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September 14, 2006

Via Email

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

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Dear Ms Morris:

We are submitting this letter in response to a request for comments by the Securities and Exchange Commission (the "**Commission**") in Release No. 33-8731; 34-54295, Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies (the "**Release**"), which proposes to further extend (the "**Extension**") the compliance dates for companies that are non-accelerated filers with respect to the internal control requirements mandated by Section 404 of the Sarbanes-Oxley Act ("**SOX 404**") and proposes a transition period for newly public companies before they become subject to compliance with the SOX 404 requirements. We have included below comments on both the proposed transition period for newly public companies and the proposed extension for non-accelerated filers.

We fully support the motivation behind the Commission's proposal and believe the proposal is well-founded but have provided the following comments to further refine the proposal and advance its aims.

Proposed Transition Period for Newly Public Companies

In the Release, the Commission proposes a transition period for newly public issuers pursuant to which an issuer would not become subject to the SOX 404 requirements until it previously has been required to file one annual report with the Commission (the "**Transition Period**"). According to the Release, this Transition Period would "benefit investors" by making implementation of the

SOX 404 requirements “more effective and efficient and reducing some of the costs that these companies face in their first year as a public company” and “remove a possibility” that the SEC rules may “unnecessarily interfere with companies’ business decisions regarding the timing and use of resources” relating to their listing in the United States.

We fully support a transition period for newly public issuers and the Commission’s underlying rationale. We are concerned, however, that the Transition Period as proposed may not provide companies that go public in the first few months of their fiscal year and file an annual report shortly thereafter in order to meet the requirements of Rule 13a-1 of the Securities Exchange Act of 1934 (the “**Exchange Act**”) the benefit of an extended compliance period as seems to be intended by the Commission. For example, if a calendar year-end company completes an IPO in February 2007 based on a registration statement that includes financial statements from its 2005 and 2004 fiscal years and the nine months ended September 30, 2006, it will be required to file an 2006 annual report on Form 10-K shortly after going public. Under the Transition Period as proposed, the 2006 annual report, covering a period before the company goes public, would count as the newly public company’s first annual report for purposes of the Transition Period. Therefore, this newly public company would be required to comply with SOX 404 in its 2007 annual report and devote significant resources to its SOX 404 compliance in its first year as a public company including the period before it goes public in early 2007. This will serve as a disincentive for companies when deciding whether to access the US public markets.

If the Commission’s intent is to provide newly public companies relief from having to comply with SOX 404 requirements in their first year as a public company, we suggest that the Transition Period be modified so that issuers need only comply with the covered SOX 404 requirements after they have filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act other than an annual report relating to a fiscal year ending prior to the date on which the company first became subject to the requirements of Section 13(a) or 15(d) of the Exchange Act.

Extension of SOX 404 Reports for Non-Accelerated Filers

We fully support the Commission’s efforts to extend the SOX 404 compliance date for non-accelerated filers and appreciate the opportunity to comment. We present below two suggestions regarding the Extension which are intended to assist the Commission in meeting the stated objectives of the Extension.

Extend Both the Management and Auditor Attestation Reports to 2008

In order to allow non-accelerated filers and their auditors to take full advantage of the anticipated guidance from the Public Company Accounting Oversight Board (“**PCAOB**”) and the Commission and prevent the unnecessary complications that may arise as result of splitting the two reports, we suggest that the Commission extend the SOX 404 compliance date for non-accelerated filers with respect to *both* the management report and the auditor attestation report until the first fiscal year ending on or after December 15, 2008.

The Commission notes in the Release that Extension with respect to the management report is intended to provide non-accelerated filers “with the benefit of the management guidance that the Commission plans to issue and the recently issued COSO guidance on understanding and applying the COSO framework, before planning and conducting their internal control assessments.” The Commission also explains that the Extension further defers the auditor attestation report requirement until the second year of compliance in order to allow non-accelerated filers and their auditors the opportunity to take advantage of anticipated PCAOB guidance and changes to Auditing Standard No. 2 (“**AS2**”), to enable non-accelerated filers to more gradually prepare for full SOX 404 compliance and to defer some of the “cost spike” associated with SOX 404 compliance. While we agree with the Commission’s stated objectives, we believe that in order to achieve these objectives, the Commission should extend both the management report and the auditor attestation report to the first fiscal year ending on or after December 15, 2008 rather than splitting the compliance dates for the two reports. The Commission notes in the Release that it is “concerned that a company that files only a management report during its first year of compliance with the Section 404 requirements may become subject to more second-guessing as a result of the proposed separation of the reports” and we agree.¹ In addition, in order to effectively prepare the management report, we believe that non-accelerated filers that are complying with SOX 404 for the first time will need to have a “frequent and frank dialogue” with their auditors regarding their internal controls as encouraged by the Commission in the Release and therefore the separation of the two reports may not result in significant cost savings. The separation of the two reports may even result in increased overall compliance costs, particularly in the event that the auditors disagree with management’s approach.

¹ We acknowledge that the Commission proposes that the management report be furnished rather than filed in the first year in order to address these concerns but believe that while this alleviates concerns regarding an issuer’s liability for the management report under Section 18 of the Exchange Act, it does not completely resolve this issue as an issuer will continue to be subject to liability under Rule 10b-5 of the Exchange Act.

Clarify When to Test Non-Accelerated Filer Status for Purposes of the Extension

We also request that the Release clarify when “accelerated filer” status should be tested for purposes of both parts of the Extension (*i.e.*, as it relates to the new compliance dates for both the management report and the auditor attestation report requirement). Under Rule 12b-2 of the Exchange Act, accelerated and large accelerated filer status is determined at the end of an issuer’s fiscal year based, in part, on whether the aggregate market value of the issuer’s voting and non-voting common equity held by non-affiliates as of the last business day of the issuer’s most recently completed second fiscal quarter is at least \$75 million. The Extension does not address, however, whether a company is entitled to rely on the Extension as it relates to both the management report and the auditor attestation report based on its status as a non-accelerated filer at the end of its first fiscal year ending on or after December 15, 2006 or whether it is required to re-test its status as a non-accelerated filer at the end of its first fiscal year ended on or after December 15, 2007 to further defer its compliance with respect to the auditor attestation report requirement.²

In order to eliminate this uncertainty, we respectfully request that the Commission clarify that for purposes of determining whether a company is entitled to rely on the Extension as it relates to both the management report and the auditor attestation report, an issuer should determine whether it is a non-accelerated filer based on its status at the end of its first fiscal year ending on or after December 15, 2006. This approach will allow an issuer to know at the start of its first fiscal year ending on or after December 15, 2007, whether it can rely on the Extension as a whole, which will enable the issuer to develop a comprehensive plan for compliance. In the alternative, if an issuer is required to re-test its non-accelerated filer status at the end of its first fiscal year ending on or after December 15, 2007, the issuer will not know for certain until the end of the second quarter of that year whether it will continue to qualify as a non-accelerated filer since its status as a non-accelerated filer will depend on its market capitalization as of the end of the second quarter of its first fiscal year ending on or after December 15, 2007. An issuer would therefore either need to incur unnecessary costs in the first two quarters of its first fiscal year ending on or after December 15, 2007 in case it loses its non-accelerated filer status and is required to comply with the auditor attestation requirement by the end of the year or defer compliance with respect to that requirement based on the assumption that it will continue to be a non-accelerated filer and risk having only two quarters to prepare

² This assumes that the Extension as adopted allows an issuer to extend compliance with all or part of the SOX 404 requirements until its first fiscal year ending on or after December 15, 2008 as is contemplated by the Extension as proposed.

for compliance if its market capitalization exceeds the threshold at the end of its second quarter.

We appreciate the opportunity to comment on these matters. We would be pleased to discuss any questions that the Commission or its staff may have about our comment letter. Please contact Richard Sandler at 212.450.4224, Richard D. Truesdell, Jr. at 212.450.4674 or Michael P. Kaplan at 212.450.4111.