



Mellon

Mellon Financial Corporation

Michael E. Bleier
General Counsel

June 9, 2005

FFIEC, Program Coordinator
3501 Fairfax Drive, Room 3086
Arlington, VA 22226

RE: Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions and Certain Alternative Dispute Resolution Provisions in External Audit Engagement Letters

Ladies and Gentlemen:

Mellon Financial Corporation, a financial holding company headquartered in Pittsburgh, Pennsylvania, is pleased to provide the following comments on the proposed Interagency Advisory and Request for Comment regarding certain provisions in external audit engagement letters that appeared in the May 10, 2005 issue of the *Federal Register* (the "Proposal").

Mellon supports a regulatory initiative to restrict limitation of liability provisions in external audit engagement letters for the reasons specified in the Proposal, but in order to achieve uniformity across all publicly traded companies and to achieve a "level playing field" between financial institutions and other companies, we believe this goal would be better served through regulatory action by the Public Company Accounting Oversight Board (the "PCAOB") instead of the federal banking agencies.

PCAOB leadership and action on this issue in lieu of the Proposal is warranted because the PCAOB, unlike the federal banking agencies, has direct authority over outside auditors of all publicly traded companies and therefore can take the most effective action in regulating the practices in question.* By virtue of its authority to regulate the auditing industry, the PCAOB can issue rules of uniform application that define what are acceptable and what are unacceptable provisions in audit engagement letters. In this way, there would be equal treatment for all companies that file reports with the SEC.

* While the federal banking agencies are authorized by law to remove, suspend, or bar an independent public accountant from performing audit services for a regulated institution, that power is limited to the circumstances specified in the law and its exercise would undoubtedly take a lengthy time to accomplish in any particular case. See, 12 U.S.C. § 1831m(g)(4).

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It is auditing firms that are seeking to include these limitations of liability provisions, not their issuer clients, and if there are concerns about these provisions potentially impairing independence, we believe those concerns should be addressed by the auditors' regulators not the federal banking agencies.

Audit engagement letters are, of course, negotiated private contractual relationships between an issuer and auditor, and if there is to be a regulatory overlay on this process, we believe it should be imposed not on a piecemeal, industry-by-industry basis but by the regulator of the party that seeks to include limitation of liability provisions. The PCAOB, of course, is already deeply involved in questions of auditor independence so this will not be a new subject for them. Also PCAOB regulation should resolve how to handle limitation of liability provisions that are included in previously-executed 2005 audit engagement letters.

We thank the FFIEC and the federal banking agencies for this opportunity to comment on the Proposal. If you have any questions about this comment, do not hesitate to contact me at 412-234-1537.

Sincerely,


Michael E. Bleier
General Counsel

cc: J. Abdelnour
L. Cunningham