


Restatements Disclosed by the Two Types of SOX 404 Issuers:

(1) Auditor Attestations Filers and (2) Management-Only Report Filers



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Restatements Disclosed by the Two Types of SOX 404 Issuers

Introduction

In response to the Enron and Worldcom collapses, Congress passed the Sarbanes-Oxley Act of 2002 (“SOX”) to better protect investors. Section 404 of SOX (“SOX 404”) requires companies to review their internal controls over financial reporting (“ICFRs”) and declare whether their ICFRs are “effective” or “ineffective.” In other words, they must determine if their ICFRs are adequate enough to produce financial statements that are complete and accurate. At this stage of SOX 404 implementation, large companies must have an auditor attest to the management’s assessment of ICFRs while smaller companies are not required to include the auditor in the process. (These small company filings are referred to as management-only reports.) In annual reports for fiscal year ending on or after June 15, 2010, the smaller companies will need to include the auditor attestation in the SOX 404 disclosure.

Small companies claim that the auditor’s participation in a SOX 404 review is too costly, but many believe that the costs are more than outweighed by the benefits investors and the stock market obtain from the more reliable

The debate over the Garrett-Adler amendment generated requests for information concerning financial restatements filed by companies, both large and small, that disclosed effective ICFRs in their recent SOX 404 assessment. As a result, Audit Analytics reviewed all SOX 404 disclosures from last year (SOX 404 Year 4) and identified all restatements made on or after the source date of the SOX 404 disclosure.

When an auditor is involved in the ICFRs assessment it appears that a disclosure that states that past financials cannot be relied upon, if determined, is given to the public more promptly.

Restatement rates after a company claimed to have effective ICFRs was 46% higher for companies that filed management-only reports as compared to those that filed auditor attestations.

financial statements derived from the auditor’s participation in the assessment of the ICFRs. This debate is presently before Congress because on November 4th, the House of Representatives Financial Services Committee narrowly passed the Garrett-Adler amendment to the Investor Protection Act of 2009, an amendment that will permanently exempt smaller companies from the auditor attestation requirement.

This research found that the restatement rates after a company claimed to have effective ICFRs was 46% higher for companies that filed management-only reports as compared to companies that filed auditor attestations. Auditor attestation filers that claimed to have effective ICFRs experienced a financial restatement rate of 5.1% while management-only filers experienced 7.4%. Because the ICFR assessment process occurs before the SOX 404 disclosure, Audit Analytics also looked at restatements that occurred within the period 90 days prior to the SOX 404 disclosure. When the restatement counts included the extra 90 days, the group of companies that filed auditor attestations disclosing ineffective ICFRs saw a marked increase in the restatement rate compared to the ineffective management-only filers.

The restatement rate for management-only filers jumps from 12.47% to 15.79%. In comparison the restatement rate for the auditor attestation filers experienced a jump from 12.97% to 26.51%. Therefore, when an auditor is involved in the ICFRs assessment it appears that a disclosure that states that past financials cannot be relied upon, if determined, is given to the public more promptly.

Executive Summary – Restatements Disclosed by SOX 404 Issuers

1. Introduction

Both the Enron and Worldcom collapse culminated from a practice of disguising the true operating performance of the companies. In response these meltdowns, Congress passed the Sarbanes-Oxley Act of 2002 (“SOX”). In its title, the declared purpose of SOX is to “protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.” One section of SOX, Section 404 (“SOX 404”), furthers this goal by instructing the SEC to prescribe rules imposing a duty on officers and management to implement, review, and certify the effectiveness of a company’s internal control structure and procedures for financial reporting.¹ In addition, the registered public accountant is to attest to and report on the management’s assessment. In short, SOX 404(a) requires management to assess a company’s internal control over financial reporting (ICFRs) while SOX 404(b) requires a registered public accountant to attest to the management’s report.

2. SOX 404 Requirements History: The Staggered and Two-Tiered Implementation of SOX 404.

United States accelerated filers² were first required to provide SOX 404 certifications in annual reports for fiscal years ending on or after November 15, 2004. During its third year of application, the scope of SOX 404 expanded to include a new category of public registrant: accelerated foreign filers. For year 3, a large accelerated foreign filer was required to provide a management opinion and an auditor attestation report in its annual report for the fiscal year ending on or after July 15, 2006. However, an accelerated foreign filer that is not a large accelerated foreign filer is only required, for its first year, to provide a management opinion for this period. The SEC has also used this two-step approach to the introduction of SOX 404 requirements in year 4 by requiring non-accelerated filers to begin providing management assessments in their annual reports. Non-accelerated filers are presently required to provide a management opinion (but not an auditor attestation) in their annual reports for the fiscal year ending on or after December 15, 2007. Therefore, except for asset backed securities and registered investment companies,³ all SEC registrants are required to provide at least a management report and accompanying certification⁴ in their annual reports unless the annual report is their very first (unless the registrant is a “newly public company”⁵). The auditor attestation requirement for non-accelerated filers is to begin in annual reports for the fiscal year ending on or after June 15, 2010.⁶ As explained below, however, this future requirement is presently under review.

3. The Proposed Amendment to Exempt Smaller Companies from Auditor Attestation Requirement

In July, the Treasury Department delivered to Congress a draft bill titled the “Investor Protection Act of 2009.” This proposed legislation, drafted in response to the Madoff Ponzi scheme and other investment scandals, will grant the SEC additional powers to regulate broker-dealers. An amendment to this act, known as the Garrett-Adler amendment, would permanently exempt non-accelerated filers from SOX 404(b), the paragraph that

¹ In general, Section 404 requires that each annual report contain an “internal control report” that (1) acknowledges the management’s responsibility to maintain adequate internal controls, (2) identifies the “framework” used to evaluate the effectiveness of the internal controls over financial reporting, and (3) provides an assessment of the effectiveness of these internal controls as of the end of the fiscal year.

² An accelerated filer is a company whose public Float (as opposed to Market Capitalization) exceeds \$75 million as of the last day of their second quarter. Once a registrant becomes an accelerated filer, it will not lose this status unless its float drops below \$50 million. A large accelerated filer is a company whose public Float exceeds \$700 million. See Rule 12b-2 of the Securities Exchange Act of 1934.

³ Registered investment companies are expressly exempt from Section 404 by Section 405 of SOX.

⁴ The SEC provides a form entitled “CERTIFICATIONS” to be attached to the annual report that contains the necessary language for a 404 certification. A separate copy of this form must be signed by both the CEO and CFO without any change in the language and attached as Exhibit 31.

⁵ Pursuant to the SEC instructions to Item 308 under regulation S-K, a registrant need not comply with SOX 404 “until it either had been required to file an annual report . . . for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year.” See also, SEC Release No. 33-8731 (Aug. 9, 2006).

⁶ See SEC Press Release 2009-213 (Oct. 2, 2009).

requires the auditor attestation of the management's assessment. On November 4th, the House of Representatives Financial Services Committee narrowly passed the amendment. This amendment has its supporters, which state that the costs of 404(b) are too burdensome for smaller companies. The opponents, on the other hand, claim that companies choose to become public registrants and the benefits that an independent auditor attestation provides to investor confidence, and the overall market, outweigh the costs. Moreover, a large portion of the costs identified are one-time implementation costs and not ongoing administration costs.⁷

4. Restatements Disclosed by the Two Types of Year 4 SOX 404 Issuers: (1) Auditor Attestations Filers and (2) Management-Only Report Filers.

4.a. Restatement Filed On or After Year 4 SOX 404 Disclosure

The debate over Garrett-Adler amendment has generated a number of requests for information concerning financial restatements filed by companies, both large and small, that disclosed effective ICFRs in their recent SOX 404 assessment. As a result, Audit Analytics reviewed all SOX 404 Year 4 disclosures.⁸ The analysis divided the SOX filers into two groups: those that filed an auditor attestation and those that did not (those that filed a "management-only" report.) The SOX 404 filings were then divided into the three types of possible disclosures:

- Ineffective ICFRs;
- ICFR Status not Disclosed; and
- Effective ICFRs.

After creating each category of SOX filer with the above disclosure type, Audit Analytics identified all restatements made by the filers and counted those restatements disclosed on or after the source date⁹ of the SOX 404 filing. These counts are presented in two tables: one for auditor attestation filers and one for management-only filers. (See table on page 5 & 6.) A review of the tables show that both filer types display about the same restatement rate, about 12.5% to 13%, when the company discloses that their ICFRs are ineffective. In the other two disclosure categories, however, the management-only filers (non-accelerated filers) do not fare as well.

For auditor attestation filers that claimed to have effective ICFRs, a total of 211 out of 4147 companies (about 5.1%) subsequently filed a financial restatement. For management-only filers, a total of 232 out of 3121 companies (about 7.4%) subsequently filed a restatement. Therefore, even though about 1000 fewer management-only filers declared their ICFRs to be effective, this group of fewer registrants produced 21 more companies that filed restatements. In other words, this group of companies had a restatement rate 46% higher than its auditor attestation counterparts.¹⁰ In addition, the management-only group produced more companies that filed multiple restatements. The 211 companies that filed one or more restatements after the auditor attestation of clean ICFRs, filed a total of 223 subsequent restatements. In comparison, the

⁷ For additional information regarding the costs and benefits of SOX 404, see the September 2009 publication of a study made by SEC's Office of Economic Analysis: **Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements**. (http://www.sec.gov/news/studies/2009/sox-404_study.pdf)

⁸ SOX 404 Year 4 is defined as Nov. 15, 2007 to Nov. 14, 2008, inclusive. This 12-month period is consistent with the initial SEC requirement that United States accelerated filers comply with Section 404 in annual reports for fiscal years ending on or after Nov. 15, 2004.

⁹ In the audit analytics database, the "source date" of a restatement is the date of first disclosure. In response to the requirements of Section 409 of the Sarbanes-Oxley Act of 2002 (entitled "Real Time Issuer Disclosures), the SEC requires," the registrants to disclose within four business days a determination that past financial statements should "no longer be relied upon." This disclosure is to appear in Item 4.02 of an 8-K. (See SEC Form 8-K Directions: www.sec.gov/about/forms/form8-k.pdf .) Therefore, for many restatements the source dated is the date of the Item 4.02, but the first disclosure may be in the form of a press release or simply revealed in a periodic report (e.g., 10-Q, 10KSB, 20-F, etc.)

¹⁰ Calculated as follows: (7.43% - 5.09%)/5.09% = 0.4597.

corresponding 232 management-only companies, filed a total of 269 restatements. The biggest difference between the auditor attestation and management-only filers concerns the disclosure category “ICFR Status not Disclosed.” For those that filed an auditor attestation, only 2 companies were silent or ambiguous with respect to the effectiveness of their ICFRs. Of those, 1 filed a subsequent restatement. In contrast, a total of 202 management-only filers failed to properly disclose the status of their ICFRs. Of those, 30 filed one or more subsequent restatement.

4.b. Restatement Filed 90 Before or Any Time On or After Year 4 SOX 404 Disclosure

Because the ICFR assessment process occurs before the SOX 404 disclosure, Audit Analytics also performed a restatement count using a larger time window: those with a restatement 90 days before or any time on or after the disclosure date of the SOX 404 filing. (See table on page 7 & 8.) As expected, the additional 90 days captured restatements that increased the restatement rates. The notable observation is the major difference in restatement rate increase between the auditor attestation filers and management-only filers that disclosed ineffective ICFRs. The management-only filers jump from a restatement rate of 12.47% to 15.79% when the prior 90 days are considered. In contrast, the auditor attestation filers jump from 12.97% to 26.51%.

The SEC requires registrants to disclose within four business days a determination that past financial statements should “no longer be relied upon.”¹¹ This disclosure is to appear in Item 4.02 of an 8-K. For many restatements the source date in the Audit Analytics database is the date of the Item 4.02 in the 8-K.¹² Therefore, when a SOX 404 review determines that the ICFRs are ineffective, it appears that companies that also need to disclose a non-reliance on past financials are more apt to provide this disclosure more promptly when an independent audit firm is involved in the process.

5. When an Auditor Firm is Involved in the SOX 404 Assessment Process, the Quality of SOX 404 Disclosures Increase and the Restatement Rate Decreases.

As explained above, Audit Analytics identified SOX 404 disclosures that failed to adequately disclose whether or not the ICFRs were effective or ineffective. These types of filings were either silent or ambiguous with their conclusion. In SOX 404 Year 4, the total number of auditor attestations was 4496 and the total management-only reports was 4590, but almost all the filings that failed to disclose the effectiveness of the ICFRs came from the management-only reports.¹³ (See table on page 5 & 6.) Only 2 companies filing an auditor attestation provided an ambiguous assessment while 202 companies filed management-only reports with an ambiguous assessment. Also, a review of all four tables shows that the companies that filed an auditor attestation experienced a reduced restatement rate. When focusing on the restatements disclosed after a SOX 404 filing, the companies that filed an auditor attestation had a 5.7% overall restatement rate and the companies that filed management-only reports had a 9.2% rate.¹⁴ If the analysis includes the period of 90 days prior to the SOX 404 filing, the restatement rate becomes 7.2% for the auditor attestation filers and 10.5% for the management-only filers.¹⁵ Therefore, the auditor’s involvement in the SOX 404 assessment process increases the quality of the disclosures and decreases the restatement rate.

¹¹ In response to Section 409 of the Sarbanes-Oxley Act of 2002, entitled “Real Time Issuer Disclosures,” the SEC identified new reportable items that must be disclosed in an 8-K. This new set of disclosure requirements became effective on August 23, 2004. One of the new reportable events is the conclusion that a past financial statement should no longer be relied upon. Such an event is to be disclosed in an 8-K under Item 4.02, entitled *Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review*. See SEC Form 8-K Directions: <http://www.sec.gov/about/forms/form8-k.pdf>.

¹² Some restatement disclosures are not given in a Item 4.02 and, in that case, the source date in the database will be the date of a press release or the date of the periodic report (e.g., 10-Q, 20-F, etc.) the contains the restated financials.

¹³ The totals are obtained from the table by summing the three disclosure categories. Auditor Attestations = 347 + 2 + 4147 = 4496 and Management-Only Reports = 1267 + 202 + 3121 = 4590.

¹⁴ The percentages are calculated as follows: Auditor Attestations = $(45 + 1 + 211)/4496 = 0.0572$ and Management-Only Reports = $(158 + 30 + 232)/4590 = 0.0915$.

¹⁵ The percentages are calculated as follows: Auditor Attestations = $(92 + 1 + 230)/4496 = 0.0718$ and Management-Only Reports = $(200 + 35 + 247)/4590 = 0.1050$.

Restatements Disclosed On or After the Source Date of a SOX 404 Auditor Attestation Year 4 Disclosure

Ineffective ICFRs			ICFR Status Not Disclosed				Effective ICFRs				
Number of Such Auditor Attestation Disclosures	Unique Companies with Restatement(s)		Total Restatements Disclosures	Number of Such Auditor Attestation Disclosures	Unique Companies with Restatement(s)		Total Restatements Disclosures	Number of Such Auditor Attestation Disclosures	Unique Companies with Restatement(s)		Restatements Disclosures Filed
	#	%			#	%			#	%	
347	45	12.97%	57	2	1	50.00%	1	4147	211	5.09%	223

Notes

1) The research is based on Audit Analytics database download of October 30, 2009.

2) SOX 404 Year 4 is defined as Nov. 15, 2007 to Nov. 14, 2008, inclusive. This 12-month period is consistent with the initial SEC requirement that United States accelerated filers comply with Section 404 in annual reports for fiscal years ending on or after Nov. 15, 2004.

3) The information above is for those registrants that filed an Auditor Attestation in addition to a Management Report. The counts above exclude two categories of registrant: (1) a group of non-tickered, closely-affiliated companies, such as funds and trusts, if the group is represented by the presence of at least one remaining entity (tickered or non-tickered) to be counted and (2) non-tickered subsidiaries if the parent company submitted a comparable filing, so as to avoid counting duplicate material weakness filings by non-tickered subsidiaries.

4) In the Audit Analytics database, the “source date” of a restatement is the date of first disclosure. In response to the requirements of Section 409 of the Sarbanes-Oxley Act of 2002 (entitled “Real Time Issuer Disclosures”), the SEC requires, the registrants to disclose within four business days a determination that past financial statements should “no longer be relied upon.” This disclosure is to appear in Item 4.02 of an 8-K. (See SEC Form 8-K Directions: www.sec.gov/about/forms/form8-k.pdf.) Therefore, for many restatements the source dated is the date of the Item 4.02, but the first disclosure may be in the form of a press release or simply revealed in a periodic report (e.g., 10-Q, 10KSB, 20-F, etc.).

5) **SOX 404 Requirements History:** United States accelerated filers were first required to provide SOX 404 certifications in annual reports for fiscal years ending on or after November 15, 2004. During its third year of application, the scope of SOX 404 expanded to include a new category of public registrant: accelerated foreign filers. For year 3, a large accelerated foreign filer was required to provide a management opinion and an auditor attestation report in its annual report for the fiscal year ending on or after July 15, 2006. However, an accelerated foreign filer that is not a large accelerated foreign filer is only required, for its initial year, to provide a management opinion for this period. The SEC has also used this two-step approach to the introduction of SOX 404 requirements in year 4 by requiring non-accelerated filers to begin providing management assessments in their annual reports. Non-accelerated filers are presently required to provide a management opinion (but not an auditor attestation) in their annual reports for the fiscal year ending on or after December 15, 2007. Therefore, except for asset backed securities and registered investment companies, all SEC registrants are required to provide at least a management report in their annual reports unless the annual report is their very first (unless the registrant is a “newly public company”). The auditor attestation requirement for non-accelerated filers is to begin in annual reports for the fiscal year ending on or after June 15, 2010. This requirement, however, is presently under review to determine if non-accelerated filers, and possibly larger companies, should be exempt from the auditor attestation provision of SOX 404.

Source: AuditAnalytics.com

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Restatements Disclosed On or After the Source Date of a SOX 404 Management-Only Year 4 Disclosure

Ineffective ICFRs			ICFR Status Not Disclosed				Effective ICFRs				
Number of Such Management-Only Disclosures	Unique Companies with Restatement(s)		Total Restatements Disclosures	Number of Such Management-Only Disclosures	Unique Companies with Restatement(s)		Total Restatements Disclosures	Number of Such Management-Only Disclosures	Unique Companies with Restatement(s)		Restatements Disclosures Filed
	#	%			#	%			#	%	
1267	158	12.47%	209	202	30	14.85%	35	3121	232	7.43%	269

Notes:

- 1) The research is based on Audit Analytics database download of October 30, 2009.
- 2) SOX 404 Year 4 is defined as Nov. 15, 2007 to Nov. 14, 2008, inclusive. This 12-month period is consistent with the initial SEC requirement that United States accelerated filers comply with Section 404 in annual reports for fiscal years ending on or after Nov. 15, 2004.
- 3) The information above is for those registrants that filed a Management Report with a corresponding Auditor Attestation. The counts above exclude two categories of registrant: (1) a group of non-tickered, closely-affiliated companies, such as funds and trusts, if the group is represented by the presence of at least one remaining entity (tickered or non-tickered) to be counted and (2) non-tickered subsidiaries if the parent company submitted a comparable filing, so as to avoid counting duplicate material weakness filings by non-tickered
- 4) In the Audit Analytics database, the "source date" of a restatement is the date of first disclosure. In response to the requirements of Section 409 of the Sarbanes-Oxley Act of 2002 (entitled "Real Time Issuer Disclosures"), the SEC requires, the registrants to disclose within four business days a determination that past financial statements should "no longer be relied upon." This disclosure is to appear in Item 4.02 of an 8-K. (See SEC Form 8-K Directions: www.sec.gov/about/forms/form8-k.pdf.) Therefore, for many restatements the source dated is the date of the Item 4.02, but the first disclosure may be in the form of a press release or simply revealed in a periodic report (e.g., 10-Q, 10KSB, 20-F, etc.).
- 5) **SOX 404 Requirements History:** United States accelerated filers were first required to provide SOX 404 certifications in annual reports for fiscal years ending on or after November 15, 2004. During its third year of application, the scope of SOX 404 expanded to include a new category of public registrant: accelerated foreign filers. For year 3, a large accelerated foreign filer was required to provide a management opinion and an auditor attestation report in its annual report for the fiscal year ending on or after July 15, 2006. However, an accelerated foreign filer that is not a large accelerated foreign filer is only required, for its initial year, to provide a management opinion for this period. The SEC has also used this two-step approach to the introduction of SOX 404 requirements in year 4 by requiring non-accelerated filers to begin providing management assessments in their annual reports. Non-accelerated filers are presently required to provide a management opinion (but not an auditor attestation) in their annual reports for the fiscal year ending on or after December 15, 2007. Therefore, except for asset backed securities and registered investment companies, all SEC registrants are required to provide at least a management report in their annual reports unless the annual report is their very first (unless the registrant is a "newly public company"). The auditor attestation requirement for non-accelerated filers is to begin in annual reports for the fiscal year ending on or after June 15, 2010. This requirement, however, is presently under review to determine if non-accelerated filers, and possibly larger companies, should be exempt from the auditor attestation provision of SOX 404.

Source: AuditAnalytics.com

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Restatements Disclosed 90 Days Before or Any Time On or After the Source Date of a SOX 404 Auditor Attestation Year 4 Disclosure

Ineffective ICFRs			ICFR Status Not Disclosed				Effective ICFRs				
Number of Such Auditor Attestation Disclosures	Unique Companies with Restatement(s)		Total Restatements Disclosures	Number of Such Auditor Attestation Disclosures	Unique Companies with Restatement(s)		Total Restatements Disclosures	Number of Such Auditor Attestation Disclosures	Unique Companies with Restatement(s)		Restatements Disclosures Filed
	#	%			#	%			#	%	
347	92	26.51%	105	2	1	50.00%	1	4147	230	5.55%	242

Notes

- 1) The research is based on Audit Analytics database download of October 30, 2009.
- 2) SOX 404 Year 4 is defined as Nov. 15, 2007 to Nov. 14, 2008, inclusive. This 12-month period is consistent with the initial SEC requirement that United States accelerated filers comply with Section 404 in annual reports for fiscal years ending on or after Nov. 15, 2004.
- 3) The information above is for those registrants that filed an Auditor Attestation in addition to a Management Report. The counts above exclude two categories of registrant: (1) a group of non-tickered, closely-affiliated companies, such as funds and trusts, if the group is represented by the presence of at least one remaining entity (tickered or non-tickered) to be counted and (2) non-tickered subsidiaries if the parent company submitted a comparable filing, so as to avoid counting duplicate material weakness filings by non-tickered subsidiaries.
- 4) In the Audit Analytics database, the “source date” of a restatement is the date of first disclosure. In response to the requirements of Section 409 of the Sarbanes-Oxley Act of 2002 (entitled “Real Time Issuer Disclosures”), the SEC requires, the registrants to disclose within four business days a determination that past financial statements should “no longer be relied upon.” This disclosure is to appear in Item 4.02 of an 8-K. (See SEC Form 8-K Directions: www.sec.gov/about/forms/form8-k.pdf .) Therefore, for many restatements the source dated is the date of the Item 4.02, but the first disclosure may be in the form of a press release or simply revealed in a periodic report (e.g., 10-Q, 10KSB, 20-F, etc.).
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Restatements Disclosed 90 Days Before or Any Time On or After the Source Date of a SOX 404 Management-Only Year 4 Disclosure

Ineffective ICFRs			ICFR Status Not Disclosed				Effective ICFRs				
Number of Such Management-Only Disclosures	Unique Companies with Restatement(s)		Total Restatements Disclosures	Number of Such Management-Only Disclosures	Unique Companies with Restatement(s)		Total Restatements Disclosures	Number of Such Management-Only Disclosures	Unique Companies with Restatement(s)		Restatements Disclosures Filed
	#	%			#	%			#	%	
1267	200	15.79%	259	202	35	17.33%	42	3121	247	7.91%	292

Notes:

- 1) The research is based on Audit Analytics database download of October 30, 2009.
- 2) SOX 404 Year 4 is defined as Nov. 15, 2007 to Nov. 14, 2008, inclusive. This 12-month period is consistent with the initial SEC requirement that United States accelerated filers comply with Section 404 in annual reports for fiscal years ending on or after Nov. 15, 2004.
- 3) The information above is for those registrants that filed a Management Report with a corresponding Auditor Attestation. The counts above exclude two categories of registrant: (1) a group of non-tickered, closely-affiliated companies, such as funds and trusts, if the group is represented by the presence of at least one remaining entity (tickered or non-tickered) to be counted and (2) non-tickered subsidiaries if the parent company submitted a comparable filing, so as to avoid counting duplicate material weakness filings by non-tickered
- 4) In the Audit Analytics database, the “source date” of a restatement is the date of first disclosure. In response to the requirements of Section 409 of the Sarbanes-Oxley Act of 2002 (entitled “Real Time Issuer Disclosures”), the SEC requires, the registrants to disclose within four business days a determination that past financial statements should “no longer be relied upon.” This disclosure is to appear in Item 4.02 of an 8-K. (See SEC Form 8-K Directions: www.sec.gov/about/forms/form8-k.pdf .) Therefore, for many restatements the source dated is the date of the Item 4.02, but the first disclosure may be in the form of a press release or simply revealed in a periodic report (e.g., 10-Q, 10KSB, 20-F, etc.).
- 5) **SOX 404 Requirements History:** United States accelerated filers were first required to provide SOX 404 certifications in annual reports for fiscal years ending on or after November 15, 2004. During its third year of application, the scope of SOX 404 expanded to include a new category of public registrant: accelerated foreign filers. For year 3, a large accelerated foreign filer was required to provide a management opinion and an auditor attestation report in its annual report for the fiscal year ending on or after July 15, 2006. However, an accelerated foreign filer that is not a large accelerated foreign filer is only required, for its initial year, to provide a management opinion for this period. The SEC has also used this two-step approach to the introduction of SOX 404 requirements in year 4 by requiring non-accelerated filers to begin providing management assessments in their annual reports. Non-accelerated filers are presently required to provide a management opinion (but not an auditor attestation) in their annual reports for the fiscal year ending on or after December 15, 2007. Therefore, except for asset backed securities and registered investment companies, all SEC registrants are required to provide at least a management report in their annual reports unless the annual report is their very first (unless the registrant is a “newly public company”). The auditor attestation requirement for non-accelerated filers is to begin in annual reports for the fiscal year ending on or after June 15, 2010. This requirement, however, is presently under review to determine if non-accelerated filers, and possibly larger companies, should be exempt from the auditor attestation provision of SOX 404.

Source: AuditAnalytics.com

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