



September 14, 2006

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

Re: Internal Control Over Financial Reporting in Exchange Act Periodic Reports
of Non-Accelerated Filers and Newly Public Companies
Release No. 33-8731; File Number S7-06-03

Dear Ms. Morris:

America's Community Bankers ("ACB")¹ is pleased to submit comments on the proposal by the Securities and Exchange Commission ("Commission") to further extend the dates for non-accelerated filers to implement the internal control requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"). We are also pleased to submit comments on the Commission's proposal to provide a transition period for compliance with Section 404 for newly public companies and companies that otherwise become subject to the reporting requirements of the Securities Exchange Act of 1934 ("Exchange Act").

ACB Position

ACB strongly supports the Commission's proposal to delay for non-accelerated filers the implementation of Section 404 of Sarbanes-Oxley. ACB has previously stated this position in testimony and in comment letters filed with the Commission.² We support the Commission's proposed 17 month extension for compliance with Section 404(b). We are concerned, however, that the five month extension for compliance with Section 404(a) will be inadequate for non-accelerated filers to learn and have sufficient experience with Commission guidance, the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") guidance for management of smaller public companies, the Public Company Accounting Oversight Board ("PCAOB") guidance for auditors, and the PCAOB's amendments to Auditing Standard No. 2 ("AS2").

¹ America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit www.AmericasCommunityBankers.com.

² See letter from Senior Vice President Regulatory Affairs, Charlotte M. Bahin, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission dated October 26, 2005, available at www.AmericasCommunityBankers.com.

ACB urges the Commission to extend the implementation deadlines for Section 404(a) and Section 404(b) to 17 months, with the caveat that if more time is needed by non-accelerated filers to comply, the Commission will consider further extensions. In addition, ACB supports the Commission's proposal to provide a transition period for newly public companies and other companies that are required for the first time to register securities and file reports under the Exchange Act. However, we believe that the Commission should establish a timeframe for the transition that is the same as the extended compliance date for non-accelerated filers.

Background

The undertaking for any size company to comply with Section 404 of Sarbanes-Oxley has proven to be costly and burdensome. As reported by the Commission's Advisory Committee on Smaller Public Companies ("Advisory Committee") and by participants at the Commission's two roundtables, it is clear that a substantial amount of time, effort and resources are necessary for any company to comply with Section 404. This is particularly true for community banks that do not have the resources and personnel of the larger public companies. We have raised this issue in testimony and in comment letters to the Commission on several occasions.³

The Commission and the PCAOB announced on May 17th a series of actions to help public companies, large and small, implement or improve their implementation of Section 404. As promised in the May 17th announcement, the Commission issued for public comment its Concept Release, which will form the basis for management guidance. The PCAOB intends to amend AS2, but the amended AS2 has not yet been released and must be approved by the Commission before it is final. In addition, the PCAOB has proposed to issue guidance for auditors of smaller public companies, which also has not been finalized and released to the public. The COSO on July 11, 2006, issued its guidance for smaller public companies, but our members have reported that this guidance is vague and difficult to apply.

We applaud the Commission's efforts to ease the compliance burden of Section 404 by extending the implementation date for non-accelerated filers. However, we do not support the Commission's proposal to extend by only five months the non-accelerated filer deadline for implementing Section 404(a). Section 404(a) requires management to report on its assessment of the effectiveness of internal control over financial reporting. The proposal would extend the previous compliance deadline of fiscal years ending on or after July 15, 2007, to fiscal years ending on or after December 15, 2007.

The Commission also proposes to extend the compliance deadline for non-accelerated filers regarding Section 404(b). Under the proposal, non-accelerated filers would not be required to file the auditor's attestation report on management's assessment of internal control over financial reporting until the company files its annual report for its fiscal year ending on or after December 15, 2008. We strongly support this 17 month extension. This additional time is necessary for

³ See letter from ACB Regulatory Counsel, Sharon Lachman, to the Advisory Committee on Smaller Public Companies ("Advisory Committee"), dated April 3, 2006, and letter from ACB Senior Vice President of Regulatory Affairs, Charlotte M. Bahin, to the Advisory Committee, dated August 9, 2005. These letters are available at www.AmericasCommunityBankers.com.

non-accelerated filers while the Commission and the PCAOB consider the appropriate role of the auditor in evaluating management's internal control assessment process and amend AS2. However, we strongly believe that this same extension should be granted for Section 404(a) compliance.

ACB is concerned that the proposed date for implementing 404(a) will not provide adequate time for non-accelerated filers to comply with Section 404. Non-accelerated filers have two disadvantages: compliance and experience with implementing Section 404 for the first time, and implementing Section 404 based on guidance and accounting standards that have not been finalized and are in a state of flux. The Commission should consider the recommendations proposed by its Advisory Committee, which stated that microcap and smallcap companies be given an exemption from Section 404 "if and until" there is a suitable framework. It is doubtful that a suitable framework will be available by the time non-accelerated filers will be required to implement Section 404 as proposed.

Management of non-accelerated filers must be able to adopt a suitable internal control framework, whether it is the COSO framework or a different framework, and to learn and have experience with the Commission's guidance, the COSO guidance for smaller public companies and the PCAOB amendments to AS2. In addition, auditors for non-accelerated filers will have to learn and work with the amended AS2 and PCAOB guidance for auditors of smaller public companies. The guidance and amendments to AS2 should be in place before non-accelerated filers are required to comply with Section 404 and, therefore, we recommend the 17 month extension for both Section 404(a) and 404(b). If additional time is necessary, the Commission should further extend the deadline.

We strongly support that the Commission's proposal that management's report required by Section 404(a) will be temporarily considered "furnished" rather than "filed" the first year of compliance if the deadlines for reports are separate. This proposal would reduce management's potential liability under the Exchange Act, while guidance and amendments to AS2 are pending. The Commission states that this proposal is necessary in the event management may second-guess the Section 404 requirements and the auditor may reach a different conclusion concerning management's assessment the following year. In addition, we believe this proposal is necessary given the uncertainty management may have preparing and issuing its report based on guidance and accounting standards that have not been finalized. We further believe that the Commission should also grant temporary relief to non-accelerated filers from management's certifications concerning internal controls required in periodic reports by Section 302 of Sarbanes-Oxley.

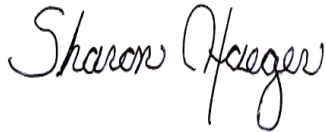
Finally, ACB supports the Commission's proposal to provide a transition period for Section 404 compliance for newly public companies and companies that for the first time register securities under the Exchange Act. The Commission hopes that the proposed transition will reduce the regulatory burdens newly public companies face and thereby encourage companies to utilize the U.S. capital markets when they issue securities to the public. The proposal provides that a newly public company and companies for the first time filing reports under the Exchange Act would not be required to comply with Section 404 in their first annual report. These companies also

Nancy M. Morris
U.S. Securities and Exchange Commission
September 14, 2006
Page 4

should not be required to comply until guidance is finalized and AS2 is amended. We, therefore, urge the Commission to set the same extension timeframe for these companies as it set for the non-accelerated filers' compliance with Section 404(b). In other words, newly public companies should not be required to comply with the Section 404 until they file their second annual report with the Commission beginning with fiscal years ending on or after December 31, 2008.

ACB appreciates the opportunity to comment on the implementation dates for non-accelerated filers and newly public companies. If we can be of any further assistance, please contact Patricia Milon at 202 857-3121 or pmilon@acbankers.org or the undersigned at 202 857-3186 or shaeger@acbankers.org.

Sincerely,

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

Sharon A. Haeger
Regulatory Counsel