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BY ELECTRONIC MAIL

April 11, 2008

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Attn: RIN 3064-AD26
comments@fdic.gov

Re: RIN 3064-AD26: Processing of Deposit Accounts in the Event of an Insured Depository Failure and Large-Bank Deposit Insurance Determination Modernization

Dear Mr. Feldman:

Citigroup Inc. ("Citi"), on behalf of itself and its insured depository institutions, appreciates the opportunity to comment on the Federal Deposit Insurance Corporation ("FDIC") notice of proposed rulemaking (the "Proposal"), relating to the FDIC's practice for determining deposit account balances at a failed insured depository institution and to require the largest insured depository institutions to adopt procedures that, in the event of a failure, provide the FDIC with standard deposit account and customer information and permit the FDIC to place and release holds on liability accounts, including deposits. 73 Fed. Reg. 2364 (January 14, 2008).

Citi currently operates five insured depository institutions in the United States, one of which, Citibank, N.A. ("Citibank"), has foreign branches in 51 countries that take uninsured deposits. At December 31, 2007, Citi had approximately \$2.2 trillion in total assets and worldwide deposits of approximately \$826 billion, of which \$255 billion were deposits at insured depository institutions, including at foreign branches of Citibank.

Citi appreciates the efforts of the FDIC to improve the Proposal when compared to the related earlier advance notices of proposed rulemaking in late 2006 and 2005. We support the basic objectives of the Proposal to permit a timely deposit insurance determination, the prompt payment of insured deposits and the least costly resolution of a failed insured depository institution. Citi strongly endorses the FDIC's proposal that deposit account balances on the day an institution fails be determined based on the institution's end-of-day ledger, after giving effect to the institution's end-of-day processes performed in the ordinary course. We note that it is imperative that there be flexibility to permit different institutions to continue with their processes and systems with as few changes as possible.

In Citi's view, certain portions of the Proposal raise significant issues that would be very burdensome, disruptive and costly to address. We believe that the FDIC needs to balance better the gains it thinks could be achieved against the very substantial burdens and costs that would result from implementation of the Proposal. Our suggestions with respect to these matters are set forth below.

A. The proposal presents unnecessary costs and burdens.

Citi is a complex multinational institution that operates multiple platforms and systems for its multitude of deposit products and accounts, including deposits resulting from credit balances related to its credit card accounts. Acquisitions of deposits, banks and credit card accounts and their integration into Citi have compounded this complexity. Citi preliminarily estimates that to implement the requirements of the Proposal will require tens of thousands of person hours, several years of work, and total costs in the millions of dollars. Citi will have to undertake extensive programming to modify existing multiple systems, some of which are in the process of being phased out to be replaced by new systems that will similarly have to be modified. We will also need to create interfaces to link legacy platforms and systems in order to aggregate customer and account data as the FDIC proposes. In addition, there will need to be extensive testing to ensure that ongoing operations are not disrupted and that the systems enhancements work effectively. Given the interdependency of systems at Citi, we anticipate that there will be a need to modify more than just the various deposit platforms and systems, thus exacerbating the costs and burdens for Citi.

It is impossible to quantify at this time these burdens and costs more precisely, but we expect that they will be very substantial. These changes would have to be made at a time that Citi and other institutions are implementing the Basel II requirements, which require massive efforts. For these reasons, the FDIC should make every effort to streamline the requirements for systems development and to work with the affected institutions to provide maximum flexibility to rely on their existing systems and processes, including cutoff times.

Citi believes that the very remote probability of failure of large banking institutions that satisfy objective high standards of safety and soundness, such as risk-based capital ratios and composite CAMELS ratings, combined with appropriate debt ratings and other indicia of financial health, does not require the FDIC to cast a broad net that captures all so-called "covered institutions." We recommend that "covered institutions" be determined not just by size, but by size coupled with objective and measurable criteria of safety and soundness along the lines, for example, that the FDIC has adopted for FDIC insurance assessments.

B. Imposition of a cutoff time that is different from our normal daily process would be an undue hardship.

The Proposal grants the FDIC, as receiver of a failed depository institution, the ability to establish a "FDIC Cutoff Point" based on facts and circumstances, which may be earlier

than the institution's cutoff times. Citi is a global institution with many different start-of-day hours of operation around the world and many different cutoff times for deposits and related transactions, based on products and geographic location. A cutoff time that differs from the institution's established times or that applies across multiple time zones worldwide is highly problematic and practically impossible to implement. To begin with, systems are not designed to be easily manipulated on short notice to change their cutoff time. In addition, such an abrupt change is certain not only to have negative consequences on our customers, but it will most likely violate customer agreements and bank disclosures everywhere, and applicable laws and regulations in foreign jurisdictions.

For these reasons, Citi respectfully recommends that the FDIC do away with the concept of the FDIC Cutoff Point and rely instead on the failed institution's own cutoff times. Moreover, the FDIC should not require depository institutions to make expensive enhancements to their systems and test them based on something that may never be implemented by the FDIC. Nonetheless, if the FDIC believes it must have the ability to set its own Cutoff Point, it should limit its discretion to exceptional circumstances and remain flexible to adopting multiple cutoff times that apply to different time zones around the world, so as to minimize customer disruption and legal complications.

C. The treatment of sweep accounts should be uniform and straightforward.

The Proposal, in its attempt to address how funds in sweep accounts should be treated in the event of a large bank insolvency, has opened a Pandora's box that has the potential to disrupt the long-established sweep products offered by depository institutions. In addition to the operational and systems issues raised, the sweep proposal has collateral implications for other laws and regulations that rely on the definition of "deposit" in the Federal Deposit Insurance Act ("FDI Act"), including Regulations D and Q and deposit insurance assessments. The impact of these unintended consequences resulting from the sweep provisions of the Proposal may not be fully understood and require further analysis and input from other banking regulators and the industry.

We respectfully suggest that, if the FDIC determines that it needs to address sweep accounts in detail, there be a separate rulemaking that is based on data provided by all interested parties on the various types of sweep accounts offered by depository institutions and the operational complexities and permutations involved with their operation.

If the FDIC believes that it must refer to sweeps in any final rule stemming from the Proposal in the short run, then it should limit itself to addressing the treatment of sweeps in the event of a bank failure in light of the Adagio case,* consistent with the

*Adagio Inv. Holding Ltd. v. FDIC, 338 F. Supp. 2d 71 (D.D.C. 2004).

FDIC's longstanding practice that all prearranged automated sweeps would be given effect in determining end-of-day ledger balances in the event of a bank failure. In this case, the final rule should simply provide that outgoing pre-arranged, automated sweeps will be recognized in end-of-day ledger balances no matter when the internal systems of the depository institution process the transaction in the ordinary course of business, and regardless of any applicable cutoff time or the time when the FDIC declares the institution's failure. The bottom line is that, once swept and until returned, such sweep products do not meet the definition of a "deposit" under the FDI Act and are either subordinated obligations with greater risk of loss than domestic deposits or outside the bank and thus not subject to loss in the event of the bank's insolvency. This has been the widely accepted view for many years among depository institutions, their customers and banking regulators.

D. <u>The requirements regarding provisional holds must be flexible to minimize costs and burdens</u>.

Citi recognizes the FDIC's strong interest in the implementation of provisional holds quickly and effectively in the event of a bank failure to aid in its resolution. We commend the FDIC's efforts to provide flexibility to satisfy the hold requirements in a variety of ways. Banks must be able to determine for themselves the best way to meet the objectives of the Proposal in the manner they deem most efficient and less costly.

Citi, however, is concerned by the enormous burden the Proposal imposes to undertake significant systems development. In the case of "internal sweeps", the Proposal provides that banks have to be able to place holds on the system of record into which the non-deposit accounts are swept. These systems generally do not have the capability to effect holds. Moreover, given the automated nature of sweeps, there is no way for a customer to access the funds while they are in the product into which the deposit funds were swept; the customer can only access its funds when they are back in the U.S. deposit account. Citi believes that there are more practical and less burdensome ways than placing holds in the sweep account to ensure that the customer does not get access to the swept funds upon their return, such as by diverting the funds to a suspense account or placing a hold when they enter the U.S. insured deposit account.

Citi is extremely concerned with the Proposal's impact on Citibank's foreign branches and their deposits. The Proposal raises serious conflicts of laws issues that are not addressed by the Proposal. Conflicting mandates from local regulators on how to manage the local branches in the event of Citibank's failure in the U.S. could expose Citi and its personnel in foreign jurisdictions to unacceptable legal risk and the conundrum of choosing compliance with U.S. or local laws. We recognize that the FDIC has indicated that it intends to work with local regulators in these situations. Nevertheless, if holds on foreign deposits are to be required, the final rule should provide that they will be required only to the extent permitted by applicable local law.

On the more practical side, a different threshold and hold percentage on foreign deposits on a country-by-country basis presents serious operational problems and

would require material development costs. For this reason, if the FDIC were to require such holds at all, notwithstanding the serious conflicts of laws issues discussed above, Citi recommends that there be one standard procedure that applies globally.

Finally, Citi strongly opposes any requirement to disclose to customers information about holds that would be placed on deposit accounts in the event of a failure and FDIC resolution. Such disclosures are unnecessary as customers will be notified of the status of their accounts as part of the FDIC's resolution process. Moreover, there will be additional costs associated with implementing any such disclosures. In the foreign context, such disclosures are certain to create competitive disadvantages for U.S. banks.

E. <u>There needs to be ample time to implement the requirements of the final rule</u>.

As mentioned above, Citi operates with multiple systems around the world so that each system will need to be modified and tested to comply with the requirements of the final rule. Moreover, the systems will need to be connected so that all requested data can be gathered in the required form. Citi's experience is that systems changes and development take several years to accomplish; for example, the consolidation of our trading platforms and systems is currently in its fourth year of development. Accordingly, Citi respectfully recommends an implementation period of at least 36 months.

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We appreciate your consideration of our comments and would be pleased to respond to any questions you may have. If you so desire, please feel free to contact the undersigned at 212-559-4118.

Very truly yours,

Peter Bieszard
Vice President
Corporate Regulatory Reporting

PB/sp