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To the participating CSA members, c/o

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Proposed 52-111- Reporting on Internal Control over Financial Reporting

I have been involved in financial reporting for more than 40 years as an auditor, a regulator, a director and a standard setter in Calgary, Toronto and Dallas. The views and recommendations that follow are based on this experience.

I seriously doubt that the SOx “solution” will prevent “Enronitis”- type problems in the future. Any benefits will be far less than the costs. Why Canada must copycat all of the highly criticized US knee-jerk reaction is beyond me. The personal liability provisions and throwing them in jail will do far more at a fraction of the cost.

My primary concern is the assumption that “one size fits all”. When I raised this at an ASC meeting, one commenter said we have adopted one size for all in the case of requiring audited financial statements. We have in the sense that the audit report is the same; we have not in how the auditor gets there. Only those controls on which the auditor relies must be evaluated and tested.

I recommend the proposed instrument be changed to allow all issuers or at least those under a certain size (in numbers of employees-say 1,000) to have an exemption to disclose those “standard” internal controls that they have chosen to not adopt and to say why and what they do instead.

Size tests based on market cap or similar dollar measures often do not recognize the problem. An issuer in capital-intensive industries such as real estate or oil and gas can have a very large market cap and very few employees resulting in difficulties in, or the impossibility of, achieving segregation of duties. In other cases, the market cap can be relatively low but the issuer is of a size where it must rely on internal controls. Limit required compliance to those issuers that must, because of their size, type of business and number of employees rely extensively on internal controls. Time-based deferrals don't solve the problem.

At present, auditors, working with their clients, decide, in almost all cases, to use some substantive procedures rather than all internal control-based compliance tests. The decision is presently where it should be, with those who know the situation best and are concerned about both efficiency and effectiveness.

Sox and this instrument were written by politicians, lawyers, big issuers, big auditors and big regulators who can't hope to have the requisite knowledge and experience. I doubt most of them have ever been involved to any degree with smaller issuers. I don't doubt that most of them have limited experience when it comes to different industries and businesses. The whole idea of relying on responses to proposed rules is the wrong way to go. A taskforce made up of those who know should have done the drafting. Adopting the above change would allow the regulators to better understand what they were trying to do and what alternatives exist for getting to the necessary answer. Why not try the above exemption for a year? If an issuer files in the US there would be no exemption. If the issuer is Canadian only, give them the exemption while you learn what they do and while you can watch what the Americans do. Canadian issuers didn't have the problems you're trying to cure.

“If you're doing something wrong, you'll do it badly.” This is evident in many ways. Three examples seem obvious. (i) You adopted the “present fairly the financial condition” without standards for what was meant by “fairly” or by “condition”. I doubt you know, or if you think you do, you'll

find many who don't agree. Certainly judges aren't the ones who should be writing fairness let alone condition standards case-by case. (ii) You said use your judgement as to what framework you use for internal controls. Again, I expect it was because you didn't know what to do. (iii) You definitely should have known what you were doing when you decided to shorten the filing deadlines for annual and interim financials but you couldn't have because the effect is the opposite to what you should have intended; financials are less, not more, reliable because many issuers don't have time to get it right. Your stated objective, to improve the quality and reliability of disclosure, has not and will not be achieved. Aside from the enormous costs, perhaps it doesn't matter; the vast majority of disclosure is just fine.

Specific Request for Comment

1. No. Please see above recommendation.
2. No. The Venture split is artificial. Please see above recommendation.
3. No. 4. Your minimum is fine.
5. Yes, except unusual circumstances should be contemplated (Eg. A war has broken out and despite reasonable best efforts, the information can't be obtained. Provide the equivalent of a BAR with more than 75 days for an acquisition?)
6. Most likely. Industry or similar organizations should be asked to develop using diverse taskforces.
7. We don't need any more "guidance"; we need some exemptions.
8. No. How can the manner in which evidence is maintained, "ensure its trustworthiness"? Using Income Tax as a model is inappropriate; we don't need another 3,000+ pages of "help".
9. No.
10. No, it may be adequate from a regulator's point of view but does that mean it's appropriate?
11. Yes, although I don't know what is meant by "transparency"- you can see through it?
12. Yes. Please see recommendation above. Disclosure of the limitation should be required.
13. No. Please see recommendation above.
14. Yes. Please see recommendation above.
15. No. Phasing in simply delays the pain and waste.
16. No. Please see recommendation above.

17. Costs to the system of regulatory staff increases. Legal costs of litigation arising from these requirements both regulatory and civil. Diversion of talent to these requirements when it could be used for better purposes.
18. No. Compliance will not achieve the objectives stated and certain of the objectives are questionable. We'll be sorry when we find the emperor has no clothes.
19. No.
20. Please see recommendation.
21. No.
22. The timing gap is no more problematic than unavoidable other timing gaps. It takes only a moment for controls or their application to change.
23. No.

Do most of us feel we're wasting our time in responding? You should have made this a question. Please act responsibly; make the change to allow the exemption, and while you're at it extend the filing deadlines.

Yours truly,

Henry R. Lawrie FCA