May 23, 2008

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

Comments@FDIC.gov

Re: **Assessment Dividends – RIN 3064-AD27**

Dear Mr. Feldman:

ING Bank, fsb ("ING DIRECT") appreciates the opportunity to comment in response to the FDIC's request for comments regarding proposed regulations to implement the assessment dividend requirements in the Federal Deposit Insurance Reform Act of 2005 ("Reform Act") and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 ("Amendments Act"). By way of background, ING DIRECT has in excess of $80 billion in assets and provides retail banking services and financial products to individuals and businesses across the United States.

As you know, ING DIRECT has been an active participant in the rulemaking process implementing the Federal Deposit Insurance Reform Act of 2005 ("Reform Act") and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 ("Amendments Act"). In that regard ING DIRECT submitted detailed comment both in its individual capacity and also in conjunction with three other banks[1] in response to the FDIC's advance notice of proposed rulemaking ("ANPR") regarding the assessment dividends. We support the FDIC's changes to the proposed rule and have only two narrowly-focused suggestions: (1) utilizing a 10-year rather than a 15-year transition period; and, (2) using only payments made with "real dollars" (i.e., not "assessment credits") when calculating "eligible premiums".

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[1] Charles Schwab Bank, Countrywide Bank and Nationwide Bank

(1) **Utilize a 10-year rather than a 15-year transition rule**.

The Notice of Proposed Rulemaking proposes a 15-year transition rule, stating that the 15-year period:

> "represents a compromise between two legitimate, but opposing, arguments. On one hand, a 15-year period recognizes the significant contributions made by some institutions in the early 1990s to capitalize the deposit insurance fund and that the interest earned on this capital continues to help fund the FDIC. On the other hand, a 15-year period does not give these institutions an advantage that could last indefinitely in obtaining dividends, as would occur under the fund balance method absent very large insurance losses...".

While that is a sound rationale for the proposition that the "1996 assessment base share" approach should be melded with the "eligible premium share" approach, it does not explain why a 15-year period should be used rather than some other period of time. ING DIRECT believes that a 10-year rather than a 15-year phase-in period is appropriate. Our rationale is simple: one-time assessment credits to offset premiums were made available to institutions in existence before December 31, 1996 (approximately 85% of the industry) because they made premium payments *before* that date. The *Federal Deposit Insurance Reform Act of 2005* required FDIC-insured institutions to resume paying insurance premium assessments effective January 1, 2007. Since a 10-year period elapsed with no general collection of premium assessments, ING DIRECT believes that parity dictates that a 10-year phase-in period should be used in implementing the new dividend assessment rule.

(2) **Use payments made with "real dollars" (i.e., not "assessment credits") when calculating "eligible premiums".**

The staff memo accompanying the proposed rule states that: "Based upon the three trade associations' recommendations, we are proposing that eligible premiums be defined as premiums charged up to the maximum rate for a Risk Category I institution. ***Payments made using one-time assessment credits would be included as eligible premiums...***" [emphasis added]. In response, we reiterate a critically important point we first made in the comment letter we submitted last fall in response to the ANPR, that:

> "we do not believe that the FDIC should include credits as part of the calculation. We understand that the initial purpose of these credits was to strike a balance between older and newer institutions. Arguably, however, once this balance was obtained, to further perpetuate the effect of the credit on a going forward basis would be punitive."

The bank coalition letter submitted last fall made the same point by saying:

> "the FDIC should not include assessment credits as part of the dividend calculation" on the basis that "once an institution's assessment credit have been used to off-set

premiums that otherwise would be due and payable, those credits are no longer available for further use by the institution" lest they be elevated to "the fabled status of a 'gift' that 'keeps on giving'."

Conclusion

For the reasons set forth above, we urge the FDIC to implement a 10-year rather than a 15-year transition rule and allow the use of only payments made with "real dollars" (rather than "assessment credits") when calculating "eligible premiums".

Respectfully,

Deneen D. Stewart
General Counsel
ING DIRECT