



CLIENT ALERT

Banking & Financial Institutions Practice Group Update

February 9, 2015

IMPLEMENTATION OF NEW FRAMEWORK FOR EVALUATION OF INTERNAL CONTROL OVER FINANCIAL REPORTING

At this time of year, SEC-reporting companies have started to prepare their annual reports on Form 10-K, which are due to be filed with the SEC by March 31, 2015, for smaller reporting companies and by March 16, 2015, for accelerated filers. Item 9A of Form 10-K includes management's annual report on internal control over financial reporting. As part of this report, management is required to make a statement identifying the framework used by management to evaluate the effectiveness of the company's internal control over financial reporting. SEC rules state that this framework must be a "suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment."

The framework used by most companies (and all of our SEC-reporting bank holding company clients) is that developed by a private sector initiative, the Committee of Sponsoring Organizations of the Treadway Commission, or "COSO." COSO originally published its Internal Control – Integrated Framework in 1992. For many years, most companies have used the 1992 framework for evaluating their internal control over financial reporting and have cited the 1992 framework in the "Controls and Procedures" section of their 10-K's. For many companies, this section of the 10-K has probably gone unchanged for many years.

But the next 10-K will need to be different. COSO updated its framework for evaluating internal control over financial reporting in 2013 and advised users to transition to the updated framework by December 14, 2014. COSO now considers the 1992 framework to have been replaced by the 2013 framework. For purposes of the next 10-K, this means that the usual Item 9A – Controls and Procedures disclosure referencing the 1992 framework will need to be modified to describe what your company has done or is doing to implement the 2013 framework.

If your company has not yet taken any action with respect to implementing the 2013 framework, there is no need for panic. The purpose of the 10-K is to provide investors with accurate disclosure. If nothing has been done to implement the new framework, you may, for example, disclose that management is aware of the new framework and describe management's plans for implementation. If your company has already implemented the 2013 framework, you should disclose that the implementation has occurred and describe what steps were taken to do so and how the company's internal control over financial reporting has changed as a result.

The SEC staff will be looking at this issue in your next 10-K. At a conference in late 2014, the chief accountant in the SEC's Division of Corporation Finance said that he views the implementation of the 2013 COSO framework as one of the key current developments for reporting companies. However, he also advised that the SEC staff does not plan to go on a comment letter writing campaign on this issue right away. That

notwithstanding, reporting companies should still pay attention to this issue and update their disclosure in Item 9A of the next 10-K.

We are happy to assist with reviewing and revising disclosure as needed to accurately reflect your company's status with respect to implementation of the 2013 COSO framework. Your outside audit firm will also be able to answer questions on this topic.

If you have any questions about this Alert, please feel free to call (919.781.4000) or e-mail your Wyrick Robbins contact or one of the following members of our Banking & Financial Institutions practice group: **Anthony Gaeta, Jr.** (tgaeta@wyrick.com); **Todd H. Eveson** (teveson@wyrick.com); **Alexander M. Donaldson** (adonaldson@wyrick.com); **Jonathan A. Greene** (jgreene@wyrick.com); **Stuart M. Rigot** (srigot@wyrick.com); or **Daniel K. Tracey** (dtracey@wyrick.com).