



September 14, 2006

VIA Email

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
rule-comments@sec.gov

Re: Release Nos. 33-8731; 34-54295; File No. S7-06-03, Internal Controls Reporting in Exchange Act Periodic Reports of Non-accelerated Filers and Newly Public Companies.

The National Venture Capital Association (NVCA)¹ is pleased to support the proposed amendments to rules on reporting obligations under Section 404 of the Sarbanes-Oxley Act (“SOX”). NVCA particularly appreciates the proposal to defer newly public companies’ Section 404 reporting requirements until these companies file their second annual reports with the Commission.

We also appreciate the Commission’s continued efforts to address the skewed cost-benefit ratio from implementation of SOX Section 404 that is impacting smaller public companies. As we have stated many times in prior comment letters on the subject of Section 404

¹ The National Venture Capital Association (NVCA) represents approximately 450 venture capital and private equity firms. NVCA’s mission is to foster greater understanding of the importance of venture capital to the U.S. economy, and support entrepreneurial activity and innovation. The NVCA represents the public policy interests of the venture capital community, strives to maintain high professional standards, provide reliable industry data, sponsor professional development, and facilitate interaction among its members. For more information about the NVCA, please visit www.nvca.org. Venture capital funding is a major factor promoting innovation and entrepreneurial businesses. In 2005, venture capital (VC) funds invested \$22 billion in more than 2500 companies. At the end of 2005, VC firms had an estimated \$260 billion under management, up from \$32 billion in 1990. 2006 NATIONAL VENTURE CAPITAL ASSOCIATION YEARBOOK, Thomson Venture Economics (2006).

rules and proposals,² we believe regulators should apply scaled regulation to account for the significant differences between large public companies and the thousands of smaller companies that make up the bulk of the public company universe. Therefore, we support the proposed delay in the implementation dates for non-accelerated filers. As in our prior comment letters, we strongly encourage the Commission to continue to delay implementation of Section 404 for these issuers until the imbalance between costs and benefits associated with Section 404 implementation has been fully addressed.³

NVCA is, of course, particularly interested in the impact of the proposed amendments on domestic companies that become public companies through initial public offerings (“IPOs”). We believe the proposed deferral of 404 reporting requirements until the second annual SEC filing will alleviate one problem that Section 404 has created in the IPO process. As the Release notes, companies have delayed IPOs by a quarter or two to avoid the problems that come with the need to comply with the formal reporting requirements of Section 404 shortly after the intense effort around an IPO.

We appreciate the Commission’s effort to address this unnecessary delay in the going-public process. However, we must note that this delay in Section 404 reporting for newly public companies will not alleviate the excessive burden Section 404 places on venture-backed companies.

For most companies, Section 404 compliance requires more than one year of preparation. Our members would be very concerned about a company that planned to go public under an assumption that it could begin to address 404 compliance after it completed its IPO. Given the current demands of 404 compliance and the increase in compliance risks once a company is

² See NVCA Comment letter on the Concept Release Concerning Management’s Reports on Internal Controls over Financial Reporting, September 11, 2006, (File No. S7-11-06); NVCA Comment letter on the Draft Report of the Advisory Committee on Smaller Public Companies, April 3, 2006, (File No. 265-33).

³ *Supra*, note 2, See, *e.g.*, Letter dated April 3, 2006.

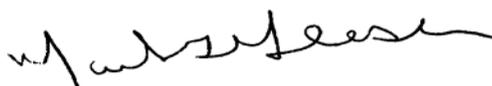
public, we anticipate that venture-backed IPO companies would still begin the process of obtaining a clean 404 opinion from their auditor long before they complete an IPO.

Furthermore, since the IPO market generally requires an audit by a large (i.e. “Big Four”) accounting firm, the cost of this pre-IPO 404 work is still significant. Therefore, while we appreciate and applaud this proposed change, we do not anticipate a major change in the Section 404-related cost and effort of an IPO to diminish until the overall 404 cost-benefit ratio is brought into balance. Our thoughts on addressing this imbalance are set out in the NVCA’s recently-filed comment letter on the Section 404 Concept Release.⁴

Conclusion

NVCA is pleased to support the proposed amendments. We will continue to monitor developments in the IPO market and the going-public process. We look forward to continuing to work with the Commission toward rebalancing the costs and benefits of SOX Section 404 and ensuring the fairness and enhancing the efficiency of the U.S. IPO market.

Sincerely yours,



Mark G. Heesen
President

⁴ *Supra*, note 2, Letter dated September 11, 2006.