

Massachusetts Bankers Association

September 16, 2005

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Email: comments@fdic.gov
Reference: RIN Number 3064-AC91

Subject: Annual Independent Audits and Reporting Requirements, 70 Fed. Reg. 147, 44293 (August 2, 2005)

Dear Mr. Feldman:

The Massachusetts Bankers Association (MBA), which represents 210 commercial, savings, and cooperative banks and savings and loan members in Massachusetts and New England, appreciates the opportunity to comment in support of the proposed changes to Part 363 of the Federal Deposit Insurance Corporation's regulations concerning annual independent audits and reporting requirements. We commend the Agencies ongoing efforts to revise and improve the regulations issued under Part 363 of the Federal Deposit Insurance Act. The proposed amendments would: 1) Increase the asset size threshold from \$500 million to \$1 billion for internal control assessments by management and external auditors; 2) Increase the asset threshold for banks between \$500 million to \$1 billion for requiring audit committee members to be independent of management.

Increasing the Asset Size Threshold for Internal Control Assessments

Financial institutions have faced rising accounting expenses in recent years. As noted in the proposal, since the enactment of the Sarbanes-Oxley Act, compliance with the audit and reporting requirements of part 363 have and will continue to become more burdensome and costly, particularly for smaller non-public covered institutions. We would agree that smaller less complex institutions under \$1 billion would greatly benefit from an exemption from existing rules without diminishing safety and soundness standards. In addition, the increase in the threshold would more appropriately reflect "asset inflation" and consolidations in the banking industry since 1993. We would also recommend that the threshold be indexed in the final rules to ensure that it remains current and appropriate in the future.

Composition of the Audit Committee

Under section 36 of the FDIC's current rules, covered institutions (assets greater than \$500 million) are required to establish an independent audit committee of its board of directors comprised of outside directors who are independent of the management of the institution. Lack of independence is described in the current rules as, an outside director who is, or has been within the preceding year, an officer or employee of the institution or any affiliate, or owns or controls, or has owned or controlled within the preceding year, assets representing 10 percent or more of any outstanding class of voting securities of the institution. Under the proposed amendment, the threshold for banks would be raised to \$1 billion, to allow for an audit committee to be comprised of outside directors who are not necessarily "independent of

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Mr. Robert E. Feldman
September 16, 2005
Page 2

management” but still should be independent of judgment. Therefore, a bank between \$500 million and \$1 billion in assets could, under this proposal have audit committee members who are its consultant or legal counsel, a relative of an officer or employee of the institution or its affiliates, or the owner of 10 percent or more of the stock of the institution. In addition, audit committee members with outstanding loans will not be required to be independent.

The Association supports the amendment and appreciates the FDIC’s recognition that many smaller institutions have faced difficulty satisfying the independent audit committee requirement. While the FDIC eliminates the requirement to have an independent audit committee, it encourages institutions with total assets of \$500 million or more but less than \$1 billion to make a *reasonable good faith effort* to establish an audit committee of outside directors who are independent of management. The Association believes such “encouragement” is too vague and should be dropped from the proposal. If not dropped, minimally the FDIC should provide guidance on how to document a “reasonable good faith effort” for examination purposes.

Effective Date

Under the proposed amendment the effective date would be December 31, 2005. We would recommend that the effective date be changed to September 30, 2005 in order to provide comparable regulatory relief to institutions that have a fiscal year that ends prior to the end of the year.

Conclusion

In conclusion, the MBA strongly supports increasing the threshold size of banks eligible for exemption from the internal control assessments and independent audit committee requirements. This is a positive step in reducing regulatory burden compliance costs for many community banks. The increased threshold would provide some much needed relief to financial institutions, particularly privately held and mutual institutions under \$1 billion in assets that are strained under the impact of the Sarbanes-Oxley Act.

Thank you for the opportunity to present our views.

Sincerely,



Daniel J. Forte
President

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