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April 14, 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-AD26; Processing of Deposit Accounts in the Event of an Insured Depository Institution Failure and Large-Bank Deposit Insurance Determination Modernization; 12 CFR Part 360; 73 Federal Register 2364; January 14, 2008

Dear Mr. Feldman:

The Federal Deposit Insurance Corporation (FDIC) has proposed a rule to (1) establish practices for determining deposit account balances at failed banks and (2) require large banks to adopt systems that would, in the event of failure, provide standard deposit account and customer information and allow holds on liability accounts to be placed and released.[1] The American Bankers Association (ABA) appreciates the opportunity to comment on the proposal.[2]

ABA supports the overall intent of the proposed rule to provide in a bank failure for timely deposit insurance determination, prompt release of depositor funds, and least costly resolution. We appreciate changes made in this proposal that improve on the earlier proposals.[3] In particular, we support the general concept that deposit determinations in the event of a bank failure would be based on end-of-day ledger balances after the normal daily processing of the bank's systems is completed.

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1 The proposed would amend 12 CFR Part 360.

2 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.

3 FDIC issued Advance Notices of Proposed Rulemaking on December 13, 2005 (70 *Fed. Reg.* 73652) and December 13, 2006 (71 *Fed. Reg.* 2364).

We also appreciate elimination of a requirement for a unique identification number for each depositor, which would have been extremely expensive for affected institutions to institute. More generally, we support the changes that would provide greater flexibility for banks to comply with the proposed regulations, including the flexibility for hold systems and processes to transmit data between banks and FDIC. It is important that the final rule be able to accommodate the various systems and processes of banks, providing room for innovations in the future.

ABA also appreciates FDIC's effort in this version of the proposed rule to contain costs for banks. Nonetheless, we continue to be concerned that certain aspects of the proposal would be excessively expensive to implement in terms of substantial costs for deposit systems development and personnel resources. The proposed adjustments to General Ledger systems – that they be capable of applying holds to deposit and other liability accounts in batch where trial balances can be reported (mapped to all of the other screens) and checks cleared – are highly demanding.

Our response to the proposal is based on the following broad recommendations, which are discussed in detail in the remainder of this letter:

1. The concept of an "FDIC Cutoff Time" is problematic and should be omitted. The end-of-day ledger based on the bank's standard operating practices should be used to determine deposit balances in a bank failure.

2. Before drafting a final rule, FDIC should perform a cost-benefit analysis that considers the limitations of its resolution processes, the costs to banks if the proposed rule is adopted, and alternative ways to achieve its goals.

3. If FDIC decides to proceed, the final rule should use all means to limit and reduce costs for banks.

4. Several elements of the proposed scheme for provisional holds should be modified.

5. A longer time-period will be needed for implementation, and thereafter testing should be done infrequently.

Summary of the Proposal

The proposal is composed of two parts. The first part, which would apply to all banks, would establish FDIC practices for determining deposit account balances at a failed bank. It would evaluate a deposit account balance on the day of a bank failure as the end-of-day ledger balance. After taking control of the bank as receiver, FDIC would establish an FDIC Cutoff Point. If the bank's cutoff time for any particular kind of transaction precedes the FDIC Cutoff Point, then this time would delineate processing of such transactions on that day; otherwise, the FDIC Cutoff Point would apply.

The second part of the proposal would apply only to "Covered Institutions" with at least $2 billion of deposits in domestic offices and either: (1) more than 250,000 deposit accounts or (2) over $20 billion of assets. These banks would be required to adopt mechanisms in advance that would, in a failure, provide FDIC with standard deposit account and customer information and enable FDIC to place and release holds on liability accounts (including deposits).

1. Determining Deposit Account Balances at a Failed Bank

♦ The concept of an "FDIC Cutoff Point" is problematic and should be omitted.

ABA recommends that the concept of an FDIC Cutoff Point should be omitted from the final rule. It would be unfair to bank customers and technically infeasible in many cases. FDIC should instead use the cutoff times for different transactions (*e.g.*, ATM, check clearing, Fed wire, teller transactions, *etc.*) that had been used by the failed bank in its normal course of business.

The concept of an FDIC Cutoff Point can be fundamentally unfair to deposit customers. Each bank establishes understandings with depositors as to when deposit business must be completed in order to count in a day's transactions. These understandings are established either in written agreements, as in sweep covenants, or in the bank's written policies. If FDIC were to set an arbitrary cutoff time to suit its convenience, then this would override the contractual arrangements. The risk that FDIC might do this means that deposit customers simply could not know beforehand how their funds would be treated in a bank failure, but instead would be subject to the fiat of FDIC. The problem is considerably greater for banks with foreign operations. Such insecurity could accelerate the flight of funds from a troubled bank.

The other main problem with an FDIC Cutoff Point is technical: banks' control systems are not set up to apply an externally-designated cutoff time for deposit transactions. FDIC would not be able to install such a procedure (and assure that it is reliable) within a few hours' time, as would be required to close a failed bank one day and make depositors' funds available the next day.

The proposal asks whether every bank, or alternately Covered Institutions, should be required to have in place computer systems capable of applying an FDIC Cutoff Point.[4] It would be very expensive for every bank, whether it is a Covered Institution or not, to adapt its deposit systems to be capable of applying a universal cutoff time for determining end-of-day deposit balances. Nor would it be a simple matter of having vendors (those that provide General Ledger systems to banks) modify their standard products. Inquiries to such firms reveal that adapting their systems to be capable of accepting a universal cutoff time would be difficult. The cost of this re-engineering would be high and would ultimately be borne by bank customers. This cost for ***all*** banks and their customers cannot be justified relative to the low probability that any one particular bank will fail.

♦ The end-of-day ledger based on the bank's standard operating practices should be used to determine deposit balances in a bank failure.

Not only is an FDIC Cutoff Point problematic, ABA believes it is unnecessary. We agree with the proposed general approach and FDIC's longstanding practice for determining deposit account balances in a bank failure: basing them on the end-of-day ledger balance after the normal processes of the bank are completed for the day. Consistent with this approach, all prearranged automated

[4] 73 *Fed. Reg.* at 2366.

sweeps would be completed in the bank's usual course of business for the workday before deposit balances are established. This approach satisfies FDIC's objective of making a timely deposit insurance determination in order to allow customers to have prompt access to their insured and unreserved customer deposits.

We further support the establishment of this procedure in regulation to avoid the legal confusion that was revealed in the *Adagio* decision.[5] To address directly the concerns raised in that decision, the final rule should explicitly provide that all automated sweep arrangements that are codified in contract will be recognized as part of the day's business and reflected in end-of-day ledger balances, regardless of when the transactions are processed.

2. FDIC should evaluate whether the costs of the proposed rule outweigh the benefits.

♦ FDIC should weigh the costs to banks of the proposal against the potential benefits and consider alternative ways to improve its failed bank resolution processes.

ABA has supported, and continues to support, a policy that no bank should be treated as too big to fail. We therefore understand the need for FDIC to have in place appropriate and necessary procedures to maintain liquidity and confidence in the banking system in case a large institution should fail. However, while improving the process of handling a bank failure is a laudable objective, FDIC must balance whatever gains it believes could be achieved from the proposed rule (including the probability of ever relying upon it in practice) against the very real costs that would be imposed on banks.

These costs would not be inconsequential. The proposal would require banks to absorb millions of dollars for software development, employee training, application of the new software to existing systems, periodic maintenance, and mandatory testing. Even ostensibly simple modifications to information systems require hundreds of man-hours in programming and testing to ensure proper functionality and avoid disruption with ongoing operations. Additional costs would be incurred to maintain and test these processes on an ongoing basis.

Against these costs, the proposal does not provide analysis of the problems that it intends to solve. We understand that a large bank failure would require FDIC to make deposit insurance determinations rapidly for hundreds of thousands of accounts. What is less clear is whether the best way to deal with this potential situation would be to require more from a major subset of the banking industry instead of changing FDIC's systems.

The banks targeted by this proposal would incur very real, sure costs for creation and maintenance of systems for hypothetical events, costs difficult to justify for cases of very low probability that the systems would ever be used. The infrequency of bank failures over the last 15 years is testament to the efficacy of major banking and FDIC reform legislation, as well as continued refinement of the bank examination process through technology and enhanced examiner oversight.

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5 *Adagio Investments Holding Ltd. v. FDIC*, 338 F. Supp. 2d 71 (D.D.C. 2004).

Our economy is better served if banks employ their resources making loans and providing other services, instead of retooling their systems – short of an appreciable risk of a particular bank failure. Thus, ABA urges FDIC not to proceed with this project before the various costs to banks can be reduced to a minimum and those costs are substantiated and outweighed by demonstrable benefits. If, nonetheless, FDIC elects to proceed, then ABA requests that the agency consider the suggestions provided below as means to lessen the costs, yet allow the proposed system to function as intended.

♦ FDIC should complete analysis of its survey of large banks' deposit insurance account systems before proceeding with a rule on provisional holds.

The proposal has made broad assumptions about how deposit holds are implemented that, according to information provided by ABA member banks, do not comport with the reality of banks' systems. Most banks simply do not have the processes in place for calculating, placing, and removing provisional holds in the proposed manner. For example, while most banks' systems are capable of placing holds on individual accounts, in most cases the holds are placed individually; their systems are not prepared to impose holds in batch, as the proposal envisions.

Development and validation of systems to do what is proposed would require very substantial financial and staff resources. This would not involve simple add-ons to existing systems, because most of the Covered Institutions have customized their General Ledger systems to the point that the system developer cannot simply install a computer software patch.

Before proceeding, FDIC needs to understand better banks' current deposit processes and what system changes would be required for banks to implement the proposed rule. Last September, FDIC proposed to survey the deposit insurance account systems of the large banks that would be classified as Covered Institutions under the proposal.[6] As ABA indicated when the survey was proposed, "we are pleased that FDIC is undertaking further research to understand the current methods for deposit tracking by large banks and the impediments that hinder real-time determination of insurance status per account."[7] We feel that the information gleaned from the survey is very important to help FDIC understand the magnitude and expense of the system augmentations it has proposed. Moreover, the survey can show the extent to which banks' current account systems can provide the information FDIC would need in a bank failure ***without any modifications***.

ABA recommends that FDIC should proceed with the survey. Once the results are in and analyzed, FDIC should develop its final rule taking full account of these results. If the results suggest that different, less obtrusive methods can provide the data that FDIC seeks, then a redesign of the proposal comprehending these considerations would be appropriate.

ABA is also very concerned about the potential impact of the proposed rule on sweep accounts. The complex proposal has the potential to undermine these products, which have grown in importance both to banks as a funding tool, and to their business customers for cash management. Sweeps are complex and varied among financial institutions. This proposal has presented new provisions with respect to sweeps, as compared to the previous proposals. The potential consequences for sweeps of

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[6] FDIC, "Survey of Large-Bank Deposit Insurance Programs," 72 *Fed. Reg.* 54264 (September 24, 2007).

[7] James Chessen, letter to FDIC on "Survey of Large-Bank Deposit Insurance Programs," November 21, 2007, page 2.

what is proposed are therefore not fully understood. Bankers feel that they and FDIC need to understand the complexity of sweep products better, through a follow-up proposal, before the rule is finalized.

Moreover, we understand that FDIC is moving to improve its understanding and handling of bank failures. It may be appropriate to wait until those changes are made before imposing high and unproductive costs on a subset of the banking industry. Doing this would avoid additional changes required of banks to conform to further changes made by FDIC.

3. The final rule should use all appropriate means to limit costs

ABA member banks have looked carefully at the proposal and have stressed how very time-consuming and expensive it would be to implement. These resources are drawn from resources at banks that would otherwise be allocated in serving bank customers. If FDIC decides to proceed with the proposal, it should make every effort to eliminate unproductive costs.[8] Here are some suggestions to do this.

- ♦ The automated system requirements should not be imposed on institutions that pose no meaningful risk of failure.[9]

ABA member banks reviewing the proposal expressed the following conviction: it would be unfair for banks that have demonstrated a high level of management, soundness, and risk control to be subject to the major, time-consuming expense of the proposed system requirements when there is such a very low likelihood of need for using these systems. This would be a pure dead weight burden, with no productive benefit for anyone – be it FDIC, bank, or customer. FDIC needs to consider whether there is a credible chance that the systems would ever be used for the soundest institutions. The focus of the final rule should be on weighing the costs against potential benefits, and therefore limiting its application to institutions where the proposed systems are warranted from the perspective of actual likelihood of being needed.

ABA also recommends that specialized banking institutions with fewer than 250,000 deposit accounts be excluded from the final definition of a Covered Institution. Since these institutions maintain relatively few insured deposit accounts and have low ratios of insurance coverage relative to their overall deposit insurance assessment base, they create few of the complex and potentially costly deposit insurance determination challenges of concern to FDIC. Moreover, the cost of compliance for these specialized firms relative to each impacted deposit account is substantial and well out of proportion to any marginal benefit that FDIC may obtain. Should FDIC nonetheless choose to include specialized banking institutions with fewer than 250,000 deposit accounts within the scope of its final rule, it should create a deposit insurance determination process that acknowledges these firms' materially different business, operational and informational profiles. This includes a flexible and proportionate approach consistent with the processes and data already used by these institutions in the conduct of their day-to-day operations, rather than seeking to impose a narrow, one-size-fits-all methodology.

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[8] This recommendation addresses the question posed in 73 *Fed. Reg.* at 2375.

[9] This recommendation addresses the issue raised in 73 *Fed. Reg.* at 2371.

The proposal states that "FDIC would recommend quarterly reporting of the number of deposit accounts for all insured institutions with total assets over $1 billion" to provide timely information on which banks qualify as Covered Institutions.[10] This data is currently included in the quarterly Thrift Financial Report (TFR) but only in the June "Call Report" (Consolidated Reports of Condition and Income). As long as the data called for is the same as what is reported in June, quarterly reporting would be a minimal additional burden. Nonetheless, ABA believes that a more important question is whether the change is productive. Since the only gain would be to determine that an institution has moved into what is classified as a Covered Institution a few months early, and since that transformation has nothing to do with its soundness, why is any change necessary?

♦ The final rule should allow banks to use existing processes and systems as much as possible.[11]

The final rule should, as much as possible, avoid requirements for new systems when existing systems will suffice. For instance, the proposal would require banks to be able to place holds on funds swept into non-deposit accounts for "internal sweeps." While FDIC would need to control these funds to limit withdrawals during the resolution of a failed bank, we respectfully submit that this new requirement is both burdensome and unnecessary. Most of the processes that banks use for booking sweep products (such as securities repos, money market mutual funds, or federal funds) are not similar to a deposit system with the functionality for holds. In many cases, there are not even "accounts" that equate to deposits.

ABA recommends that FDIC provide flexibility for banks to use existing capabilities. Due to the structure, timing, and automated processes of sweeps, there is no practical ability of a customer to access and remove such funds until the incoming side of that sweep transaction is processed and the funds are placed back into the deposit accounts. Therefore, banks could either place holds on the base deposit accounts upon return of the funds or else trap the funds prior to their return into a suspense account. This would allow FDIC to control these funds until it releases them to customers without the additional burden and cost of new process and technology development.

♦ FDIC should consider providing software to support the new rule, which banks could elect to use.

As FDIC improves its failure resolution platform, it should also explore opportunities to support the Covered Institutions during the developmental and testing stages of the process. For instance, FDIC should consider the possibility of developing software designed to provide a basic platform that all affected banks could use to implement the rule, much like FDIC intends to provide XML software for testing. FDIC could also dedicate staff to provide technical assistance to banks covered by the proposal. With this level of support, banks could map the software provided by FDIC to their systems. This would reduce the costs to the banking industry, provide FDIC with a better understanding of each bank's system, enhance the ability of FDIC to work with different types of banks, and promote the use of a consistent form at all Covered Institutions that would benefit

[10] 73 *Fed. Reg.* at 2377.

[11] This recommendation addresses the issue raised in 73 *Fed. Reg.* at 2378.

FDIC in testing and resolution situations. After all, FDIC is in effect the customer for this new information.

If FDIC were to design software that could be used industry-wide, this would shorten the implementation time and more effectively interface with FDIC's systems. Even with such software and support, Covered Institutions still would need a significant length of time to map the software to their accounts and then test it.

♦ Banks should not be required to provide a unique identification number when a deposit account is opened; such a requirement would be very expensive and could not be accurately accomplished.[12]

We applaud FDIC for dropping from the previous proposals a concept that would have required Covered Institutions to assign unique identification numbers to depositors. The current proposal does ask whether such identifiers should be included in the final rule. The answer is an unequivocal, "No." The banks to which this proposal applies oppose having to assign depositor identification numbers when an account is opened. They feel that the compliance and training costs would be excessive while offsetting benefits are not apparent.

For many of these institutions, thousands of accounts are opened every work-day. Being able to assign a unique identification number, or multiple numbers when there are multiple parties on an account, would require cooperation from each customer opening an account. For their own business purposes, banks spend considerable time trying to determine household relationships on an account. They have found this to be a major challenge, much greater than the proposal suggests is the case. It is simply very difficult to get all the information that FDIC, as well as banks, would like to have. Should the final rule require such information, this would be a huge undertaking, particularly if Covered Institutions would have to be prepared to verify the information to FDIC's satisfaction. It would involve getting more information than customers are often prepared – and to some degree capable – to provide.

Moreover, significant expense would be involved to establish and validate systems to monitor the unique identifiers for FDIC. Account opening procedures would have to be changed to obtain this information, involving more cost to train account opening staff. In sum, unique identifiers would add significant cost of the final rule whose mandated system changes will already be very expensive.

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[12] This recommendation addresses the question posed in 73 *Fed. Reg.*. at 2378.

4. Several elements of the proposed scheme for provisional holds should be modified.[13]

ABA bankers offered several suggestions for the proposed systems for holds on deposit and liability accounts.

♦ The final rule should permit various approaches for the "provisional hold methodology," including those suggested in the proposal.[14]

ABA appreciates the efforts made by FDIC in the proposal to provide flexibility for banks to satisfy the proposed hold requirements in a variety of ways, including "persistent," "memo," and "holding balances in an alternate account." We encourage FDIC to maintain in the final rule these various provisional hold options and to remain open to alternatives as new technologies and systems develop in the future.

♦ As proposed, banks should be allowed to exempt from the automated provisional hold systems deposit account structures that are small relative to the scale of the bank, including *de minimis* deposit systems, some special purpose charters, and systems targeted for near-term replacement.[15]

ABA supports the proposal's accommodation for manual holds. We believe that some deposit systems are sufficiently small relative to the overall scale of the bank that the burden and cost to implement, test, and maintain the proposed automated systems cannot be justified. Such systems include:

- deposit systems within a bank that represent a *de minimis* part of overall deposits or accounts;
- banks with special purpose charters that are not primarily in the business of deposit-taking, but have deposits incidental to their business (*e.g.*, limited purchase credit card banks and bankers' banks); and
- systems targeted for sunset within a reasonable period of time (*e.g.*, 18 months).

♦ The treatment of foreign deposits must be developed in coordination with foreign bank regulatory authorities.

ABA has major concerns with the proposed procedures for holds on foreign deposits. Were a U.S. bank with foreign deposits to fail, the proposal would allow FDIC to assign different hold percentages and thresholds on a country-by-country basis. Such holds may conflict with local laws, and the host banking agency would almost assuredly assert authority over how its local depositors were treated. These problems, which could expose the failed bank's employees to legal risk, are not addressed in the proposal. The point is that FDIC simply cannot prearrange how foreign depositors would be treated on its own authority. Accordingly, ABA recommends that FDIC should either exclude foreign deposits held outside of this country from the provisional holds requirement or

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[13] This recommendation addresses the question posed in 73 *Fed. Reg.* at 2375.

[14] This recommendation addresses the question posed in 73 *Fed Reg.* at 2373.

[15] This recommendation addresses the question posed in 73 *Fed. Reg.* at 2375.

expressly provide that such holds are required only to the extent permitted by and consistent with applicable local law.

The proposal has raised an important issue as to how depositors would be treated if a major international banking organization were to fail. Clearly, the implications of such an event would be important to multiple national regulators. Therefore, arrangements as to how such a failure would be handled need to be worked out in advance. So that liquidity could be maintained on an international basis, FDIC, working with the other U.S. regulators, needs to negotiate an arrangement with other national bank, deposit guarantor, and lender-of-last-resort authorities. The Basel Committee on Banking Supervision and the International Association of Deposit Insurers could serve as forums to aid in developing such arrangements and understandings.

- Banks should not be required to have systems in place to provide information that FDIC would normally provide in a bank failure.[16]

ABA opposes any requirement to disclose to customers information about holds that may be put in place in the event of a failure and FDIC resolution. Such disclosure would likely raise concerns among depositors and potentially even contribute to bank runs. When a bank fails, its customers are notified through FDIC's public notice process about the situation and resolution process, and are made aware of whom to contact about their accounts. Therefore, we believe that new systems to notify customers about account holds are unnecessary and could undermine customer confidence.

Development of systems to notify customers would add another layer of costs on banks. Accordingly, ABA urges FDIC not to impose on affected banks additional costs to develop special, needless, and potentially harmful systems that generate disclosures about holds.

5. A longer time-period will be needed for implementation, and thereafter testing should be done infrequently.

- The final rule should explicitly acknowledge that a bank's system does not have all the customer data anticipated in the rule.[17]

ABA banks uniformly report that their systems do not include much of the customer data items listed in the proposal. Cataloging all of the information for new deposit customers would be very time-consuming and demanding, and would require a lot of patience from bank customers – if they would even be willing and able to provide all the data. For existing customers, retroactively going back to find and fill in the information would be enormously burdensome if the information could be obtained at all. The mere act of requesting the information may erode customer trust in the bank, raising questions about whether it is about to fail. Therefore, it is important that the final rule explicitly acknowledge that a bank's system does not have all of the data listed in the proposal.

Technology staff from Covered Institutions have expressed concerns over the challenges of getting their systems to synch with those of FDIC. The proposal states that "FDIC is contemplating

[16] This recommendation addresses the issue raised in 73 *Fed. Reg.* at 2375.

[17] This recommendation addresses the question posed in 73 *Fed. Reg.* at 2377.

development of a XML validation service which would be provided to each Covered Institution for the purpose of establishing compliance with the NPR standard data requirements for depositor and customer records."[18] The affected banks request that they be given another opportunity to comment after FDIC's test system is in place.

♦ No less than three years would be needed for Covered Institutions to develop, validate and implement the new systems, and extensions would be needed for reasonable circumstances (such as mergers and acquisitions).[19]

ABA appreciates FDIC's recognition that the one-year implementation timeline suggested in its earlier proposals was insufficient. However, we strongly urge FDIC to provide even more time for Covered Institutions to implement the requirements beyond the 18 months set forth in the proposal. The advice from the technical staffs of affected banks is that to make and test the substantial changes over multiple systems as required by the proposal would be a multi-year project. As the proposal recognizes, larger banks function on several platforms, often in different locations and across time zones and borders. For this reason, affected banks will need to program and test each system individually, as well as connect them by some means so that all required data can be gathered in the requested form. ABA believes that, at a minimum, three years would be necessary for implementation.

Moreover, FDIC would need to factor in allowances for reasonable requests for extension. For example, the technical staff report that system changes in the case of mergers and acquisitions of large banks often take many years in and of themselves, along with the additional time needed to comport with the requirements of the final rule.

♦ Testing should be limited to only what is necessary and cost efficient for banks that satisfy high standards for soundness.[20]

Our members believe that frequent routine testing of these systems is not necessary, and not worth the expense for healthy, well-capitalized banks. Moreover, FDIC should provide ample notice and allow flexibility in the timing of any testing so that banks can conduct it as part of normal testing of operational systems.

Testing, while seemingly simple, is not a trivial exercise. Frequent testing would require additional hardware and software and would, of course, consume considerable staff resources. Moreover, banks are concerned that the ability to conduct a test is extremely limited, as the time between when accounts are closed very late at night and opened again in the early morning is short and growing shorter with market trends and technological developments. Testing coinciding with other system testing and testing over holiday weekends would help to ease this burden. Again, flexibility in this requirement is important.

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[18] 73 *Fed. Reg.* at 2377.

[19] This recommendation addresses the question posed in 73 *Fed. Reg.* at 2378.

[20] This recommendation addresses the question posed in 73 *Fed. Reg.* at 2378.

Assessing the requirements of any testing is made more complicated by the fact that the interface between the FDIC systems (which will be revamped over the next several years) is not yet established and will likely pose significant challenges in the early stages of development. As stated above, developing FDIC's system should precede any requirement for banks to modify their systems.

- ♦ FDIC assessments should not be tied in any way to a bank's development of an insured deposit monitoring system, since the feasibility of such systems is as yet untested.

FDIC's new risk-based premium system allows that, for banking firms with over $10 billion of assets, premium assessments can be adjusted up or down by as much as 0.50 basis points based, among other things, on "quantitative loss severity estimates, [and] qualitative indicators that pertain to potential resolutions costs in the event of failure …."[21] ABA believes strongly that this provision should not allow premium risk assessments to consider the deposit tracking systems of Covered Institutions. As pointed out here, the benefits of such systems have not been demonstrated, whereas the implementation costs are high and unrelated to bank soundness. No benchmarks have been established to determine whether a bank has developed its insured deposits monitoring systems to FDIC's satisfaction. Therefore, assessments should not be tied in any way to a bank's insured deposit monitoring system, and the assessment system should not be used as a back-door means to compel banks to develop such systems.

Conclusion

ABA and the affected banking firms appreciate that FDIC is seeking to "limit costs and burdens as much as possible;"[22] However, we continue to be concerned that the proposal still has not reached a reasonable balance. The cost for affected institutions is likely to be substantial. Accordingly, ABA urges that the system requirements should be imposed only if FDIC determines after careful and rigorous evaluation that they are outweighed by the benefits to be obtained. Moreover, we request that FDIC consider the suggestions in this letter to continue to streamline requirements for systems development and provide flexibility to rely on existing systems and processes as much as feasible.

ABA appreciates the measured approach FDIC has taken to ensure that the concepts underlying any deposit insurance determination modernization proposal are fully vetted within the banking industry. The series of proposals and FDIC's willingness to meet with banks to discuss them demonstrates FDIC's commitment to make the final rule as workable as possible. ABA encourages FDIC to continue this dialogue with the banking industry as the residual issues are resolved. Please feel free to contact the undersigned to discuss any of the thoughts expressed in this letter, or to request that we set up a directed dialogue with affected banks.

Sincerely,

Robert W. Strand

Senior Economist

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[21] 72 *Fed. Reg.* 27123 (May 14, 2007).

[22] 73 *Fed. Reg.* at 2370.