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October 31, 2005

Via Email

Re: **Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports of Companies that are Not Accelerated Filers (File No. S7-06-03)**

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Dear Mr. Katz:

We are submitting this letter in response to a request for comments by the Securities and Exchange Commission (the “**Commission**”) in Release No. 33-8618, 34-52492, Management’s Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports of Companies that are not Accelerated Filers (the “**Release**”), which extends the compliance dates for companies that are non-accelerated filers with respect to certain amendments to Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934 (the “**Exchange Act**”), Items 308(a) and (b) of Regulation S-K and S-B, Item 15 of Form 20-F, General Instruction B of Form 40F and the representations that must be included in the certifications required by Exchange Act Rules 13a-14 and 15d-14 regarding a company’s internal control over financial reporting (the “**Extension**”). These amendments require a company, other than a registered investment company, to include in its annual report a report of management and accompanying auditor’s report on the company’s internal control over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act (a “**Section 404 Report**”) and also require management to evaluate changes in the company’s internal control over financial reporting as of the end of each fiscal period and provide certain representations and certifications.¹

¹ Throughout this comment letter, we discuss the Extension as it relates to provision of a Section 404 Report but our recommendation and suggestion is intended to apply to the Extension as it relates to the other amendments as well since the compliance dates for these amendments are

We fully support the Commission's efforts to extend the Section 404 Report compliance date for non-accelerated filers and appreciate the opportunity to comment. Our recommendation and suggestion is intended to assist the Commission in meeting the stated objectives of the Extension. The Commission discusses these objectives in the Release and notes that "[d]ue to the significant costs that smaller companies are likely to incur to prepare for initial compliance with the internal control requirements, we think that it is critical to make the extension effective as soon as possible so that they have the certainty of knowing that they can rely on it." The stated benefit of this certainty is that it will prevent non-accelerated filers from having to incur significant expenses to prepare an initial Section 404 Report and enable them to potentially benefit from the experiences of accelerated filers in the second year of compliance as best practices emerge and increased efficiencies are realized.²

We fully agree with the Commission's stated objectives, however, we believe that in order to achieve these objectives, the Release should clarify when "accelerated filer" status will be tested for purposes of the Extension. Under the current rules, accelerated filer status is determined at the end of an issuer's fiscal year based, in part, on whether the aggregate market value of the issuer's voting and non-voting common equity held by non-affiliates as of the last business day of the issuer's most recently completed second fiscal quarter is at least \$75 million. If the Extension applies only to issuers that qualify as non-accelerated filers at the end of their first fiscal year ending or after July 15, 2006, then a reporting issuer that is currently a non-accelerated filer will not know for certain whether it will continue to be a non-accelerated filer at the end of its first fiscal year ending on or after July 15, 2006 (and therefore able to rely on the Extension) until the last business day of its second fiscal quarter of that year when it measures its public market capitalization. The issuer will therefore be in the position of having to either incur significant expenses to plan and prepare a Section 404 Report in the first six months of its first fiscal year ending on or after July 15, 2006 on the chance that its public equity market capitalization at the end of its second fiscal quarter may meet or exceed \$75 million or postpone its planning and procedures on the assumption that it will continue to be a non-accelerated filer but risk having to plan and prepare its first Section 404 Report in

based on the date on which the first Section 404 Report is provided. For example, the provision of certain information in the introductory language in paragraph 4 of the certification required by Exchange Act Rules 13a-14(a) and 15d-14(a) that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting and paragraph 4(b) of the certification are also extended such that a company would first be required to comply with these provisions in the first annual report that includes a management's report on internal control over financial reporting.

² The Commission notes on page 9 of the Release that "Companies that are not accelerated filers may be able to benefit from the experiences of accelerated filers in the second year of compliance with the internal control reporting requirements as best practices emerge and increased efficiencies are realized."

just six months if its public market capitalization at the end of its second quarter does in fact meet or exceed \$75 million. Neither of these scenarios provides issuers with the certainty or other benefits that the Commission has stated it intended to give non-accelerated filers by providing the Extension.

In order to eliminate this uncertainty, we respectfully request that the Commission clarify that for purposes of determining whether a company is entitled to rely on the Extension only, an issuer should determine whether it is a non-accelerated filer based on its status as of the end of the fiscal year immediately preceding its first fiscal year ending on or after July 15, 2006. This will allow an issuer to know for certain one full year in advance of its first fiscal year ending on or after July 15, 2006 whether it will be required to provide a Section 404 Report at the end of that fiscal year or will be able to rely on the Extension and first provide such a report in its first fiscal year ending on or after July 15, 2007. We believe that this will satisfy the Commission's stated objective of providing non-accelerated issuers with certainty of knowing that they can rely on the Extension and prevent such filers from incurring significant expenses and performing significant work in their first fiscal year ending on or after July 15, 2006 to begin to prepare for compliance with the internal control reporting requirements.

We appreciate the opportunity to comment on this matter. We would be pleased to discuss any questions that the Commission or its staff may have about our comment letter. Please contact Richard J. Sandler at 212.450.4224, Richard D. Truesdell, Jr. at 212.450.4674 or Michael P. Kaplan at 212.450.4111.