

December 5, 2010

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549 - 1090

Re: Study to determine how the Commission could reduce the burden of complying with Section 404(b) of the Sarbanes-Oxley Act of 2002. (File Number S7-29-10)

Dear Ms. Murphy:

I want to thank the commission for providing this opportunity to comment upon how the Commission can reduce the burden of complying with Section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is between \$75 and \$250 million (accelerated filers) for the relevant reporting period, while maintaining investor protections for such companies. Moreover, how such methods of reducing the compliance burden will encourage companies to list on exchanges in the United States.

As I believe COSO and others have already stated, the methods generally used by companies to ensure compliance with Section 404(a), the requirement for the management of Commission registrants to assess and opine upon their internal control over financial reporting annually are generally redundant, inefficient and costly. Moreover, the methods generally used by independent audit firms to review these registrant's internal control over financial reporting under Section 404(b) the requirement for registrants to obtain an independent audit of their internal control over financial reporting are also generally too costly. However, this does not have to be the case. In order for companies to be able to produce reliable financial information more quickly, as needed by the financial markets, compliant companies need to develop better internal control over financial reporting. Faster filing of financial reports requires efficient and effective controls monitoring. Today, most companies have developed and rely upon their own methods of controls monitoring for assurance regarding their internal control over financial reporting. But, these monitoring processes are generally not relied upon for either Section 404(a) or 404(b) compliance. I believe this is the challenge that the Commission needs to address. The Commission needs to provide guidance and support that will enable Commission registrants of all sizes to develop reliable controls monitoring processes that will:

1. Provide ongoing assurance that management's control objectives are being achieved
2. Provide a framework that will enable better quality assurance and risk monitoring that can then be used to enable registrants to close their books faster and report sooner with greater assurance that the right things are getting done right

3. Embed responsibility for both the adequacy of control completion and providing timely assurance to management into the normal job responsibilities of the control activity owners and their management
4. Ensure control owners understand their key control activities, understand why they are important, understand how they need to be completed and what evidence needs to be developed and maintained in order to prove adequate quality of control was achieved
5. Provide a key controls monitoring infrastructure that can be used to provide ongoing quality assurance and risk monitoring over all of management's financial, operational and compliance control objectives that can be used to identify redundancies, streamline and monitor governance, risk and compliance, and any other business process key controls activities
6. Provide a key controls monitoring infrastructure that will eliminate almost all of the redundant, costly and inefficient attribute testing currently performed to ensure Section 404(a) and 404(b) compliance, while easily integrating into and greatly enhancing the registrant's exiting assurance framework
7. Become a world class model for ongoing risk monitoring and quality assurance over a company's key controls that companies around the world will want to adopt

As I am sure you know, key controls attribute testing is the methodology currently used by almost all companies and their auditors in order to determine Sarbanes-Oxley Section 404(a) and 404(b) compliance. Attribute testing generally requires, for each of the company's key controls that are required for and relied upon for Sarbanes-Oxley Section 404 compliance, the identification of appropriate attributes to be tested, the development of a test plan, the selection of an appropriate sample of transactions; and then, the review of each attribute for each transaction. The challenge with attribute testing is that only auditors generally understand the attribute testing approach. It is not uncommon for compliant companies to have to expend significant resources to acquire the audit skills required to perform attribute testing of the company's key control activities. Further, such attribute testing is generally performed in two segments each year. Interim testing is performed annually to ensure the key controls are operating effectively as designed earlier during the year; and then, roll-forward testing is performed later in the year in order to ensure that the high risk key control activities continued to operate effectively. However, this attribute testing is generally not relied upon by company management on an ongoing basis in order to know and ensure that the company's internal control over financial reporting is operating effectively. These companies need to have ongoing monitoring so that their management can obtain assurance that that their key control activities have operated effectively. And this assurance is required at a minimum quarterly before these companies file their reports with the Commission. Worse, the only assurance that roll-forward testing of the company's high risk key controls many times provides is that the company will be able to identify and report significant deficiencies and material weaknesses. This testing does not generally provide management with the control necessary to prevent such occurrences. Thus, company management must generally have their own ongoing monitoring processes upon

which they can actually rely. What I propose is the integration of management's ongoing monitoring process and the processes used for Sarbanes-Oxley Section 404(a) compliance. I also propose that the Commission enable the independent auditors issuing reports under Section 404(b) to be able to place more reliance upon these integrated processes. This integration should eliminate the costly attribute testing of each of the company's individual key controls, and should generally replace it with much more efficient attribute testing of the company's key controls monitoring process.

There are two major improvements, which the Commission should implement in order to greatly reduce the burden placed upon registrants of complying with both Sections 404(a) and 404(b). The first major improvement is to both enable and instruct compliant companies in how to perform and to place increased reliance upon "reliable" key control activity self-assessments. The second improvement would be to both enable and instruct the PCAOB to update its auditing standards to enable the independent audit firms under its control to be able to more easily and readily rely upon "reliable" key control self-assessment processes.

In the rest of this comment letter, I will describe how to develop and implement an ongoing key controls self-assessment process – and how to ensure it is "reliable". But first, let's discuss the major advantages of adopting such a process.

The first major advantage of an ongoing key controls self-assessment process is that it integrates, formalizes and creates an infrastructure for the company's SOX compliance process and management's key controls monitoring process, which can then be used to monitor key operational, compliance and financial controls - including disclosure controls and procedures, and internal control over financial reporting. For example, I have seen the same key controls self-assessment infrastructure used to monitor debt covenant compliance and business continuity control activities. The key controls self-assessment monitoring process can be used to monitor all of the company's key governance, risk and compliance control activities.

The second major advantage of an ongoing key controls self-assessment process is that the company will generally use the exact same key controls that were attribute tested in order to ensure Sarbanes-Oxley Section 404 (SOX) compliance. The only difference is that instead of an individual test case, transaction sample and attribute test per key control, the company will setup an ongoing key control self-assessment per SOX key control activity. Moreover, the self-assessment will be completed by the employee "control owner" or by the employee entrusted by management with the responsibility for owning, operating and completing the key control for the company. This embeds the responsibility for the effective operation of the company's key controls with the key control owners and their management. Moreover, it helps the control owners to understand their control responsibilities. Something that is generally lacking when someone else performs attribute testing for the control owners and their management.

The third major advantage of an ongoing key controls self-assessment process is that one can develop the process not only by using the company's current SOX key controls, but can easily develop manual self-assessments while continuing to rely upon the existing attribute testing approach. Then, once the self-assessments are fully developed and "reliable", the company can convert to the key control self-assessment process.

While the key control self-assessments can be developed and completed manually, there are great advantages to the development and usage of an automated monitoring application. The development of an automated key controls self-assessment application enables the company to obtain almost real-time updates on the completion of key controls. Of course there is lag time between when a key control activity is completed by the control owner and the key control's self-assessment report is completed in the automated monitoring application. However, the automated monitoring application provides management with the ability to monitor both the completion of their key controls and to quickly identify any failure to complete them adequately.

As we move forward and attempt to develop real-time financial reporting processes, I believe that the automated monitoring and reporting of key control self-assessment reports will become an essential component of the overall process. Management cannot feel comfortable releasing financial information each quarter in a timelier manner unless they are also able to obtain assurance in a timelier fashion that their key financial control activities have operated effectively.

Of course, to have "reliable" control self-assessments, the individual self-assessments must have several critical components as we will explain next. The most important or critical components of a key controls self-assessment process are the:

- Right set of key controls to monitor
- Minimum quality control standard per key control
- Required evidence of control per key control
- Frequency of review per key control

Right Set of Key Controls to Monitor

The right set of key controls to monitor depends upon the control objectives that management is attempting to achieve. For SOX controls, the company should generally use a top-down risk-based approach to identify the controls that they will want to monitor via control self-assessments. And, management will generally discover that they will need to monitor essentially the same set of key controls that they are already relying upon for SOX compliance. However, the key control self-assessment reports developed must validly reflect the current key control activities. So company management and the individual control owners must own both their key control activities and their key control self-assessment reports. Moreover, the control owners and their management must be responsible for ensuring that their key control self-assessment reports get updated timely for all changes in the actual control activities. You cannot reach the

right conclusions if the population of self-assessment reports you are monitoring does not completely and accurately reflect the actual control activities being monitored.

Minimum Quality Control Standard

The “minimum standard of control” is derived directly from management’s control objectives that the key control activity was designed to achieve. The minimum standard of control actually defines the minimum level of quality which must be achieved in order for a control failure to not be reported. Therefore, the minimum standard of control actually enables the key control self-assessment process to also be an ongoing quality assurance process. It enables management to assign individual quality control standards per key control and enables management to obtain ongoing assurance that these quality levels are being achieved or an exception is reported.

The minimum standard of control should normally be achieved because it is derived from the minimum level of quality that is acceptable. Therefore, if there are failures to achieve the minimum standard of control (i.e. a key control exception), there should be unusual and generally non recurring circumstances that caused the exception. A “reliable” monitoring process must have quality control standards based upon what should normally be achieved and should only identify and report the unusual circumstances that management needs to know about; and, this is what the minimum standard of control achieves.

Required Evidence of Control

We probably all remember the commercials where someone demanded “Where’s the beef?” Well the beef in an ongoing key controls self-assessment process is created by requiring sufficient competent evidence of control completion each and every time the key control is self-assessed. We call this evidence standard per key control the – “minimum standard of evidence”. It is this evidence of control that enables the company and its auditor to rely upon the process. Every time a key control self-assessment report is completed, the control owner must opine that he or she has met not only the minimum standard of control, but also the minimum standard of evidence. This evidence as defined in the evidence standard must prove that the minimum standard of control; and therefore, each of management’s control objectives for the specific key control were adequately achieved. Generally, the best place for storing this evidence is as an electronic attachment to the key control self-assessment report. If the evidence is not attached, then the specific storage location must be defined in the evidence standard. Together, the control and evidence standards ensure that control owners know that their responsibility is not only to complete their key controls on behalf of the company, but that their responsibility is to ensure they complete each key control to the appropriate minimum level of quality and ensure that they can prove it. Together the minimum standards of control and evidence ensure the self-assessments are “reliable”.

Frequency of Review

Each key control should be self-assessed on an appropriate risk basis. This risk basis is derived from how often company management wants assurance that the key control was effectively completed. Normal frequencies of review for SOX key controls are monthly, quarterly and annually. Again, the frequency of review depends upon the specific key control.

Assurance Framework Integration

The key control self-assessment based ongoing quality assurance and risk monitoring process (as I have named this process) should fit well within most company's existing assurance frameworks. Moreover, most company's other assurance framework components should generally be unaffected by the enhancement from attribute testing to ongoing monitoring. However, one should also understand that the key controls self-assessment based ongoing quality assurance and risk monitoring process will generally be one of the most important, if not the most important component of the company's assurance framework. This is because it allows the company to monitor its key controls, which are generally one of the most important if not the most important component of the company's assurance framework.

Additional Important Reliability Characteristics

Reliability of the key control self-assessments is ensured by several additional important characteristics of the process beyond those just mentioned among which the most important are:

- Training and accountability
- Intelligent risk based review and approval
- Ongoing management monitoring
- Process testing

Training and Accountability

Training is critical to the successful implementation of a key controls self-assessment effort. Employees must be trained so that they understand that they are now responsible as control owners for not only performing their key control activities effectively, but that they are also accountable for ensuring that they performed their key control activities in a manner that ensures the minimum standard of control is achieved, and the required control evidence is both appropriately developed and maintained – or a key control exception must be reported.

Employees must understand that inaccurate reporting regarding their key controls is falsifying company records and will have the same consequences as any other falsification of company records. Employees must understand that the company is not only relying upon them to operate their key controls effectively, but also to self-assess and report on their completion accurately. Employees must understand that the company is relying upon these key control self-assessment

reports for Sarbanes-Oxley Section 404 compliance, and assurance that the right things are getting done right.

If you are one of those who believe your employees cannot be trusted to complete self-assessments reliably. Then, I ask you how you can trust them to complete their key controls? Moreover, if your company takes appropriate disciplinary action for employees who falsify company documents, then your company should be able to rely upon self-assessment reports completed by your control owners.

Intelligent Risk Based Review and Approval

Due to the large number of key control self-assessment reports that are completed, generally the number of self-assessment reports that must be reviewed and approved should be limited so that the reviews do not become too burdensome for management. Generally, the right way to achieve adequate review and approval while not being too burdensome is to design and implement an “intelligent risk based review and approval process”. An intelligent risk based review and approval process enables the norm to be self-approval of self-assessment reports, while ensuring that higher risk self-assessments are identified and reviewed on an appropriate risk basis.

The objective of an intelligent risk based review and approval process is to be able to identify all high risk key controls and ensure that they are appropriately reviewed and approved. For example, the supervisor for an area should probably be required to review and approve key control self-assessment reports anytime:

- A new key control self-assessment is developed for the area
- An existing key control self-assessment is significantly updated
- A key control self-assessment is assigned to a new employee or contractor

This is because there is a greater risk of the key control not being operated effectively and/or self-assessed whenever any of the above takes place within an organization. New key controls or significant changes in existing key controls should be reviewed in order to ensure that things get done right or they may not. The responsible manager should also develop an appropriate “track record” that justifies trusting a new employee or contractor.

An intelligent risk based review and approval process simply implements this fundamental logic over the review and approval of key control self-assessment reports. I suggest that the company should generally require appropriate review and approval of the first two self-assessment reports completed for a new or significantly updated key control, and for those prepared by a new employee or contractor.

All reported key control exceptions should be required to be reviewed and approved by appropriate management. For SOX key controls, if the key control’s frequency of review is not monthly; then, the frequency of review should be updated to be monthly until the exception is

resolved. For non SOX key controls, the frequency of review should generally be updated as appropriate to ensure adequate monitoring of the key control's resolution.

Of course appropriate criteria should be developed in order to ensure all high risk key control self-assessment reports are appropriately identified and reviewed. While one could establish a set frequency for the ongoing review and approval of medium and low risk key controls, assurance can generally be achieved in the overall assurance framework via ongoing management monitoring, as we will discuss next.

Ongoing Management Monitoring

As I explained earlier, while a key controls self-assessment based quality assurance and risk monitoring process can be implemented and effectively operated on a purely manual basis, many of the advantages of the process are derived from its automation. Automating the process creates a platform that can be used to monitor all of the company's key control activities and achieve assurance related to all of the company's key operational, compliance and financial control objectives. On-line real-time monitoring of the completion of key control self-assessment reports enables management to know that all of the right things are getting done on a timely basis and in the right order before significant deliverable are due.

On-line real-time monitoring does not mean continual or continuous monitoring. It means having the control owner provide the needed assurance when management wants that assurance as defined for each key control by its frequency of review.

As with most enhanced control processes developing a key controls self-assessment based quality assurance and risk monitoring process allows management to move faster while doing so in a safer manner. Just as race car drivers cannot go faster unless they have brakes that can keep them safe at these faster speeds, management must have better control processes and controls monitoring processes that provide them the needed assurance. From a financial reporting perspective, this means management can close the books and report faster while having the assurance that the right things got done right.

Automation of the self-assessment based quality assurance and risk monitoring process can enable additional advantages. For example, automation can enable management to monitor their key control self-assessment reports using a dashboard. Management could use the dashboard both to review high-level summary information and to drill down upon and review individual key control self-assessment reports. Drill down capabilities could also enable management to easily access and review the evidence of control and ensure that their employees are getting their jobs done right. A dashboard could create a platform for each level of management to monitor and review their completed key control self-assessment reports, key control exceptions and deficiencies.

Ongoing monitoring should generally also include a yearly review during which the control owners and SOX compliance subject matter experts review each key control and its self-assessment report. If appropriate, a risk based approach to reviewing the medium and lower risk key controls could be adopted based on management's overall assurance framework.

Anytime there are control activity changes the key control self-assessment reports that are being monitored must be updated. Ongoing monitoring of key controls must include appropriate methods and practices to ensure that changes in key control activities are timely reported so that appropriate updates to key control self-assessment reports can be timely completed. For example, one way to help ensure that control changes are identified is to forward a note to all control owners monthly asking that they ensure they comply with the company's policy and report all control activity changes so that the company's key control self-assessment reports can be updated before they are completed for the period.

Process Testing

As you will recall, using an attribute testing approach, each key control must be tested. However, since the key controls self-assessment based quality assurance and risk monitoring process is being monitored on an ongoing basis by management, testing is generally only necessary to ensure that the process is operating effectively as designed. It should generally be sufficient for company management to select an appropriate sample of completed key control self-assessment reports for the period and then to attribute test this sample.

For example, this testing generally entails testing the population of completed key control self-assessment reports for the period. For this testing, management could select an appropriate sample of specific control owners for specific periods. Then, review all of the control owner's completed key control self-assessment reports for the selected period(s). Again, the objective of this attribute testing is to be able to prove that the key controls self-assessment based quality assurance and risk monitoring process is operating effectively as designed; and therefore, can be relied upon by company management.

The attributes to be tested for each completed key control self-assessment report would generally include:

- Is the control self-assessment report appropriate?
 - Is the minimum standard of control appropriate and in compliance with policy?
 - Is the minimum standard of evidence appropriate and in compliance with policy?
 - Is the frequency of review appropriate and in compliance with policy?
- Was the control self-assessment appropriately completed for the period?
 - Was sufficient competent evidence both developed and appropriately maintained to prove that the control standard was adequately achieved or was a control exception appropriately reported?
- Were control exceptions appropriately handled by management?

- If a control exception was reported, was it appropriately reported, reviewed and approved?
- If a control exception was reported, was there an appropriate determination as to whether or not the exception was a deficiency?
 - If the control exception was a deficiency, was it appropriately classified (inconsequential, significant or material)?
 - If the control exception was a deficiency, based upon its classification was it appropriately reported, mitigated and resolved?

In some cases, it is more efficient to select a sample of certain high volume transactions rather than review the control owner's completed key control self-assessment reports. For example, journal entries and account reconciliations. This is because certain control owners may have so many journal entries or account reconciliations which would have to be reviewed, if their key control self-assessment report was selected for testing, that it is more efficient to select a sample from the entire population of journal entries and account reconciliations.

Application key control self-assessment reports may also be tested separately. However, this volume of attribute testing is generally considerably less than what is required under the common attribute testing approach.

Cost Savings

Given that a Commission registrant develops a key controls based quality assurance and risk monitoring process with the reliability characteristics enumerated above, then the registrant should be able to much more efficiently and effectively support its Sarbanes-Oxley Section 404(a) compliance process requirements. Moreover, the registrant should be able to enhance both its internal control over financial reporting and overall system of internal control. Moreover, if the Commission directs the PCAOB to enable the external audit firms under its control to rely more easily upon such processes, then we should not only have much better control processes, but more efficient and less costly Sarbanes-Oxley Section 404(b) controls audits.

If a company only implements a manual key controls self-assessment based quality assurance and risk monitoring process with the reliability characteristics I have detailed above. And, only monitors via the process their SOX key controls as needed for Sarbanes-Oxley Sections 404(a) and 404(b) compliance - the company should be able to achieve considerable savings over the cost of attribute testing each of their SOX key controls.

If a company then enhances their process by developing and implementing an automated monitoring solution, there will be a cost for such automation. However, this cost will be offset by the ability to obtain assurance faster via the real-time application. An automated application will also enable the company to monitor all of the company's non SOX key controls. This can greatly assist all of the company's business process owners in obtaining assurance regarding

their process control objectives. It can also greatly enhance the Internal Audit function by enabling Internal Audit to leverage off of its audits and the key controls they identify in each audit, since the key controls identified can be setup in the automated application so that they can be monitored. Once all of the areas in the company's audit universe are audited and key controls are setup to be monitored, future internal audits may only be needed to ensure that the key controls being monitored fully cover the area's control objectives, and that the key control self-assessment reports are being timely updated and completed, and effectively monitored.

If the Commission enables the PCAOB and the audit firms under its control to rely more easily upon manual and automated key controls self-assessment based quality assurance and risk monitoring process with the attributes detailed above, then this should enable these companies to reduce their Sarbanes-Oxley Section 404(b) compliance cost.

So, while there is a cost to automating the key controls self-assessment based quality assurance and risk monitoring process, this cost will probably be recovered overtime via the cost reductions achieved by the reduction of both internal and external attribute testing and the benefits derived from better internal control and assurance.

Additional Assistance

I realize the level of information in this comment letter may not provide you with the detail you will need to be able to adequately review my suggestions. One potential manner in which I may be able to help is that I have written and intent to publish a book tentatively entitled, Risk Monitoring: A Principles Based Integrated Assurance Framework for Management. Unfortunately, I cannot include the full text of my book in a public comment letter. However, I will be happy to provide the full text encompassing 23 Chapters and approximately 464 pages to the Commission to assist in its review. This book explains all of the concepts I have discussed in much greater depth. It also explains most of the other topics applicable to a company's assurance framework and how all of the components in the framework integrate with a key controls self-assessment based ongoing quality assurance and risk monitoring process.

Please let me know if you would like a draft copy of my book to assist you in your study.

Respectfully submitted,

/s/ JAMES BRADY VORHIES

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