NEENAH PAPER INC

September 29, 2005

Via Email and Hand Delivery

David Lynn, Chief Counsel
Elizabeth Murphy, Chief, Office of Rulemaking (via murphye@sec.gov)
Gerold LaPorte, Chief, Office of Small Business Policy
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
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RE: Comments to Release Nos. 33-8619; 34-52492; File Nos. S7-40-02; S7-06-03 (Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports of Companies that are not Accelerated Filers)

Ladies and Gentlemen:

Neenah Paper, Inc. ("Neenah") appreciates this opportunity to comment on the above-mentioned Release (the "Final Rule Release"). Neenah became an operating company on November 30, 2004 when its former parent company, Kimberly–Clark Corporation ("Kimberly-Clark"), transferred its fine paper and technical paper businesses in the United States and its Canadian pulp business to Neenah in connection with a spin-off transaction. As a result of the spin-off transaction, Neenah became an independent public company and Kimberly-Clark has no continuing equity interest in Neenah. Currently, Neenah has a market capitalization of approximately $450 million. As a result of the timing of the spin-off, Neenah is currently a non-accelerated filing company since it has been a reporting company for less than 12 months.

Specifically, Neenah wishes to comment on the second, fifth and sixth questions appearing in the section of the Final Rule Release labeled "Request For Comment." For the sake of convenience, the full text of each of the indicated questions appears below and is followed by Neenah's response.

Question 2:

Would a public float threshold that is higher or lower than the $75 million threshold that we use to distinguish accelerated filers be more appropriate for this purpose? If so, what should the threshold be and why? Would it be better to use a test other than public float for this purpose, such as annual revenues, number of segments or number of locations or operations? If so, why?

Response to Question 2:

As we indicated in our letter to David Lynn, Elizabeth Murphy and Gerold LaPorte dated September 12, 2005, commenting on the letter dated August 18, 2005 issued by the Advisory Committee on Smaller Public Companies to the Chairman of the Securities and Exchange Commission, Christopher Cox (the "September 12 Letter"), Neenah supports the position that the public float requirement for determining accelerated filer status should be raised to $700 million (a copy of the September 12 Letter is attached to this letter for ease of reference). In our September 12 Letter, we stated that the $700 million threshold was appropriate since many of the issues that have been identified by the Commission as being problematic for non-accelerated filing companies are experienced by companies with market capitalizations much larger than the current $75 million threshold.

Since we prepared the September 12 Letter, the Commission has issued a release (the "Proposed Rule Release") in connection with a proposed rule that would eliminate the final phase-in of the accelerated filing deadlines for periodic reports under the Securities Exchange Act of 1934 (the "Exchange Act").[1] In the Proposed Rule Release, the Commission acknowledges that "by virtue of their size, the proposed large accelerated filers are also more likely than smaller companies to have a well-developed infrastructure and financial reporting resources to support further acceleration of the annual report deadline."[2] In making this statement, the Commission refers to letters received from the American Institute of Certified Public Accountants, BDO Seidman LLP, Ernst & Young LLP and KPMG LLP, all of which discuss the difference in resources available to companies with market capitalizations in excess of $700 million and the issues faced by companies with market capitalizations below that level.[3]

Prior to the Proposed Rule Release, the Commission also recognized the different level of resources available to companies below $700 million in market capitalization when it granted a 45 day extension to comply with the requirements of Section 404[4]. In this release, the Commission expressed its concern "that many smaller accelerated filers may not be in a position to meet that deadline" (referring to the deadline for fiscal years ending on or after November 15, 2004).[5] In contrast, in the same release, the Commission expressed its belief that issuers over the $700 million market capitalization threshold would be able to complete the work required by Section 404 in a timely manner.[6]

We also believe it is worth noting that the Commission used the $700 million market capitalization threshold in establishing the concept of a "well-known seasoned issuer" in the recently adopted rules reforming certain aspects of the registered securities offering process.[7] In these reforms, the Commission elected to extend benefits to well-known seasoned issuers beyond those that would be made available to other accelerated filers, citing the fact that these issuers made up 95% of the equity market capitalization, were generally more active in the capital markets and were more widely followed by the investment community.[8] In consideration of the foregoing factors, the Commission stated "we believe that it is appropriate to provide communications and

[1] *See*, Release Nos. 33-8617 and 34-52491, Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports.
[2] Id.
[3] Id., *See*, Footnote 37.
[4] *See*, Release No. 34-50754.
[5] Id.
[6] Id.
[7] *See*, Release Nos. 33-8591 and 34-52056.
[8] Id.

registration flexibilities to these well-known seasoned issuers beyond that provided to other issuers, including other seasoned issuers."[9] We think it is important to note that the benefits to well-known seasoned issuers as a result of the reforms are permanent, and that in taking this action the Commission noted the additional requirements applicable to accelerated filing companies as a justification for granting such benefits. The clear implication of citing the additional requirements applicable to accelerated filing companies in this context was that with additional responsibility should come additional benefits and/or freedoms.

Although we recognize that under the Proposed Rule Release, the Commission has granted companies with market capitalizations under $700 million an additional 10 days to file their Annual Reports on Form 10-K, the responsibilities borne by accelerated filing companies are otherwise identical. We also believe that the benefits extended to companies that are well-known seasoned issuers under the reforms to the offering process are substantially greater than the benefit realized by accelerated filing companies with market capitalizations under $700 million from the 10 additional days to file their Annual Reports on Form 10-K.

In light of (i) the Commission's previous recognition of the differences in capabilities between companies with market capitalizations in excess of $700 million and those with market capitalizations below that level, and (ii) what we believe are the greater benefits enjoyed by well-known seasoned issuers under the current regulatory structure (relative to other accelerated filers); we believe that treating all companies with market capitalizations below the $700 million threshold as non-accelerated filing companies would be appropriate. Specifically, we believe this would result in a more symmetrical total package of burdens and benefits for companies that are now accelerated filing companies, but which do not have the market capitalization to qualify as well-known seasoned issuers.

Although we believe the market capitalization threshold should be raised to the $700 million threshold, we support the concept of using market capitalization as a means of distinguishing between accelerated filing companies and non-accelerated filing companies.

Question 5:

How can we best assure that the costs of the internal control over financial reporting requirements imposed on smaller public companies are commensurate with the benefits?

Response to Question 5:

We have two suggestions for the consideration of the Commission in response to this request for comment:

- *Suggestion One*. The Commission should consider amending the Final Rule Release to provide that the relief granted to non-accelerated filing companies applies to all non-accelerated filing companies that as of the time of the release had market capitalizations below $700 million; and

- *Suggestion Two*. The Commission should consider amending the Final Rule Release to provide permanent relief for companies resulting from a spin-off

[9] Id.

transaction with a market capitalization below $700 million, so that such companies will have to comply with Section 404 as of the first Annual Report on Form 10-K due after the spin-off company has filed a Form 10-K reflecting a full year as a reporting company under the Exchange Act.

The rationale underlying both suggestions is discussed below and in our September 12 Letter.

Rationale For Suggestion One:

In the Final Rule Release, in describing the rationale for extending the compliance deadline for non-accelerated filing companies to July 15, 2007, the Commission notes that there are several market place initiatives underway that “might affect the implementation of internal control reporting for smaller public companies.” In particular, the Final Rule Release takes note of the efforts of the COSO task force and the Advisory Committee on Smaller Public Companies. The importance of the efforts of both of the aforementioned entities is underscored by the feedback received by the Commission at its Roundtable on Implementation of Internal Control Reporting Provisions held on April 13, 2005 (the “Roundtable Meeting”). Specifically, such feedback indicated that it is uncertain whether there is a “broadly accepted or demonstrably suitable framework…currently in place for evaluating internal controls at smaller public companies, including non-accelerated filers.”[10] The Commission then observed that the conclusions of the COSO task force are months away and that the Advisory Committee on Smaller Public Companies will not complete its work until April 2006 at the earliest.[11]

In further explaining its decision to grant relief to non-accelerated filing companies in the Final Rule Release, the Commission notes that many participants in the Roundtable Meeting indicated that “many of the costs that they incurred in the first year of compliance would not be recurring costs; they expected the internal control reporting process to become more efficient and less costly in subsequent years.” The Commission also indicated that efficient compliance with Section 404 would be promoted by the fact that “[c]ompanies that are not accelerated filers may be able to benefit from the experiences of accelerated filers in the second year of compliance with the internal control reporting requirements as best practices emerge and efficiencies are realized.”[12]

Although we agree with the rationale expressed by the Commission as discussed above, we believe that, in light of the work that is in process with respect to establishing a framework for smaller public companies in connection with internal controls, relief should be extended to all companies that may be impacted by such work in process that have not already had to comply with Section 404. As we noted in our September 12 Letter, the Commission has previously granted relief in connection with Section 404 in situations where it recognized that companies would be forced to respond to an interim standard that would be superseded.[13]

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[10] *See*, the Final Rule Release.
[11] Id.
[12] Id.
[13] *See*, Release Nos. 33-8392 and 34-49313. In these Releases the Commission stated the following in explaining its decision to extend the time for requiring compliance with Section 404: “We believe that the extension will benefit investors because this will help ensure that appropriate controls are in place for the first reporting process. Moreover, an extension will minimize the cost and disruption of implementing a new disclosure requirement under a current standard that will soon be superseded, and will provide companies and their auditors with a sufficient amount of time to perform additional testing or remediation of controls *based on the final standard* (emphasis added).”

We believe the relief contemplated by Suggestion One strikes the appropriate balance in connection with burdens and benefits with respect to smaller public companies. It recognizes that the framework for evaluating internal controls for smaller public companies is still a work in progress and does not force companies that have not already fully implemented Section 404 compliance to continue to expend resources when more appropriate and tailored standards will be available in the near future.

The suggested relief would allow companies that may be impacted by the efforts currently underway to limit the higher costs associated with initial compliance efforts to the minimum amount possible at this point in time. At the same time, it requires companies that have already incurred the costs to continue with the systems already implemented. The observations of the Commission in connection with recurring costs and the opportunity to leverage the experience of others discussed above are equally applicable to smaller public companies that have not already fully implemented Section 404 compliance. We believe the proposed relief is consistent with the reality recognized by the Commission in other releases that many of the issues that have caused the Commission to grant relief to non-accelerated filing companies are experienced by companies with considerably larger market capitalizations. We believe that the proposed relief promotes the most efficient use of resources by the broadest spectrum of companies.

We also believe that the proposed relief is consistent with the protection of investors' interests. In the Final Rule Release, the Commission observes that notwithstanding the relief granted to non-accelerated filing companies in connection with Section 404 compliance, such companies "must continue to assess whether the company's internal accounting controls are sufficient to meet applicable requirements under federal securities laws." In addition, the Commission notes that "the independent auditors of non-accelerated filers must consider filers' internal accounting controls in connection with the conduct of audits of financial statements in accordance with standards of the Public Accounting Oversight Board"[14]. We believe these statements are equally applicable to smaller public companies, should such companies be granted the relief proposed by Suggestion One.

For the foregoing reasons, we respectfully request that the Commission consider granting the relief proposed by Suggestion One.

Rationale for Suggestion Two:

The rationale for Suggestion Two is explained fully in the September 12 Letter. In summary, the rationale underlying our position in the September 12 Letter is similar to that underlying Suggestion One: specifically, spin-off companies should not be required to incur the hard and soft costs associated with Section 404 compliance after just 12 months of being a reporting company, because in many cases, they will be required to create an infrastructure to test interim internal controls inherited as a result of the spin-off process—not the final system of internal controls. As a result of the spin-off process, most spin-off companies inherit transitional systems, including, among others, financial and human resources systems. As a result of the variety of transitional systems inherited, most smaller public spin-off companies will find it extremely difficult to make the transition to permanent systems within a 12 month period. In our experience, this fact is typically recognized by the indefinite term of the transitional services agreements that are implemented between the spinning company and the spin-off company. Under the current rules, spin-off companies may be forced to create an infrastructure to test the

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[14] *See*, Final Rule Release, Footnote 13

internal controls of a financial system that will be obsolete as soon as it is tested. We conclude in the September 12 Letter that investor interests would be better served if spin-off companies are free to focus their resources on creating an infrastructure to test the internal controls of their permanent financial and accounting systems.

We believe it is worth noting that the core principle underlying both Suggestion One and Suggestion Two is that it is not efficient to require companies to expend resources to respond to situations that are known to be transitional. The common result is that resources are wasted because the significant investment made in connection with the initial compliance effort cannot be fully leveraged in future years. In the case of Suggestion One, the transitional situation results from the fact that a broadly accepted framework for evaluating internal controls at smaller public companies is still a work in process. In the case of Suggestion Two, the transitional situation results from the attributes inherent to spin-off transactions, i.e., interim financial systems inherited as a result of the spin-off process must be replaced with free-standing permanent financial systems.

We refer the Commission to the complete discussion contained in the September 12 Letter and respectfully request that the Commission also consider granting the relief proposed by Suggestion Two.

Question 6:

We solicit comment describing the actions that non-accelerated filers have already taken to prepare for compliance with the internal control over financial reporting requirements. Specific time and cost estimates would be particularly helpful. We also would be interested in receiving additional information about the compliance burdens incurred in this year by smaller accelerated filers that included internal control reports in their Form 10-K annual reports.

Neenah takes its reporting obligations very seriously and has worked diligently since its spin-off on November 30, 2004 to be ready to comply if necessary with Section 404. As a result, the time frame for our compliance effort has spanned the period from the date of our spin-off to the present. At this time, Neenah estimates that it has spent approximately $1.7 million with outside advisors testing its interim financial control systems in connection with Section 404 compliance efforts. Neenah does not have an estimate of the “soft costs” incurred by it in connection with the time spent by Neenah personnel, but believes the soft costs are significant.

If relief is granted, Neenah estimates that it can save at least $430,000 this year in fees to advisors by not having to continue its efforts relating to its interim systems and focusing instead on its permanent system of financial control systems. Neenah believes that the soft cost savings would also be significant if relief is granted. Because of the relatively mature state of Neenah’s efforts to comply with Section 404 and the significant duplication of effort that will be required to create an infrastructure to test Neenah’s permanent financial control systems, Neenah believes that almost all of the $430,000 amount saved this year in advisor fees and any additional savings in soft costs will represent true savings to the Company, and not merely a deferral of amounts to be spent in connection with its permanent systems.

More significantly, as a result of having to create an infrastructure to test the internal controls of its permanent financial systems, Neenah estimates that it will incur duplicative costs in connection with advisor fees of over $1.0 million. When this is added to the amounts already expended in connection with advisor fees, this means that Neenah will spend a total of at least $3.1 million to comply with Section 404 by the time it has created the infrastructure to test the internal controls of its permanent financial systems. Neenah also believes that it will incur significant duplication in soft costs as a result of the compliance effort associated with its permanent financial control systems that are not included in the figure appearing above.

In light of the significant duplicative costs that will be incurred by Neenah in the future and the amount already spent by Neenah to date, any opportunity to realize efficiencies is viewed as significant by Neenah. More importantly, Neenah is bringing this to the attention of the Commission because based on its experience, it believes that without relief, the costs associated with compliance for spin-offs are unduly burdensome.

We would welcome the opportunity to respond to any questions or concerns raised by this letter. Please contact me at (678) 518-3275 or Steve.Heinrichs@NeenahPaper.com

Very Truly Yours

/s/ STEVEN S. HEINRICHS

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cc: Jonathon G. Katz (via email rule-comments@sec.gov)

NEENAH PAPER INC

September 12, 2005

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Gerold LaPorte, Chief, Office of Small Business Policy
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Securities and Exchange Commission
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RE: Comments on Letter Dated August 18, 2005 Issued by the Advisory Committee on Smaller Public Companies to Chairman of the Securities and Exchange Commission, Christopher Cox (File No. 265-23)

Ladies and Gentlemen:

Neenah Paper, Inc. ("Neenah") appreciates this opportunity to comment on the work of the Advisory Committee on Smaller Public Companies (the "Committee") and wishes to provide some comments in connection with the letter dated August 18, 2005, issued by the Committee to Chairman of the Securities and Exchange Commission, Christopher Cox (the "Committee Letter"). Neenah became an operating company on November 30, 2004 when its former parent company, Kimberly-Clark Corporation ("Kimberly-Clark"), transferred its fine paper and technical paper businesses in the United States and its Canadian pulp business to Neenah in connection with a spin-off transaction. As a result of the spin-off transaction, Neenah became an independent public company and Kimberly-Clark had no continuing interest in Neenah. Currently, Neenah has a market capitalization of approximately $450 million. As a result of the timing of the spin-off, Neenah is currently a non-accelerated filing company.

Overview

We wish to comment regarding the recommendations contained in the portion of the Committee Letter entitled "Resolution Regarding Section 404 Compliance Dates For Non-Accelerated Filing Companies." We are deeply appreciative of the efforts of the Committee to evaluate and improve the current regulatory system for smaller public companies and recognize the challenges inherent in establishing appropriate thresholds for regulatory requirements. We believe that the rationale supporting the Committee's recommendation to extend the Section 404 compliance date for non-accelerated filers applies to "smaller public companies" generally, and therefore the Section 404 compliance date should be further extended for all companies other than well-known seasoned issuers. For purposes of this letter any reference to the term "smaller public company" has the same meaning as proposed for this term in the Committee Letter (i.e., companies with a market capitalization less than $700 million).

We believe, for the reasons discussed below, that the Commission should consider also granting smaller public companies that resulted from a spin-off transaction relief from the requirement that such companies comply with the internal control requirements of Section 404 after being a reporting company for a period of 12 months. We believe that it is appropriate for such companies to comply with Section 404 as of the first Annual Report on Form 10-K due after the spin-off company has filed a Form 10-K reflecting a full year as a reporting company under the Exchange Act.

Section 404 Internal Control Requirements and Smaller Public Companies

We wish to add our support to the view expressed by many individuals and entities providing comments to the Committee that companies below a market capitalization of $700 million should be treated as non-accelerated filing companies. We believe it is appropriate that the Section 404 relief proposed by the Committee for entities meeting the current definition of a non-accelerated filing company be extended as well to entities that would qualify as a smaller public company.

In light of the many letters already submitted to the Committee expressing support for this position, we do not include a detailed discussion of our reasons for supporting this position in this letter. Instead, we wish to refer the Commission to the particularly well reasoned discussion in support of our position contained in Item 1 and Item 2 of the letter dated May 31, 2005 submitted to the Committee by BDO Seidman, LLP, which we strongly endorse. We also refer the Commission to the letter dated August 9, 2005 by Charlotte M. Bahin, Senior Vice President, Regulatory Affairs of America's Community Bankers. The thrust of both of these letters and other letters submitted to the Committee is that many of the issues that have caused the Commission to grant longer transition times to non-accelerated filing companies are experienced by companies with market capitalizations much larger than the current $75 million threshold. As a result, these letters conclude that the same type of relief that is deemed appropriate for non-accelerated filing companies under the current regulatory scheme should be afforded to larger companies meeting the definition of a smaller public company.

Section 404 Internal Control Requirements and Spin-offs

Although we feel it is important to let the Commission know of our strong support for the position discussed above, our primary purpose in writing this letter is to inform the Commission about issues that are unique to spin-off companies that should be considered by the Commission prior to taking any action in response to the recommendation of the Committee as set forth in the Committee Letter. Specifically, we believe that if companies resulting from a spin-off are required to comply with the internal control requirements of Section 404 after just a twelve months reporting history, many spin-offs will be forced to incur the cost of creating an infrastructure to comply with the requirements of Section 404 twice (the reasons supporting this conclusion are discussed further below).

Spin-off companies are uniquely impacted by the twelve month reporting history provision and we believe that when the burdens and benefits of meeting this requirement are considered in the context of a spin-off transaction, relief from the current Section 404 implementation requirements is appropriate. Below is a brief discussion of the Section 404 related issues arising in the context of the spin-off process as well as a discussion of the reasons for granting spin-off companies relief from the need to comply with the internal control requirements of Section 404 after just 12 months of being a public company.

Many of the issues faced by spin-off companies arise from the fact that spin-offs are "creatures of their creator" and the corresponding reality that the independent entity resulting from a spin-off has little or no influence over the timing of when it is spun off or over the financial, accounting and internal control systems that it inherits as a result of the process. The lack of influence referred to in the prior sentence results from the larger circumstances that typically give rise to a spin-off transaction. In most cases, companies choose to spin-off divisions or lines of business that they determine are no longer compatible with the long-term plans for the larger enterprise. Once this determination is made, the larger company has an incentive to complete the spin-off for its own reasons, but has limited interest in the fate of the spin-off company following its creation. As a result, spin-off transactions are generally managed in a manner that focuses on achieving the goal of rapidly completing the spin-off. The long-term operational concerns of the entity resulting from the spin-off may be a secondary consideration.

Since the focus of most spin-off transactions is rapid completion, they frequently involve interim arrangements for financial, accounting and internal control systems where the entity resulting from a spin-off is dependent for a period of time on the financial, accounting and internal control systems of the parent enterprise. As a result, many spin-off companies are required to operate for a period of time under an interim arrangement (where they receive support from their former parent company, whose systems are themselves frequently subject to Section 404) until they are able to transition to a permanent independent system of financial, accounting and internal controls.

Requiring a spin-off entity to comply with the internal control requirements of Section 404 after just a 12 month reporting history is likely to force the new entity to create an interim infrastructure to test the internal controls applicable to a system that is transitional. Based on our experience, we do not believe that it is possible for a spin-off company to transition from the interim system to its permanent system within the 12 months following the spin-off transaction. As a result, under the Committee's proposal, spin-off companies would have to invest initially in an infrastructure to test internal controls applicable to the transitional system in place immediately following the spin-off followed by a subsequent investment to create an infrastructure to test the internal controls applicable to the permanent system of finance and accounting ultimately implemented.

At the round table (the "Round Table") hosted by the Commission on April 13, 2005, to evaluate the experience of companies in the first year of complying with the internal control requirements of Section 404, a common theme expressed by panel participants was that the direct and indirect costs of Section 404 compliance were greater than expected in the first year and that the cost of compliance outweighed the benefits[15]. Supporting this criticism are the reports from many sources indicating that costs in the first year of compliance increased dramatically[16]. Furthermore, there is compelling evidence indicating that, for smaller public companies, the costs of complying with the internal control requirements of Section 404 is higher relative to larger

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[15] *See* briefing paper entitled "Roundtable on Implementation of Internal Control Reporting Provisions," http://www.sec.gov/spotlight/soxcomp/intcontreport0405.htm (Briefing Paper).

[16] The average audit fees of the largest 100 reporting companies jumped by 45% to an average of $13 million. *See* "Sarbanes-Oxley Exposes Missteps and Audit Costs Spur Gripes," Bloomberg, April 13, 2005. In addition, representatives of Nasdaq have indicated that for companies listed on this market the average cost for compliance during the first year was $1 million with some companies spending as much as $15 million. *See,* Statement of Edward S. Knight, Executive Vice President and General Counsel, the Nasdaq Stock Market, Inc. at the Meeting of the SEC Advisory Committee on Smaller Public Companies, June 17, 2005 at Columbia Law School, New York, New York.

companies; i.e., the compliance costs are relatively fixed and not proportionate to revenue or market capitalization.[17]

In response, the Commission has indicated that it expects the process to become more efficient in the future as a result of the lessons learned by management in the prior year's assessment of a company's internal controls.[18] This response appears to place some weight on the fact that companies should be able to realize efficiencies after the first year but ignores the costs that are incurred in the first year of implementation which, as noted above, can easily be redundant for spin-off companies. As a result, the implication appears to be that one of the justifications for continuing to require compliance with Section 404 in spite of the unexpectedly high costs[19] is that the investment in initial compliance can be leveraged in the future.

In the case of many spin-off companies, the initial investment in Section 404 compliance cannot be leveraged following the first year. Instead, the process of creating an infrastructure to comply with Section 404 with all of its attendant costs will need to be repeated as the spin-off company transitions from its temporary to its permanent accounting and financial systems. In this case, we believe the burdens to the spin-off company and its investors, simply outweigh the benefits to investors. We believe that investors do not benefit when a company is forced to spend significant sums of money to test the internal controls of a financial system that was established to be transitional. We believe this is particularly true in a context where management is giving the certifications required by Sections 302 and 906 of Sarbanes-Oxley.

Moreover, we believe that the situation of the spin-off company is similar to two other instances where the Commission has granted relief in connection with the internal control requirements of Section 404. The first is in connection with the relief granted to companies making acquisitions as outlined in the FAQ released by the staff of the Commission.[20] The second is when the Commission first extended the dates for complying with the internal control requirements of Section 404.[21]

Relief Granted to Acquiring Companies. We believe that the management of a spin-off company finds itself in a situation very similar to that encountered by the management of a company that has recently made a large acquisition. In the FAQ release referred to above, the staff permits issuers to exclude recent acquisitions from the first annual Section 404 assessment following the acquisition. Relief is also granted from the Section 302 certification requirement. Under the relief provided by the FAQ, a

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[17] As a percentage of revenue, smaller issuers (i.e., companies with less than $100 million in revenue), have spent approximately 11 times more than larger companies (i.e., companies with revenues greater than $2 billion) on Section 404 compliance. *See,* Statement of Edward S. Knight, Executive Vice President and General Counsel, the Nasdaq Stock Market, Inc. at the Meeting of the SEC Advisory Committee on Smaller Public Companies, June 17, 2005 at Columbia Law School, New York, New York. Other studies have found that smaller public companies bear higher relative costs than larger companies. *See*, American Electronics Report on Sarbanes Oxley Section 404, the 'Section' of Unintended Consequences and its Impact on Small Business, February 2005.

[18] *See,* Staff Statement on Management's Report on Internal Control Over Financial Reporting dated May 16, 2005.

[19] At the time the internal control requirements of Section 404 were adopted, the Commission estimated that the average cost of implementing the requirements of Section 404 (exclusive of costs associated with the auditor's attestation of management's report) would be $91,000 per company. *See*, Final Rule: Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Reporting Requirements, Release Nos. 33-8238 and 34-46986.

[20] *See*, Management's Report on Internal Control Over Financial Reporting and Disclosure in Exchange Act Periodic Reports Frequently Asked Questions (revised October 6, 2004) – Questions 3 and 9.

[21] *See*, Final Rule Management's Report on Internal Control Over Financial Reporting and Disclosure in Exchange Act Periodic Reports, Release Nos. 33-8392 and 34-49313.

company could exclude an acquired entity from its Section 404 assessment for a period as long as two years. For example, under the FAQ, if a business combination occurred in January of 2005, management could exclude the acquiree from the Section 404 assessment for the year ended December 31, 2005 and include the acquiree in the annual assessment for the year ended December 31, 2006. This is nearly a two-year period. Although acquisitions can be extremely material to investors, the staff acknowledged the fact that it may not be possible for management to assess and integrate an acquired company's internal controls between the time of the consummation of the transaction and date of the next annual report.

Although we recognize that if the spin-off date for a company were in January 2005, it too could receive the benefit of a two-year period before complying with Section 404, we believe it is important to note that the entity resulting from a spin-off has far less control over when the transaction is completed than a company making an acquisition. As discussed above, we believe that the timing of most spin-off transactions is driven by the larger company, whose interest is typically to complete the spin-off at the time best suited to it (in many cases spin-off transactions are deliberately planned as year end transactions, resulting in spin-off company having the minimum amount of time to come into compliance with Section 404).

In addition, a company making an acquisition also has the ability to complete diligence on a potential target and understand the state of its financial and accounting systems. Through the diligence process, management of an acquiring company can evaluate the state of the target's internal controls and factor that into the decision of whether or not to proceed.

In contrast, management of many spin-off companies have little advance opportunity to view or understand the transitional system that they will inherit following the spin-off. We believe that if relief of up to two years is provided in situations where the decision to proceed is completely within the control of the party making the acquisition, it is appropriate to consider providing spin-off companies the relief requested above.

Relief Granted in Extending the Date for Compliance With Section 404. We believe that the rationale given by the Commission in explaining its decision to extend the deadline for compliance with Section 404 echoes many of the concerns raised in this letter with regard to spin-offs[22]. Although we recognize that this extension was granted in response to the fact that the standards for compliance had not been finalized by the PCAOB, we believe that many of the concerns that the Commission was trying to address in granting that relief are present in the context of spin-offs. In the last paragraph of the applicable release the Commission stated: "Moreover, an extension will minimize the cost and disruption of implementing a new disclosure requirement under a current standard that will soon be superseded, and will provide companies and their auditors with a sufficient amount of time to perform additional testing or remediation of controls based on the final standard."[23]

At the time it granted the extension, the Commission recognized the wisdom of not requiring companies to attempt to respond to a standard that would clearly be obsolete in the near future. The extension reflects the realization that investors' interests would best be served if companies were free to focus on responding to a final standard. The Commission specifically realized that there would be needless hard and soft costs associated with such an exercise. Additionally, in granting relief the Commission realized

[22] *Id*.
[23] *Id*.

that the circumstances giving rise to the potential interim exercise were really beyond the control of the affected companies (i.e., the fact that final standards had not been issued by the PCAOB).

We believe that same concerns that caused the Commission to grant relief in the instance cited above are directly present in the context of spin-offs. First and most importantly, because spin-off companies are the "creature of their creator" they really have little or no control over the fact that they often inherit a transitional financial system. As a result, unless relief is granted, many will be forced incur significant hard and soft costs creating an infrastructure to test financial systems that will be obsolete as soon as they are tested. We believe that in such a case, the interests of investors will be much better served if spin-off companies are free to focus their resources on creating an infrastructure that will test the internal controls of their permanent financial and accounting systems. The relief proposed in this letter will allow spin-off companies the latitude they need to avoid needlessly spending company resources testing an interim solution.

For these reasons, we respectfully request that the Commission consider either (a) extending the deadline for Section 404 compliance for all "smaller public companies" rather than only non-accelerated filers, or (b) providing spin-off companies with the relief requested above.

We would welcome the opportunity to respond to any questions or concerns raised by this letter. Please contact me at (678) 518-3275 or Steve.Heinrichs@NeenahPaper.com.

Very truly yours,

/s/ STEVEN S. HEINRICHS

Steven S. Heinrichs
Vice President, General Counsel and Secretary

cc: Jonathan G. Katz (via email rule-comments@sec.gov)