



# Financial Reporting

## Subject:

## SEC Announces Extension to SOX 404(b) Compliance for Small Public Companies

**Should you have any questions regarding questions regarding the new deadline for Section 404(b) compliance for small public companies, please contact:**

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### Compliance to Begin June 15, 2010

On Friday, October 2, 2009, the SEC announced an extension for small public companies to comply with Section 404(b) of the Sarbanes-Oxley Act. Companies with a market cap of less than \$75M ("non-accelerated filers") and their independent auditors will need to report on the effectiveness of their internal controls beginning on or after June of 2010.

The requirement for compliance with Section 404(b) will now be effective beginning with the annual reports of companies with fiscal years ending on or after June 15, 2010. This delay means that non-accelerated filers with fiscal years ending on or after December 15, 2009 through June 14, 2010 will have an additional year before they need to include the auditors' attestation report on internal controls in their annual report on Form 10-K.

### Why the Further Extension?

The SEC originally granted an extension to nonaccelerated filers so that its Office of Economic Analysis could complete a study of whether additional guidance provided to company managers and auditors in 2007 was effective in reducing the costs of compliance. The study was only just completed in September of this year and, as such, the SEC decided that it was appropriate and reasonable to extend the deadline for compliance so that small public companies and their auditors had more time to plan for the required auditor attestation.

### How Small Public Companies Should React to the News

SEC Chairman, Mary Shapiro, made it clear that there will be no further extensions to this deadline and stressed the importance for all public companies and their auditors to, "act with deliberate speed to move toward full Section 404 compliance". In a separate statement, SEC Commissioner, Luis Aguilar, reinforced Chairman Shapiro's comments and assured investors that there will be no further extensions of the compliance deadline (<http://www.sec.gov/news/speech/2009/spch100209laa.htm>)

Given these very clear statements by the SEC, MFA strongly recommends non-accelerated filers not alter their current efforts toward compliance. This extension merely delays the auditor requirement to opine on the company's internal controls over financial reporting – it does not relieve the current requirement for management to assess their operating environment and attest to the effectiveness of their internal controls over financial reporting that is discussed within the company's annual report. Use the extra time to ensure you have properly designed, implemented and documented your controls before your auditors must provide formal attestation.

### Further Information

To read the full SEC press release (and view the SEC's SOX Internal Controls study), click on the following link: <http://www.sec.gov/news/press/2009/2009-213.htm>.