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FT INTERVIEW TOM FEENEY

Advocate of SOX reform points to capital markets leak

By Jeremy Grant in Washington

Tom Feeny is not a politician most voters would associate with the thicket of auditing and compliance rules laid out in the Sarbanes-Oxley law, enacted four years ago this weekend.

As speaker of the Florida house of representatives at the time of the controversial recount during the 2000 presidential election, he led efforts to have Republican members of the electoral college certified before it was clear whether Al Gore or George W. Bush had won the state's electoral votes.

Then there was an outlandish suggestion that Florida secede from the union if the national debt ever exceeded \$6,000bn (£4,700bn, £3,200bn).

Now a conservative congressman in Washington, Mr Feeny is emerging as a champion of legislative

reform of Sarbanes-Oxley – or “SOX”.

Mr Feeny's beef includes the usual criticisms of SOX: that its most burdensome provisions – enshrined in section 404 – are adding unnecessarily to companies' auditing costs and that it is tying up too much executive time.

But he warns it has also led to an “outsourcing of America's 100-year lead in capital formation” as companies shun US stock markets and seek listings in London and Hong Kong instead.

“Last year, while I was on a listening tour of bankers associations and the Chicago [derivatives] exchanges, the evidence was starting to come out in dribs and drabs. Now there's a sort of fire hydrant of evidence that we have a huge leak in our capital markets,” the Republican congressman says.

He casts himself in the

role of “an American economic Paul Revere” with his warnings. “The British are coming,” he says, using the words of the hero of the war of independence. “And by the way, so is Luxembourg coming, and Hong Kong,

Shanghai and a dozen other markets. I think it has already started being bad for America.”

Section 404 requires the disclosure of a company's internal controls and that those controls are checked



Tom Feeny: casts himself in the role of ‘an American economic Paul Revere’ with his warnings
Michael Terrance

by external auditors. That has forced companies to hire extra sets of auditors and distracted management from the day-to-day running of the business.

Two months ago, Mr Feeny launched a bill that would exempt from section 404 companies of less than \$700m in market capitalisation and whose revenues do not exceed \$125m.

Yet it is not clear legislators have the stomach to make changes to SOX. While many acknowledge it was an over-reaction to the Enron and WorldCom scandals, they also recognise it signalled to voters that Washington was getting tough on corporate wrongdoers.

Nor are lawmakers keen to tackle SOX when its two principal authors – Democratic senator Paul Sarbanes and Republican congressman Michael Oxley – are still in office. Indeed, the

Securities and Exchange Commission and the US accounting regulator are working on clarifying how companies should implement section 404.

At the weekend, Mr Oxley urged them to “promptly adopt” such changes, saying the costs of section 404 compliance were “not [due] to the text of the Sarbanes-Oxley Act, but to an overly zealous implementation of these internal control provisions”.

Mr Feeny thinks regulators have a role by clarifying some of the language in section 404 – such as more clearly explaining what is “material” for accounting disclosure purposes. But he believes the political winds will shift in favour of some legislative action after the forthcoming congressional mid-term elections.

That is partly because the first hard data on the effects

of section 404 are starting to emerge, providing evidence for congressional hearings.

He cites research – due out in September – by the Heritage Foundation, whose researchers have already found that SOX has had a dampening effect on business start-ups and the number of venture capital deals.

Mr Feeny also believes there will be an opening once Mr Sarbanes and Mr Oxley retire from Congress, as expected, after November's mid-term elections.

“I understand Senator Sarbanes may have been asking some of his Democratic colleagues as a personal favour ‘please don't do this while I'm here,’” he says.

“I happen to know that there are some people who, because of their promise from one gentleman to the other, don't want to sign on to anything. I think all that changes after November 8.”