

September 14, 2006

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

**Internal Control Over Financial Reporting in Exchange Act  
Periodic Reports of Non-Accelerated Filers and Newly Public Companies  
Commission File No. S7-06-03**

Dear Ms. Morris:

Ernst & Young LLP is pleased to respond to the Securities and Exchange Commission's (the "Commission" or "SEC") request for comment regarding the proposal to (1) further extend for non-accelerated filers the dates for their compliance with the internal control requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002, and (2) provide a one-year deferral of the internal control reporting requirements for newly public companies. Following some general commentary, we have organized our comments to respond to the specific issues on which the Commission seeks public comment.

We believe the requirements of Section 404 for a management assessment and an auditor attestation on internal control over financial reporting are providing benefits to the investing public through more reliable and transparent financial reports, increased investor confidence, lowered cost of capital for issuers, and a reduced risk of financial statement fraud. Based on our experience, issuers are benefiting from continual improvement in internal controls and an increased control consciousness. We appreciate the continued efforts of the Commission, the PCAOB and others to refine the process of reporting on internal control over financial reporting, including focusing on the unique Section 404 implementation challenges faced by smaller public companies.

We support the SEC's proposal to defer 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 it is appropriate to provide a further extension of the compliance dates for non-accelerated filers provided that the further extension of time is not longer than necessary for the SEC and PCAOB to issue (1) the forthcoming implementation guidance for management, (2) the amendments to Auditing Standard No. 2 ("AS

2”), and (3) the related guidance being developed for auditors regarding audits of internal control over financial reporting for smaller public companies. The extension of time should contemplate needed time for management and auditors to absorb and implement the guidance in advance of the extended effective date. We expect this guidance to provide significant benefits both for management in conducting an assessment of internal control over financial reporting and for auditors in reporting on management’s conclusion regarding the effectiveness of internal control over financial reporting.

However, we expect there might be some complications or unintended consequences of a phased approach to implementing the internal control reporting requirements that the SEC and PCAOB will need to address. For example, a phased implementation approach might confuse some investors as to the level of assurance they are receiving on the effectiveness of internal control over financial reporting in the year where only management’s assessment of internal control is required. Accordingly, we strongly believe that management’s assessment should clearly state that the assessment has not been subject to audit. We also suggest that upon adopting a phased implementation approach the SEC and PCAOB should issue guidance to clearly delineate for all parties the limited extent of the auditor’s association with management’s assessment report for 2007.

We believe the proposed transition period for internal control reporting requirements for newly public companies is not inconsistent with the overall interests of investors and the U.S. capital markets. Management of a newly public company has many competing demands for its time and company resources throughout and immediately following the initial public offering process. We believe that providing management of newly public companies with an additional year to complete its first assessment of internal control over financial reporting, and coupling management’s assessment with the auditor’s attestation at that time, is an effective and efficient means to address 404-related concerns for such companies. Although we are not convinced that the cost of complying with Section 404 is a primary factor in companies seeking alternatives to initial public offerings, or in pursuing capital markets outside of the United States, we think the proposed relief is a practical approach that provides appropriate relief for newly public companies.

### **Specific Issues on which the Commission Seeks Comment**

***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?***

As conveyed in our general comments above, we believe it is appropriate to provide a further extension of the compliance dates for non-accelerated filers provided that the further extension of

time is not longer than necessary for the SEC and PCAOB to issue the forthcoming implementation guidance for management, amendments to AS 2, and the related guidance being developed for auditors regarding audits of internal control over financial reporting for smaller public companies. The extension of time should provide needed time for management and auditors to absorb and implement the guidance in advance of the extended effective date.

***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?***

Our support for the additional extension of the compliance dates is predicated on the timing of issuance of the forthcoming implementation guidance for management, amendments to AS 2, and the related guidance being developed for auditors regarding audits of internal control over financial reporting for smaller public companies. As we state above, the extension of time should provide needed time for management and auditors to absorb and implement the guidance in advance of the extended effective date.

***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?***

Although we do not object to the phased implementation approach, as discussed earlier in our general comments, we are concerned that it may have some unintended consequences for management and investors that are best dealt with now by the SEC and PCAOB. Additionally, management's assessment without an auditor attestation could increase the risk that a material weakness will go undetected in the initial year.

***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?***

We are not aware of any evidence that would suggest that implementing sequentially management's assessment and the auditor's attestation on internal control over financial reporting would result in a more or less efficient application of AS 2. However, we believe that efficiencies in the application of AS 2 could result from management having an additional year of experience, particularly if management has developed appropriate documentation of its systems and controls.

We do not believe that implementing sequentially management's assessment and the auditor's attestation on internal control over financial reporting will have any discernable effect on the effectiveness of implementation of AS 2 since auditors ultimately must perform those procedures they believe are necessary to issue an opinion on internal control over financial reporting.

***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?***

In its request for comment, the Commission indicated that the proposal to deem management reports 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 was to address concerns that these issuers may become subject to second-guessing in situations where a material weakness in internal control is identified in the second year of reporting on internal control. We understand the Commission's concern and therefore it seems appropriate for management to "furnish" rather than "file" their report on internal control over financial reporting during their first year of compliance with the Section 404 requirements.

For the same reason, we believe the Commission should extend this same treatment to a foreign private issuer that is an accelerated filer, but not a large accelerated filer, that files its annual reports on Form 20-F or 40-F.

***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 believe that management's assessment coupled with auditor attestation is the most effective approach and the one least confusing to investors. However, we believe that management's report, even with a disclosure that it has not been audited, will have some meaning for investors. Management's report would be an indication to investors that management has undergone the process of evaluating internal control over financial reporting that is incremental to the processes supporting management's certifications under Section 302 and 906. In addition, we believe that the guidance for management from the SEC will serve to add some rigor to that assessment and enhance the meaning of the reporting for investors.

***Are the proposed extensions in the best interests of investors?***

If providing the extension of the compliance dates makes it possible for the SEC and the PCAOB to complete and issue the forthcoming implementation guidance for management and the related guidance being developed for auditors regarding audits of internal control over financial reporting for smaller public companies, then the extensions are in the best interests of investors as they will facilitate the ultimate implementation of Section 404 by the affected companies.

***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. If the phased implementation approach is adopted, we firmly believe that management's report should include an explicit statement that the auditor has not audited internal control over financial reporting. Some audit firms (including Ernst & Young) are already making similar statements in reports issued for the financial statements of non-accelerated filers not yet subject to the requirements of Section 404. We also believe it is important that the Commission require similar language in auditor's reports on the financial statements of all non-accelerated filers prior to the date that the internal control reporting requirements become effective (i.e., before the auditor performs the first integrated audit of the financial statements and internal control over financial reporting).

***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 state above, we are concerned that implementing sequentially management's assessment and the auditor's attestation on internal control over financial reporting may have some unintended consequences for management and investors that are best dealt with up front by the SEC and PCAOB staffs. For example, we have a concern that implementing sequentially management's assessment and the auditor's attestation on internal control over financial reporting may lead to confusion on the part of the investors as to the level of assurance they are receiving on the effectiveness of internal control over financial reporting in the year where only management's assessment of internal control will be required. Our concerns would equally apply to foreign private issuers that follow a phased implementation approach to internal control reporting.

***Do the timing requirements for initial compliance with the internal control reporting requirements make it overly burdensome or costly to undertake an initial public offering or public listing in the U.S.? Do they otherwise discourage companies from undertaking initial public offerings or seeking public listings in the U.S.? Is the proposed relief appropriate and in the interest of investors? Is some other type of relief appropriate?***

As stated in our general comments, we believe effective internal control coupled with management assessment and auditor attestation benefits the investing public. However, we believe there are several practical difficulties for newly public companies in immediately complying with the internal control reporting requirements.

The potential requirement to perform an assessment in a shortened time period after going public can be an added burden on management. Further, requiring a newly public company to comply with the requirements of Section 404 with the filing of its initial annual report would potentially require management and auditors to evaluate certain processes and controls as they are being designed, implemented, and executed for the first time. While the proposed relief would mean that investors would not benefit from management's assessment and the auditor attestation in the first year of becoming a public company, management is still subject to and the investing public benefits from the Section 302 and 906 requirements.

While some would suggest that U.S. regulatory compliance costs are compelling more companies to pursue capital outside of the U.S., evidence indicates that recent listings on some of the other markets (e.g., AIM in London) are for companies with a smaller median market cap and revenues than what is considered attractive to the U.S. market. Many of the largest initial public offerings in the last few years result from the privatization of former state-owned enterprises that often are encouraged or directed to list on local or regional exchanges. Additionally, the uniqueness, uncertainty, and risk exposure associated with the U.S. litigation environment is often cited as a factor affecting a company's decision of where and how to raise capital.

***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?***

As described above in our general comments, we believe the additional time proposed to be given to newly public companies is not inconsistent with overall interests of investors and the capital markets.

We do not believe a transition period available only for companies that become public later in their fiscal year is a workable solution. Such a rule may compel management to make decisions

regarding the timing of an initial public offering in order to avail themselves of the Section 404 deferral that are not in the best interests of the investing public.

***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 a phased implementation approach may be necessary to provide time for the SEC and PCAOB to complete and issue forthcoming implementation guidance for management and auditors, we do not believe a phased implementation approach would be necessary or beneficial to investors after issuance of the guidance and the implementation period has ended.

***Would the proposed transition period allow newly public companies to complete their internal control reporting processes more efficiently and effectively? Would it improve the quality of internal control reporting by newly public companies?***

We do believe that efficiencies could be achieved if management would have time to deal with its assessment of internal control over financial reporting after it becomes subject to the requirements, rather than before going public when there are numerous competing demands on management's time and company resources. We do not believe the transition period would improve the quality of internal control over financial reporting of newly public companies.

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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*