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11 September 2006

Nancy M. Morris
Secretary
Securities and Exchange Commission
100F Street, NE
Washington DC 20549-1090

Dear Ms Morris

FILE NUMBER S7-11-06
Submission by Australia and New Zealand banking Group Ltd to the Securities and Exchange Commission in relation to Concept Release concerning Management's Reports on Internal Controls over Financial Reporting

Australia and New Zealand Banking Group Limited (ANZ) as a foreign private issuer is pleased to be able to provide feedback to the Securities and Exchange Commission ("SEC") based upon our experience to date.

In Attachment 1 we respond in detail to the questions posed by the SEC. Below we set out our overall observations on Sarbanes Oxley Act (SOX) s404 and ANZ's journey to comply with s404, (Attachment 2 provides a brief synopsis of ANZ.)

ANZ supports the general principles and intent of s404 and notes that there are close parallels between many of the requirements of the Sarbanes Oxley Act 2002 and laws, regulations and codes of behaviour operating in Australia. There is, however, no precise equivalent to s404 in Australia that results in such depth and detail as has resulted from the implementation of s404 and more particularly AS#2 which, for all intent and purposes, sets the scope of s404 attestation. ANZ believes that the issuance of a "Management Guide" is a critical step in the evolution of s404 practice; a guide that directly communicates the SEC's expectations to management as distinct from management guidance being indirectly derived from auditors/consultants meeting the expectations of AS#2 and the PCAOB.

ANZ has implemented an extensive SOX program over the last 3 years, and will be subject to reporting on our s404 compliance in the next quarter. From our perspective, the benefits from our SOX program have been greatly overshadowed by the costs of the program. Despite the efforts of the SEC to issue guidance that encourages companies to adopt a top-down, risk-based approach to implementation of s404, our understanding of market practice and the interpretation of the SOX requirements by our advisors and auditors has meant our program has an excessive focus on low level details, controls, documentation and evidentiary material.

Our implementation of SOX has been strongly influenced by advice we receive from consultants/public accounting firms. The advice has been relatively consistent. Each firm has taken a similar approach to what they recommend companies do to satisfy the requirements of s404. We have followed this advice because the program is new and therefore we believe it is safest to follow the advice of the public accounting firms as to the interpretation of the requirements.

We take pride in providing financial information that not only complies with the intent and the letter of all regulations we are subject to, but also assists readers of our financials to understand how the company is performing and how it is being managed. We frequently publish financial information that is not mandated disclosure, to keep the markets better informed.

Integral to the aim of being a transparent financial discloser is the requirement that the internal controls over financial reporting are effective in ensuring the disclosed information presents a true and fair view of the company. The controls that ensured our financial data was free of material error extended from controls operated by our processing staff to controls exercised by our Board and Audit Committee.

This robust control environment has now had overlaid a very labour intensive and detailed process of systematically identifying controls, writing test scripts for those controls, preparation of evidence of testing that the controls are operating, and new documentation of financial reporting processes. Rather than concentrating on those areas of greatest risk of management influence, the program focuses excessively on detailed transactional type controls. We would submit that the original driver of s404 would be best satisfied by focussing on controls over areas where there is risk of management influence and non-routine accounting processes.

There has been some benefit from this process. The finance staff has a more thorough knowledge of the controls over the end-to-end process, from customer source systems to general ledger, and we have focussed the attention of our operations staff on the impact their work has on financial statements.

We welcome the constant review of the guidance on s404 implementation that the SEC is undertaking. We are entirely supportive of legislation that aims to ensure that financial reports are not deliberately misstated.

We are hopeful that over time, once the feedback is assessed and further guidance is issued, companies will be able to re-assess their s404 compliance requirements. We remain doubtful of the long term sustainability of the processes and procedures that have been developed to give effect to s404 and believe that significant revision will be needed.

We would be pleased to provide additional comment to expand on anything we have presented either in this letter and attachments or, for that matter, on any other issues that the SEC wishes to seek input upon.

We look forward to the seeing the results of the SEC's considerations based upon this survey.

Yours faithfully

/s/ Shane Buggle

SHANE BUGGLE
Group General Manager Finance
Australia and New Zealand Banking Group Limited

ANZ observations in relation to questions posed by the Securities and Exchange Commission

ANZ's comments regarding each of the questions asked are framed within the following general context:

- A Management Guide from the SEC should be established addressing the principles to be applied by management in complying with SOX 404
- The Management Guide should address and distinguish management's approach in dealing with
  - Deliberate misrepresentation or fraud in financial statements (the key risk issue which ANZ understands drove the development of the Sarbanes – Oxley Act) and, on the other hand,
  - Erroneous misstatement or processing error,

  but should place most if not all attention on (a) as the principle driver for s404.
- The Management Guide should address the degrees of freedom that:
  - auditors have to work with management without compromising independence and should address, in particular, the need for management and auditors to agree up front the scope and nature of critical issues that will be directly subject to s404 compliance: and
  - management has in determining the alternate ways of achieving compliance which may not necessarily follow traditional audit methodology.
- The Management Guide must address safe harbour rules that management and auditors can rely upon in relation to the points above
- AS#2 should be aligned to the Management Guide so that the possibility of unnecessary work and cost can be reasonably avoided.
- PCAOB examination practices in relation to auditors need, in turn, to align with the Management Guide.

1 In line with the principles in our letter mentioned, ANZ considers that the rules and Staff Q&A should be captured within a Management Guide. The Management Guide should also be expanded to address the following:

   a. There should be a strong emphasis on the top-down, risk-based approach.

   b. The top-down, risk-based approach should seek to place reliance on key company level controls wherever possible both in general and specifically in relation to those company level controls that focus upon deliberate misrepresentation or fraud in financial statement.

   c. The top-down, risk-based approach should place lesser emphasis on scope regarding potential misstatement arising from processing error.

   d. In relation to both b. and c. the Management Guide could provide illustrations to management of the types of company level controls and the substance thereof, that would be, in the opinion of the SEC, instrumental in managing the breadth and scope of the compliance effort, thereby minimising reliance on transaction level controls. We would be very interested in statements of good company practice that the SEC would like to see across all companies.

e. As part of these illustrations, the Management Guide could focus on key company level controls such as period end and analytical review attributes, financial planning and budgeting and also the critical key risk "hot spots" that define and drive the nature timing and extent of transaction level control assessment.

f. The Management Guide could also give recognition to other forms of regulatory or supervisory regimes that, in part, assist in achieving s404 objective and ensure that appropriate value is attributed to those existing regimes to avoid cost duplications. Such recognition would need to be explicitly recognised in the Management Guide and consequently in AS#2. For example ANZ as a bank in Australia is supervised by the Australian.

g. The Management Guide should also address the extent of reliance that can be placed on management monitoring and/or a company's routine scope of internal audit, for example, throughout a fiscal period that is an appropriate substitute for concentrated testing.

h. The guidance should provide safe harbour for both management and auditors to work collaboratively during the planning phases to ensure all issues are agreed early thus helping to manage cost and make the remainder of each year's compliance activity run seamlessly in parallel to normal business activity.

i. It is essential that the Management Guide principles be reflected in the AS#2 scope and that PCAOB examinations are aligned to these principles. This, we believe, may require more latitude for auditors that may not at this time be allowed by AS#2.

2. ANZ does not consider that there are any special issues that should relate to foreign private issuers (FPIs).

   We wish, however, to bring two points to the SEC's attention, one relating to regulatory overlap and the other being a matter of communication to FPIs through the SOX regulatory evolution.

   - **Regulatory Overlap:** As a financial institution ANZ is governed by financial regulatory regime applied in each country of operation. While ANZ appreciates there may be variances in robustness of some regulatory regimes, it is fair to say that Australia and New Zealand, which represent some 95% of ANZs business (total assets), do have well developed regulatory frameworks actively managed through the local regulators, APRA and the Reserve Bank of New Zealand, both soon to apply BASEL II governance framework. Indeed, the same applies to US banks which are also subject to the US FDICIA requirements. We would be interested to learn what consideration has been given to industries such as banking which are already subject to other regulatory frameworks and how the value of these can be leveraged to also assist help meet the SOX objectives.

   - **Communication to Foreign Private Issuers:** While the SEC and PCAOB effectively communicate with registrants we do find that being outside the US results in longer communication channels. Any advice or guidance provided by the SEC/PCAOB in practice is channelled through accounting firms as the applicators of AS #2. In turn, US accounting firms communicate through their counterparts in the FPI home country. ANZ sees this as another plank to support a Management Guide through which the SEC communicates directly with management whether in the US or offshore.

3. ANZ considers that wherever possible the approach to guidance should be principles based consistent with current rules and staff Q&A with sufficient practical illustrations so as to provide clarity to both management and accounting firms.

4. In line with observations at 2 above particularly in relation to industries that are subject to other regulatory frameworks such as banks, ANZ believes that the SEC should give consideration to a tiered assessment framework. This may be developed on the basis of guidelines that recognise both the alternate regulatory framework as well as the risk maturity of organisations

   For example organisations may be tiered as follows:

   - Tier 1 organisations may be those such as small companies where the individual inherent risk may be high but the risk to the market as a whole (due to relatively small number of shareholders/market capital at risk) is low - in which case:
     - management articulates the financial reporting controls systems (company level and transaction level controls) for the company; and
     - auditor attestation (beyond normal financial audit activities) is limited to the design of the controls systems but able to qualify accounts on the basis that management representations are not being fulfilled (as determined by normal financial audit process).
   - Tier 2 organisations may be those of a medium to large nature and which have large inherent risk to the market (because of size, number of shareholders or market capital at risk) but for which there are no other overlapping regulatory frameworks in place, in which case:
     - management applies the approach now in place for s404 assessment; and
     - auditors attest as to the appropriateness of management assessment and the effectiveness of internal controls.
   - Tier 3 organisations may be those that are also subject to alternate globally recognised regulatory regimes or frameworks in addition to the SEC listing rules and which have inherently high market risk (in terms of both size or market capital at risk and number of shareholders), but already substantially mitigated by other regulatory frameworks, in which case:
     - management identifies its fundamental risk issues, with a principal focus on risk of management manipulation, and mitigants at the highest level;
     - management assesses and attests to the effectiveness of those high level controls (see 1 above) independently of auditors;
     - management articulates the financial reporting risk framework for other financial reporting controls;
     - auditors attest to the effectiveness of management's view on high level controls and test controls; and
     - auditors only attest to the acceptability of the "other financial reporting controls" as a documented framework.

     In adopting such a framework of tiering the SEC will recognise the existence of other regulatory frameworks which have an overlapping purpose, ensuring a cost effective and efficient approach. The SEC would also be demonstrating a risk based approach to the securities market as a whole having recognised the mitigating affect of other frameworks.

5. See comments at 3 above.

6. ANZ has applied the guidance contained in AS#2, as interpreted in conjunction with advisors in the absence of other guidelines, and supplemented through various publications and forums such as the Corporate Executive Board and accounting firm publications. We doubt that we have done anything substantially different to other organisations. Due to the requirement for auditor independence, companies such as ANZ have used other accounting firms as their consultants. While each accounting firm's approach coalesces in matters of principle, the advice given based upon the accounting firm's own approach to auditing at a level of detail tends to differ. This is of itself extremely time consuming and results in companies paying both their auditor and other accounting firm to flesh out and resolve what in practice are reflections of the differing audit processes.

7. ANZ considers that should the SEC provide additional guidance common to all companies there are likely to be few drawbacks. ANZ does recognise, however, that there would be different approaches applied to smaller companies. Guidance that management gets now is largely derived from the audit community. The audit community have a key overriding objective - to meet the examination standards of the PCAOB. The practical consequence of this is that companies must meet the same objective. This situation will not change whilst the current AS#2 is the sole basis of guidance. AS#2 should follow the SEC guidance.

8. Australia has no equivalent framework to COSO or the Turnbull Report. Thus ANZ has chosen the framework which is most familiar to the SEC. ANZ considers the COSO framework to be fit for purpose.

9. In line with other comments ANZ considers that Staff Statements should be incorporated in management guidance incorporating changes that arise from company feedback.

10. The SEC could consider alternate attestation approaches. Specifically, s404(b) requires the auditor to 'attest to and report on, the assessment made by management' but does not require the auditor to directly attest to the effectiveness of internal controls. In this regard ANZ notes that the current attestation approach for accounting firms, and thus management, is derived solely from AS#2 and not s404 itself. S404 appears to envisage latitude in application. ANZ considers that there is scope in for the SEC to define attestation more widely, with due emphasis on a risk based approach. For example, for risks related to financial misrepresentation or fraud, the accounting firms' attestation approach should be in line with what AS#2 now contemplates but for risks associated with operational error there is scope to confine examination to management's own internal attestation approach (should it exist) akin to the Japanese SOX model.

11. As noted earlier, ANZ considers it quite important to address both in principle and by way of illustrations, the top-down, risk-based approach. Specific points are:
    a. The top-down, risk-based guidance should focus strongly on company level controls with the greatest emphasis on those controls designed to mitigate the risk of misrepresentation or financial reporting fraud.
    b. The top-down, risk-based approach should place lesser emphasis on potential for processing error.
    c. The top-down, risk-based approach should place significant emphasis on period end controls and through comment and illustrations could cover the appropriate attributes for maximum reliance.
    d. The top-down, risk-based approach should also place significant emphasis on financial planning and budgeting coupled with analytical review processes, again describing/illustrating attributes upon which maximum reliance can be placed.
    e. Finally, the top-down, risk-based approach should concentrate upon a limited number of key risk "hot spots" that are relevant to the type of business and which are fundamental to the reliability of financial reporting.

12. AS#2 indicates that there would normally be expected to be a balance between preventative and detective controls or manual and automated controls. ANZ considers that such constraints should not be mandated for s404 compliance purposes. Whilst it is probable that a company will in practice have a balance of these forms of controls, for s404 efficiency purposes ANZ questions the need for such prescription relative to management's evaluation. To illustrate, in a banking business, there is a balance between preventative (often in the banking network) and detective (often in the centralised back office) controls. Thus, there is a level of deliberate in-built redundancy. It should be sufficient though, for s404 purposes, to choose the most cost effective key controls from a testing point of view.

13. No comment

14. No comment.

15. ANZ considers that guidance would be useful in the general area of leveraging the value of strong company level controls with particular emphasis on making an effective link between strong company level controls with strong period end controls, strong analytical review controls and key “hot spot” controls (based on inherent risk) referred to earlier. This would aid reducing the scope in terms of a company’s other transaction level controls. All other transactional level controls should then be looked at in the context of their “residual” risk. This is likely to be particularly applicable to Tiers 2 and 3 level companies, referred to above.

16. Comments at 15 are applicable. Having considered the strength of company level controls and period end controls, guidance should focus on “residual risk” associated with transaction processing controls rather than “inherent risk”.

17. No additional guidance needed other than in the context of earlier comments regarding key focus being on fraud related misrepresentation rather than error.

18. The scoping in or out of multiple locations has been driven mainly by quantitative methods influenced by level of “coverage” criteria. Since the issuance of additional guidance in May 2005 there has been some moderation in the way “coverage” has been used as the principal view of risk. ANZ considers that if the emphasis is clearly on top-down risk and after taking into consideration the strength of company level controls and period end controls coupled with clear identification of the key risk “hot spot” processes, the right locations or business units will be identified without the need to apply “coverage” criteria. ANZ believes that it would be useful for the SEC to provide illustrations of the ways in which a risk-based approach would be used to direct scope particularly in relation multiple locations as opposed to the “coverage” based approach.

19. ANZ has had limited success in utilising company level controls in reducing levels of testing elsewhere. There appears to be greater preference to examine controls at a transaction level and at the conclusion of the first year of compliance ANZ will be re-examining this position to determine if a new/changed approach will result in a different level of acceptance of company level controls as a prime mitigating factor. ANZ does however have other company level controls identified such as internal attestation processes subject to separate verification which we believe should have a greater role to play in reducing the level of “other” testing.

20. In our view this is a particularly interesting question. It is reasonably contendable that the evidence standards being applied are driven, in the main, by the need for auditors to withstand scrutiny of their own files. ANZ considers that the standards of evidence should be tailored to issues involved, viz. there should be an expectation of high standards of evidence in relation to judgmental values. On the other hand, the standards of evidence around routine transactional processes should be more focussed on monitoring attestation rather than at a lower level of control activity. ANZ believes that guidance drawing a distinction between controls mitigating deliberate misstatement risks and those mitigating risk of error in routine transactional activities would be beneficial.

21. No comment

22. ANZ has yet to complete its first year of compliance. For the first year we have approached evaluation on the basis of a standard model including the deployment of a special team of testing resources devoted to the testing of key controls. We intend to review this approach from a cost/efficiency perspective for subsequent years, to strike a balance between independent testing/evaluation and the use of management monitoring and testing.

For this reason it would be useful to understand what the SEC considers to be appropriate criterion for determining the use of independent testers versus other forms of monitoring activities. For example, ANZ would conceptually apply independent structured testing of company level controls, period end controls and key risk “hot spot” financial processes whereas we would be more disposed to monitoring controls supported by internal attestation in relation to “other” controls at a routine transaction level. Additionally ANZ considers that guidance regarding materiality distinguishing profit and loss, balance sheet and notes to accounts would be useful. While much of this has been clarified through various publications/literature, ANZ considers that these aspects could now be captured in management guidance.

23. ANZ would welcome guidance on this subject. Of particular interest is the use of management representation at multiple locations or business units and the circumstances in which this might be used as a means of providing assurance that controls continue to work at the “as of” reporting date, i.e. as a substitute for other forms of testing.

24. Broadly ANZ considers this aspect to be reasonably clear with the exception of ITGCs. In relation to ITGCs it would be useful to clarify the nature of ITGC issues that can be directly related to material weakness or significant deficiency. In addition, the management guide should also address through, both discussion and illustration, the extent of reliance that can be placed upon manual controls including analytical review, to mitigate the financial statement consequences of deficient ITGC.

25. ANZ considers that the SEC should either capture the 3rd framework within any management guidance, or, indeed, something similar that perhaps is more simplified. Again, of particular importance is the need to provide illustrative guidance. Within such guidance the SEC could also clarify guidelines regarding the threshold for a significant deficiency

26. ANZ has not yet experienced a financial close process.

27. ANZ considers that such guidance would be helpful. In particular, ANZ considers that such guidance should address issues of materiality regarding restatement and circumstances which do or do not constitute material weakness.

28. ANZ has not yet attempted to automate the testing of programmed controls and functionality. ANZ has applied a benchmarking approach to establishing appropriate evidence over automated controls. Our experience thus far indicates this is both a time consuming and costly part of the program and we will be looking for more efficient ways to “test” these aspects going forward through the standard change management practices within our IT function. ANZ believes that the SEC could provide greater guidance in this area on matters such as:

    a. Benchmarking of application controls to normal change management practices.

    b. Reliance that can be placed upon a combination of effective access and change management controls to mitigate application control testing.

    c. Clarity regarding the “perpetual” value of b. above (subject to appropriate evidence) as opposed to the time limits that accounting firms appear to apply, eg. if the application and thus application controls have not changed for 3 or 4 years and this can be reasonably proven then the application controls per se should be sound and not be retested annually.

    d. In line with c above the extent to which “update” review will be sufficient beyond year 1 as distinct from complete retest each year.

29. Again, ITGCs are the single most time consuming and costly aspect of compliance. Most of the available guidance for S 404 appears silent on the subject of IT controls and there appears to be significant variances between the scope of coverage between companies we've contacted. Further, there is little empirical evidence of ITGC weaknesses being associated with material financial statement misstatement which suggests that these are receiving too much attention.

ANZ considers that this is an area where guidance is not only required but an area where some research needs to be applied before the guidance is formulated. Because of the more remote nature of the role ITGCs play in formulating financial statements (after considering the affects of other forms of non-IT controls), management guidelines to companies need to integrate ITGCs into the total mix of guidance.

Management guidance should be by reference to the key COBIT objectives that companies should apply in a generic sense but then look at the balance of other controls of a manual nature that could reasonably substitute for the more pervasive ITGCs.

ANZ fully appreciates that the scope of ITGCs is dependent upon firstly, the nature of the business and also on the extent to which the business relies upon computer applications in the financial reporting processes. Therefore, it may be necessary address guidelines on the basis of both principle as well as illustrative scenarios.

ANZ's approach to the scoping of ITGCs was to firstly risk workshop the relevance of COBIT objectives that should apply across the in scope applications and then confirm appropriateness by linking back to the COSO framework.

30. ANZ has applied the COBIT framework. In the early stages of developing our approach, we sought advice on this subject but found that there was significant variance from one advisor to another. Further, we found that having determined the most applicable COBIT objectives to guide financial reporting related scope for ITGC from some 300 plus COBIT objectives, we were then expected to justify the reason for elimination of the other COBIT objectives by documentation. While we now have a reasonable position it is nonetheless clear that there is need for much more clarity around:

a. The types of ITGCs that should be related to financial reporting controls (it is unlikely that most larger companies should have a significant difference in the range of relevant ITGCs)

b. The association between ITGCs and financial reporting and

c. Acceptable complimentary controls within the routine business activity that help to reduce the scope of ITGC coverage.

d. Acceptable ITGCs that help to reduce the scope of transactional controls including application controls.

31. Comment under this item also covers questions 32 and 34. This is ANZ's first year of compliance. We have found that there have been aspects of documentation which have been needed for business reasons which from our perspective have proven beneficial.

We also documented in the early stage many controls which, as our experience has grown, have proven to be redundant. Equally we have found that some forms of documentation have been needed to give additional comfort to auditors based on the need for a "copy for the file". Broadly we are not uncomfortable with the overall documentation required (save for comments in our letter regarding level of detail) although we do believe that guidance would be useful in formulating a documentation standard which, again, is based on risk.

For example:

a. The standard of documentation and evidence should be strong in areas of company level controls, period end controls, analytical review and key risk “hot spots”.

b. For other elements of the business a lesser standard of documentation should be acceptable.

33. We believe that further guidance to registrants is necessary regarding document retention. Whilst document retention requirements for auditors are clear it is perhaps necessary for registrants to establish similar document retention periods.

35. No comment.

ANZ synopsis

1. Nature of business

ANZ is a full financial service banking company providing services to consumer, high net worth, small business, corporate and multinational customer segments. ANZ products and services include deposit and loans to all segments including mortgage lending, debit and credit card services, trade related transactional services, structured financing, custodial services, investment services, foreign exchange and risk management services, vehicle and equipment financing services.

2. Principal business locations

ANZs head office is located in Melbourne, Australia. ANZ's main sphere of operation is Australia and New Zealand and is represented through about 1,000 branches.

ANZ also has branch and representative offices in Asia, Pacific, Europe and United States.

3. Financial perspective

ANZ total balance sheet is in excess of USD 230 bn

4. Employees

ANZ employs approximately 30,000 staff globally

5. Principal market position

ANZ is the 3rd largest banking company by market capitalisation in Australia and, through its wholly owned subsidiary, is the largest bank in New Zealand.

6. Regulatory framework

ANZ is incorporated under the Corporations Act and supervised by the Australian Securities and Investment Commission (ASIC). ANZ is licenced to provide banking services under the Banking Act prudentially supervised by the Australian Prudential Regulation Authority (APRA) the banking, insurance and superannuation supervisor in Australia. ANZ is subject to various laws and regulations of each country in which it operates including being registered with the SEC as a FPI.