



ADVANCING GLOBAL COMMUNICATIONS

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February 26, 2007

The Honorable Christopher Cox, Chairman
U.S. Securities and Exchange Commission
Attn: Nancy M. Morris, Secretary
100 F Street, NE
Washington, DC 20549-1090
Electronic Address: rule-comments@sec.gov

The Honorable Mark W. Olson, Chairman
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006-2803
Electronic Address: comments@pcaobus.org

Re: SEC File Number S-7-24-06; Management's Report on Internal Control Over Financial Reporting (71 Fed. Reg. 77,635);
PCAOB Release No. 2006-007; Proposed Auditing Standard

Dear Chairman Cox and Chairman Olson:

The Telecommunications Industry Association (TIA) appreciates the opportunity to comment on the proposed regulations promulgated by the Securities and Exchange Commission (SEC)¹ and the Public Company Accounting Oversight Board (PCAOB). TIA commends the agencies for addressing the important issue of the Sarbanes-Oxley Act² (SOX Act) compliance. Our members are particularly concerned with the impact of Section 404 on small- and medium-size businesses (SMEs). While the goal of Section 404, protecting investors from financial accounting manipulations, is meaningful, it has resulted in a negative, unintended burden on the small business community.

TIA represents more than 600 companies that provide information and communications technology products and services for the global marketplace through its core competencies in standards development, domestic and international advocacy, as well as market development and trade promotion programs. The association facilitates the convergence of new communications networks while working for a competitive and innovative market environment. TIA has a broad membership with interests in various policy issues affecting their business. Eighty percent of TIA's members are comprised of small-

¹ *Management's Report on Internal Control Over Financial Reporting; Proposed interpretation; Proposed Rule, 71 Fed. Reg. 77,635 (Dec. 27, 2006)* [hereinafter *Management's Report*].

² *Sarbanes-Oxley Act of 2002*, Pub. L. No. 107-204, 116 Stat. 745 (2202).

or medium-sized businesses, and TIA appreciates this opportunity to comment on the effects of SOX Section 404 on these entities.

Representing 99.7 percent of all employer firms and employing half of all private sector employees, small businesses are vital to the United States economy.³ The U.S. economy depends on these companies to create jobs and spur innovation, particularly since 41 percent of high-tech workers are employed by SMEs.⁴ Unfortunately, this essential sector of the U.S. economy is being harmed by the effects of SOX Section 404.

Since the enactment of the SOX Act, TIA has been concerned with its disproportionate effects on small- and medium-sized public companies. Although not the objective of the SOX Act, compliance with Section 404 triggers extensive administrative costs and auditing fees that particularly impact SMEs. Based on data from Foley & Lardner's 2004 and 2005 studies on the impact of the SOX Act, audit fees increased an average of 84% for Standard and Poor's (S&P) small-cap companies and 92% for S&P mid-cap companies, while only increasing 55% for S&P 500 companies.⁵ Based on data from the same study, the average cost of being public in FY 2004 for companies with annual revenue of under \$1 billion, increased by \$851,00 (33%) over 2003.⁶ These costs can be attributed in large part to accounting and auditing fees, lost productivity, and legal fees associated with SOX compliance.⁷

The costly burden of Section 404 of the SOX Act is driving small companies out of public markets. It is simply too difficult for these companies to comply with the requirements of Section 404 and operate as a public company. As a result, these companies are choosing not to go public or to delist as a public company.⁸ Further, some of these companies are turning to foreign exchange to list, injuring U.S. competitiveness in a global market.

TIA hopes that the SEC and PCAOB use this rulemaking to remedy the significantly different impact that the SOX Act has on smaller and larger companies, and the unexpected burden that is falling on smaller companies. There is a need for regulatory clarity regarding this issue, which is why TIA supports the provisions in both the SEC and PCAOB proposed rules addressing scalability.⁹ It is important that management and auditors have the freedom to consider both the size and complexity of a company when identifying a material weakness, which is a deficiency, or combination of deficiencies in Internal Control Financial Reporting (ICFR) such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis by the company's ICFR.¹⁰ Recognizing that smaller companies have fewer business lines, less complex business processes and reporting systems, and fewer levels of management, will allow both management and auditors to focus only on material weaknesses, while reducing the time and money exerted by small companies on SOX compliance.

³ Advocacy Small Business Statistics and Research at <http://app1.sba.gov/faqs/faqindex.cfm?areaID=24> (last visited Feb. 7, 2007).

⁴ *Id.*

⁵ Foley and Lardner, LLP, "The Cost of Being Public in the Era of Sarbanes-Oxley," June 16, 2005.

⁶ *Id.*

⁷ *Id.*

⁸ Neal Wolkoff, "American's regulations are scaring the Sox off small caps," Financial Times, Aug. 1, 2006.

⁹ Add cite to appropriate section of each proposed reg

¹⁰ Management's Report, *supra* note 1, at 13.

Additionally, TIA supports a minimum one-year extension of the exemption for non-accelerated filers, unless and until a cost/benefit analysis of the regulations has been completed. This can be achieved through full-field testing of the proposed regulations on accelerated filers before they become mandatory for non-accelerated filers. Extending the exemption for non-accelerated filers will allow these companies to properly prepare for compliance and reduce the likelihood of a material weakness on their first audit. Further, the SEC and PCAOB can use this time to evaluate the effects of the regulations on larger companies before imposing them on smaller companies, for whom the regulations are significantly more burdensome.

TIA strongly believes that it is important to balance the interest in protecting investors' interest, with the need to foster the U.S. capital market and small- and medium-size public companies, in particular. We believe this can be accomplished through the scaled approach to Section 404 where the requirements and related costs are appropriate to the company's size.

We would like to thank you on behalf of our members for this opportunity to submit comments regarding implementation of the Sarbanes-Oxley Act and your agencies' proposed regulations. If you have any questions about this submission, or if there are other ways we can assist you, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Seiffert", with a stylized flourish at the end.

Grant Seiffert
TIA President