Mr. William H. Donaldson, Chairman
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549-0609

Re: File 4-497

May 23, 2005

Dear Mr. Donaldson:

I welcome the Commission's recent announcement for solicitation of comments on implementation of Sarbanes-Oxley internal control provisions. I am pleased to know that the Commission is considering these comments so that it can balance the need for accurate accounting with effectiveness of this recently enacted provision.

INTRODUCTION

Since the introduction of the Sarbanes-Oxley Act, financial institutions have seen exponential increases in their accounting expenses. The cost of compliance with Section 404 is pushing profitability of community banks significantly into the future.[1] Community banks anticipate having to document on average 78 percent of their internal control process.[2] Currently they spend more than 80 percent of their total compliance costs on Section 404.[3] As a result, community banks are considering whether to continue making SEC filings at all. With the costs of compliance rising, dozens of companies have stopped filing federal financial reports to save money in order to avoid the hassle of Sarbanes-Oxley.[4] They have found that deregistering the stock is easier than complying.[5] In the alternative, community banks may be left with no other

---

[1] *See* Independent Community Bankers of America Survey: The Costs of Complying with Section 404 of the Sarbanes-Oxley, March 4, 2005
[2] *Id.*
[3] *Id.*
[4] *See* Katie Merx, Smaller Firms Consider Halting SEC Filings as Sarbanes Costs Rise, Craines Detriot Business, April 18, 2005, p. 18
[5] *Id.*

option than to merge with larger banks, thus reducing the number of banking options for depositors.

While the huge cost of compliance is obvious, it is not clear whether the regulations created by Sarbanes-Oxley are needed to create greater stability. Furthermore, in some cases it seems that over-regulation may create increased instability of the overall system. As such, Sarbanes-Oxley Act Section 404 should exempt community banks with assets less than $500 million since the benefits of compliance fail to outweigh the costs, especially since Section 404 does not create a greater standard of internal control than was created by prior legislation. Moreover, community banks were not involved in the scandals which led to the legislation and are already accountable to substantial regulations, including those enacted by the FDIC. The SEC should exempt community banks since the additional regulation is not only unnecessary, but the financial burden placed on community banks as a result of excessive regulation is likely to result in a situation where community banks will be forced to go private or merge with a bigger bank. The overly burdensome accounting provisions of Section 404 of Sarbanes-Oxley are likely to drive community banks out of the system, lead to higher concentration of deposits and therefore increase the pressure on the FDIC depository fund.

In demonstrating this point, this paper will review all bank accounting controls legislation pre-dating the Sarbanes-Oxley Act, including requirements created by federal deposit insurance regulations. It will review the accounting control provisions of the Sarbanes-Oxley, compare it to prior legislation and discuss the practical effects of this legislation on community banks.

PRE-SARBANES-OXLEY LEGISLATION

The past three decades have seen the introduction of significant legislation concerning bank accounting practices. The first such legislation came following the exposure of political and corporate abuses in connection with the Watergate debacle when the overseas activities of many U.S. corporations came under the scrutiny of the Securities and Exchange Commission ("SEC") and Congress.[6] Congress became concerned that corrupt corporate practices would not only reduce public confidence in the business community but it would also harm America's image abroad.[7] As a result, in 1977, Congress passed the Foreign Corrupt Practices Act (FCPA), which aimed to prevent the bribery of foreign government officials by U.S. companies and to regulate the accounting practices of companies.[8] Although the primary purpose of the FCPA was to prevent bribery, the legislature felt that corporate accounting and control practices were interrelated issues.[9] Prior to the passage of the FCPA, payments made by US companies to foreign government officials were often made out of funds that were not properly recorded on the company's annual statements. The FCPA made it a crime not only to bribe a foreign government but also to make false or misleading entries on a company's books for any purpose.

---

[6] *See* Brown, H. Lowell, "Parent-Subsidiary Liability Under the Foreign Corrupt Practices Act", Baylor Law Review, Winter, 1998

[7] *See* Diersen, Kari Lynn, Foreign Corrupt Practices Act, American Criminal law Review, Summer 1999

[8] Corrupt Services Act of 1977, Pub.L.No. 95-213(codified in 15 U.S.C.78m)

[9] *See* Timothy Atkinson, Kenneth I. Bialkin, Philip Chenok, Ralph C. Ferrara, Harvey L.Pitt, Mark M. Richard & John R. Stevenson, Program on Corrupt Services Act of 1977 and the Regulation of Questionable Payments, 34 Bus. Law. 626 (1979); ABA Committee on Corporate Law and Accounting, Practical Implications of the Accounting Provisions of the Foreign Corrupt Practices Act of 1977.

Under the FCPA, in addition to barring bribery, public companies are required to:

1. Make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;
2. Create a system of internal accounting controls that will provide reasonable assurances that transactions are properly authorized; and
3. Record accurately all amounts on the company's books.[10]

Congress defined reasonable detail and assurances as "such level of detail and degree of assurances that would satisfy prudent individuals in the conduct of their own affairs, having in mind a comparison between benefits to be obtained and costs to be incurred in obtaining such benefits."[11] In other words, the reasonableness of the accounting controls in place were to be determined based on a cost-benefit analysis.

To further clarify the standard created by the FCPA, the SEC has promulgated several factors to consider in evaluating whether an accounting system achieves the objectives of the Act.[12] These factors include the overall control environment, the translation of broad accounting control objectives into specific objectives which are applicable to the business, organizational and other characteristics of the company, the specific control procedures and environmental factors which should contribute to the achievement of the specific control objectives, whether control procedures are functioning as intended and the benefits and costs of additional or alternative controls.[13]

---

[10] 12 U.S.C. §78m(b)(2)(B)
[11] S. 708, 97th Cong., 1st See., 127 CONG.REC.12,983-85(1981)
[12] *See* Lowell H. Brown, Parent-Subsidiary Liability Under the Foreign Corrupt Practices Act, Baylor Law Review, Winter 1998.
[13] *Id.*

While the factors identified by the SEC give banks additional direction in determining what one must do to comply with the FCPA, it is obvious that the standard set by the FCPA is quite flexible and leaves room for interpretation. Some scholars take the position that the provisions of the FCPA require all financial records to include information that might alert the SEC to impropriety.[14] However, such disclosure would go beyond the requirements of the statute if it was not deemed to be reasonable.

Due to the inherent flexibility of the statute, the FCPA does not provide a sufficiently clear standard which can be relied upon by the investing public. In fact, a bank can argue that any type of control system is reasonable so long as it satisfies the cost-benefit analysis. Because of the difficulty in defining the governing standard of reasonableness, it is of no surprise that the SEC chose to make a very limited use of these internal control provisions in the past three decades.[15]

While the FCPA remained the principal standard regarding accounting practices for more than a decade, Congress felt the need for further regulation and, in 1991, they enacted the Section 36 of the Federal Deposit Corporation Improvement Act (FDICIA).[16] The legislation was enacted as result of the Savings and Loan crisis in the late 1980's which had caused a whopping $153 billion dollars loss to American taxpayers.[17] The losses were the result of unmanaged asset/liability gaps that led to exposures in interest rate, speculative investments in junk bonds and service industries, fraud, and substantial losses from lending to and investing in

---

[14] *See* O. Thomas Johnson, Foreign Corrupt Practices Act, The International Laywer's Deskbook, January 1996, available at http://www.abanet.org/genpractice/lawyer/spring97/johnson.html (last visited on April 23, 2005)
[15] Search in the Westlaw federal cases database reveals only 65 cases dealing with the FCPA's corrupt practices provisions and only 14 cases dealing directly with the FCPA's accounting provisions.
[16] Pub. L. No. 102-242, 1991 U.S.C.C.A.N. (105 Stat.) 2236
[17] *See* Timothy Curry and Lynn Shibut, The Cost of the Savings and Loan Crisis: Truth and Consequences, FDIC Banking Review, Volume 13, No.2, December 2000

the US commercial real estate sector.[18] The extent of the disaster turned it into a major threat to the US financial system, and one of the most expensive financial sector crises the world has seen.[19]

Section 36 of the FDICIA was codified in 12 U.S.C. 1831m and implemented by the FDIC in regulation 12 C.F.R 363 which specifically addresses annual independent audits and report requirements. Part 363 applies to any insured depository institution which has total assets greater than $500 million.

Pursuant to the FDICIA, any insured depository institution with assets of at least $500 million is required to conduct an annual audit by an independent public accountant in accordance with Generally Accepted Accounting Principles (GAAP).[20] Each institution must annually prepare a management report signed by its chief executive officer and chief accounting officer or chief financial officer.[21] The report must contain a statement of management's responsibilities for preparing the institution's annual financial statement, for establishing and maintaining an adequate internal control structure, procedures for financial reporting and methods of complying with regulations relating to safety and soundness.[22]

An institution is in compliance with safety and soundness regulations when the institution maintains at least a 4 percent ratio of capital to total assets in order to qualify as adequately capitalized, the very minimum standard of capitalization required.[23] The basis for this standard is the idea that adequate capital holdings by depository institutions lower the probability of bank

[18] *Id.*
[19] *Id.*
[20] 12 U.S.C. 1831n
[21] 12 C.F.R. §363.2(b)
[22] 12 C.F.R. §363.2(b)(1)
[23] 12 U.S.C. §1831o(c)(1)

failure and reduce the incentive to take excessive risk.[24] Management's assessment of compliance with these standards should include sufficient information to enable the independent public accountant separately to examine and report on management's assessment.

Once management has completed its internal audit, pursuant to Part 363, an independent accountant must examine, attest to, and report on the assertions of management concerning the institution's internal control structure and procedures for financial reporting.[25] While each institution can determine its own standard for an internal control structure and procedures for financial reporting,[26] the independent auditor must confirm that the control systems relied on by management are actually in place.[27] However, Part 363 does not require the auditor to make a determination of the adequacy of the control structure.

In effect, Part 363 puts a great deal of control in management's hands. Management produces its own financial statements, determines its own method of maintaining adequate internal control structures, determines its own procedures for financial reporting and its own methods of complying with regulations relating to safety and soundness.

It should be noted that while Part 363 excludes financial institutions with assets less than $500 million, those institutions are still subject to compliance with FDICIA regulations concerning safety and soundness.[28] Therefore, while smaller institutions are not subject to the same degree of scrutiny which larger banks are subject to, they are not completely free from regulation. Regulation is based on a concrete examination of their assets and liabilities. On top of that, all FDIC-insured banks must also satisfy the risk-based capital standards which require

[24] *See* Macey, Miller, Carnell, Banking Law and Regulation, (Third Edition 2001), 278
[25] 12 C.F.R. §363.3(b)
[26] *See* FDIC Laws and Regulations, available at http://www.fdic.gov/regulations/laws/rules/2000-8500.html (last visited April 5, 2005)
[27] 12 C.F.R. §363.2
[28] *See* FDIC Laws and Regulations, available at http://www.fdic.gov/regulations/laws/rules/2000-8500.html (last visited April 23, 2005)

banks to hold differing amounts of capital depending upon the amount of assets held in various risk-weighted categories.[29] To this effect, the FDICIA established a system of capital-based prompt corrective action.[30] The system specifies five capital categories: well-capitalized; adequately-capitalized; undercapitalized; significantly undercapitalized; and critically undercapitalized.[31] An institution falling below minimum capital standards will be subject to stringent regulatory restrictions and requirements.[32] The goal of the prompt corrective action is to correct problems before they grow too large and cause losses to the deposit insurance fund.[33] In short, even banks which are not subject the FDICIA's accounting control requirements must still comply with other significant provisions of the Act.

<u>SARBANES-OXLEY ACT OF 2002</u>

From March, 2000 through September 30, 2002, the U.S. stock market lost half of its market capitalizations, thereby reducing investor's net worth by almost $8.5 trillion.[34] The drop in the stock market was followed by revelations of accounting scandals at WorldCom, Adelphia, Tyco, Enron, and others. American investors realized that internal and external auditing systems at these firms had failed. Congress and the President responded by enacting the Sarbanes-Oxley Act of 2002.[35]

The accounting controls provision of the Sarbanes-Oxley Act is Section 404. Section 404

---

[29] *See* Macey, Miller, Carnell, Banking Law and Regulation, (Third Edition 2001), 281
[30] 12 USC Section 1831o
[31] *See* Macey, Miller, Carnell, Banking Law and Regulation, (Third Edition 2001), 313
[32] *Id.*
[33] *Id.*
[34] The market capitalization for all New York Stock Exchange listed companies dropped by $3.63 billion from a high of $12.67 billion in June, 1999 to $9.04 billion in September 2002. *See* WALL ST. J., Oct. 1, 2002
[35] Sarbanes-Oxley Act of 2002, Pub.L.No 107-204, 116 Stat. 745, (codified in scattered sections of 15 U.S.C.). The Act is named after its principal sponsors, Senator Paul Sarbanes, then-chairman of the Senate Committee on Banking, Housing, and Urban Affairs, and Congressman Michael Oxley, chairman of the House on Financial Services

applies to companies subject to the reporting requirements of the Securities Exchange Act of 1934 – any bank that has at least $10 million in assets or 500 shareholders.[36] According to the latest FDIC statistics, there are currently 4,893 banks or savings institutions that have more than $100 million in assets; 3,517 with $100 to $500 million; 859 with $500 million to $5 billion; 150 with $5 to $50 billion; and 22 with more than $50 billion.[37] As a result, all insured depository institutions or holding companies that are required to file periodic reports under Section 13(a) or 15(d) of the Exchange Act, but did not have to comply with FDIC Part 363, now must observe the internal control requirements of Section 404. Federal banking regulators exempted banks with less than $500 million in assets from internal control reporting requirements of the FDICIA to reduce the financial burden of smaller institutions that were already subject to the full scope of banking laws, including safety and soundness provisions of the FDICIA.[38] The Section 404 seems a direct contradiction of legislatures' intent under the FDICIA.

Pursuant to Section 404, each company's annual statement must contain:

a) a statement of management's responsibility for establishing and maintaining and adequate internal control structure and procedures for financial reporting;[39] and

b) management's assessment, as of the end of the company's most recent fiscal year, of the effectiveness of the company's internal control structure and procedures for internal reporting.[40]

Subsection (b) of section 404 further requires that a registered public accounting firm attest to and report on management's assessment of the effectiveness of the company's internal controls and procedures for financial reporting in accordance with standards established in March 2004

---

[36] Pub.L.No. 107-204 §404(a)
[37] *See* FDIC Working Paper July 2003 available at http://www.fdic.gov/bank/analytical/working/wp2003_07/fig04.html (last visited April 5, 2005)
[38] 12 U.S.C. 93a, 1818, 1831–p, 3102(b); 15 U.S.C. 6801, 6805(b)(1).
[39] Pub.L.No. 107-204 §404(a)(1)
[40] Pub.L.No. 107-204 §404(a)(2)

by the Public Company Accounting Oversight Board (PCAOB) Auditing Standard No.2, "An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statement."[41] While Section 404 does not specify what constitutes adequate internal control structure and procedures, the PCAOB's Auditing Standard No. 2 does describe how auditors can spot control deficiencies. Therefore, while Audit Standard No. 2 is directed towards auditors, not the financial institutions themselves, financial institutions can only begin to determine the extent of the control structures needed by reviewing Audit Standard No. 2.

Auditing Standard No. 2 defines three degrees of control deficiencies in paragraphs 8, 9 and 10. Paragraph 8 states that a control deficiency exists when the design of operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. Paragraph 9 states that "a significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the company's ability to initiate, authorize, record, process, or report external financial data reliably in accordance with "GAAP" such that there is a more than a remote likelihood that a misstatement of the company's annual or interim financial statements that is more than inconsequential will not be prevented or detected." Finally, paragraph 10 states that "a material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected." The definition of likelihood ("more than remote") resulted in extensive testing that go beyond the original intention Section 404.

Although there is a significant difference in the treatment by the SEC of a material weakness and a mere control deficiency, determining what category a particular accounting

[41] Pub.L.No. 107-204 §404(b)

deficiency falls into is not easy, particularly for bank CEOs who may have little accounting experience. The American Institute of Certified Public Accountants (AICPA) Audit Sampling Guide provides general quantitative guidance for materiality according to which, "a common rule of thumb for materiality is 5 percent to 10 percent of pretax net income."[42] The 5 percent threshold is widely recognized as the threshold at which an item is considered material. However, this standard does not seem to be consistent with the standard applied by federal courts which says that "a fact is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding whether to invest."[43] Therefore, the definitions of materiality are subject to different interpretations of management, shareholders and external auditors. This is likely to increase the tension among these groups and lead to counter-productivity which would defeat the overall purpose of Sarbanes-Oxley, namely investor confidence.

Examples of a possible material weakness would include restatement of previously issued financial statements, ineffective oversight by the company's audit committee, ineffective internal audit, ineffective regulatory compliance or identification of fraud. The term remote is defined by the PCAOB as "when the chance of the future event or events occurring is slight." The FDIC has stated that the SEC's Section 404 regulations and PCAOB Auditing Standard No. 2 establish more extensive testing and documentation requirements for internal control over financial reporting than those required by FDIC's Part 363.[44]

[42] See FDIC Financial Institution Letters, "Applicability of Selected Provisions of the Sarbanes-Oxley Act of 2002 to Insured Institutions with $500 Million or More In Total Assets."
[43] *TSC v. Northway,* 547 F.2d 1169 (1976)
[44] *See* FDIC's Financial Institution Letter, FIL-122-2004, available at http://www.fdic.gov/news/news/financial/2004/fil12204.html (last visited April 5, 2005)

Many banks have indicated that PCAOB Auditing Standard No. 2 definitions of likelihood ("more than remote" and "inconsequential") have so far resulted in extensive testing that is beyond the intention of Section 404. Many fear that, during the auditing process, external auditors may use their own definitions of materiality with some determining that there is a material weakness even when the deficiency falls far below the 5 percent pretax income rule. As a result, external auditors can exercise an unnecessary degree of control in the auditing process which can result in not only in higher costs for banks, but also in disagreement between managers, auditors and shareholders as to what constitutes "materiality". With confusion over the standards set forth in compliance with Sarbanes-Oxley, it is not surprising that accounting costs have become so high.

<u>IS SECTION 404 COMPLIANCE WORTH THE EXPENSE?</u>

In light of the exorbitant cost of compliance, many are beginning to wonder whether the benefits of Sarbanes-Oxley are even worth its cost. While there are some obvious differences between the statutes, such as the exemptions under the FDICIA depository institutions that have assets less than $500 million, it seems that compliance with Section 404 will not serve to create any greater stability than has been achieved by the FCPA and FDIC Part 363.

Upon comparing all three statutes it seems the only factor that really sets Section 404 of Sarbanes-Oxley Act apart from its predecessors is its insistence on greater documentation of the controls. However, the control standards which each statute seeks to encourage are themselves similar.

For instance, the FCPA directs institutions to maintain records of their financial records which contain "reasonable detail" and "accurately and fairly reflect the transactions."

Furthermore, the FCPA instructs institutions to create an accounting control system that will provide "reasonable assurances that transactions are properly authorized." That the records maintained should be an accurate reflection of the transaction seems to imply that the records must be truthful as to details of the transaction. Moreover, the "reasonable assurances" standards seem to imply that institutions must do what a reasonably prudent person would do to keep track of the accounting control system.

The "reasonable" standard set forth in the FCPA is similar to the standard set forth in the FDICIA which requires that financial institutions maintain "adequate internal control structures and procedures for financial reporting and complying with regulations relating to safety and soundness." While the FDICIA adds that institutions must comply with new set of "safety and soundness" regulations, the standard by which institutions must maintain their internal control structures is almost identical to the standard set by the FCPA. In fact, the term "adequate" in the FDICIA seems to be interchangeable with "reasonable" in the FCPA.

Similarly, the internal controls standard promulgated by Section 404 also seems to be one of reasonableness and adequacy. In fact, the act specifically states that institutions must maintain "an *adequate* internal control structure and procedures for financial reporting." While the adequacy of the control structure is to be determined with the assistance of PCAOB Auditing Standard No. 2, the standards created by the PCAOB seem to be a convoluted way of stating that the control structure must be "reasonable." For instance, paragraph 10 of Auditing Standard No. 2 states that the controls will be deemed to have a material weakness where there is "a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected." However, it could be said that the controls maintained are not reasonable if they would allow for more than a remote likelihood of a material misstatement. Obviously, if a control structure would allow for such a misstatement or failure, that control structure was neither adequate nor reasonable. By sharing nearly identical accounting control standards with two prior statutes, Section 404 hardly offers any innovation. At best, it seems to overlap the pre-existing legislation.

Moreover, it is doubtful that Sarbanes-Oxley's insistence on greater documentation in and of itself will improve accounting controls or do more to prove the stability of institutions than prior regulations. In this regard, the safety and soundness requirements of the FDICIA may do a better job of guaranteeing bank stability. The fact that a bank is adequately capitalized may be a better indication of stability than whether the minutia of every transaction can be documented. Moreover, adequate capitalization may in and of itself be proof that a financial institution does have adequate controls in place. If the institution did not have adequate controls, they might be less likely to be adequately capitalized. In this way, the FDICIA looks at results to determine whether a bank has adequate and reasonable controls in place while the Section 404 looks at documentation of controls without consideration of the results. As such, one has to wonder if we are really gaining anything by looking at the documents instead of the results.

Moreover, there is no guarantee that providing more documentation will prevent fraud. While Section 404 tries to eliminate the risk of internal control failure, it is plausible to assume that it cannot completely eliminate such risks. Numerous legislative acts have been passed since the Great Depression in the 1930's aimed at preventing corporate malfeasance and providing investing public with greater protection. While Congress can pass legislation intended to prevent corporate malfeasance, it cannot entirely prevent corporations from engaging in illegal activities.

Moreover, while the FCPA, FDICIA and Section 404 overlap, compliance with the Sarbanes-Oxley essentially does away with the cost-benefit standard set forth in the FCPA. In effect, Section 404 asks for compliance regardless of whether the cost exceeds the benefit. In light of the similarities, and sometimes deficiencies, of Section 404, it leads one to wonder whether the cost of compliance is really worth it.

By disregarding a determination as to whether the costs exceed the benefits, it seems that Section 404 will have a chilling effect on regulatory compliance. Already, many smaller banks have indicated that the cost of compliance with Section 404 outweighs its benefit and have therefore already gone private or decided to merge with a bigger institution in order to avoid the financial burden of compliance.[45] Such consolidation in the banking industry is likely to decrease the overall number of banks in the future, increase the value of total deposits at bigger banks, put more constraints on the deposit insurance fund and increase the possibility of a bailout in case of a financial crisis.

CONCLUSION

In conclusion, it does not appear that compliance with Sarbanes-Oxley is worth the cost to smaller banks. Rather than imposing costly documentation requirements on banks, the regulatory agencies should have simply made better use of the regulations they already had. The imposition of documentation requirements where the standard for internal controls remains virtually unchanged seems to be nothing more that an emotional response to the scandals involving Enron, WorldCom and others. In addition, the limited use of the pre-Sarbanes FCPA's accounting requirements seems to indicate that there was a lack of interest regarding sufficient

[45] *See* John Reosti and Ben Jackson, "Compliance Costs Driving More Small Banks Into Privacy", American Banker, February 28, 2005

internal controls prior to these scandals. In now trying to impose Section 404 requirements on small banks, the Commission should take a good look at the regulations all FDIC-insured institutions were already required to comply with, including safety and soundness provisions of the FDICIA and ask themselves whether they are really improving the stability and controls of banks or if they are merely asking them to do additional work to achieve the same results. The Commission should recognize the requirements imposed by the Federal Deposit Insurance Corporation Improvement Act and the substantial protections those laws already provide. Many smaller community banks do not have the resources to meet the standards imposed by PCAOB Accounting Standard 2.

Furthermore, while the cost of compliance is unlikely to add more stability than that which is created by the safety and soundness principles promulgated by the FDICIA, compliance costs themselves may increase instability. High costs could negatively affect banks' profitability as well as their lending potential in communities across the country. The SEC should therefore exempt FDIC-insured institutions and their holding companies which have less than $500 million in total assets from the internal control reporting, assessment and attestation requirements of Section 404 since these institutions are already subject to stringent capital requirements of the FDICIA.

Best regards,

Hendrick Vandamme,
Fordham University School of Law,
LL.M. in Banking, Corporate and Finance Law 2005,
New York, NY 10023