**From:** Peter A. Basilevsky [PBasilevsky@ssbb.com]
**Sent:** Wednesday, March 08, 2006 1:20 PM
**To:** Comments
**Cc:** awalker@wsgr.com
**Subject:** Internal Control Roundtable

Dear Ladies and Gentlemen:

I am writing you with regard to your ongoing evaluation of the internal controls over financial reporting mandated by Sec. 404 of the Sarbanes-Oxley Act of 2002 ("SOX") and embodied in Item 308 of Regulation S-K ("Reg. S-K") as promulgated by the Securities and Exchange Commission ("SEC").

While I certainly applaud the goals sought to be achieved by the enactment of SOX Sec. 404 and its implementing rules, I fear that once again the law of unintended consequences has reared its head. Apart from the debate that is occurring regarding the best way internal controls over financial accounting should be applied to small public companies you should be aware that the issue is fast becoming much broader and is extending into the private company realm where, I believe neither Congress nor the SEC ever intended the rules to be applicable. This unfortunate result is directly attributable to the increasing practice of many public companies to require their vendors to certify as part of the Request For Proposal ("RFP") process that they are SOX 404 compliant or that if they are not that they are willing to become so compliant. Presumably this extension of the 404 process is the result of the public company's desire to meet its 404 compliance requirements and to receive a clean bill of health from its attesting auditors. Obviously, the investor protection goals of SOX 404 and the SEC implementation rules are recognized not to be applicable in the first instance to private companies. However, it appears that indirectly this is increasingly becoming the case. Among the questions that must be asked is that if I am correct and this practice is becoming wide spread, whether the statistical data that has been published regarding the cost of compliance (which seems to mount daily) is woefully understated and, if so understated, at what point does the burden imposed exceed the benefit that can reasonably be expected to be achieved.

I realize that both the PCAOB and the SEC have sought to curb the enthusiasm with which outside auditors engage in their attestation audits by focusing on "top down" materiality analyses, etc. However, in these litigious times it is understandable that outside auditors will seek to limit their exposure by engaging in audit procedures intended to leave no stone unturned. Likewise, with the certification requirements of Excghange Act Rule 13a-14 (a)/15d-14(a) and SOX Sec. 906, Management has an equally valid reason to seek to limit their exposure to potential liability. Unfortunately, like many things in life a balance should be struck between the implementation of laudable goals and the possibly detrimental costs that such implementation engenders. Accordingly, it is incumbent on you and the SEC as the primary rule makers and regulators to set some limitations. Whether there should be some bright-line rules which clarify how far a company must drill-down in its testing process and the outside auditors in their attestation process or whether this is an instance where a principles based approach rather than a rules based approach is better I leave to persons much better qualified than I to determine. However, I can attest from my personal experience advising small public and private companies that the edifice created by SOX 404 and its implementing rules has grown (and continues to grow) like topsy to the point that it is seriously hurting many companies who can ill afford the costs and burdens being imposed on them (for uncertain benefits) and this by extension endangers the U.S. economy as a whole.

Regards,

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