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Securities and Exchange Commission
Attn: Nancy M. Morris, Secretary
100 F Street, NE
Washington, D.C. 20549-1090

Re: **File Number S7-06-03**
Internal Control Over Financial Reporting In Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies

Dear Ms. Morris:

Deloitte & Touche LLP is pleased to respond to the request for comments from the Securities and Exchange Commission (the Commission) with respect to its proposed extension of compliance dates for Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies [Release No. 34-54295; File No. S7-06-03]. The comments provided herein are based on our collective insights and experiences, including those of the non-U.S. member firms of Deloitte Touche Tohmatsu.

We support the Commission's proposal to extend the dates by which non-accelerated filers are required to comply with the Commission's rules relating to Section 404 of the Sarbanes-Oxley Act of 2002, in order to allow the Commission to complete its effort to establish guidance for management's assessment process and to allow time for the Public Company Accounting Oversight Board (the PCAOB) to complete its announced plans to amend its Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of the Financial Statements* (AS 2). As discussed in more detail below, while we have concerns about implementing the management assessment requirement in Section 404 a year before auditor attestation is required, we ultimately would not object to this proposal for existing non-accelerated filers, provided that adequate disclosures are required. Finally, we also have significant concerns about the proposal to delay implementation of Section 404 for companies who have recently completed their initial public offerings.

We are including below more detailed responses to certain questions that the Commission raised in its proposal.

Is it appropriate to provide a further extension of the compliance dates of the internal control over financial reporting requirements for non-accelerated filers? If so, are the proposed extensions for compliance with management and auditor attestation report requirements appropriate in length or should they be shorter or longer than proposed? Should the Commission consider a further extension if the revisions to Auditing Standard No. 2 and the release of guidance for management are not completed in sufficient time to permit issuers and auditors to rely on them?

We believe that Section 404 is an important provision and that investors in public companies of all sizes should be able to benefit from it as soon as possible. We also believe, however, that in order for investors in companies that are not accelerated filers to receive the full benefit of Section 404, issuers and auditors must have time to understand and appropriately apply any new management guidance and revisions to AS 2. Therefore, we believe it is appropriate to provide a further extension of the compliance dates for non-accelerated filers.

We believe that the extensions set forth in the current proposal should be sufficient to implement forthcoming management guidance and revisions to AS 2, provided that there are no unforeseen delays in their adoption. If unforeseen delays arise, we believe the Commission should consider an additional extension if and when that becomes necessary.

Is it appropriate to implement sequentially the requirements of Section 404(a) and (b) of the Sarbanes-Oxley Act, as proposed, so that a non-accelerated filer would only have to include management's internal control assessment in the annual report that it files for its first fiscal year ending on or after December 15, 2007 and would not have to begin providing an accompanying auditor's attestation report until it files an annual report for a fiscal year ending on or after December 15, 2008?

We believe that the requirement for an independent audit of internal control over financial reporting is integral to the benefits that Congress intended to provide to investors in adopting Section 404. Therefore, we have concerns about separating the auditor's attestation requirement from the requirement that management assess internal control over financial reporting. As discussed below, we believe that at a minimum, such a provision should be accompanied by additional disclosure by both management and the auditor.

Possibility of Undisclosed Deficiencies. Auditor attestation on internal control over financial reporting, especially when done as part of an integrated audit with financial statements, increases the likelihood that internal control deficiencies will be identified. In addition, the absence of auditor attestation could reduce the rigor of management's own assessment process and thus increase the risk that management fails to identify and remediate existing internal control deficiencies.¹

Even during the initial year, when only management performs and reports on its assessment, auditors will have a responsibility to report to management and the audit committee, as appropriate, control deficiencies of which the auditor becomes aware during the course of

¹ See, e.g. "Bridging the Sarbanes-Oxley Disclosure Control Gap: The Lord & Benoit Report," available at http://www.section404.org/pdf/Lord_Benoit_Report_1_.pdf#search=%22Lord%20%26%20Benoit%22 (2006 study suggesting the importance of an independent assessment by noting that only 47 of 586 companies with ineffective controls identified by Section 404 had previously self-reported control deficiencies, either under Section 302 or under Section 404 readiness or management assessment activities performed in prior periods).

performing the financial statement audit. However, the auditor's procedures with respect to internal control over financial reporting during the financial statement audit will not be nearly as targeted and comprehensive as the auditor would perform in an integrated audit. Therefore, delaying the implementation of the auditor attestation requirement of Section 404 could result in an increased risk to investors from undisclosed deficiencies, as well as to companies who may face risk of litigation if they fail to identify and disclose existing material weaknesses that the auditor discovers the following year.

Potential Confusion over the Auditor's Role. In proposing that companies not be required to have an independent audit of internal control over financial reporting in the initial year of compliance, the Commission nevertheless encourages "frequent and frank dialogue among management, auditors and audit committees to improve internal control and the financial reports upon which investors rely" and suggests that "management should not fear that a discussion of internal controls with, or a request for assistance or clarification from, the auditor will itself be deemed a deficiency in internal control or constitute a violation of our independence rules as long as management determines the accounting to be used and does not rely on the auditor to design or implement its controls." We appreciate the Commission's reassurance in this area, and believe that auditors can and will provide limited assistance to management, to the extent permissible, during management's internal control assessment in the first year of phase-in.

However, we are concerned that investors may be confused about the role of the auditor in the first year. Therefore, if the Commission were to adopt the proposed phase-in, we believe that it should also require explicit and prominent disclosure – both by the company and by the auditor – that makes clear that the auditor has not audited the company's internal control over financial reporting.²

As discussed, notwithstanding the concerns identified above, we understand the Commission's desire to assist in a smooth transition to full compliance with Section 404 for non-accelerated filers. Therefore, while we prefer adoption of an audit requirement concurrent with the first management assessment, if the Commission determines that the phase-in proposal is in the public interest, and if it requires the disclosures suggested above, we would not object to the proposal.

Would the phasing-in of the management assessment requirement and auditor attestation report requirement make the ultimate application of Auditing Standard No. 2 more or less efficient and effective?

While we do not believe that a phase-in necessarily would make the ultimate application of AS 2 more or less efficient or effective, we do believe that the lack of an independent audit of internal control over financial reporting in the first year would make Section 404 overall less effective, because of the possibility of undisclosed deficiencies and confusion over the auditor's role. Moreover, we do not believe that a phase-in would make the second year implementation of

² See, e.g., AU Section 9508, Reports on Audited Financial Statement: Auditing Interpretations of Section 508, No. 18, *Reference to PCAOB Standards in an Audit Report on a Nonissuer* (suggesting the following language for the audit report: "The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly we express no such opinion."). We note that such changes to the auditor's report likely will require action by the PCAOB.

management's assessment, along with the independent auditor's attestation, any more efficient or effective than if these requirements were implemented simultaneously. In fact, there may be increased tension between the auditor and the company, especially in the second year if the auditor were to identify material weaknesses in internal control over financial reporting that the company did not disclose in the first year.

However, if the Commission determines not to adopt the phase-in, it should extend the compliance dates for *both* management and the auditor so that there is sufficient time to efficiently and effectively apply management guidance and revisions to AS 2 in the initial year of compliance (e.g. to fiscal years ending on or after December 15, 2008).

Is it appropriate to deem the management report on internal control over financial reporting to be "furnished" rather than "filed" during the first year of a non-accelerated filer's compliance with the Section 404 requirements? If so, is it also appropriate to take the same action during the first year of compliance with the Section 404 requirements by a foreign private issuer that is an accelerated filer, but not a large accelerated filer, and that files its annual reports on Form 20-F or 40-F?

As discussed, one of our concerns about the proposed phase-in is the risk that a company may be subject to a risk of litigation or regulatory action if it fails to disclose in its initial year of compliance a material weakness that the auditor discovers the following year. We therefore believe that, if the Commission adopts the phase-in, it would be appropriate for it to allow all companies (foreign and domestic) using the phase-in to "furnish" rather than "file" their management report.

Would management's assessment of internal control over financial reporting provide meaningful disclosure to investors, independent of the auditor attestation report? Is there an increased risk that management will fail to identify a material weakness in the company's internal control over financial reporting, and if so, do the potential benefits of the proposal outweigh this risk?

We do believe that management's assessment alone would provide useful disclosure to investors, although we do not believe that investors will receive the full benefit of Section 404 until both components are implemented. Moreover, as discussed, we believe that investors may be confused by a management-only reporting requirement, unless there is explicit disclosure that the auditor is not giving an opinion on the company's internal control over financial reporting. Also as discussed, we believe that there is an increased risk that management will fail to identify an existing material weakness in the company's internal control inherent in the phase-in proposal.

Should we require a non-accelerated filer to disclose in its annual report that management's assessment has not been attested to by the auditor during the year that the audit attestation report is not required?

Yes. As discussed, we believe that prominent disclosure that management's assessment has not been attested to by the auditor is essential, both in management's assessment and in the auditor's report on the financial statements.

Simultaneously with the publication of this release, we are issuing a separate release to extend the date by which a foreign private issuer that is an accelerated filer (but not a large accelerated filer), and that files its annual reports on Form 20-F or 40-F, must begin to comply with the auditor attestation report portion of the Section 404 requirements. Is there any additional relief or guidance that we should consider specifically with respect to foreign private issuers?

As we will discuss in more detail in our response to the Commission's Concept Release Concerning Management's Reports on Internal Control Over Financial Reporting, we believe there are specific areas where clarification is needed for foreign private issuers that should be addressed in management guidance provided by the Commission.

Should newly public companies, or a subgroup of newly public companies, be given additional time after going public before they are required to include management and auditor attestation reports on internal control over financial reporting in their annual reports filed with the Commission? If so, how much time? Should we propose a transition period only for companies that become public in the third or fourth quarter of their fiscal year?

Companies that undertake an initial public offering must comply with a host of new requirements that are designed to protect investors and the integrity of our public markets. These requirements are viewed as a cost of accessing the capital in those markets. We do not believe that the Section 404 requirements should be treated differently, and therefore we do not believe that newly public companies should be given additional time after going public before they are required to comply with Section 404. Nor do we believe that there should be a transition period for companies that become public in the third and fourth quarters of their fiscal years. In fact, an argument could be made that the safeguards of Section 404 are of increased importance for newly public companies and their investors, because those companies are often less sophisticated and lack the market following that can act as a safeguard for investors.

We are sensitive to concerns that the regulatory costs of entering the U.S. markets may discourage some companies from entering. However, we note that the vast majority of newly public companies are non-accelerated filers and therefore will receive the benefits of the general extension of compliance that the Commission has proposed for all non-accelerated filers. We are confident that the efforts the Commission and the PCAOB currently are undertaking to improve the Section 404 process, combined with increasing experience by issuers and auditors, will ultimately facilitate the implementation of Section 404 for newly public companies.

We recognize that there may be broad support for a deferral of compliance with Section 404 for newly public companies. If the Commission decides to adopt such a deferral, we believe it should be narrowly crafted, perhaps by use of a revenue threshold, so that it applies only to smaller companies that are raising capital in the public markets for the first time. We also believe that prominent disclosure by the company and the auditor should be required so that investors understand that the company is not yet required to comply with Section 404 and, accordingly, there has been neither a management assessment nor an audit of internal control over financial reporting.

As an alternative to the proposed transition period, should we require a newly public company to include management's assessment, but not the auditor's attestation report on management's assessment in the first annual report that the company is required to file?

While we would not object to the Commission's proposal to adopt a one time phase-in for existing non-accelerated filers, assuming there is appropriate disclosure, we do not believe that all newly public companies should be allowed to include management's assessment on internal control over financial reporting in their first annual report, without the auditor's attestation report. For the proposed one-time phase-in for all non-accelerated filers, we believe that the Commission may conclude that market uncertainty about auditor involvement would be effectively mitigated by disclosure by the company and the auditor, especially in light of the general publicity that will accompany adoption of this provision by the Commission. We do not believe, however, that investor confusion caused by allowing all newly public companies going forward to omit auditor attestation in their first year of reporting can be effectively mitigated, because such a phase-in would apply to different companies in different years. We also reiterate our belief that investors in newly public companies will benefit from full Section 404 compliance at least as much as investors in established registrants.

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We believe investors have greatly benefited from the Section 404 requirements, and we commend the Commission's ongoing efforts to improve the implementation of the requirements. In this regard, we will be submitting a separate comment letter on the Commission's Concept Release Concerning Management's Reports on Internal Control Over Financial Reporting (File Number S7-11-06) and direct your attention to that letter for a further discussion of related topics.

We appreciate the opportunity to comment on the questions above. If you have any questions, please contact Robert Kueppers at (212) 492-4241 or John Fogarty at (203) 761-3227.

Very truly yours,

/s/ Deloitte & Touche, LLP

cc: Chairman Christopher Cox
Commissioner Paul Atkins
Commissioner Roel Campos
Commissioner Annette Nazareth
Commissioner Kathleen Casey
Conrad Hewitt, Chief Accountant
John White, Director, Division of Corporation Finance