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September 14, 2006

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Internal Control Reporting for Non-Accelerated Filers As Required by Section 404 of the Sarbanes-Oxley Act; File Number S7-06-03

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to offer comments on the Securities and Exchange Commission (SEC) proposal to delay by one year the due date for management's and for the auditor's internal control report for non-accelerated filers as required under Section 404 of the Sarbanes-Oxley Act of 2002.

Under the SEC proposal, a non-accelerated filer would begin to provide the management internal control report required by Section 404(a) in the annual report it files for a fiscal year ending on or after December 15, 2007 and, in the case of the auditor's attestation report required by Section 404(b), in the annual report it files for a fiscal year ending on or after December 15, 2008. For calendar year filers, this would mean that the management internal control report would have to be included in the 2007 annual report and the auditor's report in the 2008 annual report. Without the delay, non-accelerated, calendar year filers would have to file the management internal control report in the 2006 annual report and the auditor's attestation in the 2007 annual report.

ICBA's Position

Although we commend the SEC for proposing an additional delay in the Section 404 due dates for non-accelerated filers, we do not believe that a one-year delay will afford

¹The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 265,000 Americans, ICBA members hold more than \$876 billion in assets \$692 billion in deposits, and more than \$589 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

sufficient time for non-accelerated filers and their auditors to benefit from the anticipated changes that the Public Company Accounting Oversight Board plans to make to Auditing Standard No. 2 as well as the implementation guidance that the PCAOB plans to issue for auditors of smaller public companies. Both the SEC and the PCAOB have indicated that they will be completely revising AS2 to address internal control requirements for smaller public companies and will be issuing final guidance to assist in management's performance of a top-down, risk-based and scalable assessment of controls over financial reporting. We do not expect that the changes to AS2 and the guidance will be final until the middle of next year which leaves little if any time for management to understand the new guidance and complete its Section 404 internal control report by the end of 2007.

ICBA recommends at least a two-year delay in the Section 404 due dates for non-accelerated filers so the calendar year filers will have until the due date for their 2008 annual report to file their management internal control reports and the due date for their 2009 annual report to file the auditor's attestation report. A two-year delay will give the SEC and the PCAOB additional time to consider all the comments it will receive in response to the SEC's Concept Release issued on July 11, 2006², any proposed changes to AS2 and any proposed guidance for smaller public companies. It will also give more time for management of non-accelerated filers to understand and apply all the new guidance that will be issued from the SEC and the PCAOB. The delay will also give management additional time to gain some efficiencies in the process of reviewing and evaluating the effectiveness of internal controls before becoming subject to the requirement that the auditor attest to the management's assessment of internal controls.

Recently, the Committee of Sponsoring Organizations (COSO) issued guidance intended to help management of smaller public companies to understand and apply the COSO framework. A two-year delay will allow management the opportunity to understand and thoroughly apply the guidance issued by the COSO. This guidance outlines 20 fundamental principles associated with good internal controls, defines each principle, and describes a variety of approaches that smaller companies can use to apply the principles. In the case of many non-accelerated filers, it will take at least until the end of next year before management will understand the COSO framework so that, in consultation with their auditors, they can plan and conduct their internal control assessments.

ICBA agrees with the SEC that delaying the auditor's attestation report until the year after the management's report is due will help non-accelerated filers smooth the cost spike that many accelerated filers have experienced in their first year of compliance with the Section 404 requirements. For smaller public companies, the most expensive part of Section 404 compliance has been the auditor's attestation report. Delaying that report until a year after the management report is due will help to reduce audit expenses. **However, ICBA still believes that the costs of Section 404 are disproportionately higher for smaller public companies and that most smaller public companies should be exempt from the requirement that an auditor attest to their internal controls.**

² Release No. 34-54122; File No. S7-11-06

Conclusion

ICBA recommends at least a two-year delay in the Section 404 due dates for non-accelerated filers so the calendar year filers will have until the due date for their 2008 annual report to file their management internal control reports and the due date for their 2009 annual report to file the auditor's attestation report. A two-year delay will give the SEC and the PCAOB additional time to consider all the comments it will receive in response to the SEC's Concept Release, any proposed changes to AS2, and any proposed guidance for smaller public companies and will give the management and auditors of non-accelerated filers additional time to understand and apply all the new guidance including the COSO guidance issued two months ago.

ICBA appreciates the opportunity to comment. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,



Christopher Cole

Regulatory Counsel