

# GRAUBARD MILLER

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## MEMORANDUM

August 11, 2006

**TO:** Clients and Friends

**FROM:** Graubard Miller

**SUBJECT:** SEC Proposes Delay in Implementing Section 404 for Small Public Companies and Certain Foreign Private Issuers

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### General

The Securities and Exchange Commission has recently proposed to extend the dates for smaller public companies and many foreign private issuers to comply with Section 404 of the Sarbanes-Oxley Act of 2002. A copy of the proposed rules (SEC Release No. 33-8731) is attached hereto.

These proposed modifications will be subject to a 30-day comment period before the SEC issues final rules. Please note that the SEC has not proposed to eliminate any Section 404 reporting requirements, but rather to extend certain compliance dates that are currently in effect.

### Non-Accelerated Filers

The SEC proposed to extend the date by which non-accelerated filers must include in their annual reports a report by management assessing the effectiveness of the company's internal control over financial reporting ("Management Report"). The initial compliance date for these companies would be moved from fiscal years ending on or after July 15, 2007 to fiscal years ending on or after December 15, 2007. The SEC also proposed to extend the date by which non-accelerated filers must include in their annual reports an auditor's attestation report on internal control over financial reporting ("Auditor Attestation Report") from the first annual report for fiscal years ending on or after December 15, 2007 to the first annual report for fiscal years ending on or after December 15, 2008.

## **Foreign Private Issuers**

The SEC also proposed to extend the date by which foreign private issuers that are accelerated filers (but not large accelerated filers) and that file their annual reports on Form 20-F or 40-F, must include an Auditor Attestation Report in their annual reports from the first annual report for fiscal years ending on or after July 15, 2006 to the first annual report for fiscal years ending on or after July 15, 2007. These companies would be required to comply only with the requirement to include the Management Report in their first annual report for the fiscal years ending after July 15, 2006.

## **Newly Public Companies**

The SEC also proposed a transition period for newly public companies which become public through an IPO, a registered exchange offer, or that otherwise become subject to the Exchange Act reporting requirements. The newly public company would not be required to provide either a Management Report or an Auditor Attestation Report until it has previously filed one annual report with the SEC.

## **Additional Information**

If you have any questions, please call Brian Ross at (212) 818-8610 or Marci J. Frankenthaler at (212) 818-8892. We intend to provide updates to this memorandum and our previous memoranda regarding the implementation of the provisions of the Sarbanes-Oxley Act of 2002 as warranted at our website, [www.graubard.com](http://www.graubard.com). When visiting our website for updates, please review the section entitled “Articles.”