NORTH CAROLINA BANKERS ASSOCIATION

P.O. BOX 19999/RALEIGH, NC 27619-1999
(919) 781-7979/FAX (919) 881-9909
TOLL FREE: (800) 662-7044

March 23, 2005

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

Re: File Number 4-497
Section 404, Sarbanes-Oxley Act of 2002

Dear Mr. Katz:

In February, the U.S. Securities and Exchange Commission announced that it would accept written feedback on the implementation of Section 404 of the Sarbanes-Oxley Act of 2002. The North Carolina Bankers Association (NCBA) is pleased to have the opportunity to comment on Section 404.

The NCBA is a trade association representing 138 banks, savings institutions, and trust companies headquartered or doing business in North Carolina. In an effort to assess the impact of Section 404, the NCBA recently sent out a survey to each of our members who have tradable shares of stock. The response that we have received thus far has been overwhelming. An analysis of preliminary data together with information already supplied by our members has revealed a number of trends.

Many of our members have questioned the necessity of imposing another set of internal control and attestation requirements. The banking industry is already one of the most heavily regulated industries in the nation. For example, since 1991, banks with assets in excess of $500 million have been required to comply with the internal control and

attestation requirements of the Federal Deposit Insurance Corporation Improvement Act (FDICIA). Even those banks not subject to FDICIA have for years been required by their regulators to have an adequate control structure in place, and they have been subject to regular safety and soundness examinations. The NCBA and its members are, therefore, concerned that Section 404 provides little, if any, added benefit to the public.

In addition, our members are troubled by the sheer cost of compliance. There have been reports by the media that, due to Section 404, companies have seen their outside audit fees jump roughly 50 percent. Given the differences in asset size among NCBA members, the cost figures for complying with Section 404 cover a broad range. The SEC's decision on March 2, 2005 to further extend the compliance date for non-accelerated filers also makes it difficult to provide precise figures, since the majority of NCBA members appear to be non-accelerated filers and therefore can only provide rough estimates. However, NCBA members are anticipating substantial compliance costs for the audit fee, software and vendor charges, consulting services, and bank employee labor charges. A small publicly traded community bank can easily expect to pay $100,000 to comply with Section 404, and by some estimates, the cost may be far greater.

Due to the costs associated with the Sarbanes-Oxley Act and Section 404, a number of our members have made the difficult choice to go private, while others have reduced their number of shareholders to the point where they are no longer subject to Section 404 reporting requirements. By taking these drastic measures, they are losing access to the public equity market, but it is a question of survival. The expense of another layer of compliance can make the difference between staying in business or having to merge with a larger bank that can more readily absorb the costs.

Although the large banks may in many cases be better able to absorb the cost of compliance, all banks subject to Section 404 are devoting massive amounts of staff time to compliance. Bankers have expressed frustration, saying that they are, in effect, trying to hit a moving target. No one wants to be subjected to government and public criticism, so they are doing their best to comply, and the auditing firms are scrambling to interpret the often vague standards under the law. The net result of all this testing and retesting is yet to be determined, but there is a growing risk that as bankers are forced to spend progressively more time on compliance they will have less opportunity to grow their business.

A cost/benefit analysis needs to be made to determine whether Section 404 will achieve its objective. Protecting the interests of investors and the public is certainly a laudable goal of the Sarbanes-Oxley Act, but the right balance needs to be struck. We ask that the SEC carefully consider the impact that Section 404 is having on our nation's banks and adopt appropriate changes to its regulations to ease this burden.

The North Carolina Bankers Association appreciates the opportunity to submit these comments. If you have any questions, then please do not hesitate to contact the undersigned.

Sincerely,

Nathan R. Batts
Associate Counsel