

# Comments on the Proposed Interpretation; Proposed Rule on Management’s Report on Internal Control Over Financial Reporting

## Overview

The SEC received letters from 210 commenters. Many commenters were supportive of the Commission’s efforts in developing guidance for management regarding its evaluation and assessment of internal control over financial reporting (ICFR). In addition to their expression of support for the guidance, commenters noted a number of issues which are summarized in this document. This summary is generally organized by each section within the Interpretive Guidance, followed by other topics related to responses to specific questions as outlined in the table of contents below:

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## **Expression of Support for the Interpretive Guidance**

- A majority of commenters were supportive of the Commission's efforts in developing this Interpretive Guidance to help management conduct an effective and efficient evaluation of its internal control over financial reporting (ICFR) under Section 404(a) of the Sarbanes-Oxley Act of 2002. Comments expressing this view were received from various interested parties, including issuers (of all sizes), accounting firms, attorneys, professional organizations, individuals and service providers. Specific comments received included the following:
  - The guidance will empower management to take ownership of their assessment process rather than the previous practice where management was forced to over-rely on the audit standard and the judgment of their auditor.<sup>1</sup>
  - The proposal appropriately reflected an articulation of principles to guide management's assessment process that would allow them to focus their efforts on the areas of internal control posing higher risk to reliable financial reporting.<sup>2</sup>
  - An assessment process conducted in accordance with the guidance would be both more efficient and more effective at detecting material weaknesses.<sup>3</sup>
  - Communication between management and their auditors would be improved by allowing them to have a productive dialog over the manner by which both assessments are conducted.<sup>4</sup>

## **Alignment of the SEC and PCAOB proposals**

### **Comments relating to the nature of the SEC and PCAOB proposals**

- Many commenters indicated that the PCAOB's proposed auditing standard is more detailed and prescriptive than the SEC's proposed guidance,<sup>5</sup> and some of these commenters suggested that the prescriptive nature of the proposed auditing standard could continue to result in auditors doing more work than is necessary. Commenters were also concerned that a prescriptive auditing standard could present management with a dilemma of either having to perform work that is not necessary to complete its own evaluation solely for the purpose of helping their auditors fulfill their responsibilities under a more prescriptive standard or paying the auditor to perform that work on his or her own. A few commenters suggested that the SEC include additional detail in its guidance to assist management in conducting its

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<sup>1</sup> See, for example, letters of Neenah Paper, Inc., European Association of Listed Companies, Ace Limited, American Electric Power, American Electronics Association

<sup>2</sup> See, for example, letters of American Electric Power, PPG Industries, Inc., American Bar Association, Business Roundtable, U.S. Chamber of Commerce

<sup>3</sup> See, for example, letters of Mastercard, Inc., Microsoft Corporation, Ernst & Young LLP, McGladrey & Pullen LLP, Cleary Gottlieb Steen & Hamilton

<sup>4</sup> See, for example, letters of Eli Lilly and Company, BP p.l.c., and Financial Executives International Committee of Corporate Reporting

<sup>5</sup> See, for example, letters of American Electronics Association, Eli Lilly and Company, Pfizer, Pepsico, The Allstate Corporation, Financial Executives International Committee of Corporate Reporting, Financial Executives International Small Public Company Task Force, American Stock Exchange, American Electric Power, Procter & Gamble, Institute of Management Accountants, Association for Financial Professionals

assessment to help prevent this situation.<sup>6</sup> In addition, other commenters expressed that while the SEC’s proposal was principles based, providing additional detail and examples would better enable management to conduct its assessment.<sup>7</sup>

### **Comments relating to differences in terminology**

- Several commenters noted that there were differences in the terminology used in the SEC’s proposed management guidance and the PCAOB’s proposed auditing standard. They noted that use of common terminology by management and the auditor ensures clarity and that it would be helpful for the Interpretive Guidance and the auditing standard to use the same terms when referring to the same concept.<sup>8</sup>
- Some major accounting firms and issuers noted that the SEC’s proposed management guidance uses “financial reporting elements” and “financial reporting risk” rather than using “significant account” and “relevant assertion,” which are used in the PCAOB’s proposed auditing standard.<sup>9</sup> Some of these commenters indicated that if terms used solely in the SEC’s proposed guidance were to be either aligned or reconciled with the corresponding terminology used by the PCAOB in its proposed auditing standard, efficiencies would more likely to be achieved and confusion minimized;<sup>10</sup> alternatively, some major accounting firms suggested that such terms be more clearly defined in the SEC’s proposed guidance.<sup>11</sup>
- Some commenters noted that the SEC proposed guidance uses the term “entity-level controls” and the PCAOB proposed standard uses the term “company-level controls” in describing the same types of controls. Aligning the terminology in this area could help eliminate some of the confusion that already exists about these types of controls and how they are to be considered.<sup>12</sup>
- Some commenters noted differences in the manner in which the SEC and PCAOB proposals define “material weakness.” Some noted that the PCAOB’s proposed auditing standard

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<sup>6</sup> See, for example, letters of Association for Financial Professionals, American Electronics Association, Procter & Gamble, Financial Executives International Committee of Corporate Reporting

<sup>7</sup> See, for example, letters of American Stock Exchange, Independent Community Bankers, Institute of Internal Auditors

<sup>8</sup> See, for example, letters of The Institute of Chartered Accountants of England and Wales, BDO Seidman LLP, McGladrey & Pullen LLC, Financial Executives International Committee on Corporate Reporting, Deloitte & Touche LLP, KPMG LLP, Center for Audit Quality, PricewaterhouseCoopers LLP, Grant Thornton LLP, Aerospace Industries Association, Edison Electric Institute, and ISACA

<sup>9</sup> See, for example, letters of PricewaterhouseCoopers LLP, Grant Thornton LLP, Deloitte & Touche LLP, BDO Seidman LLP, McGladrey & Pullen LLP, Edison Electric Institute, PPL Corporation, BASF, The Institute of Chartered Accountants of England and Wales

<sup>10</sup> See, for example, letters of BDO Seidman LLP, McGladrey & Pullen LLC, PPL Corporation

<sup>11</sup> See, for example, letters of Ernst & Young LLP, KPMG LLP

<sup>12</sup> See, for example, letters of Financial Executives International Committee on Corporate Reporting, Cardinal Health

excludes from the definition of material weakness the phrase “in a timely manner;”<sup>13</sup> and one association noted its disagreement with the SEC definition’s use of “by the company’s internal control over financial reporting” in the last sentence of the definition because of their stated belief that a material misstatement would not necessarily be indicative of a material weakness where it would be detected on a timely basis by means other than a company’s internal control over financial reporting.<sup>14</sup>

## **Comments relating to communication and coordination about ICFR assessments and audits**

- Many commenters expressed their views about the importance of communication and coordination about the ICFR assessment and audit between management and auditors.<sup>15</sup> Issuers and auditors commented that to optimize reliance on management’s assessment and achieve quality and efficiency objectives, management’s assessment and the auditor’s audit approach should be discussed between the respective parties to enable both to have the most efficient and effective approaches.<sup>16</sup>
- Several of the major accounting firms expressed their view of the importance of communication and coordination between management and auditors. They noted that while management’s assessment of ICFR and the external audit of ICFR are separate activities and need not be conducted in the same manner, there is an important interaction between the two through the auditor’s consideration of the work of others and the ability of the auditor to use the company’s documentation as evidential matter to support the auditor’s opinion.<sup>17</sup>
- Some commenters indicated that increased communications will be necessary and that communications between management and auditors about the ICFR assessment and audit should be encouraged.<sup>18</sup> One respondent expressed a different view – that the Commission should emphasize that discretion is provided to company management in performance of their ICFR assessment in order to avoid unnecessary deliberation between management and auditors.<sup>19</sup>

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<sup>13</sup> Financial Executives International Small Public Company Task Force, Financial Executives International Committee on Corporate Reporting, The Institute of Chartered Accountants of England and Wales,

<sup>14</sup> See The Institute of Chartered Accountants of England and Wales letter.

<sup>15</sup> See, for example, letters of Microsoft, Financial Executives International Committee on Corporate Reporting, Procter & Gamble, 3M Company, Institute of Internal Auditors, Nike, Grant Thornton LLP, McGladrey & Pullen LLP, PricewaterhouseCoopers LLP, BDO Seidman LLP, Deloitte & Touche LLP, KPMG LLP, Center for Audit Quality, The Financial Services Roundtable, Washington Legal Foundation, Manulife Financial, Banco Itau Holding Financeira SA

<sup>16</sup> See, for example, letters of Microsoft, Financial Executives International Committee on Corporate Reporting, Procter & Gamble, 3M Company, Institute of Internal Auditors, Nike, Deloitte & Touche LLP, PricewaterhouseCoopers LLP, BDO Seidman LLP, Grant Thornton LLP, KPMG LLP

<sup>17</sup> See, for example, letters of Grant Thornton LLP, McGladrey & Pullen LLP, PricewaterhouseCoopers LLP, BDO Seidman LLP, Deloitte & Touche LLP, KPMG LLP, Center for Audit Quality,

<sup>18</sup> See, for example, letters of The Financial Services Roundtable, Washington Legal Foundation, Manulife Financial

<sup>19</sup> See Edison Electric Institute letter.

- To encourage coordination between management and auditors, some major accounting firms recommended that the SEC include a discussion in management's guidance regarding interaction with the independent auditor and clearly indicate that coordinated efforts by management and the auditor are crucial for the most efficient process overall.<sup>20</sup>

### **Comments relating to strong indicators of a material weakness**

- Many commenters indicated their belief that inconsistencies should not exist between the SEC's guidance and the PCAOB's auditing standard with regards to matters considered to be strong indicators of a material weakness.<sup>21</sup>
  - Some commenters noted that specifically, the SEC guidance does not include as a strong indicator of a material weakness the circumstance of an ineffective risk assessment process or internal audit function at companies for which such a function needs to be effective for the company to have effective ICFR, such as for very large or highly complex companies.<sup>22</sup>
  - Some commenters suggested the SEC guidance regarding strong indicators of material weaknesses be revised to include an ineffective risk assessment process.<sup>23</sup> Commenters offering alternative suggestions proposed that the guidance should explicitly state that the lack of a risk assessment process or an ineffective risk assessment process is a material weakness;<sup>24</sup>
  - However, other commenters suggested that the list of strong indicators of a material weakness be removed from the guidance altogether.<sup>25</sup> These commenters believed that singling out specific factors as presumptively mandatory material weaknesses unduly influences the consideration of individual facts and circumstances.

### **Comments relating to PCAOB inspections**

- Several commenters expressed views about the PCAOB inspections process, noting that the PCAOB should adjust its inspection practices in consideration of the SEC and PCAOB

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<sup>20</sup> See, for example, letters of Deloitte & Touche LLP, BDO Seidman LLP, PricewaterhouseCoopers LLP, KPMG LLP, Center for Audit Quality, BDO Seidman

<sup>21</sup> See, for example, letters of Crowe Chizek LLC, McGladrey & Pullen LLC, Center for Audit Quality, Deloitte & Touche LLP, BDO Seidman LLP, Bar Association of New York City, KPMG LLP, PricewaterhouseCoopers LLP

<sup>22</sup> See, for example, letters of Deloitte & Touche LLP, BDO Seidman LLP, Center for Audit Quality, Computer Sciences Corporation

<sup>23</sup> See, for example, letters of Deloitte & Touche LLP, BDO Seidman LLP, Center for Audit Quality, Computer Sciences Corporation

<sup>24</sup> See Deloitte & Touche LLP letter.

<sup>25</sup> See, for example, letters of Cleary Gottlieb Steen & Hamilton, Bar Association of the City of New York, Institute of Internal Auditors

proposals;<sup>26</sup> and that if the PCAOB inspection process continues to focus on detailed auditing steps as opposed to the bigger picture, it could drive undesirable behavior, including over-auditing.<sup>27</sup>

## **Identifying Financial Reporting Risks**

### **Comments relating to fraud risk**

- Several commenters indicated that the proposed guidance should more strongly emphasize the importance of fraud risk assessments, antifraud controls, and the importance of management's responsibility to identify and evaluate fraud risk.<sup>28</sup> To achieve these goals, some of these commenters suggested that relevant guidance from the AICPA SAS No. 99 – Exhibit titled “Management Antifraud Programs and Controls,” the 2005 AICPA document “Management Override of Internal Control: The Achilles’ Heel of Fraud Prevention” and other guidance provided by the private sector, such as COSO, should be incorporated into management’s guidance.<sup>29</sup>
- One major accounting firm also noted that the guidance should address the consideration of entity-level controls when identifying controls to address the risk of material misstatement due to fraud; in particular, the guidance should address whether an entity-level control can, by itself, address such a risk, and if so, what the characteristics of such a control would need to be.<sup>30</sup>
- Issuers and others also commented on fraud risk, requesting additional guidance related to the fraud assessment.<sup>31</sup>

### **Comments relating to risk assessment and lower risk items**

- Some commenters requested additional guidance, including supporting illustrations and examples, around the classification of high/medium/low risk processes and the identification of controls.<sup>32</sup>

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<sup>26</sup> See, for example, letters of Intel Corporation, Microsoft, PPG Industries, Inc., Procter & Gamble, Northrop Grumman, American Electric Power Company, European Federation of Accountants, Aerospace Industries Association, Cisco, Financial Executives International Committee on Corporate Reporting, The Institute of Chartered Accountants of England and Wales, Reznick Group

<sup>27</sup> See, for example, letters of Eli Lilly and Company, Northrup Grumman, Association for Financial Professionals, Financial Executives International Committee on Corporate Reporting

<sup>28</sup> See, for example, letters of Deloitte & Touche LLP, PricewaterhouseCoopers LLP, KPMG LLP, Center for Audit Quality, Grant Thornton LLP, McGladrey & Pullen LLP, BDO Seidman LLP, Moody’s Investor Services

<sup>29</sup> See, for example, letters of McGladrey & Pullen LLP, Grant Thornton LLP, KPMG LLP, Center for Audit Quality

<sup>30</sup> See Deloitte & Touche LLP letter.

<sup>31</sup> See, for example, letters of Procter & Gamble, Tatum LLC, BASF, Financial Executives International Committee on Corporate Reporting, Sasol Group

- Some commenters requested examples of low-risk areas and the related type and extent of testing which might be applicable based on varying risk levels;<sup>33</sup> while others expressed the view that inclusion of low-risk items in the scope of the assessment is contrary to a top-down risk-based approach.<sup>34</sup> One major accounting firm expressed concerns that management might interpret the guidance to mean that it may be considered appropriate to exclude from further consideration the controls over large balance financial statement line items considered to have a low risk of misstatement, noting that large balance financial statement line items, due purely to their size, have an inherent risk of material misstatement; and that the lack of control risk does not address the inherent risk associated with these financial statement line items. This firm further stated that based on the assessed level of control risk, it might be appropriate for management to limit the nature and extent of procedures on these accounts, but excluding them altogether is not the appropriate approach for management’s assessment of ICFR.<sup>35</sup>

### **Identifying Controls That Adequately Address Financial Reporting Risks**

- Some commenters recommended that the Commission expand its guidance on identifying controls that adequately address financial reporting risks to incorporate illustrative examples of controls, particularly entity-level or company-level controls, that would be considered effective.<sup>36</sup> Others requested a more descriptive definition of a control that adequately addresses financial reporting risks, noting that there are no common definitions of “critical controls” or “key controls”.<sup>37</sup> One major accounting firm noted that additional language should be added to the guidance highlighting the need for management’s assessment to encompass controls that relate to all components of the chosen control framework, not just those controls at the process level that address the identified financial reporting risks.<sup>38</sup>

### **Consideration of Entity-Level Controls**

- Many commenters requested additional guidance about the considerations to be made when determining whether entity-level controls operate at a sufficient level of precision to adequately prevent or detect misstatements on a timely basis.<sup>39</sup>

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<sup>32</sup> See, for example, letters of Hutchinson Technology, Consumer Federation of America, PPL Corporation, UnumProvident

<sup>33</sup> See, for example, letters of Computer Sciences Corporation,

<sup>34</sup> See, for example, letters of BHP Billiton Group, The Institute of Chartered Accountants of England and Wales

<sup>35</sup> See Deloitte & Touche LLP letter.

<sup>36</sup> See, for example, letters of KPMG LLP, Ford Motor Company

<sup>37</sup> See, for example, letters of Association for Financial Professionals, Aerospace Industries Association

<sup>38</sup> See Deloitte & Touche LLP letter.

<sup>39</sup> See, for example, letters of PricewaterhouseCoopers LLP, Deloitte & Touche LLP, Financial Executives International Committee on Corporate Reporting, Eli Lilly and Company, Grant Thornton LLP

- Some issuers noted that specific examples would be helpful to reinforce that the precision of entity-level controls can be at a fairly high level (i.e., the level of a material misstatement),<sup>40</sup> while two major auditing firms offered a different view - that the proposed guidance should more specifically recognize that, in order to appropriately address the risk of misstatement, entity-level controls must operate at a level of precision that would detect misstatements that are less than material to the financial statements in order to appropriately consider aggregation risk.<sup>41</sup>
- Numerous commenters requested guidance and specific examples on the linkage between entity-level controls and a company’s identified financial reporting risks, and the linkage between effective company-level controls and required testing of transactional controls.<sup>42</sup>
- Some commenters requested a clearer definition of entity-level controls,<sup>43</sup> with one issuer noting that the definition in footnote 29 of the proposed guidance is broad and may create confusion.<sup>44</sup>
- One major auditing firm stated that it would be useful to include in the guidance a principles-based continuum for considering the impact of entity-level controls on the nature and timing of management’s evaluation of controls at the process, transaction or application levels. The continuum would extend between (1) a direct entity-level control that is designed to operate at a degree of precision that would, by itself, prevent or detect on a timely basis material misstatements to one or more relevant assertions, and (2) an indirect entity-level control (e.g. the control environment) that is not directly related to any relevant assertion for any specific significant account and, therefore, would not by itself prevent or detect on a timely basis material misstatements to one or more relevant assertions.<sup>45</sup>
- Some commenters noted that precision as it relates to the “design” of entity-level controls is lacking clarity in the SEC guidance.<sup>46</sup>

### **Comments relating to monitoring controls**

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<sup>40</sup> See, for example, letters of Financial Executives International Committee on Corporate Reporting, Eli Lilly and Company

<sup>41</sup> See letters of Deloitte and Touche LLP and Grant Thornton LLP

<sup>42</sup> See, for example, letters of Financial Executives International Committee on Corporate Reporting, Eli Lilly and Company, MasterCard, Northrup Grumman, UnumProvident, Pfizer, Ernst & Young LLP, Procter & Gamble, Ace Limited, Brown-Forman, Computer Sciences Corporation, BP plc, MetLife, Grant Thornton LLP

<sup>43</sup> See, for example, letters of American Electric Power, Cardinal Health

<sup>44</sup> See letter of Cardinal Health

<sup>45</sup> See PricewaterhouseCoopers LLP letter

<sup>46</sup> See, for example, letters of McGladrey & Pullen LLP, Center for Audit Quality

- Several commenters indicated that it would be beneficial for the guidance to provide specific examples of what constitutes monitoring procedures, how monitoring procedures could be evaluated, and when monitoring activities are insufficient, making direct testing necessary.<sup>47</sup>
- Two major accounting firms noted that clarification is needed about the meaning of monitoring controls, as the lack of specificity in the proposed guidance may result in management's inappropriate reliance on activities that generally provide a less persuasive level of evidence that controls are operating effectively;<sup>48</sup> One of these firms recommended that the Commission should revise the guidance to expand upon considerations management should make when determining how and when to rely on less persuasive forms of evidence.<sup>49</sup>
- Some commenters suggested that the guidance should provide that monitoring activities and the assessment of ICFR should not be considered solely as an annual compliance exercise and therefore that the Commission should move away from a point-in-time assessment in ICFR to an assessment of ICFR throughout the year.<sup>50</sup>

### **Role of General Information Technology Controls**

- The majority of commenters who addressed this topic indicated that they would like the SEC to clarify testing of ITGCs by providing more detailed guidance regarding the selection of ITGCs for inclusion in a company's scope. Specifically, additional language, including specific examples of which ITGCs management needs to evaluate, would be quite helpful and valuable.<sup>51</sup>
- Two commenters stated that the ITGC information in the staff guidance from May 2005 is more extensive than the proposed guidance and includes more guidance around ITGCs that should be merged in the new guidance.<sup>52</sup>
- Several commenters requested additional guidance explaining the relationships or dependencies between ITGCs and application controls.<sup>53</sup>

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<sup>47</sup> See, for example, letters of Center for Audit Quality, Cardinal Health, UnumProvident, Computer Sciences Corporation, PPL Corporation

<sup>48</sup> See, for example, letters of Ernst & Young LLP, Grant Thornton LLP

<sup>49</sup> See letter of Ernst & Young LLP

<sup>50</sup> See, for example, letters of BDO Seidman LLP, Eli Lilly and Company, BASF Chemical Company

<sup>51</sup> See, for example, letters of MasterCard Incorporated, Microsoft Corporation, Faisal Danka, Rod Scott, National Association of Real Estate Investment Trusts, The Travelers Companies, Inc., Nina Stofberg

<sup>52</sup> See letters of Procter & Gamble Company and Financial Executives International

<sup>53</sup> See, for example, letters of National Association of Real Estate Investment Trusts, Reznick Group, P.C., Cardinal Health, Inc., Aerospace Industries Association

- A few commenters offered suggestions for gaining efficiencies in ITGC testing by eliminating unnecessary and redundant testing in areas such as program development<sup>54</sup> and operational and physical controls.<sup>55</sup>
- One professional association cited differences between the proposed guidance and the PCAOB's proposed auditing standard as a potential source of difficulty around ITGCs. The PCAOB's proposed auditing standard provides auditors with specific points to consider; however, the SEC's discussion of ITGCs is broader, making it difficult for management and auditors to work together.<sup>56</sup>

## **Evidential Matter to Support the Assessment**

### **Comments relating to evidential matter to support the assessment**

- Some issuers requested that the SEC's guidance provide more specific guidelines and examples for identification and documentation of controls, proof that they are working effectively, clarification and examples of acceptable documentation of management's risk assessment, and guidance on the type and manner in which evidence should be maintained.<sup>57</sup>
- Several of the major accounting firms noted that while the extent of documentation management prepares to support its assessment is a matter of judgment, a certain level of documentation is necessary,<sup>58</sup> with one firm noting that documentation is necessary to (1) provide evidence that a control is operating as designed and (2) enable auditors to evaluate the work of management when reliance on such work is anticipated,<sup>59</sup> and other firms noting that management should have some documentation of the identified financial reporting risks, the roles and responsibilities of company personnel performing internal control functions, and a description of the controls sufficient to communicate how they are to be performed.<sup>60</sup>
- One major accounting firm noted that the difference in documentation requirements that exists between the proposed interpretive guidance and the requirements of AS No. 3, Audit Documentation, is a concern.<sup>61</sup> This firm and other major accounting firms noted

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<sup>54</sup> See letters of Rod Scott and The Travelers Companies, Inc.

<sup>55</sup> See letter of Aerospace Industries Association

<sup>56</sup> See letter of America Electronics Association

<sup>57</sup> See, for example, letters of Ford Motor Company, Nasdaq, UnumProvident, American Stock Exchange, The Hundred Group of Finance Directors, Enbridge, Consumer Federation of America, 3M Company

<sup>58</sup> See, for examples, letters of KPMG LLP, Deloitte & Touche LLP, Center for Audit Quality

<sup>59</sup> See BDO Seidman LLP letter

<sup>60</sup> See, for examples, letters of Deloitte & Touche LLP, Center for Audit Quality

<sup>61</sup> See Grant Thornton LLP letter

that a higher quality management assessment generally can be more effectively leveraged by the independent auditor if it is accompanied by higher quality documentation.<sup>62</sup>

## **Implementing Procedures to Evaluate Evidence of the Operation of ICFR**

### **Comments relating to rotational testing**

- Some investor groups and two major accounting firms noted their agreement with the requirement in the proposed management guidance that management test on a yearly basis the operating effectiveness of ICFR,<sup>63</sup> with one of those firms noting that while they believe it is appropriate for management to consider results of past assessments, the guidance should make it clear that the evaluation of operating effectiveness is an annual requirement.<sup>64</sup>
- Some commenters noted that the PCAOB standards specifically provide for benchmarking of automated controls and suggested that the SEC consider where and how management might be encouraged to benchmark or rotate testing of controls in all areas.<sup>65</sup>
- Some commenters observed that the SEC's guidance should endorse the use of rotational testing for certain controls that are medium or low risk, relatively static or routine, or areas where a company has demonstrated historically strong and effective controls.<sup>66</sup>

### **Multiple Location Considerations**

- Several commenters who responded to this topic requested guidance about scoping in a multi-location environment.<sup>67</sup> Specifically, these commenters noted that the proposed guidance does not include any factors to consider in determining locations to include within the scope of testing, and that including such factors in the guidance would be beneficial. These commenters also requested clarification on what entities are so insignificant that no further evaluation procedures are necessary, and further clarification about how locations that are individually immaterial but that could be material in the aggregate should be handled.

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<sup>62</sup> See, for example, letters of BDO Seidman LLP, McGladrey & Pullen LLP, Ernst & Young LLP, KPMG LLP, Center for Audit Quality

<sup>63</sup> See, for example, letters of Consumer Federation of America, American Federation of Labor and Congress of Industrial Organization, Deloitte & Touche LLP, PricewaterhouseCoopers LLP

<sup>64</sup> See PricewaterhouseCoopers LLP letter

<sup>65</sup> See, for example, letters of Eli Lilly and Company, MasterCard, Financial Executives International Committee on Corporate Reporting

<sup>66</sup> See, for example, letters of Edison Electric Institute, Procter & Gamble, Computer Sciences Corporation, European Association of Listed Companies, ING Group, Bar Association of New York City, Supervalu, The Travelers Companies, Inc.

<sup>67</sup> See, for example, letters of PPL Corporation, Aerospace Industries Association, Ernst & Young LLP, Grant Thornton LLP

- In terms of evaluating evidence in a multi-location environment, two commenters requested examples illustrating the appropriate level of testing for subsidiaries based upon risk and materiality.<sup>68</sup> Additionally, one association stated that additional guidance would be beneficial with regard to the level of controls documentation required at the entity-level in circumstances where an entity has multiple locations.<sup>69</sup>

## **Evaluation of Control Deficiencies**

### **Comments relating to materiality and the classification of control deficiencies**

- Some commenters requested more definitive, explicit and quantifiable guidance on how to aggregate and quantify control deficiencies in order to classify them among the three categories (control deficiency, significant deficiency and material weakness).<sup>70</sup>
- One issuer respondent indicated that they would like the SEC to consider abandoning multiple classifications of deficiencies in favor of focusing on material weaknesses, leaving to management the discretion as to how to communicate lesser deficiencies to its audit committee, outside auditors and shareholders.<sup>71</sup>

### **Comments related to interim vs. annual measures of materiality**

- Some commenters recommended that the reference to “interim financial statements” be removed from the definition of material weakness, to enable focus solely on annual financial statements when evaluating the significance of control deficiencies to determine if a material weakness exists.<sup>72</sup> Such commenters noted that the SEC and the PCAOB would need to be aligned on this matter if the change were to be made not to require that control deficiencies be evaluated against interim results.
- One issuer respondent took the opposite view and indicated that the reference to interim financial statements in the definition should not be removed, noting that the use of interim materiality is clarified by the proposed auditing standard.<sup>73</sup>

### **Comments related to the proposed changes to the ‘likelihood’ components of the material weakness and significant deficiency definitions**

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<sup>68</sup> See letters of PPL Corporation and Nina Stofberg

<sup>69</sup> See Ohio Society of Certified Public Accountants letter

<sup>70</sup> See, for example, letters of BDO Seidman LLP, New York State Society of CPAs, Anthony S. Chan, ING Group N.V., Rockwood Holdings, Inc.

<sup>71</sup> See Brown-Forman letter

<sup>72</sup> See, for example, letters of PPL Corporation, Cisco Systems, Inc., Eli Lilly and Company, Financial Executives International Small Company Task Force, Ford Motor Company, Microsoft Corporation, Deloitte & Touche LLP, Edison Electric Institute

<sup>73</sup> See MetLife, Inc. letter

- Some commenters expressed the belief that the change from “more than remote” to “reasonable possibility” is not a substantive change and that it will have little or no impact on the effort devoted to identifying and analyzing deficiencies.<sup>74</sup> Two commenters provided a recommendation to change the definition to “reasonably likely” rather than “reasonable possibility.”<sup>75</sup> These two commenters agreed that the problem with “more than remote” is not that it is misunderstood, but rather that it is too low of a threshold, and changing it to “reasonable possibility” does not change that. Both commenters indicated that changing to “reasonably likely,” which is used in the MD&A and 401(a) off-balance sheet rules, is a better solution.
- On the other hand, several commenters indicated a favorable view to the likelihood change, stating that it will provide greater clarity and reduce the amount of time spent evaluating control deficiencies.<sup>76</sup>

### **Comments related to the existing framework for evaluating deficiencies that was developed by the large accounting firms**

- Two commenters requested that the SEC make reference to the existing framework in order to reduce the risk of inconsistencies in the marketplace in reporting material weaknesses.<sup>77</sup>
- Some commenters took the opposite position and suggested that the proposed guidance include a statement that the deficiency evaluation factors in the guidance can be used instead of the more prescriptive existing framework.<sup>78</sup> These commenters stated that the factors laid out in the proposed guidance to consider in evaluating control deficiencies or combinations of deficiencies are helpful and provide more room for judgment.

### **Expression of Assessment of Effectiveness of ICFR by Management and the Registered Public Accounting Firm**

- Approximately half of the commenters that addressed this topic agreed with the Commission’s proposal to eliminate the opinion on management’s assessment.<sup>79</sup> The reasons presented by those commenters is cited below:

<sup>74</sup> See, for example, letters of Computer Sciences Corporation, Kimball International, Association of Chartered Certified Accountants

<sup>75</sup> See letters of Cleary Gottlieb Steen & Hamilton LLP, Bar Association of the City of New York

<sup>76</sup> See, for example, letters of Cisco Systems, Inc., Financial Executives International Small Company Task Force, MetLife, Inc., Microsoft Corporation, Procter & Gamble Company

<sup>77</sup> See letters of Grant Thornton LLP, Hudson Financial Solutions

<sup>78</sup> See, for example, letters of Microsoft Corporation, Financial Executives International Committee on Corporate Reporting, Procter & Gamble Company

<sup>79</sup> See, for example, letters of America’s Community Bankers, Banco Itau Holding Financeira SA, Bar of the City of New York, BP p.l.c., Cisco Systems, Inc., Computer Sciences Corporation, Deloitte & Touche, Eli Lilly and Company, European Association of Listed Companies, Financial Executives International, Frank Consulting, Grant

- Removal of the auditor opinion on management's assessment emphasizes that management is solely responsible for determining controls appropriate for its business and unique characteristics;
  - The elimination of an attestation by the auditors of management's assessment would greatly reduce wasted effort;
  - The proposal affords management greater flexibility, resulting in lower cost without diminishing investor protection;
  - The proposal reduces duplicative work; and
  - Opinion on ICFR clearly conveys the scope and results of auditor's work while reducing the complexity of dual opinions.
- An almost equal number of commenters noted that the Commission is proposing to eliminate the wrong opinion (the opinion on management's assessment).<sup>80</sup> These commenters indicated that the opinion on management's assessment should remain rather than the independent auditor's opinion on the effectiveness of ICFR. Following are the major reasons cited for commenters' opposition to the Commission's proposal:
    - The proposal is in conflict with SOX section 404(b). Attestation on "the assessment made by the management of the issuer" is legally required;
    - The auditor's opinion on ICFR entails a significant amount of unnecessary and duplicative work being performed annually by the auditors;
    - Removing the requirement for auditors to report on management's evaluation lessens the focus on management's activities;
    - A review of management's process is more proactive and preemptive than an audit of controls which would be detective and after the fact;
    - The SEC retained the more costly alternative. The goals of 404 can be met by management's assessment of ICFR, coupled with the audit of management's assessment by the external auditor. This solution would preserve the intent of 404, while resulting in a meaningful reduction in the overall cost of compliance; and
    - Retaining the auditor's opinion on ICFR will drive more work; therefore, retaining the opinion on management's assessment is the most cost effective outcome.

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Thornton, Hudson Financial Solutions, Kimball International, Lubrizol, MetLife, Inc., PPG Industries, Inc., Procter & Gamble Company, RAM Energy Resources, Inc., SVLG

<sup>80</sup> See, for example, letters of Alamo Group, Matthew Leitch, Rod Scott, European Federation of Accountants, Hutchinson Technology Inc., Ian Lamdin, Nike, Inc., Southern Company, Linda Slocombe, Hess Corporation, Robert Richter, Nasdaq Stock Market, Inc., Institute of Management Accountants, Institute of Internal Auditors, Financial Services Roundtable, Institute of Public Auditors in Germany (IDW), Association of Chartered Certified Accountants, BHP Billiton Limited, The Hundred Group of Finance Directors, National Venture Capital Association

- Several commenters indicated that although the move from dual opinions to a single opinion eliminates confusion, they do not expect substantial efficiencies from this change. In other words, they do not see it having an impact on the level of work, nor do they see it leading to a decrease in audit fees.<sup>81</sup>
- Regarding the proposed revision to the wording of Rule 2-02(f) of Regulation S-X, various commenters indicated that further revision is necessary to eliminate confusion.<sup>82</sup> The commenters stated that the wording should be strengthened to add clarity that the auditor’s opinion is on management’s stated result of their assessment that the controls are effective and not on the assessment process used by management to arrive at the stated result. The proposed revision to both 1-02(a)(2) and 2-02(f) make reference to “attestation report on management’s assessment of internal control over financial reporting.” These commenters recommend that this wording be changed to “attestation report on internal control over financial reporting.” Last, these commenters recommend that the wording be aligned to the PCAOB’s proposed auditing standard because it is important to ensure that the same wording is used to describe the external auditor’s responsibilities.
- Some commenters proposed an entirely different auditor reporting model.<sup>83</sup> Two of these commenters indicated that the PCAOB’s proposed auditing standard should be eliminated and auditors should use the American Institute of Certified Public Accountants Statement on Auditing Standards No. 55/AU 319, *Consideration of Internal Control in a Financial Statement Audit* (SAS 55). Under their recommendation, management would still provide an assessment under 404(a) and SAS 55 compliance by the auditor would be sufficient to provide assurance to the investing public.<sup>84</sup> Another respondent stated that the PCAOB and SEC have not satisfactorily set out in print the reasons for their view that an audit is required and that the issue should be re-examined and debated fully and publicly to confirm whether the SEC and PCAOB have correctly interpreted Congressional intent.<sup>85</sup>
- One major accounting firm suggested that guidance be provided as to the auditor’s responsibilities in situations where he or she becomes aware that management does not have an adequate basis for its assessment.<sup>86</sup>

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<sup>81</sup> See, for example, letters of Procter & Gamble Company, BHP Billiton Limited, Biotechnology Industry Organization, Nasdaq Stock Market Inc., Cisco Systems, Inc., Eli Lilly and Company, European Association of Listed Companies

<sup>82</sup> See, for example, letters of Frank Gorrell, BDO Seidman LLP, Neenah Paper, Inc., Manulife Financial, Cleary Gottlieb Steen & Hamilton LLP, The Hundred Group of Finance Directors, Microsoft, Financial Executives International, Nina Stofberg, PepsiCo., Bar Association of the City of New York

<sup>83</sup> See letters of Southern Company, Silicon Valley Leadership Group, The Institute of Chartered Accountants of England and Wales

<sup>84</sup> See letters of Southern Company and Silicon Valley Leadership Group

<sup>85</sup> See The Institute of Chartered Accountants of England and Wales letter.

<sup>86</sup> See letter of BDO Seidman LLP

## **Disclosures About Material Weaknesses**

- The proposed guidance currently states that “companies should also consider including the following in their disclosures” (pg 46), then goes on to list three bulleted items. Some commenters object to the use of “should consider” and do not believe disclosure of the details surrounding the material weakness should be elective.<sup>87</sup>
  - One respondent indicated that the language in the guidance may be interpreted as permission to be vague in disclosure of material weaknesses by only indicating that mgmt should “consider” disclosing additional information besides the mere existence of the material weakness.<sup>88</sup>
  - One major accounting firm stated that the language should be stronger to indicate that such disclosures should ordinarily be made (or that disclosures that are not as robust would ordinarily be unacceptable).<sup>89</sup>
- Two commenters indicated that further guidance is needed in case different conclusions were reached by management and the auditor – namely, how the SEC would expect management to disclose these differing opinions in the annual report on internal controls.<sup>90</sup>
- Some commenters disagreed with the Commission’s decision to allow registrants to disclose that ICFR is ineffective “due solely to” the identified material weakness (es). Two of these commenters, major accounting firms, indicated that permitting such disclosure should be eliminated because it seems to imply that management is concluding that the company’s internal control is effective except for the disclosed material weakness.<sup>91</sup> Another major accounting firm noted that the language would be inappropriate in certain situations, such as when material weaknesses relate to the control environment or other pervasive elements of ICFR.<sup>92</sup> Another respondent, an investor group, stated that there is no basis for a “due solely to” statement in the effectiveness conclusion. Management does not know “absolutely” that there are no other material weaknesses because at best they are not at absolute assurance.<sup>93</sup>

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<sup>87</sup> See, for example, letters of Hudson Financial Solutions, Ohio Society of Certified Public Accountants, Manulife Financial

<sup>88</sup> See letter of Tatum LLC

<sup>89</sup> See letter of Grant Thornton LLP

<sup>90</sup> See letters of JD Higginbotham, Lubrizol Corporation

<sup>91</sup> See letters of BDO Seidman LLP and Crowe Chizek & Company LLC

<sup>92</sup> See Deloitte & Touche, LLP letter

<sup>93</sup> See Consumer Federation of America letter

## **Impact of a Restatement of Previously Issued Financial Statements on Management’s Report on ICFR**

- One respondent requested additional practical guidance and examples as to when a restatement, for other than a change in accounting principle, would not require a modification of previous conclusions and disclosure.<sup>94</sup>
- Two major accounting firms and one association noted a discrepancy between the auditor’s requirements and management’s requirements in situations of a restatement.<sup>95</sup> Specifically, requiring an auditor to re-evaluate its opinion, while at the same time permitting management's prior report on ICFR to remain unchanged without notice to investors that such report should not be relied upon is confusing for investors. The accounting firms recommend that under these circumstances, when a restatement of the financial statements is required and it is determined that a material weakness existed as of the date of management's previous report on ICFR, the SEC should require the company to amend its most recent ICFR report in its 10-K/A to disclose the impact of the restatement on the prior conclusion with respect to ICFR. If no amendment prior to the 10-K is necessary, the company should include disclosure of the impact in its 10-K for the most recently completed fiscal year.

## **Foreign Private Issuers**

- The majority of commenters who responded to this topic shared the view that the SEC should exclude the U.S. GAAP reconciliation from the scope of management’s assessment.<sup>96</sup> One law association commented that if the SEC rejects this recommendation and chooses not to fully exempt the U.S. GAAP reconciliation, then it should allow for “except for” reporting for material weaknesses that only impact the reconciliation.<sup>97</sup>
- Two major accounting firms took the opposite view and agree with the inclusion of guidance for FPIs that allows for planning and conducting an evaluation based on the primary financial statements of the FPI (see fn 47) and then performing an evaluation of the severity of any identified control deficiency in relation to both the primary financial statements and the U.S. GAAP reconciliation (see fn 73).<sup>98</sup> One of these firms also noted that footnote 73 should be clarified to highlight that a control deficiency that results or could result in a material misstatement of the U.S. GAAP reconciliation disclosure, even if it does not have a material

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<sup>94</sup> See Tatum LLC letter

<sup>95</sup> See Deloitte & Touche LLP letter, Consumer Federation of America, KPMG, LLP

<sup>96</sup> See, for example, letters of The Hundred Group of Finance Directors, Cleary Gottlieb Steen & Hamilton LLP, Committee on Capital Markets Regulation, European Association of Listed Companies, The Institute of Chartered Accountants of England and Wales

<sup>97</sup> See Bar Association of the City of New York letter

<sup>98</sup> See letters of BDO Seidman LLP, Deloitte & Touche LLP

impact on the home country financial statements, is typically a material weakness because the reconciliation disclosure is part of the Commission filing.<sup>99</sup>

- A few commenters indicated that the Commission should exempt from Section 404 FPIs that can demonstrate compliance with equivalent home country regulations.<sup>100</sup> One respondent stated that where it is not possible for the Commission to harmonize its rules, it should at least provide more flexibility.<sup>101</sup>
- One FPI respondent indicated that the area of most concern is the disproportionately wide scope of 404 activities of FPIs reporting under IFRS compared to U.S. filers subject to U.S. GAAP.<sup>102</sup> The respondent indicated that IFRS disclosures cover all of the required U.S. GAAP disclosure information, in addition to other required disclosures under IFRS. Reporting under IFRS implies that certain disclosures not required by U.S. GAAP are part of the financial statements, and as such, part of the scope for 404. They suggest that the SEC create a provision in the guidance that allows for the exclusion of non-U.S. GAAP disclosures from the evaluation process to eliminate the difference in 404 efforts between U.S. filers and foreign filers that use IFRS.
  - Similarly, one major accounting firm suggested that further guidance to FPIs around whether to include in the ICFR assessment disclosures required pursuant to their primary GAAP for which there is no corresponding requirement under U.S. GAAP would significantly aid management in scoping.<sup>103</sup>

## **Scalability**

- Some commenters stated that the proposed guidance is scalable and flexible enough to accommodate companies of all sizes, complexities and industries.<sup>104</sup>
- Several commenters stated that the guidance falls short of scalability and requested additional guidance and examples as to how smaller companies may scale their compliance activities.<sup>105</sup>

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<sup>99</sup> See Deloitte & Touche LLP letter.

<sup>100</sup> See letters of Committee on Capital Markets Regulation, Eric Fandrich, Financial Executives International Committee on Corporate Reporting

<sup>101</sup> See Financial Executives International Committee on Corporate Reporting letter

<sup>102</sup> See ING Group N.V. letter

<sup>103</sup> See Ernst & Young LLP letter

<sup>104</sup> See, for example, letters of PepsiCo., New York State Society of Certified Public Accountants, PricewaterhouseCoopers LLP, Deloitte & Touche LLP

<sup>105</sup> See, for example, letters of American Electronics Association, Institute of Management Accountants, National Venture Capital Association, Bar Association of the City of New York

- One major accounting firm indicated that issuers may benefit from additional discussion regarding scalability in the consideration of entity-level controls and considerations regarding the role of information technology general controls.<sup>106</sup>
- Several investor groups requested that the guidance emphasize that scaled or tailored evaluation methods and procedures for smaller public companies do not imply less rigorous evaluation methods and procedures. In addition, these commenters indicated that the guidance should clarify that management is required to evaluate the size and complexity of their company when determining whether their company is a “smaller public company” for purposes of implementing the guidance. As such, they are opposed to guidance that permits scaling based solely on size limits.<sup>107</sup>

### **Rule or Interpretation**

- The majority of commenters who addressed the issue of whether the SEC’s proposed management guidance should be issued as an interpretation or codified as a Commission rule favored the guidance being issued as an interpretation.<sup>108</sup> Following are some of the reasons cited by the commenters favoring interpretive guidance:
  - Interpretation will allow management more flexibility in implementation which best fits their size company and complexity;
  - Such guidance need not be rules-based to be effective;
  - There is no requirement for adoption of the guidance;
  - There is no benefit to codifying it as a rule; and
  - Issuance as a formal rule is not necessary, since the existing rules under the Exchange Act, Rules 13a-15(c) and 15d-15(c), would be modified to explicitly acknowledge that an evaluation performed in accordance with the Interpretive Guidance satisfies SEC requirements.
- However, some commenters who recommended that the SEC’s proposed management guidance be codified as a Commission rule provided the following reasons in support of their position:<sup>109</sup>

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<sup>106</sup> See Ernst & Young LLP letter

<sup>107</sup> See, for example, letters of Council of Institutional Investors, International Brotherhood of Teamsters, Consumer Federation of America, CalPERS, Pension Reserves Investment Management Board

<sup>108</sup> See, for example, letters of United Technologies Corporation, ING Group N.V., Neenah Paper, Inc., Institute of Internal Auditors, Grant Thornton LLP, American Bankers Association, Ohio Society of Certified Public Accountants, Manulife Financial, Microsoft Corporation, ACE Limited, Computer Sciences Corporation, American Electric Power, BP p.l.c., Financial Executives International, Pfizer Inc., The Institute of Chartered Accountants of England and Wales

<sup>109</sup> See, for example, letters of Frank Gorrell, Council of Institutional Investors, International Brotherhood of Teamsters, Lubrizol Corporation, CalPERS, PepsiCo.

- Promotes consistency among companies and auditors; and
- Prevents auditors from dictating process.

### **Comments relating to whether compliance with the guidance should be voluntary or mandatory**

- The majority of commenters who responded to whether compliance with the Interpretive Guidance should be voluntary or mandatory supported voluntary compliance, as proposed.<sup>110</sup> Examples of reasons cited by the commenters favoring voluntary compliance follow:
  - Provides flexibility;
  - Ensures companies current complying are not forced to change; and
  - Minimizes disruption in implementation.
- Some commenters favored mandatory compliance. One stated that for the sake of investors and comparability, the Commission should require compliance with the interpretive guidance,<sup>111</sup> while another stated that to ensure the efficiency and effectiveness of the 404 assessment process, the guidance should be mandatory when issued in its final form.<sup>112</sup>

### **Other Matters**

#### **Comments relating to previously issued Commission guidance**

- Several commenters indicated that the topics in the existing staff guidance about ICFR continue to be relevant and that it should not be retracted,<sup>113</sup> while some noted that the proposed guidance appears to appropriately incorporate most of the pertinent topics of the existing staff guidance.<sup>114</sup> Other commenters noted that only certain FAQ's needed to be retained, as some were already incorporated in the Interpretive Guidance and other were no longer necessary.<sup>115</sup> Some commenters noted that "The Communications with Auditors"

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<sup>110</sup> See, for example, letters of ING Group N.V., Neenah Paper, Inc., Institute of Internal Auditors, Grant Thornton LLP, American Bankers Association, Ohio Society of Certified Public Accountants, Business Roundtable, Microsoft, Computer Sciences Corporation, BP p.l.c., Silicon Valley Leadership Group, The Hundred Group of Finance Directors, Financial Executives International, Washington Legal Foundation

<sup>111</sup> See Frank Gorrell letter

<sup>112</sup> See Hudson Financial Solutions letter

<sup>113</sup> See, for example, letters of Grant Thornton LLP, Microsoft, Institute of Internal Auditors, Tatum LLC, Manulife Financial, BDO Seidman LLP, Computer Sciences Corporation

<sup>114</sup> See, for example, letters of American Banking Association, Ace Limited

section from the SEC's May 2005 guidance should be retained or incorporated in the new guidance.<sup>116</sup>

### **Comments related to continued deferral / exemption for non-accelerated filers**

- Numerous commenters indicated that small companies should continue to be exempt from the Section 404 requirements at least until a thorough examination of both the new SEC guidance and the PCAOB's proposed auditing standard has been conducted to ensure that smaller companies are not disproportionately burdened.<sup>117</sup> A similar group of commenters expressed the desire that the SEC delay implementation of management's assessment for an additional year for smaller public companies.<sup>118</sup>
- A small group of commenters continued to call for a complete exemption from Section 404 for smaller public companies,<sup>119</sup> while others expressed their continued support for the Commission not to extend a permanent exemption to smaller public companies.<sup>120</sup>

### **Comments related to the effects of the proposed guidance**

- Many commenters expressed the view that the proposed guidance will not lead to unnecessary changes to the evaluation processes of issuers who have completed ICFR assessments,<sup>121</sup> while others noted that the new guidance could lead to changes in company's existing assessment process.<sup>122</sup>

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<sup>115</sup> See KPMG, LLP letter

<sup>116</sup> See, for example, letters of Financial Executives International Committee on Corporate Reporting, Procter & Gamble, Cleary Gottlieb Steen & Hamilton

<sup>117</sup> See, for example, letters of American Electronics Association, International Association of Small Broker-Dealers and Advisers, Small Business Entrepreneurship Council, Bar Association of the City of New York, National Venture Capital Association, Silicon Valley Leadership Group, Committee on Capital Markets Regulation

<sup>118</sup> See, for example, letters of Chandler (U.S.A.), Inc., CNB Corporation & Citizens National Bank of Cheboygan, American Bankers Association, Biotechnology Industry Organization, Financial Executives International Small Company Task Force

<sup>119</sup> See, for example, letters of Independent Community Bankers of America, Washington Legal Foundation, UFP Technologies

<sup>120</sup> See, for example, letters of Frank Gorrell, CalPERS, Pension Reserves Investment Management Board, WithumSmith+Brown Global Assurance, LLC, AFL-CIO

<sup>121</sup> See, for example, letters of Grant Thornton LLP, Microsoft, Nike, Frank Gorell, ING, Institute of Internal Auditors, The Ohio Society of CPAs, BDO Seidman LLP, Computer Sciences Corporation, PPL Corporation, Pfizer, Pepsico, American Bankers Association

<sup>122</sup> See, for example, letters of Hutchinson Technology, Ace Limited, Manulife

**LIST OF COMMENTERS**

**Proposed Rule Concerning Management's Report on Internal Control Over  
Financial Reporting**

## List of Commenters (210 Total)

### **Law Firms & Law Associations (4)**

Bar Association of the City of New York  
Committees on Federal Regulation of Securities  
and Law and Accounting of the Section of  
Business Law of the American Bar  
Association  
Cleary Gottlieb Steen & Hamilton LLP  
Washington Legal Foundation

### **Banks & Banking Associations (9)**

American Bankers Association  
America's Community Bankers  
British Bankers' Association  
Citizens South Banking Corporation  
CNB Corporation & Citizens National Bank of  
Cheboygan  
Federal Deposit Insurance Corporation (FDIC)  
Heritage Financial Corporation  
Home Federal Bancorp, Inc.  
Independent Community Bankers of America

### **Foreign Private Issuers & Foreign**

#### **Professional Associations (18)**

Akzo Nobel NV  
Association of Chartered Certified Accountants  
Banco Itau Holding Financeira SA  
BASF Aktiengesellschaft  
BHP Billiton Limited  
BP p.l.c.  
BUSINESSEUROPE  
Canadian Bankers Association  
Cees Klumper & Matthew Shepherd (Royal  
Ahold)  
Enbridge Inc.  
European Association of Listed Companies  
European Federation of Accountants (FEE)  
ING Group N.V.  
Institut Der Wirtschaftsprufer [Institute of  
Public Auditors in Germany] (IDW)  
Manulife Financial  
PCG Worldwide Limited (UK)  
The Hundred Group of Finance Directors  
The Institute of Chartered Accountants in  
England and Wales (ICAEW)

### **Investor Groups & Similar (10)**

American Federation of Labor and Congress of  
Industrial Organizations (AFL-CIO)  
American Stock Exchange

CalPERS  
Consumer Federation of America  
Council of Institutional Investors  
Employee Retirement System of Rhode Island  
International Brotherhood of Teamsters (IBT)  
Moody's Investors Service  
Pension Reserves Investment Management  
Board  
State Employees' Retirement System –  
Commonwealth of Pennsylvania

### **Small Firms/404 Service Providers (11)**

Finn Consulting LLC  
Frank Consulting, PLLP  
Hudson Financial Solutions  
Paisley Consulting  
Protiviti  
Reznick Group, P.C.  
R. Malcolm Schwartz (CRS Associates LLC)  
Rod Scott, R.G. Scott & Associates, LLC  
Schneider Downs & Co., Inc.  
Tatum LLC  
WithumSmith+Brown Global Assurance, LLC

### **Individuals & Other (26)**

Anthony S. Chan, CPA  
Ashley W. Burrowes, Ph.D., FCA, CMA  
Cheryl Savage, CPA, CIA  
Curtis C. Verschoor, CMA  
David C. John  
Eric Fandrich  
Faisal Danka  
Frank Gorrell, MSA, CPA  
Hugh J. Campbell Jr., CPA  
Ian Lamdin, CPA, CFE  
James J. Angel, Ph.D., CFA  
JD Higginbotham, CPA  
Jeffrey M. Monohan  
Joseph V. Carcello  
Kaushik Patel  
Keith Kaplan, CPA  
Kim Dobson, CA, CISA  
Linda G. Slocombe, CA  
Manan Sagar  
Matthew Leitch  
Nina Stofberg  
Oscar Macedo  
Peter D. Hirsch, CPA  
Robert F. Richter, CPA

Thomas E. Damman  
Valentina G. Bruno

**Issuers (43)**

3M Company  
Ace Limited  
Alamo Group  
Allstate Corporation  
American Electric Power Company, Inc.  
Brown-Forman  
Cardinal Health, Inc.  
Catapult Communications  
Chandler (U.S.A.), Inc.  
Cisco Systems, Inc.  
Computer Sciences Corporation  
Eli Lilly and Company  
Ford Motor Company  
Hess Corporation  
Hutchinson Technology Inc.  
Intel Corporation  
Kimball International  
Lubrizol Corporation  
MasterCard Incorporated  
MetLife, Inc.  
Microsoft Corporation  
Minn-Dak Farmers Cooperative  
Nasdaq Stock Market, Inc.  
Neenah Paper, Inc.  
NIKE, Inc.  
Northrop Grumman Corporation  
PEPSICO  
Pfizer Inc.  
Plains Exploration & Production Company  
PPG Industries, Inc.  
PPL Corporation  
Proctor & Gamble Company  
RAM Energy Resources, Inc.  
Rockwood Holdings, Inc.  
San Jose Water Company  
Southern Company  
Sprint Nextel Corporation  
State Street Corporation  
Supervalu Inc.  
The Travelers Companies, Inc.  
UFP Technologies  
United Technologies Corporation  
UnumProvident Corporation

**Major Accounting Firms (8)**

BDO Seidman, LLP  
Crowe Chizek & Company LLC  
Deloitte & Touche LLP

Ernst & Young LLP  
Grant Thornton LLP  
KPMG LLP  
McGladrey & Pullen LLP  
PricewaterhouseCoopers LLP

**Professional Associations & Business Groups (33)**

Aerospace Industries Association  
American Electronics Association  
American Enterprise Institute  
American Society for Quality (ASQ)  
Association for Financial Professionals (AFP)  
Biotechnology Industry Organization  
Business Roundtable  
Center for Audit Quality  
Committee on Capital Markets Regulation  
Committee of Sponsoring Organizations of the  
Treadway Commission (COSO)  
Edison Electric Institute (EEI)  
Ethics Resource Center (ERC)  
Financial Executives International (FEI)  
Financial Services Forum  
Financial Services Roundtable  
Greater Boston Chamber of Commerce  
Institute of Internal Auditors (IIA)  
Institute of Management Accountants (IMA)  
International Association of Small Broker-  
Dealers and Advisers (IASBDA)  
ISACA and IT Governance Institute (ITGI)  
Managed Funds Association  
National Association of Real Estate Investment  
Trusts  
National Venture Capital Association  
New York State Society of Certified Public  
Accountants  
Ohio Society of Certified Public Accountants  
Semiconductor Equipment and Materials  
International (SEMI) and Fabless  
Semiconductor Association (FSA)  
Silicon Valley Leadership Group  
Society of Corporate Secretaries & Governance  
Professionals  
TechNet  
Telecommunications Industry Association  
The Small Business Entrepreneurship Council  
U.S. Chamber of Commerce  
U.S. Small Business Administration's Office of  
Advocacy

**University of Wisconsin Students (48)**

Adam Hurst (UW)  
Wade Piazza (UW)  
Alec Leavitt (UW)  
Anna Nystuen (UW)  
Ashley Lopina (UW)  
Ashley Kropelnicki (UW)  
Betsy Kiefer (UW)  
Casey Brandow (UW)  
Dustin Bakalars (UW)  
Erika Schlechter (UW)  
Hoi-Wai Jackie Cheng (UW)  
Jacob A. Kraus (UW)  
Jeff Rohrer (UW)  
Joe Peterson (UW)  
Joseph A. Osterbauer (UW)  
Justin Pavloski (UW)  
Kimberly Krier (UW)  
Kimberly Huston (UW)  
Lindsey Ferguson (UW)  
Lydia DeBaker (UW)  
Matthew K. Volm (UW)  
Natalie M. Lepkowski (UW)  
Nicole McGuire (UW)  
Nicholas Kolb (UW)  
Tim Van Grinsven (UW)  
Travis Glaser (UW)  
Adam Kleinmaus (UW)  
Andrew Setz (UW)  
AnnMarie Sagen (UW)  
Benjamin J. Hauser (UW)  
Cal Nitka (UW)  
Derek Hammen (UW)  
Emily Rocolle (UW)  
Giancarlo J. Compuesto (UW)  
Jackie Stoikes (UW)  
James Slye (UW)  
Jennifer East (UW)  
Jonathan Otto (UW)  
Joshua McDaniel (UW)  
Katlin M. Dassow (UW)  
Kimberly R. Holte (UW)  
Larry P. Prock (UW)  
Lori Popodi (UW)  
Matt Nitka (UW)  
Michelle Lange (UW)  
Nila Panyasithavong (UW)  
Nicholas Faber (UW)  
Rachel Meuleners (UW)