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¶1-010 概述

萨班斯-奥克斯利法案 (Sarbanes-Oxley Act) (以下简称: 萨班斯法案) 的一个主要目的是提高报告的质量和增加投资者对金融市场的自信心。市场行为显示, 就财务信息的编制和呈报程序向投资者提供一个更为清晰的指引是很有必要的。为此, 萨班斯法案第 404 条款要求递交给 SEC 的年报中必须附有公司管理层对建立和维护充分有效的内部控制体系表示负责的声明。在该报告中, 管理层还需要提供对这些内部控制有效性的评价。

另外, 法案第 404(b) 款要求, 公司的审计师需对该公司管理层的内部控制有效性评价做出鉴证并出具报告。在要求注册会计师事务所对管理层的内部控制评价做出鉴证并出具审计报告的同时, 美国国会并不希望审计师将对此类项目的评估作为一项单独的业务或者作为事务所增加收费的基础。

奥克斯利 (Michael Oxley), 当时的众议院金融服务委员会主席认为, 内部控制在会计和审计系统中是十分重要的审查与制衡制度, 并且也被很多人视为是对可信赖的财务报告的严格考验。广泛上来说, 管理层编制财务信息的一个关键方面就是建立和保持一个针对财务报告的内部控制制度。有效的财务报告内部控制是一个用来为财务报告可靠性提供合理保证的程序。但是, 由于我们并非处于一个完美的世界

里，有效的财务报告内部控制既不可能、也不会成为提供实现财务报告目标的绝对保证（PCAOB 职员在 2004 年 6 月 23 日的解释）。

逐渐地，404 条款的合规成本开始加重了上市公司的负担。SEC 原先估计 404 条款的实施需要耗费每个公司的平均成本为 91,000 美元，总计达到 12.5 亿美元（2003 年 6 月 5 日发布第 33-8238 号文件，参见第五节）。但是后来的预计使事实上的平均成本比之前估计数据高出了 20 多倍。

SEC 主席考克斯 (COX) 已经认识到该法案的 404 条款是需要遵循法案的各个公司所要面临的一项单独的最大挑战。毫无疑问，他指出，该条款已经增加了大量的成本费用，但是这也很有助于保证提供更可靠的财务报告，因为这些公司需要提高他们的内部控制以达到法令规定的要求。

最终这种关注传达到了议会，SEC 和 PCAOB 承担了一项主要的改革。在议会紧密监督下，SEC 和 PCAOB 共同合作致力于创建一个新的、以风险和原则为导向的制度来报告财务报告内部控制的有效性。404 条款没有改变，但是依照条令发布的章程、指南和标准都已进行了改革，以回应那些认为内部控制合规成本过高从而会损害美国金融市场竞争力的关注。改革建立在 2005 年 5 月 SEC 和 PCAOB 联合发行的指南的基础上。

证监会发布了管理指南（见第 33-8810 号文件（SEC 2007 年），FED. SEC. L. REP. ¶87,913 段），并修正了许多内部控制规则（见附录 A 的 ¶20-020 段等）。在这部分，PCAOB 采纳了一项新的关于财务报告内部控制审计的审计准则第 5 号文件（见附录 B 的 ¶21-010 段），取代了审计准则第 2 号，并且采用了一项规则，要求非审计的内部控制服务要预先取得审计委员会的批准。

考克斯主席已承诺分析现实中的信息，以确定实施 404 条款的成本和收益符合 SEC 的期望。此外，通过由 SEC 来监督 PCAOB 的检查计划，该委员会将监督审计事务所是否正在以实现审计效率的预定结果和降低成本的方式执行审计准则第 5 号，同时监督 PCAOB 是否以期望的方式审查审计事务所。

新审计准则第 5 号将在 2007 年 11 月 15 日及之后的会计年度审计中生效。但是，必须指出的是，SEC 允许尽早采用新的标准。事实上 SEC 工作人员鼓励审计师早日采用新标准，以使发行人和投资者可以早日受益于这些与内部控制审计执行有效性和效率相关的改进。

该委员会最近在规章 S-X（即：规定如何准备根据 1933 证券法和 1934 证券法应向证交会呈报的报告的财务报告部分）的修订于 2007 年 8 月生效，且在该委员会将于收到申请之日起，开始接受由个人审计师根据审计准则第 5 号描述的有关内部控制财务报告有效性的认证报告。

¶1-020 证监会规则制定与指南

SEC 采纳了相关规章，旨在通过提高上市公司向投资者关于公司管理层对公司财务报表和财务报告内部控制的责任范围的披露，以及管理层免除其职责方式的披露，来满足该法案的目标（见转载于附录 A 的规章，见 ¶20-020 段及其后；另见第 34-47986 号文件（SEC 2003 年），CCH 2003 年 12 月 ¶86,923 段）。

执行 404 条款规定的政策基础，关键在于坚信建立和维护财务报告内部控制是一个重要的管理职责。此外，有效的财务报告内部控制制度将被视为可靠的财务报表的一个必要组成部分。通过要求管理部门以报告的形式陈述其对公司财务报表、财务报告内部控制及管理层就这些控制的有效性所作出的评价的责任，投资者能够更好地评估公司管理层的职责履行情况和公司财务报表的可靠性。

财务报告内部控制所要求的年度评估也将鼓励公司投入足够的资源和精力来维持这种控制。而且，这种评估要求应有助于确认在系统崩溃前潜在的弱点和缺陷，从而促进持续、有序和及时的公司内部的信息流通，并最终促进信息在投资者和市场之间的流动。

SEC 认为，改进披露的另一个目的是帮助企业尽早发现欺诈性财务报告，从而可能遏制财务欺诈或者最小化欺诈的不利影响。所有这些好处都将有助于增加市场效率，并提高投资者对公司财务状况披露的可靠性和财务报告内部控制制度的信心。

与 404 条款相关的 SEC 规则要求，公司，而不是注册的投资公司，要在它们的年度报告中包含一个有关公司财务报告内部控制管理的报告。公司财务报告内部控制管理报告的准备将会需要很多人的参与，包括如：高级管理人员，内部审计师，内部法律顾问，外聘律师和审计委员会成员等。

管理指南

SEC 管理指南（见第 33-8810 号文件（SEC 2007 年），FED. SEC. L. REP. ¶87,913 段），以及 PCAOB 的新准则（见附录 B），对内部控制报告制度做出了改革，改革的内容包括：

- 通过指导审计师测试最重要的控制，来引导审计关注内部控制最重要的问题；
- 采取基于专业判断的、灵活的、原则导向的制度；
- 取消原来的规定，即由审计师来评估管理的过程；
- 为较小规模的公司量身定制审计；
- 根据 PCAOB 的标准来调整证监会规定；
- 取消了主要证据的规定，允许更多地依靠其他人员的工作；
- 重新定义实质性漏洞 (material weakness)；
- 要求审计委员会预先批准非审计的内部控制服务；
- 将主要测试重点放在实体或公司层面控制；
- 要求审计师在制定审计计划时评估欺诈风险；
- 在保证质量的同时减少穿行测试数量；
- 结合内部控制和财务报告的审计；
- 要求在每一个决策点进行风险评估，采用自上而下的方法；
- 测试重要的控制，以评估财务报表虚报风险；
- 允许以风险导向审计方法来审计多家企业；
- 允许审计师使用在过去的审计中获得的知识；
- 重新调整内部控制，以防止财务报告中出现重大误报。

详细的讨论请参见本书的第 2 章，该章将更全面地讨论 SEC 内部控制报告的管理指南。

¶1-030 对审计委员会的影响

审计委员会将受到新的内部控制制度的影响。虽然内部审计师在 404 条款中并没有被专门提及，但是他们在内部控制职责上有责任去审查和评估公司的制度、流程、业务、职能和活动。因此，他们在萨班斯时代面临着很多挑战。

审计委员会有责任确保公司拥有健全的内部控制和报告控制。新的规章管理制度有助于委员会要求管理人员评价该公司的控制，并证明他们已经向审计委员披露了所有重要缺陷 (significant deficiencies)。为了给审计师们更多的支持并帮助满足该法案的内部控制要求，内部审计部门的领导应该有一个与审计委员会直接沟通的渠道（详见证监会委员 Cynthia Glassman 于 2002 年 9 月 22 日在美国董事秘书协会的发言）。

萨班斯法案要求审计委员会直接负责外部独立审计师的任命、薪酬和监督工作。该法案还要求审计师报告和证明公司内部控制的管层评价。

因此，内部审计师必须帮助企业风险分析员和风险分析经理加强风险评估和财务报告的控制程序，而现在，根据萨班斯法案，还要帮助其加强其他的公开披露程序。反过来，在一些监管者看来，为了更有效率，内部审计师应直接向审计委员会报告。这些监管者认为，一个公司的整体质量保证体系和监督计划会因为内部审计师不对审计委员会负责而有所损害（美国联邦储备委员会理事 Susan Schmidt Bies 于 2003 年 5 月 7 日在内部审计协会大会上的发言）。

此外，COSO 报告指出，公司的董事会和审计委员会的组成，以及董事应如何履行在财务报告过程中的有关职责，是公司控制环境的关键方面。公司财务报告内部控制的一个重要组成部分是董事会或审计委员会参与监督财务报告过程，包括评估管理层的会计判断和会计估计的合理性，以及审查相关监管机构的文件备案要求。

最佳实践：审计委员会应积极使内部审计师参与进来，以确保风险评估和财务报告的控制过程是有效的。

审计委员会的监督

小规模审计委员会应如何监督内部控制过程的这一问题，是一结构性难题。除严格的法规要求之外，该规则的一个显著要点是审计委员会委员需要喜欢提出问题，这意味着他们应该更好的利用他们的财务知识。SEC的高级官员认为，根据审计准则第5号规定，在综合基础上特别关注管理指南实施和外聘审计师的年终审计范围时，审计委员会发挥更加积极的作用是非常重要的（见总会计师 Conrad Hewitt 2007年7月25日评论）。

然而，这并不意味着审计委员会必须重新审计财务报表，或重新设计内部控制制度。这意味着，他们应该持积极的怀疑论和寻求解决问题的态度，直到他们满意已经收到了足够的信息来作出明智的判断为止。这在管理层或审计师已卷入了事实的或潜在的利益冲突的情况下尤其是正确的（见证监会委员 Cynthia Glassman 对美国董事秘书协会的发言，2002年9月22日）。

最佳实践：风险导向审计程序应定期核查，以确保随着公司的发展和生产流程的变化审计资源能一直集中在较高风险的领域。当需要审查低风险的领域时，审计师应该进行足够的交易性测试，以便确保这种低风险的评级。审计委员会应该收到有关违反内部控制的报告，以确定审计程序在那些地方需要得到加强（美国联邦储备委员会理事 Susan Schmidt Bies 在内部审计协会大会上的发言，2003年5月7日）。

在广泛的意义上说，要相信，审计委员会必须为内部审计的质量保证铺平道路，并提供最大的独立性、客观性和专业性的内部审计程序。审计委员会应确定内部审计的基调（美国联邦储备委员会理事 Susan Schmidt Bies 在国家银行监事会议上的发言，2003年5月30日）。

一线经理

审计委员会有责任确保他们的组织拥有有效的内部控制，该控制对于他们业务的性质和范围来讲是充足的，并且受制于有效的审计程序。

根据联邦储备委员会理事 Susan Schmidt Bies 的说法，有效的内部控制是一线管理人员的责任。一线部门经理必须确定他们业务范围内的可能接受的风险水平，必须确保他们自己能够从风险中获得合适的回报且充足的资本能够得到维持。

作为一种最佳实践，理事 Susan Schmidt Bies 建议通过一项计划，即至少每年一次独立地评估内部控制的有效性。支持性部门如会计、内部审计、风险管理、信贷审查、合规和法律部门应当独立监控和测试控制过程以确保这些职能是有效的。审计委员为内部审计确定了这一基调（见联邦储备委员会理事 Susan Schmidt Bies 在2004年6月22日的金融机构会计论坛上的发言）。

从这个意义上讲，独立是指，内部审计去执行类似外部审计鉴证这类的工作。当需要找出这种方法的具体细节时，最重要的一点是，审计委员会应当对管理层的报告有一些合理的独立性评估。审计委员会成员可以用这些报告去设置来年的审计计划，并跟踪风险在公司内发生了哪些变化或正在发生什么变化，以帮助应当增加哪些控制的讨论（见联邦储备委员会理事 Susan Schmidt Bies 在2004年6月22日金融机构会计论坛上的发言）。

内部审计师的独立性

内部审计师的独立性问题直接与审计委员会有关。内部审计师应当证明其独立于管理层且忠实于审计委员会，而不只是表面的独立。反过来，审计委员会应该要求内部审计程序具有尽可能高的独立水平，同时减少对独立性的任何威胁，例如一些内部审计师作为组织内部的管理层顾问的这一趋势。

内部审计师通过充当内部控制框架和程序质量的有效独立评估人，来为公司增加价值。当审计师扮演管理层顾问的角色时，他们失去了自己的独立性，因为他们日后需要对这种工作提出意见（美国联邦储备委员会理事 Susan Schmidt Bies 在2003年5月7日的内部审计师协会会议上的评论）。

内部审计师作为在公司周围的审计委员会的独立的眼睛和耳朵，能发挥重要的作用。由于他们的工作遍及整个组织，他们清楚哪些管理人

CHAPTER 1 OVERVIEW

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¶1-010 Introduction

A central goal of the Sarbanes-Oxley Act is to enhance the quality of reporting and increase investor confidence in the financial markets. Market events had shown a need to provide investors with a clearer understanding of the processes that surround the preparation and presentation of financial information. To that end, Sarbanes-Oxley Act Section 404 of the Act requires that annual reports filed with the SEC be accompanied by a statement by company management that management is responsible for creating and maintaining adequate internal controls. In the report, management must also present its assessment of the effectiveness of those controls.

In addition, Section 404(b) requires the company's auditor to report on and attest to management's assessment of the company's internal controls. In requiring the registered public accounting firm preparing the audit report to attest to and report on management's assessment of internal controls, Congress does not intend for the auditor's evaluation to be the subject of a separate engagement or the basis for increased charges or fees.

According to Michael Oxley, then Chair of the House Financial Services Committee, internal controls are important checks and balances in accounting and auditing system and are considered by many to be the acid test for reliable financial statements. On a broad level, a key aspect of management's responsibility for the preparation of financial information has been its responsibility to establish and maintain an internal control system over financial reporting. Effective internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting. But, since we do not live in a perfect world, effective internal control over financial reporting cannot, and does not, provide absolute assurance of achieving financial reporting objectives. (PCAOB staff interpretation of June 23, 2004.)

Increasingly, the cost of complying with the mandates of Section 404 began to burden public companies. The SEC initially estimated that implementation of Section 404 would cost an average of \$91,000 per company, for a total of \$1.25 billion dollars (Release No. 33-8238 (June 5, 2003), see Section V). But later estimates have put actual average costs at more than 20 times that amount.

SEC Chairman Cox has noted that Section 404 has posed the single biggest challenge to companies under the entire Act. Without question, it has imposed the greatest costs, he noted, but it has also contributed significantly to more reliable

financial reporting as companies improved their internal controls to meet the statutory requirements.

Ultimately the concerns reached Congress, and the SEC and the PCAOB undertook a major reform. With Congress closely watching, the SEC and PCAOB worked together to create a new risk-based, principles-based regime for reporting on the effectiveness of internal control over financial reporting. Section 404 remains unchanged, but the rules, guidance, and standards promulgated pursuant to the statute have been reformed in response to concerns that internal controls compliance was overly costly and harmful to the competitiveness of U.S. financial markets. The reforms build on the guidance issued by the SEC and PCAOB in May of 2005.

The SEC issued management guidance (see Release No. 33-8810 (SEC 2007), FED. SEC. L. REP. ¶87,913) and amended a number of internal controls rule (reproduced in Appendix A, at ¶20-020 et seq.). For its part, the PCAOB adopted a new Auditing Standard No. 5 on the audit of internal control over financial reporting (reproduced in Appendix B, at ¶21-010), to replace Auditing Standard No. 2, and adopted a rule requiring audit committee pre-approval of non-audit internal control services.

Chairman Cox has pledged to analyze real-world information to determine that the costs and benefits of implementing Section 404 are in line with SEC expectations. In addition, through SEC oversight of the PCAOB's inspection program, the Commission will monitor whether audit firms are implementing Auditing Standard No. 5 in a manner designed to achieve the intended results of audit efficiency and cost reduction and whether the PCAOB is inspecting audit firms in a manner consistent with expectations.

New AS5 will become effective for audits of fiscal years ended on or after November 15, 2007. However, it is important to note that the SEC allows early adoption of the new standard. In fact, the SEC staff encourages early adoption by auditors so that issuers and investors can begin to benefit from the improvements that have been made relative to effectiveness and efficiency in the conduct of internal control audits.

The Commission's recent amendments to Regulation S-X become effective on August, 2007 and the Commission will begin accepting the single auditor's attestation report on the effectiveness of internal control over financial reporting prescribed in Auditing Standard No. 5 in timely filings received starting on that date.

¶1-020 SEC rulemaking and guidance

The SEC adopted rules intended to accomplish the Act's goals by improving public company disclosure to investors about the extent of management's responsibility for the company's financial statements and internal control over financial reporting and the means by which management discharges its responsibility. (See rules reproduced in Appendix A, at ¶20-020 et seq.; see also Release No. 34-47986 (SEC 2003), 2003 CCH Dec. ¶86,923.)

The policy underlying the rules implementing Section 404 centers on the belief that the establishment and maintenance of internal control over financial reporting has

always been an important responsibility of management. Moreover, an effective system of internal control over financial reporting is seen as a necessary ingredient of reliable financial statements. By requiring a report of management stating management's responsibility for the company's financial statements and internal control over financial reporting and management's assessment regarding the effectiveness of such control, investors will be able to better evaluate management's performance of its stewardship and the reliability of a company's financial statements.

The required annual evaluation of internal control over financial reporting will also encourage companies to devote adequate resources and attention to the maintenance of such control. Additionally, the required evaluation should help to identify potential weaknesses and deficiencies in advance of a system breakdown, thereby facilitating the continuous, orderly and timely flow of information within the company and, ultimately, to investors and the marketplace.

According to the SEC, the improved disclosure is also designed to help companies detect fraudulent financial reporting earlier and perhaps thereby deter financial fraud or minimize its adverse effects. All of these benefits will increase market efficiency by improving investor confidence in the reliability of a company's financial disclosure and system of internal control over financial reporting.

The SEC rules related to Section 404 require companies, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over financial reporting. The preparation of the management report on internal control over financial reporting will likely involve multiple parties, including senior management, internal auditors, inhouse counsel, outside counsel and audit committee members.

Management guidance

The SEC management guidance (see Release No. 33-8810 (SEC 2007), FED. SEC. L. REP. ¶87,913), along with the PCAOB's new standard (see Appendix B), reform the internal control reporting system by:

- Focusing the audit on the matters most important to internal control by directing the auditor to test the most important controls;
- Adopting a flexible principles-based system reliant on professional judgment;
- Eliminating the requirement that the auditor evaluate management's process;
- Scaling the audit for smaller companies;
- Aligning SEC regulations with the PCAOB standard;
- Eliminating the principal evidence provision to allow more reliance on the work of others;
- Redefining material weakness upward;
- Requiring audit committee pre-approval of non-audit internal control services;
- Placing the main testing focus on entity or company level controls;
- Requiring auditors to assess the risk of fraud when planning the audit;

- Reducing the number of walkthroughs while preserving quality;
- Integrating internal control and financial statement audits;
- Requiring risk assessment at each of the decision points in a top-down approach;
- Testing controls important to assessing the risk of financial statement misstatement;
- Allowing a risk-based approach for auditing multiple corporate locations;
- Allowing auditors to use knowledge obtained during past audits; and
- Refocusing internal controls to prevent material misstatements in financial statements.

See Chapter 2 for a more complete discussion of the SEC's management guidance of internal control reporting.

¶1-030 Impact on audit committees

Audit committees will be impacted by the new internal controls regime. Although internal auditors are not specifically mentioned in Section 404, they have within their purview of internal control the responsibility to examine and evaluate all of a company's systems, processes, operations, functions, and activities. Thus, they are subject to a number of challenges in the Sarbanes-Oxley era.

The audit committee has a role to play in ensuring that the company has robust internal and reporting controls. The new regulatory regime helps the committee in this regard by requiring that officers assess the company's controls, and certify that they have disclosed any significant deficiencies to the audit committee. To foster additional support for internal auditors and to help meet the Act's requirements for handling complaints relating to internal controls, the head of internal audit should have a direct line of communication to the audit committee. (See remarks of SEC Commissioner Cynthia Glassman to the American Society of Corporate Secretaries, Sept. 22, 2002.)

The Sarbanes-Oxley Act requires the audit committee to be directly responsible for the appointment, compensation, and oversight of the work of the external independent auditors. The Act also requires the auditor to report on and attest to management's assessment of the company's internal controls.

Thus, internal auditors must help corporate risk officers and managers reinvigorate the risk assessment and control process over financial reporting and now, under Sarbanes-Oxley, other public disclosures. In turn, in order to be effective, internal auditors should report directly to the audit committee, in the view of some regulators, who reason that the company's entire quality assurance and monitoring program will be tainted if the internal auditors are not accountable to the audit committee. (Remarks by Federal Reserve Board Governor Susan Schmidt Bies, Institute of Internal Auditors Conference, May 7, 2003.)

In addition, the COSO Report states that the composition of a company's board and audit committee, and how the directors fulfill their duties related to the financial reporting process, are key aspects of the company's control environment. An

important element of the company's internal control over financial reporting is the involvement of the board or audit committee in overseeing the financial reporting process, including assessing the reasonableness of management's accounting judgments and estimates and reviewing key filings with regulatory agencies.

Best Practice: The audit committee should actively engage the internal auditor to ensure that risk assessment and control process over financial reporting are vigorous.

Audit committee oversight

The question of how granular audit committee oversight over the internal control process should be is inherently difficult. Beyond the strict regulatory requirements, the clear thrust of the rules is that audit committee members need to be inquisitive, which means they should put their financial literacy to good use. SEC senior officials believe that it is important for the audit committees to play a more active role with particular attention paid to the management guidance implementation and the scope of the external auditor's year-end audits on an integrated basis in accordance with Auditing Standard No. 5. (See remarks of Chief Accountant Conrad Hewitt, July 25, 2007.)

This does not mean, however, that audit committee members must re-audit the financial statements or redesign internal controls. It does mean that they should have a healthy skepticism and pursue issues until they are satisfied they have received adequate information to make an informed judgment. This is especially true with respect to instances that involve real or potential conflicts of interest for management or auditors. (See remarks of SEC Commissioner Cynthia Glassman to the American Society of Corporate Secretaries, Sept. 22, 2002.)

Best Practice: Risk-focused audit programs should be reviewed regularly to ensure audit resources are focused on the higher-risk areas as the company grows and produces and processes change. As lower-risk areas come up for review, auditors should do enough transaction testing to be confident in their risk rating. Audit committees should receive reports on all breaks in internal controls to determine where the auditing process can be strengthened. (See remarks of Federal Reserve Board Governor Susan Schmidt Bies, Institute of Internal Auditors Conference, May 7, 2003.)

In a broad sense, there is the belief that audit committees must pave the way for quality assurance over the internal audit and provide for the utmost independence, objectivity, and professionalism of the internal audit process. The audit committee sets the tone for the internal audit. (See remarks of Federal Reserve Board Governor Susan Schmidt Bies at the Conference of State Bank Supervisors, May 30, 2003.)

Line managers

Audit committees are responsible for ensuring that their organizations have effective internal controls that are adequate to the nature and scope of their businesses and are subject to an effective audit process. According to Federal Reserve Board Governor Susan Schmidt Bies, effective internal control is the responsibility of line management. Line managers must determine the acceptable level of risk in their line

of business and must assure themselves that they are getting an appropriate return for this risk and that adequate capital is being maintained.

As a best practice, Governor Bies recommends adopting a program for independently assessing the effectiveness of internal controls at least annually. Supporting functions such as accounting, internal audit, risk management, credit review, compliance, and legal should independently monitor and test the control processes to ensure that they are effective. The audit committee sets the tone for the internal audit. (See remarks of Federal Reserve Board Governor Susan Schmidt Bies at the Accounting Forum for Financial Institutions, June 22, 2004.)

In this sense, independent may mean that internal audit is brought in to perform something similar to an external auditor's attestation. While the details of such an approach would need to be worked out, the important point is that the audit committee should have some reasonably independent assessment of management's report. Audit committee members could use these reports to set the audit plan for the next year, to track how risks have changed and are changing within the organization, and to facilitate discussion of which controls should be added. (See remarks of Federal Reserve Board Governor Susan Schmidt Bies at the Accounting Forum for Financial Institutions, June 22, 2004.)

Independence of internal auditor

The issue of internal auditor independence directly involves the audit committee. The internal auditor should demonstrate independence from management and loyalty to the audit committee, and not just the appearance of independence. In turn, the audit committee should require the highest possible level of independence for the internal audit process and eliminate any threats to this independence, such as the tendency for some internal auditors to act as management consultants within the organization.

Internal auditors add value by being effective independent assessors of the quality of the internal control framework and processes. Auditors lose their independence when they perform management consulting roles for which they later will have to render an opinion. (Remarks by Federal Reserve Board Governor Susan Schmidt Bies, Institute of Internal Auditors Conference, May 7, 2003.)

Internal auditors can play a valuable role as the independent eyes and ears of the audit committee around the organization. As they work throughout the organization, they know which managers and which projects are likely to entail greater weaknesses in controls. Prompt reporting to the audit committee and timely resolution of audit findings will build credibility with the committee.

If an audit committee asks an internal auditor for recommendations on how to improve independence, the typical response should be that the test for any recommended change is whether it makes management more accountable for the ongoing effectiveness of internal controls and makes the internal audit function more effective in monitoring and process validation. (Remarks by Federal Reserve Board Governor Susan Schmidt Bies, Institute of Internal Auditors Conference, May 7, 2003.)

Pre-approval of non-audit services

The PCAOB also adopted a rule requiring the auditor to obtain pre-approval from the audit committee for the performance of any non-audit internal control services. The Sarbanes-Oxley Act requires audit committee pre-approval of all non-audit services that the auditor proposes to perform for the client company. Rule 3525 was approved by the SEC on July 27, 2007 (see Release No. 34-56152).

Rule 3525 implements this pre-approval requirement by requiring auditors to take certain steps as part of seeking audit committee pre-approval of internal control related non-audit services. These steps are intended to ensure that audit committees are provided the information they need to make an informed decision on how the performance of internal control-related services may affect the auditor's independence. Specifically, the auditor seeking pre-approval to perform non-audit internal control services must:

- Describe in writing, to the audit committee the scope of the proposed service;
- Discuss with the audit committee the potential effects of the proposed service on the firm's independence; and
- Document the substance of the firm's discussion with the audit committee.

These requirements parallel the auditor's responsibility in seeking audit committee pre-approval to perform tax services for an audit client under PCAOB Rule 3524 and are codified, like that rule, as part of the Board's rules on ethics and independence. Consistent with the tax service pre-approval rule, Rule 3525 does not specify that the pre-approval must be specific. Instead, the rule is neutral as to whether an audit committee pre-approves a non-audit service on an ad hoc basis or on the basis of policies and procedures.

Many companies have adopted policies providing for pre-approval in annual audit committee meetings. And the Board understands that such an annual planning process can include as robust a presentation to the audit committee as a case-by-case pre-approval process. Thus, Rule 3525 is flexible enough to accommodate either system and encourages auditors and audit committees to develop systems tailored to the needs and attributes of the company.

A Note to Rule 3525 explains the general standard of auditor independence, and that application of this standard is guided by several principles, including whether auditors assume a management role or audit their own work. The Note further specifies, as an example of the standard's application, that an auditor would not be independent if management had delegated its duty for internal control to the auditor or if the auditor had designed or implemented the audit client's internal controls.

¶1-040 Foreign private issuers

Sarbanes-Oxley Act Section 404 makes no distinction between domestic and foreign issuers and, by its terms, clearly applies to foreign private issuers. The SEC, therefore, applies the management report on internal control over financial reporting requirement to foreign private issuers that are Exchange Act reporting companies.

第八章 利用他人的工作

引言	¶8-010
评估其他人员的能力	¶8-020

¶8-010 引言

审计师利用他人工作的能力对于他们必须亲自执行的程序有着直接的影响。审计师重复那些已由有能力和客观的人执行了的高质量的相关工作，存在增加了工作量却没有不提高质量的风险。此外，将审计师人力资源花费在审计师本来能够信赖他人工作的领域，可能会导致审计师过多地关注低风险的控制。因此，审计准则第 5 号允许外部审计师利用他人的工作，以获得与内部控制设计和运行有效性有关的证据。准则采用了原则导向的方法，以确定在何时和何种程度上审计师能够利用他人的工作。

认识到发行人可能雇用除了内部审计师以外的人员执行与管理层内部控制评估有关的活动，准则允许审计师利用除内部审计师以外的其他公司雇员的工作，以及在管理层和审计委员会指导之下的工作的第三方的工作。

风险导向方法

与准则的风险导向方法相一致，审计师对于他人的工作的利用程度取决于与被测试的控制相联系的风险。随着风险的降低，审计师也越少需要亲自执行工作。相反，在有较高风险的领域，比如处理舞弊风险的控制，对他人的工作利用则将受到限制，即使这些工作完全可以用。同样，他人工作对于审计师工作的影响也取决于风险与执行工作的人的能力和客观性之间的关系。随着风险的降低，能力和客观性的必要水平也同样降低（审计准则第 5 号第 19 段，转载于¶21-010 段）。

注意，由于所要求的判断程度，审计师必须要么亲自执行程序以知道误报的可能来源，要么监督直接为审计师提供帮助的他人的工作（审计准则第 5 号第 35 段，见¶21-010 段）。

统一框架

此外，委员会了解到，其他人员为了管理层内部控制评估的目的而执行的部分工作会与财务报表审计相关。因此，在内部控制和财务报表的联合审计中，审计师可能利用这些工作以得到，支持以财务报表审计为目的的控制风险评估的证据（审计准则第 5 号第 17 段，见 ¶21-010 段）。

委员会为利用他人工作采用了一个单一的、统一的框架，因为用于确定何时适合利用他人工作的影响因素应当与用于财务报表审计和联合审计中的因素相同。这些因素包括正在测试目标事项的性质，和实施测试的工作人员的能力和客观性。假如审计师合理地评估了这些因素，他们就能在任何审计项目中进行正确的决策。

删除主要证据的规定

重要的是，审计准则第 5 号也删除了先前包括在审计准则第 2 号中的主要证据的规定。主要证据的规定要求审计师自身的工作就是审计师发表意见的主要证据。这一规定限制了利用他人工作，特别是在低风险领域利用他人的工作。

删除控制测试的限制

同样，审计准则第 5 号删除了审计准则第 2 号中，为了对控制环境中的控制实施测试而利用他人工作的具体限制。当执行工作的人员的能力和客观性足够高的时候，审计准则第 5 号中一般原则的应用允许审计师为测试控制环境的特定方面而利用他人的工作。在这种情况下，例如，审计师可以利用他人工作以确定存在书面的行为守则，且雇员已经接受并加强了对守则的理解。

另一方面，评估公司的行为守则是否确实得到遵循需要更多的判断。此外，在应用审计准则第 5 号中的利用他人工作的原则时，审计师应当恰当地决定，由于正在进行测试的控制的高风险性质，无论其他工作人员的客观性或能力如何，其都需要亲自实施更多的测试。

多区域

¶8-010

此外，在确定对控制实施测试的地区或业务单元时，外部审计师可能会考虑到由他人代表管理层执行的工作。例如，假如内部审计师计划在不同地区执行相关审计工作时，独立的审计师可以与内部审计师协调工作，减少他们原本需要实施审计程序的地区或业务单元的数量（审计准则第 5 号第 B12 段，见 ¶21-010 段）。

¶8-020 评估其他人员的能力

由于取消了主要证据的规定，内部审计师和那些外部审计师利用其工作的其他工作人员的能力变得额外的重要。因此，根据审计准则第 5 号的规定，审计师必须评估那些他们计划利用其工作的人员的能力和客观性，以确定审计师可以在什么程度上利用他人工作。能力和客观性的程度越高，审计师可以利用的工作就越多（审计准则第 5 号第 18 段，转载于 ¶21-010 段）。

为了利用他人的工作，能力意味着达到和维持能够使工作人员有力的执行分配给他们的任务的理解力和知识水平，客观性意味着能够客观地和具有学术诚信地来执行这些任务的能力。为了评估能力，审计师应当评估与工作人员的资格和其实实施他们计划利用的工作的能力相关的因素。为了评估客观性，审计师应当评估是否存在一些因素要么阻碍，要么提高工作人员以必要的客观性程度来实施审计师计划利用工作的能力。

委员会劝诫审计师不要利用那些客观性程度很低的人员的工作，无论这些人员的能力水平如何。同样，审计师也不应当利用那些能力水平很低的人员的工作，无论其客观性程度如何。那些核心工作是在公司中执行测试或合规职能的人员，例如内部审计师，通常被认为在实施对外部审计师会有用的类型的工作时，拥有较高的能力和客观性。

穿行测试

审计准则第 5 号允许审计师利用他人工作以实现某项穿行测试的目标，但是在仅作为直接协助的情况下。也就是说，审计师必须监督、审查、评估和测试由其他人员实施的工作。

¶8-020

¶12-020 季度证明

审计师关于管理层的内部控制季度证明的责任，与其关于管理层的内部控制年度评估的责任不同。审计师应按季度执行有限程序，以便为确定下列事项提供依据：他是否发现了在审计师看来应对财务报告内部控制变更的披露做出的任何修改，以便使证明具有准确性，并符合萨班斯法案第 302 条款的规定要求（加入到了审计准则《中期财务信息》的 SAS 第 100 号（审计准则第 722 条））。

请注意表格 10-Q 必须披露在管理层内部控制变化评估报告中确认的、发生在公司上个季度的公司内部控制变化信息，这种变化已经严重影响或具有合理可能性会严重影响公司的财务报告内部控制（规章 S-K 第 308 条，转载于¶20-040 段）。

CHAPTER 12 AUDITOR'S DUTIES REGARDING SECTION 302 CERTIFICATIONS

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Quarterly certifications	¶12-020

¶12-010 Introduction

Sarbanes-Oxley Section 302 and the SEC rules implementing it require the company's principal executive and financial officers to make the following quarterly and annual certifications with respect to the company's internal control over financial reporting:

- A statement that the certifying officers are responsible for establishing and maintaining internal control over financial reporting;
- A statement that the certifying officers have designed such internal control over financial reporting, or caused such internal controls to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles; and
- A statement that the report discloses any changes in the company's internal controls that occurred during the most recent fiscal quarter (the company's fourth fiscal quarter in the case of an annual report) that have materially affected, or are reasonably likely to materially affect, the company's internal control over financial reporting.

Under Auditing Standard No. 5, auditors should modify their report on the company's internal controls if management's annual certification pursuant to Section 302 is misstated (AS5, paragraph C1, reproduced at ¶21-010). Thus, if matters come to the auditors' attention as a result of the audit of internal controls over financial reporting that lead them to believe that modifications to the disclosures about changes in internal controls over financial reporting are necessary for the annual certifications to be accurate and to comply with the requirements of Section 302, they should follow the communication responsibilities as described in AU §722 Interim Financial Information, for any interim period.

This would mean communicating up the ladder to the audit committee. If management and the audit committee do not respond appropriately, in addition to the responsibilities described in AU sec. 722, auditors should modify their report on the audit of internal controls to include an explanatory paragraph describing the reasons they believe that management's disclosures should be modified. (AS5, paragraph C15, reproduced at ¶21-010.)

¶12-020 Quarterly certifications

The auditor's responsibility as it relates to management's quarterly certifications on internal controls is different from the auditor's responsibility as it relates to

management's annual assessment of internal controls. Auditors should perform limited procedures quarterly to provide a basis for determining whether they have become aware of any material modifications that, in their judgment, should be made to the disclosures about changes in internal control over financial reporting in order for the certifications to be accurate and to comply with the requirements of Section 302 of the Act. (Added to the auditing standard on interim financial information SAS No. 100 (AU 722).)

Note that the Form 10-Q must disclose any change in the company's internal controls identified in management's evaluation of any change in the internal controls that occurred during the company's last quarter that has materially affected or in reasonably likely to materially affect the company's internal control over financial reporting. (Item 308 of Regulation S-K, reproduced at ¶120-040.)

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