some cases too much work had been done to verify [financial] statements.”

Recent PCAOB Policy Statements have refined and limited the scope of the internal control audits by explaining how much testing of internal control over financial reporting is actually required of auditors. The PCAOB identified definitional issues and rigid audit practices as the primary, unnecessary cost drivers affecting audit processes, and thus in need of clarification. In particular, the PCAOB has tried to prevent rigid application of AS No. 2 and facilitate the exercise of auditors’ professional judgment in the conduct of more cost-efficient audits.

The formal Policy Statement issued by the PCAOB specifically outlined cost control tactics auditors can utilize under AS No. 2. First, integrate preparations for the conduct of overlapping or similar internal control and financial statement audits to ensure the dual application and benefit of evidence gathered and tests conducted for either audit. Second, exercise professional judgment in assembling audit plans; thus, rather than utilizing standardized “checklist” audits, auditors can specifically target the relevant risks facing individual audit clients. Third, utilize risk assessments required by AS No. 2 to help identify low and high-risk accounts and then allocate the bulk of audit work towards high-risk areas evincing a strong likelihood of material misstatement. Fourth, start with company-wide controls and work from the top-down to facilitate identification and testing of only those accounts and processes that have actual relevance to internal control over financial reporting. Fifth, communicate with audit clients regarding accounting or internal control issues before making decisions or implementing internal control processes under consideration. Finally, take advantage of the significant flexibility that the standard provides, giving auditors the chance to rely upon the work of others for guidance and instruction.

This last tactic is of particular importance for non-U.S. firms faced with section 404 compliance efforts. In addition to the

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98 Norris, supra note 8.
99 Id.
100 The SEC has encouraged management, auditors, and audit committees to engage in “frequent and frank dialogue” regarding internal controls and financial reporting. The SEC’s auditor independence rules permit such communication and cooperation so long as management decides on the accounting to use and the auditor does not design or implement the company’s internal controls. SEC Flexibility, supra note 19.
101 These five points are detailed in Press Release, supra note 94.
opportunity to learn from the mistakes and experiences of U.S. firms required to comply with section 404 one year earlier, non-U.S. firms may avoid most of the costs and time delays attributable to auditors’ first-time experience with section 404. Beyond the first year, the PCAOB expects continued compliance costs to come down as the initial costs associated with the first review of internal controls dissipate. Moreover, as mentioned above, many non-U.S. issuers can expect to find SOX compliance costs subsumed in the costs of home-country compliance efforts.

2. SEC guidance

Expressing concern about unnecessarily high compliance costs, the SEC commented on the questionable value of “mechanical and even overly cautious” application of the section 404 rules and standards. The SEC also announced that it expects a more efficient integration of future internal control and financial statement audits, effectively lowering section 404 compliance costs. Furthermore, the SEC stressed appropriately tailoring internal controls and section 404 compliance methods to the operations of smaller companies, signaling the need for auditors and management to exercise common sense and a measure of previously unacknowledged autonomy to prevent audit costs from spiraling out of control.

More specifically, Donald T. Nicolaisen, chief accountant for the SEC, issued a staff report encouraging auditors to use their judgment to reduce the checks they perform. The SEC also strongly encouraged companies with financial weaknesses to provide investors with additional information to help them assess exactly how relevant such weaknesses really are to investing decisions. Indeed, some weaknesses may have a pervasive impact on internal control over financial reporting while other material weaknesses or financial events have little or no impact at all. For

103 SEC Flexibility, *supra* note 19.
104 Id.
106 Id.
107 Congressman Michael Oxley recently cited one extreme example of this problem himself. He reported that Ball Corporation, a firm operating in his congressional district, recently conducted an audit where the auditors listed the janitor’s theft of a few toilet paper rolls from company bathrooms as a “material
example, the fact that a company needed to revise financial reports does not necessarily prove the initial existence of material weaknesses.\textsuperscript{108} Regarding the definition of “material weaknesses,” the SEC also provided a more relaxed definition to determine whether certain control weakness need to be reported at all.\textsuperscript{109}

With regard to compliance facilitation for SEC registrants abroad, the SEC adopted measures in April 2005 to provide leeway for non-U.S. firms that adopt International Financial Reporting Standards, granting one-time relief for eligible non-U.S. firms for their first year of reporting under IFRS. Under the rule, eligible non-U.S. issuers may file financial statements prepared according to IFRS for the two most recent years, rather than the typically required three.\textsuperscript{110} The SEC further extended eligibility to non-U.S. issuers reporting under IFRS for the first time with respect to the issuers’ 2007 financial year or earlier. The extension reaches far beyond the originally proposed cutoff of January 1, 2007, but it effectively accommodates issuers with fiscal years beginning after January 1, 2007.\textsuperscript{111} The SEC created additional flexibility in the final rule by permitting eligibility for firms that prepare financial statements using IFRS as adopted by the European Union (EU GAAP), provided the International Accounting Standards Board reconciles the EU GAAP and the IFRS.\textsuperscript{112}

As its staff continues to review section 404 implementation in the U.S. and survey the corporate governance landscape abroad, the SEC is likely to issue further guidance on section 404 and other U.S. accounting requirements in the form of official guidance and regulations. As firms and auditors move beyond the start-up costs of section 404 compliance and as the SEC continues to provide guidance, section 404 compliance costs for all firms will inevitably decrease and likely even more so for non-U.S. firms.\textsuperscript{113}

\textsuperscript{108} Norris, \textit{supra} note 8.

\textsuperscript{109} Firms should determine “materiality” based on annual totals for the entire company rather than upon the impact an item might have on a quarterly report or on results for one part of the company. However, when one or two segments of a company are very important to investors, they could appropriately apply an expanded definition of material weaknesses. \textit{Id.}

\textsuperscript{110} Baumann & Cebik, \textit{supra} note 102.

\textsuperscript{111} \textit{Id.}

\textsuperscript{112} \textit{Id.}

\textsuperscript{113} \textit{SEC Flexibility}, \textit{supra} note 19.
IV. THE DOWNSIDE OF DELISTING

A. Listing Benefits and Opportunity Costs

With the biggest capital markets in the world, international firms have long complied with U.S. regulations for the sake of maintaining their listings on U.S. markets.\(^{114}\) Despite the expected increases in compliance costs, many non-U.S. companies are unwilling to bear the opportunity cost of delisting and consequently remain committed to maintaining their U.S. listings.\(^{115}\) Most large companies have said they would consider delisting, but the delisting trend has not gained enough momentum to push many non-U.S. firms to delist, particularly larger firms involved in generous amounts of cross-border commerce. Global pharmaceutical giant AstraZeneca International and U.K. Telecom giant BT have cited their strong involvement with U.S. markets as a significant incentive to keep their U.S. listings despite increased SOX compliance costs.\(^{116}\)

Investors are far more likely to invest in non-U.S. firms insofar as they can rely upon the assurances and security provided by SEC registration and its accompanying compliance requirements. Many non-U.S. firms have found access to large numbers of investors outside their home country by offering shares in the U.S. capital markets. Foreign ownership of South Korea’s KT Corp.’s shares has risen from zero to forty-three percent since the company listed its shares on the NYSE in 1999; seventy percent of those new shareholders come from the U.S.\(^{117}\)

The benefits of U.S. listings go beyond mere access to millions of affluent investors. Compliance with SEC regulations also benefits firms in other aspects of corporate governance. KT Corp., for example, recently won awards from both the Korean Stock Exchange and Credit Lyonnais Securities Asia as the top-rated and most improved corporate governance practitioners in Asia.\(^{118}\) In addition to improving visibility amongst investors, a U.S. listing arguably adds the advantages of transparency and liquidity that can ultimately translate into significant reductions in a firm’s cost of capital as well as an increase in stock price.\(^{119}\)

\(^{114}\) Myers, supra note 86.

\(^{115}\) Id.

\(^{116}\) Foreign Policy, supra note 65.

\(^{117}\) Id.

\(^{118}\) Id.

\(^{119}\) Id.
B. Regulatory Considerations

1. The long arm of the SEC

The SEC seems more than willing to extend its jurisdiction across U.S. borders in cases involving U.S. shareholder interests. Recent SEC investigations of various foreign corporations have demonstrated an arguably blatant disregard for and transgression of geopolitical boundaries for the sake of protecting U.S. investors. In early 2005, Mexican broadcaster TV Azteca complained about the SEC’s imposition of U.S. regulations on a Mexican company and Mexican citizens. In the instance of the TV Azteca investigation, the SEC used SOX provisions to justify filing several civil fraud charges against TV Azteca’s executive officers. The U.S. charged that chairman Ricardo Salinas Pliegas concealed $109 million in profits by purchasing debt at reduced prices from Azteca’s cell phone subsidiary Unefon. Salinas denied the charges and accused the SEC of exerting extraterritorial jurisdiction in bad faith, but the SEC justified its charges with the fact that Azteca trades its shares on the NYSE and thus must comply with U.S. laws, including SOX.

Although Mexico’s National Banking and Securities Commission led the investigation into TV Azteca’s dealings, the SEC’s public involvement with the charges raised significant international concerns regarding the new regulatory demands emanating from the U.S. Indeed, SOX provisions could raise the governance standard for any firm, regardless of national origin, so long as the firm has sufficient cooperation with subsidiaries or partners in the U.S.

Despite the lack of appreciation many have for the “financial imperialism” practiced by the SEC, most detractors readily admit to the counterproductive nature of challenging or antagonizing the SEC, which guards access to the best and most liquid markets in the

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120 Among others, the SEC investigated TV Azteca in Mexico, Ahold and Royal Dutch/Shell in the Netherlands, Spiegel in Germany, and Vivendi in France. Sherwood, supra note 21.
121 Id.
122 Id.
124 Id.
125 Id.
The cost of tapping into U.S. capital markets will inevitably catch some firms off guard, as some firms will probably secure U.S. listings without a precise knowledge of the U.S. driven obligations they are undertaking. Nevertheless, the SEC has signaled its intention to preserve investor protections without “inappropriately designing the U.S. capital market as one with no exit.”

Regardless of changes in SEC policy, a mass exodus of non-U.S. firms from U.S. markets should be restrained by the uncertainty present in the regulatory environment and the constant demand for access to the world's largest pool of market capital. Non-U.S. firms, in particular, can benefit from adopting a proactive wait-and-see approach regarding delisting strategies, especially in light of the forthcoming reconsideration of the SEC’s 300-U.S.-shareholders rule that may eventually exempt many firms from compliance and result in further savings. Despite the relaxation of deregistration requirements, a clear commercial benefit may prompt additional withdrawal of firms who find the size and complexity of U.S. markets uncompetitive and unproductive.

2. The EU’s Eighth Directive

Most of the firms that have actually abandoned U.S. markets had relatively small presences in the U.S. to begin with. Thus, non-U.S. firms with relatively significant U.S. dealings should consider the impact of changing corporate governance regulations outside the United States. U.K. and European companies, for example, are unlikely to pursue U.S. delisting strategies when pending EU proposals may impose stricter financial regulation.

126 Regulatory and financial fraud specialists in Amsterdam claim that a greater fear of the SEC now exists than of domestic authorities and public prosecutors. Indeed, most firms would prefer to avoid getting into a “legal arms race with the SEC.” Sherwood, supra note 21.
127 For example, one German firm who recently acquired a U.S. company will have to make its first internal control report in 2005. Even though it has little or no control over the report, nor understanding of the risks involved, the parent company will be liable for any shortcomings. Id.
128 Id.
129 See Hobson, supra note 70. Despite a slowdown in new, non-U.S. listings over the last few years, particularly from European countries, the NYSE saw no voluntary delistings in 2004. See also Sarbox Escape, supra note 30.
130 Hobson, supra note 70.
131 Foreign Policy, supra note 65.
132 Delisting Trickle, supra note 34.
133 EU Regulation, supra note 61.
Indeed, the new wave of financial legislation emanating from the EU will make delisting far less likely as Europe raises corporate governance practices closer to the high standards set by U.S. regulators.\textsuperscript{134}

In the mid-1990s, long before the Enron and WorldCom scandals in the U.S., the EU began looking at harmonization of audit regulations for its member states. Shortly thereafter, the goals for updating the “Eighth Directive”\textsuperscript{135} went far beyond the updating and harmonization of audit laws across Europe. After the financial scandals in the U.S. and the Parmalat\textsuperscript{136} scandal in Europe, the EU proposed changes designed to utilize the Eighth Directive to establish a new, heightened standard of corporate governance across Europe.\textsuperscript{137} Although its narrow focus on audit regulations calls into question the appropriateness of dubbing the Eighth Directive a European version of SOX,\textsuperscript{138} the intentions and expectations for both pieces of legislation are quite similar.

The U.S. rapidly adopted new laws focused on enforcing executive responsibility to investors and protecting auditor independence.\textsuperscript{139} The EU, on the other hand, claims to have little need to rush into regulatory action since the European financial reporting regime had already remedied the kinds of structural problems found in the U.S.\textsuperscript{140}

Nevertheless, after the financial scandals in the EU and the U.S., proposals to broaden the scope of the Directive arose. Of particular importance are the provisions designed to strengthen the

\textsuperscript{134} Id.
\textsuperscript{135} Written and enacted in 1984, the Eighth Directive will be the eighth EU Directive on auditing since the foundation of the European Common Market.
\textsuperscript{137} Graeme Burton, Audit Crackdown: Claims that the European Union is Preparing Its Own Sarbanes Oxley Should be Treated with Skepticism, INFOCONOMY, http://www.infoconomy.com/pages/politics-management/group99804.adp (last visited Nov. 15, 2004).
\textsuperscript{138} Id.
\textsuperscript{140} Indeed the EU and the U.K. both embarked upon reforms in the early and mid-1990’s after a round of corporate collapses. Thus, it is arguable that European law had properly dealt with many of the transparency and accountability issues that that SOX legislation tried to clean up in 2002. Id.
role of the audit committee and bolster independent oversight of the accounting profession. 141

The EU amended one particular point of the Eighth Directive regarding internal controls shortly after the U.S. scandals and the subsequent passage of SOX. While the Eighth Directive proposal does not plan to employ the same stringent internal controls assessment and reporting requirements of SOX, it nevertheless requires audit firms to report on key issues arising from audits, such as weaknesses in internal control mechanisms for financial reporting. 142 While SOX is generally characterized as more rules-driven than the EU proposal, the systems share similarities. 143 The EU adherence to the principle of minimum harmonization necessarily requires member states to exercise more latitude and autonomy so that each may add their own specific national requirements on top of the general principles outlined by the Eighth Directive. Consequently, while the EU must still finalize and enact the Eighth Directive, firms must still wait and see just how far each respective European country will go towards enacting specific SOX-type requirements. Many nations will undoubtedly follow suit to one degree or another; the Italian Parliament, at least, will likely adopt sweeping legislative reforms, reorganize securities and financial regulators, and institute corporate governance changes that closely resemble SOX mandates. 145

Thus, in addition to the SEC’s willingness to work with non-U.S. firms and nations to facilitate cost saving compromises, various nations around the world are likely to continue fortifying their capital markets and developing consumer confidence with stricter corporate governance regulations. With the U.S. leading the way with SOX, many nations stand to benefit by looking to the U.S. experience for guidance and by lobbying the SEC for

141 Id.
142 Id.
143 Id.
144 The minimum harmonization principle entails the establishment of broad, general minimum standards or principles which Member States have an obligation to follow while leaving flexibility for each respective nation to add local regulations governing areas not specifically excluded by the Directive. Under a minimum harmonization regime, France, for example, could enforce its more restrictive regulations regarding what non-audit services its firms may provide to audit clients. In this way all members can comply with the standards of the Eighth Directive, and maintain their own national regulations. Id.
additional compromises to increase the overlap between the U.S. and international compliance efforts.

C. Pragmatic Considerations

This section highlights a few pragmatic business-related considerations for firms considering compliance avoidance via withdrawal from U.S. markets.

1. Mergers with U.S. traded firms

As the likelihood of future firm mergers and international share trading increases, non-U.S. firms should exhibit increased interest in preserving SOX compliance capabilities. When management for potential acquirers investigates noncompliant acquirees, they will most likely find them in need of reforms. Indeed, SOX compliance capabilities may become a serious consideration when weighing a firm’s suitability and profitability in a proposed merger. Thus, one byproduct of SOX compliance measures may be an increased attractiveness to potential acquirers. Similarly, firms acquiring entities with U.S. traded shares will find themselves subject to SOX regulation as a result of an otherwise profitable and strategic merger.

2. Reliance by lenders and insurers

Many banks have started using measures similar to SOX requirements to provide assurances of financial safety and corporate integrity when issuing loans. Some private and public firms currently use SOX provisions in representations and warranties for loan documents. Insurance companies have also begun to request SOX-type assurances and protections from firms renewing their business insurance policies.

147 This is especially true for large loans given to highly leveraged companies. Id.
148 Id.
3. Executive recruitment

As SOX’s influence spreads, it has established a “culture of personal responsibility” in its wake.\textsuperscript{149} Not only do equity investors have more confidence in what executives report, executives themselves are more certain of their own results and far more cautious of the liabilities imposed upon them.\textsuperscript{150} Firms refusing to raise reporting and audit standards to SOX-type levels may risk losing their ability to attract top, executive talent. Qualified executive officers will have understandable concerns about the firm’s ability to shield its officers from allegations of wrongdoing, regardless of whether such corporate governance measures are mandated or not.

4. Quality directors

Section 404 compliance measures have sparked a dramatic increase in the number of companies looking for quality, independent directors. Combining this fact with the tendency qualified directors now have, as a result of SOX, to limit their directorship positions results in a tight market for qualified, independent, outside directors.\textsuperscript{151}

Aware of the new standards, many qualified directors understand the new liability they could incur because of their directorships. Thus, good directors will serve warily, if they do at all, on the boards of firms that shun the kinds of controls and mechanisms required by SOX.\textsuperscript{152} As the culture of corporate transparency spreads across the globe, firms will find themselves unable to attract the kind of independent, quality directors that will most benefit the company without significantly implementing SOX-type measures.\textsuperscript{153}

5. Shareholder litigation

Future legal actions brought by unhappy shareholders or other interest holders will likely rely upon the standards of corporate

\textsuperscript{150} Id.
\textsuperscript{151} Foley & Lardner LLP, supra note 146.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
governance and internal control mechanisms set by SOX. Though unlisted firms may technically escape SOX compliance mandates, as a tactic, shareholder litigants will rely upon the highest corporate governance standards available to evaluate reporting practices. Litigants will likely characterize deviations from such standards as breaches of duty inasmuch as they grow to represent an industry standard. ¹⁵⁴

6. Investors

The financial scandals of the past few years have made investors increasingly skeptical and nervous about the integrity of financial statements. Additionally, savvy investors look closely at firms’ future growth strategies. Venture capitalists and private equity funds find firms with clearly defined track records or goals for moving into and succeeding in global markets and expanding overseas operations as particularly attractive. Thus, the closer private and non-U.S. firms come to complying with SOX as a means of facilitating future growth and cross-border expansion, the more attractive the firms’ shares will appear to forward looking investors.¹⁵⁵

V. PROACTIVE CORPORATE GOVERNANCE

A. Global Homogenization of Best Practices

The inevitability of regulatory and cultural conflict in transnational operations is changing market expectations. Increased focus on financial integrity and a growing culture of financial transparency and accountability will affect all players in a global market. As in all markets operating with imperfect information, investors and corporate decision makers will rely on proxies to measure a firm’s adherence to the new culture. SEC enforcement efforts and the criminal sanctions associated with noncompliance will promote SOX mandates as the gold standard or, at the very least, as a reliable proxy against which to compare all other corporate governance standards. Such influence is already recognizable. Marco Ventoruzzo, legal counsel to the Italian stock exchange, characterizes SOX rules as “not so different from those in Italy.” Ventoruzzo further indicated that Italy enjoys the

¹⁵⁴ Id.
¹⁵⁵ Id.
“advantage of being a second comer” in creating modern governance rules.\textsuperscript{156}

Additionally, increased competition and U.S. regulation of the market place will certainly affect future regulatory and compliance environments abroad. Heightened awareness of corporate misdeeds and pragmatic concerns regarding the need for more financial accountability and transparency will further homogenize solutions implemented by corporate governance reforms across the globe. Thus, it is reasonable to anticipate an emerging set of unofficial best practices that industry leaders will come to expect, regardless of localized compliance regulations. It is even more feasible to anticipate that such practices will largely reflect the principles and practices outlined by SOX. Thus, in addition to the regulatory and pragmatic considerations outlined in the previous section, well-advised firms weighing SOX compliance costs against U.S. listing values should take a long-range, holistic perspective on corporate governance.

1. U.S. influences upon homogenization

The recent flurry of financial scandals in the U.S., Latin America, Asia, and Europe has fueled an increasingly urgent push for corporate governance reforms. At the same time, the scandals may themselves be a response to the pressure corporations feel because of the reforms. The questionable veracity of financial data stimulates demand for more reliable and verifiable data while the calls for heightened scrutiny have shed light upon otherwise shady and “creative” corporate finance practices. Indeed, the Enron and WorldCom scandals alerted the rest of the world to the dire need for stricter controls over financial reporting, which led to the discovery of similar scandals in other countries. Consequently, the U.S. appropriately, through SOX, made the trailblazing effort to restore the investing public’s confidence. Not only have SOX efforts reestablished the image and safety of U.S. capital markets, but other world economic leaders will follow suit to one extent or another.

Asia, Latin America, and Europe all have sufficient incentive to continue improving and aligning corporate governance reforms to further facilitate further global trade and investment. Not only are most of these areas influenced by U.S. dealings or subject to the

SEC’s extraterritorial reach, increased transnational dealings among non-U.S. firms will further homogenize corporate governance practices. Air China’s efforts to offer shares on both the Hong Kong and London stock exchanges evidence this trend. The ability to use the same prospectus for both listings and the undeniable benefit of doing business in similar regulatory environments enhances the attractiveness of such dual listings.\footnote{Stone, supra note 5.} In such cases, the fact that countries increasingly respect the standards embodied in SOX make them the standard of choice.

Now that U.S. firms have safely passed section 404 compliance hurdles, even though some did so only with significant concessions from U.S. regulators, the willingness of non-U.S. firms to comply should increase.\footnote{Carney, supra note 23.} Though costly and time consuming, compliance benefits, including discoveries of legitimate and material weaknesses in reporting controls, make SOX all the more attractive. Executive officers for some non-U.S. firms fully expect SOX compliance to pay dividends through renewed investor confidence.\footnote{Myers, supra note 86.} In particular, the recent governance reform experiences of two countries, Japan and Mexico, highlight the spreading culture of transparency and accountability, which many countries are rapidly assimilating in an effort to fuel economic development and progress.

2. Japan

Yoshihiko Miyauchi, chairman and CEO of Japanese firm Orix Corp., expects Orix to realize gains from “the recognition that we have met the SEC’s and NYSE’s requirements for transparency and governance.”\footnote{Id.} Chairman Miyauchi’s comment illustrates the cultural impact that SOX has outside of the U.S. Until recently, long-entrenched customs and traditions enshrined Japanese corporate governance with a virtual shroud of secrecy. Japanese corporate reforms actually began in the late 1990s as a response to increasing foreign investment and growing capital flows from non-Japanese sources. Investors demanded that public companies become less opaque, but reforms came at a painfully slow pace. Although foreigners currently own thirty-four percent of Japanese
shares compared with twenty-three percent six years ago, \textsuperscript{161} calls for increased transparency seemed to fall upon deaf ears until recent financial scandals prompted Japan to jumpstart financial reform efforts.

In early 2005, the government charged Yoshiaki Tsutsumi, the infamous Shogun-style Japanese chairman of railroad, real estate, and global hotel conglomerate Seibu Group, with extensive insider trading and falsifying corporate records. \textsuperscript{162} Many view the Seibu scandal as an important milestone in Japan’s previously sputtering attempts \textsuperscript{163} to reform long-standing traditions of weak corporate accountability and autocratic governance. \textsuperscript{164} Indeed, both Japanese regulators and Japanese firms in the private sector took significant steps to reform the tradition-bound culture in Japanese boardrooms that fostered Tsutsumi-like governance for generations. \textsuperscript{165}

Recent regulatory efforts to boost public confidence and facilitate foreign investment have resulted in changes to Japanese securities transaction laws. Effective since mid-2005, these new laws effectively give financial regulators greater authority to investigate corporate wrongdoing. \textsuperscript{166} The increased regulatory


\textsuperscript{162} Id.

\textsuperscript{163} Id.

\textsuperscript{164} Once named the richest and most powerful corporate executive on earth by Forbes magazine, Chairman Tsutsumi wielded absolute power over Seibu Group for four decades. He once went seven years without holding a single official board meeting. Much like a monarch, he ruled the international conglomerate by personal decree. Former employees reported living in fear of Tsutsumi who was known to readily fire or slap in the face employees who incurred his displeasure. When Tsutsumi exited the company's commuter train in northern Tokyo, rows of Seibu workers would bow in unison as he left his private train car. It is a testimony to the culture of corporate loyalty in Japan in general, and at Seibu in particular, that two company executives reportedly committed suicide rather than cooperate in the investigation of Tsutsumi. \textsuperscript{Id.}

\textsuperscript{165} Managing Director of the Tokyo Stock Exchange Eisuke Nagatomo reported that responsibility to shareholders is becoming more valued than a chairman or CEO’s monarchial authority, an idea that “has not always been at front and center in Japan,” but one that is “finally changing.” \textsuperscript{Id.}

\textsuperscript{166} The Japanese Financial Services Agency (FSA) and the Securities and Exchange Surveillance Commission have long been considered paper tigers whose annual budgets equal only four percent of the U.S. SEC’s typical budget. As of late, the FSA has rather actively issued new standards for internal controls over financial reporting and new standards on quality control for audits. \textit{See} Program for Further Financial Reform, Japan’s Challenge: Moving Toward a Financial Services Nation, http://www.fsa.go.jp/en/policy/reform/index.html (last visited Nov. 11, 2005); Press Release, Fin. Serv. Agency (Japan), Further Enhancing Market Functions and
authority resulted in rapid action. In mid-2005 the Tokyo Stock Exchange (TSE) delisted Seibu and three other companies, including cosmetics giant Kanebo, for willfully misleading investors.\textsuperscript{167} Although the TSE has not ejected a public company for such actions in twenty-five years, the push for increased accountability seems stronger than the inertia of Japan’s corporate culture where saving face is often prized above all else. The TSE now requires the chief executives of listed firms to sign SOX-like statements, personally vouching for the accuracy of financial reports.\textsuperscript{168}

3. Mexico

As Mexico and other Latin American countries play an increasingly significant role in the global economy, corporate governance reforms will surely follow. Although the Mexican investment climate is generally considered favorable, increased global integration has led to increased scrutiny of its business and regulatory practices. U.S. enforcement of SOX has pressured regulators and corporations to do more to find and eliminate fraud.\textsuperscript{169} In addition to section 404’s internal control requirements, SOX provisions also aim at curtailing money laundering, requiring U.S. firms to perform tougher “due diligence” investigations of foreign partners.\textsuperscript{170} Mexico enacted significant financial reforms in 2005, thus strengthening its financial regulation infrastructure. The Mexican Congress expects to pass new securities laws requiring stricter controls over financial reporting,\textsuperscript{171} and the National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores) launched financial investigations into seventy Mexican firms.\textsuperscript{172} Unsurprisingly, the proposed Mexican Securities

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\textsuperscript{167} Faiola, \textit{supra} note 161.
\textsuperscript{168} \textit{Id.}
\textsuperscript{169} Johnson, \textit{supra} note 123.
\textsuperscript{170} \textit{Id.}
\textsuperscript{171} On the last day of the Session, the Finance Committee of the Chamber of Deputies gave the green light to the Securities Markets Law (Ley de Mercados de Valores). As the Senate has already passed the reforms, it is highly expected that law will pass easily in the fall session beginning September 2005. Kenneth Emmond, \textit{Securities Reform: A Big Opportunity for Mexico}, MEXIDATA.INFO, July 18, 2005, http://www.mexidata.info/id547.html.
\textsuperscript{172} Johnson, \textit{supra} note 123.
Market Law contains SOX-like elements and measures designed to enhance transparency and promote better corporate governance.173 Protection of minority shareholders’ interests is of particular concern for investors in Mexican markets. Many are awaiting the exact wording of the regulation that determines exactly when regulatory agencies must give notice to minority shareholders that a firm is under scrutiny for noncompliance.174 As it stands, Mexican minority shareholders often do not know until late in the game that the shadow of regulatory investigation may have devalued their stock. The TV Azteca scandal illustrates just how tough it is for investors to get their hands on relevant information. The only news Mexican investors received about insider trading and corporate fraud allegations in the TV Azteca scandal came from the SEC.175

Although the probability that Mexico will enact significant reform in coming years is debatable,176 the financial incentive to clean up their markets is obvious. Anticipating absorption of firms delisting from U.S. markets, authors of the proposed Mexican Securities Market Law continue to try to overcome the notion that noncompliant companies circumvent compliance mandates by fleeing to the freewheeling Mexican markets. Authorities can only accomplish this by creating a credible, legal compliance framework that attracts capital and instills confidence in firms choosing to list on the Mexican Stock Exchange.177 When the Securities Market Law was first proposed in 2004, the Mexican Stock Exchange had roughly 150 listings. By comparison, the South Korean Exchange, with a similar-sized economy, has more than 1,500 listings.178 Foreign investment has substantially increased in Mexico in recent years, and regulators seem willing to do whatever it takes to keep the momentum going with legal reforms to reinforce the trend of growing transparency in Mexico.179 The TV Azteca scandal may

173 More specifically, the Mexican bill calls for company officers convicted of insider trading to face up to 12 years in prison and fines of up to half a million dollars. Emmond, supra note 171.
174 Id.
175 Id.
176 Geri Smith, A Lesson in Transparency for Mexico, BUS. WK. ONLINE, Jan. 17, 2005, available at http://www.businessweek.com/magazine/content/05_03/b3916035_mz011.htm (highlighting the massive cultural challenges timid regulators face in reforming free-wheeling Mexican businesses).
177 Emmond, supra note 171.
178 Id.
179 Few Mexican firms engaged in good investor relation efforts in the mid-1990s while most major Mexican firms have strong investor relation operations today. Johnson, supra note 123.
have pushed Mexico to jumpstart badly needed reforms.\textsuperscript{180} Aware of the significant growth opportunities if they succeed, Mexican regulators have plenty of incentive to continue on their chosen path of reform.

4. Reevaluating the allure of delisting strategies

The financial institutions that facilitate the liquidity so valued by public firms might have required—through competitive market forces—more exacting internal controls, regardless of U.S. compliance mandates.\textsuperscript{181} This raises the question of the true necessity of SOX. Could the system have corrected itself without the U.S. government forcing firms to bear arguably unnecessary compliance costs?\textsuperscript{182} Although the question is largely irrelevant and rhetorical for most U.S. firms at this point, non-U.S. firms must consider the role that both U.S. regulation and market forces play and will continue to play in driving governance standards higher.\textsuperscript{183}

Considering the heightened transparency levels expected by both regulators and investors, most firms, regardless of where in the world their headquarters is located, must take a long, hard look at where SOX compliance will eventually lead them. As the knee-jerk reaction of strict regulation and enforcement gives way to the flexible and cooperative concessions issued by the SEC and the PCAOB, companies faced with compliance cost concerns should recognize the equally shortsighted nature of delisting solutions. Regulatory mandates and compliance costs aside, firms adopting a proactive approach to corporate governance and investor relations are poised to reap the benefits of confidence and flexibility that only full and active participation in efficient and reliable capital markets may garner.

B. Embracing the Benefits of Proactive Governance

Information is crucial to the health and vitality of both investors and capital markets. Because of the critical roles that information and information distribution occupy for investor-owned and investor-oriented companies, it is not surprising that Mexican

\textsuperscript{180} Id.
\textsuperscript{181} See Engel et al., supra note 27.
\textsuperscript{182} See id. (analyzing the value of SOX regulation in light of contract law’s inability to enforce proper disclosure or deter insider trading and evaluating the potential benefit of the legislative solution to private firms).
\textsuperscript{183} Id.
telephone giant, Telmex, increased visibility and transparency through its SOX compliance efforts.\textsuperscript{184} Telmex executives further characterized SOX mandates as a welcome opportunity for improvement rather than an obstacle to be avoided.\textsuperscript{185}

Although anecdotal, the Telmex experience illustrates how a proactive approach leverages the time and money spent on improving informational and decision-based strategies. Firms must choose between merely tolerating and suffering through costly compliance initiatives or taking full advantage of SOX to make reporting procedures more efficient and gain more control over operations.

Investor confidence concerns aside, proactive governance advocates argue that good governance leads to improved business information and consequently more confident and sound decision-making.\textsuperscript{186} Recognizing both the internal and external benefits they may derive from strong governance practices, a handful of progressive firms embrace a proactive approach to corporate governance, some even going beyond SOX and NYSE listing standards. NASDAQ’s General Counsel observed that some seek out these enhanced standards specifically to satisfy institutional investors’ focus on good governance.\textsuperscript{187} Other firms have reported that enhanced reporting procedures and governance structures have enabled compliance with both SOX and non-U.S. GAAP disclosure practices.\textsuperscript{188} Strategically leveraging compliance initiatives into reform opportunities has led others to extend SOX standards beyond the executive level by requiring managers to evaluate and certify the work of their own business units.\textsuperscript{189}

For some, greater awareness of a firm’s inner workings is well worth the hassle and cost of compliance. Among the many perceived benefits is the expectation that improvements in management’s internal control assessment will likely improve risk

\textsuperscript{184} Myers, \textit{supra} note 86.
\textsuperscript{185} Id.
\textsuperscript{186} Stone, \textit{supra} note 5.
\textsuperscript{187} Corporate Counsel, \textit{supra} note 28.
\textsuperscript{188} German pharmaceutical group Altana reported leveraging compliance measures to satisfy more than one set of regulatory requirements. Myers, \textit{supra} note 86.
\textsuperscript{189} In general, non-U.S. companies may follow home-country reporting and control practices. Nevertheless, some firms voluntarily chose to follow the NYSE requirements for U.S. companies regardless of the difference in home-country rules or business practices. Other non-U.S. firms have relied upon the NYSE’s code of ethics when revising their own code despite the absence of jurisdiction to compel such adoption. \textit{Id.}
identification and allow companies to better respond to changing market demands.\textsuperscript{190} Additionally, a proactive approach improves controls and leads to increased operating efficiency, reduced litigation, and stronger fraud controls.\textsuperscript{191}

\textbf{C. Proactive Investor Relations}

SOX compliance, voluntary or not, builds an environment of trust that may take more than a lifetime to create but can disappear in seconds.\textsuperscript{192} The standards embodied in SOX guard that trust. Strong corporate governance and investor relation programs should aim to communicate to actual and potential shareholders that management’s interests align with investors’ interests.\textsuperscript{193} This joining of a public relations function with the higher-level operations of compliance and equity fundraising may seem counter-intuitive to some. However, such an expansive and proactive view of governance initiatives readily recognizes SOX compliance and other reform expenses as worthwhile outlays. Firms garner value insofar as compliance efforts send “a clear message to the markets,” showing how committed the company is to “protecting minority rights and creating shareholder value by adopting the best corporate governance practices set forth in every market where . . . shares are traded.”\textsuperscript{194} The expensive and time-consuming nature of SOX compliance, which makes delisting so understandably attractive, justifies itself as a worthy investment when placed in the context of long-term, holistic growth strategies. Aside from all the logistical, personnel, and compliance costs associated with lowering the number of U.S. shareholders below 300, and aside from the technical and legal requirements of SEC deregistration, firms must seriously evaluate the message that delisting and deregistering may send to the investing public. Such a strategy may very well communicate to investors that the firm will spend millions just so they can avoid improving the same corporate

\textsuperscript{190} SOX critics argue that the costs of section 404 outweigh the actual benefits as compliance will do little to prevent future corporate scandals and the benefits derived from the implementation do not justify the significant costs. See supra Part II.B. For a more detailed criticism of the specific SOX provisions that will do little to remedy corporate governance shortcomings and pitfalls, see Huffman, supra note 1, at 255–57.

\textsuperscript{191} Id.

\textsuperscript{192} Myers, supra note 86.

\textsuperscript{193} See id.

\textsuperscript{194} Id.
governance standards upon which investors rely for confidence. Conversely, SOX compliance initiatives present firms with valuable opportunities to reevaluate and strengthen investor relation strategies.

VI. CONCLUSION

Well-governed non-U.S. firms, who at least value and plan for stronger governance initiatives, should find the compliance efforts well worth their time and money. Firms engaging in avoidance of SOX-type reforms may find that cultural and market forces will penalize them for lax governance reform initiatives. The SOX implementation drama awakened the global community to the need for increased accountability and established a growing culture keen on exhibiting responsible and transparent corporate governance practices. As the harsh reaction to worldwide corporate scandals subsides, non-U.S. firms should refrain from joining in the anti-SOX backlash by hastily pursuing delisting strategies, incurring extremely high opportunity costs unavoidable by all but a small handful of closely held firms. The hassle, complexity, and cost of delisting and deregistering quickly erode the value of delisting strategies, especially considering the opportunity cost of forgoing access to U.S. capital markets, precluding opportunities for U.S. partnerships, and preemptively limiting future U.S. operations.

Once U.S. and non-U.S. firms view the SOX drama as a knee-jerk reaction meant to protect the primacy and reliability of U.S. capital markets, and once investors and companies realize that the reactionary zeal is subsiding, firms will begin leveraging corporate governance reforms proactively, pragmatically, and strategically. Many non-U.S. companies stand to benefit from SOX-governance initiatives. Concessions from U.S. regulators in combination with the compliance efforts of U.S. firms have eased the path for non-U.S. firms looking to leverage proactive governance strategies. If firms do not embrace and eventually exhibit good governance values, cross-cultural expectations, and competitive and regulatory forces may eventually disadvantage such firms. Most non-U.S. firms that have increased involvement with U.S. firms or markets on their immediate horizon will ultimately find some measure of SOX-like governance reform beneficial and inescapable.

Just as Hero and Claudio overcome the drama and complexity of courtship to find bliss at the end of Much Ado About Nothing, the

SOX drama will soon subside and well-intentioned firms who can see past the drama will be able to preserve and develop valuable relationships with U.S. capital markets and investors.