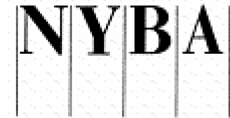

Michael P. Smith
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January 31, 2008

Via E-Mail
Mr. Robert E. Feldman
Executive Secretary
Attn: Comments, Federal Deposit Insurance Corp.
550 17th Street, N.W.
Washington, D.C. 20429

Re: Federal Deposit Insurance Corp. ("FDIC") FIL-96-2007

Dear Mr. Feldman:

The New York Bankers Association ("NYBA") thanks the Corporation for the opportunity to provide comments on the FDIC's proposed amendments to 12 CFR Part 363 ("Annual Independent Audits and Reporting Requirements.") While we find many of the changes to be appropriate adjustments to existing requirements, we feel that several of the proposals, as currently drafted, may be overly and unnecessarily burdensome. NYBA is comprised of the community, regional and money center banks and thrifts doing business in the State of New York. Our members have aggregate assets in excess of $5 trillion and more than 300,000 New York employees.

Non-Compliance Disclosure Requirement

As proposed, the rule would require management's assessment of compliance with designated safety and soundness laws and regulations to include a clear statement as to management's conclusion regarding compliance and the disclosure of any noncompliance with such laws and regulations to the FDIC. The proposal also seeks comment as to whether the disclosure of instances of non-compliance be made available for public inspection. Pursuant to Part 363 of the FDIC's regulations, management already is required to assess its compliance with designated safety and soundness laws and regulations. This

additional proposed requirement to disclose any noncompliance – apparently no matter how technical or *de minimis* – would not only create additional unnecessary reporting burdens, but could also cause significant confusion and unnecessary concern to the public.

The current regulation - which requires disclosure of material weaknesses in a public company's internal controls over financial reporting - recognizes that the incremental benefit of publishing a detailed and explicit list of non-material deficiencies is greatly outweighed by the burdens and risks of broad-based disclosure. This is particularly true as management's assessment of compliance for the investing and banking public to judge the material safety and soundness weaknesses of the institutions with which they deal is currently available for public inspection and provides sufficient information. Any instances of noncompliance can and would be more appropriately addressed through oversight via examination and discussion between regulators and banks. Consequently, we do not think that any change to the disclosure requirements is appropriate – particularly if the disclosures were to be made public.

Filing Engagement Letters

The proposed rules would require that banks file their signed audit engagement letters with the appropriate regulator within 15 days of signing, to afford such regulator the opportunity to review the letters, in a timely fashion, for language that would limit auditor liability. We believe that this new requirement is unnecessary, as directors already have a general fiduciary obligation to ensure that banks are not exposed to inappropriate levels of liability. Moreover, if the proposed rules are also going to require that the audit committee monitor for this language, then the fifteen-day filing requirement unnecessarily adds to paperwork and compliance burdens with little or no additional benefit. The language, too, can be reviewed by the FDIC during examination, where any additional concerns may be raised.

Independence – External Auditor

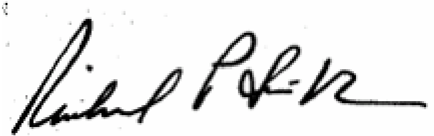
Banking institutions are already required to utilize auditors that are independent under the rules of the SEC and the AICPA. The proposed regulation calls for compliance with a third set of independence rules – those of the PCAOB. This proposed requirement, however, may add significant challenges to those already faced by banking institutions in smaller communities, where there may not be ready access to multiple audit firms that satisfy both the SEC and AICPA independence rules and have experience in auditing banking institutions. We suggest that any final rule requiring compliance with the PCAOB rules include a mechanism for the FDIC to have discretion to ease the rules in cases where these restrictions can cause problems.

Illustrative Management Reports

The proposal provides examples of management reports to facilitate the preparation of the reports by management. The proposal indicates that the exact language in the examples will not be required, but it is important that the FDIC make this clear in the final rule to avoid misinterpretation by public accounting firms.

We thank you for the opportunity to comment on this proposal.

Sincerely,



Michael P. Smith