

FEDERAL RESERVE BANK OF SAN FRANCISCO
101 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94105

May 22, 2003

**BANKING SUPERVISION AND REGULATION:
RECENT CORPORATE GOVERNANCE AND
NON-PUBLIC BANK ORGANIZATIONS**

To State Member Banks, Bank
Holding Companies, U.S. Branches
and Others Concerned,
in the Twelfth Federal Reserve District

Statement on Application of Recent Corporate Governance Initiatives to Non-Public Banking Organizations (SR 03-8)

The Federal Reserve Board, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (the agencies) have issued a *Statement on Application of Recent Corporate Governance Initiatives to Non-Public Banking Organizations*. The interagency statement responds to questions that the agencies have received as to whether the agencies expect small, non-public banking organizations to comply with the Sarbanes-Oxley Act and the recent corporate governance proposals of the New York Stock Exchange (NYSE) and the NASDAQ.

As a general matter, the Sarbanes-Oxley Act, with its detailed standards designed to improve corporate governance, financial disclosures, and auditing relationships, only applies directly to public companies, including public banking organizations. Public banking organizations are those that have a class of securities registered or are required to file reports under the Securities Exchange Act of 1934. The proposed changes to the NYSE and NASDAQ listing standards, which set new detailed standards related to board composition, director independence, audit committees, and other corporate governance standards, apply to public banking organizations listed on these exchanges.¹ The FDIC issued guidance earlier this year addressing the interplay between the Sarbanes-Oxley Act and Part 363 of the FDIC's regulations, which applies to all insured depository institutions with \$500 million or more in assets.²

By issuing the interagency statement, the agencies reiterate their long-standing endorsement, through regulation and guidance, of sound corporate governance and auditing policies and practices for all banking organizations under their supervision. Our regulatory approach, as well as the approach adopted by Congress in the Sarbanes-Oxley Act, has sought to balance the goal of strong corporate governance with the recognition that smaller, non-public banking organizations typically have fewer resources and less complex operations than public organizations.

Consistent with these approaches, the agencies do not expect to take steps to generally apply the board composition, director independence, audit committee, auditor independence, and other corporate governance requirements of the Sarbanes-Oxley Act or NYSE and NASDAQ proposals to non-public organizations that are not otherwise subject to them. Rather, the statement encourages

¹ In October 2002, the Federal Reserve issued SR letter 02-20, The Sarbanes-Oxley Act of 2002 (October 29, 2002), describing relevant provisions of the Act and the need for public banking organizations to comply with the law and any implementing regulations issued by the Securities and Exchange Commission. The 2002 SR letter did not address the Federal Reserve's expectations regarding compliance with the laws and the SEC's regulations by small, non-public banking organizations. Please see our letter dated November 13, 2002.

² See FDIC FIL 17-2003 (Corporate Governance, Audits, and Reporting Requirements), Attachment II, March 5, 2003.

non-public banking organizations to review their policies and procedures relating to corporate governance and auditing to ensure that they are consistent with applicable law, regulations, and supervisory guidance. Banking organizations should also make sure that their corporate governance and auditing policies and practices remain appropriate in light of their size, operations, and resources. The agencies also are advising such banking organizations that their standards and practices will continue to be subject to supervisory review and that appropriate corrective supervisory action will be taken if deficiencies are noted.

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Additional Information

All circulars and documents are available on the Internet through the Federal Reserve Bank of San Francisco’s Internet site, at <http://www.frbsf.org/banking/letters>. Paper copies of the Board’s notice (**SR 03-8**) are available from our Corporate Services Department. To request copies to be sent by mail, please call (415) 974-2060.

For additional information about this matter, please contact our Banking Supervision and Regulation Department at (415) 974-2936.

FEDERAL RESERVE BANK OF SAN FRANCISCO

Attachment:

[*Statement on Application of Recent Corporate Governance Initiatives to Non-Public Banking Organization*](#)

Cross Reference: SR letter 02-20