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## Court Ruling Upholds New Auditing Board

**Sarbanes-Oxley Wins;  
SEC Also Eases Stock Moves**

By **DAVID REILLY**

March 21, 2007 8:56 p.m.; Page C5

A federal judge in Washington dismissed a lawsuit challenging the constitutionality of the accounting-firm regulator Public Company Accounting Oversight Board, and by extension the controversial Sarbanes-Oxley corporate-reform legislation that gave birth to the agency.

Although the groups that brought the suit plan to appeal, the decision is a victory for the PCAOB, whose creation ended decades of self-regulation by the accounting industry, and for advocates of the changes wrought by Sarbanes-Oxley. That legislation was passed in 2002 in response to scandals such as Enron and WorldCom but has since become the subject of a backlash among corporate executives who feel the act is overly burdensome and imposes hefty costs on business.

### STOCK LAW

- **The News:** A judge threw out a lawsuit that challenged the new accounting regulator called the Public Company Accounting Oversight Board.
- **Impact on Investors:** If such a suit would win, it might throw into question the whole Sarbanes-Oxley legislation that was meant to reform how corporations behave.
- **In Related News:** To make U.S. markets seem more appealing, the SEC yesterday approved rules making it easier for foreign companies to leave if they change their minds.


Sarbanes-Oxley opponents have also argued that the law's constraints are driving companies to list on overseas markets rather than U.S. stock exchanges, and so hurt U.S. competitiveness. In a move designed to counter this perception and to boost U.S. markets' attractiveness to foreign companies, securities regulators yesterday unanimously voted to approve new rules making it easier and faster for foreign companies to exit from U.S. markets.

Under the new rules, non-U.S. companies may leave U.S. markets and escape Securities and Exchange Commission oversight if U.S. trading volume in their securities is 5% or less than world-wide trading in the same securities over the previous 12 months. The new rules will take effect by midyear.

In the PCAOB case, U.S. District Judge James Robertson's 14-page decision dismissing the case against the PCAOB, at least temporarily, removed a threat to the entire Sarbanes-Oxley legislation. Because portions of the Sarbanes-Oxley law aren't severable, a successful challenge to the part of the act that created the PCAOB could have resulted in the entire law being declared unconstitutional.

A PCAOB statement said, "We are pleased with the Court's decision and look forward to

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continuing to fulfill the mandate given us by Congress to protect the interests of investors."

Michael A. Carvin, a partner at law firm Jones Day representing groups challenging the PCAOB, said the decision was a "relatively expected bump in the road" and that his clients "plan on appealing." He added that the "real decision is going to be in the court of appeals, and we remain optimistic."

The case was brought against the PCAOB by Beckstead & Watts LLP, a small Nevada accounting firm, along with organizations such as the Free Enterprise Fund, a group advocating tax reform and limited government. These groups argued that the private PCAOB is effectively an arm of the government and so its members should be appointed by the president. The PCAOB's five-member board is appointed by the SEC.

-- *Judith Burns contributed*

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