Norman R. Nelson
General Counsel

450 West 33rd Street
New York, NY 10001
tele 212.612.9205

norm.nelson@theclearinghouse.org

March 31, 2009

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

Attn: Comments

Re: RIN 3064-AD35: Notice of Proposed Rulemaking–Assessments

Dear Mr. Feldman:

The Clearing House Association L.L.C. ("The Clearing House"), an association of major commercial banks,[1] appreciates the opportunity to comment on the Federal Deposit Insurance Corporation (the "FDIC") notice of proposed rulemaking (the "Proposal") that would impose a 20 basis point emergency special assessment (the "Special Assessment") on June 30, 2009. 74 Fed. Reg. 9338 (March 3, 2009). The Clearing House appreciates the FDIC's need to address the decline in the reserve ratio of the Deposit Insurance Fund (the "DIF") in light of recent and anticipated failures of FDIC-insured institutions, and we agree that a financially sound DIF is essential to support the country's financial system.

Nonetheless, we submit that the FDIC should balance its efforts to rebuild the DIF against the procyclical consequences of an additional large assessment that would significantly

1 The members of The Clearing House are: ABN AMRO Bank N.V.; Bank of America, National Association; The Bank of New York Mellon; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, National Association; JPMorgan Chase Bank, National Association; UBS AG; U.S. Bank National Association; and Wells Fargo Bank, National Association.

depress bank earnings and reduce the capacity of depository institutions to meet customer credit needs.[2] As we discuss below, we believe that the Proposal should be revised to minimize these negative effects while achieving our shared goal of maintaining confidence in the DIF.

Set forth below are our comments on three of the issues described in the Proposal. We offer our basic recommendation in the first response.

1. Should the June 30, 2009 special assessment be at a rate other than 20 basis points?

Our member banks recognize the FDIC's need to rebuild the DIF through additional assessments. In our view, however, of the current economic climate and other relevant considerations, we urge that the Special Assessment should be implemented over time and be subject to the FDIC's periodic reassessment. This approach would mitigate the adverse impact of the Special Assessment on depository institutions, their customers and confidence in the banking system, without compromising the FDIC's need to address the decline in the DIF reserve ratio.

Particularly in the current economic environment, the Special Assessment will have a powerful depressant impact on bank earnings. Assume, for example, that a bank was able to earn 50 basis points (pre-tax) on its deposit base. The Special Assessment, at 20 basis points, would reduce that bank's pre-tax earnings by 40%. The impact would be even more severe in the case of a bank with little or no earnings. For a bank that would have earned 10 basis points (pre-tax) on its deposit base, the Special Assessment would throw that bank into a significant loss position.[3]

This loss of earnings, which directly reduces equity capital, would severely curtail the lending capacity of this country's depository institutions. Assuming a 10x multiplier (loans to equity), the Special Assessment could reduce available loans by as much as $145 billion in 2009. In addition, credit availability will be further depressed by a likely decline in deposits

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[2] The Federal Deposit Insurance Act explicitly urges the FDIC to seek to "prevent sharp swings in the assessment rates". 12 U.S.C § 1817(b)(3)(C).

[3] The loss would be magnified if it resulted in a required writedown of the bank's deferred tax asset or goodwill.

caused by the Special Assessment. Such an impact would undermine the numerous and unprecedented Federal programs that are being directed at "restoring the flows of credit necessary to support recovery" and to "support lending to creditworthy borrowers during an economic downturn."[4]

Moreover, such a decline in earnings could have a substantial negative impact on the DIF itself. Banks that report losses or sharply reduced earnings would be at an increased risk of loss of funding and, ultimately, failure. The reduced capital position of other banks would make it more difficult for them to bid aggressively—or bid at all—for failed banks. Potential equity investors will be discouraged. More generally, there will be a loss of confidence in the banking system that could well outweigh any direct loss of confidence in the DIF.

Although the cost of the Special Assessment could, in theory, be passed on to depositors in the form of lower rates on deposit accounts, The Clearing House believes that such an approach is not practical. Interest rates on insured deposit accounts are at historic lows as a result of the current interest rate environment, which severely limits institutions' ability to pass on the Special Assessment's cost to customers. In addition, competition between deposits and deposit-like alternatives (in particular, money market funds) is intense, making the demand for deposits highly sensitive to changes in offered interest rates. At the very least, efforts to pass through these costs to bank customers would reduce the spending power of those customers and result in a reduction in the insured deposit base.

The Clearing House submits that the following recommended revision of the Proposal would enable the FDIC substantially to achieve its objectives, which we share, while significantly mitigating the adverse effects of the Special Assessment. Under our proposed revision (the "Revision"), the FDIC would announce its intention to collect up to a 20 basis point emergency special assessment if current conditions and expectations do not change, but that the FDIC would implement the assessment in stages through the end of 2011 in order to enable the

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[4] Joint Statement by Secretary of the Treasury Timothy F. Geithner, Chairman of the Board of Governors of the Federal Reserve System Ben S. Bernanke, Chairman of the Federal Deposit Insurance Corporation Sheila Bair, Comptroller of the Currency John C. Dugan, and Director of the Office of Thrift Supervision John M. Reich regarding the Financial Stability Plan (February 10, 2009).

FDIC to review the most current conditions and expectations and adjust the assessment accordingly. Such periodic review and assessment are particularly appropriate because of the highly volatile nature of the economy. Adjustments could be in terms of timing, amount or both.

Under one example of the Revision, the FDIC would adopt a first stage assessment of 5 basis points for the quarter ending June 30, 2009 and a preliminary plan to impose an additional assessment of 5 basis points on March 31, 2010 and 10 basis points on March 31, 2011. The subsequent assessments would, however, be subject to a quarterly reassessment by the FDIC beginning with the first quarter of 2010. In each quarter, the FDIC would reconsider its original plan and make a new determination, based on the reserve ratio of the DIF, borrowings available to the FDIC and the various relevant conditions in the banking industry and the overall economy. For example, in the reassessment during the first quarter of 2010, the FDIC could determine, based on those factors, to take one of the following actions: (a) impose a 5 basis point assessment on March 31, 2010 as originally planned; (b) accelerate some or all of the planned 2011 assessment and impose up to a 15 basis point assessment; or (c) determine that no (or a reduced) assessment is necessary at that time. The FDIC could also revisit the issue of whether an additional 10 basis point assessment is needed. This flexibility would give the FDIC the ability to impose the Special Assessment only as needed and to respond to changing economic and regulatory conditions.

Alternatively, the FDIC could preliminarily adopt a quarterly phase-in of the Special Assessment that would impose an assessment of 2 basis points for each remaining quarter of 2009 beginning with the quarter ending June 30, 2009, followed by an assessment of 2 basis points in each quarter of 2010, and 1.5 basis points in each quarter of 2011. This phase-in approach would be subject to quarterly review by the FDIC, based on the factors outlined above, to determine whether no assessment is necessary in that quarter, whether an acceleration is necessary and/or whether an additional 10 basis point assessment is needed.

Such a phase-in approach also would enable the FDIC to evaluate the effect on the DIF of recent and future efforts by Congress, the Department of the Treasury (the "Treasury"), the Federal Reserve and the FDIC itself to support the DIF, bank liquidity and

lending. In particular, it would provide the FDIC with a more informed view of the contribution to the DIF of the fees charged under the Temporary Liquidity Guarantee Program.

In addition, and of particular importance to our member banks, the Revision will allow depository institutions to account for any assessment in the period in which a final determination as to the amount of that assessment is made. As a result, the accounting impact will not automatically be concentrated in any one quarterly earnings report. In contrast, under the Proposal, the entire Special Assessment will be reflected in depository institutions' financial statements for the second quarter of 2009. That also will be the case even if the Special Assessment were assessed as of June 30, 2009 but the payments were spread over time.

The Clearing House recognizes and appreciates Chairman Bair's public statements indicating the FDIC's willingness to adjust the Special Assessment from 20 basis points to 10 basis points if Congress passes pending legislation that would raise the FDIC's authority to borrow from the Treasury. This potential development highlights the rapidly changing legislative and regulatory landscape and reinforces The Clearing House's position that the Special Assessment should be implemented over a period of time and subject to periodic reassessment so that such changes can be taken into account.

The Clearing House also appreciates that depositor confidence in the DIF is essential to maintaining confidence in the banking system, and we recognize the banking industry's responsibility to restore the DIF over time. Nonetheless, The Clearing House recommends that the FDIC adopt a periodically reviewable phase-in of the assessment schedule as a more appropriate approach. Our Revision would assure that the FDIC resources are strengthened, but in a way that is less procyclical and that provides greater credit availability.

2. <u>Should special assessments be assessed on assets or some other measure, rather than the regular risk-based assessment base?</u>

The Clearing House strongly urges the FDIC not to depart from its consistent and logical approach to imposing assessments. The FDIC should impose any special assessment on the deposit base of depository institutions, as it has done in the past and in the Proposal, and not on the basis of some previously unused measure, such as assets. Any deviation from the

standard assessment base would be inconsistent with the purpose of the DIF, which is to protect insured deposits and not assets.

Moreover, any deviation from a deposit-based assessment would further exacerbate the existing penalty imposed on larger institutions, such as our member banks. This penalty exists because the assessment is based on all domestic deposits, and not just insured domestic deposits, and the largest banks have a relatively higher percentage of uninsured domestic deposits.

Although the issue is many-faceted, we submit there is no legitimate basis for concluding that large banks, as a class, pose a greater risk to the DIF than smaller institutions. The FDIC should not use the Special Assessment as a vehicle to reject its prior determinations and introduce a new factor —size — as a special risk factor.

3. Should FDIC assessments, including emergency special assessments, take into account the assistance being provided to systemically important institutions?

The Clearing House respectfully submits that the FDIC should not take into account the assistance being provided to systemically important institutions when imposing assessments. As discussed in response to the prior question, we believe that assessments on individual institutions should continue to be imposed on the basis of the deposits of the institution.

We note, however, that there is an important relationship between the assistance being provided to systemically important institutions (and for that matter non-systemically important institutions) and the Special Assessment. As discussed above, the significant increase in assessments contemplated by the Proposal works at cross-purposes with Federal Government efforts to improve bank capital and bank liquidity under various Federal programs. If the Proposal goes forward as drafted, the Federal Government would, in essence, be providing institutions with liquidity and lending capacity with one hand and taking it away with the other.

4. Additional Views

The Clearing House believes that the FDIC should, as a matter of the highest priority, consider various actions that could reduce the potential demands on the DIF and thereby the need for special assessments. Specifically, we urge the FDIC to propose that the Capital Purchase Program and Capital Assistance Program under the Troubled Asset Relief Program be made available to institutions that are deemed to be viable *after* giving consideration to the TARP capital injection. This approach could prevent the failures of scores of banks and prevent losses of tens of billions of dollars by the DIF. It was this approach that contributed to the success of the Reconstruction Finance Corporation and the fledgling FDIC during the 1930's. We also recommend that the FDIC consider utilization of open bank assistance programs as urged by Congress in Section 143 of the Federal Deposit Insurance Corporation Improvement Act.

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Thank you for considering the views expressed in this letter. If you would like additional information regarding this letter, or if it would be helpful to meet with representatives of our member banks, please contact me at (212) 612-9205.

Sincerely,