



WithumSmith+Brown Global Assurance  
A Limited Liability Company

February 27, 2007

**Via Electronic Mail**

The Honorable Christopher Cox, Chairman  
U.S. Securities and Exchange Commission  
Attn: Nancy M. Morris Secretary  
100 F Street, NE  
Washington, DC 20549

**Re: SEC File Number S-7-24-06; Management's Report on Internal Control Over Financial**

Dear Chairman Cox and Secretary Morris:

WithumSmith+Brown Global Assurance, LLC ("WS+B GA") is pleased to submit our comments to the SEC with respect to its proposed interpretive guidance, *Management's Report on Internal Control Over Financial Reporting*. The comments of WS+B GA are based on our experience as advisors to public and private companies in assisting them with achieving compliance with Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX"). WS+B GA is a division of WithumSmith+Brown, P.C. ("WS+B"), which is a registered public accounting firm serving middle market issuers, and our comments include those of WS+B in its role of performing integrated audits.

Overall, WithumSmith+Brown Global Assurance, LLC supports the SEC's efforts to align the expectations of the marketplace for an effective and cost efficient audit process with the fundamental need to have all companies, large and small, operate under a sound system of internal control over financial reporting. We believe that any action to move small public companies toward compliance with Section 404 of SOX is a move in the right direction. We have long been critical of the constant delays with compliance that continue under the unproven guise of excessive costs, which has been measured based solely on the experience of accelerated filers attempting to comply with a new standard. We applaud the SEC and the PCAOB in their stand to apply a single set of rules to all public issuers as anything less would cause confusion and misinterpretation of the results by the investing public.

In addressing the guidance provided by the SEC, we would like to focus on the continued concerns of the small business community to "fix" the problems of scalability and high costs of internal control reporting for small public companies. In doing so, we acknowledge that the proposed interpretive guidance is not perfect and we have responded to the PCAOB with some suggestions for improvement. We further understand that the costs of compliance have been way beyond the amount anticipated and that some actions are needed to curb the cost of compliance with Section 404.

**Concerns of Small Entities**

In general, the major concern of small public entities has been driven by the cost of compliance. However, none of the small public entities have formally gone through the process of compliance with Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX"). Therefore, any estimation of the true cost of compliance has been based on extrapolation of the cost of the accelerated filers.



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We believe that high costs in the initial year for accelerated filers were due to four critical factors that we think will be resolved:

1. The learning curve associated with the implementation of a new standard such as SOX always takes longer the first time around. The increased experience by the SOX consulting firms coupled with improved software to manage the SOX project will reduce costs.
2. Companies neglected their internal control documentation during the 1990's and beyond due to the advent of risk-based auditing. Firms once again will be keeping the documentation up-to-date after the painful process to get the documentation current.
3. Companies waited until the last minute to start their SOX compliance process causing an increased demand for qualified SOX consulting firms that could not be met in time for many of the companies to complete their documentation and testing requirements. There are more firms today that are qualified to do SOX compliance consulting work and the non-accelerated filers have been granted extensions through December 31, 2008 to comply. If the non-accelerated filers act soon, the deadline will not impact them and their costs will be reduced.
4. The revisions proposed by the PCAOB to AS 2 clearly provide for auditor reliance on the work of independent and competent internal auditors and SOX consulting firms. However, many of the independent auditors failed to utilize this provision and chose to retest all of the accounts. It is anticipated that less retesting will occur.

### **Further Exemptions and Delays**

There continues to be an outcry among small public companies and now politicians to further delay compliance with Section 404 of SOX, now due to the timing of the SEC and PCAOB releases. The demand for further clarification came from the small business community in the first place. Now they are demanding more time to digest the new process. My question is, *what have the small public companies been doing over the last 5 years regarding developing an effective system of internal control over financial reporting?* Despite the fact that the CEO's and CFO's of non accelerated filers have been required to certify in their annual and quarterly reports (per Sections 302 and 906) during the 4 previous delay periods that they have an effective system of internal control in place, if you believe small business advocacy groups, none of the non-accelerated filers have begun the process of hiring an external consultant to assist them in implementing compliance with Section 404. If that is the case, what is the basis for the CEO and CFO sign-off of Sections 302 and 906? Further, if they have not reacted yet, why should they continue to get a free pass?

I think the time has come to hold small public companies accountable. Since the delays started in 2005, small public companies have been warned not to use the time extensions to delay implementation, but to use it to improve the quality of their documentation. This group has not heeded the advice. Participants at small business roundtable have expressed concern that it will take longer for small public companies to create and implement an internal control reporting process. We agree, but they have had over 4 years to start the process and still they have not complied .



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It is obvious that the small public companies will only be satisfied with total exemption and will continue to find excuses not to begin the process. We commend the SEC and PCAOB on its strong statement that all public companies must comply and we hope that this latest ruse to further delay implementation on the part of the small business advocacy groups will go unheeded.

We also must consider two other factors:

- 1) The guidance proposed by the SEC and PCAOB is largely directed at the auditors and not at the companies. Therefore, there is no reason for the companies to look for delay.
- 2) The new rules regarding disclosure of compensation are scheduled to be implemented and a delay with Section 404 will provide an additional burden on the companies to comply with both rules at the same time.

### **Requests for Further Clarification of Guidance**

At the outset of our comments, we stated that nothing is perfect. All rules and processes are evolving. Although the interpretive guidance is not perfect, we should push forward, test its applicability over time and tweak the implementation as necessary. We will never get perfect agreement or a process that satisfies all issuers. The interpretive guidance is a step in the right direction and addresses many of the small business issuers' concerns. We need to move forward!

There is also some expressed concern that the guidance will not "fix" the problem. It may not initially but with some work it can be designed to meet reasonable goals of efficiency and cost effectiveness.

### **Costs Will Still Be Disproportionately High For Small Public Companies**

Small companies simply face a dilemma that certain imbedded costs are needed to run a company. Advocates of small business are still arguing that they were told Section 404 compliance would cost \$91,000. We have no idea where that number came from or how it was developed. It is time to face reality. We are sure when the compensation disclosures are made, we will find that small business CEO's are being paid at a **disproportionately higher level** in comparison to their larger counterparts.

### **Conclusion**

It is time to act and time to comply with the rules. The latest delays for non-accelerated filers to comply with SOX for years ended on or after December 15, 2007 for management assessment and December 15, 2008 for independent auditor assessment have just been approved. There would be a significant loss of credibility if these dates are delayed again. This will empower the small business lobby further and make the decision more political. The investing public has greatly benefited from SOX and the U.S. has maintained its leadership in the capital markets with a record setting 2006 capital fund raising year. We strongly urge the SEC to ward off the outside pressures to further delay implementation and to continue to have the courage to require transparency and compliance for all public companies.



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We appreciate the opportunity to comment on the SEC's proposed interpretive guidance and would be pleased to discuss any of our points in more detail. If the staff has any questions regarding our comments, please contact **Tom Basilo, Chairman and CEO** at 609-734-9090 x 211 or via email at [tbasilo@withum.com](mailto:tbasilo@withum.com).

Very truly yours,

A handwritten signature in black ink that reads "Withum Smith + Brown Global Assurance, LLC". The signature is written in a cursive, flowing style.

WithumSmith+Brown Global Assurance, LLC