September 4

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

Dear Ms Morris

Re: File Number S7-11- 06

The development of additional guidance for management regarding its evaluation and assessment of internal control over financial reporting is of great interest to us and me in my role with a foreign private issuer, as Executive General Manager Finance (Chief Financial Officer). The intent of the Sarbanes-Oxley Act (the Act) is commendable and strongly supported. Corporate Executives should bear the responsibility of providing accurate financial information to the public.

However, the Act has unintentionally created an onerous burden that effectively discourages and will discourage foreign companies from accessing the US capital markets. It highlights the need for consideration and analysis of the costs of listing in the US versus the associated benefits. The burden involved in obtaining an external attestation under section 404 of the Act places the US capital markets at a significant competitive disadvantage at a time when global capital markets are more accessible than ever before and well capable of assessing risk and return without the operation of the Act in their jurisdictions.

I believe that a renewed emphasis on the top-down, risk-based approach should be the primary focus of additional SEC guidance. Costs associated with the assertion and attestation required by section 404 can only be significantly reduced (without compromising the intent of the legislation) by ensuring the focus is directed to key areas of risk.

Without improved guidance management will continue to find themselves at the tail-end of unrealistic expectations generated by external auditors' conservative and risk averse interpretations of the requirements of the PCAOB's auditing standard No.2 ("An Audit of Internal Control over Financial Reporting Performed in Conjunction with an Audit of the Financial Statements"" (AS No.2)). Any additional guidance provided by the SEC will need to be consistent with Auditing Standards issued by the PCAOB. Moreover the "disconnect" between the published position of the PCAOB and their apparent testing regime and critiquing of auditors needs to be reconciled (anecdotal feedback from a number of Big 4 firms tells us that auditor behaviour is directly driven by the prescriptive feedback from audits of the auditor). This is clearly driving excessive bureaucracy and requirements for "demonstrated compliance" by auditors of their auditees. PCAOB behaviour

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drives auditor behaviour which drives expectations placed on issuers which are in a number of cases disconnected from the effective control environment which actually operates in modern corporations today.

In my view, AS2 fundamentally contradicts guidelines issued by the SEC and the PCAOB and requires urgent attention. While the SEC has, through its guidance, emphasised the importance of reasonable assurance and the importance of a top-down, risk-based approach this has not been reflected in AS No.2.

Specifically AS No.2:

- Defines a significant deficiency as
  "...a control deficiency ... that adversely affects the company's ability to initiate, authorize, record, process or report external financial data reliably..."
- In evaluating management's assessment process the auditor should address whether management has assessed
  "*... controls over initiating, authorizing, recording, processing and reporting significant accounts and disclosures and related assertions embodied in the financial statements."*
- In evaluating management's documentation the auditor should evaluate whether such documents includes:
  "...information about how significant transactions are initiated, authorized, recorded, processed and reported..."

All of these micro requirements work against management :

- focussing on risk of material misstatement;
- determining what constitutes "reasonable assurance"; and
- leveraging from strong entity level controls.

If the internal control structure adequately records and reports external financial data reliably, then the system of internal controls over financial reporting should be considered appropriate. In this situation, there should be no need to focus additional attention on the initiation of an individual transaction.

To overcome existing contradictions and help eliminate excessive testing and resulting costs, I recommend the following:

- The issue of additional clear guidance to management that still enables the use of professional judgement. Matters to consider would include:

  - Emphasising the importance of strong entity level controls, monitoring activities, satisfactory internal audit ratings within companies, prior year testing results in order to focus on areas of greatest risk. Any such guidance should outline the potential impact in terms of reduced detailed transactional testing.

    - The types of evidence that management (as opposed to the external auditor) may choose to rely on in determining whether a control is operating effectively other than direct testing (e.g. control self assessment).
    - The appropriate timing of management's testing to support an "as at" certification.

- The alignment of auditing standards with guidance issued to management by the SEC.
- Consideration be given to amending the role of the external auditor in attesting to management's assertion by:

    - Providing negative assurance only.
    - Providing a restricted opinion based on a targeted examination of the control environment and entity level controls together with existing procedures involved in the financial close process only.

- Reassess the need for an annual assessment and/or attestation by the external auditor by considering:
    - Relieving companies that receive a "clean" section 404 attestation from the cost of an annual assertion and attestation in favour of a less frequent (say triennial) requirement. Exceptions may include (for example) where there has been a substantial change in the constitution of the Executive management team or the Board of Directors.
    - The attestation required by section 404(b) of the Act be optional at the discretion of the Audit Committee providing relevant disclosures of the decision made (effectively an "if not why not" approach).

In addition, further guidance in the following areas would help to clarify the requirements of management's assessment:

- The types of evidence that management may choose to rely on in determining whether a control is operating effectively. External auditors have emphasised the importance of physical "sign off" as evidence that a control is operating. Can management rely on instructions issued to staff indicating the controls to be implemented prior to financial data being lodged for consolidation (e.g. closing checklists)? Does a physical "sign off" provide any more evidence that a control is operating effectively?
- The necessity to base line spread sheets, reports and system parameters and settings. For stable systems and processes that have been a part of financial reporting for several years and audited at least annually, both externally and internally, is it necessary to test them to prove that they continue to operate as expected?
- What information technology controls should be considered key? Current guidance from the IT Governance Institute suggests 31 IT general controls should be considered key. Based on the number of entity level and transactional controls that are considered key in other

areas this would seem to be excessive. Further guidance would be helpful in ensuring focus on fundamental IT risks and controls.

In summary, I believe that the focus of SEC guidance and AS No.2 needs to be diverted from the lower risk involved with the initiation, authorization and processing of data. The focus needs to be clearly placed on the reliable recording and reporting of external financial data that is at risk of being materially misstated. The focus must be on properly leveraging from Company Level Controls, the Control Environment, Monitoring Activities and the Reporting Process. Private Issuers should be able to leverage from the presence of a strong and visible Internal Audit function that has a presence in the assessment of the Internal Controls over Financial Reporting.

Together these areas are the corner stone of the control structure. Their strength determines whether additional work is required to provide “reasonable assurance” over financial reporting. Currently lower level controls are over tested as a result of insufficient guidance on the leverage that can be obtained from higher level controls. Current interpretations of AS No.2 result in a so called “comprehensive assessment” that does not take sufficient account of the risk of material misstatement and therefore is excessively costly. Specific guidance on a top-down risk-based assessment will help address this issue. Such guidance will enable a reduction in the number of transactional controls tested and focus on the key controls without impacting on the quality of the assurance provided to the public.

We appreciate the opportunity to provide input into the Concept Release and look forward to the resultant additional guidance to assist with management’s assessment of Internal Controls over Financial Reporting.

Yours faithfully

W Peter Day
Executive General Manager Finance (Chief Financial Officer)
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Cc Michael Bernardini (General Manager Corporate Compliance – Amcor Limited)