



September 1, 2006

To: Securities and Exchange Commission
Regarding: S7-11-06; SOX 404 Guidance for smaller public companies

Dear Sir or Madam:

Thank you for the opportunity to address the Commission on this very important topic. There are few topics today that present the sort of financial implications and procedural uncertainty as the implementation of SOX 404 in a small public company. The former is well-known, quite correct, and has been discussed at length, while the latter has not received its due attention. Part of the reason that costs of implementation tend to be high is the lack of objective standards and safe harbor provisions, as auditing firms are properly concerned with expectations of performance established solely with hindsight.

Most of us in the financial community fully support the spirit and communicated intent of Sarbanes-Oxley. Despite putting our names on the dotted lines, we support the loss of the infamous "I didn't know" defense by those who profited handsomely while ultimately punishing investors and the entire financial community. We even invite additional scrutiny and review of our internal controls environment. We simply ask for two elements to make these principles more workable for entities with more limited resources:

- 1) Set procedural expectations, not overall goals, consistent with capabilities. A company such as McDonald's may have spent \$40 million on attaining SOX 404 compliance, for example, but that's 0.2% of its annual revenue. Many smaller companies are staring at spending between 1% and 5% of revenue to attain compliance, and far less able to bear that financial burden. If required procedures were reduced and auditors and companies allowed more flexibility in how they address the goals and standards of Sarbanes-Oxley provisions, the cost of compliance gap could be greatly reduced.
- 2) Create more objective standards. Accounting has many inherent subjective elements, but that doesn't eliminate the ability to instill objective standards into most of its aspects. Typically, a standard is created that allows a filing entity to manage to the standard in the absence of clear indication of wrongful action, intent, or other facts and circumstances. As long as the auditors are

forced to interpret what may or may not qualify as a significant deficiency or a material weakness, concerned about their own legal obligations and PCAOB review processes, they are incentivized to require greater substantive (costly) procedures than may be the intent of Sarbanes-Oxley. Objective standards at least allow companies and auditors a more fixed “target” to manage to, again, while maintaining the requirement for changes should individual circumstances warrant. This would not change the expectations or principles, but would greatly reduce implementation cost and uncertainty, and better match existing standards.

To be clear, smaller public companies should not be exempted from the expectations or principles of sound policy. They should maintain adequate internal controls. They should be accountable for their actions to the extent of other public entities. We simply ask for greater precision in the guidelines and recognition that smaller entities may be able to achieve compliance using methods inappropriate for larger entities, and vice versa. As we do with reporting requirements today, let us use some business judgment and present a reasonable demonstration of compliance to our external auditors who then, using the same professional skepticism they use in their audit process today, will be able to better rely on those guidelines and execute their responsibility in protecting the public interest.

Sincerely,

/s/ Frank Cesario
Frank Cesario
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