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Washington, DC 20036

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**Donna J. Fisher**  
Director, Tax and  
Accounting  
Phone: 202-663-5318  
Fax: 202-828-4548  
dfisher@aba.com

April 1, 2008

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Re: File No. S7-06-03

Ms. Morris:

The American Bankers Association (ABA)<sup>1</sup> appreciates the opportunity to comment on the Securities and Exchange Commission's (the Commission) proposed amendments, *Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers* (the proposal). This is an important step in the improvement of the compliance requirements on internal controls.

We applaud the Commission for taking this logical step toward assessing the cost of compliance with Section 404(b) of the Sarbanes-Oxley Act of 2002 prior to requiring it of nonaccelerated filers. We also appreciate the Commission's leadership in making improvements in the auditing standards used for Section 404, which, hopefully, will result in improved efficiencies of time and costs while retaining the benefits of the required reporting.

The estimated costs of the Section 404(b) auditor attestations, which were severely under-estimated for larger companies, must be analyzed prior to having smaller companies spend their hard-earned shareholder dollars on unnecessary payments to public accounting firms. This outpouring of cash has already occurred for large companies as well as many small companies. We thank you for this well-reasoned approach, and we strongly encourage you to proceed with the proposal.

In a recent survey,<sup>2</sup> in which the membership of the ABA participated with other trade associations to assess the costs of Section 404, a majority of respondents acknowledged that the requirements of Section 404(b) would greatly reduce the net

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<sup>1</sup> The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$12.7 trillion in assets and employ over 2 million men and women.

<sup>2</sup> U.S. Chamber of Commerce. (Nov. 8, 2007). *Cost of SOX 404 Survey*. [http://www.uschamber.com/NR/rdonlyres/ezpr3mrrmp4ucso2mf45olddhtmumpbjpwe6dfuzoqwwoxpf7ykd5p6f175j4hclimx3r5awk3xzao3bmpk4mthjuf/0711sox\\_survey\\_report.pdf](http://www.uschamber.com/NR/rdonlyres/ezpr3mrrmp4ucso2mf45olddhtmumpbjpwe6dfuzoqwwoxpf7ykd5p6f175j4hclimx3r5awk3xzao3bmpk4mthjuf/0711sox_survey_report.pdf).

income of nonaccelerated filers. With this survey as a basis, we appreciate the opportunity to provide feedback on the Commission's questions that were included in the request for comment.

*Is it appropriate to provide a further extension of the auditor attestation requirement for non-accelerated filers as proposed? If so, should we postpone this requirement for an additional year as proposed, or would a longer or shorter timeframe be more appropriate?*

The only appropriate course of action is a deferral in the face of the historical costs of Section 404 compliance and the commonly acknowledged evidence that smaller companies bear a disproportionate cost for this compliance. Even recent efforts at reducing costs, such as the issuance of Auditing Standard No. 5 by the Public Company Accounting Oversight Board, have yet to produce significant cost reductions.

As the Commission indicates in the proposal, there are ongoing efforts to improve Section 404 for all filers and some initiatives targeted at assisting smaller companies. Among these initiatives are the replacement of Auditing Standard No. 2, improved efficiency through PCAOB efficiency audits, and development of guidance for auditors of smaller public companies. Until these efforts are completed and their benefits realized, it is imprudent to spread the application of misapplied legislation and regulation that further erodes shareholder value.

*How would the proposed extension affect investors in non-accelerated filers?*

The deferral would reduce unnecessary expenses incurred in complying with Section 404(b), while providing increased assurance related to the operational effectiveness of internal controls through the management report requirement of Section 404(a).

*Would the proposed additional deferral of the auditor's attestation report requirement make the application of the Section 404 requirements more or less efficient and effective for nonaccelerated filers?*

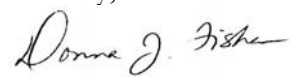
The proposal will allow nonaccelerated filers one more year of preparing and documenting their internal controls and improving processes before an external review is required, thereby reducing the cost and increasing efficiency.

*Should management's report on ICFR be "filed" rather than "furnished" during the second year of the nonaccelerated filer's compliance with the ICFR requirements under Section 404(a) if we adopt the proposed extension?*

Since the "filing" of information with the Commission imparts a perception of a higher degree of reliance and liability, nonaccelerated filers should only be required to "furnish" these reports until an external review is required.

Thank you for taking the time to consider our comments. Please contact Charlie Gilman, ABA's Accounting Policy Advisor (202.663.4986), or me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Donna J. Fisher". The signature is written in black ink and is positioned above the printed name.

Donna J. Fisher