
SEC Extends Deadline for Smaller Public Companies to File Auditor Attestation Report on Internal Control over Financial Reporting

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As a result of action by the Securities and Exchange Commission, most smaller public companies will not have to file their first auditor attestation report on internal control over financial reporting until their 2009 fiscal years. The SEC announced on June 20, 2008, that it had approved a one-year extension of the compliance date for "non-accelerated filers" to meet the auditor attestation requirement of Section 404(b) of the Sarbanes-Oxley Act.¹ With the extension, non-accelerated filers will be required to provide the attestation reports in their annual reports for fiscal years ending on or after December 15, 2009.

Under Section 404(a) of the Sarbanes-Oxley Act and the SEC's regulations implementing that section, every public reporting company is required to include in its annual report a management report on the effectiveness of the company's internal control over financial reporting as of the end of the fiscal year covered by the report. Non-accelerated filers became subject to this rule beginning with fiscal years ended on or after December 15, 2007. Section 404(b) and the SEC's regulations also require that each public company provide an attestation report from its registered public accounting firm about internal control over financial reporting. The SEC had previously deferred implementation of the audit attestation requirement for non-accelerated filers until fiscal years ending on or after December 15, 2008, and that date has now been further extended to fiscal years ending on or after December 15, 2009.

In conjunction with its extension of the compliance date for the auditor attestation requirement, the SEC has initiated a study of the costs and benefits of Section 404 implementation. The SEC says that the study will pay special attention to the consequences for smaller companies and the effects

of the Section 404 auditor attestation requirements. In addition to reviewing information from annual reports filed this spring, the SEC staff will conduct interviews and a web-based survey to collect "real world" data and will analyze "what drives costs, particularly for smaller companies, and where companies and investors derive the benefits from Section 404." The study will help determine whether the SEC's 2007 interpretive guidance for management's assessment and the Public Company Accounting Oversight Board's 2007 amended auditing standard are having the intended effect of facilitating more cost-effective internal control evaluations and audits of smaller companies.

¹A "non-accelerated" filer is an issuer that is not an "accelerated filer" or a "large accelerated filer," as those terms are defined in SEC Rule 12b-2. Generally speaking, a non-accelerated filer is an issuer that has less than \$75 million in public float as of the last business day of its most recently completed second fiscal quarter; that has not been subject to the reporting requirements of the Securities Exchange Act of 1934 for at least 12 calendar months; or that has not filed at least one annual report under the Act's reporting requirements.

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