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**ICO, Inc.**  
5333 Westheimer, Suite 600  
Houston, Texas 77056  
713-351-4100

October 21, 2005

*Via e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)*

Securities and Exchange Commission  
Division of Corporate Finance  
450 Fifth Street, N.W.  
Washington, D.C. 20549

**Re: The application of Sarbanes-Oxley 404 to small public companies**

Dear Sirs:

I write from the perspective of the newly appointed CEO of ICO, Inc. (NASDAQ: ICOC) and an investor, among whose holdings is a substantial block of ICO common stock I acquired over the past four years, comprising some 3% of the firm's common stock outstanding. As an investor, I am incredibly appreciative of the role played by the Securities and Exchange Commission in assuring that the capital markets in the United States possess integrity and are efficient. As the CEO of ICO, Inc. ("ICO" or the "Company"), I have, among other responsibilities, the job of building shareholder value. ICO is today considered an accelerated filer due to the fact that on March 31, 2005 the non-affiliate market capitalization of the Company exceeded \$75 million, at just over \$79 million. (That has proved to be a very short-lived achievement, as our total market capitalization has been below the \$75 million threshold every day since April 6, 2005, as it was for all but approximately 40 days in the five years prior to March 31, 2005.)

In our letter dated April 13, 2005 (a copy of this letter is attached) we requested that the Commission provide us with relief from the strict application of the accelerated filer thresholds. We believe that we are entitled to such relief under the spirit of the law, as we are a small public company. Unfortunately, the Commission decided there could be no exceptions granted and declined to provide relief to ICO. Nevertheless, the experience of implementing Sarbanes-Oxley 404 has provided us insight into the challenges small public companies will have complying with the law. I believe the Commission must consider whether the costs of implementing the requirements of Sarbanes-Oxley 404 make sense in light of the benefits for a small company like ICO. For the trailing twelve months ended June 30, 2005, ICO generated operating income of \$5.8 million and pre-tax income of \$2.7 million. Currently, we believe that our third party costs attributable to our FY 2005 implementation of Sarbanes-Oxley 404 will total approximately \$1.7 million (being \$0.7 million in new independent auditor fees and \$1.0 million for third party implementation costs). Furthermore, we have hired additional employees in our corporate office and have incurred additional legal fees relating to implementing Sarbanes-Oxley 404, increasing



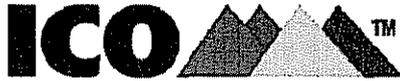
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our expenses by approximately \$350,000. Thus, our direct cost of complying with SOX 404 in FY 2005 will be approximately \$2.1 million (roughly \$1.7 million of this expense was included in the twelve month period ended June 30, 2005). Compared to the amount of profit generated by the Company, this cost has been staggering. We do not take lightly spending \$2.1 million of shareholder money to comply with Sarbanes-Oxley 404. We strongly believe that spending this amount of money to implement the requirements of Sarbanes-Oxley 404 is more appropriate for a firm with a substantially higher market capitalization.

While the cost of implementation has been very high for our company, the indirect cost of complying has been just as staggering. In this area, ICO may be unique as it has 17 plants in 9 countries. So we are thinly spread over the entire globe. Our accounting, financial, and IT teams throughout the world have been involved implementing Sarbanes-Oxley 404, as have been our managers. From the CEO and the CFO in Houston, to the manager and staff accountant in Australia, many of our employees have been devoting significant time and effort to implement Sarbanes-Oxley 404. While estimating the amount of indirect cost to the Company this implies is difficult, certainly the cost has been substantial.

Without question there have been many benefits to implementing Sarbanes-Oxley 404, although I wonder if the costs to maintain compliance are sustainable. Imagine if we devoted the same energy, effort and resources to new product development? Apparently, in light of the enormous burden imposed by Sarbanes-Oxley 404 on a U.S.-based Company our size, there are only two alternatives to avoid or minimize the effect of this burden: 1) take action so that the Company is not subject to these rules (by selling the Company or taking it private, for example), or 2) hope new rules will provide relief for ICO. As a new CEO, I will be disappointed if the first alternative becomes the best alternative for our shareholders only because of burdensome regulatory requirements, although that is a distinct possibility because these requirements constitute a very heavy and, frankly, unsustainable burden to carry. When regulatory burdens begin to have such a significant impact on corporate earnings and force companies to take actions that constrain severely their ability to raise capital, it should impose a higher burden on our government to be sure that the benefits to investors outweigh the burden on shareholder value and our economy. We suggest that this burden has not been met, at least in so far as Sarbanes-Oxley 404 is applied to a company the size of ICO. Through the process of considering new rules, we hope the Commission will consider the costs of compliance relative to the benefits for investors. Does the Commission really want to close the public markets to small companies?

Having stated the above, we believe the Commission should understand where we have spent the vast majority of our time and efforts (including money) to comply with Sarbanes-Oxley 404. It has not been terribly expensive or difficult to enhance and test our entity-level controls, or to comply with the corporate governance requirements. Indeed, we concur that strong corporate governance and sound entity-level controls absolutely should be required for any



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publicly-held company. We have spent the vast majority of our resources to comply with Sarbanes-Oxley 404 testing and documenting our process-level and general computer controls. If the Commission remains committed to establishing three tiers for setting filing requirements and deadlines (which we applaud), we strongly suggest that the Commission allow small public companies to focus on entity-level controls, and that these companies should not be required to have an audit performed to assess and test process-level and general computer controls. We believe that for this purpose, small companies should be defined as those companies with a market capitalization of less than \$700 million. This level of market capitalization is suggested because we believe a \$75 million threshold is too low and the \$700 million market capitalization figure has been suggested by the Commission as the point in which a company becomes a "Large Accelerated Filer."

Thank you for considering our comments.

Sincerely,

A. John Knapp, Jr.  
President and Chief Executive Officer

Attachment  
cc: Jonathon Ingram



ICO Polymers, Inc.  
5333 Westheimer, Suite 600  
Houston, Texas 77056  
+1-713-351-4100

April 13, 2005

*Via U.S. Mail and e-mail*

Office of the Chief Accountant  
Mail Stop 1103  
450 Fifth Street, NW  
Washington, DC 20549  
Attention: Ms. Nancy Salisbury

RE: *ICO, Inc (The "Company" or "ICO")*  
*NASDAQ symbol: ICOC*  
*Request for additional time to comply with Section 404 of The Sarbanes-Oxley Act*  
*of 2002*

Ladies and Gentlemen:

We are writing you today as a small public company requesting a review of our situation and to ask that we be considered a non-accelerated filer for purposes of the Company's fiscal year ending September 30, 2005, so that we will not be required to include in our annual report a report of management's assessment on the effectiveness of the Company's internal control over financial reporting or to make certain representations in the certifications required by the Exchange Act Rules 13a-14 and 15d-14 regarding the Company's internal control over financial reporting. Please note that we are not requesting an extension of the accelerated Form 10-K and Form 10-Q filing deadlines that apply to accelerated filers.

As you are aware, a registrant's status as an accelerated filer is determined as of the end of the registrant's second fiscal quarter. Our fiscal year end is September 30 and therefore our measurement date for the fiscal year ending September 30, 2005 was March 31, 2005. On March 31, based on our closing stock price of \$3.37 per share, the market value of our public float as defined under Rule 12b-2 was \$79.8 million. We were therefore modestly above the \$75.0 million threshold and thus, will be an accelerated filer as of September 30, 2005. According to the "letter of the law" the Company must now comply with Section 404 of the Sarbanes-Oxley Act including the internal controls related audit to be performed by the Company's independent accountants and other requirements referenced above for our fiscal year ended September 30, 2005. However, our stock price was below \$3.17 per share (and the market value of our public float was less than \$75.0 million) less than an hour prior to the closing of the stock market on March 31, 2005. In our review of the releases from the Securities and Exchange Commission ("SEC") and the extensions granted to date, we feel that the SEC is in fact doing what it can to help public companies comply with Section 404 of the Sarbanes-Oxley Act. For reasons that we elaborate on below, we believe that the Staff of the Commission should extend the

Company's 404 compliance date by one year. We hope that you will consider our circumstances and provide relief for ICO.

### *The Company*

The Company manufactures specialty polymer resins and concentrates, and provides specialized polymer processing services. These products and services are provided through the Company's 17 operating facilities in 9 countries. Of the 17 operating facilities, 10 are located in foreign countries. Of the Company's fiscal 2004 revenue of \$257.5 million, \$160.5 million, or 62%, was generated from our locations in foreign countries. The Company's net income in fiscal year 2004 was \$257,000.

### *Market Value of Our Public Float*

The Company's common stock trades on Nasdaq under the ticker symbol "ICOC." Trading in the Company's stock is, however, very thin – for the six months ended March 31, 2005, the average trading volume for the Company's stock was only approximately 103,200 shares. Because of the Company's small market cap and thin trading, the Company's public float market value is relatively volatile. Again, although the Company's public float market value at the close of business on March 31, 2005 was \$79.8 million, it was below \$75.0 million less than one hour before the close of business on that day. In fact, during the day on March 31, 2005, the market value of our public float ranged from a low of \$74.4 million to a high of \$80.5 million. Moreover, our market value was less than \$75.0 million both before and after March 31, 2005. On March 9, 2005, our closing stock price was \$3.16 per share, which resulted in a public float market value of \$74.8 million. On April 6, 2005 (four business days after March 31, 2005), our closing stock price was \$3.10 per share resulting in a non-affiliate market value of \$73.4 million. The non-affiliate market value for the first six months of our fiscal year 2005 averaged approximately \$72.9 million. In fact, with the exception of 42 days in the past six months, our public float market value has been less than \$75.0 million for the past five years. Furthermore, as of the date of this letter our closing stock price was \$3.09 per share which equates to a public float market capitalization of \$73.2 million.

### *Smaller Companies and Companies with Foreign Operations Need Additional Time to Comply*

Reviewing the SEC's release dated March 2, 2005 extending the compliance date for Section 404 by one year for certain public companies, we note that the release discusses needed relief for smaller public companies and for foreign private issuers. ICO is certainly a smaller public company, and we believe that we share many of the characteristics of foreign private issuers. The March 2, 2005 release includes the statement: "We believe it is important to provide the Advisory Committee with time to consider the framework for internal control over financial reporting applicable to smaller public companies, methods for management's assessment of such internal control, and standards for auditing the internal controls of these companies." The release further includes the statement: "In addition, at the request of the Commission staff, a task force of the Committee of Sponsoring Organizations ("COSO") has been established to expand the

existing COSO framework to provide more guidance on how the framework can be applied to small companies.” As a “smaller public company,” we would greatly benefit from the additional guidance that will be provided in the future. The release also states: “Foreign companies have faced particular challenges in complying with the internal control over financial reporting and related requirements, which include language, culture and organization structures that are far different from what is typical in the United States.” As the majority of our operations are located overseas, we face these challenges as well.

*Conclusion*

The Company has taken Section 404 of the Sarbanes-Oxley Act very seriously. Through the six months ended March 31, 2005, ICO has spent approximately \$300,000 on external consulting resources. The internal cost of the implementation to date is two to three times that figure taking into account the amount of time spent educating our employees, while managing and implementing the requirements of the Sarbanes-Oxley Act. If required to comply this fiscal year, we would expect to spend another \$300,000 on external consulting resources and incur a substantial increase in our year end audit fees. The external implementation cost of Sarbanes-Oxley in year one for the Company could be as high as \$1.2 million. By having an extra year to comply with Section 404 of the Sarbanes-Oxley Act we would expect to reduce the external consulting cost of the implementation, defer the higher audit cost and greatly benefit from continued guidance becoming available for companies similar to ICO.

In closing, we feel that the facts of our case are very unique and that we are clearly the type of company deserving of relief in the spirit of the new rule. We respectfully request that the Staff consider our case, and classify the Company as a non-accelerated filer for purposes of determining the compliance deadline for the requirements of Section 404 of the Sarbanes-Oxley Act of 2002 for our fiscal year ended September 30, 2005. Your prompt consideration of this matter would be greatly appreciated.

Given the urgency of this situation, we would appreciate receiving a reply as soon as possible, but hopefully within the next 14 days. We would also be happy to come to meet with the Staff in Washington as soon as possible, if you believe that would be helpful. Should you have any questions, please feel free to contact me at (713) 351-4125. We look forward to hearing from you.

Sincerely,



Jon C. Biro  
Chief Financial Officer  
and Treasurer

Securities and Exchange Commission  
April 13, 2005  
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cc: Mr. Charles T. McCord, III,  
Audit Committee Chairman  
ICO, Inc.