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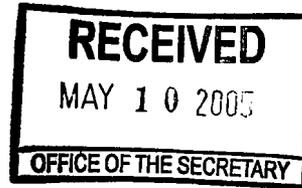


FLORIDA BANKERS ASSOCIATION

ALEX SANCHEZ  
CHIEF EXECUTIVE OFFICER

April 29, 2005

Jonathan G. Katz  
Securities & Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549



**Re: File Number 4-497; Implementation of Internal Control Reporting Provisions of the Sarbanes-Oxley Act of 2002**

Dear Mr. Katz:

I write on behalf of the Florida Bankers Association ("FBA"). FBA is comprised of the vast majority of banks, thrifts, and trust companies doing business in Florida. Its members comprise both small community institutions and some of the nations largest financial institutions. Its members are directly affected by the implementation of the internal control provisions of Section 404 of the Sarbanes-Oxley Act of 2002 ("Act").

Background

The members of the Florida banking community are supportive of the goals of the Sarbanes-Oxley Act. Indeed, financial institutions are often the victims of the type of conduct that the Act is designed to prevent. Our institutions often suffer immediately and directly from the type of financial shenanigans that have given rise to Sarbanes-Oxley. The requirement and the enforcement of appropriate financial controls in publicly traded companies are of extreme importance to our members.

It is entirely appropriate that the requirement of adequate financial controls apply to financial institutions as well as other publicly traded companies. We strongly believe, however, that there are significant distinguishing factors between our members and other public companies that need to be taken into account.

Devising and implementing good regulation is difficult. One size does not fit all. Finding the appropriately nuanced approach is rarely a simple endeavor. Unlike most other public companies, financial institutions are highly regulated and frequently examined by strong professional regulators. In addition to regular financial audits by their accountants, financial institutions are regularly examined by such government agencies as the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of Thrift Supervision, the Office of the Controller of the Currency, and state financial institution regulators. These examinations

directed to the fundamental issue of the safety and soundness of the institution. An integral part of such a determination is the various controls that the institution has with respect to its operations.

It follows therefore, that the regulations flowing from Sarbanes-Oxley should be melded with the existing regulatory system. A result which simply adds another layer of expense and requirements without concomitant additional benefit is not good regulation.

### Concerns

We have heard from our bankers, both large and small, a number of concerns.

The level of detail being required by auditors is excessive. Auditors do not wish to be criticized and so their zeal to go the extra mile or, in some cases, extra 10 miles. Examples such as those reported in the letters of the Independent Community Bankers Association of America and the American Bankers Association are reported by our members.

The incentive for auditors is to make sure that they cannot be criticized for their work. Since the cost of the audit process is not borne by them, the result appears to be an exquisite attention to detail. We recognize that in beginning a new examination procedure the auditors must find their way and strike a balance. We are concerned that they are striking the balance at a point that creates cost and burden without any commensurate benefit.

Any sort of auditing or examination process requires that judgment be brought to bear. There must be a sense of proportionality between the task to be accomplished, the method by which it is achieved and the benefit which is derived. Such an appropriate proportionality has not yet been struck.

Duplication is a second concern. As mentioned above, banks are examined by various federal and state agencies for the specific purpose of determining their safety and soundness. This is a regulatory regime, which, while not perfect, has served the public and the industry well. It should be noted that the problems which generated Section 404 of Sarbanes-Oxley have not manifested themselves in the financial services industry.

It appears to our bankers that much of the Sarbanes-Oxley Section 404 examination duplicates the same types of examinations that banks currently undergo. The result is that examination by the federal agency, by the internal auditors, by the external auditors, and now by the Section 404 examination, cover much of the same territory. While the scope is not precisely the same, there are significant areas of overlap. Unless the various examinations are coordinated and appropriate weight and respect are given to their respective findings, we are concerned that unnecessary duplication will add to cost without providing any additional safeguards.

Our members are concerned that the levels of materiality being enforced are too low. This results in an examination that spends time and resources looking into areas without creating any real benefit.

The cost of the implementation is a major concern. As reported by the American Bankers Association in its letter to you of April 1, 2005, the fees for financial audits have been in some cases more than doubled. The costs of these audits are not insignificant to a financial institutions fiscal health. As reported in the Independent Community Bankers of America's letter to you of March 31, 2005, their survey show the average total cost for a community bank to comply with Section 404 was in excess of \$200,000. In addition to the costs paid to outside vendors and consultants, there is the very significant internal cost in terms of the resources required to prepare for the audit and to respond to it. For smaller banks this has a material impact on their financial performance. One truly wonders whether these additional costs will provide meaningful benefit and further the purposes of Sarbanes-Oxley.

#### Recommendations

**Exempt Smaller Institutions.** Banks have been subject to the internal control attestation requirement of the Federal Deposit Insurance Corporation Improvement Act ("FDICIA") since 1991. Banks with assets less than \$500,000,000 are exempted from its requirements. Regulators recognize that the FDICIA requirements for attestation would be unduly burdensome, particularly in view of banks being subject to the full scope of banking law and regulations.

**Provide Appropriate Guidance to Auditors.** Florida Bankers understand that we are in the process of implementing Section 404. Given the high degree of public attention and regulatory scrutiny, we understand the desire of auditors to be cautious. In the absence of guidance, auditors may well take the most conservative stance in order to avoid criticism. This appears to have lead to requirements and procedures being imposed which are expensive, burdensome, and not particularly productive. By giving auditors better guidance with respect to what is required some of the redundancy and burden can be reduced.

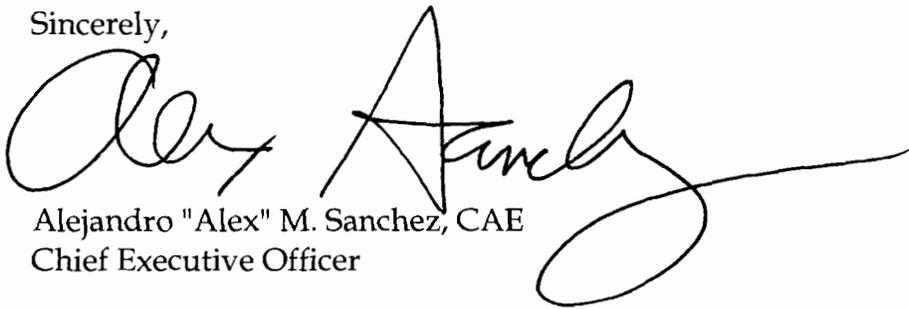
**Continued Exchanges with Industry Regarding the Implementation of Section 404.** The upcoming roundtable is a positive step. To identify issues and to engage in a joint constructive discussion as to their resolution offers the best avenue to achieving the goals of Sarbanes-Oxley without imposing unreasonable burdens.

**Coordination With Related Regulation.** Integration of existing agency examination and Section 404 examination should be coordinated in a way to avoid duplication. Multi-tiered regulation touching on the same or similar subject matters should be structured in as an efficient way as possible.

CONCLUSION

On behalf of the Florida Bankers Association we appreciate this opportunity to bring our thoughts to you. We hope to continue to work with the Securities and Exchange Commission as we go through the sometimes-trying effort of implementing new regulations. Working together in a spirit of cooperation, we are sure we will be able to achieve the results that all of us desire.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Sanchez", with a long horizontal flourish extending to the right.

Alejandro "Alex" M. Sanchez, CAE  
Chief Executive Officer