

**THE COST OF BEING PUBLIC
IN THE ERA OF SARBANES-OXLEY**

Presented by:

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EXECUTIVE SUMMARY

- Based on data received from Foley & Lardner's 2004 and 2005 studies, the average cost of being public in FY 2004 for a company with annual revenue under \$1 billion has increased \$851,000 (33%) over FY 2003. Further, from the enactment of the Sarbanes-Oxley Act through FY 2004, the average costs have increased a total of \$2.4 million, representing a 223% increase.
- In FY 2004, the average cost of being a public company with annual revenue of \$1 billion and over was \$14.3 million, an increase of \$4.4 million (45%) over FY 2003.
- Lost productivity continued to represent a major cost for all companies responding to our 2005 survey, particularly for the smaller public companies responding. Average costs associated with lost productivity increased more than 556% to \$1 million in FY 2004 for responding companies with annual revenue under \$1 billion, compared to an 18% increase to \$2.9 million in FY 2004 for responding companies with annual revenue over \$1 billion.
- Fees paid to outside auditors have continued to increase by double digit percentages year over year since the enactment of the Sarbanes-Oxley Act in 2002. This increase accelerated dramatically in FY 2004. We attribute this increase to the substantial costs associated with the financial control audits required under Section 404 of the Sarbanes-Oxley Act, which phased-in for most domestic public companies at the end of 2004.¹
 - Of all the companies analyzed, audit fees increased an average of 61% between FY 2003 and FY 2004.
 - Audit fees increased an average of 84% for S&P Small-Cap companies, 92% for S&P Mid-Cap companies and 55% for S&P 500 companies.
- It continues to be increasingly expensive for companies of all sizes to attract and retain qualified directors. In FY 2004, S&P Small-Cap, S&P Mid-Cap and S&P 500 companies witnessed double-digit increases in average annual director fees with increases of 17%, 14% and 13% respectively. Over the past four years, the impact of corporate governance reform on director fees has been significant, with increases of 46% for S&P Small-Cap, 45% for S&P Mid-Cap and 43% for S&P 500 companies between FY 2001 and FY 2004.
- Consistent with results from previous years, a significant number of survey respondents (20%) are considering going-private transactions as a result of corporate governance and public disclosure reforms. Additionally, respondents to our 2005 survey are increasingly considering other options, including selling the company (10%) and merging with another company (14%).
- There was a significant increase in the number of respondents to our survey who felt that corporate governance and public disclosure reforms have impacted administrative expenses "a great deal," increasing from 54% in our 2004 survey to 70% in our 2005 survey. We attribute this increase to the financial impact of the phase-in of Section 404 in FY 2004.
- A vast majority (82%) of respondents felt that corporate governance and public disclosure reforms are too strict, an increase of 15% compared to our 2004 survey.

¹ Section 404 phased-in for domestic public companies with market capitalizations exceeding \$75 million beginning with their first fiscal year ending after November 15, 2004.

VERBATIMS

Regarding the impact of Section 404 on the company's relationship with their outside auditing firm...

- *The relationships have become almost unusable. This is probably the largest unintended consequence of the SOX. Companies can no longer consider the Big Four their "trusted business advisors."*
- *...the Big Four seem to want to be treated as the IRS, but at premium fees.*
- *It appears that the accounting firms have taken this law to a much higher level than was ever intended by Congress...*
- *They now drive a Mercedes instead of a Buick.*
- *... we used to work together, now the auditors are the policemen/adversaries not consultants/advisors.*
- *... the uncertainty has made everyone very uneasy.*
- *... the relationship is much less client-service oriented and collaborative. Consultations with our external auditors are much more formal and less frequent.*
- *... it has created an adverse relationship with the auditors. They are no longer an advisor the company can count on during the normal course of business. Public company auditors are now privatized regulators for the SEC.*
- *We rely less on them for advice. We are more cautious in what is discussed with them, when and by whom.*
- *We don't share strategies, ideas or proposals with them any more than we would share them with the IRS.*

On how the Audit Committee reforms implemented by Sarbanes-Oxley have changed the relationship between the Audit Committee of your Board and senior management...

- *We now have a "Lead Audit Director" and overall our Audit Committee is involved in more decisions made throughout the year.*
- *The relationship between management and the audit committee has become much more formal as the scope of the audit committee has expanded and their requests for information from management have increased.*
- *More meetings and more costs.*
- *The Audit Committee takes their responsibility much more seriously now. They are more involved with related-party transactions, the whistle blower hotline and critical accounting transactions.*
- *It has caused a much more intense relationship and deeper questioning of company practices.*

How would you suggest modifying corporate governance and public disclosure reform?

- *Get a panel of CEOs to work with government to amend SOX.*
- *While stock exchange rule changes have generally been fair, section 404 of SOX is unduly costly and burdensome with limited benefit. This section should be repealed or drastically modified to a more moderate position.*
- *There is an inverse relationship in SOX between cost and benefit. The lowest cost changes have had the best effect, like more frequent meetings, CEO/CFO certifications, etc. The highest cost reforms have the least benefit. 404 specifically is total overkill.*
- *The reforms don't address the cardinal issue. The executives at Enron/WorldCom etc. would have ignored the reforms had they been in place.*
- *The reforms are driving small companies out of the public markets. It is virtually impossible for a small company to comply with the requirements and stay in business.*
- *SOX 404 is a political over-reaction. The provisions of SOX 404 need to be focused more on accountability, not documentation and meaningless bureaucracy.*
- *Overall, the governance and disclosure reforms are a positive step forward to increase reliance on our country's economic society, but we have somewhat decreased our abilities a little to continue growing and attracting new companies to set up shop here because of the strenuous requirements placed on public companies in America.*
- *While it is good to have procedures in place, it is absolutely ridiculous to the extent that everything must be wet signed, proved, re-proved, and documented. I have to document the documents that document the documentation to the documents, and have them all signed and dated. I write my initials and the date in my sleep, for crying out loud.*
- *The legislation has increased costs and increased internal awareness of the "rules of the game," but was needed.*
- *404 is a colossal waste of time and money. This has placed the accountants in a heavy handed, open-your-checkbook position which has forever changed the profession and its relationship with clients.*

Analysis of Standard & Poor's Database

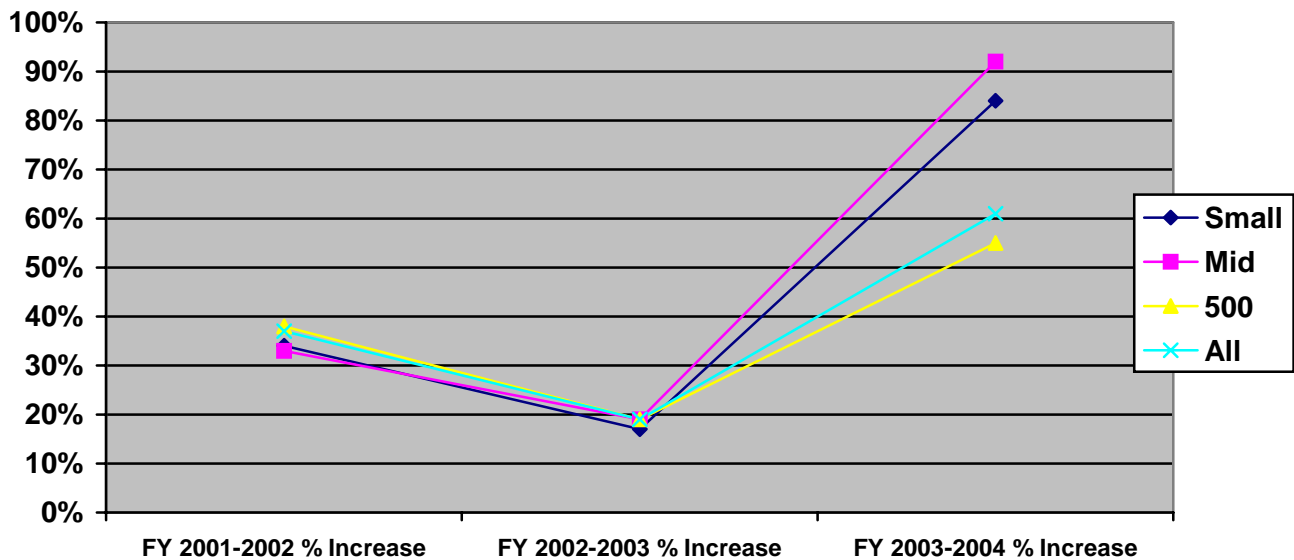
Foley & Lardner commissioned a statistical analysis of proxy statement data compiled and maintained by Standard and Poor's Investment Services Custom Business Unit. This database contains information from more than 700 public companies included in the S&P 500, S&P Mid-Cap 400 and S&P Small-Cap 600 indices and was obtained by Standard and Poor's from proxy statements relating to 2005 annual shareholder meetings filed with the Securities and Exchange Commission through May 18, 2005. Whenever possible, the same companies used in Foley & Lardner's 2004 analysis were used for the 2005 proxy review to ensure consistency in year-over-year comparisons. However, a small number of companies from the 2004 analysis were not included in this year's analysis because they did not file 2005 proxy statements prior to the May 18, 2005 cut-off date. These companies may not have filed proxy statements by that date for a variety of reasons, including going private, merging out of existence, or moving their 2005 annual shareholder meeting to a later date than the date of their 2004 annual shareholder meeting.

Given that the S&P database represents a random sample of public companies included in the S&P 500, S&P Mid-Cap 400 and S&P Small-Cap 600 indices, the margin of error for each category was used to calculate a confidence interval - the range in which the average audit fees of companies in the indicated market cap category should fall at a 95% confidence level.

Audit Fees

Average Audit Fees				
Market Cap	FY 2001 Confidence Interval ¹	FY 2002 Confidence Interval ¹ (YOY % increase)	FY 2003 Confidence Interval ¹ (YOY % increase)	FY 2004 Confidence Interval ¹ (YOY % increase)
S&P Small-Cap	\$362,000 +/- \$37,550	\$485,000 +/- \$58,990 (34% increase)	\$567,000 +/- \$67,390 (17% increase)	\$1,042,000 +/- \$103,920 (84% increase)
S&P Mid-Cap	\$716,000 +/- \$94,920	\$951,000 +/- \$121,860 (33% increase)	\$1,135,000 +/- \$158,490 (19% increase)	\$2,177,000 +/- \$281,200 (92% increase)
S&P 500	\$2,934,000 +/- \$427,160	\$4,048,000 +/- \$543,880 (38% increase)	\$4,809,000 +/- \$681,780 (19% increase)	\$7,443,000 +/- \$937,110 (55% increase)
All	\$1,597,000 +/- \$212,650	\$2,190,000 +/- \$275,570 (37% increase)	\$2,600,000 +/- \$341,860 (19% increase)	\$4,173,000 +/- \$479,320 (61% increase)

Historical Audit Fee % Increases



¹ The confidence intervals represent the range in which the average audit fees of companies in the indicated market cap category should fall at a 95% confidence level.

- Note that percent increases for all categories (S&P Small-Cap, S&P Mid-Cap and S&P 500) remained largely consistent in FY 2002 and FY 2003. However, small- and mid-cap organizations witnessed a much greater percent increase in audit fees for FY 2004 (84% and 92% respectively) than S&P 500 companies, which saw a relatively modest 55% increase.
 - Although the percent increase was more modest for S&P 500 companies, these companies witnessed the most significant average dollar increase, up \$2.6 million from FY 2003 to FY 2004.
- Fees paid to outside auditors have continued to increase by double-digit percentages year over year since the enactment of the Sarbanes-Oxley Act in 2002. This increase accelerated dramatically in FY 2004. We attribute this increase to the substantial costs associated with the financial control audits required under Section 404 of the Sarbanes-Oxley Act, which phased-in for most domestic public companies at the end of 2004.¹
 - Of all the companies analyzed, audit fees increased an average of 61% between FY 2003 and FY 2004.
 - Audit fees increased an average of 84% for S&P Small-Cap companies, 92% for S&P Mid-Cap companies and 55% for S&P 500 companies.
 - As noted in our 2004 study, the significant average percent increases in audit fees for S&P Small-Cap, S&P Mid-Cap and S&P 500 companies in FY 2002 declined somewhat in FY 2003. However, the percent increases in FY 2004 hit the highest rates we have seen, roughly doubling the significant percent increases seen in 2002, the first year after the Sarbanes-Oxley Act was enacted.
 - The increase in average audit fees in FY 2004 continued to be significant for each category:

Market Cap	FY 2004 Increase in Average Audit Fees
S&P Small-Cap	\$475,000
S&P Mid-Cap	\$1,042,000
S&P 500	\$2,634,000

¹ Section 404 phased-in for domestic public companies with market capitalizations exceeding \$75 million beginning with their first fiscal year ending after November 15, 2004.

- Other fees paid to auditors continued to decline in FY 2004, decreasing an average of 52% from FY 2003 levels for all companies analyzed. The largest decreases occurred in the S&P 500 (55%) with decreases of 19% for S&P Small-Cap and 15% for S&P Mid-Cap companies.
 - We believe this decline is primarily a result of the continued shift of consulting work away from outside auditors because of Sarbanes-Oxley Act auditor independence regulations, as well as heightened sensitivity surrounding consulting work generally, even consulting work that is not strictly prohibited under the Sarbanes-Oxley Act regulations.

Annual Director Fees

- It continues to be increasingly expensive for companies of all sizes to attract and retain qualified directors as annual director fees continued to increase steadily and consistently for each category of company analyzed:

	FY 2002 <u>Increase</u>	FY 2003 <u>Increase</u>	FY 2004 <u>Increase</u>	FY 2001 – 2004 <u>Increase</u>
S&P Small-Cap	11%	13%	17%	46%
S&P Mid-Cap	11%	15%	14%	45%
S&P 500	9%	16%	13%	43%

- Companies listed on the NYSE continued to have significantly higher average annual director fees than NASDAQ-traded companies, paying directors an average of \$36,000 in annual fees in FY 2004 compared to \$23,000 in average annual fees for NASDAQ companies. However, NASDAQ companies witnessed a larger increase in average annual fees paid to directors, climbing 67% between 2001 and 2004, compared to 41% for NYSE companies during the same period.

Analysis of Public Company Survey

In January of 2005, Foley & Lardner distributed public company and private organization surveys via mail and e-mail to approximately 9,000 CEOs, CFOs, General Counsel, Chief Compliance Officers, Board Members, Directors and other executives of both public companies and private organizations. Recipients were asked to complete the survey that applied to their entity, based on their standing as either a public company or a private organization. Recipients were given the option to complete a paper- or Web-based version of the applicable survey.

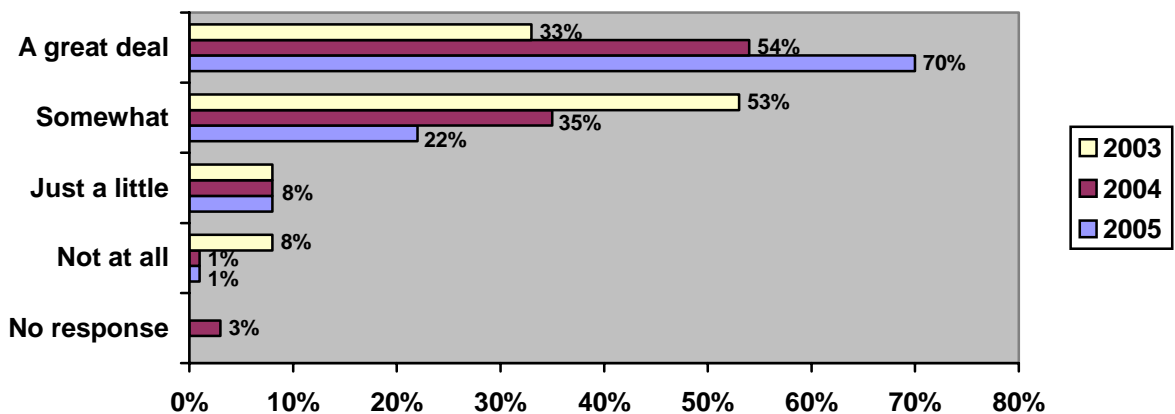
A total of 147 public company surveys were returned. A total of 48 surveys were returned from public companies with annual revenue of \$1 billion or more, and 93 surveys were returned by public companies with annual revenue under \$1 billion (6 companies did not provide an answer regarding their annual revenue).

The survey addressed many of the same questions and issues as the surveys conducted by Foley & Lardner in 2003 and 2004. The results of the survey follow (Please note: due to rounding, percentages may not always add up to 100 percent):

Have corporate governance and public disclosure reforms increased your company's overall administrative expenses a great deal, somewhat, just a little, or not at all? (Please check just one.)

- There was a significant increase in the number of respondents to our survey who felt that corporate governance and public disclosure reforms have impacted administrative expenses "a great deal," increasing from 54% in our 2004 survey to 70% in our 2005 survey. We attribute this increase to the financial impact of the phase-in of Section 404 in FY 2004.

	2005	2004	2003
A great deal	70%	54%	33%
Somewhat	22%	35%	53%
Just a little	8%	8%	8%
Not at all	1%	1%	8%
Don't know/No Answer		3%	-

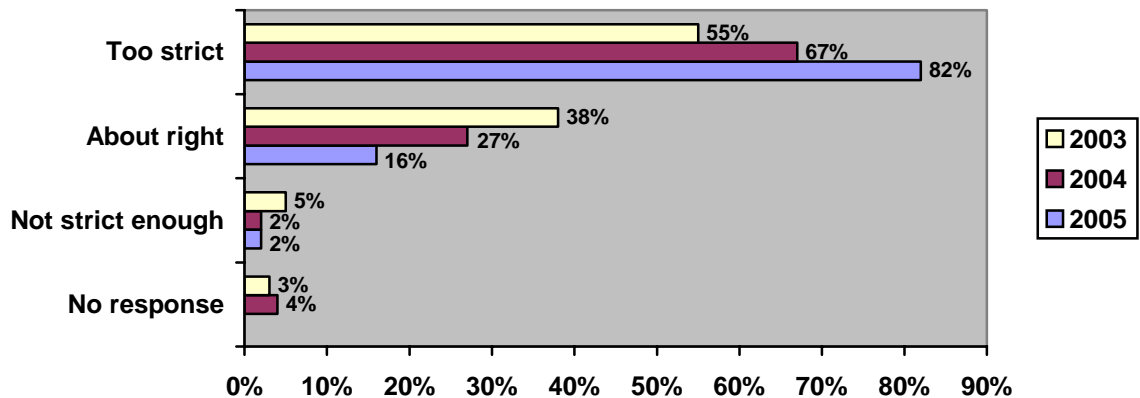


- We attribute the increase in those respondents who felt that corporate governance and public disclosure reforms have impacted administrative expenses “a great deal” to the financial impact of the phase-in of Section 404 in FY 2004.
 - In the first full year of Sarbanes-Oxley Act compliance (FY 2002), we believe administrative expenses were impacted primarily by CEO/CFO certifications and director independence compliance. In year two (FY 2003), we believe new audit committee rules and NYSE/NASDAQ listing standards accounted for the bulk of administrative expenses, supplemented for some companies by preparations for Section 404 phase-in. In year three (FY 2004), the full impact of Section 404 phase-in was realized by domestic public companies with market capitalizations in excess of \$75 million, which we believe accounted for the increase in those responding that administrative expenses have been impacted “a great deal.”

Do you feel that the corporate governance and public disclosure reforms implemented since the enactment of the Sarbanes-Oxley Act in 2002 are too strict, about right, or not strict enough? (Please check just one.)

- A vast majority (82%) of respondents felt that corporate governance and public disclosure reforms are too strict, an increase of 15% compared to our 2004 survey.

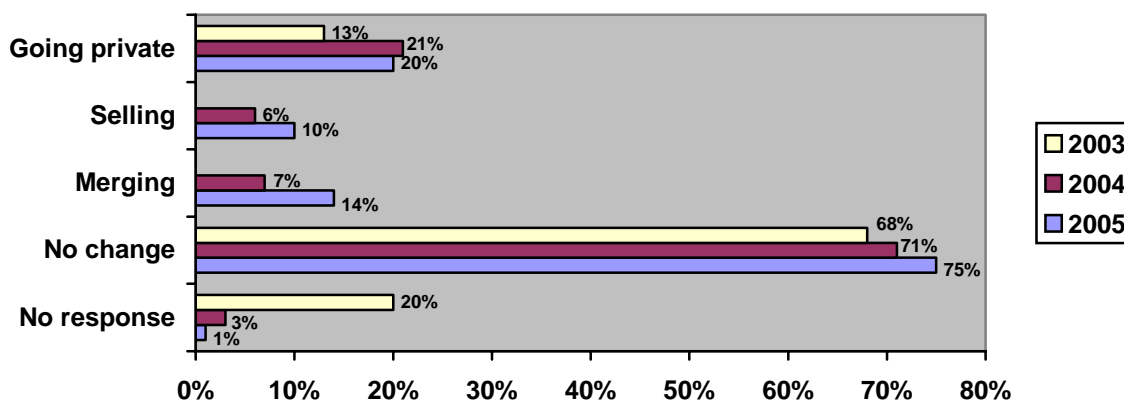
	2005	2004	2003
Too strict	82%	67%	55%
About right	16%	27%	38%
Not strict enough	2%	2%	5%
Don't know/No Answer	-	4%	3%



As a result of the new corporate governance and public disclosure reforms implemented since the enactment of the Sarbanes-Oxley Act in 2002, is your company considering any of the following? (Check all that apply.)

- Consistent with results from previous years, a significant number of survey respondents (20%) are considering going-private transactions as a result of corporate governance and public disclosure reforms. Additionally, respondents to our 2005 survey are increasingly considering other options, including selling the company (10%) and merging with another company (14%). We attribute this increase to companies becoming more aware of the various transactions available as they investigate alternatives to remaining a public company.

	2005	2004	2003
Going private	20%	21%	13%
Selling your company	10%	6%	N/A ¹
Merging with another company	14%	7%	N/A ¹
No change	75%	71%	68%
Don't know/No Answer	1%	3%	20%



- Most of the respondents who said they were exploring the option of going private, selling or merging were companies with under \$1 billion in annual revenue.
- Of those respondents who said they would consider going private as a result of Sarbanes-Oxley, 100% said that they felt the corporate governance and public disclosure reforms are “too strict.”

¹ This option was not available in our 2003 survey.

To what extent do you agree with this statement: Now that we are into the third year of Sarbanes-Oxley Act related reforms, I am better able to predict costs associated with corporate governance reforms. (Please check just one.)

- A majority of respondents (56%) did not feel that they were better able to predict costs associated with Sarbanes-Oxley Act related reforms.
- We believe that costs associated with Sarbanes-Oxley Act related reforms will, however, become more predictable in future years as companies complete their initial Section 404 audits.

	2005	2004
Strongly Agree	5%	4%
Agree	39%	35%
Disagree	40%	50%
Strongly Disagree	16%	10%
Don't know/No Answer	1%	2%
Net Agree	44%	38%
Net Disagree	56%	60%

Please rank the following areas based on increased costs, both internal and out-of-pocket, associated with corporate governance reform, with 1 having the greatest impact and 5 having the least.

Area (2004 rank)	1 st	2 nd	3 rd	4 th	5 th	No answer	1 st - 2 nd	4 th - 5 th
404 Compliance (1)	86%	5%	1%	-	2%	6%	91%	2%
Legal Expenses (2)	3%	51%	26%	9%	3%	8%	54%	12%
D&O Insurance (3)	3%	19%	22%	33%	11%	12%	22%	44%
Revised NYSE/NASDAQ Listing Standards (4)	1%	12%	33%	34%	8%	12%	13%	42%
Other (5)	3%	5%	3%	5%	41%	44%	8%	46%

- Consistent with the results of last year's study, Section 404 compliance was overwhelmingly listed as the area having the most significant financial impact on responding public companies, followed by legal expenses and D&O insurance.

**THE COST OF BEING PUBLIC FOR
COMPANIES WITH ANNUAL REVENUE UNDER \$1 BILLION**

Based on the responses of senior management to our studies conducted in 2003, 2004 and 2005, the average costs of being public for public companies with annual revenue under \$1 billion surveyed in each year were:

<u>Item</u>	<u>Before Reform</u>	<u>Estimated FY 2002 Costs</u>	<u>FY 2001 – FY 2002 % Increase</u>	<u>Estimated FY 2003 Costs</u>	<u>FY 2002 – FY 2003 % Increase</u>	<u>Estimated FY 2004 Costs</u>	<u>FY 2003 – FY 2004 % Increase</u>	<u>FY 2001 – FY 2004 % Increase</u>
D&O Insurance	\$ 329,000	\$ 639,000	94%	\$ 850,000	33%	\$ 407,000	(52%)	24%
Audit ¹	\$ 339,000	\$ 466,000	37%	\$ 532,000	14%	\$ 1,044,000	96%	208%
Legal	\$ 212,000	\$ 404,000	91%	\$ 468,000	16%	\$ 213,000	(54%)	0%
Board Compensation	\$ 107,000	\$ 212,000	98%	\$ 313,000	48%	\$ 222,000	(29%)	107%
Lost Productivity	\$ 46,000	\$ 93,000	102%	\$ 160,000	72%	\$ 1,050,000	556%	2,183%
Other SOX Costs	\$ 26,000	\$ 83,000	219%	\$ 100,000	20%	\$ 300,000	200%	1,054%
Corporate Governance Set-Up Costs ²	<u>N/A</u>	<u>N/A</u>	N/A	<u>\$ 147,000</u>	N/A	<u>\$ 185,000</u>	26%	N/A
Total	<u>\$1,059,000</u>	<u>\$1,897,000</u>	79%	<u>\$2,570,000</u>	35%	<u>\$ 3,421,000</u>	33%	223%

**THE COST OF BEING PUBLIC FOR
COMPANIES WITH ANNUAL REVENUE OF \$1 BILLION AND OVER**

Based on the responses of senior management to our studies conducted in 2004 and 2005, the average costs of being public for public companies surveyed with annual revenue of \$1 billion and over are:

<u>Item</u>	<u>Estimated FY 2003 Costs</u>	<u>Estimated FY 2004 Costs</u>	<u>FY 2003 - FY 2004 % Increase</u>
D&O Insurance	\$ 2,200,000	\$ 3,100,000	41%
Audit ¹	\$ 3,631,000	\$ 5,734,000	58%
Legal	\$ 841,000	\$ 403,000	(52%)
Board Compensation	\$ 247,000	\$ 475,000	92%
Lost Productivity	\$ 2,500,000	\$ 2,938,000	18%
Other SOX Costs	\$ 246,000	\$ 1,100,000	347%
Corporate Governance Set-Up Costs	<u>\$ 174,000</u>	<u>\$ 496,000</u>	<u>185%</u>
Total	<u>\$ 9,839,000</u>	<u>\$ 14,246,000</u>	45%

¹ Audit fee amounts were obtained using the 2005 S&P database to provide a more accurate portrayal of actual accounting fees for the companies within this category.

² This cost area was first measured in our 2004 study. Therefore, data prior to FY 2003 is not available.

- The overall costs associated with corporate governance reform continued to increase in FY 2004, particularly auditing fees, lost productivity and other SOX costs, which saw the most dramatic increases. We attribute these increases to the costs associated with Section 404 compliance.
- Based on data received from Foley & Lardner's 2004 and 2005 studies, the average cost of being public in FY 2004 for a company with annual revenue under \$1 billion has increased \$851,000 (33%) over FY 2003. Further, from the enactment of the Sarbanes-Oxley Act through FY 2004, the average costs have increased a total of \$2.4 million, representing a 223% increase.
- In FY 2004, the average cost of being a public company with annual revenue of \$1 billion and over was more than \$14 million, an increase of \$4.4 million (45%) over FY 2003.
- We believe that the dramatic increases seen in accounting fees between FY 2003 and FY 2004 reflects the impact of Section 404. Companies with annual revenue under \$1 billion witnessed a much larger percentage increase in audit fees than companies with over \$1 billion in annual revenue. Because the requirements of Section 404 do not vary by the size of the public company, smaller public companies are disproportionately impacted by the costs of complying with Section 404.
- Legal fees decreased 54% for public companies responding to our survey with annual revenue under \$1 billion and 52% for responding companies with annual revenue over \$1 billion. We attribute this decline to the legal fees associated with the implementation of revised NYSE and NASDAQ corporate governance listing requirements, as well as the audit committee provisions of the Sarbanes-Oxley Act, which became effective in FY 2003. Legal fees associated with these implementations were not repeated in FY 2004.
- We believe that the 29% decrease reported in average board compensation costs for companies with annual revenue under \$1 billion is an anomaly in our survey data. This result is not consistent with the 14% increase in average annual director fees seen in the S&P data or our survey data results for companies with annual revenue over \$1 billion, which showed board compensation costs for those companies increased 92%. Based on the S&P data, the data for companies with over \$1 billion in revenue, as well as our anecdotal observations and experiences, we believe there continues to be an overall increase in board compensation costs for companies of all sizes.
- We believe the magnitude of the 52% decrease reported for average D&O insurance costs for companies with annual revenue under \$1 billion is also an anomaly in our survey data. Once again, this result is not consistent with the 41% increase reported for companies with revenue over \$1 billion. Our own anecdotal observations and experiences indicate that while a slight percentage decrease may have occurred for companies with revenue under \$1 billion, we would have expected the decrease to be much smaller than the 52% decrease reported.
- Lost productivity continued to represent a major cost for all companies responding to our survey, particularly for the smaller public companies responding. Average costs associated with lost productivity increased more than 556% to \$1 million in FY 2004 for responding companies with annual revenue under \$1 billion, compared to an 18% increase to \$2.9 million in FY 2004 for responding companies with annual revenue over \$1 billion.
 - Additionally, we asked survey respondents to estimate the financial impact of lost productivity in FY 2004 associated specifically with the requirements of Section 404. Responding companies with annual revenue under \$1 billion estimated an average financial impact of \$426,000 while responding companies with annual revenue over \$1 billion estimated \$1,147,000.

Methodology

Overview

In 2005, Foley & Lardner LLP worked with national research firm KRC Research in a third annual study designed to gauge the true financial impact of corporate governance reform on public companies. Due to the complexities of current reforms and the myriad of governance issues facing companies today, a multi-tiered approach was used to gather the necessary data. The study consisted of a survey designed to measure attitudes toward current reform among top executives and a comprehensive review of a database compiled by Standard and Poor's Investment Services Custom Business Unit from proxy statements filed in 2005 by certain S&P Small-Cap, S&P Mid-Cap and S&P 500 companies. A full description of each approach appears below.

Public Company Survey

In January of 2005, Foley & Lardner distributed public company and private organization surveys via mail and e-mail to approximately 9,000 CEOs, CFOs, General Counsel, Chief Compliance Officers, Board Members, Directors and other executives of both public companies and private organizations. Recipients were asked to complete the survey that applied to their entities, based on their standing as either a public company or a private organization. Recipients were given the option to complete a paper- or Web-based version of the applicable survey.

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