

January 21, 2008

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

RE: Part **363** – Independent Audits and Reporting Requirements

Mr. **Feldman**:

Mutual of Omaha Bank **welcomes** the **opportunity** to comment on the FDIC's proposed amendment to 12 CFR Parts **308** and **363** "**Annual** Independent Audits and Reporting Requirements".

Mutual of **Omaha** Bank is a wholly-owned subsidiary of Omaha Financial **Holdings**, Inc., a wholly-owned subsidiary of Mutual of Omaha Insurance Company. Mutual of Omaha Bank is headquartered in Omaha, Nebraska and is regulated by the Office of Thrift Supervision. Mutual of Omaha Bank operates ten branches in Nebraska and Colorado, with total assets of \$600 **million**.

Management's Assessment of Internal Control

Proposed Section 363.2 "Annual reporting requirements" will require management's report to include, among other things, an assessment by management of the effectiveness of internal controls over the preparation of regulatory financial **statements** in accordance with regulatory reporting instructions and a statement expressing management's conclusion as to whether the institution's internal control over financial **reporting** (defined as **both** financial statements prepared in accordance with **generally** accepted accounting principles (GAAP) and those prepared for regulatory reporting purposes) is effective. While this proposed requirement is applicable only for insured depository institutions with total assets of \$1 billion or more at the **beginning** of the fiscal **year**, it is reasonably likely that Mutual of Omaha Bank will exceed \$1 billion in assets in the future and will therefore have to comply.

We believe the requirement for **management** to assess internal control over financial statements prepared for **both** GAAP and regulatory reporting purposes is too broad and would require significant time and effort. In comparison, the requirements for management's assessment of internal control over financial reporting for public companies and insurance companies are as follows:

- Management of public companies is required by Public Company Accounting Oversight Board (PCAOB) Auditing Standard No. 5 to assess and report on internal control over financial statements prepared in accordance with GAAP only.

- Management of insurance companies will be required by the National Association of Insurance Commissioners (NAIC) to assess and report on internal control over financial statements prepared in accordance with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the state of domicile (not GAAP).

The proposed amendment will require a broader assessment than that required for both public companies and insurance companies.

Independent Public Accountant Reports

The proposed amendment will require the independent public accountant of insured depository institutions with total assets of \$1 billion or more at the beginning of the fiscal year to examine, attest to, and report separately on, the assertion of management concerning the effectiveness of the institution's internal control structure and procedures for financial reporting. The accountant's report must include the following:

- a statement identifying the internal control framework used,
- a statement that the independent public accountant's evaluation included controls over the preparation of regulatory financial statements in accordance with regulatory reporting instructions, and
- a statement expressing the independent public accountant's conclusion as to whether the insured depository institution's internal control over financial reporting is effective. The report must disclose all material weaknesses in internal control over financial reporting that the independent public accountant has identified.

The attestation and report shall be made in accordance with generally accepted standards for attestation engagement.

We understand the American Institute of Certified Public Accountants (AICPA) is in the process of revising the attestation standards (AT 501) and will likely require the same level of assurance as is required for an audit of internal control over financial reporting under PCAOB Auditing Standard No. 5. We believe the proposed amendment will be too costly based on the experiences of public companies complying with Sarbanes-Oxley Section 404 and considering the broader scope of the assessment (assessment includes internal control over financial statements prepared for both GAAP and regulatory reporting purposes). Banking regulators can assess the adequacy of management's internal control over financial reporting when conducting **periodic on-site examinations**, a monitoring mechanism the Securities and Exchange Commission (SEC) does not have in place for public companies.

In comparing these requirements to those of insurance companies, which are also highly regulated, the NAIC eliminated the proposed requirement for the independent public accountant to express an opinion on the company's internal control over financial reporting when revising the Annual Financial Reporting Model Regulation in 2006. Each state's Department of Insurance will assess the adequacy of management's internal control over financial reporting when conducting periodic on-site examinations.

Disclosure of Noncompliance with Designated Laws and Regulations

The FDIC specifically requested comments on whether the disclosure of instances of noncompliance with designated laws and regulations are made available for public inspection or should the FDIC designate such disclosure as privileged and confidential and not available to the public.

There may be technical violations of Regulation O that may be a reportable violation, but has little effect on the safety and soundness of a financial institution. Therefore we believe this information would not be beneficial to the public and in some cases even misleading.

If you have any questions or would like to discuss the comments provided above, I can be reached at (402) 351-4484 or by email at Margie.Heller@mutualofomahabank.com.

Respectfully submitted,

A handwritten signature in black ink that reads "Margie Heller". The signature is written in a cursive style with a long, sweeping underline.

Margie Heller
Chief Financial Officer
Mutual of Omaha Bank