

Dear SEC

Thankyou for giving constituents the opportunity to provide comments on your concept release concerning management's reports on internal control over financial reporting.

Please note that our comments also considers the information in the August 9, 2006 press release "**SEC Offers Further Relief From Section 404 Compliance for Smaller Public Companies and Many Foreign Private Issuers**"

I am the Director of finance of XenoPort, a 130 employee, pre-commercialization biotech company. We have revenues from a commercial partnership that should total around \$10m for the year. We have a mkt cap of approximately \$450 based on approximately 25 million shares outstanding and we have an average daily trade volume of 150,000 shares . We went public in June 2005, filed our first 10K in March 2006 (we are a December 2005 year end) and we will become an accelerated filer on 12/31/2006.

I personally spent 13 years with PwC in the profession, leaving in January 2004, having spent 1 year readying to perform 404 attestations on the first year of 404 (as would have been) and left to become Director of finance at a, then-public, \$180m revenue medical device manufacturer. I successfully guided the company through the first year of it's 404 compliance in 2004 before the company's acquisition early 2005. My wife is still at PwC and I maintain active relations with the profession and am a keen observer of all things 404 related eg I watched the Spring roundtables in their totality.

We have debated 404 at length and would like to add the following comments in response to certain of the questions raised on pages 13-15 of the concept release:

1) Attestation. we support the concept of attestation, especially by management and believe that the various certifications have gone some way to improving investor confidence in our markets.

2) Management Guidance. Much has been written on this matter and we concur that guidance needs to be provided to management, preferably before any new companies are required to attest to 404. We agree with your assessment that in the absence of such guidance, management is forced to rely upon AS2 which clearly has the wrong perspective, and COSO, which though a valuable tool, is not an implementation tool but rather a framework, and is, as such, somewhat lacking in usefulness. We believe, that until such guidance is in place, it is inappropriate for any companies to have to make 404 attestations.

3) August 9 exemptions. We applaud the exemptions for small companies and thank the SEC for listening to its constituents. Additionally, we would like to ask the SEC to consider how it determines who should gain the various exemptions. At present, exemptions have been proposed (on August 9) for companies who are not accelerated filers. This is a sensible starting point but ignores many other smaller companies, such as my own where we have a small number of employees, no substantive revenues (2 invoices this year!) and low traded volumes. I believe that the SEC should consider exemptions based on size (eg companies under \$50 million in revenue or under 500 employees etc) to reflect operational realities.

4) Auditor regulation. We consider that the audit profession has lost a significant amount of its luster from its performance during the whole 404 process and that it has been somewhat exposed for its greed. Partnerships enjoyed record partner profit distributions in 2005 (some of my friends are partners) as a result of 404 and they are understandably very loathe to give this up. At every juncture, the 'profession' has been seen to oppose any cut-backs in the scope of 404 and this is blatantly for the purposes of their own pockets. At a recent Big-4 hosted 404 update seminar, the presenting partner, stated "we are the judge, the jury and the executioner and we even get paid

for it. You can't do anything about it so get used to it". Hardly the voice of an impartial profession. It is imperative that the SEC and the PCAOB recognize that the audit firms are not impartial paragons of virtue, but hard-nosed profiteers who are abusing their positions to make a fast buck. Whilst I understand the PCAOB is looking into this, and all of their current proposals re making more use of integrated audits, focus on risk areas etc, is excellent, I think it is important to recognize that the PCAOB also has very little to gain from asking audit firms to scale back their procedures.

5) Management certifications. We believe that audit committees have become much more robust in event years and that this, and not 404, is the real key to improving financial reporting. Gone are the days when meetings focused on their members golf handicaps and instead, they have been replaced with robust, in-depth discussions. The 10Q and 10K certifications prepared by CEOs and CFOs are real and in our experience have led to a change of behavior. This should be enough, when coupled with management 404 certifications to provide assurance to the investment community.

6) Negative impact. We have spent a considerable amount of time in 2006 preparing for 404. Most of this time has been spent documenting and testing controls and implementing controls to formalize procedures so that our auditors have something tangible to test. We have 'added' some 40+ controls this year and yet none of these controls has actually strengthened our control environment as each is merely the documentation of something that was previously occurring. The time spent on all this extra documentation, both for overall 404 documentation purposes and also for the added 'controls' where we are now documenting every slight task we perform has reduced the time that we can spend on true financial reporting. While we believe our financial reporting continues to be top class, it is necessarily impacted by having less hours to spend and by having a huge additional area of focus. It has also directed significant resources away from operational finance matters eg supporting the business, which will ultimately impact our competitiveness as a company and has made it harder for us to dedicate resource to critically analyzing areas that we can improve internal reporting. All of these are believe are unintended but unfortunate side-effects of 404.

Summary.

Considering all of the above points, we believe that it sensible for the following points to be adopted:

- No additional companies to be required to attest to 404 until management guidance is provided
- Once guidance is provided, 'small companies' to be required to perform management certifications only
- Big companies ie large accelerated filers should be required to perform 404 certifications but this area should be rethought to cut out the focus on low-level transactional matters when the real risk lies in the tone at the top and the ability of individuals to make top-sided entries.

Once again, thanks for the opportunity to provide comments. I hope you appreciate that this mail could have been 20 times this length and that 404, whilst well-meaning and important in some areas, needs to be very carefully realigned if it is to actually provide a positive benefit.

Yours faithfully,

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