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January 31, 2008

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

Dear Mr. Feldman:

Crowe Chizek and Company LLC is pleased to comment on the FDIC proposed rule, *Annual Independent Audits and Reporting Requirements* (12 CFR Parts 308 and 363). We believe the proposal does include some regulatory relief which will be helpful to institutions subject to Part 363. However, we have concerns about proposed changes to auditor independence requirements, PCAOB inspection reports and engagement letters.

C. Independent Public Accountant (§363.3), Item 4: Independence

SEC independence rules are applicable to issuer audit clients. SEC independence rules do apply to auditors of certain types of nonissuer audit clients (e.g., broker dealers, registered investment advisor), but those are exceptions, so in general the SEC's rules do not apply to nonissuers. Those rules include partner rotation, cooling-off, audit committee administration and partner compensation. The Sarbanes-Oxley Act of 2002 (SOX) continued the clear distinction in application of independence rules between issuers¹ and nonissuers.

We acknowledge the long-standing requirement for auditors of institutions subject to Part 363 to "be in compliance with the AICPA's Code of Professional Conduct and to meet the independence requirements and interpretations of the SEC and its staff." However, Section 363.3(f) of the proposal expands the requirements by stating: "The independent public accountant must comply with the independence standards of the AICPA, the SEC and the PCAOB." The requirement for compliance with PCAOB independence standards is new.

¹ The Act defines an issuer as follows: "The term issuer means issuers as defined in section 3 of the Securities Exchange Act of 1934, the securities of which are registered under section 12 of that Act, or that is required to file reports under section 15(d), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that it has not withdrawn."

The PCAOB was established specifically for registered public accounting firms who audit issuers. Because the SEC does not incorporate PCAOB independence rules into SEC Rule 2-01, *Qualifications of Accountants*, of Regulation S-X, we observe that if FDIC proceeds to apply the PCAOB independence standards to nonissuer FDICIA institutions, it will be applying a new set of independence standards to those institutions. This is creating a new rule, not a clarification of the existing requirements, and given the additional burden of following yet another set of independence standards, it simply is not warranted or advisable. We suggest the FDIC consider the cost-benefit burden prior to proceeding with establishing this new rule.

C. Independent Public Accountant (§363.3), Item 5: Peer Reviews

The FDIC's proposal, consistent with current practice, would require the auditor to file two copies of its peer review reports with the FDIC for public inspection. First, we observe the public portions of PCAOB inspection and peer reports are available on the PCAOB and AICPA's websites.² The FDIC can obtain these reports from the respective website. Thus, there should be no requirement for auditors to submit reports directly to the FDIC.

Secondly, the proposal contains the phrase "...except for the portions of any peer review report and inspection report determined to be nonpublic by the AICPA and the PCAOB, respectively, the report will be made available for public inspection by the FDIC." This suggests the FDIC is proposing to require the nonpublic portion, as referred to as Part II, be submitted.

By law, auditors are not permitted to make Part II of the inspection report available. The Sarbanes-Oxley law states "no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than twelve months after the date of the inspection report." The PCAOB reporting regime explicitly provides confidentiality of Part II of its report, as long as appropriate actions are taken.

D. Filing and Notice Requirements (§ 363.4), Item 2: Independent Public Accountant's Reports

We do not agree with the FDIC's proposed requirement for institutions to submit copies of audit engagement letters including any related agreements and amendments, with the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor within 15 days of acceptance by the institution.

² The peer review reports are available at:
<http://peerreview.aicpaservices.org/publicfile/DocDefault.aspx>

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First, there is no reason why the engagement letter is "singled out". Institutions enter into material contracts frequently (e.g., extending significant credit, hiring upper management, engaging professional services). Those material contracts are reviewed as part of the field examination process. We agree that the *Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions in External Audit Engagement Letters* ("Advisory") should be complied with by institutions, but we observe the existence of many interagency advisories and policy statements for which compliance is confirmed through the field examination process.

Furthermore, we question whether submission of engagement letters would make them available to the public under the Freedom of Information Act. If reviewing said letters at the institution, our understanding is these are not subject to the Freedom of Information Act. However, upon submission, we question if this would still be true.

We observe in the proposal the requirement for audit committees to take ownership over compliance with the Advisory. As the audit committee is already charged with this activity, we do not agree with the proposal to usurp that responsibility and file copies.

Lastly, the Advisory was implemented after the prohibition of indemnification clauses by the SEC for public companies. As the SEC does not require submission of engagement letters, we believe this is a burden placed on institutions that exceeds requirements applied to public companies.

E. Audit Committees (Part 363.5), Item 4: Independent Public Accountant Engagement Letters

As discussed above, we believe the audit committee should be charged, as part of their governance, with the responsibility for compliance with the Advisory. Rather than requiring copies of the engagement letter to be submitted to the FDIC and primary regulator, we support the proposal to require the audit committee to ensure audit engagement letters do not contain any limitation of liability provisions in accordance with the Advisory.

We would be pleased to discuss our comments with you. If you have any questions, please contact Sydney Garmong or Wes Williams.

Very truly yours,



Crowe Chizek and Company LLC