

U.S. Chamber of Commerce

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October 24, 2005

David Chavern
Vice President

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

RE: Release 2005-134

Dear Mr. Katz:

In its release # 2005-134, dated September 21, 2005, the Commission solicited public comment on several questions about the application of internal control reporting requirements -- including questions regarding the amount of time and expense that companies that are not accelerated filers have incurred to date to prepare for compliance with the internal control reporting requirements.

The U.S. Chamber of Commerce is the largest business federation in the world, representing the interests of some three million companies. While we strongly support effective control mechanisms, we believe that Section 404 of the Sarbanes-Oxley Act of 2002 (SOX), as currently implemented by the PCAOB and SEC, has placed extraordinary burdens on the U.S. capital markets, far in excess of what was anticipated at the time of the adoption of SOX. Further, we believe that while the SEC and PCAOB have it within their power to significantly ameliorate the implementation issues, they have -- to date -- not taken effective action do so. It is important that this change.

Working with a broad cross-section of its members, the Chamber developed 15 steps the PCAOB and SEC could take to fix the flawed implementation of Section 404 which we submitted to the SEC in advance of the SEC's April 13, 2005 roundtable on 404 implementation. Most of these proposals were echoed by both participants at the roundtable and other comment letters received by the SEC.

We appreciate the Commission's timely decision to delay the application of Section 404 to smaller public companies for another year, at least until the significant flaws in 404 implementation can be resolved.

We also welcomed the SEC and PCAOB's guidance of May 16, 2005, intended to improve the overall implementation of Section 404. Unfortunately, it does not appear to have had that desired effect. It has, in fact, sowed confusion among issuers. The PCAOB's Policy Statement carries the implication that it will provide guidance to auditing firms when it finds that there has been excessive testing or overreaching audit plans. However, we understand that the PCAOB's inspection process has not included any such guidance and there are no current plans to include any in the future. There is now a real question as to the extent to which the PCAOB's own processes and actions match its recent statements on internal controls.

The bottom line is that after many tens of billions of dollars of expenditure – and the risk of many hundreds of billions of dollars additional expenditure in the near future – the time for “wait and see” has ended. The SEC and PCAOB have primary regulatory responsibility for the implementation of Section 404 and we call upon them to act immediately to fully address the problems faced by the business community and the U.S. capital markets.

The U.S. Chamber's April 12, 2005 letter to the SEC contains recommendations for improvement to the implementation of Section 404 (<http://sec.gov/news/press/4-497/dchavern3638.pdf>.) Our recommendations included the following:


- The PCAOB should reopen Auditing Standard No. 2 (AS 2) to provide greater clarity for terms of art, such as “material,” “reasonable,” “significant,” “relevant,” and “sufficient.” Among other things, such clarity could include providing specific safe harbors, allowing greater reliance on the work of others and defining key terms – such as “materiality” – in the context of full year primary financial statements.
- The PCAOB should develop new, more sophisticated standards for the testing of IT systems. Consideration should be given to the allowance of testing grace periods for new IT systems where there is disclosure to the investing public and other parallel control systems are in place.

- The PCAOB should specifically allow for more risk-based testing regimes. This would include the possibility of retesting certain controls less frequently than annually and focusing on changes from identified baselines and the prior existence (or nonexistence) of problems with the controls in question.
- The PCAOB should follow its own guidance and be willing to indicate to auditors when they do too much, as well as when they do too little. As the primary regulator of a small and very important profession, it is the PCAOB's responsibility to provide guidance with respect to both "over-auditing" and "under-auditing."
- Both the SEC and PCAOB should develop additional means for public companies of all sizes and interests to have a say in the development of standards that have an immediate impact on the conduct of their businesses. Input from companies should not be limited to formal commentary on proposed actions or the Standing Advisory Group. The SEC and PCAOB have an obligation to proactively reach-out to companies – particularly smaller companies that do not have Washington offices and are not highly focused on announcements on government websites – to determine the impact of proposed standards under Section 404.

The single most important thing that our members want is for someone in Washington – be it the SEC the PCAOB or both – to take responsibility for fixing the implementation of Section 404. This includes assuring a fair cost/benefit balance for the business community.

Such a balance does not currently exist – and its absence indicates an abdication of regulatory responsibility. There is a significant problem and the SEC and PCAOB need to take immediate steps to address the continuing challenges companies of all sizes face with the current way Section 404 is being implemented.

Sincerely,



David C. Chavern
Vice President
Capital Markets Programs