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September 13, 2005

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

Also sent via email to Comments@FDIC.gov
Subject Matter Line: RIN 3064-AC91

Re: Federal, Public Comment on Proposed Deposit Insurance Corporation Rule "Annual Independent Audits and Reporting Requirements" as Published in the *Federal Register*, Vol. 70, No. 147, August 2, 2005, RIN 3064-AC91

Dear Mr. Feldman:

Thank you for the opportunity to comment on the proposed rules for Annual Independent Audits and Reporting Requirements published August 2, 2005 in the *Federal Register*.

Increasing the Asset Size Threshold for Internal Control Assessments

Crowe Chizek agrees with the FDIC's recommendation to increase the asset size threshold for internal control reporting requirements, as set forth in Part 363, from \$500 million to \$1 billion. With continued consolidation over the last decade resulting in 86% of industry assets being held by institutions exceeding \$1 billion, we agreed that safety and soundness of the banking and thrift industry, as a whole, can still be achieved with this increased threshold. We believe \$1 billion in assets is a more appropriate measure of a small bank. We also observe the Office of Comptroller of the Currency recognizes the need for separate examination procedures for large banks versus small banks. The Comptroller's Handbook, *Community Bank Supervision*, states it generally applies to supervision of national banks under \$1 billion in total assets¹, which is consistent with the proposed FDIC rule.

¹ The Introduction to Comptroller's Handbook, *Community Bank Supervision*, states that: "This booklet explains the philosophy and methods of the Office of the Comptroller of the Currency (OCC) for supervising community banks. Community banks are generally defined as banks with less than \$1 billion in total assets and may include limited-purpose chartered institutions (e.g., trust banks, community development banks)."

Composition of the Audit Committee

Crowe Chizek also concurs with the FDIC's recommendation to increase the asset size threshold at which members of the audit committee must be independent from management, as set forth in Part 363, from \$500 million to \$1 billion. For many smaller institutions, this requirement about the composition of the audit committee can be a difficult one to achieve.

Recommendation for Consistent Application of Independence Rules

Crowe Chizek suggests the FDIC's recommendation regarding audit committee independence for nonpublic institutions should also apply to external auditor qualification, and we urge the FDIC to increase the asset size threshold at which nonpublic institutions would apply the SEC independence rules to auditor independence. If the audit committee members do not need to be independent, it seems inconsistent to require the auditor to meet SEC independence rules for a smaller nonpublic institution.

We believe the independence standards of the SEC, based on public company investor needs, are most relevant to public companies which are subject to different laws, regulations, and user needs, there are inherent differences between public and nonpublic companies. The current guidelines provide for the external audits of each FDIC-insured depository institution with \$500 million or more in total assets, whether or not it is a public company, to comply with the SEC's auditor independence requirements. These requirements include the non-audit service prohibitions and audit committee pre-approval requirements implemented by the SEC's January 2003 auditor independence rules. As the FDIC proposal points out when discussing, "[t]he FDIC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile." We agree with that assertion and believe the added requirements to follow the SEC independence rules are not appropriate for the smaller community banks under \$1 billion in total assets. As previously noted, we observe the Office of Comptroller of the Currency recognizes that distinction in The Comptroller's Handbook, *Community Bank Supervision*, which states that it generally applies to supervision of national banks under \$1 billion in total assets.

Crowe Chizek agrees with the position taken in *Interagency Policy Statement on the Internal Audit Function and Its Outsourcing* dated March 17, 2003, "The agencies believe that a small nonpublic institution with less complex operations and limited staff can, in certain circumstances, use the same accounting firm to perform both an external audit and some or all of the institution's internal audit activities." The policy statement also notes, in part, that "...the agencies view an internal audit outsourcing arrangement between a small non-public institution and its external auditor as not being inconsistent with their safety and soundness objectives for the institution."

There are operational synergies in using one firm for external audit and some or all internal audit. Additionally, smaller institutions may be able to reduce their overall costs if the threshold for external auditor compliance complies with SEC independence requirements for a nonpublic company is raised from \$500 million to \$1 billion in assets. Further, many of these institutions do not want to manage multiple relationships. We believe the audit committee of

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community banks should decide whether or not to use its auditor for other services within the existing independence requirements for auditors of private companies. If the FDIC's goal is to accommodate those institutions with limited resources, then we believe it stands to reason an appropriate step is to also raise the requirement to follow SEC independence rules, for smaller institutions and their auditors, from \$500 million to \$1 billion in assets. This would also offer simplicity for compliance with regulations rather than monitoring differing thresholds for independence matters. We believe all independence requirements should be at \$1 billion for community banks instead of one measure for audit committees and a different measure for auditor independence.

The decision to obtain non-audit services from the audit firm should be undertaken by management, the board of directors and audit committee. In our experience, they carefully consider independence concerns as well as concerns as to the best-qualified service provider. Smaller institutions should have the opportunity to seek the best service possible for them based their own facts and circumstances.

We believe community banks are best served by allowing the audit committee to make the decision whether or not to follow the SEC independence rules based on concerns with operational synergies, controlling costs, the additional burden of managing multiple relationships, and the opportunity to have the best service provider. If the audit committee members do not need to be independent, it seems inconsistent to require the auditor to meet SEC independence rules and adds the burden of monitoring multiple thresholds for compliance with independence standards. Accordingly, we encourage the FDIC to increase the asset size threshold of nonpublic institutions at which point smaller institutions and their auditors must follow the SEC independence rules from \$500 million to \$1 billion.

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Crowe Chizek hopes our comments help the FDIC in their consideration of the proposed rules. If you have any questions, please contact Wes Williams at (574) 236-8626.



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