



FOLEY & LARDNER LLP

THE INCREASED FINANCIAL & NON-FINANCIAL COSTS OF STAYING PUBLIC

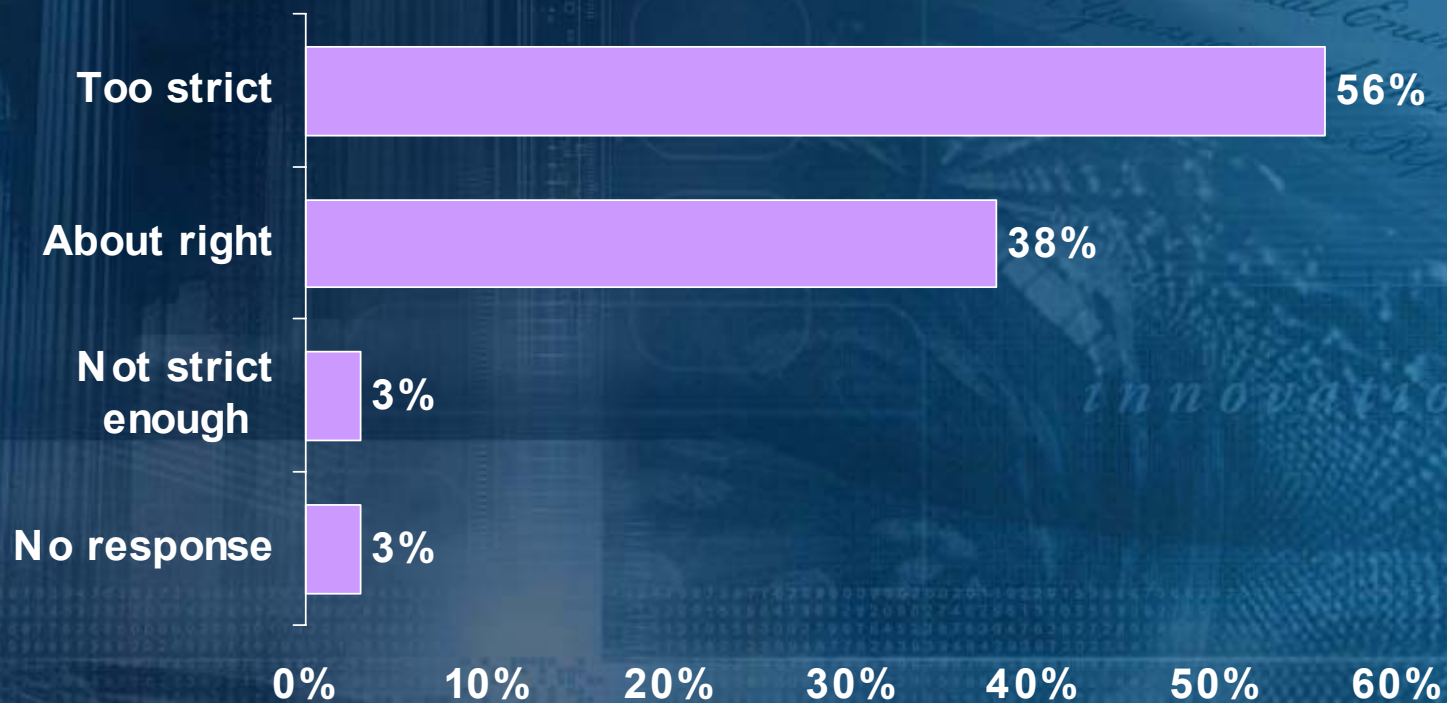
American Enterprise Institute

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New Corporate Governance and Public Disclosure Reforms:



Feedback

- “The ‘one size fits all’ regs are a problem. Resources & controls are different for our 150 employee firm vs. a 15,000 employee...company”
- “Reduce Section 404 requirements [dealing with internal controls]”
- “[I] am in favor of holding top officers accountable for financial information”
- “Reduce disclosure controls and procedures and internal control verifications and certifications”
- “I think they are taking some of the correct steps”
- “Enforce existing laws before creating new ones”
- “We cannot afford to be public with 120% increases in costs”
- “It is apparent that some reform was needed”
- “Corporate governance and public disclosure has improved dramatically over the past 12-15 months”

Feedback

- “Evaluate [the] benefit vs. cost of all rules”

Overview

- Senior management of public middle market companies expect costs directly associated with being public to increase by almost 100% as a result of corporate governance compliance and increased disclosure as a result of the Sarbanes-Oxley Act of 2002 (SOX), new SEC regulations and changes to exchange listing requirements.
- The consensus among professionals in the principal areas of accounting, board compensation, insurance and investor relations/public relations anticipate significant cost increases in their areas.
- Legal fees are anticipated to continued to increase significantly, both to a public company directly and through separate counsel serving one or more Board committees (e.g., Audit Committee).

Overview

- Many of these increases are “leading edge” and are only just starting to be reported in SEC filings by public companies, since results for FY 2002 do not include a full year of SOX or full implementation of SOX and SOX-related requirements.
- While large-cap/large revenue public companies will see the largest increase in the cost of being public in absolute dollar terms, they are better able financially to absorb the increased costs.
- The overall increases will fall disproportionately on small-cap and mid-cap public companies who may face crippling financial burdens to remain public in the new environment.

Increase In Audit Fees For Public Companies (2001-2002)



Audit Fees

- In FY 2002, mean **total** fees paid to a company's accountants were:
 - By Capitalization
 - Small-Cap: \$1.1 million
 - Mid-Cap: \$2.2 million
 - S&P 500: \$8.8 million
 - By Revenue
 - <\$500 million: \$ 0.9 million
 - \$500M - \$1B: \$ 1.4 million
 - \$1B - \$3B: \$ 2.6 million
 - >\$3 billion: \$10.3 million

Director Fees

- Annual retainers paid to outside directors have increased more modestly than fees paid to company accountants, but director compensation increased at a faster rate in FY 2002 over FY 2001, compared to increases in FY 2001 over FY 2000:

	<u>FY 2001 vs. FY 2000</u>	<u>FY 2002 vs. FY 2001</u>
	Increase	Increase
Small-Cap	5%	7%
Mid-Cap	1%	11%
S&P 500	5%	9%

Director Fees

- In dollar terms, the mean annual retainer paid to each outside director in FY 2002 varies as follows:

Small-Cap	\$20,000
Mid-Cap	\$24,000
S&P 500	\$35,000

D & O Insurance

- D&O premiums (including Side A coverage) recently have been in the range of:

Small-Cap	\$50,000 – \$500,000
Mid-Cap	\$100,000 – \$1,000,000
S&P 500	\$250,000 – \$1,250,000
- The consensus is that D&O insurance premium increases in the range of 100-300% are common, especially if the company is coming off a three-year cycle. However, industry experts see percentage increases ranging as widely as 50% to 500%.
- So far, good CGQ (Institutional Shareholder Services' Corporate Governance Quotient) scores are NOT having an impact on premiums, but weak CGQ scores could hurt.

Legal Fees

- Even small-cap companies are seeing legal fees increase by double digit percentages, ranging from several thousand dollars to tens of thousands of dollars for 34 Act filings alone.
- Legal fees directly associated with SOX compliance (e.g., revise or draft committee charters; codify disclosure controls & procedures and internal controls; prepare codes of conduct and other guidelines or policies) can easily range in the hundreds of thousands of dollars for even mid-cap companies.

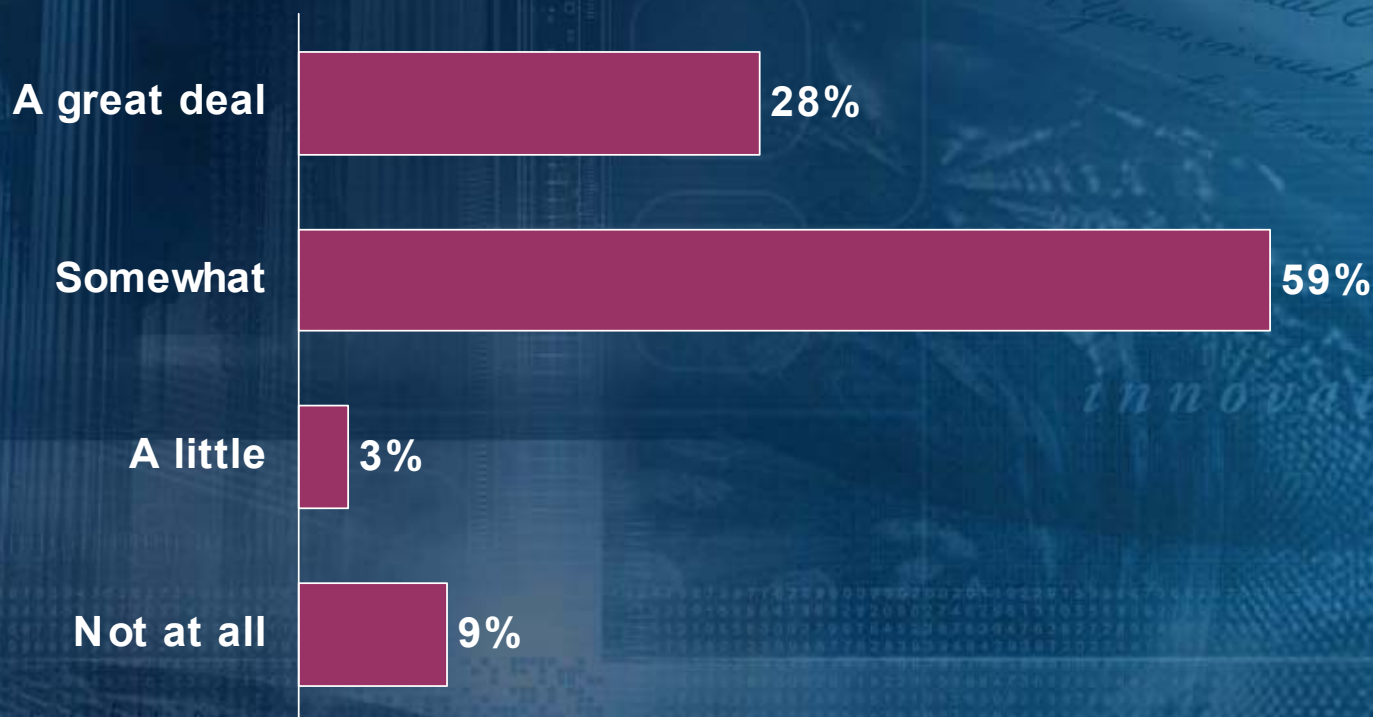
PR/IR Fees

- Range of outsourced annual **IR** costs

Small-Cap	\$25,000 – \$300,000
Mid-Cap	\$55,000 – \$480,000
S&P 500	\$100,000 – \$480,000
- Range of outsourced annual **PR** costs

Small-Cap	\$24,000 – \$240,000
Mid-Cap	\$36,000 – \$300,000
S&P 500	\$120,000 – \$1,200,000

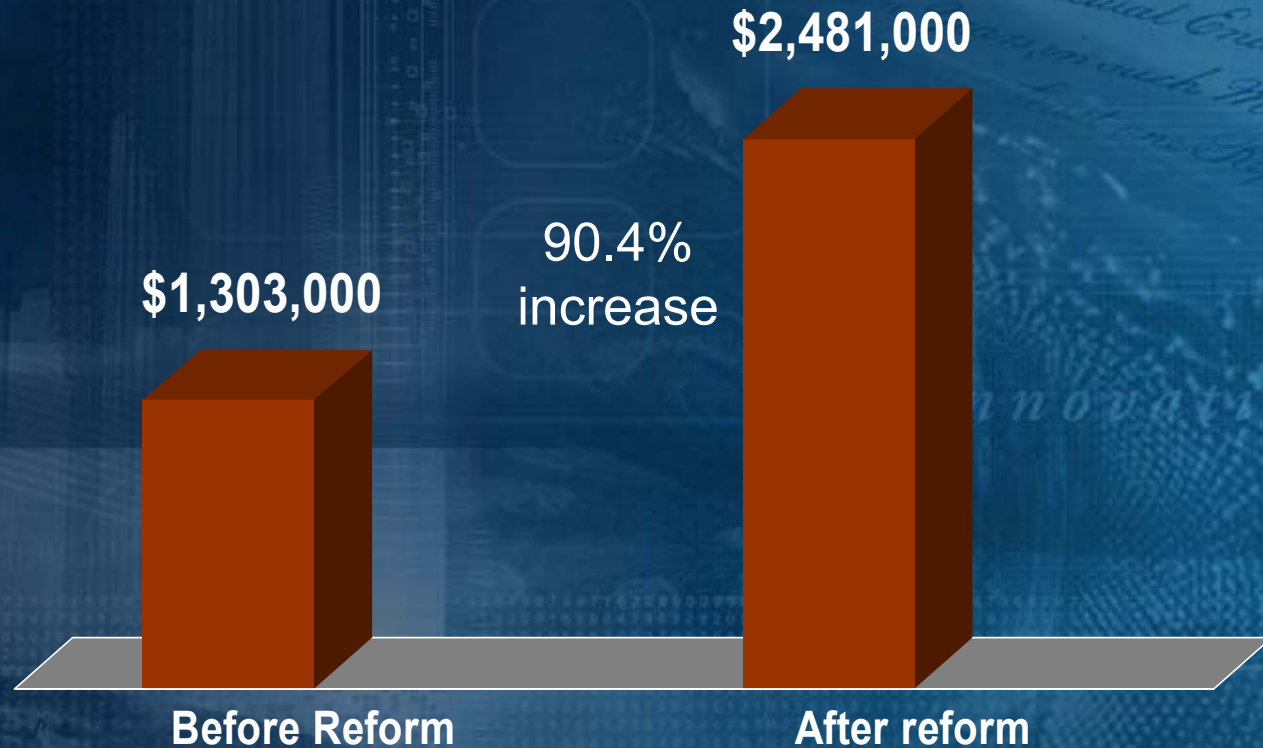
New Corporate Governance & Public Disclosure Reforms Impact On Company's Overall Administrative Expenses:



Cost Of Being Public

<u>Item</u>	<u>Before Reform</u>	<u>After Reform (Estimated)</u>	<u>Increase</u>
D&O Insurance	\$ 329,000	\$ 639,000	94.2%
Accounting	\$ 243,000	\$ 499,000	105.3%
Legal	\$ 212,000	\$ 404,000	90.6%
Public Relations	\$ 197,000	\$ 221,000	12.2%
Board Compensation	\$ 107,000	\$ 212,000	98.1%
Financial Reporting/Printing	\$ 47,000	\$ 85,000	80.9%
Lost Productivity	\$ 46,000	\$ 93,000	102.2%
Compliance Personnel	\$ 36,000	\$ 132,000	266.7%
Investor Relations	\$ 35,000	\$ 58,000	65.7%
Other SOX Costs	\$ 26,000	\$ 83,000	319.2%
Transfer Agent	\$ 25,000	\$ 37,000	48.0%
Director Search Firms	\$ 0	\$ 18,000	*
Total	<u>\$1,303,000</u>	<u>\$2,481,000</u>	<u>90.4%</u>

Cost Of Being Public



Is your company considering going private or selling the company *as a result of* new corporate governance and disclosure reforms:

