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October 9, 2009

Mr. Tom Smelker
Director, Treasury Operations
Office of the Comptroller of Public Accounts
Treasury Operations Division
208 East 10th Street
Austin, Texas 78701

RE: SB 638

Dear Mr. Smelker:

The Independent Bankers Association of Texas (IBAT) appreciates the opportunity to comment as you and your staff develop rules to implement the provisions of SB 638 to create a new methodology of providing collateral for public funds. We additionally are very appreciative of the open communication throughout this process, and the obvious effort and thought that has already been expended on this project.

While we have had the opportunity to express some of our concerns and observations, we felt it appropriate to reduce our comments to writing for the record.

First and foremost, we were gratified to see in the presentation that there was consideration shown in the proposed fee schedule for the smallest users. A number of our smaller community banks are concerned that larger institutions will enjoy significant economies of scale and efficiencies with the pooled collateral system, while their own costs and time expended will increase. This obviously has the potential to create competitive disparities. We had previously recommended that any fee schedule take into consideration this potential, and your initial proposal does just that. In further refining the fee schedule, you may wish to consider an “either/or” scenario based upon both the number of public entities as well as the average deposits covered by the pool. For example, some smaller banks have a number of very small public entity customers, and the total deposits are nominal at best. It would in our assessment be appropriate to take into consideration both of these measurements when determining the fee assessment tiers.

One of the beneficial aspects of this program is the “real time” transparency to the participating public entities through disclosure on the Comptroller’s website. At the September 29 meeting, there was some discussion regarding availability of this information to the public, rather than just those parties participating in the program. While we recognize the importance of transparency in government, there exists ample opportunity for misinterpretation in the event of an underpledge scenario.

In many cases, a deficiency in pledged collateral is created by a public entity failing to timely notify the depository of a substantial deposit. We fear that through no fault of their own, depositories could be blamed for these deficiencies. We urge you to thoughtfully weigh the benefits and downsides in determining the extent of public access to these data.

There was also discussion at the meeting regarding levels of collateral coverage for deposits. While the statute calls for “at least 102%”, there was discussion of increasing this to 105%. As penalties are added for noncompliance in the new statute, this becomes significant. In the present public funds deposit environment, the vast majority of our banks pledge significantly in excess of the required levels. We anticipate that such practices will continue in the pooled collateral scenario. If indeed the 105% will be “the number”, please consider not implementing fines unless the pledged securities fall below 102%, and additionally, consider lowering the requirements for those banks that adhere to certain standards, e.g., no underpledge scenarios over the past year. Again, we are not concerned about the ongoing adequacy of securities pledged to cover public deposits, but rather extraordinary days where significant deposits are received.

An additional topic of discussion and potential concern is the Comptroller’s approval of an institution’s participation in the program as delineated in 2257.103 (2). We are assuming that there will be some ongoing review of an institution’s eligibility to participate, and urge you to focus on compliance with the program and meeting the pledging and reporting requirements, rather than the condition of the institution. Especially in difficult times and in abnormal interest rate cycles, the sudden loss of the ability to continue as an approved depository for public funds could create significant stress on an institution.

Finally, IBAT would be pleased to provide community bank experts in this area to assist in any way possible as logistical and operational issues are addressed in this process. We again wish to thank you and your staff for the terrific work you have done on this significant task and your outstanding communication with the various stakeholders. We look forward to continuing to work with you going forward.

Sincerely,



Stephen Y. Scurlock
Executive Vice President