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Comments to SEC, File No. S7-24-06

Since I am an independent consultant assisting companies with their Sarbanes-Oxley efforts, I have evaluated the proposed principles based guidance from the SEC and the proposed revision of AS2 by the PCAOB. From my perspective as a consultant working with small to mid sized companies, the present proposals represent another step forward in guidance for implementing section 404.

My view of the recent guidance and revision of AS2 is based on my experience working inside companies designing implementing, and managing internal financial processes and workflows. From that perspective, I have noticed a pervasive and material issue that I believe requires more attention in the SEC's principles based guidance. The issue I see is that the guidance focuses on managements responsibly for "Controls" or "Internal Controls" whereas the text of section 404 puts at least an equal emphasis on managements responsibility for adequate procedures for financial reporting. I believe that this concentration on controls to the exclusion of adequate procedures is incorrect, or, at best, incomplete when compared to the original legislation. The present focus on controls may be a carry over from the initial reliance on the PCAOB's AS2 auditors view regarding compliance since this is an area of primary focus for auditors.

In Section 404 (a) (1) the law assigns responsibility to management for the following:

"(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and **procedures for financial reporting**;"

As I read this, managements most important responsibility relates to **establishing and maintaining adequate procedures for financial reporting**. Once the procedures are in place, an adequate internal control structure can help ensure the procedures are operating properly. Controls do not make a lot if sense by themselves, they must apply to specific procedures. I believe it is unrealistic to assume that the procedures exist and are controllable without SEC guidance addressing "adequate procedures" as a required compliance objective. One definition of "procedure" from the Mariam-Webster dictionary is as follows: "a series of steps followed in a regular definite order", " a particular way of accomplishing something or acting".
After the procedures have been developed and documented, the control structure can be put in place by management. They can then test the procedures for effectiveness by testing the controls for effectiveness. Finally, the external auditor can test the processes,

procedures, and controls to assure themselves that the controls and procedures are adequate and in compliance with the framework selected for Sarbanes-Oxley compliance.

As SEC Commissioner Roel Campos has stated “There was never anything wrong with the principles of 404” and “What we need to work on is implementation”.

A secondary comment along the lines of implementation, is that the channels of communication for matters related to Sarbanes-Oxley compliance have followed the historical press release and reporting channels focused on financial professionals and auditors. In the case of SOX compliance this can be self defeating because the primary audience must be the CEO. Since compliance programs must be funded by the CEO, secondary information can be erroneous and lead to incorrect funding decisions.
An example of an erroneous article and my email response is included below.

E-Mail Correspondence from Scott Cohen:

This is a great point Jim.

I'm cc'ing this email to Compliance Week managing editor Matt Kelly.

Thanks for taking the time to contact us.

Best,

s.

Scott Cohen
Editor & Publisher
Compliance Week

From: James (Jim) Finn [mailto:jamesfinn@finnconsultingllc.com]
Sent: Wednesday, December 13, 2006 9:16 PM
To: editor
Subject: SOX article

Please note – The article below is one reason misinformation about SOX creeps into the consciousness of American business. The statement that “companies conduct audits of internal controls as required by Section 404 of Sarbanes Oxley” can mislead a reader into thinking that “auditing” is a major responsibility of the company’s management. In my view – the opposite is true. The company is responsible for ‘establishing and maintaining an adequate internal control structure and procedures for financial reporting’. Having done that they must then perform an assessment – of which “auditing” is only a part of their responsibility.

The auditors – audit , not the company.

Quote from your article:

Brace yourself: The SEC will answer a host of critical corporate-governance questions this week, **including the eagerly anticipated guidance to help companies conduct audits of internal controls as required by Section 404 of Sarbanes-Oxley.** The Commission did postpone a decision on shareholder access to the proxy statement until next month, but will still make rulings on disseminating proxy materials via the Internet and easing the way for foreign private issuers to delist from U.S. markets. Chairman Christopher Cox expects it to be one of the longest open meetings “in quite a while.” A detailed look at the agenda is inside.

SEC Takes Aim At SOX 404, Internet Proxies

Sincerely

James Finn

President
Finn Consulting LLC