CANADIAN BANKERS ASSOCIATION

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Sent via e-mail to rule-comments@sec.gov

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

Dear Ms. Morris:

Re: Subject File 4-511 - Section 404 of the Sarbanes-Oxley Act

The Canadian Bankers Association ("CBA") welcomes the opportunity to comment on our experience with the reporting and auditing requirements of Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404").

The CBA is a professional industry association that provides information, advocacy education and operational support services to its members, the 54 chartered banks of Canada, which include domestic banks, foreign banks and branches of foreign banks. The CBA's mission is to be a leading contributor in the development of public policy on issues that affect the financial services sector. A number of CBA members are foreign private issuers and are subject to the requirements of SOX 404, as well as equivalent draft requirements of the Canadian Securities Administrators ("CSA"). One of Canada's largest domestic banks has successfully completed SOX certification, and others expect to do so this year.

Our members view last year's roundtable as a positive step in establishing a more open dialogue with the regulator and external auditors and an effective opportunity to solicit further guidance and clarification on the implementation of SOX 404. The CBA is pleased to provide our input and recommendations for further enhancement of the certification process.

CBA members are generally supportive of the principles embodied in SOX 404 and recognize the value of the initiative. The Canadian banking industry is highly regulated. As a result, the principles of governance and strong control environments are not new to CBA members. SOX 404 has, however, further elevated organizational awareness of risk and the importance of enterprise-wide controls and their documentation.

Our submission is focused on identifying opportunities to further clarify the legislation and corresponding PCAOB auditing standards and to ensure that there are synergies with existing Canadian regulations. CBA members ask that the SEC seriously consider the recommendations set forth in this letter.

Our key recommendations are broadly:

1. Revisit the requirement for an annual attestation by the external auditors and explore other alternatives that can achieve the same results, as evidenced by recent developments in proposed Canadian regulatory rules.

2. Provide specific guidance as to the benchmark for assessing management's evaluation that will allow a top-down risk-based approach that is consistent with the approach advocated by the SEC.

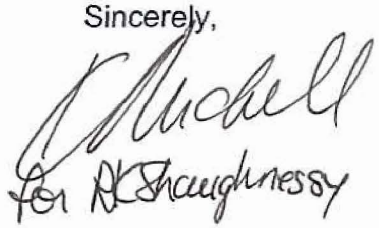
3. Promote a pragmatic risk-based evaluation method that recognizes the continuous nature of controls and allows for the effective allocation of testing resources to areas of greatest risk.

We elaborate on our key recommendations in Appendix 1. We discuss the areas of benefit and the challenges experienced by our members in complying with SOX 404 in Appendix 2.

There has been considerable attention paid in the media to the costs of SOX 404 compliance. SEC statements about the benefits achieved, together with further guidance and refinements as suggested in our submission, would help reassure the markets of the value created by SOX. We encourage the SEC to issue a report on the key accomplishments and benefits of SOX 404 compliance.

Please do not hesitate to contact me if you have any questions or comments regarding this matter.

Sincerely,



Attachments (2)

Appendix 1 - CBA Comments to SEC re Reporting and Auditing Requirements of SOX 404

KEY AREAS FOR ENHANCEMENT

We recommend that the following points be addressed by the Securities and Exchange Commission ("SEC") in order to ensure that the original objectives of SOX 404 and the principles that were embodied in that section and subsequently articulated in the May 16, 2005 PCAOB guidance are appropriately applied and, more importantly, sustained.

Auditor Attestation

The Canadian Securities Administrators (CSA) is in the process of introducing new internal control requirements equivalent to those of the Sarbanes-Oxley Act. In a recent announcement (Multilateral Instrument 52-313, accessible at www.osc.gov.on), the CSA proposed to eliminate the requirement for auditor attestation with respect to management's assessment process and internal controls over financial reporting. While the CSA's requirement for management assessment of internal controls over financial reporting remains unchanged and is consistent with the objectives of SOX 404, significant cost savings would be achieved by eliminating the auditor attestation process.

The CSA has elected to monitor management's compliance with the process and to consider audit requirements in the future based on the findings of their monitoring process. The CSA has also confirmed that this does not preclude boards of directors or audit committees from engaging the auditors to perform specified work.

Our members request that the SEC and PCAOB assess the feasibility of eliminating the auditor attestation requirement. Alternatively, we suggest the introduction of a rotational cycle for attestation, perhaps every 3 years or the creation of a limited risk-based attestation that is not all-encompassing.

Guidance on Management Evaluation

Despite other guidance available, the PCAOB standard for auditors has become the standard against which management's evaluation is assessed. The PCAOB standard is the benchmark being applied by the auditors when assessing management's process. Experience has shown that management's planned application of a risk-based approach can be deemed deficient by the auditors when measured against the standard. There should be greater clarity as to the SEC's expectations of management's evaluation process. This specific guidance should represent the benchmark against which management's evaluation will be measured and should reflect the application of the top-down risk-based approach from management's perspective. This is in line with the approach being adopted by the CSA in the absence of an auditor attestation. If auditor attestation of management's evaluation is required, specific guidance should be provided that would support the application of professional judgment in the evaluation of management's risk-based approach.

Pragmatic Risk-Based Evaluation Approach

Internal control testing is a major cost factor of SOX 404 compliance. The evaluation approach should make allowances for the continuous nature of controls as internal controls are generally intended to operate effectively on a regular or continuous basis. We believe that some testing relief should be provided by giving consideration to rotational testing in lower and moderate risk areas, as determined through risk assessment. Rotational testing has proven historically to be an effective method of assessing the operation of internal controls and is used extensively by highly functioning internal audit groups. In particular, routine transactions of low value but high volume could be

assessed periodically through rotational testing. Application of rotational testing should also reduce the need for extensive roll-forward procedures to the “as at” reporting date. This approach would result in substantial reduction in both management and external auditor’s certification efforts.

Appendix 2 - CBA Comments to SEC re Reporting and Auditing Requirements of SOX 404

BENEFITS AND CHALLENGES

The areas of benefit and the challenges experienced by our members are discussed below. We provide specific background and examples of the issues that have contributed to the recommendations we make for enhancement to the regulations and guidance.

Consolidation and Enhancement of Existing Processes

The evaluation process has encouraged greater rigour and formality in the documentation of key processes and controls related to financial reporting. This consolidation of process documentation has become a useful reference tool for many business units. Further, the execution of SOX 404 requirements has allowed CBA members to supplement other control self-assessment processes in place and allowed prioritization of remediation efforts for deficiencies.

Risk Based Approach

A risk-based approach to assess internal controls over financial reporting should allow the achievement of the objectives of SOX 404 in a more efficient and effective manner. However, in the first year of compliance, auditors of foreign private issuers in Canada have shown reluctance in accepting the risk-based approach. External auditors continue to expect both detailed testing of transaction/application controls as well as entity-level controls. Many CBA members experienced hesitation on the part of external auditors to accept reduced management testing in areas deemed by management to be lower risk. In these cases, external auditors' expectations for more testing "coverage" contradict the notion of risk assessment. Despite the post-May 2005 guidance, external auditors appear to remain constrained by their own internal risk management requirements, the litigious environment, as well as the possibility of PCAOB inspections, which provide limited latitude for the use of judgment. This is especially relevant in the banking industry where the magnitude of the ending balances in financial statements immediately overshadow the application of risk as external auditors are reluctant to accept that the underlying processes may be of lower risk.

Entity Level Controls

Insufficient guidance is currently available on the subject of reliance upon entity-level controls. Our experience has been that this has resulted in unwillingness by the external auditors to leverage reliance upon entity-level controls without a clear and direct link between these and the underlying detailed processes. Entity-level controls can provide the highest value in terms of assessment. However, due to unclear linkage between entity-level controls and transaction processes, it has resulted in extensive evaluation of processes despite strong entity-level controls. Further clarification of the linkage between entity-level controls and processes and potential leverage of entity-level controls to assess individual processes and to perform an effective top-down evaluation is necessary.

Baselining

CBA members have experienced challenges in assessing operating effectiveness of IT Application controls, consistent with other accelerated filers. An informal practice of "baselining" once every three years has emerged which is being driven by some external auditors. This practice, however, has not been formalized and publicly endorsed by the SEC.

The notion of “baselining” of application controls is inconsistent with the concept of top-down evaluation, specifically in the context of strong IT general controls. Should “baselining” remain a permanent requirement of internal control evaluation, a “baselining” timeline beyond three years should be considered.

Cost/Benefit

Costs incurred by CBA members to comply with SOX 404 have been substantial despite attempts to maximize the use of internal resources. Other organizational projects were given lower priority as internal resources were channelled to this initiative. Many members have questioned the cost/benefit trade-off of some aspects of SOX 404 compliance. For instance, detailed documentation and evaluation of routine transactions has not produced benefits that outweigh costs. Further, additional costs have been incurred to develop concepts, approaches and practices as insufficient guidance was available. Beyond internal costs, CBA members have experienced increases in external auditor costs which have not only been a function of additional attestation activities but also as a result of a dramatic learning curve on the part of auditors. We do anticipate some cost reduction on a go-forward basis as a result of non-recurrence of initial start-up costs, process improvements and fewer resource requirements for documentation activities.

Sustainability Challenges

CBA members have identified numerous challenges in sustaining the compliance efforts, but none more serious than recruitment and retention of qualified resources. Registrants, auditors and consultants are all drawing from a limited pool of resources resulting in fierce competition and higher costs of obtaining relevant skill sets.

Other Governance Frameworks

The past two years have not been without other challenges. Operating in the heavily regulated financial services sector, many CBA members experienced implementing SOX 404 in addition to other requirements, such as Basel II and Legislative Compliance Management. The underlying foundation of these governance frameworks is often similar, and all initiatives require extensive executive commitment and resources to ensure successful implementation. Some members intend to integrate the SOX 404 framework with other governance frameworks to promote the achievement and assessment of multiple internal control objectives (operational, compliance, financial reporting) using a consistent approach. We believe that there should be more opportunity to streamline SOX 404 requirements with these additional regulatory requirements.