October 26, 2005

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: File No. S7-06-03; Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports of Companies That Are Not Accelerated Filers; 70 FR 56825 (Sept. 29, 2005)

Dear Mr. Katz:

America's Community Bankers ("ACB")[1] is pleased to support the final rule issued by the Securities and Exchange Commission ("SEC") delaying for one year the implementation of section 404 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley")[2] for non-accelerated filers. That release also requested comments in response to certain questions about the application of section 404 to smaller public companies.[3]

ACB strongly supports delaying the application of section 404 to non-accelerated filers until July 15, 2007, and appreciates the SEC taking this much-needed step. We recommended and supported this delay in recent testimony before the SEC's Advisory Committee on Smaller Public Companies ("Advisory Committee"). A copy of that testimony as well as a separate comment letter filed with the Advisory Committee is attached.

The attached testimony and comment letter, as well as an attached comment letter filed in connection with the SEC's April Roundtable on section 404, provide comments on the burden imposed by section 404 on publicly held community banks. We will not reiterate the comments made previously, but instead we include the attached letters and respectfully urge you to consider them as part of your deliberations. These letters and testimony provide suggestions for reducing the burden of section 404 on smaller public companies. Other ways to reduce the burden may come to light once the Committee on Sponsoring Organizations issues an exposure draft on implementing a control framework in smaller businesses, expected later this year.

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[1] America's Community Bankers is the member-driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit *www.AmericasCommunityBankers.com.*
[2] Pub. L. 107-204 (2002).
[3] 70 Fed. Reg. 56825 (Sept. 29, 2005).

The attached materials also explain why we believe that $700 million of public float should be used as the threshold to identify companies eligible for burden relief.

We would like to highlight one of our key observations about section 404. While we have made suggestions to the Advisory Committee on how to make section 404 less burdensome, we believe that there is a limit to what can be achieved by tweaking the requirements for smaller companies. Instead, we believe that the SEC, in conjunction with the Public Company Accounting Oversight Board (the "PCAOB"), should re-assess the requirement for an audit of internal controls. There is nothing in the legislative language that requires an audit opinion. The section 404 language is almost identical to similar requirements for internal control reports and attestations contained in banking law.[4] Bank regulators never interpreted those requirements to mandate an audit opinion and Congress knew this when it adopted Sarbanes-Oxley.

Requiring the auditors to issue an audit opinion on internal controls lays a significant amount of responsibility and liability at the door of the auditing firms. We believe it has helped lead to a check-the-box mentality by management and auditors with regard to section 404 compliance. One has to sympathize with the position of auditors and can understand why the auditing firms have taken quite a conservative approach to this task. We do not believe that the cost and burden of section 404 will be reduced significantly for the smaller companies if you make incremental changes in the requirements without changing the role and responsibility of the auditor. We believe that at least for smaller public companies, an auditor review of management's internal control assessment should be, at the most, all that is required under section 404.

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

Sincerely,

Charlotte M. Bahin
Senior Vice President, Regulatory Affairs

Attachments:

ACB Letter to the SEC, dated April 1, 2005
ACB Letter to the Advisory Committee, dated August 9, 2005
ACB Testimony Before the Advisory Committee, dated August 9, 2005

[4] 12 U.S.C. § 1831m and 12 C.F.R. Part 363.

April 1, 2005

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: SEC Roundtable on Implementation of Sarbanes-Oxley Internal Control Provisions
File No. 4-497

Dear Mr. Katz:

America's Community Bankers ("ACB")[5] is pleased to submit comments on the implementation of section 404 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley)[6] in connection with a public roundtable being held by the Securities and Exchange Commission ("SEC") on April 13. This issue is of great interest and concern to our members. ACB has received a good deal of information about section 404 implementation from our members and has continually brought this information to the attention of regulators.[7]

ACB and its public members appreciate the enormous benefits that can be achieved with a more focused approach to internal controls. Banking organizations with $500 million or more in assets have been subject to internal control reporting and attestation requirements under banking law since 1991. The banking industry knows first hand how important an internal control requirement is to the safe and sound operation of a company. However, there is clear evidence that the implementation of the section 404 requirements is resulting in a good deal of unnecessary burden and costs, even for the banking institutions that already were subject to similar requirements under banking law. Much of the burden and costs are resulting from the requirements of Auditing Standard No. 2 issued by the Public Company Accounting Oversight Board ("PCAOB"). External auditors, fearing the consequences of improperly implementing

[5] America's Community Bankers is the member-driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit *www.AmericasCommunityBankers.com.*
[6] Pub. L. 107-204 (2002).
[7] *See* letter from Diane Casey-Landry, President of ACB, to William McDonough, Chairman of the Public Company Accounting Oversight Board, dated November 4, 2004, and letter from Diane Casey-Landry to Donald Powell, Chairman of the Federal Deposit Insurance Corporation, dated September 21, 2004. Both are available at www.americascommunitybankers.com.

this new standard, are approaching it in a very stringent and conservative manner further adding to the burden.

We appreciate the efforts of both the SEC and the PCAOB to explore the way in which the internal control requirements are being implemented and being open to issuing additional guidance or revising the requirements to reduce unnecessary burden. This letter provides examples of some of the implementation problems that ACB members have been reporting. We believe, however, that it would be useful for both the SEC and the PCAOB members to work through the implementation process with select public companies and public auditors to see first hand how a fairly straight-forward requirement in section 404 is resulting in a great deal of unnecessary and costly work on the part of both company management and public auditors.

This letter also contains a number of suggestions that are based on the comments we have received from members.

Burden and Cost Generally

Many ACB community bank members are expressing serious concern that the cost of section 404 compliance will significantly outweigh the benefits of the resulting improvements in internal control processes and management's understanding of the effectiveness of these controls. In particular, they do not believe that the effort and expense resulting from additional certifications, documentation and testing requirements are commensurate with the risk from operations. In response to their regulatory and supervisory environment, these institutions are generally run more conservatively than companies in unregulated industries and the management teams typically have a very keen understanding of the risks facing the institutions and the controls in place to identify and manage those risks. In light of the noncomplex structure of the operations and business of many community banks, we believe that some of the costs, particularly the audit fee increases, are resulting from the reluctance of audit firms to exercise appropriate professional discretion in determining auditing scope for smaller, less complex companies. We believe this reluctance stems from the audit firms' reasonable fear that any exercise of discretion that results in an audit of appropriately limited scope may subject them to criticism or sanction by the PCAOB.

ACB is concerned that many community banks simply do not have the internal resources to meet the high threshold required by the PCAOB standard as it is being implemented by auditors. Banks in this position are facing significant external consulting costs, as well as increases in their auditing fees. There have been many published reports about the increase in auditing fees for all public companies, but the smaller companies are less capable of absorbing these costs. Some community banks are reporting audit and attestation fee estimates up to 75 percent higher than what they have paid in the past and some community banks are reporting total fees that equal up to 20 percent of net income. Our members also are facing a significant increase in legal fees associated with section 404. While we understand that companies will incur the most significant costs during the first year of section 404 compliance, there is strong evidence indicating that compliance costs will remain at a substantial level.

Those community banks who have gone through the 404 implementation process have not found material weaknesses, and any weaknesses that were found were insignificant. Some shareholder advocates will point to the companies that have found problems or that have not yet been able to report results as evidence of the need for the requirements. However, most of the problems brought to light to date seem relatively minor and would not result in significant financial statement reporting problems.

While a clean report may give investors additional comfort about the integrity of financial results, investors did not appear to be clamoring for more scrutiny and have comfort knowing that the banking industry is heavily regulated. Furthermore, the internal control requirements do not appear to be associated with the type of fraudulent activity that triggered the passage of Sarbanes-Oxley. For all of the costs being incurred by shareholders as companies implement section 404, there is no certainty that the corporate scandals of the past would have been prevented had 404 been in place earlier. There also is no certainty that they will not reoccur. The issue in those scandals was not internal controls, but fraudulent activity by management and "tone at the top." At some point, most small companies will have to review whether the benefits of being a public company justify the cost to investors of compliance with the securities laws, including Sarbanes-Oxley. Many small companies already have made the choice to go private, including Sturgis Bancorp, Madison Bancshares, Home Financial Bancorp and Fidelity Federal Bancorp. Others are looking for merger partners.

The time devoted to section 404 compliance is taking time away from other matters. Executive officers must spend a great deal of time on the minutia required by the auditors at the expense of a focus on daily operations, long-term performance and strategic planning. Internal audit and other departments also are spending significant time with 404, taking away focus and efforts from other required activities. For example, we have heard reports that, in some instances, community banks have abandoned regular risk audits for this fiscal year to concentrate on 404 compliance. Also, compliance with 404 is adversely affecting the way companies are managed. Some members are indicating that they are being forced to centralize decision-making because the price to be paid for a problem or gap in an area would be too high. It is not in anyone's best interest to have this requirement dictate corporate strategy or otherwise adversely affect the ability of companies to operate efficiently.

Documentation Requirement

Community banks report that the level of documentation being required is unnecessarily intensive. As regulated banking institutions, they previously were required to have effective internal controls in place, which already required a substantial amount of documentation on their processes. However, the depth and breadth of the documentation being required and the number of controls needing documentation is much greater than what was required in the past. The external auditors are taking the position that if a policy, procedure or practice is not supported by a formal written policy, it does not exist and it is not being followed. Small banks sometimes utilize informal policies or procedures that are followed in practice, but these are ignored by the auditor if there is no formal narrative or flow charts walking someone through the operation. While this type of documentation is important for major processes, it seems to be an overcompensating measure when auditors apply it to every single operation of the bank as is being done during the implementation of 404.

It would be helpful for the SEC and PCAOB members to perform field visits to gain a better, first-hand understanding of the actual documentation requirements being imposed on smaller public companies and see what is actually being required by the auditors. This type of review could help the SEC and PCAOB members better identify the changes that should be made to reduce the burden of this requirement.

Testing Requirement

The testing requirement is probably the most costly aspect of Section 404 implementation and the cost that is likely to be most significant in future compliance efforts. The testing of controls is redundant in the sense that the same controls are tested internally, sometimes by different people within the company, and then again by auditors. For the banking industry, examiners may also test internal controls. When the PCAOB initially proposed Auditing Standard No. 2, the ability for auditors to rely on the work performed by others was severely circumscribed. That aspect of the proposal received a good deal of comment. The PCAOB tried to give some leeway in the final standard, but the language used in the standard has led to confusion in application. Although some community banks are reporting that the auditor relied on testing performed by internal audit to some extent, most of ACB's public members who responded reported that there was no reliance by the auditor on internal testing. This is especially unfortunate because banking institutions tend to have independent, competent and dedicated internal audit functions and the testing done by internal audit should receive a great deal of deference by the auditor.

There are also major concerns on the degree of testing being required. Requiring audit firms to test every control annually is unnecessary and excessive. The increased requirements on the testing of controls has placed an enormous strain on smaller companies that do not have the necessary internal resources to perform much of the testing work. Those companies will have to expend significant resources each year to hire third parties to do the testing. Even for some organizations that possess the internal resources to perform the testing, the breadth and depth of the requirement go beyond what should be required to construct reasonable, cost-efficient controls and takes focus away from other work that must be completed. Many of ACB's public members have had to hire additional internal audit staff for this reason.

Relationship with the Auditor

Contentious relationships are developing between external auditors and senior management of community banks. As we indicated above, external auditors are reluctant to exercise discretion and limit the scope of their review for fear of criticism or sanction from the PCAOB. While this may have a perceived benefit of providing much needed regulation to govern the audit profession, ACB is extremely concerned about the problems this is causing. Because there is a clear lack of formal guidance to help external auditors exercise proper judgment, they are being overly conservative in their 404 implementation efforts and taking hard-line, abrupt positions during the audit process. The auditor's conservative positions are requiring that controls for every transaction and activity of a bank be documented and tested. Additionally, auditors will no longer consult with management on accounting and internal control matters. Unlike in the past when auditors and bank management engaged in open and healthy dialogue, there is now more of an adversarial or confrontational relationship. Banks are being forced to proceed with little or no discourse with the auditor, then being told after the fact by the auditors that they did it wrong. This seems to promote a process that is doomed to fail.

Not only does this add to the costs being imposed on small businesses in obtaining outside counsel or hiring internal resources, it is leading to some institutions deciding against certain, legitimate and beneficial transactions. These banks are less likely to expend the resources when there is significant risk that the external auditor will not agree with the bank's position, whether obtained externally or determined internally.

We also want to address the resource issues at the public auditing firms. Some smaller companies are having trouble finding auditors and consultants willing to do the work because those firms are too busy with other clients. While that may ease up a bit now that the SEC has delayed implementation for non-accelerated filers, some auditing firms do not want to take on the liability of a smaller company. Some smaller companies have been asked by the larger audit firms to take their business to another firm, while others are finding that the audit firm cannot get the work done on time.

Busy auditors and fee increases are one thing, but those institutions that have, at least for now, accepted a doubling in their audit fees to maintain their longstanding audit relationships, are finding senior partners-in-charge replaced with junior staffers to perform the audit work. Many bank CEOs and CFOs have expressed concern and frustration that their staffs are training the external auditors during the audit process. Furthermore, this seriously reduces the confidence that bank management has in its external auditor review, even if the bank has the utmost confidence in its internal processes and financial statements. Their concern is that the external audit is forced upon them at enormous costs, with little or nothing gained as a result of the "junior staff" review being done by the external auditor. When bank management raises the matter with senior officials at the auditing firms, they are told that the firms' auditors are stretched thin. The banks are sometimes urged to retain a new firm.

Another issue we would like to bring to your attention is the disclaimer clauses that auditors are inserting in engagement letters. Many of these disclaimers absolve the auditor from anything other than gross negligence and even in those cases, limit damages to the fees paid. Bank regulators have discussed this issue and are working on a response that would prohibit auditors of regulated depository institutions from including these disclaimers in engagement letters. We believe that the SEC and the PCAOB should also review this issue with regard to other public companies. It is not appropriate for auditors to include these disclaimers, particularly in light of the substantial fees they are now collecting for their work.

Private FDICIA Banks

An unfortunate consequence of the section 404 requirements is that provisions of Auditing Standard No. 2 are being inappropriately applied to private institutions. As you are aware, depository institutions with $500 million or more in assets have been subject to internal control reporting and attestation requirements under Section 36 of the Federal Deposit Insurance Corporation Improvement Act ("FDICIA") since 1991. Many of our members are reporting that their external auditor is applying Auditing Standard No. 2 in FDICIA engagements. At ACB's request, the Federal Deposit Insurance Corporation ("FDIC") issued a supervisory letter indicating that the attestation standard for FDICIA private banks was not changed by Sarbanes-Oxley and that AT 501 issued by the American Institution of Certified Public Accountants should govern FDICIA attestations. However, many privately held and mutual FDICIA banks continue to experience substantial audit fee increases coupled with serious strains on internal resources because some audit firms are still applying Auditing Standard No. 2 to the FDICIA banks.

This is not surprising since AT 501 is in the process of being revised and is rumored to be very similar to Auditing Standard No. 2. It also is understandable that auditors view the PCAOB standard as "best practices" for what is appropriate for all companies – private or public. This is a troubling development that we continue to discuss with the bank regulators. The PCAOB standard, as discussed above, is more extensive and intrusive than what the private FDICIA banks have experienced in the past. Even if regulators view the benefits as exceeding the significant costs of section 404 for public companies, it is hard to see how the benefits of applying Auditing Standard No. 2 could outweigh the enormous costs and burden to private banking institutions. These institutions are subject to stringent banking laws and regulations and regular examinations. They do not broadly seek funds from public investors so the consequences of an internal control problem are not nearly as severe. We continue to work with the bank regulators and public auditors in finding a solution to this problem.

Suggestions for Change

Audit Opinion on Internal Controls. We believe that the PCAOB, in conjunction with the SEC, should re-assess the requirement for an audit of internal controls. When issuing Auditing Standard No. 2, the PCAOB adopted an expanded interpretation of the Sarbanes-Oxley requirements. Two sections of Sarbanes-Oxley address the attestation of management's assessment of the internal control structure. Section 103(a)(2)(A) stipulates that the PCAOB develop an auditing standard that would require the external auditor to "*describe in each audit report the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 404(b)*…." Following this wording, Section 404(b) of Sarbanes-Oxley directs public company auditors to "*attest to, and report on, the assessment made by management*." In contrast, Auditing Standard No. 2 requires a detailed integrated audit of internal control and financial statements and requires the auditor to opine directly on the effectiveness of internal controls.

Conducting a thorough and detailed review of how management reaches its conclusions about internal controls can be as effective, but considerably more efficient and less burdensome, than the required audit. Requiring an independent audit of internal control over financial reporting is duplicative of work performed by a company's internal audit function and senior management and has resulted in the cost, burden and frustration arising from Auditing Standard No. 2. While additional guidance for auditors, as suggested later in this section, could reduce some of the unnecessary burden, we think it would be beneficial to at least consider a totally different approach. As we predicted when the audit requirement was initially proposed, public auditors are interpreting their responsibilities under the standard quite broadly and, in an effort to avoid future liability, are erring on the side of doing too much, rather than not doing enough.

We urge the PCAOB to rethink whether a separate audit of internal controls is really necessary and scale back these standards to a reasonable level of inquiry that allows an auditor to opine on the conclusions reached by management. There are other protections recently put in place that will protect the investing public and that make a more burdensome standard inappropriate. For instance, the chief executive officer and chief financial officer must certify each quarter as to the accuracy of the company's financial statements and their responsibility for establishing and maintaining internal controls.[8] They also must certify that the internal controls have been designed to provide reasonable assurance about the reliability of the financial statements and that they have evaluated the effectiveness of the internal controls. The certifications with regard to the accuracy of the financial statements are made under the threat of criminal liability if the officer knowingly makes a false certification. These new requirements coupled with a thorough review of management's assessment of the internal control environment by the external auditor should provide the protections needed by investors.

If the SEC and the PCAOB continue to believe that an audit is appropriate and necessary, we offer the following additional suggestions for making the requirement less burdensome.

Documentation. We urge the SEC and PCAOB to issue guidance reinforcing language in the framework adopted by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") that many controls are informal and undocumented, yet still exist, can be tested and evaluated, and can be highly effective. The presumption that if a control is not documented, it does not exist, must be changed.

Testing. This is the area where we believe additional guidance and changes to Auditing Standard No. 2 could significantly reduce the burden and cost on smaller companies. Particularly since the testing must be performed every year. More reliance on testing by internal audit and other competent personnel or third party consultants should be permitted and encouraged in clear and unambiguous language without any confusing ambiguity. The requirement that the auditor's own work provide the principal evidence for the auditor's opinion should be removed as this language leads to confusion over what is permitted. Guidance should also allow auditors to rotate the testing so not every control needs to be tested every year. A three-year interval for each control, other than the most significant controls, should be sufficient.

Guidance for Auditors. The SEC and the PCAOB should carefully review and evaluate the manner in which auditing firms are implementing the section 404 requirements and provide

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[8] Sections 302 and 906 of Sarbanes-Oxley; Final Rule: Certification of Disclosure in Companies' Quarterly and Annual Reports, 67 Fed. Reg. 57276 (Sept. 9, 2003).

corrective guidance where problems are found. Initial reports from community banks suggest that there is a significant amount of inconsistency and confusion regarding the level of work being required by auditors. Different approaches are generating inconsistency in the fee increases being imposed on community banks. The issue of insufficient staff at the external auditing firms raises the concern of whether the firms can adequately meet their auditing responsibilities. The lack of sufficient, qualified staff also discourages the firms from taking a more tailored and customized approach to auditing the smaller companies. Fear of second-guessing also plays a role, and the one-size-fits-all approach becomes the rule regardless of the size or complexity of the organization.

We understand that SEC staff advocates a private response to this problem, such as adoption by COSO of a more tailored internal control framework for small companies. However, in light of the strong oversight role played by the SEC and the PCAOB, together with the fact that the section 404 requirements are so new, we also look for leadership from the SEC and the PCAOB on this issue. Even if COSO does adopt a more tailored framework, that does not mean that auditors would change their approach to Auditing Standard No. 2 for the smaller companies without guidance from the PCAOB. Also, we suggest that appropriate guidance needs to be issued to reduce the burden on larger companies as well. It would be helpful if the PCAOB would evaluate the audit practices and provide guidance on more reasonable approaches.

It also would be helpful to have guidance on how much assistance the auditor can give on the front end without jeopardizing auditor independence. While some PCAOB members have been speaking out on this issue in public forums encouraging more communication between company management and public auditors, formal written guidance would be very useful.

Relief for Banking Institutions. We question the necessity of having the significant costs of section 404 compliance and Auditing Standard No. 2 imposed on an industry that is already heavily regulated and subject to routine examination by government regulators – often multiple agencies -- on a regular basis. Many of the new requirements for public companies under Sarbanes-Oxley are similar to the requirements imposed on banks for many years under FDICIA. However, the FDICIA institutions are still experiencing significant costs and burdens in meeting the new standards of the section 404 requirements and Auditing Standard No. 2. Many of these institutions are not convinced that their auditors have clearly explained what additional work is being required to warrant the tremendous fee increases.

Federal banking regulators recognized years ago that internal control reporting and attestation requirements for the smaller community banks would be unduly burdensome, so the requirements were applied only to those institutions with $500 million or more in assets. Regulators felt comfortable with this approach since these smaller institutions are still subject to the full scope of banking laws and regulations, are required to have an adequate internal control structure in place, and, most importantly, are subject to regular safety and soundness examinations. Now, however, these smaller publicly held banks are facing additional significant burden in order to prepare for the application of Auditing Standard No. 2 by their external auditor. The fear is that these added costs could erode retained earnings and weaken capital adequacy, creating very real safety and soundness concerns. ACB believes that the SEC and the

PCAOB should recognize the substantial level of regulation and independent oversight of the banking industry and grant some appropriate relief.

We urge the SEC and the PCAOB to consider allowing regulated depository institutions to meet the Sarbanes-Oxley requirements by complying with the current approach to the internal control reporting and attestation requirements contained in federal banking law. ACB believes that the federal banking regulators, in close consultation with the SEC and PCAOB, are fully capable of evaluating whether the banking law standards need to be updated. If a full exemption is not deemed appropriate, we believe that, at a minimum, relief consistent with the FDICIA exemption for smaller community banks should be seriously considered. And, for the larger depository institutions, compliance with section 404 should then also constitute compliance with any related banking law requirement.

ACB appreciates the opportunity to comment on this important matter and is available to assist the SEC in any way we can to better understand the section 404 implementation issues. ACB remains committed to working with the SEC and the PCAOB to reach a workable solution for this important corporate governance and risk management requirement. If you have any questions, please contact the undersigned at (202) 857-3121 or via e-mail at cbahin@acbankers.org, Diane Koonjy at (202) 857-3144 or via e-mail at dkoonjy@acbankers.org, or Dennis Hild at (202) 857-3158 or via e-mail at dhild@acbankers.org.

Sincerely,

Charlotte M. Bahin
Senior Vice President, Regulatory Affairs

cc: William J. McDonough
Chairman
Public Company Accounting Oversight Board

Michael Zamorski
Director, Division of Supervision and Consumer Protection
Federal Deposit Insurance Corporation

Scott Albinson
Managing Director, Supervision
Office of Thrift Supervision

Richard Spillenkothen
Director, Division of Banking, Supervision and Regulation
Federal Reserve Board

Zane D. Blackburn
Chief Accountant
Office of the Comptroller of the Currency

America's Community Bankers Shaping Our Future

August 9, 2005

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: Advisory Committee on Smaller Public Companies
File No. 265-23

Dear Mr. Katz and Advisory Committee Members:

America's Community Bankers ("ACB")[9] would like to take this opportunity to comment on the work of the Advisory Committee on Smaller Public Companies and provide some suggestions to relieve the burden of the federal securities laws on smaller companies. ACB is the national trade association for over 1,200 community banks across the nation. Our membership is made up of national and state commercial banks as well as federal and state savings associations. Our members are public, private and mutual associations.

Complying with the federal securities laws has always been more difficult for the smaller public companies because of their more limited resources. In deciding to access the public equity markets, companies must weigh the costs and benefits of being a registered public company and having shares listed on a national exchange. That cost/benefit analysis has become even more important in light of the passage of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), the issuance of new corporate governance listing standards by the national security exchanges, and the more aggressive enforcement activities of regulators. It would be a shame if all of these new demands and risks dissuaded smaller companies from becoming public or remaining public if there were alternatives available that relieved the burden of laws and regulations while continuing to protect investors. Smaller companies are the primary catalyst for job creation and are an essential component for having a strong and dynamic market economy. These companies need flexibility in determining where to find funding to grow their businesses. Sometimes access to the public markets makes the most sense.

[9] America's Community Bankers is the member-driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit *www.AmericasCommunityBankers.com.*

Public community banks are particularly stressed by many of the new securities laws changes. Those banks already are subject to a great deal of regulation and are subject to periodic safety and soundness examinations by federal bank regulators. Some of the corporate governance changes, brought on by egregious accounting and governance scandals at larger companies, tax these companies even further to the point that it becomes unreasonable to remain public. In addition, small private banks and mutual organizations are feeling the effects of some of the changes as there is pressure to comply with what are deemed to be "best practices" and public auditors are subjecting all depository institutions required to produce internal control reports to the public company attestation standards.

We are using this opportunity to provide some suggestions for change to relieve the burden on smaller companies while still protecting investors. We start with a general discussion of what we believe constitutes a "smaller public company" that should benefit from burden relief. The remaining suggestions are arranged based on the subject matter focus of each Subcommittee of the Advisory Committee.

Definition of Smaller Public Company

Currently, there are several size categories under the federal securities laws, with two critical ones on which we wish to comment being the $75 million threshold for accelerated filers and the $25 million threshold for "small business issuer" status.

We agree with other commenters that the accelerated filer threshold should be increased to $700 million. The SEC's own research indicated that the $700 million threshold was the level at which a company becomes widely followed and these larger companies represented about 95 percent of equity market capitalization. There is a great deal of difference between a $75 million company and a $700 million company in terms of staff and financial resources to meet more rigorous standards. Smaller companies were required to comply with section 404 of Sarbanes-Oxley on the same time frame as the much larger companies, even though they did not have the internal resources to comply and had difficulty getting the attention of outside experts and auditors. The SEC already has used the accelerated filer category to differentiate among companies with regard to certain filing requirements. We believe the SEC should use the non-accelerated filer status, as adjusted to the higher $700 million threshold, to identify companies that should receive more lenient regulatory treatment in the future as smaller public companies.

We also believe that "accelerated filer" status should not be measured as of a single point in time. This makes it too difficult for smaller companies who suddenly find themselves over the threshold based on what may be a temporary increase in stock price. We would recommend that the status be determined by looking at average market capitalization over an extended period of time.

The $25 million threshold for "small business issuer" has not been changed since 1992, even though the average size of companies has increased significantly over this period. In order to make this status more meaningful, we suggest that the threshold be raised to at least $100 million of revenue and public float.

Internal Control over Financial Reporting

Section 404 of Sarbanes-Oxley is the most burdensome new requirement in the legislation. It is not so much the language of the law that creates the problems, but the way it has been implemented under the rules and regulations of the SEC and the Public Company Accounting Oversight Board ("PCAOB"). We are hopeful that the guidance issued on May 16, 2005 by each of those agencies will make a difference before smaller companies must comply beginning in July, 2006. However, we are not counting on that to happen. As long as the auditors must provide their own opinion on the effectiveness of internal controls, rather than attest to management's assessment, we fear that the auditors will not change their approach significantly. Anecdotal evidence to date, including conversations our public members have had with their auditors, show that the guidance has not yet had any effect on the way the auditors are approaching this work.

Much has been written about the burden of section 404 and we will not repeat the complaints here. We have attached our letter to the SEC in connection with its section 404 roundtable in April that summarizes the concerns of our members with regard to section 404's expense and burden.

We have the following suggestions for reducing the burden of section 404 on smaller community banks.

- The effective date for non-accelerated filers should be delayed for another year so that compliance would be required for fiscal years beginning after July 15, 2007. This is justified for many reasons. It will take some time for the guidance issued May 16 to be digested by the auditors and for the regulators to see if the guidance makes a difference in approach. Also, the Committee of Sponsoring Organizations of the Treadway Commission ('COSO") has delayed the release of an exposure draft on *Implementing the COSO Control Framework in Smaller Businesses* until August, at the earliest. Once released, it will take time to accept comments and issue final guidance. Finally, the PCAOB has said that it will use the inspection process to examine auditor's application of Auditing Standard 2 and will address instances where the auditors have taken an unreasonable approach. This process will take a year or two before it has any effect on unnecessarily burdensome practices. It would be very unfair to expose smaller companies to the significant burden and expense of section 404 until all of the implementation issues that arose with the larger companies are resolved.

- We think that all banks and savings associations that are so heavily regulated and subject to regular safety and soundness examinations should be exempt from the section 404 requirement. It is difficult to see why companies that operate under a microscope should be subject to the same burdensome requirements as companies that are not regulated at all.

- Understanding the difficulty in implementing an overall exemption for banks and savings associations, we believe that community banks and savings associations with less than $1 billion in assets should be exempt from section 404. The legislative language in section 404 mirrored that found in requirements imposed by the Federal Deposit Insurance Corporation Improvement Act ("FDICIA"). FDICIA required that banks and savings associations provide an annual management report on internal controls and obtain an attestation of management's assessment by the external auditor. (We note here that the bank regulators never required a separate opinion from the auditor.) Recognizing the significant burden this requirement would place on smaller institutions, and knowing that those smaller institutions were subject to extensive examination, institutions with less than $500 million were excluded from that requirement. The bank regulators recently proposed an increase in the exemption threshold to $1 billion. If the banking agencies believe that $1 billion institutions can be exempt from the requirement without harm to the industry, it seems that an exemption under section 404 also could be granted without harm to investors. Investors would otherwise be protected by the complete application of all other regulatory requirements and periodic safety and soundness examinations.

- We believe that the following suggestions for changes in the approach of section 404 audits would help relieve the burden of the requirements for smaller companies:

  Relax the requirement so that the report and audit is required every two or three years.

  Issue guidance that *requires* staggered testing of controls, with more important controls tested more frequently.

  Issue guidance that *requires* external auditors to rely on the work of management and internal audit unless there is reason to believe that the work is flawed.

  Adopt a definition of materiality for smaller companies that takes into account the smaller level of revenues and profits. For example, materiality could be measured after removing the effects of stock option expensing and on an annual, rather than quarterly basis. Otherwise, almost any potential problem becomes material for a smaller company, leading to an unnecessary amount of documentation and testing.

Corporate Governance and Disclosure

<u>Filing Deadlines</u>. Over the course of the last few years after passage of Sarbanes-Oxley, the SEC has accelerated the filing deadlines for periodic reports on Forms 10-Q and 10-K, current reports on Form 8-K, and insider beneficial ownership reports under section 16. Unlike larger

companies, smaller public community banks do not have employees on staff dedicated to filing these reports so either have to divert attention from other matters to meet stringent deadlines or hire outside help. The two business day deadline for section 16 reports is particularly difficult because these reports are required from principal shareholders, directors and executive officers, and a certain amount of coordination with these parties must be arranged. Also, in light of the significant number of items that now must be reported on Form 8-K, the new four-business day filing requirement takes its toll on staff. Smaller companies do not have the staff resources to handle the increasing amount of information that has to be filed. Shareholders in these smaller companies do not need or want so much information on such an immediate basis. Also, shorter deadlines only encourage those investors who already have a short-term outlook on investments when it seems prudent to encourage longer-term investment objectives.

We suggest that the deadlines for non-accelerated filers be changed to 10 calendar days for filing current reports on Form 8-K and section 16 beneficial ownership reports.

When the SEC accelerated the deadlines for periodic reports, it provided an exemption from the new deadlines for non-accelerated filers. However, larger companies are also now experiencing problems with the deadlines in light of the substantial work that must be done to comply with Sarbanes-Oxley. Therefore, the SEC should consider freezing the current deadlines that are now in place rather than phasing in the final step in the acceleration schedule that would require annual reports be filed within 60 days and interim reports be filed within 35 days.

Definition of Independent Director. ACB urges the SEC and the national stock exchanges to relax the definition of independence for purposes of board and audit committee service for non-accelerated filers. Community banks undertake substantial efforts to find qualified directors willing to serve on the board and its various committees. Bank directors not only have responsibilities under applicable corporate and securities laws, but they also must understand and enforce a full range of banking laws and regulations. Especially after passage of Sarbanes-Oxley, many qualified individuals cannot put in the necessary time and effort that is now required for board service and some also are wary of the increased exposure to personal liability. Because a community bank generally seeks to elect directors from the bank's community, this further narrows the field of potential candidates.

Changes in the definition could broaden the pool of candidates without interfering with the goal of Sarbanes-Oxley to install board members who can competently perform their oversight role and exercise independent judgment. We urge that the following changes be made to the definition of independence:

- There currently is no *de minimis* exception to the prohibition on the receipt of any direct or indirect consulting, advisory, or compensatory payments by audit committee members. The current rule creates challenges when seeking qualified audit committee members when you couple the prohibition with the look-back provisions of the stock exchange listing requirements and the fact that the prohibition extends to family members. We also note that the Federal Deposit Insurance Corporation ("FDIC") recently proposed relaxing the audit committee independence rules for insured depository institutions of less than $1 billion in assets in recognition of the increasing difficulty of finding qualified audit committee members. The only requirement under the FDIC proposal is that audit committee members not be officers or employees of the institution or any affiliate at the time of service or within the preceding year.

We think this approach is appropriate for depository institutions because board and audit committee oversight is examined on a regular basis by the federal bank regulators. If this is too far for the Advisory Committee to go in its recommendations, we believe there should at least be a *de minimis* exception to the prohibition on compensatory payments. For example, the New York Stock Exchange rules allow payments to independent directors, but not audit committee members, of up to $100,000. Under the original proposal, but not in the final rules, payments over $100,000 would have only established a rebuttable presumption that the individual was not independent. We believe this is a reasonable approach for all directors, including audit committee members, of smaller public companies. Even with an exception, the rules could require that the board of director be notified of any payments made to a potential director candidate and make a determination as to whether the payments would affect the ability of the director candidate to act independently.

- The stock exchanges should be encouraged to define an independent director for smaller public companies as an individual who is not employed by the company or an affiliate, and who does not have a spouse or children employed as an executive officer of the company or an affiliate, and who does not have, in the opinion of the board, any relationship that would interfere with the exercise of independent judgment. This would be a reasonable and practical approach.

  A less far-reaching alternative would be for the stock exchanges to at least narrow the look-back provisions and the definition of immediate family members to broaden the pool of independent director candidates for non-accelerated filers. Those rules can work fine for Fortune 500 companies that can look nationally for board candidates. For the smaller geographical area that provides candidates for the smaller companies, however, the rules unnecessarily narrow the pool of potential directors. Smaller companies should have the ability to cease any payments and terminate any business relationships with an individual that would otherwise preclude him or her from being considered independent and family member should only include spouse and children.

<u>Auditor Independence</u>. The independence rules should be relaxed so that auditors can provide advice to companies with regard to the proper application of accounting rules and Auditing Standard No. 2. The implementation of section 404 and Auditing Standard 2 has exposed a problem with the tough auditor independence rules resulting from Sarbanes-Oxley. Auditors have taken a very stringent position and will no longer provide any advice or help at

all with regard to the application of very complex accounting rules. Smaller companies do not always have the internal staff expertise to work through complex requirements and it is expensive to seek outside help. In the past, management could work cooperatively with auditors to ensure an approach that everyone could agree was the correct one. With the continuing complexity of accounting rules, appropriate changes to the auditor independence requirements should be made for smaller companies to allow this level of cooperation to continue.

Disclosure Rules. Serious consideration should be given to whether smaller public companies should have less extensive disclosure requirements. The amount of detail in current disclosures is more than is needed by investors. Also, investors in depository institutions have access to extensive quarterly financial reports that are filed with the federal banking regulators. These reports are filed within 30 days of the end of each quarter and are available to the public soon thereafter.

Capital Formation

Registration Requirements. The threshold number of shareholders that requires registration with the SEC needs to be modernized to reflect changes in corporate structure over the last 65 years. Current requirements set the threshold at 500 shareholders of record for registration and 300 for withdrawal from registration. These standards have been in effect since 1964 and do not reflect the significant growth in companies since that time. We suggest a threshold that is effective in requiring disclosure and protection in those instances where a company is of a substantial size and has a significant investor following. We urge consideration of two different recommended thresholds: one based on “shareholders of record” and one based on “beneficial shareholders.” A public float threshold in combination with number of shareholders may be appropriate. At a minimum, however, we believe that the threshold for registration should require at least 1,250 beneficial shareholders, with an appropriate corresponding threshold for withdrawals that is not less than 1,000 beneficial shareholders.

Accounting Standards

While we do not support different accounting standards for small companies, something needs to be done about the complexity of accounting rules and principles. It is increasingly difficult for smaller companies to understand and apply accounting standards without external help. A perfect example is the new stock option expensing rules. Rather than try to understand and apply the new rules or hire expertise, smaller companies will choose to terminate stock option plans. Accounting standards should be written in a way that is clear and understandable and should be relatively easy to apply. To the extent possible, they also should not lend themselves to disagreement on outcome based on who is doing the analysis. We do support longer transition periods for smaller companies so that they have the necessary time to review and understand new accounting rules.

ACB appreciates the opportunity to provide these comments to the Advisory Committee. 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
Senior Vice President
Regulatory Affairs

Written Statement of

David Bochnowski
Chairman and CEO
NorthWest Indiana Bancorp
Munster, Indiana

and

Member
Government Affairs Steering Committee
America's Community Bankers

representing

America's Community Bankers
Washington, DC

before the

Advisory Committee on Smaller Public Companies
of the
Securities and Exchange Commission

Chicago, Illinois

August 9, 2005

Good Afternoon and thank you for giving me this opportunity to testify. My name is David Bochnowski. I am Chairman and CEO of NorthWest Indiana Bancorp, a holding company for Peoples Bank, a state-chartered bank located in Munster, Indiana. I also am the former Chairman of America's Community Bankers, the trade association for over 1,200 community banks and savings associations across the country. I am very happy to testify before such a distinguished panel of executives, attorneys and accounting professionals and to share with you some of the issues that confront my organization as a smaller public company.

Let me tell you something about my company. NorthWest Indiana Bancorp has been a public company since Peoples Bank converted from mutual form in 1984. We raised $3.1 million in capital and had $157 million in assets. We now have nearly $580 million in assets, with $46 million in equity capital. Our annual compound rate of return for our investors since 1984 has been 23.2%, which includes price appreciation and dividends paid. We currently have approximately 440 shareholders and our stock is traded on the OTC Bulletin Board. We were very happy with our decision to go public in 1984. It gave us the opportunity to expand the number of people who could participate in our success and gave us the capital to grow. Our stock has been a good investment.

Our bank is regulated by the FDIC and the Indiana Department of Financial Institutions and the holding company is subject to inspection by the Federal Reserve. That means that both organizations are subject to regular safety and soundness examinations and must comply with a host of safety and soundness and consumer-related regulations.

On May 19th of this year, our company issued a press release indicating that we were looking into options to terminate our SEC registration. After an analysis of the costs and benefits of remaining public, the board felt it was the right thing to consider and necessary in light of the board's fiduciary duties. A Special Committee of independent directors has been appointed to review our options. The board also has decided that if it decides to move forward with a de-registration of the company's shares based on a recommendation by the Special Committee, it would first seek prior shareholder approval even though such approval is not required by state law.

Why did we take this step of exploring de-registration? The simple answer is the cost and burden of complying with section 404 of Sarbanes-Oxley. Before I elaborate, let me say that this step was not taken lightly. We would like to remain a public company. We believe strongly in the benefits of SEC regulation and shareholder transparency. We like to share the story of our success with our investors. If we do terminate our SEC registration, the purpose will not be to force some shareholders out or discontinue our long history of providing information to shareholders and engaging in open and honest communication with them. That is definitely not our goal. We will remain a regulated banking institution and will continue to provide quarterly and annual information through the bank regulatory process and in other ways. We would continue to take our responsibilities to our investors very seriously and hopefully continue to reward them with significant returns.

We are not an accelerated filer so the effective date for section 404 compliance does not occur until next year. However, in anticipation of this new requirement, our external auditors presented an estimate of what it would cost in auditing fees for this new work. Our external auditing costs would increase from $94,000 to $185,000. Soft costs also would increase. Our estimate is that internal costs would increase about $75,000 to $100,000, including the salary of at least one new hire for our internal audit staff. We are somewhat more fortunate than other smaller companies in that we believe we can do most of the internal work ourselves and avoid additional significant consultant fees.

The board noted these numbers with some astonishment, particularly because it was not clear what benefit we would get from these additional costs. As a federally insured depository institution, Peoples Bank is very heavily regulated by state and federal banking authorities, as is the holding company. My company is required by banking law to have internal controls in place appropriate for its size and complexity. Once we crossed the $500 million asset threshold, management became subject to a requirement to prepare annual internal control reports and obtain attestations of those reports by our external auditor. The statutory language of this requirement is similar to the language in section 404, but it has been implemented by bank regulators much differently. While complying with the banking law internal control requirements appeared to carry with it a fairly reasonable burden, section 404 compliance was a different story.

The board grappled with how we could justify these costs to our investors and what the burden of 404 would mean overall for our institution. Our board was looking at a company that has been very well run, returning over 20% on an annual compound basis to shareholders. The bank already was testing internal controls on a regular basis and internal control effectiveness was subject to review by internal and external audit and our banking examiners. And yet we are going to be subject to this significant increase in costs which may not be justified.

We do not see a ready way to reduce these costs in any significant way and view them as an open-ended commitment that would continue far into the future. Because of the small number of auditing firms, there is no ability to negotiate fees. The big four companies are not interested in doing work for a company of our size. Bidding for our work is realistically limited to two smaller auditing firms.

We also do not see that the lessons learned from 404 implementation with the larger companies is going to result in less costs and burden anytime soon. We appreciate the efforts of the SEC and PCAOB in trying to address some of the section 404 issues with new guidance. Our belief is that this well-intentioned guidance will not be of much help, at least in the short term. Anecdotal information from other members of America’s Community Bankers as well as our own conversations with our auditor lead us to believe that the auditors will not change their approach to section 404 compliance in any significant way. There is not much competition among auditors so companies have no negotiating room. More importantly, the PCAOB chose to require that the auditors not just attest to management’s assessment of a company’s internal controls, but that they provide an audit opinion on the effectiveness of internal controls. This is a much higher standard than has been required under banking law and goes beyond the requirements of the statutory language of section 404. The higher standard is the primary cause of the significant increase in costs for many smaller organizations.

In the end, what our board was looking at was basically a wealth transfer from our shareholders to our public auditor, with no compensating benefit to the company. This is particularly frustrating in that the catalyst for Sarbanes-Oxley was a rash of corporate scandals caused in large part by auditors and other gatekeepers not doing their jobs. While the additional direct expenses may not seem that high to some, this is money that could be used in more productive ways to benefit the company and add shareholder value. Also, it is not just the direct costs that are a burden. The indirect costs of personnel time and energy must be taken into account.

The board is considering the time and energy that it and management would have to devote to an exercise that would have no additional benefit. One should not underestimate the costs of transferring additional time and energy that goes into operating a bank, deciding on future strategy, and responding to the needs of stakeholders, including customers, the community, employees and shareholders, into a time-intensive, paper-producing process. The company has been well run in the past and complies with a vast array of safety and soundness requirements, including internal control management, and shareholder reporting regulations. The board and management already were meeting the challenges of strict regulatory requirements. Now they are being asked to comply with a pass/fail test on internal controls. Distraction of other internal staff is also a hidden burden. And we have to consider whether we can retain qualified staff to help comply with these requirements, as internal audit personnel at banks are being snatched up by public auditing firms for their expertise.

When all of these concerns were taken into account, the board felt that it was necessary to review our alternatives for the sake of the company and its shareholders.

One possible alternative to avoiding the significant costs of internal control reporting is to terminate our SEC registration. Banking regulation currently requires us to provide these reports and an attestation. As a result of the passage of section 404, public auditors have been imposing the PCAOB's attestation standard on our competitors subject to these requirements, rather than the highly effective but more reasonable approach they took in the past. The FDIC has recognized the significant burden this has placed on smaller depository institutions and just last month proposed raising the exemption threshold that triggers the internal control reporting requirements from $500 million to $1 billion.

That would be very meaningful for a bank like ours if we chose to terminate SEC registration. That would mean that we could completely avoid the burden that section 404 and the PCAOB's implementing rules have placed not only on smaller public companies, but private and mutual banks as well. We would still have to maintain appropriate internal controls under banking law, and those controls would be examined on a regular basis. But we would not have the redundant distraction of 404 and could focus on more meaningful work to grow our company and reward our shareholders.

I've told you how section 404 has so heavily influenced our board's decision to seek alternatives, let me tell you what changes I think could help smaller companies like ours stay in the public markets.

First of all, I think it is essential that the effective date for section 404 compliance by smaller companies be extended for another year. It will take some time for the SEC and the PCAOB to determine if the May 16 guidance does have any effect and, if it doesn't, how to proceed. Also, COSO has delayed the release of an exposure draft on implementing the COSO internal control framework in smaller companies to August at the earliest. Finally, the PCAOB has said that it will use the inspection process to examine the auditor's approach to 404 compliance, and that will take some time. It would be unfair to expose smaller companies to the significant burden and expense of 404 until all of the implementation issues are addressed.

Serious consideration should be given to exempting smaller companies from the requirement. At a minimum, we believe the SEC should follow the lead of the FDIC and exempt community banks and savings associations with less than $1 billion in assets. These institutions already operate under a microscope and investors would otherwise be protected by the complete application of all other safety and soundness regulations and periodic examinations.

The SEC could choose to revise the requirement for smaller companies so that the reporting and attestation requirement only applies every two or three years, rather than annually.

The SEC and the PCAOB could issue additional guidance with more teeth to force the auditors to approach compliance in a more reasonable way. The guidance could require that the auditors stagger the testing of controls, with more important controls tested more frequently, and that auditors use the work of internal audit unless there are reasons to think that the work is flawed. Serious consideration should be given to coupling this guidance with termination of the audit opinion requirement. The PCAOB could adopt the approach used by the banking regulators that requires the auditor to review and attest to management's report rather than issue a separate opinion.

I also would like to touch on a few other requirements that produce unnecessary burden for smaller companies.

The accelerated filing deadlines for Form 8-K current reports and beneficial ownership reports are too short for smaller companies who do not have dedicated staff available to fulfill these requirements. The 2-business day timing for beneficial ownership reports is difficult because a certain amount of coordination with the shareholders, directors and executive officers who must comply is required. Current report filing within 4 business days has become increasingly difficult with the significant number of new reportable items. Such short filing deadlines are not necessary for smaller community banks. The investors in these companies like other smaller companies tend to be long-term investors, not swayed on a day-to-day basis by company news and information.

The SEC and the stock exchanges should rethink their definitions of independence for directors and audit committee members. Community banks seek out director candidates from the local community and it gets more difficult to find qualified directors when the definition of independence is so narrow. We must disclose in public documents that one of our very competent and effective audit committee members who is a CPA in a small local firm is not independent. His transgression: another partner at his firm advised our trust group on a minor tax matter a few years ago for approximately $600 in fees. If that type of payment was made now while the CPA serves on the audit committee, that would be a violation of the SEC audit committee rules. I note that the FDIC recently proposed relaxing the audit committee independence rules for smaller depository institutions. Those institutions with less than $1 billion in assets would be required to have audit committee members who are not officers or employees of the institution or an affiliate, but the committee members would not have to meet the other bank regulatory independence rules. The FDIC recognized that smaller community banks have increasing difficulty in finding qualified audit committee members willing to take on the significant risk of service.

In conclusion, I would like to thank you again for this opportunity to share my views with you. I would be happy to answer any questions.