

**stewart**



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June 23, 2005

Mr. Donald T. Nicolaisen  
Chief Accountant  
U.S. Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, D.C. 20549

RECEIVED  
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Office Of The Chief Accountant

Re: Sarbanes-Oxley

Dear Mr. Nicolaisen:

We understand and appreciate that the Securities and Exchange Commission is continually seeking feedback from filers with regard to the implementation and compliance with the requirements of the Sarbanes-Oxley act. As an accelerated filer who recently completed the first year of compliance, we are pleased to provide input for your consideration, in the form of the attached position paper.

We appreciate your consideration of our views and would be happy to discuss them with you or your staff, at your convenience.

Respectfully,

Max Crisp  
Executive Vice President and  
Chief Financial Officer

mc: rf

cc: Malcolm S. Morris, Chairman and Co-CEO, SISCO  
Stewart-Morris, Jr., President and Co-CEO, SISCO  
Craig Allen, Partner, KPMG  
Michael B. Skalka, EVP and General Counsel, Stewart Title Guaranty Company  
Mark Winter, Senior Vice President/Director, National and International  
Operations, Stewart Title Guaranty Company  
John A. Watson, Partner, Fulbright & Jaworski L.L.P.

## **Position Paper on Sarbanes – Oxley Section 404**

By Stewart Information Services Corporation  
June 2005

It seems appropriate to summarize and update our previous recommendations and comments about Sarbanes – Oxley Section 404 (“SOX 404”). The Financial Executive Research Foundation recently issued its study of the “Practices of Leading Companies” relating to SOX 404. Considerable media attention is currently being given to the subject.

In summary, we believe there is some value in SOX 404 work. We have gained a more thorough knowledge of our financial controls. That is good. However, after doing all the assessments, documentation, testing, auditing and the other requirements of SOX 404, we have concluded SOX 404 requirements and procedures should be modified as soon as practicable. In that spirit, we have listed the following recommendations.

### **1. A “review” and not an “audit”**

Change the requirements for the external auditor from doing an “audit” to doing a “review” of controls. The auditor’s opinion would be changed accordingly. We understand this point would require study

### **2. Quarterly deadline – 40 days**

Change the proposed deadlines by the SEC for the quarters, from 35 days to 40 days. (We really believe a 45 day deadline would be preferable). We believe adding the SOX 404 work, while at the same time reducing the deadlines for filing has been harsh and unreasonable. At our company, we consolidate more than 250 entities and in many ways have a more complicated accounting closing than many larger companies.

*Comment: A major goal of SOX 404 is to produce financial reports that are accurate and are of the highest disclosure quality. The audit committee, the external auditor and the company should be given adequate time to meet and discuss financial reports. They should not have to work under the pressure of deadlines that are unreasonable. It is not clear to us that investors and others gain significantly because a deadline for a quarterly filing is moved ahead by five days.*

### **3. An evaluation date for SOX 404**

Consider allowing companies to choose one of their own quarter ends (instead of December 31) to assess and certify their controls. Auditors would certify controls as of the selected date. They would be required to use the same quarter end each year. We value goodwill at a date other than December 31. Why not do internal controls the same way?

#### **4. “To the best of my knowledge and belief...”**

Add the time-honored words (“...the best of...”) to the SOX certificates. By deleting these words the signer is being charged with somewhat higher responsibilities and at a level not in line with the common sense of fairness under American law.

#### **5. Additional details**

See copies of our letters to the SEC dated March 24, 2004 and May 19, 2004 for other details (attached).

#### **6. Survey by the Financial Executive Research Foundation**

Revise future SOX 404 requirements to respond to the following major points made in a study completed in May 2005 by the Financial Executive Research Foundation:

- “Excessive cost of compliance.
- Diversion of management’s attention from running the business.
- Changed relationship with external auditors.
- Audit coverage becomes more important than risk.
- Placing restrictions on IT system changes or acquisitions.
- In some cases, U.S. companies have been placed at a competitive disadvantage...”

Prepared by Max Crisp  
Stewart Information Services Corporation  
Chief Financial Officer  
June 2005

END

March 24, 2004

Elizabeth M. Murphy, Chief  
Office of Rulemaking  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0312

Dear Ms Murphy:

We respectfully request you leave the future deadlines for your annual report filings at 75 days and not reduce it further to 60 days. For reasons given below, we believe this change is absolutely essential. We believe leaving the quarterly report deadline at 40 days instead of reducing it further to 35 days is also a significant need.

**Actual experience.** One of the purposes of your phase-ins of deadlines must have been to see what experience itself would show about the reasonableness of reducing the deadlines further in March 2005. Our experience in March 2004 says any further reduction from the 2004 deadline is harsh and unfair. The already-reduced deadline of 75 days is fair and achievable.

We filed this year as required, on March 15, 2004 (or 75 days). Our work included good planning and benefited from a high quality staff and good technology. We worked many overtime hours. We produced financial statements and related reports by compiling data from more than 250 entities. Our operating environment is highly decentralized, as is true for many companies. Consolidating a large number of different locations takes time.

We were stretched to our near-limit. We required 100% of the current allowable deadline of 75 days. While we hope we can improve some next year, we are not sure we can. We are extremely concerned about our ability to reduce our time by 15 days. If actual experience counts, and it should, the 75-day deadline is appropriate.

**Other reporting companies.** We believe the experience in this year's filings by most of your other reporting companies with large numbers of subsidiaries to consolidate has been comparable to ours. We believe they will agree with our recommendation of a 75-day deadline.

This is particularly true for those of us who are in the "middle class" (those who are not in the smaller group established by your \$75 million threshold and those who are not

included in the mega companies who generally can close faster). A survey conducted by you of middle-size companies asking for comments on a deadline of 75 days versus 60 days would, we believe, show an overwhelming plea for a 75-day deadline.

**Accuracy and quality.** To reason that we and other companies are asking for more time than is really needed would not be accurate. A vast majority of us want to close without making errors. We want to release information that is well written while attaining a quality in reporting that you also are seeking. We do have pride and want to do it right. Please give us the appropriate amount of time we believe actual experience shows we need.

**External auditors.** While planning allows the auditors to do much of their work before the final closing, there is no question the auditors must have sufficient time to reach their opinion on the final numbers. We believe this is one of the most valid arguments against shortening the deadline to 60 days.

**Audit committee.** Still another major serious problem with shortening the deadline to 60 days is it does not allow proper time for the audit committee to meet its responsibilities after it receives input from the auditors. The obvious serious nature of this issue is clear without us elaborating here.

**Quarterly reports.** We believe the arguments made above apply also to the reduction in quarterly deadlines to 35 days instead of 40 days. We find it difficult to believe that allowing 5 more days in filings will disturb the balance that is needed between reporting properly and reporting quickly.

**Balance.** In closing, we agree with the point you make in your final rule about the balance that is needed between prompt filings and the time needed to properly report to you. We believe experience has now shown that 60-day and 35-day deadlines will tilt the balance of the reports toward too much danger of possible:

- Unnecessary and serious inaccuracies
- Poor quality of reporting
- Auditing mistakes
- Encroachment on the abilities of audit committees meeting their responsibilities

We respectfully request you make the 75-day and 40-day deadlines permanent for 2005 and subsequent years.

Very truly yours,



Max Crisp  
Executive Vice President and  
Chief Financial Officer

**bcc:** Malcolm Morris  
Stewart Morris, Jr.  
Dr. Doug Hodo  
John Watson  
Clyde Pehl  
Alison Evers

May 19, 2004

Mr. Donald T. Nicolaisen  
Chief Accountant  
U.S. Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, D.C. 20549-0312

Dear Mr. Nicolaisen:

We all enjoyed your insight and comments as a panelist at the May 13 Financial Reporting Symposium in Houston. I personally want to thank you for the opportunity to meet with you immediately following the morning session. As you will recall, we discussed your comments regarding your sensitivity to the fiscal 2004 accelerated filer deadlines. The acceleration of the Form 10-K deadline from this year's 75 day deadline to 60 days, simultaneous with the initial implementation of Section 404 of the Sarbanes-Oxley Act (SOX 404), we believe is an unreasonable burden to be placed on registrants and their audit committees, independent auditors and legal counsel. We further believe the same is true with the scheduled acceleration of the Form 10-Q deadline from 40 days to 35 days.

During the conference, you indicated that your office had not received any letters of concern from registrants since the issuance of Final Rule 33-8128. On March 24, 2004, I wrote a letter to Ms. Elizabeth M. Murphy, Office of Rulemaking of the SEC. I have enclosed a copy of this letter for your convenience. With respect to other registrants, I can only surmise that the lack of feedback would be due to their reluctant acceptance of the Final Ruling following the SEC's period for public comment. As you recall, 282 of the 302 public comment letter respondents - which included registrants, law firms, accounting firms, and other interested parties - expressed serious concern over the new regulations. Such respondents warned of the risk these regulations may have on the quality of financial information, together with the undue hardship and cost of complying with the new regulations.

We believe the 75-day deadline applicable to the Form 10-K for the past year ended December 31, 2003, and the 40-day deadline for the Form 10-Q in the current year should be retained on a permanent basis as the filing requirements. Our primary reason supporting this request is the time required for the proper pre-filing reviews by internal and external parties, which are discussed below. To begin, here are a few relevant facts about our company:

- We are a real estate information and transaction management company providing title insurance and related services through more than 7,200 issuing locations in the United States and several international markets;

- We operate in two business segments, which generated \$2.2 billion in consolidated revenues during 2003, with total assets of \$1.0 billion at December 31, 2003;
- We have approximately 250 consolidated subsidiaries - many of them with minority interests - and an additional 50 equity investees. The primary reason for the large number of subsidiaries and affiliates is our focus on decentralized operations to attract and retain successful entrepreneurially-run companies.

Like many other registrants, our quarterly and annual pre-filing review process involves several internal and external parties, which are presented below:

- Senior financial management
- Disclosure Committee
- Co-Chief Executive Officers
- Independent Auditors, including SEC Reviewing Partner
- Legal Counsel- internal and external
- Audit Committee of Board of Directors

The pre-filing process also includes the review, completion and submission of internal certifications from operations and financial management in both field and corporate locations to support the executive officer certifications under Section 302 of the Sarbanes-Oxley Act.

As you can understand, once the financial statements and reports are in fairly final form, the complete pre-filing review process can take anywhere from two weeks to three weeks, with the Form 10-Q toward the lower end of the range, and the Form 10-K toward the higher end of the range. Further, any substantive revisions to the draft documents resulting from the review process must be re-circulated to the reviewing parties prior to approval of final documents and filing with the SEC.

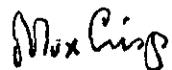
Using our most recent filings as examples, we filed our 2004 first quarter Form 10-Q on Monday, May 3, 2004 (33 days); and our 2003 Form 10-K on March 15, 2004 (75 days). Although we were successful in filing our Form 10-Q in less than 35 days, our independent auditors and Audit Committee expressed concern about the compressed timeline for their review. Fortunately, the review process proceeded satisfactorily due to the limited number of discussion points with our first quarter reporting. With respect to the Form 10-K filing, we have serious concerns as to whether we can meet a 20% deadline reduction (for fiscal 2004), immediately following a 17% deadline reduction (in fiscal 2003).

In further support of our reasoning, I would also ask that you review the accompanying letter sent to Ms. Murphy.

Mr. Nicolaisen, I appreciate your sensitivity to the dual challenges facing registrants, their audit committees and professional advisors this upcoming year-end with the accelerated filer deadline and SOX 404 implementation. We would all agree that it is imperative that registrants publish quality financial information to investors.

Accordingly, we respectfully request that the SEC's Final Rule be amended to make permanent the Form 10-K and Form 10-Q deadlines of 75 days and 40 days, respectively.

Very truly yours,

A handwritten signature in black ink that reads "Max Crisp". The signature is written in a cursive, slightly slanted style.

Max Crisp  
Executive Vice President and  
Chief Financial Officer

bcc: Craig Allen  
Laura McMahan