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Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303

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
Commission File No. S7-06-03

Dear Mr. Katz:

Ernst & Young LLP is pleased to respond to the request by the Securities and Exchange Commission (the "Commission" or the "SEC") for comment regarding the application of Section 404 of the Sarbanes-Oxley Act of 2002 ("Section 404") to smaller public companies.

We believe Section 404 is working positively and that the investing public is already benefiting from more reliable and transparent financial reports, increased investor confidence, lowered cost of capital for issuers, and a reduced risk of financial statement misstatement. In our experience, we have witnessed issuers benefiting from continual improvement in internal controls and an increased control consciousness. We appreciate the continued efforts of the Commission, the Public Company Accounting Oversight Board (the "PCAOB") and others to refine the process of reporting on internal control over financial reporting, including focusing on the unique Section 404 reporting challenges faced by smaller public companies.

In that regard, we fully support the SEC's decision to defer for an additional year the date for non-accelerated filers to comply with the Section 404 requirements for management's assessment and the independent auditor's attestation on internal control over financial reporting. We believe the additional deferral will provide the time necessary for issuers to prepare for internal control reporting, make any necessary improvements to their internal controls, leverage the experiences of accelerated filers, and embed "best practices" into their own assessment processes.

Notwithstanding their deferred effective date to comply with Section 404, in accordance with the federal securities laws, non-accelerated filers must always maintain a system of internal accounting controls sufficient to provide reasonable assurance that annual and interim financial statements will be free of material misstatement. This obligation is part and parcel of a decision

to obtain capital through the public markets, and investors expect that all public companies, larger and smaller, will maintain such internal controls. Therefore, we do not believe that it is in the public interest to institute a different set of standards for management of smaller public companies and their independent auditors to assess and report on the effectiveness of internal control over financial reporting.

In its May 16, 2005 statement regarding management's reporting on internal control over financial reporting, the SEC staff advocated the use of a top-down, risk-based approach to management's assessment. Under this approach, management applies its cumulative knowledge, experience, and judgment to identify the areas of the financial statements that present significant risk that the financial statements could be materially misstated and then identifies relevant controls and designs appropriate procedures for documenting and testing those controls. We believe that such an approach, as described in the SEC staff's statement and in the additional PCAOB staff implementation guidance issued on May 16, is sufficiently flexible to allow management to scale its efforts to the relative size, complexity, and risk profile of the company.

Similarly, in performing an audit of internal control over financial reporting, the auditor has a responsibility to plan and perform the audit to reduce to an appropriately low level the risk that he or she will fail to find a material weakness if one or more exists. Given that risk assessment underlies the entire audit process and has a pervasive effect on the amount of work auditors perform in an audit of internal control over financial reporting, we believe that there also is sufficient flexibility within the framework of PCAOB Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements*, to allow auditors to scale the nature and extent of testing performed to the size and complexity of the issuer.

We acknowledge the efforts of COSO to develop guidance on the application of the COSO framework by smaller companies, and the efforts of the Commission's Advisory Committee on Smaller Public Companies (the "Advisory Committee"). Although we believe the COSO guidance will be of significant benefit to non-accelerated filers and we remain interested in the continuing work of the Advisory Committee, the fundamental principles of an effective system of internal control and the objectives of reporting are the same regardless of the size of the issuer. Based on our consideration of information available to date, we clearly do not believe that permitting management and independent auditors to provide less assurance or to report less frequently based on the size of a company is best for investors; instead such alternatives likely would confuse investors, retard efforts to enhance confidence in the capital markets, and further widen the expectation gap.

The cost of complying with reporting on internal control over financial reporting is the subject of considerable debate. We believe that it would be appropriate for the SEC to continue to monitor the experience of accelerated filers and independent auditors in complying with Section 404 at least through the second year in order to assess the ongoing costs and benefits of Section 404 for both accelerated and non-accelerated filers, and to assess the ability of the smallest public

companies to comply with Section 404 on a cost effective basis. Should policymakers ultimately determine that the benefits to the investors in the smallest public companies do not exceed the costs, we believe the SEC might consider, to the extent consistent with its statutory authority, allowing such issuers to obtain exemptions from the auditor attestation requirements of Section 404. Such exemptions, which would require appropriate involvement of or disclosure to shareholders, would be preferable to "watered down" management and auditor reporting requirements. However, we do not believe sufficient information currently exists to make such a determination.

Transition Period Considerations

During the remaining Section 404 transition period (and if the SEC subsequently adopts any exemptions for the smallest public companies), the SEC should give further consideration to whether a non-accelerated (or exempt) filer has sufficient time to prepare its initial Section 404 reports. Currently, a non-accelerated filer that becomes an accelerated filer during its fiscal year ending on or after either July 15, 2005 or July 15, 2006, must comply with Section 404 in its annual report for that fiscal year. Given that the calculation of an issuer's public equity float occurs at the end of its second fiscal quarter under the SEC's definition of an accelerated filer, a non-accelerated filer that exceeds the current $75 million public equity float threshold for the first time would essentially have only six months to prepare for its initial Section 404 reporting. Based on our experience, this generally would not provide a smaller public company a sufficient amount of time to accelerate the procedures necessary to report under Section 404. Accordingly, until such time that Section 404 applies universally to all issuers, we recommend that the SEC modify its existing transition provisions such that a non-accelerated filer (or an issuer otherwise exempt from Section 404) must first comply with Section 404 in its second annual report after becoming an accelerated filer (or losing its Section 404 exemption). Such modification would provide a non-accelerated (or exempt) filer with a more reasonable period of time to prepare its initial Section 404 report in an orderly and cost-effective manner.

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We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Very truly yours,

Ernst & Young LLP