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February 26, 2007

Ms. Nancy M. Morris
Secretary
U. S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Re: File Number S7-24-06, Proposed Interpretation, Proposed Rule- *Management's Report on Internal Control Over Financial Reporting*

Dear Ms. Morris:

Crowe Chizek and Company LLC appreciates the opportunity to comment on the U.S. Securities and Exchange Commission's (the "SEC") Proposed Interpretation and Proposed Rule (the "Proposal") *Management's Report on Internal Control Over Financial Reporting*.

We are supportive of the Proposal as it helps issuers focus on a top-down, risk based approach, and provides specific guidance for management, which previously may have looked to an audit standard for guidance. The Commission is providing guidance which recognizes that management can approach the assessment process in a manner that might be different than an auditor. The Proposal should help issuers migrate to a process which is integrated with the issuer's monitoring mechanisms. Combined with other guidance for registrants from COSO, and experience gained over the last three years by those companies performing assessments, issuers will now be better armed to undertake an efficient approach to assessing the effectiveness of their internal controls.

There are areas where we believe the Proposal could be clarified or modified, and our comments on such follow.

Risk Assessment

The interrelationship between inherent risk and control risk should be clarified for users of the Proposal, as the risk of material misstatement is a combination of both. We believe that in evaluating the risk of financial statement misstatement, management should begin with inherent risk - determining the likelihood of whether an error will occur or not, independent of the controls in place. This assessment of inherent risk is critical in determining the number and type of controls needed to mitigate that risk. However, the proposed language quoted below

seems to suggest that the effectiveness of controls should be considered in determining inherent risk, which is then a determinant in deciding how much control testing to perform, which is circular.

"1. Identifying Financial Reporting Risks and Controls" states, "Management ordinarily would consider the company's entity-level controls in both its assessment of risk and in identifying which controls adequately address the risk." (page 21) However, "2. Evaluating Evidence of the Operating Effectiveness of ICFR" states, "Management's assessment of ICFR risk also considers the impact of entity-level controls, such as the relative strengths and weaknesses of the control environment, which may influence management's judgments about the risks of failure for particular controls." (page 30)

Precision of Entity Level Controls

"c. Consideration of Entity-level Controls" states, "Some entity-level controls are designed to operate at the process, transaction or application level and might adequately prevent or detect on a timely basis misstatements in one or more financial reporting elements that could result in a material misstatement to the financial statements." (page 27)

We agree with this conceptually and believe that this is one area where registrants and auditors may not have always sought out entity level controls to form conclusions on ICFR in the most cost effective manner. However, in practice there are few entity level controls which operate at the threshold of precision needed to effectively eliminate, or seriously reduce, control testing at the account level, because entity-level controls are too general in nature. Because of the potential cost saving implications of the effective operation of such controls, we encourage the SEC to provide several examples where such controls operate with the necessary degree of precision. If there are not such controls, then this language that such control "might adequately prevent or detect" should be modified.

Evidential Matter

"c. Evidential Matter to Support the Assessment" states, "Management may determine that it is not necessary to separately maintain copies of the evidence it evaluates; however, the evidential matter within the company's books and records should be sufficient to provide reasonable support for its assessment." (page 38)

The cost of documentation can be high; however there is a correlation between the effective documentation of a control activity and the effectiveness of its performance. We are concerned that the proposed guidance sets too low a bar for documentation. Good documentation may be a key driver to achieve efficiencies in the overall ICFR process, and we believe management should separately and specifically support its assessment with documentation.

We believe it is important for management to ensure that the documentation is truly found in the company's books and records in the fashion used to manage the business. For management to complete an effective assessment of ICFR, they must understand how the key control objectives are achieved. The language of the Proposal could cause management to conclude "it's in there" without truly understanding whether each control objective has been effectively addressed in the manner management believes it has. We believe it is important for management to be clear where in their books and records the evidence exists to support the assurance that the control objectives have been achieved, so they can communicate this to their audit committee, board of directors, or others that management does have the basis for its assertion.

The Proposal provides a principles based approach. In application, management, or their vendors, will likely develop tools to assist in documenting the needed evidential matter. Tools such as checklists should be scaled to meet the needs of entities of varying size and complexity. Management needs to ensure that such tools are used appropriately to their facts and circumstances. The Proposal could address this.

Evaluation of Future Effects

The Proposal suggests that among the factors that affect the likelihood that a deficiency will result in a misstatement not being prevented or detected in a timely basis include "The possible future consequences of the deficiency." (page 43) An assessment "as of" a date should not need to consider what future unknown events might happen which may affect the assessment "as of" an earlier date.

Strong Indicators of Material Weakness in ICFR

In the discussion of evaluation of deficiencies, an ineffective control environment is listed as a strong indicator of a material weakness, and three examples of such weaknesses are noted (page 45). We suggest that a fourth example be added relating to ineffective risk management or internal audit process where one is needed (i.e., some small businesses may not need an internal audit function). The overall emphasis of the Proposal is that the registrant's embedded controls can supply much evidence regarding the effectiveness of ICFR. That approach suggests a great reliance on the COSO concept of monitoring. Effective risk management or internal audit processes appropriately scaled for the size and complexity of the registrant, are an important component of monitoring controls. This should be emphasized in this section by addition of a specific example of a weakness where the entity needs effective risk management or internal audit processes.

"Restatement of previously issued financial statements to reflect the correction of a material misstatement." (page 45) is also listed as a strong indicator of a material weakness in ICFR. However, restatement of previously reported financial information should not necessarily lead to a conclusion that there is a material weakness in ICFR as of a current date. A company may

have improved systems as of the assessment date that detects an error, or perhaps a previous weakness was remediated during the year such that at the “as of” date, no material weakness exists, even if a restatement was required during the year. We believe that it is important to clearly define what management should have known in making this determination. Certain restatements take place because of the evolution of thinking regarding the application of accounting standards. The Proposal also indicates: “However, the restatement of financial statements does not, by itself, necessitate that management considers the effect of the restatement on the company’s prior conclusion related to the effectiveness of ICFR.” (page 48)

The Public Company Accounting Oversight Board’s proposed standard (PCAOB Proposed Standard) guidance on strong indicators of a material weakness is different than that in the Proposal. We recommend that the language in the Proposal be conformed to that proposed for adoption in a PCAOB Standard after consideration of comments.

Assessment Due Solely to and Only to Extent of Material Weakness(es)

The proposed guidance permits registrants to conclude that controls are “ineffective due solely to, and only to the extent of, the identified material weakness(es).” (page 46) This conclusion may be appropriate in some cases, but the SEC has not provided sufficient guidance on the limitations of this approach. In many instances, the concept of “due solely to, and only to the extent of” would be clearly inappropriate. If management uses this, they have concluded that the material weakness is material only on its own, not in combination with other control weaknesses. Management should be encouraged to consider the potential combination of a material weakness and other control weaknesses to determine whether that combination yields another material weakness. Without more conditional language, companies will not fully consider the pervasiveness of identified material weakness(es).

There are several concerns on the approach suggested in the Proposal. First, any material weakness arising from the control environment or other company level controls should not be concluded in this manner. Second, any weaknesses related to financial reporting or the application of generally accepted accounting principles should likely not be concluded in this manner. Third, it would be difficult to suggest that weaknesses associated with critical estimates or unusual transactions could be concluded in this manner, since the cause of such control failures are often hard to precisely determine and could easily be related to the skill levels of financial reporting personnel and their ability to deal with complex and non-routine matters. These first three concerns cover a significant percentage of the types of material weaknesses reported to date. Fourth, inclusion of the optional plural (“weakness(es)”) itself raises questions—the existence of more than one material weaknesses should strongly call into question management’s ability to assess whether ineffectiveness is “due solely to, and only to the extent of,” the disclosed problems. Fifth, how should the existence of significant deficiencies in other areas be considered in this assessment?

Disclosures About Material Weaknesses

The Proposal indicates that “companies should consider including the following in their disclosures: “... management’s current plans, if any, for remediating the weakness.” (page 47) Disclosure of management’s plans should be performed outside of management’s assessment report so the auditor does not report currently on management’s plans for future remediation. Similarly, any disclosures of the “potential impact and importance” of identified material weaknesses (page 47) should be noted as not having been subject to auditor procedures or reporting.

Cost Risks

The Staff has included a caution to registrants that “In addition, the benefits of the proposed amendments may be partially offset if the company’s auditor obtains more audit evidence directly itself rather than using evidence generated by management’s evaluation process, which could lead to an increase in audit costs.” (page 59) While this statement is true, its positioning in the Cost-Benefit Analysis section of the release increases the risk that registrants will not properly consider this guidance. This point should be included in the discussion of type and amount of evidential matter (pages 38-39).

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We hope that our comments and observations will assist the U.S. Securities and Exchange Commission in finalizing the Proposal. Crowe Chizek and Company LLC fully supports efforts to improve financial reporting and corporate governance, with the objective of furthering the public interest.

We would be pleased to discuss our comments with members of the Commission or its Staff. If you have any questions or would like to discuss these issues, please contact Wes Williams at (574) 236-8626, James Brown at (574) 236-8676, or Richard Ueltschy at (502) 420-4446.

Cordially,



Crowe Chizek and Company LLC