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February 22, 2008

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

Re: Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers; File No. S7-06-03

Dear Mrs. Morris:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to offer comments in connection with the Securities and Exchange Commission's proposal to delay for one additional year the implementation of Section 404(b) of the Sarbanes Oxley Act of 2002 (SOX) for non-accelerated filers. SOX Section 404(b) requires SEC filers to include in their annual reports an attestation report of their independent auditor on internal control over financial reporting. Under the SEC's proposal, a non-accelerated filer would be required to provide an auditor's attestation report on internal control over financial reporting in an annual report filed for fiscal years ending on or after December 15, 2009.

Summary of ICBA's Comments

ICBA strongly supports the SEC's proposed delay in the implementation of SOX 404(b) for the non-accelerated filers until 2009 but is concerned that there is insufficient time to conduct an accurate and comprehensive study on the costs and benefits of Section 404 and whether it is being implemented in a cost-effective manner for smaller reporting

¹*The Independent Community Bankers of America represents 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. 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 268,000 Americans, ICBA members hold more than \$908 billion in assets, \$726 billion in deposits, and more than \$619 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

companies. ICBA therefore recommends that the delay be extended for two years or until the end of 2010 to allow additional time to prepare and conduct the survey and to issue any further guidance.

ICBA's Position

ICBA commends the SEC for its proposal to delay the implementation of Section 404(b) for non-accelerated filers for an additional one year period until a study is completed to determine the costs and benefits of internal control over financial reporting (ICFR) requirements. If the delay is implemented, calendar year, non-accelerated filers will have until 2009 to implement the SOX 404(b) requirements. In addition to allowing time for a study, the delay will give non-accelerated filers and their auditors a chance to understand and apply Auditing Standard No. 5 (AS5) and will give the Public Company Accounting Oversight Board (PCAOB) additional time to promulgate its guidance for ICFR audits of smaller public companies. For many publicly held community banks, the delay will save thousands of dollars in auditing fees and other indirect costs associated with ICFR audits.

In letters to the SEC and the PCAOB and in recent testimony before the House Small Business Committee, ICBA has consistently urged the SEC to delay the implementation of SOX 404 for non-accelerated filers and conduct a study to determine whether Auditing Standard No. 5 and recent guidance from the SEC on management reporting would reduce the costs of SOX 404 on accelerated SEC filers.² We wholeheartedly agree with the SEC that implementation of SOX 404(b) should be delayed until the proposed SEC SOX 404 study is completed and it is clear that further guidance from the SEC or the PCAOB is unnecessary to improve the cost and efficiency of ICFR requirements, particularly with respect to smaller public companies. Otherwise, publicly held community banks and many smaller public companies may end up incurring unnecessary SOX 404(b) compliance costs before the SEC would have the benefits of the study.

However, ICBA is concerned that the SEC will rush the proposed SOX 404 study to meet a fall deadline. We note that the SEC intends to conduct a Web-based survey of companies that are subject to the ICFR requirements as well as in-depth interviews with a subset of these companies. The SEC's plan is to gather data from a large cross-section of companies about the costs and benefits of compliance with the ICFR requirements and to evaluate whether new management guidance and AS5 are having the intended effect of facilitating more cost-effective ICFR evaluations and audits. The SEC wants to begin this study this summer and complete it by this fall.

While ICBA agrees with the SEC that the study should be comprehensive and should include in-depth interviews with a large cross-section of companies, we believe that it will be difficult for the SEC to complete the study and evaluate the results before the end

²See the testimony of William A. Loving, Jr. before the House Small Business Committee concerning "Sarbanes-Oxley Section 404: New Evidence on the Costs for Small Business" at a hearing on December 12, 2007. Also see ICBA's letters dated February 26, 2007 and July 12, 2007 to the SEC and the PCAOB concerning proposed AS5.

of the first quarter of next year much less by fall of 2008. Conducting a comprehensive SOX 404 survey will be very challenging because of all the different types of direct and indirect compliance costs that are involved. The interviewing part of the survey may take up to six months or more depending on the number of companies that are interviewed and the amount of information that is asked for. We understand that the SEC staff is currently working on a very short deadline to develop the survey and conduct a pilot program.

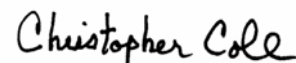
We recommend that the SEC delay implementation of SOX 404(b) for non-accelerated filers for two years, or until the end of 2010. This will give the SEC more time to prepare and pilot a comprehensive survey, conduct interviews with a broad cross section of accelerated filers, and analyze results. It is important that the SEC study accurately assess the impact of AS5 and other guidance on SOX 404 costs and that it not be rushed just for the sake of having non-accelerated filers implement SOX 404(b) by 2009. It is also important that the survey also pay special attention to those small companies that are complying with the ICFR requirements for the first time and that are using the new management guidance to prepare their management reports under SOX Section 404(a). A two year delay will give the SEC sufficient time to conduct the survey comprehensively and accurately and also will allow time for the SEC to issue additional SOX 404 guidance if the survey indicates that more guidance is needed.

Conclusion

ICBA commends the SEC for its proposal to delay the implementation of Section 404(b) for non-accelerated filers for an additional one year period until a study is completed to determine the costs and benefits of internal control over financial reporting requirements. However, ICBA is concerned that the SEC will not have sufficient time to prepare and conduct the proposed SOX 404 study because of the complexity of the issue and the time it will take to interview companies. Therefore, we recommend that the SEC delay implementation of SOX 404(b) for non-accelerated filers for two years, or until the end of 2010.

ICBA appreciates the opportunity to offer comments in connection with the SEC's proposal to delay the implementation of Section 404(b) of the Sarbanes Oxley Act of 2002 (SOX) for non-accelerated filers. 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

Senior Regulatory Counsel