Consumer Federation of America
U.S. Public Interest Research Group
Consumers Union
Consumer Action

April 24, 2007

Dear Senator:

Vote NO on the DeMint Amendment
Amendment Would Hurt Investors, Undermine Market Competitiveness

We have heard reports that Sen. Jim DeMint (R-SC) may offer an amendment to S. 761, the America Competes Act that would make compliance with the internal control provisions of the Sarbanes-Oxley Act voluntary for the majority of public companies. **If this ill-advised, anti-investor amendment should come up for a vote, we urge you to oppose it.** It would harm investors and undermine the competitiveness of U.S. capital markets.

Sen. DeMint has suggested that the Sarbanes-Oxley Act has eroded the competitiveness of U.S. markets. This argument simply is not supported by the facts. In fact, by every important measure of competitiveness – the ability to attract capital, to provide companies with access to low-cost capital, and to provide individuals and institutions with a safe and profitable place to invest – SOX has helped not hurt our markets. Moreover, by undermining important protections that attract capital to our markets, Sen. DeMint's amendment would seriously endanger our competitive advantage in these areas that are most important to the overall health of the U.S. economy.

1) SOX has promoted the competitiveness of U.S. capital markets.

It is also not true, as Sen. DeMint claims, that SOX has imposed cost burdens that have caused companies to choose to raise capital elsewhere. In fact, as all but the most superficial examination of IPO statistics makes clear, SOX has had a dramatically positive effect on the health of the U.S. IPO market.

The U.S. share of the world IPO market plunged from its high of roughly 60 percent in 1996 to a low of about 8 percent in 2001, before the passage of SOX. Since then it has recovered somewhat, to about 16 percent in 2006.

Since implementation of SOX, the number and value of U.S. IPOs has risen dramatically. According to a recent article in *Barron's*, last year's $40.6 billion in IPOs represents a 170 percent increase from 2003.

During that same period, the number of foreign companies listing on U.S. markets and the amount of money they raised here have also risen. In fact, a recent Thomsen Financial study examining 20 years of IPO statistics found that the $10.6 billion foreign companies raised through U.S. IPOs last year represented a 23 percent share of U.S. IPO volume, the highest level since 1994. It also found that foreign companies accounted for 16 percent of IPOs in the United States last year, the highest percentage in the 20 years studied. Recent reports indicate that foreign companies accounted for an even higher 19 percent of the 67 IPOs conducted on the New York Stock Exchange, Nasdaq, and the American Stock Exchange during the first quarter of 2007.

Far from improving U.S. markets' ability to attract listings, Sen. DeMint's amendment would undermine the single best reason foreign companies have to list in the United States – the fact that investors are willing to pay more for the shares of those companies that show they are willing and able to meet U.S. investor protection standards. This "valuation premium," which shrank dramatically from 1999 through 2002, has increased significantly since the Sarbanes-Oxley Act was adopted.

2) The benefits of SOX greatly out-weigh the costs.

Sen. DeMint is also mistaken when he argues that the costs of the Sarbanes-Oxley Act's internal controls requirements are not justified by the benefits. Since the law was implemented, it has become clear that many companies had neglected their decades-old responsibility to maintain adequate controls to ensure the accuracy of their financial statements. Since implementation began, several thousand companies – more than 1,300 in 2005 and 1,118 in 2006 – have had to report material weaknesses in their controls. These enhanced reviews have also turned up several thousand financial misstatements – 1,538 in 2006 alone.

The good news is that, at companies that have implemented the internal controls requirements, incidents of both material weaknesses and financial restatements are down dramatically. The number of material weaknesses among companies that have implemented the law declined 35 percent between 2005 and 2006, while the number of material weaknesses reported by non-implementing companies rose 20 percent. Similarly, the number of restatements declined by 14 percent among implementing companies, but rose 40 percent among those companies that have not yet implemented the law.

The implications are clear. Prior to passage of the Sarbanes-Oxley Act, companies were not meeting their obligation to maintain adequate systems and procedures to ensure the accuracy of their financial reports. Since implementation began, those companies that have implemented the law have seen significant improvements in both the quality of their controls and the accuracy of their financial statements. These improvements represent very real savings to investors. A recent study by Glass Lewis & Co. found that **companies that issued financial restatements in 2006 under-performed the Russell 3000 index by 20 percent, while those with material weaknesses under-performed the index by 18 percent**.

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If adopted, Sen. DeMint's amendment would seriously undermine the competitiveness of U.S. markets, by making them less attractive to investors and by eroding the valuation premium that offers the best reason foreign companies have to undertake a U.S. IPO. At the same time, it would expose investors to a return to the shoddy and deceptive financial reporting that led to passage of the Sarbanes-Oxley Act in the first place. **We strongly urge you to vote no if this amendment comes to the floor for a vote.**

Respectfully submitted,

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