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SEC to Delay 404 While Studying Costs and Benefits

The Securities and Exchange Commission outlined plans to give non-accelerated filers another extension to comply with the Section 404, the internal-control provision of the Sarbanes-Oxley Act.

SEC Chairman Christopher Cox announced that the SEC is planning to conduct a study of Section 404 costs and benefits during 2008. In his recent testimony before the U.S. House of Representatives Committee on Small Business, Cox said, "Unless there is an additional deferral, companies will incur compliance costs before the SEC has the benefit of study and analysis."

The Office of Economic Analysis is directing a study that will gather and analyze real-world data. The study will look for trends and provide a comparison to costs under the old auditing standard. The study will also focus attention on smaller public companies that are complying with 404 for the first time.

The study of costs and benefits is expected to have two main parts:

1. A web-based survey of companies that are subject to section 404, and
2. In-depth interviews with a subset of companies including those that are just now becoming compliant.

The two-part approach is intended to allow the SEC to gather data from a large cross-section of companies, while providing more detailed information about what drives the costs

and where companies derive the benefits, especially for newly compliant companies. In an effort to gather real-time data, the survey will take place in the coming months as companies for the first time prepare their financial statements and undergo external audits under the new auditing standard and internal assessments with the aid of the new management guidance.

Your Input, Please!

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To access the online survey:

<http://tinyurl.com/24sf9j>

"We anticipate that the study and analysis of the results will be completed no earlier than June 2008," Cox said in his testimony.

In the current scenario, smaller companies would begin complying with Sarbanes-Oxley Section 404(b) for fiscal years ending after December 15, 2008, which means companies will incur compliance costs before the SEC has studied any actual cost data.

Cox will propose to the SEC "that we authorize a further one-year delay in implementation for small businesses in order to base our

SEC Gives Smaller Companies Easier Access to Capital

The Securities and Exchange Commission (SEC) has approved changes that will give companies with less than \$75 million in public float faster and easier access to capital when they need it or market conditions are favorable. Specifically, the SEC adopted amendments to the eligibility requirements of Form S-3 and Form F-3 of the Securities Act to allow companies that do not meet the current public float requirements of the forms to nevertheless register primary offerings of their securities, subject to certain restrictions:

- The company must meet the other registrant eligibility conditions for the use of the respective form;
- The company cannot be a shell company and can not have not been a shell company for at least 12 calendar months before filing the registration statement;
- The company must have a class of common equity securities listed and registered on a national securities exchange; and
- The company may not sell more than the equivalent of one-third of their public float in primary offerings pursuant to the new instructions in any period of 12 calendar months.

These changes are intended to allow a larger number of public companies to benefit from the greater flexibility and efficiency in accessing the public securities markets afforded by Forms S-3 and F-3 in a manner that is consistent with investor protection.

"By extending the benefits of the Form S-3 and F-3 streamlined registration statements to approximately 1,400 smaller reporting companies, the Commission has significantly enhanced the ease and efficiency with which these companies can access the public securities markets," said John White, Director of the SEC's Division of Corporation Finance.

The effective date for these amendments will be 30 days after their publication in the Federal Register.

GETTING TO KNOW...



AnneMarie Scully

AnneMarie Scully, CPA, loves to learn what makes an organization tick – this deep understanding enables her to more fully serve the organization's needs. As senior audit manager at Tauber & Balser, P.C., AnneMarie provides audit and consulting services to public companies in a variety of industries, including manufacturing, real estate, service and technology.

"I enjoy keeping current with reporting requirements and researching technical issues," says AnneMarie, "and ensuring that my clients are in compliance with the regulations of the U.S. Securities and Exchange Commission."

AnneMarie advises her clients to be proactive with financial reporting. "Rather than looking at the accounting

function as a year-end activity, bring your accountant in to the business planning process early," she says, emphasizing that this increases the efficiency of audits, circumvents problems and saves companies money. "You'll avoid surprises at year end."

She also encourages companies to hire talent with specific experience in public company financing, including in-house staff, external accountants and consultants, and auditors.

In addition to her membership in national and state CPA societies, AnneMarie is active with the United Way and the Atlanta Lawn Tennis Association. AnneMarie earned a Bachelor of Business Administration at Emory University. She is married and the proud owner of two rat terriers

Contact AnneMarie: 404.814.4955 or ascully@tbcpa.com.

Fair Value Measurements a Reality

Ever since the Financial Accounting Standards Board (FASB) released Statement No. 157, *Fair Value Measurements*, there has been pushback about the start date. In particular, the Institute of Management Accountants and Financial Executives International have led a push for deferring FAS 157 by one year, citing the need for internal accounting teams, valuation experts and external auditors to have more time to learn the complexities of the standard.

Despite the request of these groups to delay implementation of the standard, the FASB has formally voted against a blanket deferral of Statement 157, which provides a framework for marking value estimates to market rather than historical cost.

So, for fiscal years beginning after November 15, 2007, companies will be required to implement the standard for financial assets and liabilities, as well as for any other assets and liabilities that are carried at fair value on a recurring basis in financial statements. As a result, Statement 157, along with its sister standard, Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*, becomes effective as originally scheduled in accounting for the financial assets and liabilities of financial institutions.

Standard 157 requires companies to measure fair value based on the exit price of an asset and market value placed on that asset – the standard essentially lays out the hierarchy that provides direction on how fair values are determined.

When the FASB voted to reject a deferral of Statement 157, it did provide a one-year deferral for the implementation of Statement 157 for other nonfinancial assets and liabilities.

PCAOB Staff Audit Practice Alert on Fair Value Measurements

The Public Company Accounting Oversight Board (PCAOB) has also published a Staff Audit Practice Alert on the audit of fair value

measurements in financial statements – only the second staff audit practice alert that the PCAOB has published to date.

This alert, *Matters Related to Auditing Fair Value Measurements of Financial Instruments and the Use of Specialists*, highlights four areas:

- Auditing fair value measurements;
- Classification of fair value measurements within the fair value hierarchy established by FAS 157;
- The use of specialists in fair value measurements; and
- The use of pricing services in fair value measurements.

“We were motivated to develop and issue this alert by the auditing challenges presented by the subprime credit situation and its effects on the markets and fair value measurements, and certain issues that might arise in the transition to Statement of Financial Accounting Standards No. 157,” said Marty Baumann, Director of the PCAOB Office of Research and Analysis.

For assistance with implementing FASB’s new fair value option, contact Marc Welch, CPA, audit principal-in-charge of Tauber & Balser, P.C.’s Audit Department. Send an email to: mwelch@tbcpa.com.

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decision on final implementation of 404(b) on the best available cost data.”

If approved, this would be the third extension for small companies. In his testimony, Cox stated that the goal of all these efforts is to implement Section 404 just as Congress intended – in the most efficient and effective way to meet the objectives of investor protection, well-functioning financial markets, and healthy capital formation by companies of all sizes.

“We won’t forget that for small business to continue to prosper in America, both strong investor protection and healthy capital formation must go hand in hand,” he said.

TAX TIP

Cost segregation is a low-risk, high-return tax planning method for property owners to increase cash flow and maximize the financial return on your business’s capital investments. It is a strategic tool, in which your real estate assets are identified, evaluated and categorized resulting in accelerated depreciation deductions. Instead of waiting years to see a return on real estate investments, a cost segregation study could help your company recover major capital improvement costs more rapidly. A cost segregation study could help your company receive a present value cash flow savings equaling 10 or more times the cost of its investment.

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Electronic Filing of Form D Mandated

In an effort to reduce filing burdens of smaller companies, the Securities and Exchange Commission has adopted provisions that will mandate electronic filing of Form D.

The phase-in period begins Sept. 15, 2008, during which time electronic filing will be voluntary. Electronic filing will become mandatory on March 16, 2009.

The SEC also adopted amendments to revise and update the information requirements of Form D. Specific revisions will include, among other changes,

- requiring filers to identify all issuers in a multiple-issuer offering;
- deleting the requirement to identify as "related persons" owners of 10 percent or more of a class of equity securities;
- replacing the current requirement to provide a business description with a requirement to provide industry group information from a pre-established list;
- requiring revenue range information for operating companies and net asset value information for hedge funds (subject to an option to decline to disclose);
- requiring reporting the date of first sale;
- specifying that material mistakes of fact or errors in a previously filed Form D require an amendment and when changes in a previously filed Form D or the passage of time require amendments;
- requiring that amendments contain current information in response to all information requirements;
- revising the minimum investment amount disclosure requirement to specify that it relates to outside investors only;
- permitting a limited amount of free writing to the extent necessary to clarify responses.

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