

SEC proposes delay in SOX Section 404(b) effective date

House Small Business Committee hearing

On Wednesday, December 12th, the U.S. House of Representatives' Small Business Committee held a hearing titled, "Sarbanes-Oxley Section 404: New Evidence on the Costs for Small Businesses." In addition to Securities and Exchange Commission (SEC) Chairman Christopher Cox, the panelists included five opponents to the implementation of certain aspects of Section 404 of the Sarbanes-Oxley Act of 2002.

Proposed delay of Section 404(b) for non-accelerated filers

In testimony before the committee, Chairman Cox announced his intentions to propose another one-year delay in the effective date for non-accelerated filers (i.e., those with less than \$75 million in public market capitalization) to implement Section 404(b) of the Sarbanes-Oxley Act of 2002. Section 404(b) requires the independent auditors of public companies to attest to, and report on, management's assessment regarding the effectiveness of internal control over financial reporting. The current effective date for Section 404(b) is for fiscal years ending on or after December 15, 2008. If the Commission adopts another one-year delay, it would move the effective date to years ending on or after December 15, 2009.

Chairman Cox's proposal did not include a delay in the effective date for the implementation of Section 404(a), which requires management to include in its annual reports an assertion regarding the effectiveness of internal control over financial reporting. Section 404(a) is effective for non-accelerated filers in fiscal years ending on or after December 15, 2007.

Planned study on the costs and benefits of 404

Chairman Cox indicated that the proposed Section 404(b) delay would give the SEC an opportunity to complete a study of the costs and benefits of Section 404, which he expects to have completed no earlier than June of 2008. Conducted under the direction of the Office of Economic Analysis, the study will seek to identify trends and provide a comparison of costs between

Auditing Standard Nos. 2 and 5. It will also focus on small companies that are complying with Section 404 for the first time. The study will include a Web-based survey for companies subject to 404 and in-depth interviews with selected companies.

Grant Thornton's recommendation

We encourage non-accelerated filers to take the Section 404(a) requirements seriously and to take steps now to ensure that they have in place an effective assessment process to support their evaluation of the adequacy of internal control over financial reporting. These steps should involve:

- Analyzing risks that have a reasonable possibility of causing a misstatement in the financial statements,
- Identifying controls that adequately mitigate those risks,
- Evaluating appropriately persuasive information about whether those controls are designed and operating effectively,
- Prioritizing and correcting identified control weaknesses (if any), and
- Preparing documentation supporting the evaluation.

The SEC previously published guidance that can help management design an effective process for evaluating internal control in accordance with the Section 404(a) requirements (<http://www.sec.gov/rules/interp/2007/33-8810.pdf>). In addition, Grant Thornton LLP is working with the Committee of Sponsoring Organizations (COSO) to develop guidance that will help companies more effectively and efficiently monitor their internal control systems. A discussion document articulating the general concepts of effective internal control monitoring is available on COSO's Web site at www.coso.org.

If you have questions or comments, please contact your local engagement partner or Trent Gazzaway at Trent.Gazzaway@gt.com.