THE FINANCIAL SERVICES ROUNDTABLE

Impacting Policy. Impacting People.

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via email at comments@fdic.gov

Mr. Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: Interim Rule: Processing of Deposit Accounts in the Event of an Insured Depository Institution Failure

Dear Mr. Feldman:

The Financial Services Roundtable[1] ("Roundtable") respectfully submits comments on the Federal Deposit Insurance Corporation's ("FDIC") interim rule on the processing of deposit accounts in the event of an insured depository institution failure.[2] This is a topic the Roundtable previously recommended that the FDIC evaluate in a separate rulemaking, and the Roundtable appreciates the opportunity now to provide further input.

The Roundtable is supportive of FDIC's intention to provide regulatory guidance on issues involving the treatment of internal sweep arrangements that arose from the decision in *Adiago Investment Holding Ltd. v. FDIC*.[3] Like the FDIC, the Roundtable is supportive of providing customers with the information needed to make informed decisions on what product meets their needs. However, the Roundtable continues to have concerns with the FDIC's interim rule, particularly with the establishment of a single, arbitrary cutoff time in the event of an institution's failure and with the disclosure requirements for sweep arrangements.

Single, Arbitrary Cutoff Time (FDIC Cutoff Point or Institution's Cutoff Time)

The FDIC interim rule recommends a single, arbitrary cut-off time for the FDIC to make its insurance determination in the event of a large bank failure. In prior proposals, the FDIC indicated that this cutoff time could apply to all customers, regardless of the customers' geographic location or the type of transaction. In this interim rule, the FDIC states that the cutoff time will be determined as the earlier

[1] The Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $66.1 trillion in managed assets, $1.1 trillion in revenue, and 2.5 million jobs.
[2] The Roundtable has previously commented on the FDIC's Advanced Notice of Proposed Rulemaking on the large-bank deposit insurance determination modernization proposal on March 10, 2006 and March 7, 2007 and on the FDIC's Notice of Proposed Rulemaking on this topic on April 14, 2008. The Roundtable's comments on this proposal can be found on its website at http://www.fsround.org/policy/regulatory/fdic.htm.
[3] 338 F. Supp. 2d 71 (D.D.C. 2004).

of the FDIC's established Cutoff Point or the institution's ordinary cutoff time.

Although we appreciate the FDIC's detailed explanation of how these cutoff times will be determined in various instances, the Roundtable reiterates its concern that establishing a single cut-off time is problematic for financial institutions. From a technological standpoint, most operational systems at large banks are not capable of changing the current cutoff time limitations when immediately directed by the FDIC. Additionally, an arbitrary cutoff time may theoretically precede normal business days or intraday transfers by customers, particularly in reference to those accounts at international banks. Therefore, we once again *recommend* that the FDIC utilize the established cutoff times used by banks in their normal business hours.

Disclosures of Sweep Accounts

The FDIC also requests comment on whether depository institutions should be required to disclose to sweep account customers that swept funds will not be included as deposits should the institution fail. As the FDIC discusses in the interim rule, there are various types of sweep accounts in the industry and as such, there are various treatments for the different types of sweeps in the event of an institution's failure.

While the Roundtable is supportive of the underlying intention of providing customers with clear and concise information necessary to aid in a customer's investment decisions, the Roundtable is concerned that a single disclosure for the various sweep arrangements will limit an institution's ability to tailor a specific product to the customer's needs. Additionally, by requiring such disclosures on a periodic basis, the FDIC would create a significant and unnecessary cost to the industry since financial institutions currently provide disclosures in their account agreements with customers on the general application of sweeps in the event of an institution's failure. Therefore, the Roundtable *recommends* that the FDIC not require specific, uniform disclosures for sweep arrangements; we *encourage* the FDIC to discuss with the industry the current disclosures provided to customers, which will further illustrate that a general disclosure will not be beneficial to customers.

According to the interim rule, the FDIC will "require institutions to prominently disclose to customers whether the swept funds are deposits and the status of the swept funds if the institution failed."[4] This is also particularly troublesome for our members since it would be difficult for an institution to know the status of the deposits at the time the disclosure is required. This is partly due to the fact that an institution may not know the determined "cutoff time" (as we previously discussed), nor would it know the status of the sweep at that time. Thus, the Roundtable *recommends* that the FDIC should not prescribe what is included in the disclosures to customers in the event of a failure.

[4] Federal Register, Vol. 773, Nol. 138, p. 41174 (July 17, 2008).

Conclusion

In conclusion, the Roundtable appreciates the FDIC's initiative to examine this topic. However, we continue to remain concerned that the FDIC proposal relating to the single cutoff time and the uniform disclosures of sweep arrangements create costs and burden to the industry that outweigh the overall intent behind the interim rule.

Thank you again for the opportunity to share our views with you on this subject. If you have any questions, please feel free to contact me or Melissa Netram at 202-289-4322.

Sincerely,

Richard M. Whiting

Richard Whiting
Executive Director and General Counsel