



July 12, 2007

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20459-1090

Re: Comments on the Filing of Proposed Rule on Auditing Standard No. 5  
Release No. 34-55876; File No. PCAOB-2007-02

Dear Ms. Morris:

America's Community Bankers<sup>1</sup> is pleased to submit comments on the Securities and Exchange Commission's ("SEC") proposed rule relating to the Public Company Accounting Oversight Board's (PCAOB) Auditing Standard No. 5, *An Audit of Internal Control Over Financial Reporting That Is Integrated With an Audit of Financial Statements* ("AS5"). ACB applauds the efforts of the SEC and the PCAOB to develop a less burdensome and less costly standard for the audit of internal control over financial reporting ("ICFR").

ACB supports AS5 as submitted by the PCAOB to the SEC for final approval as required by the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"). The revised auditing standard addressed many of the concerns raised at the SEC/PCAOB roundtables and in comment letters. We believe that AS5 is an improvement over the previous prescriptive and stringent Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with An Audit of Financial Statements* ("AS2"). AS5 is a streamlined and more useful standard that contains instructive notes throughout on scaling the audit for small companies, entity level controls, testing and walkthroughs. Specifically, we support provisions of the revised auditing standard that:

- Direct auditors to focus on areas of greatest risk that a company's internal controls will fail to detect or prevent a material misstatement in financial statements;
- Reduce the number of mandatory obligations of an ICFR such as the elimination of the requirements for auditor walkthroughs and testing of a "large portion" of a company's operations;
- Direct auditors to perform only those procedures that are necessary to achieve the benefits of the internal control audit;

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<sup>1</sup> America's Community Bankers ("ACB") is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit [www.acb.us](http://www.acb.us).

- Permit auditors to use the work of others, knowledge obtained from prior audits, and their professional judgment in conducting an audit of ICFR;
- Scale the audit to fit the size and complexity of any public company; and
- Eliminate the auditor's opinion on management's assessment process of internal controls.

### **Implementation Concerns**

ACB commends the efforts of the SEC and the PCAOB to revise the auditing standard for ICFR with the goal of reducing the costs and burdens of the audit of ICFR. In order for these objectives to be achieved and the revised auditing standard to be successful, the SEC and PCAOB must continue to closely monitor the implementation of AS5. We are concerned that there is little incentive for auditors to change the manner in which they audit ICFR. In fact, the opposite is true because of liability concerns. The PCAOB is authorized to discipline auditors and levy substantial civil money penalties for a broad range of violations of Sarbanes-Oxley, PCAOB rules, and securities laws relating to the preparation and issuance of audit reports.

It is important that the PCAOB continues its outreach programs to accounting firms to educate and address auditor concerns with AS5. The PCAOB should reassure auditors that their use of professional judgment, the work of others, and knowledge from prior audits will not lead to sanctions and penalties. Otherwise, we believe that auditors will "over-audit" and continue to engage in unnecessary walkthroughs, require excessive documentation, and engage in duplicative and redundant testing of internal controls at all levels. The PCAOB must appropriately adjust its inspection program and closely monitor auditing firms and the implementation of AS5. In addition, the SEC must actively engage in its oversight responsibility to ensure that the benefits of AS5 will be realized.

### **Ombudsman**

We recommend that an ombudsman office be established at the PCAOB. Such an office would be a valuable tool for the PCAOB to help monitor and ensure the implementation of AS5 as intended. The Federal Deposit Insurance Corporation ("FDIC") maintains such an office which has been successful in answering inquiries from bankers about FDIC policies and procedures, bank examination matters, referring issues to FDIC subject matter experts within the FDIC, and bringing parties together to clarify issues. A similar and informal program at the PCAOB would be of great advantage to auditors and to the companies they audit. For example, we have heard from our members that audit firms are taking very different approaches to how they will adjust their audits of ICFR based on the new auditing standard: one bank stated that their auditor anticipates few changes to their audit of ICFR based on AS2 and another stated that the auditor will make changes based on a review of management's approach to internal controls. An ombudsman could help resolve these issues and ensure consistency of responses.

## **Regulatory Overlap**

ACB continues to believe that the SEC and the PCAOB should do more to recognize bank compliance with the internal control requirements and reports required by bank regulators under the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”), and reduce the duplicative burden of ICFR for banks under regulations implementing Sarbanes-Oxley. Furthermore, although ACB supports the elimination of the auditor’s opinion on management’s evaluation of internal controls as a step in the right direction, we firmly believe that an attestation, as literally required by Sarbanes-Oxley, is sufficient and that no opinion is necessary. We have raised these issues in prior comment letters to the SEC and PCAOB.<sup>2</sup>

## **Further Extension for Non-Accelerated Filers**

Finally, ACB members that are non-accelerated filers continue to be concerned with the costs and burdens of compliance with Section 404. These smaller companies are acutely aware of the struggle accelerated filers have undergone to implement Section 404, even though the larger companies have significantly more resources and capability. Non-accelerated filers are the companies that can least afford to add personnel, hire consultants and upgrade or change systems at enormous costs. This is particularly true if the SEC’s interpretive guidance for Management’s Report on Internal Control Over Financial Reporting (“Management’s Guidance”) and AS5 prove unsuccessful in reducing the costs and other burdens associated with a company’s implementation of Section 404. This will not be known until there has been experience in the field with Management’s Guidance and AS5.

ACB strongly urges the SEC to grant a further one-year extension for compliance with Section 404(a) and Section 404(b) of Sarbanes-Oxley for public companies that are non-accelerated filers. We have requested this extension in testimony before the House Small Business Committee and in comment letters.<sup>3</sup> The SEC’s Management’s Guidance was published on June 20, 2007. It is anticipated that the final AS5 will be available at the end of July, 2007 and effective for audits of fiscal years ending on or after November 15, 2007. There will not be adequate time to gain experience with the Management’s Guidance or AS5 to ensure that they will reduce the burdens and costs of the audit of ICFR for non-accelerated filers. Non-accelerated filers should not be

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<sup>2</sup> See letter dated February 26, 2007 from ACB Regulatory Counsel Sharon Haeger to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, commenting on proposed Management’s Report on Internal Control Over Financial Reporting; and letter dated February 26, 2007 from ACB Regulatory Counsel Sharon A. Haeger to the PCAOB’s Office of the Secretary, commenting on the proposed auditing standard, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements*.

<sup>3</sup> See testimony of ACB’s President and CEO, Diane Casey-Landry, before the House Small Business Committee on June 5, 2007; see letter dated February 26, 2007 from ACB Regulatory Counsel Sharon A. Haeger to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, commenting on Management’s Report on Internal Control Over Financial Reporting; and letter dated February 26, 2007 from ACB Regulatory Counsel, Sharon A. Haeger to the PCAOB’s Office of the Secretary, commenting on the proposed auditing standard, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements*.

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required to comply with Management's Guidance and AS5 until accelerated filers have gained experience with an audit of ICFR using the revised standard.

ACB appreciates the opportunity to comment on AS5. Should you have any questions please contact Patricia A. Milon at (202) 857-3121 or [pmilon@acbankers.org](mailto:pmilon@acbankers.org) or the undersigned at (202) 857-3186 or [shaeger@acbankers.org](mailto:shaeger@acbankers.org)

Sincerely,

A handwritten signature in black ink that reads "Sharon Haeger". The signature is written in a cursive, flowing style.

Sharon A. Haeger  
Regulatory Counsel