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January 31, 2008

via e-mail to:Comments@FDIC.gov

Mr. 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

Dear Mr. Feldman:

PricewaterhouseCoopers LLP (PwC) appreciates the opportunity to comment on the Federal Deposit Insurance Corporation (FDIC) proposal to amend Part 363 of the FDIC's regulations implementing provisions of section 36 of the Federal Deposit Insurance Act concerning annual independent audit and reporting requirements for certain FDIC-insured depository institutions. 72 Fed. Reg. 62310-62335 (November 2, 2007)

PwC is a nationwide accounting and professional services firm. We serve as auditors for a number of FDIC-insured depository institutions and their holding companies.

The Proposal

The FDIC regulates federally-insured depository institutions and seeks comment on proposed changes to its Part 363 Regulations and Guidelines that would incorporate certain audit, reporting, and audit committee practices from the Sarbanes-Oxley Act of 2002 (SOX) and other proposed amendments.

PwC Views

PwC generally supports the FDIC's objective of incorporating certain SOX requirements and practices into Part 363 and to provide clearer and more complete guidance to institutions and independent public accountants concerning compliance with the requirements of section 36 and Part 363.

However, for the reasons set forth below, PwC strongly believes that proposed section 363.3(g) governing peer reviews of independent public accountants should be limited to require the filing of only the public portion (Part I) of the Public Company Accounting Oversight Board (PCAOB) inspection report for an independent public accountant.

We also believe the proposal by the FDIC to limit use of consolidated holding company financial statements to situations where subsidiary-insured depository institutions comprise 75 percent or more of consolidated total assets is too arbitrary an approach and may, in some cases, result in treating very similar institutions differently. We support more of an objectives-based approach, and believe that if a numerical test is retained, it should serve, at most, as a regulatory presumption that could be rebutted by a reporting institution based on other criteria.

1. Independent Public Accountant PCAOB Inspection Reports

The FDIC proposal includes a provision that codifies in regulation the peer review reporting guideline in the current Appendix to Part 363 and expands its scope to include a requirement that an independent public accountant file with the FDIC its full PCAOB inspection report. In our view, the proposal fails to recognize that a PCAOB inspection report is divided into two parts – Part I which is public, and Part II which is not made public. The PCAOB distributes the nonpublic Part II portion of the inspection report only to the Securities and Exchange Commission (SEC), state accountant licensing authorities, and the firm examined.

The restrictions on public disclosure of Part II were adopted by the PCAOB in response to statutory limitations on public disclosure included in SOX. Specifically, Section 104(g)(2) of SOX provides that

> *…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 12 months after the date of the inspection report*[1]*.*

The PCAOB Board, in citing this statutory authority for keeping Part II nonpublic, noted that in doing so it was reflecting a concern "that discussing aspects of a firm's quality controls, in a context where criticisms and potential defects cannot be discussed, may create a distorted and misleading impression."[2]

The PCAOB Board has also indicated that the nonpublic nature of certain information in Part II is required by Section 105(b)(5)(A) of SOX, which provides for the confidentiality of "all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection report under section 104 or with an investigation under this section …."[3] In this regard, the PCAOB Board has indicated that it will generally maintain as nonpublic any otherwise nonpublic information that it obtains concerning the firm or its clients in the inspection.[4]

Since the nonpublic nature of the information in Part II of the PCAOB inspection report is mandated by Congress and implemented by the PCAOB in its rules and practices, we recommend that the FDIC amend its proposal to require an independent accounting firm to submit only Part I of its PCAOB inspection report under section 363.3(g) governing peer reviews.

We believe such nonpublic treatment is consistent with the same principles that underlie the confidential treatment afforded examination reports issued by banking regulators, including the FDIC. The confidential nature of the Part II portion of the PCAOB inspection report, which remains confidential pursuant to statute unless remedial actions are not addressed by the firm, is critical to the continuous quality improvement of the profession and to the public interest guiding the principles of PCAOB regulation. As noted by the PCAOB, disclosing the nonpublic Part II of the PCAOB inspection report could be misleading and violate privacy and proprietary interests protected by statute.

It should be noted that while state accounting licensing authorities are able to obtain Part II of the various firms' PCAOB inspection reports directly from the PCAOB by signing a confidentiality

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[1] Section 104(g)(2) of SOX, 15 U.S.C. § 7214(g)(2).
[2] STATEMENT CONCERNING THE ISSUANCE OF INSPECTION REPORTS, PCAOB Release No. 104-2004-001, August 26, 2004 at page 5.
[3] Section 105(b)(5)(A) of SOX, 15 U.S.C. § 7215(b)(5)(A).
[4] STATEMENT CONCERNING THE ISSUANCE OF INSPECTION REPORTS, PCAOB Release No. 104-2004-001, August 26, 2004 at page 6.

agreement, similar requests by these entities to the accounting firms have been respectfully declined. To date, we have declined to provide Part II of the PCAOB inspection report to anyone outside our firm.

We strongly urge the FDIC to revise the proposed section 363.3(g) by amending the proposed requirement to limit the filing with the FDIC to Part I only of the PCAOB inspection report.

2. Numerical Threshold for Consolidated Reporting Requirements

The proposed regulations also include a provision that would require the total assets of a holding company's insured depository institution subsidiaries to comprise 75 percent or more of the holding company's consolidated total assets to afford an FDIC-insured financial institution the option to comply with Part 363 by submitting consolidated financial statements and related reporting at the holding company level. We are concerned that a test based solely on assets may be too arbitrary an approach for addressing the financial reporting requirements and safety and soundness objectives that the FDIC wishes to achieve.

First, we believe that an objectives-based, alternative test based on qualitative factors for determining the permissibility of complying with Part 363 at the holding company level is a fairer approach. For example, this could include consideration of such factors as the FDIC-insured financial institution's organization and control structure, where key business processes reside, the degree and use of shared services and systems, the extent of use of service organizations, and the procedures for monitoring, controlling and eliminating intra-group transactions on consolidation. It is entirely possible that FDIC-insured financial institutions would not meet the 75 percent asset test but could nonetheless achieve the safety and soundness purposes of Part 363 by reporting at the holding company level as a result of a highly centralized and shared control structure, or by scoping in the relevant business and reporting process in the assessment of internal controls over financial reporting.

Second, sole reliance on an asset-based test may result in disparate treatment of and impose different burdens on similar competing banking organizations. Similar institutions may fall just barely on opposite sides of the test, thereby receiving potentially very different regulatory treatment. In contrast, objectives-based standards, if properly constructed, should help to achieve the purposes of the safety and soundness regulation, rather than illusory coverage and simplicity.

Should the FDIC wish to retain a numerical test for this purpose, we believe it should not be a regulatory requirement (and proscription for some), but rather should be a regulatory presumption that could be rebutted by the type of objectives-based facts and circumstances discussed above.

Conclusion

In addition to the specific recommendations above, we believe that provisions in the proposed Part 363 regulations and guidelines affecting the rights and responsibilities of independent accounting firms should be reviewed with the public accounting profession and its federal regulators—the PCAOB and the SEC—prior to finalization.

We appreciate the opportunity to express our views. We would be pleased to discuss any comments or answer any questions that you may have. Please do not hesitate to contact Alan Lee at (703) 307-1338, Daniel Weiss at (703) 918-1431 or Wesley Bricker at (973) 236-5682 regarding our submission.

Sincerely yours,

PricewaterhouseCoopers LLP

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