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May 23, 2008 ***By electronic delivery***

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Attention: Comments

Re: RIN 3064–AD27; Assessment Dividends; 12 CFR Part 327;
73 *Federal Register* 15459, March 24, 2008

Dear Mr. Feldman:

The American Bankers Association (ABA) appreciates the opportunity to comment on the assessment dividends notice of proposed rulemaking.[1] ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $160 million in assets – represent over 90 percent of the industry's $13 trillion in assets and employ over two million men and women.

We commend the careful, deliberative process the Federal Deposit Insurance Corporation (FDIC) has undertaken to progress to a final rule and appreciate important improvements that have been made, taking into account concerns raised by the banking industry. In this letter we highlight some additional changes that we believe would improve the proposal. However, before discussing these and other details of this proposal, ABA believes that a more fundamental point must be made:

> ***FDIC should manage the assessment income to keep the reserve ratio below 1.35 percent so that no dividend payout would ever be triggered.***

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[1] ABA commented on the initial proposal for an interim rule, as well as on an additional proposal focused on the allocation of dividends. See 71 *Fed. Reg.* 28804 (May 18, 2006) and ABA's letter to the FDIC of August 14, 2006 (*www.fdic.gov/regulations/laws/federal/2006/06c04dividend.pdf*), and also 72 *Fed. Reg.* 53181 and ABA's letter to the FDIC of November 19, 2007 (*www.fdic.gov/regulations/laws/federal/2007/07c06AD19.pdf*).

The FDIC should set premium rates sufficient to maintain the insurance fund near the Designated Reserve Ratio. As ABA has stated in other comment letters implementing the new premium system, the FDIC should assess ***low and steady*** premiums.[2] Thus, by appropriate fund management, the question of how dividends should be distributed would become largely academic.

ABA believes that the current assessment rate schedule is set too high and should more closely accord with the timeframes provided by Congress for periods of economic slowdown. The current schedule constitutes a three-fold increase in the effective premium rate from last year (after accounting for the use of credits), a very significant increase and not in keeping with the expectation of the legislation that spikes in premiums should be avoided. Smoother premium flows would be a better practice for the fund, for the industry, and for the customers served by the banking industry. At current premium rates, the FDIC will raise $1.85 billion more – a 283 percent increase – in revenue from 2007 to 2008. At a time when business liquidity and funding needs are so important to support economic growth and recovery throughout the country, this money would be far better employed supporting loans in banks' communities.

Specific Comments on the Notice of Proposed Rulemaking

As background, the FDIC is required in statute to distribute dividends whenever the Deposit Insurance Fund exceeds 1.35 percent of insured deposits.[3] The FDIC adopted an interim rule for this purpose in 2006, which is scheduled to be replaced with a permanent rule by the end of this year.[4] Accordingly, the FDIC has proposed a final rule to govern the allocation, annual determination, notification, and payment of assessment dividends, as well as administrative appeals for dividend amounts.

We appreciate that the FDIC considered comments from ABA, and we support appropriate changes from the temporary rule and refinements from the proposed allocation of dividends. In particular, we support in the current proposal:

- the acceleration of the annual process for determination and distribution of dividends, so that any dividends would be distributed in the first quarter following the year-end declaration;
- defining "eligible premiums" to include up to the maximum for risk Category I, ignoring credits;
- the balanced consideration of alternative dividend allocation schemes, taking into account the significant premiums paid in the early 1990s to recapitalize the FDIC;
- quarterly notification of each bank's share of future dividends;
- defining a "successor" institution following a merger consistent with the assessment credit rule;[5] and
- the clarification of the dispute resolution process to be consistent with that for risk-based premium classification.

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[2] See ABA's letter to the FDIC of September 21, 2006 (*www.fdic.gov/regulations/laws/federal/2006/06c11ratioad02.pdf*).
[3] The authorizing passage in the Federal Deposit Insurance Reform Act of 2005 §2107 allows the FDIC to forgo dividends temporarily when the insurance fund exceeds 1.35 percent, under special circumstances.
[4] 71 *Fed. Reg.* 61385 (October 18, 2006).
[5] 12 CFR 327, subpart B, following 71 *Fed. Reg.* 61374.

We have two additional recommendations with respect to the proposed dividend process:

1. The quarterly notification should provide enough information to allow banks to understand how their dividend shares are computed. As proposed, starting in 2010 banks will be notified in their quarterly premium assessment invoices of their current shares of any future dividends. ABA approves of this procedure, so that a bank can look up its current share on FDICconnect at any time. We note that, as proposed, a bank will have 90 days from the posting to challenge that share (30 days if a dividend has been declared). While this timeframe is consistent with that allowed to challenge a risk-based premium classification, it is quite short. The proposal explains that allowing a longer period would likely lead to significant delay, should a dividend be declared. Given this time limit, ***ABA recommends that the dividend share notification provide sufficient data so that a bank can check its allocation; the notification should also alert the bank as to the deadline to file a challenge.*** This information would improve this important communication to insured banks.

2. FDIC should establish a rule regarding the transferability of claims on future dividends. It is conceivable that banks may want to sell to other banks their claims on potential future dividends. In parallel, the FDIC permitted sales of assessment credits, and several banks took advantage of this provision. We note that marketable "dividend options" could be an additional source of liquidity for banks. Accordingly, ***ABA recommends that the FDIC should permit sales of dividend shares, and should promulgate rules to clarify any regulatory implications for doing so.***

ABA appreciates this opportunity to comment on the proposal. The public, deliberative, and active approach of the FDIC in establishing a rule for the allocation of any future dividends is to be commended. ABA believes that a schedule of low, steady premiums in both the short- and long-run is the best strategy for maintaining a strong insurance program as well as for insurance fund reserves within the normal operating range, not triggering a dividend distribution in the first place. Such a program would provide the FDIC with adequate reserves while minimizing the potential for negative consequences for banks and their customers.

Sincerely,

Robert W. Strand