1358 East 15th, Edmond, Oklahoma 73013, Member FDIC

SpiritBank

April 2, 2009

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

Re: RIN 3064-AD35 – Interim Rule on 20 Basis Point Assessment, 12 CFR Part 327

Dear Mr. Feldman:

This letter will serve as a "comment" regarding the Federal Deposit Insurance Corporation's ("FDIC") proposed rule for a special assessment of 20 basis points on banks set to be assessed on June 30, 2009 and paid September 30, 2009 (the "Special Assessment"). Our Commentary, Impact Measures and Recommendations are as follows:

Commentary

From the inception of the FDIC during the Great Depression the insurance fund has no doubt provided tremendous stability in the financial markets. This has translated into greater economic growth and prosperity for all Americans. The integrity and stability of the FDIC is indeed of paramount importance to our banking system.

Recent bank failures have diminished the Deposit Insurance Fund (the "DIF"). We are cognizant of the market statistics that show that the DIF reserve ratio equaled 0.40% on December 31, 2008. This in turn resulted in the FDIC's Board of Directors to impose, *inter alia* the Special Assessment to help increase the DIF to the mandated minimum of 1.15%. The Special Assessment, however, is the wrong solution to the problem.

Impact Measures

1. *Impact on Earnings.* The Special Assessment is significant and will dramatically reduce earnings for all banks. The fact that bank earnings are already strained from the recessionary cycle, imposing the Special Assessment in this short-term approach will only exacerbate the decline in earnings.

2. *Lack of Capital for Growth.* Most small banks which lend to small business owners (who in turn employ a majority of the work force) will be limited on the amount of lending capacity they have if the Special Assessment is imposed. Those small banks depend on earnings each year to supply internal growth in their banks. Market statistics show that if the Special Assessment is imposed the correlating impact will be a 13% reduction in lending by banks, which is diametrically in

BRISTOW, DRUMRIGHT, OILTON, CUSHING, SAPULPA, STROUD, TULSA, DEPEW, EDMOND, STILLWATER & OKLAHOMA CITY

opposition to The Department of the Treasury and President Obama's request that banks need to make credit more available.

3. *Other Impacts.* Because earnings will be significantly impacted investors are less likely to invest in banks at a time when all banks need additional capital. In addition, some banks will be required to lay off workers, reduce charitable contributions in their communities, etc., if the Special Assessment is imposed.

Suggested Modifications

1. *Support of Deposit Protection Act of 2009.* The FDIC has announced that it supports the Deposit Protection Act of 2009 (the "Protection Act"). The Protection Act allows the FDIC to borrow from the Treasury up to $100 Billion to replenish the DIF. Certain members of Congress, however, want to tie this to the "mortgage cram-down" legislation, which is inappropriate. The FDIC should be encouraged to support only the Protection Act by itself, which will take the Special Assessment from 20 basis points to 10 basis points.

2. *Issuance of Bonds.* The FDIC should consider issuing bonds both to the public and to the banking industry to borrow monies to replenish the DIF. The banks then could be repaid over a period of years by the banks with normal assessment until the DIF reaches the 1.15% minimum.

3. *Borrow Monies Allocated Under TARP.* The legislation under the Troubled Asset Relief Program ("TARP") has broad language which may allow the FDIC to borrow from the Treasury under the existing legislation. Given that many banks have made the decision not to participate in the Treasury's program, monies should be available to the FDIC.

Very sincerely yours,

S. Trevor Kelly, MBA, J.D., LLM (Taxation)
Vice Chairman of the Board and
Chief Legal Counsel

STK:bjm