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Re:

Securities and Exchange Commission

17 CFR Parts 210, 240 and 241

RIN 3235-AJ58

Management's Report on Internal Controls Over Financial Reporting

Submitted via email: rule-comments@sec.gov

The result of the implementation have of the Sarbanes-Oxley Act of 2002 (the "Act") has generally been positive. Benefits include, improved investor confidence, more reliable financial information, greater transparency in the reporting process and improved disclosure of items that materially effect a company's financial statements. The large number of tracked deficiencies, significant deficiencies and most importantly reported material weaknesses in the initial years of the Act is evidence of a corporate governance and reporting process needing repair. The Act quickly restored confidence in a corporate system that was clearly broken and full of abuse.

Now entering the fourth year of the Act, the number of deficiencies and material weaknesses are significantly declining and a process is in place at those accelerated filers that support the requirements to comply with the Act. The reliability of reported financial information was strengthened and many irregularities in the financial reporting process identified and addressed. Still, these improvements have come at great cost to corporations and the U.S. capital markets. In this my fourth year of designing controls and governance processes to help organizations comply with the Act – initially for a Fortune 500 domestic office products company and for the last three years being responsible for global compliance for a leading U.S. financial services organization - I have observed a good trend (both within my company and in my financial services peers), the number of control deficiencies and material weaknesses have significantly been reduced. A major element of this positive trend is, companies are improving the internal control structure in their financial reporting environment.

Given the trend above, I support the efforts of the Commission to provide better guidance to companies through this proposed document. This is a critical step in an evolving process of improving the overall financial reporting process. Therefore, to begin with, I will address one of the Commission's specific questions listed in the back of the proposed guidance – "Should this guidance be issued as an interpretation or should it, or any part, be codified as a Commission rule?

> This guidance ought to be issued as a Commission rule. The amount of ambiguity and varied opinions associated with complying with the Act has been too great. The business community needs clearer direction in order to ensure compliance with the law and maintain a competitive capital structure. Issuing the guidance in a form other then a Commission rule may not help the Commission set forth an approach by which management can conduct a top-down, risk-based evaluation of internal control over financial reporting.

Materiality and Reasonableness

While the guidance distinguishes between materiality for financial statement purposes – quantitative – from materiality due to the susceptibility of an account to a material misstatement, the guidance stops short of quantifying financial statement materiality. This has been an area of difference between companies and their external auditors, as each have different interests in setting materiality. Quite often management is over testing because of the concern that less testing would result in an adverse opinion in management's assessment process. More specific guidance on materiality, with calculations derived from the financial statements, will reduce the level of inconsistency in how companies and external auditors address materiality. Given that the Commission traditionally does not define materiality from a financial statement perspective, providing examples of materiality thresholds – such as 3-4% of the balance sheet and/or pre-tax net income – gives management a better understanding of how to perform this critical step in the assessment process.

Also, a standard rule on materiality can help to clarify and better define the concept of "reasonableness", as clearly anything falling below the materiality threshold will be inconsequential to the company, external auditors and investors.

Audit Liability

External Auditor liability ought to be limited so that external auditors will be more apt to take controlled risk in the audit process. (Presently, auditor fear of liability suits that could result in the liquidation of the firm, contributes to preventing auditors from applying a risk-based approach to the audit of internal controls over financial reporting.) Thus, audit fees increase and the auditor is limited in the amount of reliance place in the work of others – including internal audit and management's self-assessment testing process.

Entity Level Controls

The use of entity level controls in the compliance of the Act has been an area of great debate within the accelerated filers and with their external auditors. In one regard, entity level controls like the Code of Conduct is important because they help set the "tone at the top"; however, many hours were spent developing programs to design, document and test these controls. Further, PCAOB guidance indicated that the existence of strong entity level controls should help the auditor reduce work in certain areas of the audit and therefore, focus their audit procedures on more risky areas.

In practice this has not developed and instead the testing of entity level controls resulted in management and external auditors spend too much time looking at entity level controls with no significant benefit in the entire audit process.

Therefore, better clarity is needed around entity level controls; and distinguishing between entity level controls and business monitoring controls. Entity level controls will continue to exist at very high levels of large organizations but documentation and testing ought to be limited to the governance process, and how management communicates entity level controls throughout the organization. Then, more emphasis ought to be placed on how management can use business monitoring controls instead of test re-performance to determine the effectiveness of certain internal controls over financial reporting.

End-to-End Documentation

The Commission appears to indicate that end-to-end documentation is not necessary and where end-to-end documentation exists it can take on many forms, ranging from very formal to somewhat informal forms. This can be interpreted to be a major shift in how accelerated filers documented their processes in the past. Is it the intent of the proposal to reduce the effort around documenting the end-to-end process? Should management understand this section to say, that only the control design be documented and no longer the end-to-end process? This would be most effective if businesses did not need to develop separate documentation solely for the purpose of complying with the act.

Also, the proposal states, it is more important, that the documentation can be focused on those controls that management concludes are adequate to address the financial reporting risks. In other words, is it the intent of the proposal for management to consider only those controls determined to be important for ensuring the effectiveness of internal controls over financial reporting and not all controls in the transaction process – with all other controls being monitored using proven business practices and not test re-performance.