



September 9, 2005

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments, RIN 3064-AC91

Re: Annual Independent Audits and Reporting Requirements
70 FR 44293 (August 2, 2005)

Dear Mr. Feldman:

America's Community Bankers ("ACB")¹ appreciates the opportunity to comment on the proposal² issued by the Federal Deposit Insurance Corporation ("FDIC") to amend its regulations concerning annual independent audits and reporting requirements. The proposal would increase the asset-size threshold to \$1 billion from \$500 million for required internal control assessments by bank management and external auditors and for requiring audit committee members to be independent of management.

ACB Position

ACB strongly supports this proposal. We believe that the adoption of the proposal as a final rule will provide immediate, much needed relief to many overburdened community banks. ACB strongly supports the FDIC's proposal that will relieve institutions with assets between \$500 million and \$1 billion from the onerous management report on the effectiveness of internal controls and the associated auditor's attestation report as required by Section 36 of the Federal Deposit Insurance Act. ACB also strongly endorses the parallel increase in the threshold for audit committee independence requirements. ACB believes that raising these thresholds will not jeopardize the ability of the institutions in this asset range from continuing to operate in a safe and sound manner.

ACB has submitted two requests for this change to the FDIC. Each letter outlined our specific concerns. Copies of both letters are attached. In a letter dated September 21, 2004, ACB described concerns over the substantial impact that the enactment of the Sarbanes-Oxley Act ("Sarbanes-Oxley") and the implementation of the requirements have had on

¹ America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

² 70 Fed. Reg. 44293 (Aug. 2, 2005)

public and private financial institutions, including mutual institutions, with \$500 million or more in total assets (“FDICIA banks”). Many of these concerns arise from the FDICIA audit and attestation requirements that are similar to those of Sarbanes-Oxley Section 404 and Public Company Accounting Oversight Board Auditing Standard 2.

Community banks continued to experience substantial audit fee increases in 2005 coupled with serious strains on internal resources as audit firms apply the new public company internal control attestation standards to all banks whether they are public, private or mutual. On March 18, 2005, ACB specifically requested that the FDIC promptly increase the asset threshold from \$500 million to \$1 billion for the internal control report and auditor attestations. ACB believes the increased threshold would provide some much needed relief to privately held and mutual institutions with less than \$1 billion in assets.

ACB encourages the prompt adoption of the proposal, in its entirety. We also urge the FDIC to consider allowing the amendments to be effective for banks reporting on a September 30, 2005 fiscal year-end reporting cycle. There are a large number of well-managed institutions that operate on a September 30 fiscal year end. ACB believes that these institutions should be afforded the relief provided by this amendment during the 2005 reporting year, rather than being required to wait until the latter part of 2006.

Finally, the preamble³ to the proposal indicates that the FDIC has identified other possible revisions to its Part 363 that would mitigate the duplication of FDICIA and Sarbanes Oxley requirements. We strongly urge the FDIC to consider any changes that may provide relief to those mutual and private institutions that are not subject to the Sarbanes Oxley requirements, but who are required to comply with the provisions of Part 363. We welcome the opportunity to work with the FDIC to identify these changes and we urge the FDIC to issue a proposal for comment promptly.

Conclusion

Thank you for the opportunity to comment on this important matter. We appreciate the FDIC’s willingness to consider ACB’s request for relief in this area. We reiterate that these changes will provide much needed relief and will not result in a diminution of the safe and sound operation of these private or mutual institutions. Should you have any questions, please contact Dennis Hild at 202-857-3158 or dhild@acbankers.org or the undersigned at 202-857-3121 or cbahin@acbankers.org.

Sincerely,



Charlotte M. Bahin
Senior Vice President, Regulatory Affairs

³ Id at 44295.



September 21, 2004

The Honorable Donald E. Powell
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Request for Guidance

Dear Chairman Powell:

America's Community Bankers ("ACB") represents a large constituency of privately held banks, including over 90 percent of the mutual institutions insured by the Federal Deposit Insurance Corporation ("FDIC"). Since enactment of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), a number of questions have arisen about the application of that Act to mutual institutions and other private banks of all sizes. Recently, we became aware of a situation that indicates an urgent need for guidance from the FDIC and other federal bank supervisors.

We are writing to request that the FDIC, either alone or in conjunction with the other federal bank supervisors, issue written guidance with regard to internal control standards for private and mutual insured depository institutions with \$500 million or more in total assets ("private FDICIA banks").

Since adoption of the Federal Deposit Insurance Corporation Improvement Act in 1991 ("FDICIA"), private FDICIA banks have been subject to the annual audit and reporting requirements of Section 36 of the Federal Deposit Insurance Act and Part 363 of the FDIC regulations.⁴ Under these provisions, insured depository institutions with \$500 million or more in total assets, whether privately held, publicly owned or mutual, have been required to submit annual management assessments of their internal control structure and obtain attestations of those assessments from their independent external auditor.⁵ The regulations indicate that the attestation should be made in accordance with generally accepted standards

⁴ 12 U.S.C. § 1831m and 12 C.F.R. Part 363.

⁵ 12 U.S.C. §§ 1831m (b)(2) and (c).

for attestation engagements.⁶ Those standards, prior to the passage of Sarbanes-Oxley, have been established by the American Institute of Certified Public Accountants (“AICPA”).⁷ Sarbanes-Oxley established certain internal control requirements for all public companies. That law adopted language similar to FDICIA and requires all public companies to provide annual management assessments of internal controls and to obtain an independent attestation of the assessments. Sarbanes-Oxley also established the Public Company Accounting Oversight Board (“PCAOB”) to govern the public auditing profession and develop auditing standards, including standards for the attestation of internal control structure assessments for public companies. The PCAOB adopted attestation standards that were approved by the SEC on June 17, 2004.⁸ External auditors must apply these standards for public companies subject to Sarbanes-Oxley. However, questions have been raised as to if and how these standards should be used in connection with the required attestation of internal control assessments for private FDICIA banks.

Throughout this process, ACB has maintained active dialogue with FDIC staff, and we have expressed our concerns over the lack of formal guidance for private FDICIA banks in light of the revised standards for public entities. We have been advised that the AICPA attestation standards and AT 501 continue to govern the private FDICIA banks as they have in the past notwithstanding the adoption of new standards by the PCAOB. We have confirmed this position with AICPA staff, who also informed us that they are working on revising the auditing and attestation standards for private companies, including AT 501.

Despite what we have been told by FDIC and AICPA staff, our members have informed us that the PCAOB standards are having a significant impact on the processes that external auditors are utilizing in the review of internal control structure reports for private FDICIA banks. Since AT 501 was not revised and neither was the FDICIA regulation, external auditors are placing greater reliance on PCAOB Auditing Standard 2 for engagements with private FDICIA banks. Since auditors are under tremendous pressure to improve their audits of public companies, it is understandable that they view the PCAOB standard as setting the standard for what is appropriate for all companies—private or public. This is a troubling development. The PCAOB standard is much more extensive and intrusive than what the private FDICIA banks have experienced in the past. While it is important that these banks have a sound internal control structure, the PCAOB attestation standards for publicly held institutions is placing an undue burden on privately held institutions. Many private FDICIA banks do not have the in-house staff and resources available to engage in such an undertaking and will have to hire additional staff or expensive consultants and advisers. Public and private members have already reported that they are facing significant increases in auditing fees as a result of the PCAOB attestation standards and some of these increases do not seem justified.

⁷ AICPA’s Attestation Standards Section 501 (“AT 501”) – *Reporting on an Entity’s Internal Control Over Financial Reporting*.

⁸ Order Approving Proposed Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with An Audit of Financial Statements*.

Without any guidance from the FDIC, neither the external auditors nor the private FDICIA banks know how the PCAOB attestation standards should affect the existing attestation process. The auditors claim that the banking agencies made it clear that they needed to be doing more under AT 501 and FDICIA. Many auditing firms therefore appear to be utilizing the PCAOB attestation standards to determine what extra work they will be doing for the private FDICIA banks. The unfortunate result is inconsistent practices among different auditing firms and banks. This not only raises a fairness issue, but also creates confusion for private FDICIA banks, public auditors, and other advisers.

In light of this situation, we are requesting that the FDIC issue guidance as soon as possible to avoid further unnecessary expense and confusion. We request the FDIC to address the attestation standards that should apply to private FDICIA banks and to what extent, if at all, the PCAOB attestation standard should impact the internal control structure assessment and attestation processes at these banks. We believe this guidance is necessary because of the limited resources of the private FDICIA banks, their lack of access to the capital markets, and the limited risk to public investors due to the private nature of their ownership. We would be pleased to provide additional details about the information we are receiving from our members and the results of our consultations with auditing firms about this issue.

Thank you for your consideration of our request. We look for to receiving the guidance that we believe will reduce the burden faced by privately held community banks.

Sincerely,



Diane Casey-Landry

cc: Robert Storch
Federal Deposit Insurance Corporation

Richard Spillenkothen
Gerald A. Edwards, Jr.
Federal Reserve Board

Zane D. Blackburn
Office of the Comptroller of the Currency

Scott Albinson, Managing Director, Supervision
Office of Thrift Supervision



March 18, 2005

The Honorable Donald E. Powell
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Request for Guidance

Dear Chairman Powell:

America's Community Bankers ("ACB") represents the interests of both publicly held and privately held banks, including over 90 percent of the mutual institutions insured by the Federal Deposit Insurance Corporation ("FDIC"). We appreciate issuance of Financial Institution Letter ("FIL") 122-2004 last November. ACB had expressed the concerns of our members over the substantial impact that the enactment of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") has had on public and private financial institutions with \$500 million or more in total assets. The FIL provided much needed guidance on the internal control attestation requirements for independent auditors for both public and private banks.

While the FIL responded to some of our concerns, one additional action which could make a meaningful impact for private and mutual banks is for the FDIC to amend its rules at Part 363 and raise the threshold of those institutions required to comply with Part 363 from \$500 million to \$1 billion in assets. The FDIC has publicly stated that it is considering raising the current \$500 million threshold for institutions to comply with the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"). We strongly urge you to take this action.

Public banks of all sizes are required to comply with the requirements of Sarbanes-Oxley section 404 and the implementing standards issued by the Public Company Accounting Oversight Board ("PCAOB"), the Securities and Exchange Commission ("SEC") and the American Institute of Certified Public Accountants. Mutual and private banks are not required to comply with the requirements of Sarbanes-Oxley, but we have heard that many privately held and mutual banks with assets between \$500 million and \$1 billion continue to experience substantial audit fee increases coupled with serious strains on internal resources in light of the new public company standard and in fact some audit firms are de facto applying the standard.

We believe the change we request will provide much needed relief for those private and mutual institutions under \$1 billion in assets who are currently struggling to absorb the

substantial costs associated with FDICIA reviews by their external auditors that are primarily being driven by Sarbanes-Oxley Section 404 and PCAOB Auditing Standard 2.

We strongly urge the FDIC and other banking agencies to play an active role in the SEC's Roundtable on April 13 to evaluate the impact of Sarbanes-Oxley Section 404 on small businesses. Both public and private community banks are being dramatically impacted by this landmark legislation. Based on a substantial amount of input from members on the overwhelming costs and burdens of Sarbanes-Oxley Section 404, ACB believes that without explicit and reasonable relief from those provisions, many community banks face serious issues related to significantly increased costs as well as resource requirements which could erode retained earnings and weaken capital adequacy, creating very real safety and soundness issues.

In reviewing this request, we urge you to consider the limited resources that community banks have and that private and mutual community banks have no access to the capital markets. The recent onslaught of regulatory and legislative requirements hinders these banks from remaining competitive and jeopardizes the vital role they play in meeting the financial service needs of local communities and small businesses.

We would appreciate the opportunity to meet with you and the FDIC staff to further discuss the status of increasing the FDICIA threshold and the potential for the Agencies to advance financial institution relief from the provisions of Sarbanes-Oxley Section 404.

We would be pleased to work with your staff to provide additional information. Thank you for your consideration of our request. And again, our thanks for your past efforts to relieve this burden.

Sincerely,



Diane Casey-Landry

cc: Robert Storch
Federal Deposit Insurance Corporation

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