February 26, 2007

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

Re: SEC File No. S7-24-06

Dear Ms. Morris:

AeA is the nation's largest high-tech trade association, representing nearly 2,500 U.S.-based technology companies. Membership spans the industry product and service spectrum, from semiconductors and software to computers, Internet and telecommunications systems and services. With 18 US offices, and offices in Brussels and Beijing, AeA brings a broad industry and grassroots perspective to the public policy arena.

AeA has particular insight to small and micro-cap technology companies through our two widely respected annual investor conferences that we sponsor for issuers, analysts, and portfolio managers. The stratum of American companies that have "graduated" from venture or bootstrap capitalization to the NASDAQ or NYSE constitute a crucible of risk-taking that reflects the best of America's market economy. For these companies, the impact of Section 404 of the Sarbanes-Oxley Act ("SOX") has had a devastating impact.

AeA appreciates the current efforts by the SEC and PCAOB to make SOX implementation more cost-effective and scalable, and we respectfully submit the

following comments in response to the SEC's proposed interpretive guidance and rule amendments to Section 404 and the PCAOB's proposed Auditing Standard Number 5, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements* ("AS5").

Millions of dollars are being drained annually from the innovative and productive activities of businesses that have merited access to our public capital markets. The incremental SOX 404 cost burden that has been added to the many small public companies who must now comply with cumbersome, annually recurring administrative expenses, including professional fees for inexperienced outside auditors, continues – and thus far this is only for accelerated filers.

Although the proposals attempt to address current implementation problems, we do not believe they will be effective in their current form in significantly reducing the excessive compliance burdens our member companies, and in particular smaller companies, face. If the problems associated with Section 404 continue, they will negatively impact U.S. competitiveness by hindering the ability of smaller, innovative companies to grow and compete in global markets and by encouraging companies to list on foreign exchanges.

Scalability

We applaud the SEC and PCAOB for recognizing the unique attributes of smaller and less complex companies by stressing the importance of "scalability." That said, the current proposals do not provide sufficient guidance as to how smaller companies may scale their compliance activities. The list of characteristics and attributes of a smaller company is a start; however, additional guidance and examples are absolutely necessary. Smaller companies continue to have less leverage than larger companies when working with their external auditors and greater specificity as to how these companies can tailor their internal controls activities would better provide companies with the certainty they need. Without this guidance, smaller public companies will continue to face unnecessary costs, particularly as they relate to documentation. In addition, we believe that the SEC should clarify that the characteristics of smaller companies, such as a lack of segregation of duties, do not necessarily result in a material weakness in internal control.

It is imperative that the SEC not allow a multi-year "test" of AS5, compelling additional years of extremely excessive audit fees that yield dubious value to the capital markets. We implore you to reconsider the micro-cap and small-cap exemptions proposed by the SEC's Advisory Committee on Smaller Public Companies ("Advisory Committee"), at least until the cost-effectiveness of AS5 has been proven over sufficient time. These companies should continue to be exempt *at least* until a thorough examination of both the new interpretive guidance and AS5 has been conducted to ensure that smaller companies are not disproportionately burdened.

AeA believes the Advisory Committee's recommendations take an appropriate approach to Section 404 compliance necessary for smaller public companies. The recommendations represent an understanding of the unique circumstances that smaller companies face in complying with Section 404, based on a thorough

analysis of inputs by professionals directly engaged in efforts to comply. The recommendations balance the need to provide investor protection with the desire to ensure that smaller companies continue to have access to the American capital markets. In addition, smaller companies could choose to fully comply with Section 404 in its current form, which would allow the financial markets to determine whether there is a benefit for smaller companies that decide to comply with Section 404 in its entirety.

Further Delay for Non-Accelerated Filers Necessary

As a practical matter, non-accelerated filers will not have sufficient time to understand and comply with the new guidance after they are released in their final form. Should the SEC reject the aforementioned recommendation relating to exemptions, AeA urges the SEC to, at the very least, delay the non-accelerated filer compliance dates for an additional year so that these companies and their auditors have additional time to interpret and implement these complex Section 404 proposals.

Better Alignment of SEC and PCAOB Proposals Needed

The SEC's proposed interpretive guidance is a step in the right direction as the lack of guidance for management has resulted in management's reliance on AS2. The goal of keeping the interpretive guidance less detailed so that it remains flexible is commendable; however, the proposal is ultimately too ambiguous to provide companies with the certainty they need. Although shorter than AS2, AS5 is far more prescriptive in its approach in comparison to the more principles-based SEC proposal. Making determinations relating to information technology ("IT") controls has been particularly problematic for smaller companies, and AS5 does provide auditors with specific points to consider; however, the SEC's discussion of IT controls is broader, making it difficult for managements and auditors to work together.

When coupled with the proposed AS5 – which is far more granular – companies will likely end up following AS5 as external auditors are the ones who will continue to decide whether or not to give a company a passing grade. Because of the differing approaches to the guidance, external auditors will remain in control of the implementation process, and this will undermine the flexibility and effectiveness of any new SEC guidance for issuers. We recommend that the SEC and PCAOB better align their proposals to help ensure that management's assessment of internal controls is emphasized and that AS5 does not become the *de facto* guidance for management as is the current situation with AS2.

Illustrative Examples

AeA recommends the SEC provide companies, and in particular smaller issuers, with clearer guidance and examples so that companies can have a reasonable degree of certainty when they tailor and evaluate their internal controls, and in particular, their documentation activities. This will help ensure that the external auditor's needs do not supersede management's professional judgment and needs.

Illustrative examples of how the SEC's proposed guidance should be implemented would be particularly beneficial in the area of defining "material weakness." This term continues to be vague and there is concern that it will create even greater confusion unless the guidance provides examples and real life case studies.

Safe Harbor Proposal

In an effort to provide management with greater certainty, the SEC's proposed amendments to the Securities Exchange Act of 1934 rules 13a-15(c) and 15d-15(c) would provide companies that perform an evaluation of their internal controls in accordance with the SEC's issuer guidance with a non-exclusive safe harbor. In theory, this should add greater certainty to the compliance process; however, the current SEC proposal is too vague to effectively assist companies in creating and

evaluating their internal controls. The safe harbor is similarly insufficient in minimizing the uncertainty that exists for companies that would like to comply.

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Thank you for the opportunity to comment on this important matter. I would be happy to discuss our recommendations in further detail. If you have any questions, please feel free to contact me at (202) 682-4448 or marie_lee@aeanet.org.

Sincerely,

Marie K. Lee
Director and Counsel, Finance and Tax Policy
AeA (American Electronics Association)