

SUMMARY OF COMMENTS

**Concerning the Commission's Proposed Rules Regarding
Temporary Postponement of the Final Phase-in Period for Acceleration of Periodic Report
Filing Dates
Securities Act Release No. 8477
Exchange Act Release No. 50254**

File No. S7-32-04

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I. List of Commenters

a) Accounting Firms and Accountants

1. BDO Seidman, LLP (“BDO”)
2. Deloitte & Touche LLP (“Deloitte1”)
 - a. Letter dated July 28, 2004 (“Deloitte1”)
 - b. Letter dated September 28, 2004 (“Deloitte2”)
3. Ernst & Young LLP (“E&Y”)
4. Group of the largest four accounting firms (“Four Firms”)
 - a. Deloitte & Touche LLP
 - b. Ernst & Young LLP
 - c. KPMG LLP
 - d. PricewaterhouseCoopers LLP
5. Gary Bilello, CPA (“Bilello”)
6. KPMG LLP (“KPMG”)
7. Paul Allen, CPA (“Allen”)
8. PricewaterhouseCoopers LLP (“PWC”)

b) Associations

9. American Bar Association (“ABA”)
10. American Institute of Certified Public Accountants (“AICPA”)
11. American Society of Corporate Secretaries (“ASCS”)
12. America’s Community Bankers (“ACB”)
13. Business Roundtable (“BR”)
14. National Association of Real Estate Investment Trusts (“NAREIT”)
15. New York State Bar Association (“NYSBA”)

c) Corporations and Corporate Executives

16. Addison (“Addison”)
17. AmSouth Bancorporation (“AmSouth”)
18. Astoria Financial Corporation (“Astoria”)
19. BMC Software, Inc. (“BMC”)
20. Central Vermont Public Service Corporation (“CVPSC”)
21. Computer Sciences Corp. (“CSC”)
22. Eli Lilly and Company (“Eli Lilly”)
23. Enterprise Products GP (“Enterprise”)
24. Federal Signal Corporation (“FSC”)
25. FFLC Bancorp, Inc. (“FFLC”)
26. First Federal Bancshares of Arkansas (“FFBA”)
27. FirstBank Northwest (“FirstBank”)
28. Franklin Financial Services Corporation (“FFSC”)
29. Horizon Organic Dairy (“Horizon”)
30. ICU Medical, Inc. (“ICU”)
31. MAXXAM Inc. (“MAXXAM”)
32. MBNA Corporation (“MBNA”)

- 33. Pfizer (“Pfizer”)
- 34. Protective Life Corporation (“PLC”)
- 35. Red Robin Gourmet Burgers, Inc. (“Red Robin”)
- 36. Spectrum Organic Products (“Spectrum”)
- 37. The Chubb Corporation (“Chubb”)
- 38. Valero Energy Corporation (“VEC”)
- 39. Vineyard National Bancorp (“Vineyard”)

d) Law Firms and Attorneys

- 40. Becker & Poliakoff, P.A. (“Becker”)
- 41. Bierce & Kenerson, P.C. (“Bierce”)
- 42. Troutman Sanders LLP (“Troutman”)

II. Overview

On August 25, 2004, the Commission issued a proposal to postpone for one year the final phase-in period for acceleration of the due dates of quarterly and annual reports required to be filed under the Securities Exchange Act of 1934 by certain reporting companies known as “accelerated filers,” as defined under Exchange Act Rule 12b-2. We received 41 comment letters on the proposal. We also received two letters prior to publishing the proposal from accounting firms that also submitted letters on the proposal. The commenters were comprised of the following groups:

- 7 accounting firms and accountants;
- 7 associations;
- 24 corporations and corporate executives; and
- 3 law firms and attorneys.

An overwhelming majority of the commenters supported the proposed postponement. They agreed that a postponement of the final phase-in period for acceleration of the annual report would provide additional time for companies and their auditors to focus their efforts and resources on complying with the internal control requirements. Many commenters believed that the additional time would allow companies to produce better quality reports and alleviate substantial demands placed on the same personnel and systems that are key to preparing periodic reports and meeting internal control requirements. The commenters also believed that the additional time will allow management, audit committees and external auditors to be more involved and coordinate more extensively to resolve difficult analytical issues that may arise in the internal control process. Some commenters believed that companies and auditors need the additional time to address the internal control requirements as well as the other new and proposed regulations of the SEC, NYSE and FASB. Finally, several commenters believed that the one year postponement is an appropriate length to allow enough time for companies and their auditors to carefully and completely implement the internal control requirements, while instituting processes to meet the accelerated filing deadlines.

Several commenters believed that a postponement in the accelerated filing deadlines would benefit investors by ensuring better quality analysis and accurate disclosure of financial data to investors. The commenters did not believe that investors would be significantly disadvantaged by the postponement. For example, the commenters noted that investors would still receive periodic reports within the current accelerated filing deadlines. Alternatively, a few commenters noted that the expanded Form 8-K disclosure requirements and the acceleration of the Form 8-K filing dates would provide investors with timely information of significant events affecting companies. The commenters believed the benefits from the postponement substantially outweighed the minimal impact of the time delay of information to investors.

All commenters remarking on the issue suggested that the final phase-in of the accelerated filing deadlines should be postponed for both annual and quarterly reports. Most of the commenters stated that additional time is necessary for quality compliance with the internal control requirements in the quarterly reports. Some commenters believed the additional time would allow management to better integrate the ongoing evaluation and testing of internal control over financial reporting with the quarterly evaluation of the effectiveness of disclosure controls and procedures. Other commenters noted that applying the postponement to the annual and quarterly reports would

simplify companies' efforts to plan and implement the acceleration of the filing deadlines with respect to both types of reports in year four.

None of the commenters favored the possible alternative to extend the filing deadlines only for accelerated filers requesting an extension by filing Form 12b-25 under the Exchange Act. The commenters believed that the extension alternative could raise unnecessary concerns about the registrant in the capital markets. They also noted that the extension alternative would divert companies' time, attention and resources away from compliance with the internal control requirements as well as be an inefficient use of the Commission staff's time. All of the companies remarking on the extension alternative favored the proposed approach and expressed the view that the one year postponement would more uniformly assist companies in their efforts to thoroughly implement the internal control requirements.

A number of commenters offered suggestions outside the scope of the proposals. For example, nine commenters urged the Commission to delay the implementation of the internal control requirements to allow companies sufficient time to improve the quality of internal control reporting. In addition, nine commenters requested that the Commission reassess the final scheduled accelerated filing deadline for annual and quarterly reports. Four of the nine commenters believed that the current filing deadlines for periodic reports provide the appropriate balance between timely preparation of information and the quality and accuracy of information, and as such, thought that no further acceleration of the filing deadlines for annual and quarterly reports is necessary. Finally, six commenters requested that we reassess the scope of the Rule 12b-2 definition of an "accelerated filer." Four of the six commenters believed that the \$75 million public float threshold should be increased because smaller companies that meet the current threshold are finding it difficult to meet the requirements of an "accelerated filer" due to a lack of sufficient resources.

The responses are discussed in more detail below.

III. General Observations

- Thirty-seven commenters supported the proposal and its underlying rationale.¹ (In addition, before issuing the proposal, the Commission received two letters requesting that we delay for one year further acceleration of the Form 10-K filing deadline by one year.²)
- Four commenters suggested a postponement of the compliance dates for the internal control requirements in lieu of the proposal.³ Two of these commenters asserted that the proposal would have little, if any, effect on companies' efforts to implement internal control requirements.⁴ Five commenters, who supported the proposal, also suggested delaying the compliance dates for the internal control requirements.⁵

A. Appropriateness of Postponement

- Twenty-three commenters believed that postponement of the final phase-in period of the accelerated filing deadlines is appropriate as additional time is necessary for companies and auditors to comply with the initial application of Section 404.⁶ Some of these commenters offered the following arguments:
 - Companies and auditors would produce better quality reports (14 commenters).⁷
 - Substantial demands are placed on the same personnel and systems that are key to preparing periodic reports and Section 404 compliance (12 commenters).⁸
 - The proposal would enhance the commenters' ability to address difficult analytical issues in the Section 404 compliance process (e.g. determining whether an issue constitutes a significant deficiency or a material weakness) (7 commenters).⁹

¹ ABA; ACB; Addison; AICPA; AmSouth; ASCS; Astoria; BDO; Becker; Bierce; BMC; BR; Chubb; CSC; CVPSC; Deloitte2; Eli Lilly; Enterprise; E&Y; FFBA; FFLC; FirstBank; FSC; Horizon; ICU; KPMG; MAXXAM; MBNA; NAREIT; NYSBA; Pfizer; PLC; PWC; Spectrum; Troutman; VEC; Vineyard.

² Deloitte1; Four Firms.

³ Allen; FFSC.

⁴ Bilello; Red Robin.

⁵ ACB; Becker; Bierce; FFLC; Troutman.

⁶ ABA; AICPA; AmSouth; ASCS; Astoria; BMC; BR; CSC; CVPSC; Deloitte1; Eli Lilly; Enterprise; E&Y; FFBA; Four Firms; FSC; ICU; NAREIT; NYSBA; Pfizer; PWC; VEC; Vineyard.

⁷ ABA; AICPA; Astoria; BR; CSC; CVPSC; Eli Lilly; Enterprise; Four Firms; FSC; ICU; NYSBA; PWC; VEC.

⁸ ABA; ASCS; BMC; CSC; CVPSC; Deloitte1; Enterprise; FFBA; Four Firms; FSC; NYSBA; VEC.

⁹ ABA; BR; Deloitte1; Eli Lilly; E&Y; Four Firms; Pfizer.

- Management, audit committees and external auditors would be more involved in the Section 404 compliance process and coordinate their efforts more extensively (4 commenters).¹⁰
- Five commenters believed that the quality and breadth of periodic disclosures would suffer without the postponement.¹¹ Four of the commenters noted the concurrent pressure associated with the accelerated filing requirements and Section 404 compliance.¹² Two of the four commenters believed that there is the possibility that errors would go undetected in an effort to complete the internal control requirements and file the Form 10-K by the required accelerated deadlines.¹³
- Eight commenters believed that the one year postponement is an appropriate length and would allow enough time for companies and their auditors to completely and carefully implement the internal control requirements, while instituting processes to meet the accelerated filing deadlines.¹⁴
- Seven commenters indicated that compliance with internal control requirements has been more time consuming than initially estimated, which has increased the cost of compliance.¹⁵ One of these commenters attributed the underestimation to uncertainties related to the initial implementation of the internal control requirements.¹⁶
- Three commenters believed that companies and auditors need additional time to address the requirements of Section 404 and PCAOB Auditing Standard No. 2 as well as a significant number of other new or proposed regulations (e.g., new Form 8-K reporting requirements, proposed changes to NYSE listing standards and proposed FASB rules governing the accounting of stock options).¹⁷

B. Benefits of the Postponement for Investors

- Eighteen commenters believed that a postponement in report filing deadlines would benefit investors by ensuring better quality analysis and accurate disclosure of financial data to

¹⁰ ABA; CVPSC; E&Y; Four Firms.

¹¹ ABA; Deloitte1; Enterprise; Four Firms; PWC.

¹² Deloitte1; Enterprise; Four Firms; PWC.

¹³ Deloitte1; Enterprise.

¹⁴ ABA; AICPA; AmSouth; Astoria; BMC; BR; Pfizer; PWC.

¹⁵ ASCS; Astoria; CVPSC; Deloitte1; Four Firms; ICU; PWC.

¹⁶ Four Firms.

¹⁷ ABA; Four Firms; NYSBA.

investors.¹⁸ Two of these commenters noted that the postponement would be especially helpful to larger companies with complex operations.¹⁹

- Six commenters believed that the benefits from the postponement substantially outweigh the impact of the time delay in providing investors with information.²⁰

C. Disadvantages of the Postponement for Investors

- Twelve commenters believed that investors would not be significantly disadvantaged by postponement of the final phase-in period of the accelerated filing deadlines.²¹ For example, five of these commenters noted that investors would still receive periodic reports within the same time frame in 2005 as they had in 2004.²² Alternatively, four of these commenters noted that the expanded Form 8-K disclosure requirements and the acceleration of the Form 8-K filing date help provide investors with timely information despite the postponement.²³

D. Postpone the Final Phase-In of the Accelerated Final Deadlines

1. Applicable to Both Annual and Quarterly Reports

- Eighteen commenters believed that the postponement should apply to both annual and quarterly reports.²⁴ Some of these commenters offered the following reasons:
 - Five believed that companies encounter similar difficulties in preparing annual and quarterly reports.²⁵ Four of the five commenters believed that additional time would allow management to better integrate the ongoing evaluation and testing of internal control over financial reporting with the quarterly evaluation of the effectiveness of disclosure controls and procedures.²⁶
 - Nine believed that additional time is necessary for quality compliance with Section 404 requirements in quarterly reports (e.g., Item 308(c) of Regulation S-K, Exchange Act

¹⁸ ABA; AICPA; AmSouth; Astoria; BMC; BR; Chubb; CVPSC; Deloitte1; Eli Lilly; Enterprise; E&Y; Four Firms; FSC; NYSBA; Pfizer; PLC; PWC.

¹⁹ BMC; Pfizer.

²⁰ ASCS; Deloitte 1; Eli Lilly; Enterprise; E&Y; PWC.

²¹ ABA; ASCS; Astoria; BMC; BR; Eli Lilly; E&Y; ICU; NYSBA; Pfizer; PWC; VEC.

²² ABA; Astoria; Eli Lilly; E&Y; PWC.

²³ ASCS; E&Y; NYSBA; Pfizer.

²⁴ ABA; AICPA; AmSouth; Astoria; BMC; BR; Chubb; Deloitte2; Eli Lilly; E&Y; FFBA; Horizon; ICU; NYSBA; Pfizer; PLC; PWC; VEC.

²⁵ ABA; AICPA; E&Y; ICU; NYSBA.

²⁶ Astoria; AICPA; E&Y; PWC.

Rule 13a-15(d) or Rule 15a-15(d) and PCAOB Auditing Standard No.2).²⁷ Three of the nine commenters believed that companies would not have enough resources to focus on both the accelerated quarterly filing deadlines and internal control requirements in quarterly reports.²⁸

- One commenter believed that shifting the entire implementation schedule uniformly by one year provides greater clarity and simplicity.²⁹ Another commenter noted that planning and procedures for annual and quarterly reports are done in parallel.³⁰ Similarly, another commenter noted that companies took into account the concurrent acceleration for annual and quarterly reports when scheduling financial reporting process improvements.³¹

E. Alternatives to Postponement of the Final Phase-In of the Accelerated Final Deadlines

1. Request for Extension of Filing Deadlines by Accelerated Filers

- Thirteen commenters opposed providing extension of the filing deadlines by requests or by demonstration of need.³² Some of these commenters offered the following reasons:
 - Five of these commenters believed that the market might view the action as a non-compliant, negative event and thus stigmatize the companies.³³ Consequently, one of the five commenters noted that companies committed to full compliance with the Commission's rules would not receive the desired relief.³⁴
 - Five of these commenters believed a uniform rule that applies to all companies is better for the market, companies, and auditors.³⁵ Three of the five commenters noted that an objective standard is best and that a subjective standard would be unfair, uncertain and subject filers to unnecessary market risk.³⁶ One of the five commenters believed that

²⁷ ABA; AICPA; Astoria; BR; Deloitte2; Eli Lilly; E&Y; Pfizer; PWC.

²⁸ ABA; Astoria; PWC.

²⁹ BR.

³⁰ NYSBA.

³¹ ABA.

³² ABA; AICPA; AmSouth; Astoria; BMC; BR; Eli Lilly; E&Y; FSC; ICU; NYSBA; Pfizer; PWC.

³³ ABA; BMC; BR; ICU; Pfizer.

³⁴ BMC.

³⁵ ABA; AmSouth; BMC; Eli Lilly; FSC.

³⁶ ABA; BMC; FSC.

only a uniform postponement would ensure thorough implementation of Section 404 requirements for all companies.³⁷

- Seven of these commenters believed that an extension by requests or by demonstration of need would be burdensome.³⁸ Five of the seven commenters believed that the extension approach would not be an efficient use of the Commission staff's time.³⁹ Similarly, five of the seven commenters believed that companies would be unnecessarily burdened or that companies' time, attention and resources would be diverted away from Section 404 compliance efforts.⁴⁰
- Two commenters noted that the postponement would not preclude a company from filing prior to the due date.⁴¹
- One commenter noted that the extreme pressure on management, responsible for the preparation of the financial and internal control reporting, would lead to a disproportionate number of registrants filing Rule 12(b)-25 extensions, if the proposal was not adopted, which could raise unnecessary concerns about the registrant in the capital markets.⁴² Another commenter believed that outside auditors would face a severe strain on their resources, jeopardizing the Section 404 compliance process if this alternative was considered instead of the proposal.⁴³

VIII. Miscellaneous Comments

A. Reconsideration of Section 404 Implementation Date

- Nine commenters urged the Commission to delay the implementation of Section 404.⁴⁴ Six of the nine commenters suggested that the Commission postpone Section 404 implementation by one year.⁴⁵ One of the nine commenters suggested that the Commission postpone Section 404 implementation until reporting companies adopt and road test effective controls under existing outsourcing service agreements.⁴⁶ Another commenter

³⁷ Eli Lilly.

³⁸ ABA; AICPA; AmSouth; Astoria; BR; Eli Lilly; PWC.

³⁹ AICPA; AmSouth; Astoria; BR; PWC.

⁴⁰ ABA; AICPA; Astoria; BR; PWC.

⁴¹ Astoria; PWC.

⁴² Four Firms.

⁴³ Eli Lilly.

⁴⁴ ACB; Allen; Becker; Bierce; Bilello; FFLC; FFSC; Red Robin; Troutman.

⁴⁵ ACB; Allen; Becker; FFLC; FFSC; Red Robin.

⁴⁶ Bierce.

suggested that first time accelerated filers be exempt from Section 404 reporting for one year.⁴⁷ Together with the delay in Section 404 implementation, two of the nine commenters suggested the following:

- One commenter proposed that the Commission only require voluntary public disclosure of the written opinions contemplated by the PCAOB's Auditing Standard No. 2 in registrants' annual reports during the first year ending December 31, 2004.⁴⁸
- One commenter proposed that the Commission require separate filing dates for the management report containing Section 404 requirements and the rest of the annual report.⁴⁹
- Seven commenters noted that it is appropriate to postpone Section 404 implementation for the following reasons:⁵⁰
 - Six of these commenters believed that Section 404 compliance process should be allowed sufficient time to improve the quality of internal control reporting.⁵¹ For example, three of the six commenters noted that companies are finding that it takes a great deal of time and effort to bring systems up to the requirements provided by PCAOB's Auditing Standard No.2, especially in light of the fact further guidance on this standard was provided to the public in June 2004.⁵² In addition, one of the six commenters believed that additional time would allow companies to not only improve their reporting, but the underlying internal control structure as well.⁵³
 - One of the commenters noted that additional time is needed for suppliers of reporting companies to integrate their processes because a company's financial reporting involves its entire supply chain.⁵⁴
 - One commenter noted that companies are relying extensively on outside consultants to meet Section 404 requirements under the current timeframe, which is interfering with a company's understanding and improving of its own internal control environment and structure.⁵⁵

⁴⁷ BDO.

⁴⁸ Troutman.

⁴⁹ Bilello.

⁵⁰ ACB; Allen; Bierce; FFLC; FFSC; Red Robin; Troutman.

⁵¹ ACB; Allen; Bierce; FFLC; FFSC; Troutman.

⁵² ACB; Allen; Troutman.

⁵³ Allen.

⁵⁴ Bierce.

⁵⁵ Allen.

- One commenter noted that companies are paying excessive audit and consulting fees to implement Section 404 requirements due to the short timeframe between the release of the final rules and required compliance.⁵⁶
- One commenter believed that delaying Section 404 implementation would not harm investors, as CEO and CFO certifications and the statements on controls and procedures in periodic reports provide protection to investors.⁵⁷

B. Reconsideration of Accelerated Filing Deadlines

- Nine commenters requested that the Commission reassess any remaining scheduled acceleration.⁵⁸ Seven of these commenters requested that the Commission consider leaving the deadlines as they currently exist.⁵⁹ One of the nine commenters suggested that the Commission monitor the consequences of shorter filing deadlines.⁶⁰ Another commenter suggested that the Commission confirm that the benefits outweigh the negative impact.⁶¹
- Four commenters believed that the current filing deadlines for periodic reports provide the appropriate balance between timely preparation of information and the quality and accuracy of information and as such no further acceleration of the filing deadlines is necessary.⁶² Two of these commenters also noted that recent changes in Form 8-K requirements and filing deadlines provide investors with information on a more timely basis.⁶³
- Five commenters believed that it is appropriate to reconsider further acceleration due to significant changes in the financial reporting environment since when the accelerated filing deadlines were adopted, which require companies to commit adequate time in preparing their disclosure.⁶⁴ Four of these commenters provided examples of significant changes in the financial reporting environment as support for their position, including the following: (i) internal control requirements,⁶⁵ (ii) requirements for greater financial statement transparency

⁵⁶ Red Robin.

⁵⁷ FFLC.

⁵⁸ BDO; Chubb; Deloitte2; E&Y; FFBA; FSC; MBNA; Pfizer; PLC.

⁵⁹ BDO; Chubb; Deloitte2; FFBA; FSC; Pfizer; PLC.

⁶⁰ E&Y.

⁶¹ Pfizer.

⁶² Chubb; MBNA; Pfizer; PLC.

⁶³ Pfizer; PLC.

⁶⁴ Chubb; E&Y; MBNA; Pfizer; PLC.

⁶⁵ Chubb; MBNA; PLC.

(MD&A),⁶⁶ (iii) new accounting standards from FASB and IASB,⁶⁷ (iii) impact of increased auditor liability,⁶⁸ (iv) expansion of the role of audit committees in overseeing financial reporting⁶⁹ and (iv) increased complexity of business activities.⁷⁰

- Another commenter concurred that the accounting rules have become more complex, highly technical and are ever-changing.⁷¹ This commenter also noted that accounting research has increased, which is critical towards providing accurate and compliant financial reports and related disclosure.
- Two commenters requested that the Commission roll back the accelerated periodic report filing deadlines to 90 days for annual reports.⁷² One of these commenters suggested that the roll back apply only to annual reports that either contain the company's initial report on internal control over financial reporting or cover a reverse acquisition transaction where the accounting acquirer is not an accelerated filer prior to the transaction.⁷³
- One commenter noted that the implementation of the final phase of the accelerated filing deadlines could be reexamined in light of this year's experience if necessary.⁷⁴

C. Reconsideration of the Definition of Accelerated Filers

- Six commenters requested that the Commission reassess the scope of the definition of accelerated filers.⁷⁵ Four of these commenters believed that the \$75 million public float threshold is too low and should be increased.⁷⁶ One of these commenters suggested that the change be to a public float of \$250 million.⁷⁷
- Four commenters believed that companies that meet the \$75 million public float threshold are finding it difficult to meet the requirements of an "accelerated filer" due to a lack of

⁶⁶ Chubb; E&Y; MBNA; PLC.

⁶⁷ MBNA.

⁶⁸ MBNA.

⁶⁹ Chubb; PLC.

⁷⁰ MBNA.

⁷¹ CVPSC.

⁷² BDO; ICU.

⁷³ BDO.

⁷⁴ Four Firms.

⁷⁵ AICPA; Becker; BDO; E&Y; FFSC; Spectrum.

⁷⁶ Becker; BDO; FFSC; Spectrum.

⁷⁷ Spectrum.

sufficient resources.⁷⁸ One of these commenters believed that the combination of recent rule changes are making it impossible for companies with less than \$500 million market capitalization to continue to be publicly-traded, harming the investing public.⁷⁹ Another commenter suggested using the company's sales revenue of \$350-500 million as the threshold to determine accelerated filer status instead of the company's public float.⁸⁰ The commenter believed the above threshold would capture companies that would have the resources to meet the requirements of an accelerated filer.

- One commenter believed larger companies will have more resources and capability to adapt to the level of effort that is required to comply with the internal control requirements and thus the burden on the smaller registrant in this regard is disproportionately high.⁸¹
- One commenter suggested that the Commission gather data on how widely the accelerated filers with public floats ranging from \$75 million to \$1 billion are followed by investors, after dividing them into strata.⁸² Another commenter noted that studies would show the public float level at which most companies are widely followed to be significantly greater than \$75 million.⁸³

D. Other Comments

1. Requests relating to Section 404

- One commenter believed that the term “adequate” in Section 404 to describe the internal control structure and procedures for financial reporting is vague and undefined. The commenter requested the term to be interpreted as "sufficient to disclose all material information" or otherwise conform to existing investor-protection standards of materiality applicable for disclosure purposes. The commenter noted that due to the vagueness of Section 404, it is uncertain whether a company's internal control structure extends to the company's outsourced business.⁸⁴
- Two commenters suggested that the Commission closely monitor the incidence of Form 12b-25 filings related to the inability to complete Section 404 reporting and consider whether the consequences normally associated with a late filing are warranted.⁸⁵ One of

⁷⁸ Becker; BDO; FFSC; Spectrum.

⁷⁹ Spectrum.

⁸⁰ Becker.

⁸¹ Four Firms.

⁸² BDO.

⁸³ BDO.

⁸⁴ Bierce.

⁸⁵ AICPA; E&Y.

these commenters believed that relief in such instances might reduce disclaimed opinions by independent auditors, resulting in a higher quality of Section 404 reporting.⁸⁶

2. Survey Results on Periodic Report Filings and Section 404 Compliance

- Two commenters discussed an analysis of Form 10-K filing patterns of Fortune 100 companies for the years ended 2002 and 2003.⁸⁷ The analysis illustrated that the average number of days from year-end to the earnings release date and auditors' report date increased from 24 to 29 days and 38 to 45 days, respectively.
- One commenter discussed a survey of public companies.⁸⁸ The survey concluded that the company employee man-hours necessary to comply with Section 404 ranged from 80 to 6,500 hours, and on average, more than 6,000 hours.
- One commenter conducted a survey of 36 companies of the timeline for preparation of periodic reports.⁸⁹ The survey indicated that large Fortune 500 companies, prior to the initial phase of accelerated reporting, took approximately 25 days to gather data, 50 days to prepare and review the annual periodic report and an additional 6 days to complete the filing process (*i.e.*, printing and filing on EDGAR). The commenter believed that much of the time savings to meet the 75-day filing date last year, would have come from the review process.

3. Other Suggestions & Observations

- One commenter expressed willingness to help the Commission draft a set of suggestions, guidelines and examples on a pro bono basis on the Commission's transparency initiatives.⁹⁰ The commenter further offered to send the Commission a copy of *Merrill Lynch Guide to Understanding Financial Reports* to show the Commission how the commenter explains sophisticated financial material in an easy to read manner.
- One commenter believed that the PCAOB put heightened liability pressure on accounting firms, which is now being transferred to the clients.⁹¹

⁸⁶ E&Y.

⁸⁷ Deloitte1; Four Firms.

⁸⁸ Four Firms.

⁸⁹ Deloitte1.

⁹⁰ Addison.

⁹¹ FFSC.