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January 31, 2008

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

Dear Mr. Feldman:

**Re: Proposed Rule – Annual Independent Audits and Reporting Requirements
(12 CFR Parts 308 and 363)**

KPMG LLP is pleased to provide our comments on the Proposed Rule entitled “Annual Independent Audits and Reporting Requirements” (12 CFR Parts 308 and 363), published in the Federal Register on November 2, 2007 by the Federal Deposit Insurance Corporation.

KPMG supports the proposed amendments that would incorporate certain audit, reporting, and audit committee practices from the Sarbanes-Oxley Act of 2002 into Part 363. We also agree that the proposed amendments would provide clearer and more complete guidance to institutions and independent public accountants concerning compliance with Section 36 of the Federal Deposit Insurance Act and Part 363.

We have the following comments on certain sections of the proposed rules, as noted:

Part 363.1(b) – Compliance by Subsidiaries of Holding Companies

The proposed rule would require the total assets of a holding company’s insured depository institution’s subsidiaries to comprise 75 percent or more of the holding company’s consolidated total assets as of the beginning of its fiscal year in order for an institution to comply with Part 363 at the holding company level. The FDIC specifically requested comment on whether 75 percent is an appropriate threshold. We believe the 75 percent threshold is appropriate and we support the proposed amendment.

Part 363.3(g)(2) – PCAOB Inspection Reports

Part 363.3(g)(2) proposes that the independent public accountant must file with the FDIC the PCAOB inspection report issued with respect to that accounting firm. The PCAOB inspection report consists of both “public” and “nonpublic” information. Pursuant to Section 104(g)(2) of the



Sarbanes-Oxley Act of 2002, the nonpublic portion of the report cannot be disclosed by the PCAOB unless criticisms of the accounting firm’s quality controls remain unremedied 12 months after issuance of the report. Only two exceptions to this statutory prohibition are provided: (i) under Section 104(g)(1), the inspection report in its entirety must be provided to the SEC and each appropriate state regulatory authority (typically, the state boards of public accountancy) and (ii) under Section 105(b)(5)(B)(ii), such confidential information may be disclosed to a “Federal functional regulator” when the Board believes, in its discretion, that disclosure is necessary to accomplish the purposes of the Sarbanes-Oxley Act or to protect investors. We do not understand the PCAOB to have made such a determination concerning nonpublic portions of its inspection reports. Accordingly, we respectfully submit that the proposed regulation at Part 363.3(g)(2) runs counter to the clearly-expressed statutory statement that the discretion to make limited exceptions to the prohibition on disclosure of PCAOB inspection reports’ “nonpublic” components resides exclusively with the PCAOB. It would thwart both the overall statutory regulatory scheme of the Sarbanes-Oxley Act and the discretion specifically delegated to the PCAOB if another federal agency effectively could negate these provisions by requiring the accounting firm to file the report directly.¹

Parts 363.4(c) and 363.5(c) – Engagement Letters

Paragraph 363.5(c) requires the audit committee to ensure that audit engagement letters and any related agreements do not contain impermissible limitation of liability provisions. We agree with this proposal. We believe the audit committee is in a unique position to provide effective oversight in this area. However, Paragraph 363.4(c) would require the institution to file with the FDIC and other appropriate regulators a copy of the audit engagement letter. We consider this safeguard redundant and recommend it be deleted.

Part 363.4(c) – Availability of Filed Documents under Freedom of Information Act

We note that the proposed rule requires each insured depository institution to file with the FDIC certain documents provided to the institution by its independent auditor (Part 363.4(c)). These documents contain confidential, proprietary trade secret information belonging to the auditor, and the auditor would be likely to suffer competitive injury if the documents were disclosed to the public. These materials, when filed with the FDIC, may become subject to disclosure under the Freedom of Information Act or similar laws. Accordingly, we urge that the final regulation specify

¹ Although the proposed rule provides that the nonpublic portion of the report would not be made available for public viewing, that provision does not remedy the statutory violation represented by the required filing.



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that the documents identified in Part 363.4(c) be declared to be documents and information that are “exempt from disclosure” under FOIA pursuant to 12 C.F.R. § 261.14.

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We would be pleased to discuss our comments with you at any time. Please call Michael D. Foley at (212) 909-5517 if you have any questions.

Very truly yours,

KPMG LLP