

February 26, 2007
Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File No. S7-24-06
Management's Report on Internal Control Over Financial Reporting

Dear Secretary,

I thank you for the opportunity to provide comments and input to the SEC's proposed interpretation and rule (SEC Guidance). It is good to see the SEC responding positively to its various constituents and adjusting its approach to achieve a better cost/benefit balance for the market. Below I note a number of issues that have come to my attention during my review of both the SEC Guidance and PCAOB Release No. 2006-007 (PCAOB AS-5), as well as based on input from foreign registrant clients in Japan.

Effective Date

Although the PCAOB specifically requests comments regarding the effective date for AS-5, ("How can the Board structure the effective date...", AS-5 p. 35, Question #34), there is no explicit mention of a timetable for implementing the SEC Guidance. It would be good if the SEC could clarify its expectations for setting the effective date. Since the intent of the SEC Guidance is to promote efficiency and effectiveness, it would be good for the SEC not to delay these benefits by explicitly permitting accelerated or early application of the guidance, including effectiveness of the 'Safe Harbor' provision.

Foreign Registrants

The SEC asks: "Are there any considerations unique to the evaluation of ICFR by a foreign private issuer that should be addressed in the guidance. If yes, what are they?" (SEC Guidance p. 77648). As recently reported in the Wall Street Journal, Treasury Secretary Henry Paulson is quoted as saying: "One of the biggest costs to business globally is duplicative regulation."¹ Along with the expansion of internal control mandates internationally, many foreign registrants now find themselves duplicating their efforts in the attempt to meet both local rules in addition to extra-territorial application of Sarbanes-Oxley rules.

For example, a Canadian financial institution with significant U.S. holdings may find itself trying to comply with three regulatory Internal Control regimes concurrently at its Japanese operations, in addition to the multiple layers of regulatory oversight under which the financial services industry is already encumbered.

It would be beneficial if the SEC would provide clear guidance on whether or the extent to which an evaluation made by foreign registrants that satisfies local rules or guidance, such as J-SOX in Japan or the Revised Turnbull Guidance and Combined Code in the UK, is also one way to satisfy the SEC rules.

¹ "G-7 Seeks to Shed Overlapping Regulations", by Deborah Solomon, Wall Street Journal, February 12, 2007; Page A2.

Embedding SAS 70

In the SEC Guidance the following example is provided, under the heading “5. Inability to Assess Certain Aspects of ICFR”, that highlights the use of Type 2 SAS 70 reports:

“... the service organization may be unwilling to provide either a Type 2 SAS 70 report or to provide management access to the controls in place at the service organization so that management could assess effectiveness.” (p. 77648)

In footnote #81 more detail is provided describing SAS 70 reports based on the AU Sec. 324 Interim Auditing Standard. Although provided as an example, the example suggests that there are only two alternatives that a service organization might provide to management: either a SAS 70 report or access to the controls. My concern is that this implicitly and unnecessarily limits the options available to both the service organization and management. In particular, for foreign registrants, there are other types of reports in local markets that may provide equal or more appropriate cover for management, such as reports based on the AAF 01/06 Technical Release in the UK, Section 5970 in Canada, etc. The limits to the applicability and suitability of SAS 70 reports are generally well known (especially in the area of IT services outsourcing), and as the market is currently working out its options and developing solutions, it would be better to make it clear that a SAS 70 report is just one means to achieving the objective of adequate control over service organizations.

This is particularly important because in AS-5 the PCAOB bases its discussion of “Use of Service Organizations” (Page A1-53) specifically in the context of AU Sec. 324. If the auditors require SAS 70s based on PCAOB AS-5, management will likely be compelled to fall in line. Here too, and consistent with the SEC’s intent to have management take responsibility for the methods it uses, management should be availed of every opportunity to choose the most appropriate tools to achieve effective control rather than depending exclusively on auditing standards. Not entrenching SAS 70 in the SEC Guidance and PCAOB accounting rules should have the salutary effect of encouraging the market to develop alternative and effective solutions.

Thank you for the opportunity to provide input into your review process, and I welcome any questions you may have regarding the above.

Sincerely,

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