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July 2, 2010
By E-mail to: Comments@FDIC.gov

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

Re: Assessments Proposal: RIN 3064-AD57

Dear Mr. Feldman:

This letter is submitted on behalf of Wells Fargo & Company and its depository institution affiliates, including Wells Fargo Bank, N.A., (collectively, "Wells Fargo"),[1] in response to the Notice of Proposed Rulemaking (the "Proposal") issued by the Federal Deposit Insurance Corporation (the "FDIC") to amend its regulations regarding the assessment system applicable to large depository institutions. We support the FDIC's continuing efforts to identify and manage risks to the Deposit Insurance Fund (the DIF), including its work in developing an appropriate system to measure the risk posed by individual insured depository institutions and to price deposit insurance premiums based on such risk. However, we believe that the Proposal in its present form is overly complex, lacks transparency, is poorly timed, does not meet the FDIC's stated objective of differentiating risk posed by individual institutions and may produce unintended, negative consequences. We therefore respectfully urge that the Proposal be withdrawn in its current form and receive further study and revision before it goes forward as a final rule. If the FDIC does elect to go forward with some version of the Proposal, we believe there are a number of important modifications that need to be made to any final rule.

[1] Wells Fargo is a diversified financial services company providing banking, insurance, investments, mortgages, and consumer and commercial finance through more than 10,000 stores 12,000 ATM's, and the Internet (wellsfargo.com and Wachovia.com) across North America and internationally. As of June 30, 2010, Wells Fargo had six commercial bank depository institutions in its organization: Wells Fargo Bank, N.A.; Wells Fargo Bank Northwest, N.A.; Wells Fargo Bank South Central, N.A.; Wells Fargo Central Bank; Wells Fargo Bank, Ltd. and Wells Fargo Financial National Bank.

Executive Summary

A. Wells Fargo is opposed to the Proposal and respectfully requests that it be withdrawn for the following reasons:
   1. The Proposal is overly complex and lacks sufficient transparency to enable interested persons to properly evaluate its reasonableness. The use of a wide variety of static historical factors based heavily on the recent crisis years together with subjective factors creates a system that is potentially difficult to understand and administer.
   2. The timing of the Proposal is premature. It is inadvisable to adopt major revisions to the methodology used to determine rates in the midst of the major financial reform legislation moving through Congress. Not only is it likely that the financial reform legislation will affect the behavior of institutions, but this legislation is changing the definition of "Tier 1 Capital," a key factor in determining an institution's total performance score. Recent proposals from the Bank for International Settlements ("Basel III") and the FASB, together with the bank regulators' response to the final versions of these proposals should be considered prior to a change in the assessment process. In addition, the prepaid assessments levied by the FDIC remove any urgency to resolving any issues with the current assessment process and the FDIC should take advantage of this time to make sure an appropriate, forward-looking approach to determining rates is adopted.
   3. The Proposal is fundamentally flawed in its use of uniform metrics across all large depository institutions. Each institution must be examined and assessed for probability of failure and cost to the DIF based on its idiosyncratic risks. Static metrics, applied uniformly, do not create a risk-based outcome. Further, the Proposal ignores the risks posed by small and medium-sized institutions to the DIF. As a consequence, the Proposal fails to meet the FDIC's stated objective of developing a forward-looking view of risk that better takes into account the risks that institutions present to the DIF.
   4. The Proposal, if adopted as a final rule, may have unanticipated negative consequences. For example, it may discourage large institutions from playing an active role in the FDIC's resolution process as potential bidders on assets marketed by the FDIC.

B. If the FDIC proceeds with adopting some version of the Proposal as a final rule, it should consider the following changes to the Proposal before adopting it in final form:
   1. The idiosyncratic risks of each financial institution should be incorporated into any risk-based premium assessment process. This evaluation should include such items as an inclusion of the impact of Purchase Credit Impaired ("PCI") loan accounting (e.g. the establishment at the time of purchase of a life of loan loss "reserve"), an assessment of the actual loss content in credit metrics such as Non Performing Assets, loan portfolio granularity and underwriting practices.)

2. Institutions should be provided access to their data contained in the LIDI database. It is only by making this information available to affected institutions that the FDIC can adhere to the stated principle that the information used in the scorecards will be based on readily available data.
3. The FDIC's discretion to make adjustments should be limited and affected institutions should be given a greater opportunity to understand the basis for any discretion exercised by the FDIC in setting a rate.
4. The new methodology should be extended to all institutions, not just large institutions. It is only by extending the new methodology to small and medium-sized institutions that the FDIC can meet its stated goal of implementing a forward-looking view of risk that does a better job of considering the risk that an institution presents to the DIF.
5.. The concept of "potential losses" should either be removed as a factor from the scorecards or greater clarity should be given as to how this factor is to be determined.
6. Steps should be taken to ensure that the new methodology of determining assessment rates does not devolve into a competing regulatory regime for insured institutions.
7. Further study should be given as to whether and how the Proposal may impact the current assessment appeals process established under the FDIC's rules and regulations.

WELLS FARGO OPPOSES THE PROPOSAL AND, FOR THE REASONS SET FORTH BELOW, RESPECTFULLY REQUESTS THAT THE PROPOSAL BE WITHDRAWN

As is more fully explained below, the Proposal in its present form is premature and may produce some unintended, negative consequences. For these reasons, the Proposal should be withdrawn at this time.

1. The Proposal is Overly Complex and Lacks Sufficient Transparency

Put plainly, given the significant dollar implications for affected institutions, the Proposal is just too complex and lacks sufficient transparency to be properly understood. Typically, an effort to implement a significant change of the sort contemplated by the Proposal would undergo a comprehensive and open analysis of its impact which is shared with the banking community.

The FDIC should provide the results of this quantitative impact analysis with detailed calculation methodologies that afford depository institutions the opportunity to determine the impact of the Proposal in a well-informed and well-understood manner.

2. **The Timing of the Proposal is Premature**

There are four primary reasons for our conclusion that the Proposal is premature. First, it is being proposed in the midst of major financial reform legislation moving through Congress, which increases our concerns around this overly complicated process. Second, the role played by regulatory capital levels in the formula is clearly critical and the definition of regulatory capital will change due to the pending legislation and an overreliance on any one element may produce a distorted view of an institution's risk level. Third, pending proposals under Basel III and the FASB are not fully vetted and therefore the impact cannot yet be assessed. Finally, because insured financial institutions have prepaid FDIC assessments through the fourth quarter of 2012 (including a 3bp base assessment increase starting 2011), there is no particular urgency in moving to a new methodology for determining assessment rates and the FDIC should take advantage of this time to make sure an appropriate, forward-looking approach to determining rates is adopted.

a) *Before adopting any major changes to the method used to determine FDIC assessment rates, it is important that the effect of the financial reform legislation presently moving through Congress be better understood*

Congress is currently in the midst of enacting major financial reform legislation. The conference report passed by the House and expected soon to be passed by the Senate changed the assessment base from total domestic deposits currently, to average total assets minus average tangible equity. This will significantly expand the assessment base. Although the pending legislation will determine the assessment base to use and the Proposal is focused on how an insured depository institution's assessment rate will be determined, these are not entirely unrelated factors, especially if the FDIC desires the new method for determining assessment rates to be revenue neutral.[2] The FDIC should postpone any significant change in the methodology for determining assessment rates until it is better understood whether, and to what extent, the revised assessment base affects the behavior of institutions.

Additionally, other aspects of the final financial reform legislation will almost certainly affect the behavior of financial institutions. If the goal of the new methodology for determining assessment rates is to take a forward-looking approach to risk, it is advisable to delay any new approach to determining assessments until after it is understood how the behavior of financial institutions is affected by this new reform legislation.

[2] On June 30, 2010, the House of Representatives approved the final conference report. The Senate had not voted on the bill at the filing of this letter but is expected to do so shortly after returning from the July recess. Other provisions in the bill that would impact the DIF are a provision to make permanent the increase in basic FDIC coverage from $100,000 to $250,000, and to extend the Transaction Account Guarantee (TAG) program through the end of 2012.

A postponement of any final rule will allow the FDIC to move beyond merely addressing the last financial crisis and truly permit it to take a forward-looking approach to viewing risk.

b) *The definition of "Tier 1 capital," a key factor in calculating the total performance score under both of the proposed scorecards, is in the process of being changed and may not be settled for quite some time. Additionally, the significant role of Tier 1 Capital in the Proposal may yield a distorted view of an institution's risk level*

Regulatory capital levels and ratios are key factors in calculating a financial institution's total performance score under both of the proposed scorecards. Tier 1 Capital is a critical factor in determining the first CAMELS component and the Tier 1 Capital Leverage ratio (Tier 1 Capital/Average Total Assets). A Tier 1 Common Capital ratio (Tier 1 Common Capital/ Average Total Assets) has been included as a quantitative measure. (We do note the definitional difference between this Proposal and that used by the Federal Reserve during the SCAP process.) Tier 1 Capital serves as the denominator of a number of ratios in both the Ability to Withstand Asset-Related Stress scorecard component and the Credit Quality scorecard measure. Clearly, the FDIC has determined that Tier 1 Capital is to play a major role in setting a large or highly complex institution's assessment rate. Consequently, how "Tier 1 Capital" is defined becomes critical to the proposed methodology.

The definition of "Tier 1 Capital" is currently in the process of being changed and it may be quite some time before it is fully understood how that change will be effected. The financial reform legislation moving through Congress will eliminate trust preferred securities as an element of Tier 1 Capital. However, implementing regulations are not required to be issued until 18 months following the effective date of this legislation.

While capital is critical to an institution's safety and soundness and a widely followed financial benchmark of any business enterprise, the proposed role of Tier 1 Capital may yield a distorted view of an institution's risk level. Depending on (i) when the FDIC reviews an institution's data and makes its assessment determination, (ii) the institution's relative position in the economic cycle of its various banking activities – a position that will vary by institution depending on its business strategy, (iii) the impact of specific transactions that reduce risk and lower equity levels (such as PCI accounting), the measurement of Tier 1 Capital for assessment purposes could have an overly pronounced impact on scorecard results, to the exclusion of other noteworthy factors that might lower an institution's score.

c) *Current and Expected Proposals by the FASB and BIS May Significantly Impact Components of the Formula*

The Proposal does not take into account recently proposed changes to accounting rules which broaden the application of mark-to-market accounting. These changes, if passed as proposed, would have an immediate impact on banks balances sheets and capital levels. Additionally, these changes may affect how a banking institution manages risk.

Furthermore, the recent BIS proposal, or Basel III, is potentially transformational for banks in the application of new rules and yet another definition of Tier 1 Capital. The final guidelines under Basel III and the U.S. regulators response to these guidelines are far from resolved.

d) *The Prepaid Assessments Collected by the FDIC Allow Time for Further Study of the Issues*

Pursuant to a final rule issued November 17, 2009, the FDIC on December 30, 2009 collected prepaid assessments of $45.7 billion covering the fourth quarter of 2009 through the end of the fourth quarter 2012.[3]

The agency noted that by collecting prepayments, it was not precluded from changing rates or amending the assessment system through rulemaking. Although we acknowledge this clear indication that the FDIC could possibly continue to adjust the assessment system during the prepayment period, it notes that a relatively short period of time has elapsed between proposal of the prepayment by the FDIC and announcement of the current Proposal. Although it appears the FDIC might have been planning both actions simultaneously, we believe the FDIC should allow further time to assess the necessity for, and appropriateness of, the Proposal. Because of the prepayment that has been made to the DIF, there is no urgency to make a significant change at this time. The FDIC should take full benefit of the prepayment to allow itself a window of opportunity to gain some clarity in the legislative and economic landscape before proceeding, particularly since the FDIC's stated intent is to have neutral impact on the DIF's revenue.

2. **The Proposal Fails to Result in a Risk-Based Assessment System Because the Proposal Does Not Adjust For Idiosyncratic Risks and Ignores the Risk to the DIF Posed by Small and Medium-Sized Institutions**

The FDIC has indicated that the Proposal is intended to take a more forward-looking view of risk and to better take into account the losses that the FDIC will incur if an institution fails. However, by focusing its new methodology, with its

[3] 74 Fed. Reg. 59056 at 59058 (November 17, 2009).

uniform approach, on only the large insured institutions, the Proposal fails to meet these objectives.

a) *The Idiosyncratic Risks of a Financial Institution should be Considered in an Assessment of Risk*

Any assessment of risk should include an assessment of the potential risks and risk management practices of an institution. As noted in Section VI of the Proposal, significant holes remain in the analysis, including significant issues such as an assessment of the quality of underwriting, how to measure counterparty risk, whether to adjust for PCI "reserves" and whether cut-off values and outlier add-ons are appropriate. Just these few examples illustrate the unresolved issues currently existing in the Proposal.

The numerous measurements and calculations give an appearance of precision that cannot actually be achieved. The problem is that macro level data is being applied to individual institutions in a "one-size-fits-all" approach. Inaccuracies can arise when "simple" statistical analyses or static historical metrics of complex financial institutions are used to understand individual institutions. If the FDIC desires to take a forward-looking view of the risks that individual institutions pose to the DIF, it is important that the FDIC consider the idiosyncratic risk of that institution. Failing to do so ignores the fundamental complexities of the differences in business model, business mix, etc.

b) *Recent Data Demonstrates That Small and Medium-Sized Institutions Pose the Greatest Risk to the DIF*

Recent data show that small and medium-sized institutions have posed a greater impact on the losses incurred by the DIF than have large institutions. According to the FDIC's Failed Bank List, 254 insured institutions failed during the period January 1, 2007 through June 25, 2010, with estimated losses to date of approximately $89 billion. Of these, 78% had total assets less than $1 billion, and 96% had total assets less than $10 billion. *See FDIC's Historical Statistics on Banking -- Failures and Assistance Transactions (http://www2.fdic.gov/hsob/hsobRpt.asp); FDIC Failed Bank List (http://www.fdic.gov/bank/individual/failed/banklist.html.* This suggests that large and highly-complex institutions, typically being geographically dispersed and offering product mixes that complement one another in changing economic environments, are better able to withstand the stress that results from being concentrated in too few geographic or product markets. As a general matter, diversification of this sort should significantly reduce the risk large and highly-complex institutions pose to the DIF.

c) *A Valid Risk-Based System Should Use the Best Means to Measure the Risk Posed by All Insured Institutions, Regardless of Size*

The FDIC indicates it intends to better capture an institution's risk and differentiate between institutions based on how they would fare during periods of economic stress and to better predict the losses the FDIC may incur if an institution fails. If the system of scorecards in the Proposal represents the best way to accomplish these objectives, then it follows that the scorecards should be applied across the board to all institutions. Otherwise, the Proposal would be rendered meaningless as a tool to assess risk, because not applying the scorecards to all institutions ignores the risk that small, medium-sized and newly chartered institutions demonstrably pose to the DIF.

Many of these institutions were overly reliant on a narrow mix of products or lacked sufficient access to funding sources. In addition, many smaller institutions, in bubble states such as Florida, Nevada and California, engaged in subprime lending, poor underwriting or other deficient lending activities leading to the housing-related asset bubble. The failure of so many of these institutions demonstrates that smaller institutions, especially on a collective basis, pose just as great a risk to the DIF, if not a greater risk, as that posed by large institutions. It stands to reason, therefore, that these smaller institutions should be subjected to the same scoring analyses under the proposed assessment system, and, if the models show them to represent a greater risk than under the present assessment system, they should bear their appropriate, greater share of the assessment burden.

While we are in full support of the FDIC's objectives of moving toward a more forward-looking view of risk and taking better account of the losses an institution may present to the DIF, we do not believe the Proposal is the appropriate solution to address these objectives. The omission of small and medium-sized institutions prevents the Proposal from fully accomplishing its stated objectives.

It is for these reasons that the Proposal should be withdrawn at this time.

IF THE FDIC PROCEEDS WITH A FINAL RULE BASED ON THE PROPOSAL, THE FDIC SHOULD CONSIDER A NUMBER OF MODIFICATIONS TO THE PROPOSAL

Notwithstanding Wells Fargo's opposition to the Proposal, there are a number of modifications to the Proposal that we believe would improve any final rule derived from the Proposal. Therefore, we respectfully request that the FDIC consider adopting the following modifications to the Proposal.

1. **Idiosyncratic Risks Should be Factored Into the Risk Assessment Process**

Discussed above.

2 **Institutions Should be Provided Access to the Large Insured Depository Institution (LIDI) Database and an Opportunity to Examine How the Data Was Used**

The FDIC indicates that much of the information in both scorecards will come from the Large Insured Depository Institution (LIDI) database, a database that is not currently available to the institutions to which the scorecards will be applied. The use of such a database to calculate an institution's score is in conflict with the FDIC's statement that the data used in the scorecards is based on information that is "readily available" to affected institutions. Even though the LIDI database is derived from data the FDIC receives from each institution, unless the institution is given access to the LIDI database, and able to view the form and manner in which the data is compiled and presented by the FDIC, the institution is in no position to confirm that its data contained in the database is accurate and up to date. The institution is also unable to address instances in which the data is being misunderstood or misinterpreted. As a result, the lack of access to the LIDI database prevents large institutions from being able to confirm the validity of the assessment rates being applied to them. For this reason, Wells Fargo respectfully requests that, prior to promulgation of any final rule resulting from the Proposal, large depository institutions be given access to their information contained in the LIDI database.

3. **The FDIC's Discretion to Make Adjustments Should Be Limited, and the Proposal Modified to Give Institutions a Greater Opportunity to Understand and, Where Appropriate, Contest the Proposed Method for Discretionary Adjustments**

The Proposal states that the FDIC performance score and loss severity score can be adjusted up or down based on significant factors not adequately captured in the appropriate scorecard. The Proposal lists 44 such factors, which the FDIC terms "Examples of Associated Risk Indicators or Information" in Appendix E and indicates that this is not all the criteria the FDIC may consider.

Discretionary adjustments may significantly impact a large institution's assessment rate, depending on an institution's score prior to the addition of discretionary risk measures. The current pricing model limits the FDIC's discretionary increase to one basis point. Under the proposed model, adding discretionary points that result in an increase in total score from 75 to 90, would increase the assessment rate 16.4 basis points or 63%. With so many discretionary factors that may bear on a large institution's score and the potential that other, unknown criteria may also be applied, large institutions will not be able to reasonably predict what the outcome of the process will be, nor plan or take action accordingly.

Although the factors the FDIC intends to use in determining whether to add points to the total performance score and/or the total loss severity score are set out in Appendix E to the Proposal, these factors are so subjective in nature and in application that it is impossible for an institution to anticipate whether, how or why it will be subjected to one or more such adjustments. For this reason, the FDIC should remove from the final rule, or restrict in the final rule, its ability to make adjustments to either the performance score or the loss severity score.

Wells Fargo understands the need to continue making improvements to the pricing model and that having discretionary authority can fill the gaps caused by an imperfect process. However, since the DIF was recently funded with prepayments through 2012, we recommend the elimination of discretionary adjustments to the performance and loss severity scores on an interim basis and that "associated risk indicators and information" become objective additions to the scorecards in subsequent rounds of rulemaking. We do believe discretionary adjustments may be more appropriate in assessing the risk to the DIF attributable to newly chartered, small and medium-sized institutions.

To the extent the FDIC elects to retain some discretionary authority to adjust rates for all institutions, that authority should be restrained. As is noted above, in today's system the FDIC is limited to adjusting assessment rates by one basis point. In presenting this model, the FDIC has asserted that the proposed methodology for determining risk is more forward-looking and better suited to predicting risk than the current model. While we can appreciate the FDIC's desire to retain some discretionary authority over the setting of rates, if these statements are correct, the range of discretion the FDIC might need to correct for the results produced by the proposed methodology should not be greater than is needed under the current methodology. For this reason, if the FDIC elects to retain some discretion to adjust rates, Wells Fargo requests that this discretion be limited to an adjustment of one basis point.

If the FDIC believes it is essential for it to retain some flexibility in adjusting the total performance and/or total loss severity score, Wells Fargo requests that this ability to adjust either score be modified as follows:

- The final rule should provide a more specific explanation as to how the FDIC will elect to make an adjustment to either score. For example, how will the FDIC determine that it is appropriate to adjust a total performance score by 6 points rather than 7 points or to adjust a loss severity score by 8 points rather than 10? Without clarity as to how such fine distinctions will be made on the basis of the factors spelled out in Appendix E, it is difficult to understand how the FDIC will be able to demonstrate that the rules governing assessment rates are being consistently applied across the industry or to assure the industry of similar treatment for similarly situated institutions.

- The final rule should provide that any adjustment made by the FDIC to either score resulting in an increase in an institution's assessment rate may only be made after providing the institution with at least one quarter's advance notice of the adjustment. This will provide the impacted institution with an opportunity to anticipate and react to the higher assessment rate.

- The final rule should provide that the notice of any adjustment made by the FDIC to either score resulting in an increase in an institution's assessment rate should be accompanied by a clear, objective explanation as to how the FDIC arrived at the specific adjustment it applied to the score. Without such an explanation, the affected institution is unable to determine the legitimacy of the adjustment or to determine whether it believes it should contest the adjustment being proposed.

- The material accompanying the Proposal indicates that the proposed methodology is superior to the current system in anticipating risk to the DIF. If this is true, the need to be able to make adjustments under the new methodology should be reduced. Therefore, to the extent that the FDIC retains any discretion to adjust assessment rates, that discretion should not be greater than is available to the FDIC under the current system.

4. **The Final Rule Should Recognize the Risk to the DIF Posed by Small and Medium-Sized Institutions**

As noted above, recent data show that small and medium-sized institutions have posed a greater impact on the losses incurred by the DIF than have large institutions. If the FDIC's intent is to more accurately assess an institution's risk, and assuming the Proposal accomplishes this goal, the scoring models should be applied to all institutions, since it is in the interest of the FDIC and the DIF to uniformly discourage risky behavior among all insured institutions, not simply large institutions. Therefore, if the FDIC determines to finalize the Proposal, Wells Fargo recommends that the entire system of scorecards be made applicable to all institutions.[4]

5. **"Potential Losses" Should be Removed as a Factor in the Scorecard or a More Precise Definition Should be Provided**

One of the measures of the Potential Loss Severity Scorecard is "Potential Losses/Total Domestic Deposits". The foundational concept of potential losses may be excessively vague and uncertain, since the amount of loss that the DIF may ultimately absorb as a result of a bank failure may depend on many different

[4] 12 U.S.C. § 1817(b)(2)(D). Section 7(b)(1)(D) does allow the FDIC to establish separate risk-based systems for "large" and "small" members of the DIF, but the FDIC has not explained why small and mid-sized institutions should be treated separately under the Proposal, nor has it proposed any new system calculated to allow the FDIC to predict and prevent a repeat of the recent failures affecting these small and mid-sized institutions.

factors. We would expect that the FDIC's asset marketing and liquidation staff typically arrives at an estimated net loss to the DIF at the time an institution is first closed, based on certain assumptions and historical data. That figure is generally among the information that the FDIC press office releases in announcing the closing of a bank, along with information for depositors, borrowers or creditors, and whether any bidders or acquirors have been identified. However, over the next several weeks or months, in the course of liquidating the assets and liabilities of the former institution, the potential loss figure can expected to be adjusted, based on asset sales, recoveries, loan paydown rates, market absorption factors, new or updated appraisals, and general economic conditions. For a large institution particularly, the resolution process could extend for many months, or even years, meaning a reasonably clear picture of expected losses or recoveries may not be known for some time. Under these circumstances, a more precise definition or explanation is needed as to the meaning of "potential losses". As currently stated, the measure appears to be too imprecisely defined to be of significant utility, and could be an unfair predictor of the potential loss to the DIF posed by an institution. Unless the FDIC includes historical data in the final rule indicating the accuracy of its time-of-failure estimates of future losses, it should consider modifying the Loss Severity scorecard or the weight accorded to it.

6. **Steps Should be Taken to Ensure that the New Methodology of Determining Assessment Rates does not Devolve into a Competing Regulatory Regime for Insured Institutions**

One practical effect of the proposed new assessment system would be to give the FDIC a much more active role in assessing the operations and activities of national banks, which are already subject to oversight by their primary federal regulator, the Comptroller of the Currency (OCC). This expansion of the FDIC's role could create conflict between two regulatory regimes, each of which may have different regulatory imperatives.

For example, the OCC, while promoting the safety and soundness of national banks individually, also seeks to promote a strong national banking system that will serve the nation's banking and credit needs and complement the Federal Reserve System by virtue of national banks' membership and participation in the monetary activities of the Federal Reserve System.

On the other hand, the FDIC has a wholly different mandate as insurer of deposits, conservator and receiver of depository institutions, and administrator of the DIF. While the OCC enforces safe and sound banking practices by the banks it supervises, the lens through which it views its regulatory mission may, from time to time, naturally differ from that of the FDIC.

Although there is nothing new about the dual authority these two agencies have over the affairs of national banks, the Proposal inherently increases the degree of the FDIC's oversight to a new and deeper-reaching level into the affairs of national

banks. This is not necessarily undesirable from a regulatory standpoint, as there is a long history of fruitful cooperation between the FDIC and other federal financial regulatory agencies.

However, national banks (or other institutions for which the FDIC is not primary federal regulator) will need a clear demarcation of regulatory boundaries between the OCC and the FDIC in matters concerning its activities as a national bank, insofar as those matters affect the manner in which the FDIC will view the bank's risk to the DIF. It is the possibility that the OCC and FDIC may differ in their assessment of the degree of risk posed by the bank that creates the potential conflict that concerns Wells Fargo.

We recommend that further study be devoted to this issue and more information provided in the current or any future rulemaking concerning how it should be addressed.

7. **Further Study Should be Given as to Whether and How the Proposal May Impact the Current Assessment Appeals Process Established Under the FDIC's Rules and Regulations**

Under the FDIC's regulations, an institution that believes its assessment risk assignment is incorrect is permitted to request that the FDIC review and change the risk assignment by submitting a written request for review and following the process outlined in Section 327.4(c) of the regulations, 12 C.F.R. §327.4(c). The rule sets forth procedures regarding timeliness, submission of supporting documentation, notice regarding the FDIC's decision, and a right of appeal to the FDIC's Assessment Appeals Committee. The appeals reported on the FDIC's web page "Deposit Insurance Assessment Appeals: Guidelines and Decisions" indicate that many institutions have availed themselves of the right to challenge the agency's evaluation of their capital, their supervisory subgroup assignment, capital group classification and other determinations.

The Proposal raises certain questions concerning the process for challenging assessment determinations going forward. It may be that the current procedures established under the FDIC regulations will need to be modified. For example, the list of criteria that may figure into the mix of financial data analyzed by the FDIC to determine risk-based assessment rates has expanded greatly under the Proposal, particularly for large and highly complex institutions. In addition, the FDIC will have the ability to apply adjustments to institutions' scorecards at multiple points throughout the process. The process is made more challenging for institutions to anticipate when one considers that the FDIC indicates that it will have the flexibility to update minimum and maximum cutoff values and weights used in the scorecards annually, which may or may not be made through notice-and-comment rulemaking.

Concerning this point, the Proposal states:

> Notifications involving an upward adjustment to an institution's assessment rate would be made in advance of implementing such an adjustment so that the institution has an opportunity to respond to or address the FDIC's rationale for proposing an upward adjustment. Adjustments would be implemented after considering the institution's response to this notification along with any subsequent changes either to the inputs or other risk factors that relate to the FDIC's decision. The FDIC acknowledges the need to clarify and make technical changes to its adjustment guidelines for large institutions to ensure consistency with this rulemaking. 75 Fed. Reg. 23516 at 23527.

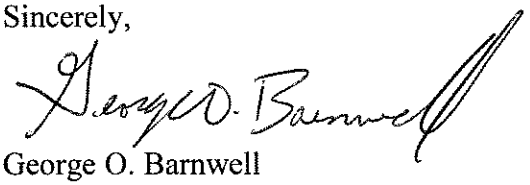
Is it the intent of the Proposal that the institution's opportunity to respond or address the FDIC's rationale be available under the existing procedures in Section 327.4(c)? If so, will the timeframes currently provided continue to be sufficient or appropriate? Will the institution continue to be required to pay any new or adjusted assessment pending these discussions? Inasmuch as the prospective increases in assessment premiums could be significant for certain institutions under the Proposal, should this requirement be re-examined?

SUMMARY

For the reasons set forth above, Wells Fargo opposes the adoption of the Proposal as a final rule and respectfully requests that it be withdrawn at this time. The issuance of the Proposal is premature in light of the financial reform legislation that is currently moving through Congress. In addition, there are many aspects of the Proposal that warrant further study before any rule is adopted in final form. As noted above, the FDIC should take full advantage of the opportunity presented by the prepayment of FDIC assessments that recently occurred to more fully study the implications of the Proposal in the environment that will be created by the new legislation. This is especially important given the potential consequences that could flow from the adoption of the Proposal (e.g., effect on continued involvement of large institutions in the FDIC's resolution processes). If the Proposal is adopted as a final rule, it is, in our opinion, important that several adjustments be made to the final rule. These include: (i) inclusion of assessments of idiosyncratic risks, (ii) providing institutions with access to their data in the LIDI database; (iii) reducing the FDIC's discretion to adjust an institution's scorecard results; (iv) extending the final rule to apply equally to small and medium-sized institutions; and (v) either eliminating "potential losses" as a factor in the scorecard or providing greater clarity as to how that factor is to be calculated. Wells Fargo also recommends that efforts be taken to reduce the likelihood that the scorecards do not result in a potentially conflicting regulatory regime between the FDIC and the institution's primary Federal regulator and that further consideration be given to whether the new methodology will impact the FDIC's current assessment appeals process.

In closing, we want to express our appreciation to the FDIC for this opportunity to comment on the Proposal.

Sincerely,



George O. Barnwell
Senior Company Counsel