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Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street N.W.
Washington, D.C. 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 021

Dear Board Members,

We appreciate your efforts to reduce the costs associated with compliance with the Sarbanes-Oxley Act of 2002 Section 404 (SOX 404), through PCAOB Release 2006-007. However, we believe that a proposal to improve the process of external auditors doing the work to allow them to express an opinion on the effectiveness of Internal Controls over Financial Reporting (ICFR) is just tinkering with a requirement we believe is redundant, not cost effective and does little if anything to improve results of public company management. We believe the proper action for the PCAOB is to:

- Limit the interpretation of the SOX legislation to require management to assess and report on the adequacy of ICFR and require external auditors attest to and report on the assessment made by management
- Eliminate the requirement of an external audit opinion on the effectiveness of ICFR.

SOX 404 has provided new regulations with the intention of protecting shareholders including items that address improving the clear responsibility for management over financial reporting and controls, improve the likelihood of discovery of and increase penalties for illegal activities. Among these are:

- Improved rules for external auditor independence and audit committee independence
- Certification of financial reports for a company by the CEO and CFO
- Management assessment and representation of the adequacy of ICFR and the requirement that external auditors attest to and report on the assessment made by management
- Significantly longer maximum jail sentences and larger fines for corporate executives who knowingly and willfully misstate financial statements
- Enhanced whistleblower protection

In addition to these and other requirements of public companies already in place prior to SOX 404, the PCAOB through AS2 has required an external audit opinion on the effectiveness of ICFR. Our experience is that our audit costs have more than doubled due to this requirement. This requirement entails significantly more work than would be required under a more precise interpretation of SOX 404(b) and is redundant with management's own assessment and it is management's job to make sure the controls are in place and effective.

The primary cause of the infamous public company disasters that brought on the SOX legislation was "colluding liars" running the companies. Without this type of leadership and behavior among the people running these companies, the probability of significant accounting fraud is very low. Less than 1% of companies have exhibited these types of behavior and yet costs are being imposed on all publicly traded companies.

We don't believe that an external audit of internal controls would have been effective at stopping "colluding liars" from their actions in the following examples:

- Enron used partnerships to hide the true performance of its business and enrich select officers.
- Adelphia used company money and debt to fund personal spending and investments of its officers (many of whom were from one immediate family).
- WorldCom intentionally violated accounting rules to treat expense items as capital to inflate its earnings.

In each of the above cases, the truth came out within a few years and in the Enron and WorldCom cases, internal personnel notified auditors or board members who were in a position to do something about it. The primary executives involved in these scandals have received substantial prison sentences (terms from five up to 25 years have been handed down).

In looking at the core reasons for SOX 404 legislation and any <u>additional</u> requirements the PCAOB chooses to impose, the actual effectiveness and cost of PCAOB imposed requirements needs to be checked against the issue they propose to fix. We believe requiring external auditors to express an opinion on the effectiveness of ICFR fails this review.

Also, if accounting rules are made more onerous than their value or competitive alternatives available in the capital markets, the PCAOB should expect companies to find ways to reduce those costs to remain globally competitive and improve the return to their shareholders. There are alternatives such as going private, selling to foreign companies, or listing on foreign exchanges. More companies will be driven to these alternatives. To expect anything different is to disregard economic reality and American ingenuity.

In a speech on February 9, SEC Commissioner Kathleen Casey said, “We need to fix 404. No other issue in recent times has come to symbolize regulation gone awry than this relatively modest-looking provision of the Sarbanes-Oxley Act. While the spirit and letter of the law never contemplated the costly and burdensome result that this provision has generated, the law’s implementation undoubtedly facilitated such a result…In the end, however, I believe we will only be able to measure our success by whether our reforms are sufficient to alter the behavior our policies have driven.” We agree with Commissioner Casey’s assessment of the impact of SOX 404 and the need for changes in regulation that are sufficient to allow significant reduction in the efforts to comply with SOX 404 by public companies and their external auditors. We do not believe PCAOB Release 2006-007 provides enough change to pass that test.

In summary:

- SOX 404 legislation put in place multiple regulations intended to improve the control environment of publicly traded companies. This is in addition to the accounting and regulatory requirements in place prior to the SOX 404 legislation.
- The requirement that external auditors express an opinion on the effectiveness of ICFR is not required by the SOX 404 legislation, is the source of most of the increased audit costs associated with SOX 404 compliance and does little if anything to mitigate the root issues that precipitated the SOX 404 legislation.

We strongly urge the PCAOB to:

- Limit their interpretation of the SOX 404 legislation, which requires management to assess and report on the adequacy of ICFR and requires that external auditors attest to and report on the assessment made by management.
- Eliminate the requirement for external auditors to express an opinion on the effectiveness of ICFR.

Sincerely,

John A. Ingleman
Senior Vice President and
Chief Financial Officer

David P. Radloff
Vice President of Corporate Finance