



# Corporate & Securities

**ALERT**  
DECEMBER 2006

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## SEC Votes to Propose Interpretive Guidance for Management Assessment of Financial Controls, Hedge Fund Private Offering Rule

### Interpretive Guidance Regarding Financial Controls Assessment

The SEC has voted to propose, for public comment, interpretive guidance for management in assessing the adequacy of a company's internal controls for financial reporting. Compliance with the guidelines, which are intended to prevent excessive testing of controls and documentation of controls and testing, would constitute compliance with the SEC's financial control rules, but a company also would be allowed to use other methods that satisfy the rules.

The guidance describes a four-step procedure:

1. Use a risk-based approach to determine areas that both are material and pose a risk to reliable financial reporting, and identify the controls addressing the risk, including the risk of fraud.
2. Gather and analyze evidence about the operation of those controls. Assessment of other controls would be unnecessary.
3. Decide if any control deficiencies identified are material weaknesses. The proposed guidance provides management with a framework, outside of the auditing literature, for making these judgments.
4. The proposed guidance explains the nature and extent of documentation that management must maintain to support its assessment, noting that the documentation may take a variety of forms.

The SEC also is proposing amendments to accounting rules to coordinate an expected parallel auditing standard to be

proposed by the Public Company Accounting Oversight Board.

The significant additional expense imposed by the financial controls rules, adopted under the Sarbanes-Oxley Act of 2002, is believed especially burdensome to smaller companies, preventing them from seeking financing in U.S. public markets. The SEC believes that smaller companies especially should benefit from the flexibility and scale the guidance is intended to afford and that it will restore some of the competitiveness of U.S. capital markets.

### Hedge Fund Private Offering Rule

The SEC also proposes to define a new category of accredited investor that would apply to offers and sales of securities issued by hedge funds and other private investment pools to natural persons. The proposed definition would include any natural person who (a) meets either the current net \$1,000,000 net worth test or \$200,000 income test and (b) owns at least \$2.5 million in investments. Currently, an individual meeting only the former criteria could invest in hedge fund securities without their registration. The new rule adds a significant second wealth test.

For more information on the content of this alert, please contact David C. Fischer at 212.407.4827 or [dfischer@loeb.com](mailto:dfischer@loeb.com).

## Contact Us

### New York

#### Partners

NORWOOD P. BEVERIDGE, JR.	NBEVERIDGE@LOEB.COM	212.407.4970
WALTER H. CURCHACK	WCURCHACK@LOEB.COM	212.407.4861
ANGELA M. SANTORO DOWD	ADOWD@LOEB.COM	212.407.4097
DAVID C. FISCHER	DFISCHER@LOEB.COM	212.407.4827
SETH D. GELBLUM	SGELBLUM@LOEB.COM	212.407.4931
ROBERT B. LACHENAUER	RLACHENAUER@LOEB.COM	212.407.4854
BARRY T. MEHLMAN	BMEHLMAN@LOEB.COM	212.407.4812
BETH BARASH NEUHAUS	BNEUHAUS@LOEB.COM	212.407.4902
MITCHELL S. NUSSBAUM	MNUSSBAUM@LOEB.COM	212.407.4159
ANDREW M. ROSS	AROSS@LOEB.COM	212.407.4838
LLOYD L. ROTHENBERG	LROTHENBERG@LOEB.COM	212.407.4937
DAVID S. SCHAEFER	DSCHAEFER@LOEB.COM	212.407.4848
FRAN M. STOLLER	FSTOLLER@LOEB.COM	212.407.4935
JOSEPH P. SVERCHEK	JSVERCHEK@LOEB.COM	212.407.4101

#### Associates

SASHA N. BADIAN	SBADIAN@LOEB.COM	212.407.4096
GIOVANNI CARUSO	GCARUSO@LOEB.COM	212.407.4866
HEATHER M. COHEN	HCOHEN@LOEB.COM	212.407.4927
MATTHEW A. KEPKE	MKEPKE@LOEB.COM	212.407.4833
SUSIE L. KIM	SLKIM@LOEB.COM	212.407.4933
MICHAEL J. KISTLER	MKISTLER@LOEB.COM	212.407.4826
NOAH J. LEICHTLING	NLEICHTLING@LOEB.COM	212.407.4075
NEIL S. NATALE	NNATALE@LOEB.COM	212.407.4934
ESTELITA SALWEN	ESALWEN@LOEB.COM	212.407.4983
LIANG SHIH	LSHIH@LOEB.COM	212.407.4885
LILI TAHERI	LTAHERI@LOEB.COM	212.407.4160
JESSICA THALER	JTHALER@LOEB.COM	212.407.4146
TAHRA T. WRIGHT	TWRIGHT@LOEB.COM	212.407.4122
JACK S. YEH	JYEH@LOEB.COM	212.407.4929

### Los Angeles

#### Partners

ROBERT S. BARRY, JR.	RBARRY@LOEB.COM	310.282.2258
KENNETH R. BENBASSAT	KBENBASSAT@LOEB.COM	310.282.2340
KARL E. BLOCK	KBLOCK@LOEB.COM	310.282.2225
GERALD M. CHIZEVER	GCHIZEVER@LOEB.COM	310.282.2121
ALLAN B. DUBOFF	ADUBOFF@LOEB.COM	310.282.2141
HAROLD A. FLEGELMAN	HFLEGELMAN@LOEB.COM	310.282.2394
CHRISTOPHER J. KELLY	CKELLY@LOEB.COM	310.282.2263
FREDRIC N. RICHMAN	FRICHMAN@LOEB.COM	310.282.2244
THOMAS ROHLF	TROHLF@LOEB.COM	310.282.2240
PAUL W. A. SEVERIN	PSEVERIN@LOEB.COM	310.282.2059

#### Of Counsel

MARIA ASPINWALL	MASPINWALL@LOEB.COM	310.282.2377
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#### Associates

ROBERT J. ELDERS	RELDERS@LOEB.COM	310.282.2350
ARASH KHALILI	AKHALILI@LOEB.COM	310.282.2282
RANA MAKSOUD	RMAKSOU@LOEB.COM	310.282.2147
JEFFREY A. SKLAR	JSKLAR@LOEB.COM	310.282.2310
LORETTA THOMPSON	LCTHOMPSON@LOEB.COM	310.282.2331
LAWRENCE VENICK	LVENICK@LOEB.COM	310.282.2318

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