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Via email to: comments@FDIC.gov

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

RE: RIN 3064-AD57: Proposed Rule to Revise Deposit Insurance Assessments

Dear Mr. Feldman:

Venable LLP welcomes this opportunity to submit comments to the Federal Deposit Insurance Corporation ("FDIC") on behalf of one of our clients, a bank with assets in excess of $10 billion ("Bank"). These comments are filed in response to the FDIC's Notice of Proposed Rulemaking that was published in the *Federal Register* on May 3, 2010 (pages 23516 et seq.), proposing certain amendments to 12 CFR Part 327 (the "Rule"). Among other things, the proposed amendments would revise the assessment system applicable to large institutions; take into account the losses that the FDIC will incur if an institution fails; revise the initial base assessment rates for all insured depository institutions; and make technical and other changes to the rules governing the risk-based assessment system. Given the scope of these proposed revisions, our client bank has a vital interest in this rule-making proceeding.

Pursuant to the *Federal Deposit Insurance Reform Act of 2005* ("FDIRA"), the FDIC premium structure must be risk-based to more appropriately align assessments with the risks of individual institutions. The FDIC has also concluded that the proposal will be revenue neutral while reallocating assessments to institutions with greater risk exposures. The FDIC has proposed the rule become effective six (6) months from now, on January 1, 2011. Given the magnitude and complexity of the proposed rule coupled with the unprecedented regulatory reforms that will be initiated upon enactment of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("*Dodd-Frank Act*") we respectfully suggest that the pending rule be withdrawn or further action on it be deferred and the effective date delayed indefinitely in order to

allow the FDIC and FDIC-insured institutions an opportunity to digest the deposit insurance reforms mandated by Congress in enacting Subtitle C of Title III of the *Dodd-Frank Act*.

The scope of changes included in the *Dodd-Frank Act* are substantial. Among other things the *Dodd-Frank Act* would:

- Make permanent the increase in the standard maximum deposit insurance amount to $250,000;

- Require the FDIC to calculate insurance assessments based on total assets minus tangible equity; and,
- Increase the Designated Reserve Ratio over time to 1.35%.

We believe these and other substantial changes in financial services regulation warrant considerable analysis before the FDIC Board acts on the pending rule.

In developing the assessment structure, FDIRA currently requires the FDIC to consider the economic conditions affecting insured depository institutions so as to allow the Designated Reserve Ratio to increase during more favorable economic conditions and to decrease during less favorable conditions; the *Dodd-Frank Act* calls for the elimination of pro-cyclical assessments (cf. Sec. 332).

Although the FDIC projects 2010 to be the peak of bank failures, enough economic uncertainty exists, as evidenced by the FDIC decision to extend the Temporary Account Guaranty program, to prompt careful consideration prior to implementing potentially drastic changes to the assessment methodology. The proposal's stated revenue neutrality, alone, is insufficient to comply with the FDIRA requirement since the effect on individual institutions can be dramatic and potentially push certain institutions into receivership. A significant increase in premiums should not be the reason for an institution's failure. Additionally, while the effect on individual institutions may not be as paramount as the effect on the industry as a whole, each institution that fails increases the pressure on the entire industry. By increasing premiums, the FDIC also takes money out of the banking system that could be loaned to bank borrowers, especially small business owners, and thus could hinder the economic recovery. A 2011 effective date could unintentionally exacerbate the risks of financial stability, destabilize the industry as a whole, and hinder economic recovery efforts. The FDIC's acknowledgement of the uncertainty associated with the insurance premiums and the insurance fund balance is further justification for a more deliberate analysis of the proposal and a delay of the effective date. Such a delay would also be

consistent with the FDIC's conclusion that the proposal "should mitigate the pro-cyclicality of the current system" (Fed. Reg. at 23518). Institutions experiencing a sudden and significant increase in premiums given the rule change would not agree with the pro-cyclicality mitigation effort and the objective will not be realized for such institutions if the rule is implemented in 2011. Such a situation would be counter to the requirement imposed on the FDIC by Section 2105 of FDIRA mandating that economic conditions be considered when implementing assessment methodology.

The rule's complexity and the lack of public availability of certain data elements further complicates analysis of the proposal. The FDIC also acknowledges that it "anticipates a further round of rulemaking may be needed to improve the large bank assessment system adopted pursuant to this rulemaking" (Fed. Reg. at 23517). As the methodology, formulae, regression analysis, and other aspects are based in large part on the vast financial data and analytical resources at the FDIC's disposal -- data and resources often not available to the public -- the reasoning behind the proposal cannot adequately be assessed, particularly in a short time frame.

Given the intended revenue neutrality of the proposal, a delay to afford a more considered analysis of the proposal has no impact on the FDIC's recapitalization plan. However, a rush to implementation could impair the recapitalization plan if the proposal is a primary catalyst for further industry destabilization.

Accordingly, it is requested that the pending proposed rule be withdrawn or further action on it be deferred and the effective date delayed indefinitely in order to allow the FDIC and FDIC-insured institutions an opportunity to digest how the deposit insurance reforms mandated by Congress in enacting the *Dodd-Frank Act* impact the industry.

Sincerely,

William J. Donovan

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