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Blue-ribbon panel in U.S. takes aim at SOX

Private-sector group

Peter Morton, Financial Post

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WASHINGTON - Sanjay Anand doesn't buy the latest worries swirling around U.S. capital markets that the high costs of tough new corporate governance rules here are forcing smaller publicly traded U.S. companies to move their shares to trade on foreign exchanges.

"I just don't believe it," says Mr. Anand, chairman of the recently created SOX Institute in New York. "It's just the latest wave of globalization and the fact that Hong Kong and London capital markets are now very competitive compared to New York."

Mr. Anand was commenting on the latest attack on the 2002 Sarbanes-Oxley Act, this one yesterday from a blue-ribbon private-sector group that complained the controversial law aimed at ending boardroom fraud was driving U.S. companies out of domestic equity markets and discouraging overseas ones from entering.

The U.S. Committee on Capital Markets Regulation, chaired by Glen Hubbard, a former White House economic adviser, and John Thornton, former president of Goldman Sachs Group Inc., said in a long-awaited report that Congress should completely exempt companies with market values of less than US$75-million from Sarbanes-Oxley audit requirements.

The committee also said that the heavy accounting rules are also discouraging non-U.S. companies from listing on U.S. exchanges.

"Firms must choose to come to the United States; they do not have to come," the group said in its 135-page report. "It is the committee's view that in the shift of regulatory intensity, balance has been lost to the competitive disadvantage of U.S. financial markets."

It's a view shared by Henry Paulson, the U.S. Treasury Secretary, who said this week that U.S. capital markets "face significant challenges" because the expense of implementing the four-year-old corporate governance rules.

There is a growing view that Sarbanes-Oxley Act, or SOX as it has been dubbed in the accounting industry, has gone too far. While SOX was designed to end the corporate finance scandals that led to the downfall of Enron Corp. and WorldCom Inc., companies trading on U.S. markets have been forced to go through major upheaval to ensure their financial systems are essentially bullet-proof from fraud.

Mr. Anand, whose institute was formed in 2003 to advise U.S. companies on how to adapt to the new rules, said he is the first to admit SOX has not been an easy transition.

Larger companies -- those with more than US$750-million in market capitalization -- have already been forced to comply. On Dec. 13, the U.S. Securities and Exchange Commission plans to come out with its latest rules for those companies with market capitalizations between US$75-million and US$750-million.

Finally, those with smaller market capitalizations are to comply as early as 2008.

"The burden on small business in particular will be significant and severe," Mr. Anand said.

When the new law came into effect, there were predictions it would only cost publicly traded companies about US$100,000 each to comply.

"It has proven to be 100 times that," Mr. Anand said.

The problem, he said, is not the law but the application of it. That is why the SEC has already pledged to make it easier for smaller companies to comply, he said.

In addition, the new Democrat-controlled Congress has vowed to take a second look at Sarbanes-Oxley next year in a bid to make the law less onerous.

The capital markets report insisted it did not want to undermine the law since it has "significantly strengthened the financial reporting and governance processes for public companies."

But it suggested that as a way to encourage foreign companies to trade in U.S. markets, the Justice Department should pledge to pursue criminal prosecutions only in instances of "pervasive culpability throughout all offices and ranks."

The report also noted that class-action lawsuits, which have soared to US$3.5-billion last year from just US$150-million in 1995, have prompted insurers to charge U.S. firms six times as much as they do European companies for coverage protecting executives and directors from lawsuits.

The committee said Congress should limit liability for accountants by "preventing damage awards against audit firms and their employees at a level that could destroy a firm."

Arthur Anderson, the accounting firm for Enron, ultimately went out of business.