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August 16, 2006, New York

Georges Ugeux  
Chairman & CEO

Ms. Nancy N. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington DC 20549-1090

Dear Ms. Morris:

**Release No. 34-54122; File NO. S7-11-06**

The above concept release is a welcome initiative of the Securities and Exchange Commission and will, undoubtedly, provide opportunities to reopen a debate on the issues related to internal control.

While the premises of the Commission are perfectly right, i.e. that *“it is impractical to prescribe a single methodology that meets the needs of every company”* the proposed remedy does not seem to be consistent with this statement: it is not *“additional guidance for management on its assessment of the effectiveness of internal control over financial reporting”* that is needed. If anything, as my professional experience has showed me both as an independent director of a medium-sized registered US company and in my interaction with non-US companies registered with the SEC, what companies need is not more guidance, but more flexibility.

The PCAOB AS No.2 has in a detailed manner imposed on the registered companies and their auditors a straight jacket in the form of a single model: this led auditors to adopt mechanical methods and wording of their opinion to protect their liability, leaving business judgement impossible. That led to what the Commission rightly describes as “*an overly conservative application of the Commission rules and AS No.2, and the requirements of AS No.2 itself, as well as questions regarding the appropriate role of the auditor*”.

The endorsement of the COSO methodology, even though it is not appropriate for non-US companies or small and medium companies is a perfect example of the attempt to adopt the “one shoe fits all” approach in contradiction with its own stated objective. The simple fact that “*any additional management guidance that we may issue is not intended to replace or modify the COSO framework*” is a perfect example of a double bind. The fact that COSO has not yet issued additional application guidance four years after the signature of the Sarbanes Oxley Act of 2002 does not encourage confidence. COSO should not have the quasi monopoly it enjoys today and other equivalent methodologies should be deemed acceptable.

There is no doubt that Section 404 of the Sarbanes Oxley Act of 2002 “*increased focus by management on internal control over financial reporting*”. The Commission would be well inspired to make sure that the competences available at the PCOAB are sufficiently diverse to enable it to fulfil a useful role. . It also should lead to opening the certification of internal controls to others than audit firms: their auditing responsibilities are sometimes putting them in conflict of interest that has not been considered when they were given the monopoly of such certifications.

It is for that reason that “*the ability of smaller companies to comply cost-effectively with the requirements of Section 404*” was put into question. It would be helpful to develop simplified rules for such companies as suggested by the Advisory Committee.

I would like also to comment on the issue related to **foreign private issuers**. The application of COSO is not the right guidance: markets around the world have developed other standards of internal controls that deserve some consideration. I would recommend that the Commission, in its restated policy to take into consideration the competitiveness of U.S. capital markets, instructs the PCAOB to establish broad principles of internal controls and to open a dialogue with the main foreign markets to understand to what extent their internal control systems aim at the same objectives and are assessed locally, in order to decide if such systems would be compatible with Section 404. The notion that this would be different for different classes of filers is not fundamentally different from the same question addressed above, for smaller companies. The same way the rules will differentiate according to the size of the registered domestic companies, they could also differentiate according to the domicile of the company.

I would also like to stress that the correlation between the Foreign Corrupt Practices Act of 1977 and Sarbanes Oxley Act of 2002 is unfortunate: the Act should not become an indirect way for the United States to apply the FCPA to foreign companies on the basis of their registration with the SEC. This risks to confirm, more than anything else, the widely spread opinion that the Act is in fact a way for the US authorities to expand their jurisdiction overseas, in violation of the principles of international private law.

## Conclusion

Based on the above considerations, I would respectfully recommend that the Commission follows the route of interpretative guidance rather than additional rules and limits its new guidance to broad principles. This would establish the leadership of the Commission while empowering managements and boards of directors in the establishment and monitoring of their internal controls. The obligation of the CEO and the CFO to validate the accounts is a sufficiently strong incentive for companies to adequately implement such controls. What is currently needed is a restatement of the objectives and principles of Section 404, leaving to the companies to adapt those principles to their specific situations

This however, will not be sufficient: the SEC has to redirect the efforts of the PCAOB towards the same philosophy and instruct them to amend AS No.2 in a way that provides guidance and principles rather than the meticulous set of detailed rules or, at the minimum, provides flexibility in the interpretation of AS No. 2.

I would strongly endorse the statement that *“management must bring reasoned judgement to the process (...and) use its cumulative knowledge and judgement (applying both qualitative and quantitative factors.”*

It is certainly not the case today and I commend the Commission for restating the responsibility of management and the Board of directors in these matters. A principle and interpretative approach will achieve these objectives, better than additional detailed rules.

