

**NJTC CFO and IT Networks present
Sarbanes-Oxley Compliance: Where are we
now?**

September 20, 2005



SOX Overview

- **The SOX Act was passed by Congress and signed into law in 2002.**
- **The rules under SOX were then promulgated by the SEC in 2003.**
- **The rules under SOX cover much more than just Section 404.**
- **For example, under SOX, the rules provide that a majority of the Board of a public company must be “independent” and the company must have an audit committee of all independent directors.**



SOX 404 Compliance

- **SOX 404 requires a public company to include in its annual reports (1) a report by management of the company on the company's internal control over financial reporting and (2) an accompanying auditor's report.**

SOX 404 Compliance

■ Compliance Dates

- Accelerated Filer = 6/15/04
- Non-Accelerated Filer = currently 7/15/06, but see proposal by SEC Advisory Committee on Smaller Public Companies dated August 18, 2005

SOX 404 Compliance

- **Recent news regarding extending dates for non-accelerated filers**
 - **Proposed Date = 7/15/07**
 - **Proposed definition of “large” versus “small” non-accelerated filer = between \$75 million market cap and \$700 million market cap**
 - **Meeting held on 9/19/05 and 9/20/05***
 - ***see recent SEC rules adopted after this presentation**

SOX 404 Compliance

■ Required Disclosure

- The final rules require a company's annual report to include an internal control report of management that contains:
 - A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the company;
 - A statement identifying the framework used by management to conduct the required evaluation of the effectiveness of the company's internal control over financial reporting;
 - Management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of the company's most recent fiscal year, including a statement as to whether or not the company's internal control over financial reporting is effective. The assessment must include disclosure of any "material weaknesses" in the company's internal control over financial reporting identified by management. Management is not permitted to conclude that the company's internal control over financial reporting is effective if there are one or more material weaknesses in the company's internal control over financial reporting; and
 - A statement that the registered public accounting firm that audited the financial statements included in the annual report has issued an attestation report on management's assessment of the registrant's internal control over financial reporting.
- The final rules also require a company to file, as part of the company's annual report, the attestation report of the registered public accounting firm that audited the company's financial statements.



SOX 404 Compliance

- **Legal Impact of a Qualified SOX 404 opinion**
 - Currently, not much?
 - Just a disclosure rule
 - In my personal opinion, I would not be surprised if the NYSE, NASDAQ and AMEX think to adopt a listing standard that requires a non-qualified SOX 404 opinion.



SOX 404 Compliance

- **Market Impact of a Qualified SOX 404 opinion**
 - Potential Financial impact = possible – too soon to tell because smaller companies have not had to report yet
 - Indirect impact on financing deals, bank lending, public offering and M&A = probable

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SOX 404

- **What will be the Long Term Impact of SOX 404 ?**