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August 18, 2006

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

Re: File Number S7-11-06

Dear Ms. Morris:

First of all, we would like to applaud the Commission for its continuing support of Section 404 of the Sarbanes-Oxley Act of 2002. While overall compliance costs are a real concern, we have not met one registrant that has not realized improvements in the reliability of financial reports as a result of their Sarbanes-Oxley compliance efforts. Additionally, the dialogue amongst senior management, boards of directors and audit committees has significantly strengthened the tone-at-the-top, sending a clear message to all employees that reliable financial reports and effective internal controls are high priorities.

Over the past several years, Kreischer Miller has assisted a number of accelerated filers in connection with initial and ongoing efforts to assess the effectiveness of internal controls in accordance with Section 404 of the Sarbanes-Oxley Act. These clients have included a wide range of clients – from pre-revenue biotechnology companies to Fortune 500 manufacturers with revenues of over $4 billion. Based on our experience, we would like to provide the following feedback to the questions raised by the Commission in its recent Concept Release.

1. Would additional guidance to management on how to evaluate the effectiveness of a company's internal control over financial reporting be useful? If so, would additional guidance be useful to all reporting companies subject to the Section 404 requirements or only to a sub-group of companies? What are the potential limitations to developing guidance that can be applied by most or all reporting companies subject to the Section 404 requirements?

   Response

   The PCAOB and the SEC have generally made it very clear that AS2 dictates the responsibility of the auditors – not registrants – and that the methods utilized by registrants might differ substantially from those utilized by the auditors. Driven by both the fear of an adverse opinion as well as the absence of detailed guidance, registrants have generally employed assessment techniques based upon the guidance issued to public company auditors by the PCAOB in AS2 as opposed to fully leveraging existing monitoring practices to eliminate redundant assessment efforts. Accordingly, we believe that detailed guidance for registrants, including hypothetical examples illustrating alternatives available to management that might differ from those available to auditors, would be extremely useful to management teams in their attempts to formulate sound approaches that comply with the spirit of Section 404.

2. Are there special issues applicable to foreign private issuers that the Commission should consider in developing guidance to management on how to evaluate the effectiveness of a company's internal control over financial reporting? If so, what are these? Are such considerations applicable to all foreign private issuers or only to a sub-group of these filers?

   Response

   In our experience, many foreign private issuers possess a level of internal control sophistication not currently possessed by domestic issuers. However, many foreign private issuers face a number of challenges, including the lack of an audit committee, absence of SAS 70 reports related to outsourced activities, and a lack of sufficient training in U.S. GAAP. Despite these obstacles, we do not believe it is appropriate to hold these entities to a different standard than their U.S.-based counterparts; however, an extension of the deadline for submission of their first report on the effectiveness of internal control over financial reporting should provide sufficient time to address the unique challenges faced by foreign private issuers.

3. Should additional guidance be limited to the articulation of broad principles or should it be more detailed?

   Response

   We believe that there is an abundance of general information available for registrants to consider during the course of their compliance efforts. However, what appears to be lacking is clear interpretive guidance that management and auditors can use as a basis to support judgmental issues encountered during the assessment process. Accordingly, we believe that interpretive guidance would prove much more useful to registrants.

4. Are there additional topics, beyond what is addressed in this Concept Release, that the Commission should consider issuing guidance on? If so, what are those topics?

   Response

   Substantially all of the compliance issues encountered by our clients appear to be addressed by the topics included in the Concept Release.

5. Would additional guidance in the format of a Commission rule be preferable to interpretive guidance? Why or why not?

   Response

   As stated in our response to #3 above, we believe that detailed guidance would be much more valuable to registrants than more generalized rules.

6. What types of evaluation approaches have managements of accelerated filers found most effective and efficient in assessing internal control over financial reporting? What approaches have not worked, and why?

Response

In general, we have found that a top-down risk-based approach led by management with sufficient auditing experience has proven to be the most effective approach to addressing compliance. Alternatively, approaches that either a) did not include a risk-based approach to determining the scope of the compliance effort, or b) did not include personnel with internal or external audit experience, generally resulted in inefficiencies as well as an increase in the number of unremediated deficiencies identified first by the auditors.

7. Are there potential drawbacks to or other concerns about providing additional guidance that the Commission should consider? If so, what are they? How might those drawbacks or other concerns best be mitigated? Would more detailed Commission guidance hamper future efforts by others in this area?

   Response

   The Commission represents the one entity with the power to sanction both auditors and registrants and, accordingly, guidance issued by the Commission would provide a much more stable foundation for registrants and auditors than guidance issued by any other body. Accordingly, any difficulties arising from a conflict between the Commission's guidance and that of any other entity, will be more than offset by the fact that the Commission's expectations will be much more clearly understood by both auditors and registrants.

8. Why have the majority of companies who have completed an assessment, domestic and foreign, selected the COSO framework rather than one of the other frameworks available, such as the Turnbull Report? Is it due to a lack of awareness, knowledge, training, pressure from auditors, or some other reason? Would companies benefit from the development of additional frameworks?

   Response

   Based on our experience, a substantial amount of interpretive guidance regarding the use of the COSO framework is currently available. Additionally, the audit approach utilized by most of the world's largest accounting firms is based, in part, on aspects of the COSO framework. For these reasons, we believe that the use of this framework resulted in a shorter learning curve for both auditors and registrants. We do not believe that the development of additional frameworks would provide substantial benefits to registrants.

9. Should the guidance incorporate the May 16, 2005 "Staff Statement on Management's Report on Internal Control Over Financial Reporting"? Should any portions of the May 16, 2005 guidance be modified or eliminated? Are there additional topics that the guidance should address that were not addressed by that statement? For example, are there any topics in the staff's "Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports Frequently Asked Questions (revised October 6, 2004)" that should be incorporated into any guidance the Commission might issue?

Response

Both the May 16, 2005 and October 6, 2004 guidance issued by the Staff were very helpful, and were utilized by every registrant we served during the course of their assessment efforts. The incorporation of the information contained in this guidance into future interpretive guidance might eliminate the need for management teams to sift through multiple publications, thus increasing efficiency in management's assessment process.

10. We also seek input on the appropriate role of outside auditors in connection with the management assessment required by Section 404(a) of Sarbanes-Oxley, and on the manner in which outside auditors provide the attestation required by Section 404(b). Should possible alternatives to the current approach be considered and if so, what? Would these alternatives provide investors with similar benefits without the same level of cost? How would these alternatives work?

Response

We believe that the issuance of an independent audit report on the effectiveness of internal controls provides substantial value to both the investing public as well as audit committees and, accordingly, do not believe that substantial changes to the role of the auditor are necessary. Based on our experience, compliance costs for accelerated filers were dramatically impacted by inefficiencies that resulted from a lack of interpretive guidance, plans that did not include the utilization of a risk-based approach, as well as training time necessary for both auditors and management. Further, costs were impacted by the scope and diversity of operations of accelerated filers and the resulting complexity of their financial reports. However, even in the most complex businesses, we have seen dramatic reductions in year two costs. As a result of these improvements, we believe that auditors' efforts to assess the effectiveness of internal controls of smaller public companies will be much more efficient.

11. What guidance is needed to help management implement a "top-down, risk-based" approach to identifying risks to reliable financial reporting and the related internal controls?

Response

Guidance in the form of hypothetical examples would be most useful. For instance, examples of how conclusions regarding the effectiveness of entity-level controls could be utilized to reduce specific process-level control testing would clarify one aspect of guidance that continues to present difficulties in application.

12. Does the existing guidance, which has been used by management of accelerated filers, provide sufficient information regarding the identification of controls that address the risks of material misstatement? Would additional guidance on identifying controls that address these risks be helpful?

Response

Generally speaking, the registrants we have worked with have not experienced tremendous difficulty in the identification of controls that address risks of material misstatement. We have observed numerous cases where registrants and their auditors have had healthy debates regarding the significance of specific controls and, based on sound professional judgment, agreed on the potential significance. However, professional judgment will always be required and even in light of additional guidance, registrants and auditors might form different conclusions.

13. In light of the forthcoming COSO guidance for smaller public companies, what additional guidance is necessary on risk assessment or the identification of controls that address the risks?

    Response

    We believe that existing guidance combined with the recently released COSO guidance for smaller public companies provides the information necessary for management to conduct effective risk assessment efforts as well as to identify controls related to the risks identified.

14. In areas where companies identified significant start-up efforts in the first year (e.g., documentation of the design of controls and remediation of deficiencies) will the COSO guidance for smaller public companies adequately assist companies that have not yet complied with Section 404 to efficiently and effectively conduct a risk assessment and identify controls that address the risks? Are there areas that have not yet been addressed or need further emphasis?

    Response

    We believe that the COSO guidance combined with the abundance of other publicly available information will provide management with the tools and information necessary to conduct effective risk assessments.

15. What guidance is needed about the role of entity-level controls in evaluating and assessing the effectiveness of internal control over financial reporting? What specific entity-level control issues should be addressed (e.g., GAAP expertise, the role of the audit committee, using entity-level controls rather than low-level account and transactional controls)? Should these issues be addressed differently for larger companies and smaller companies?

    Response

    As previously stated, we have worked with a wide range of accelerated filers—from pre-revenue biotech companies to Fortune 500 companies. In general, none clients have not had difficulty evaluating entity-level controls. Additionally, we have found that both management and independent auditors have been able to form sound judgments regarding the design effectiveness of entity-level controls at smaller publicly held companies. Accordingly, we do not believe that either additional guidance or substantial modifications are necessary to address the unique nature of smaller businesses.

16. Should guidance be given about the appropriateness of and extent to which quantitative and qualitative factors, such as likelihood of an error, should be used when assessing risks and identifying controls for the entity? If so, what factors should be addressed in the guidance? If so, how should that guidance reflect the special characteristics and needs of smaller public companies?

Response

We have noted limited circumstances where auditors have concluded that controls should be addressed for accounts with an aggregate balance in excess of defined thresholds (e.g. .5% of total assets), despite the fact that the account was not susceptible to the risk of a material misstatement, despite the fact that PCAOB guidance indicates that the internal control significance should not be based solely on the account balance. Accordingly, we believe that interpretive guidance which includes examples of circumstances when a balance might not be considered significant, despite the fact that the balance exceeds some specific quantitative measure, would prove useful for both registrants and their auditors.

17. Should the Commission provide management with guidance about fraud controls? If so, what type of guidance? Is there existing private sector guidance that companies have found useful in this area? For example, have companies found the 2002 guidance issued by the AICPA Fraud Task Force entitled "Management Antifraud Programs and Controls"23 useful in assessing these risks and controls?

Response

In general, we have found the 2002 AICPA guidance very helpful, and do not believe that additional Staff guidance would result in substantial benefits to smaller companies.

18. Should guidance be issued to help companies with multiple locations or business units to understand how those affect their risk assessment and control identification activities? How are companies currently determining which locations or units to test?

Response

Again, in general, we have found that existing guidance provides sufficient information necessary for management to determine the proper scope of their assessment efforts. However, we did encounter situations where a company was comprised of a large number of individually insignificant locations. In this circumstance there was a significant amount of healthy debate regarding the number of locations to be tested as well as both individual and aggregate sample sizes for specific controls that operated at all of the individually significant locations. Interpretive guidance that addresses this topic might prove useful to registrants with similar business structures.

19. What type of guidance would help explain how entity-level controls can reduce or eliminate the need for testing at the individual account or transaction level? If applicable, please provide specific examples of types of entity-level controls that have been useful in reducing testing elsewhere.

Response

We have found that there is considerable confusion regarding how results of entity-level testing can reduce the scope and extent of testing of process level controls associated with significant accounts. Additional interpretive guidance in the form of specific examples could provide registrants with a clear basis upon which to reduce the scope and extent of process level testing.

20. Would guidance on how management's assessment can be based on evidence other than that derived from separate evaluation-type testing of controls, such as on-going monitoring activities, be useful? What are some of the sources of evidence that companies find most useful in ongoing monitoring of control effectiveness? Would guidance be useful about how management's daily interaction with controls can be used to support its assessment?

    Response

    Despite the fact that the PCAOB highlighted the potential for management to utilize evidence resulting from on-going monitoring activities as evidence supporting its annual internal control assessment, we still see this as a significant unrealized opportunity to reduce the cost of compliance. As a result, we have worked with some of our clients to document detailed descriptions of primary responsibilities associated with significant reporting objectives as well as detailed descriptions of corresponding supervisory review responsibilities. In cases where the primary responsibilities constitute controls (e.g. reconciliation-type activities), we believe that supervisory review activities, if properly detailed and documented, will serve as sufficient evidence to support management's assessment of the effectiveness of the control.

    We believe that guidance would prove extremely useful if it encompassed the following elements:

    - Descriptive examples of specific financial statement risks (e.g. the risk that recorded inventory does not reflect assets on-hand as of the balance sheet date),
    - Controls that mitigate the specified risk (the reconciliation of general ledger inventory balances to perpetual inventory records),
    - Monitoring activities associated with the control (e.g. the analysis of the reconciliation by a supervisor, including the comparison of balances and reconciling items to supporting documentation, on a test basis), and
    - Examples of evidential matter that would be necessary in order to support management's assessment utilizing these types of techniques.

    We have found that the internal controls that tend to have the largest potential impact on periodic financial reports tend to occur during the so-called "last mile". Adopting an approach like this would most likely spur registrants—especially small companies—to implement policies that result in slightly higher internal costs associated with expanded supervisory reviews, but would dramatically reduce external fees by eliminating redundant third-party testing. Additionally, because the monitoring function occurs on a real-time basis, control deficiencies would be identified prior to the submission of periodic reports. Accordingly, this could result in an overall decrease in total compliance costs yet provide the potential for dramatic improvements in the accuracy of financial statements.

21. What considerations are appropriate to ensure that the guidance is responsive to the special characteristics of entity-level controls and management at smaller public companies? What type of guidance would be useful to small public companies with regard to those areas?

    Response

    As previously stated, we have not encountered significant difficulties in connection with the evaluation of entity-level controls at either small or large registrants.

22. In situations where management determines that separate evaluation-type testing is necessary, what type of additional guidance to assist management in varying the nature and extent of the evaluation procedures supporting its assessment would be helpful? Would guidance be useful on how risk, materiality, attributes of the controls themselves, and other factors play a role in the judgments about when to use separate evaluations versus relying on ongoing monitoring activities?

    Response

    Based on our experience, we do not believe that additional guidance regarding variation in the nature and extent of separate evaluation procedures is necessary; however, as previously noted, we believe that additional guidance providing examples of circumstances where monitoring activities can be utilized in lieu of separate evaluations would be beneficial.

23. Would guidance be useful on the timing of management testing of controls and the need to update evidence and conclusions from prior testing to the assessment "as of" date?

    Response

    We have found that registrants and their auditors have been able to reach agreement regarding the scope and extent of rollforward testing necessary to update interim tests of controls through the "as of" date.

24. What type of guidance would be appropriate regarding the evaluation of identified internal control deficiencies? Are there particular issues in evaluating deficient controls that have only an indirect relationship to a specific financial statement account or disclosure? If so, what are some of the key considerations currently being used when evaluating the control deficiency?

    Response

    Over the past several years, the PCAOB and large auditing firms have issued a substantial amount of interpretive guidance regarding the evaluation of identified deficiencies. In general, the assessment process includes an evaluation of the known error (if any), the potential error (based on account volume or other relevant information), the relative impact on critical measures of financial performance, or the qualitative nature of issues identified. We have observed some differences of opinion between management and auditors; however, we do not believe that additional guidance will eliminate disagreements because the evaluation of the significance of a deficiency is ultimately a matter of judgment. That being said, we have noted two specific issues encountered by registrants which are described as follows.

    While the Staff and the PCAOB have both issued guidance indicating that a restatement is not de facto evidence of a material weakness, almost all restatements are made because either the single period income statement or cumulative balance sheet impact is in excess of a calculated materiality threshold. We noted circumstances where auditors concluded that a material weakness existed at the "as of" date simply due to the dollar value of the cumulative balance sheet impact, despite the fact that the impact to the income statement in the most recent period was clearly not material. In light of the fact that restatements generally only occur when the impact to one or all of the financial statements is material, it seems only remotely possible that a restatement would not result in a material weakness at the "as of" date which appears contradictory to SEC and PCAOB guidance.

Secondly, we noted circumstances where material weaknesses arose due to disagreements regarding the interpretation of complex accounting standards where little, if any, interpretive guidance was available. There have been, and will undoubtedly be, circumstances where individual auditors or the Staff interpret a standard differently from management, despite the fact that management thoroughly investigated the proper accounting treatment for complex issues. We do not believe that the characterization of adjustments resulting from such differences of opinion should be characterized as material weaknesses in internal controls—evidenced by the fact that there have been examples of such occurrences where neither the auditors nor the registrant can identify any remedial action that could be taken to mitigate the risk that similar issues could arise in the future.

Additional guidance that provides insight into the Staff's point of view with respect to these two issues would be very helpful.

25. Would guidance be helpful regarding the definitions of the terms "material weakness" and "significant deficiency"? If so, please explain any issues that should be addressed in the guidance.

    Response

    In general we believe that the definitions are understood well by both registrants and their auditors. However, we believe that clarification of the definition with regard to the issues raised in our response to question #24 would be helpful.

26. Would guidance be useful on factors that management should consider in determining whether management could conclude that no material weakness in internal control over financial reporting exists despite the discovery of a need to correct a financial statement error as part of the financial statement close process? If so, please explain.

    Response

    We have worked with clients that have identified errors in connection with the financial statement close process, and have found that the auditors and our clients have been able to reach agreement regarding the significance of the deficiency in controls that resulted in the errors. However, additional clarification regarding the significance of weaknesses that result in errors in classification as opposed to errors impacting net income might be useful.

27. Would guidance be useful in addressing the circumstances under which a restatement of previously reported financial information would not lead to the conclusion that a material weakness exists in the company's internal control over financial reporting?

Response

As indicated in our response to question #24, we believe that such guidance would be useful.

28. How have companies been able to use technology to gain efficiency in evaluating the effectiveness of internal controls (e.g., by automating the effectiveness testing of automated controls or through benchmarking strategies)?

Response

We have seen a number of companies benefit through the use of technology in connection with ongoing assessment efforts, primarily through the creation and utilization of customized exception reports. However, we believe that this is still a widely untapped opportunity to reduce the overall cost of compliance.

29. Is guidance needed to help companies determine which IT general controls should be tested? How are companies determining which IT general controls could impact IT application controls directly related to the preparation of financial statements?

Response

We believe that existing COBIT guidance combined with sound judgment are sufficient to ensure that the scope of IT general controls subject to testing is limited to issues that directly impact the financial statements. In most cases, we have seen registrants evaluate their financial reporting processes in order to identify IT dependencies, and then limit testing of IT general controls to the applications or environments related to the dependencies identified.

30. Has management generally been utilizing proprietary IT frameworks as a guide in conducting the IT portion of their assessments? If so, which frameworks? Which components of those frameworks have been particularly useful? Which components of those frameworks go beyond the objectives of reliable financial reporting?

Response

All of our clients have utilized the COBIT framework in the course of their evaluation of IT general controls. While many elements of the framework constitute "best practices" as opposed to minimum required controls, we have found that auditors and registrants generally reach agreement regarding the elements of the COBIT framework that are relevant to compliance efforts.

31. Were the levels of documentation performed by management in the initial years of completing the assessment beyond what was needed to identify controls for testing? If so, why (e.g., business reasons, auditor required, or unsure about "key" controls)? Would specific guidance help companies avoid this issue in the future? If so, what factors should be considered?

Response

In our experience, documentation prepared by management was not far in excess of that necessary to identify controls for testing and, accordingly, additional detailed guidance might not provide significant benefit. In our experience, management teams prepared narratives or flowcharts as well as risk-control matrices. While the narratives might not have been necessary to identify controls for testing, they were generally prepared because no other documentation (i.e. policy) existed describing the activities. Accordingly, these narratives served as a basis for the efficient preparation of risk-control matrices (which were used to identify controls for testing) as well as served the purpose of providing registrant personnel with an understanding of specific responsibilities, thus contributing to the overall strength of the system of internal controls.

32. What guidance is needed about the form, nature, and extent of documentation that management must maintain as evidence for its assessment of risks to financial reporting and control identification? Are there certain factors to consider in making judgments about the nature and extent of documentation (e.g., entity factors, process, or account complexity factors)? If so, what are they?

Response

Again, most of the registrants that we have worked with have experienced very little difficulty in determining the extent of documentation of its assessment of risks to financial reporting.

33. What guidance is needed about the extent of documentation that management must maintain about its evaluation procedures that support its annual assessment of internal control over financial reporting?

Response

In general, our clients have sought to retain enough evidence to ensure that they could demonstrate specific results supporting management's opinion reflected in its annual report. This generally includes the retention of risk-control matrices, designated key controls, completed test plans, as well as a record of the specific sample items selected during the course of the assessment process. While additional guidance might be helpful, we do not believe it is necessary.

34. Is guidance needed about documentation for information technology controls? If so, is guidance needed for both documentation of the controls and documentation of the testing for the assessment?

Response

The registrants we have served generally require documentation for information technology controls that is comparable in scope and nature to documentation for manual controls. Again, while additional guidance might be helpful, we do not believe it is necessary.

Again, we would like to stress that we believe the passage of the Act has resulted in tangible improvements in corporate governance and the accuracy of financial reports. Additionally, based on my past experience as an executive officer at two small-cap companies as well as my current experience as the audit committee chair of a small-cap company, I believe that the benefits of Section 404 to the investing public generally outweigh the costs. We believe that the recent steps taken by the PCAOB and the SEC to address the needs of smaller public companies will ultimately lead to the "right-sizing" of the Act, providing further benefit to the investing public on a much more cost-effective basis.

If you have any questions regarding the information contained in this letter, please feel free to contact me at (215) 441-4600.

Sincerely,

Christopher F. Meshginpoosh
Director, Public Company Advisory Services