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America's Community Bankers®

March 7, 2003

Public Information Room
Office of the Comptroller of the Currency
250 E Street, SW
Mailstop 1-5
Washington, DC 20219

Attention Docket No. 02-15

Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Attention Docket No. R-1139

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Attention Comments

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552

Attention Docket No. 2002-58

Re: Removal, Suspension, and Debarment of Accountants from Performing Audit Services
<u>68 FR 1116 (January 8, 2003) and 68 FR 4967 (January 31, 2003)</u>

Dear Sir or Madam:

America's Community Bankers (ACB)[1] is pleased to comment on the proposal issued by the four federal banking agencies to adopt procedures for the removal, suspension, or debarment of accountants or accounting firms from performing certain audit services for depository institutions.[2]

The proposal would amend the agencies' rules of practice by adding provisions for the removal, suspension, or debarment of accountants or accounting firms from performing the audit services required by section 36 of the Federal Deposit Insurance Act (FDIA) and part 363 of the rules of the Federal Deposit Insurance Corporation (FDIC).[3] Under section 36 and part 363, every

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[1] ACB represents the nation's community banks of all charter types and sizes. ACB members, whose aggregate assets exceed $1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.
[2] 68 Fed. Reg. 1116 (January 8, 2003) and 68 Fed. Reg. 4967 (January 31, 2003).
[3] 12 U.S.C. § 1831m; 12 C.F.R. Part 363.

insured depository institution with $500 million or more of assets must have its financial statements audited by an independent public accountant.[4] Also, the accountant must attest to and report on management's assertions made about internal controls over financial reporting.[5] The FDIA and part 363 of the FDIC rules establish the qualifications for the independent public accountant and allow the agencies to establish rules providing for the removal, suspension and debarment of the accountant for "good cause."[6]

The proposal would define "good cause" to remove, suspend, or debar an accountant or firm from performing audit services for depository institutions and establish procedures for taking action if the agency believes the "good cause" standards are satisfied. The proposal would take into account provisions of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley)[7] that increase the responsibility and accountability of independent public accountants. The proposal also anticipates future actions by the Securities and Exchange Commission (SEC) and the Public Company Accounting Oversight Board (PCAOB), created by Sarbanes-Oxley, to oversee the accounting industry.

ACB Position

We support the agencies' efforts to enhance their ability to address misconduct by accountants who perform annual audit and attestation services for depository institutions. Although the agencies note that there have been few bank and savings association failures in recent years, the agencies believe that the circumstances of the failures that have occurred illustrate the importance of maintaining high quality in the audits of depository institutions.[8] Recent accounting scandals in public companies have highlighted the importance of an independent and competent review of financial statements to ensure that they are complete, accurate and reliable.

Immediate Suspensions

The proposal appears in most instances to set reasonable standards for determining good cause to suspend, remove or debar an accountant or accounting firm from auditing the financial statements of depository institutions. The procedures for notice and hearing will help ensure that the accountants and firms are treated fairly in all cases. We are concerned, however, with the disruption to depository institutions that could occur in the cases that result in the immediate suspension of an accountant or accounting firm. In those instances, depository institutions that are receiving services from the accountant or the firm may confront the need to comply with filing deadlines without having the necessary resources to meet the section 36 audit and attestation requirements. This could happen with little, and possibly no, advance notice. In these cases, we feel that the agencies should resolve any questions of whether the suspension is necessary as quickly as possible. The timing for resolution in the proposal could extend more

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[4] 12 U.S.C. § 1831m(d); 12 C.F.R. § 363.3(a).
[5] 12 U.S.C. § 1831m(c); 12 C.F.R. § 363.3(b).
[6] 12 U.S.C. § 1831m(g)(4).
[7] Pub. L. 107-204 (2002).
[8] 68 Fed. Reg. 1116 (January 8, 2003).

than 60 days. To limit the disruption in cases where the immediate suspension is not appropriate, we feel that the cases should be resolved well within 30 days.

Regardless of whether an immediate suspension is justified, the agencies should provide guidance to depository institutions on the expectations for meeting financial reporting deadlines when their accountants or accounting firms are subject to immediate suspension. In the recent case involving Arthur Andersen LLP, the agencies and the National Credit Union Administration issued an interagency statement that discussed the submission of financial statements by institutions that ceased using Arthur Andersen or had to file financial statements that had been audited by that firm.[9] It would be helpful to have some guidance established by the agencies in advance to deal with the situation of an immediate suspension, rather than rely on case-by-case guidance.

Conformance to Sarbanes-Oxley

The agencies should ensure that any final rule works together with the provisions of Sarbanes-Oxley. For example, the legislation sets forth a procedure for the PCAOB to investigate allegations of wrongdoing by accountants and to issue temporary suspensions or permanent revocations of registration or temporary or permanent suspensions or bars from further association with a registered public accounting firm. These orders are subject to review and approval by the SEC. Therefore, automatic removal, suspension and debarment from the ability to conduct audits of depository institutions should occur only after any sanction issued by the PCAOB has received final review by the SEC.

ACB appreciates the opportunity to comment on this important matter. If you have any questions, please contact the undersigned at (202) 857-3121 or via e-mail at cbahin@acbankers.org, or Diane Koonjy at (202) 857-3144 or via e-mail at dkoonjy@acbankers.org.

Sincerely,

Charlotte M. Bahin

Charlotte M. Bahin
Director of Regulatory Affairs
Senior Regulatory Counsel

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[9] See Interagency Statement Regarding Arthur Andersen LLP, dated March 19, 2002.