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December 17, 2008 Via electronic delivery

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

Attention: Comments

Re: RIN 3064-AD35; Assessments; 12 CFR 327; 73 Federal Register 61560; Oct. 16, 2008, as amended in 73 Federal Register 67423, Nov. 14, 2008

Dear Mr. Feldman:

The American Bankers Association (ABA) appreciates the opportunity to comment on the proposal of the Federal Deposit Insurance Corporation (FDIC) to alter its scheme for determining risk-based premium assessments. ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.6 trillion in assets and employ over 2 million men and women.

Bankers understand the importance of having a financially sound FDIC insurance fund. Bank premiums (and earnings on those premiums) have provided the entire financial support since FDIC was created 75 years ago. Banks have been and continue to be prepared to meet their obligation to keep the fund strong. The industry expected to pay higher premiums in the short run in order to pay for current bank failures and to rebuild the Deposit Insurance Fund's reserve ratio. However, the FDIC's decision on the premiums for the first quarter of 2009 is aggressive given the current economic situation. The FDIC has the statutory flexibility to extend the time period for rebuilding the insurance fund to help avert the unintended consequences of significant premium increases. Congress recognized in the recent reform legislation that premiums can be pro-cyclical and should be spread out over five years – or even longer – to reduce the tendency to pull funds from banks at the very time in the economic cycle that more lending is needed. Since banks are responsible for the fund's financial health, the ultimate cost to the industry will be virtually the same no matter what the time frame is for rebuilding.

The current environment requires a delicate balance from the FDIC to restore the Deposit Insurance Fund to the appropriate level over an appropriate timeframe without unduly burdening banks that are facing a struggling economy. We share the view that it is critically important to get this system right. While seemingly small, ***each*** basis point assessment on the industry is over ***$700 million*** today. This is a huge sum of money that would support lending many times over. We recommend that the FDIC use the full authority provided in the reform law to minimize the pro-cyclical effect of premium increases. In deciding on revisions to the risk-based premium calculation for the second quarter and beyond, the FDIC has the opportunity to provide a more balanced approach to rebuilding the Deposit Insurance Fund (DIF) and phase in the assessments more gradually.

The ABA understands the desire by the FDIC to refine the risk-based formula for calculating premiums in light of the recent bank failures. We are concerned, however, that the reaction to the relatively large losses may lead to long-term decisions about premiums that are not consistent with a true risk-based system and will create incentives that fundamentally alter the ability of banks to take advantage of the least-cost funding options. The result would be higher costs, less liquidity and an increase in the ultimate risk that FDIC faces.

The Penalty Premium on Secured Liabilities is Excessive.

The importance of having many options for liquidity has been driven home with a vengeance over the last year and particularly the last several months. Without access to Federal Home Loan Bank advances (FHLB advances) and secured lending at the Federal Reserve, the problem and costs to the FDIC could have been much larger. Regulators, including the FDIC, have encouraged banks to devise strategies for alternative funding sources beyond deposits. Now that banks have expanded access, a penalty rate is being proposed for what in practice is normal, not excessive, use of secured liabilities.

Moreover, while liquidity risk is certainly important, the added penalty is out of line compared with the much bigger concern – the riskiness of the assets that are funded, regardless of the funding source. Liquidity risk is already captured in the risk-based premium formula through the "L" in CAMELS. Thus, the added and severe penalty only compounds the cost of using secured liabilities.

Secured Liabilities are a Natural and Important Complement to Deposit Funding.
The intense competition for deposits (often by weak institutions in certain markets) has exerted upward pressure on deposit pricing for all institutions, narrowed margins, and heightened the need to have lower cost alternatives. In the face of extraordinary funding pressures, adding a punitive cost to secured liabilities by raising premium levels by as much as 50 percent will only reduce funding options, intensify deposit competition, raise costs to banks, and narrow margins further.

ABA understands the concerns that secured liabilities in some recent failures – particularly the failure of IndyMac which relied on FHLB advances for nearly one-third of its funding – have contributed to the losses that the FDIC has sustained, losses that are ultimately borne by the rest of the banking industry. ABA also appreciates the fact that excessive use of any one source of funding can, without proper management, create funding risks. However, the FDIC proposal does not truly capture "excessive" use of secured liabilities. Rather, it captures typical use. Thus, while there are many legitimate reasons why ***no*** penalty should be implied, at a minimum, the threshold over which an incremental premium is assessed should be significantly increased.

FHLB Advances Reduce FDIC's Risk.
The use of FHLB advances is a case in point regarding how misguided the proposed premium treatment is for secured liabilities. FHLB advances are a ***stable and reliable source of funds*** for banks. Advances are readily available for FHLB member banks with available collateral and they have pre-defined, predictable terms. They are as stable as core deposits and are not vulnerable to short-term promotions in the local market or surging returns on alternative assets.

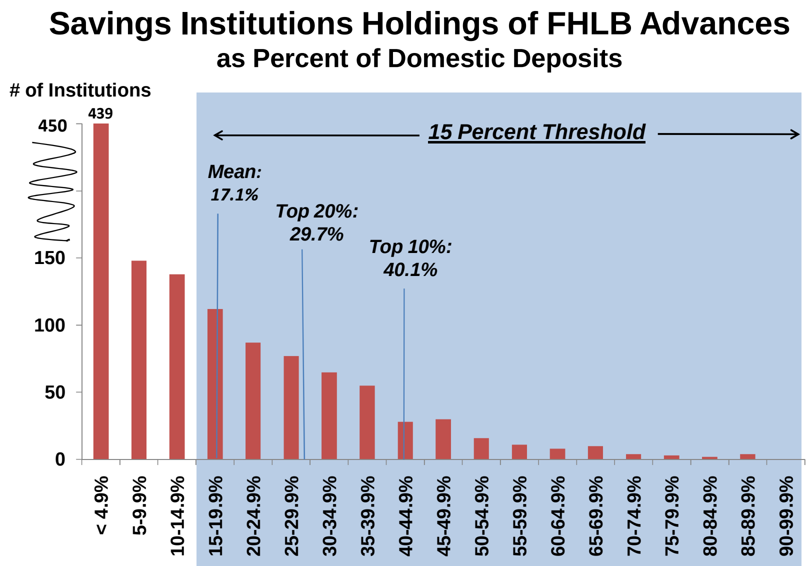
In fact, the use of FHLB advances does ***not*** increase the risk of a bank failing, but rather ***reduces*** it. The availability of such funding has a predictable, beneficial effect on a bank's business plans. Advances often are designed to be ***matched to the maturities*** of home loans and other term credits, helping a bank manage its interest rate risk exposure. This, of course, is critical to funding longer term assets such as mortgages. In fact, many banks use longer term advances to fund community development loans. With few other long-term sources of funds, these projects would be much harder to finance and many would likely not be funded at all.

Yet the proposal limits this flexible option. One adjustment to the calculation suggested by some bankers (in addition to raising the threshold) would be to exclude longer-term FHLB advances – indeed, all secured liabilities – from the calculation. This would at least protect this important source of funding and allow better asset-liability management.

While advances were designed to facilitate mortgage loans for portfolio lenders, banks also use advances for liquidity purposes to fund loan growth in general. In markets where the supply of deposit funds is insufficient to meet loan demand, a FHLB member bank can rely on advances to meet customer credit needs. Without this funding, the bank would be forced to turn to alternative, more costly wholesale funding sources that are demonstrably more volatile. This, in turn, would reduce profitability, increase liquidity risk, and provide less stability for the bank. Therefore, once again, the use of FHLB advances more likely ***lowers*** the risk to the FDIC, and banks should not be penalized through higher FDIC assessments for using them.

Threshold Unfairly Penalizes Savings Institutions.
The primary mission of the Federal Home Loan Banks is to provide funding for portfolio mortgage lenders. Such a mission is even more important now, as the secondary market for mortgages has stalled. Thus, the use of FHLB advances by these savings banks and savings institutions – which focus on home lending – is naturally greater than that of other banks. Many savings institutions have long used FHLB advances as a consistent and stable source of funding; recently other banks have also begun to realize the value of FHLB advances as a complement to other funding sources and were encouraged by regulators to set up arrangements to draw on FHLB funds.

The threshold proposed by the FDIC would unfairly penalize these banks. In fact, the average ratio of FHLB advances to domestic deposits for savings institutions is over 17 percent. Thus, the threshold of 15 percent set under the proposed risk-based formula is ***below*** the average use by savings institutions. This can hardly be described as "excessive" reliance on a funding source, particularly one that has been utilized for decades in a safe and sound manner by savings institutions. The result is that these institutions are being unfairly targeted. Clearly, the threshold is set significantly too low.



Source: FDIC data as of September 30, 2008

Both the Regulators and the FHLBs Can Place Restrictions on Use.
Each FHLB places limits on the amount of advance borrowing after reviewing the quarterly financial reports. Even in the case where a bank is experiencing financial difficulties, the FHLB is required by regulation to coordinate with the FDIC to ensure that the bank has adequate liquidity while minimizing other risks, including losses to the FDIC. The FHLBs have legal authority to access confidential examination reports to assist with this analysis. Therefore, the FDIC and bank's primary regulator already have the power to limit excessive use of advances. Such an approach is more reasonable as it considers the underlying ***risk*** of the institution and is not a one-size-fits-all threshold that applies regardless of the quality of the assets that the advances are used to fund.

The cooperative relationship between the FHLBs and their member banks has worked remarkably well for 75 years. FHLB advances serve as a critical source of funding for housing and community development purposes, support sound financial management practices, and allow more than 8,200 banks throughout the nation to have access to liquidity. There is no justification for treating FHLB advances as volatile liabilities or as a determinant of higher FDIC assessments. We request the FDIC not to adopt the proposed treatment of advances.

SFAS 140 will Impact Secured Liabilities.
The ABA is deeply concerned that the adoption of this proposed secured liability adjustment will have significant unintended consequences to those institutions subject to extensive changes to current accounting practices if the Financial Accounting Standards Board ("FASB") adopts in the form currently proposed both:

- The Exposure Draft (Revised) of Proposed Statement of Financial Accounting Standards, Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140, and

- The Exposure Draft of Proposed Statement of Financial Accounting Standards, Amendments to FASB Interpretation No. 46(R).

The FASB's adoption of these accounting changes, whose proposed implementation is January 1, 2010, would lead to the consolidation of billions of dollars of off-balance-sheet assets and related payment liabilities from secured notes and other securities held by investors. Banks with traditional securitization programs for receivables (such as credit cards, auto and mortgage loans, and other receivables) would be required under these new accounting standards to include these newly consolidated assets together with a corresponding amount of secured liabilities in their quarterly reports of condition.

This consolidation of assets and liabilities will suddenly, and in some cases dramatically, inflate the ratio of secured liabilities to domestic deposits for banks that previously and/or currently engage in securitization and other off-balance sheet transactions. Under the FDIC's proposed rules, this inflated secured liabilities ratio will result in an unintended spike in the assessment rate for these institutions. The ABA believes such increase in the assessment rate driven by changes in accounting practices is unfair, notably in those instances where an institution's consolidation of assets and liabilities is required despite the fact that the transferor bank retains only a portion of the benefits and risks associated with the ownership of the previously transferred receivables.

Also, many of the risk measure components of the financial ratios score for institutions would be skewed by the FASB's proposed consolidation of off-balance-sheet assets and related secured payment liabilities. These newly consolidated assets and liabilities on an institution's balance sheet will unduly inflate the initial assessment rates for many banks, as risk measures such as Tier 1 Leverage Ratio and Loans Past Due (components of the overall financial ratios score) become less accurate indicators of an institution's risk profile. Proposed changes in accounting practices should not drive increases in deposit insurance assessment rates where there is no evidence that the FDIC's loss due to failure increases from the consolidation of securitized assets and related liabilities on an institution's balance sheet.

For these reasons, the ABA respectfully requests the FDIC to focus its efforts on the calculation of the initial base assessment rate and unsecured debt adjustment while continuing to leave intact its longstanding approach that an institution's secured liabilities will not directly impact its assessments.

Weighing Unsecured Liabilities against Secured Liabilities Should be Considered.

In measuring loss-in-default for a bank, the proposal does not strike a fair balance between the treatments for secured and unsecured debt in measuring risk. The proposal would cap any downward adjustment in the assessment for unsecured liabilities at two basis points. There is no basis for such a cap, since the more unsecured liabilities that are subordinated to insured deposits, the lower the risk of a loss to the FDIC in case the bank fails. In fact, a bank with sufficient claims subordinate to the FDIC would involve no insurance losses, should it fail. In contrast, the upward adjustment for secured liabilities could be as high as seven basis points for Risk Category I banks, and even 22½ basis points for Risk Category IV banks. The consequence would be a bias toward higher assessment rates, even for banks where there may be more unsecured debt than secured debt to offset it.

Some banks suggest a more balanced approach: the final rule should do away with separate adjustments for secured and unsecured debt and instead make a single adjustment for net secured minus unsecured debt. The point would be to measure risk based on the net standing relative to the FDIC's claim in a bank failure.

Moreover, it should be made clear that debt guaranteed under the Temporary Liquidity Guarantee Program is not included as being "secured" liabilities in calculating premiums.

The Brokered Deposits Calculation Should Exclude Reciprocal and Broker-Dealer Sweep Deposits.

Banks are troubled by the fact that some recently failed banks used brokered deposits to grow rapidly and fund risky assets. It is important to understand, however, that ***not*** all brokered deposits share the attributes that are of particular concern to the FDIC. Treating all types of brokered deposits the same is unfair and inaccurate. Several types of brokered deposits – such as reciprocal deposit programs and sweeps from broker-dealers – have characteristics much more like core deposits and should not be considered in the same category as more volatile forms of brokered deposits. The FDIC should entirely exclude reciprocal deposit programs and broker-dealer sweep deposits from the premium calculations. Bankers have told ABA that they would be willing to report these balances so that they could be appropriately excluded from the risk-based premium calculation.[1]

Reciprocal Deposit Programs

Reciprocal deposit programs help to meet the needs of depositors with balances above the FDIC coverage limit that want to continue their relationship with their bank but also have the surety of deposit insurance protection. These programs have also been particularly valuable over the course of the last year, as individuals and businesses have sought out greater FDIC protection. This highlights one of the fundamental problems with the threshold as proposed. During weak economic time periods, customers seek greater insured deposit protection, but the proposal would penalize banks for meeting the needs of their customers.

Reciprocal deposit programs enable customers to maintain a relationship with their bank. Because these deposits are typically based on an already established relationship with the bank, they have characteristics much like core deposits. In fact, the reinvestment rate for the Certificate of Deposit Account Registry Service (CDARS) is around 87 percent.[2] The cost is also cheaper as these deposits are typically priced similar to core deposits.

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[1] Reporting forms would need to be developed for this. However, ABA would note that the FDIC can provide separate reporting from the Call Report for deposit insurance purposes (thereby eliminating the need for an FFIEC effort). This can be done quickly, much in the same way that the FDIC developed reporting forms for the Temporary Liquidity Guarantee Program.

[2] CDARS is a service provided by Promontory Interfinancial Network (Promontory). The reinvestment rate and the pricing comparisons are provided by Promontory.

These programs also keep funds in local communities. Without these types of program, customers may be more likely to withdraw money from the local bank and spread it on their own to banks that are paying well above market interest rates. Thus, penalizing low-cost, stable brokered deposit funding would only create more volatile funding in the system, which clearly is counter to the goal of the FDIC's proposed program.

Simply put, these deposit programs are designed to provide greater FDIC deposit insurance protection for customers, maintain the relationship between the bank and customer, and keep funds in the local community. This method of funding is not risky for well-capitalized institutions and any concerns should be raised as part of the examination process – which is already included in the premium calculation. Adding a penalty premium would create a disincentive for banks to use a very good source of core-like deposits. Moreover, there is likely to be no appreciable loss of franchise value (which has been a concern of the FDIC's in bank failures) as a result of a bank using these types of arrangements. Thus, it is patently unfair to penalize banks that use these stable sources of funding and the FDIC should exclude reciprocal deposit programs, like CDARS and other similar programs, from the calculation of "brokered" deposits in the FDIC's rule.

Finally, those programs that allow affiliated depository institutions to sell certificates of deposit of their affiliates should also be excluded from the calculation of brokered deposits. While not reciprocal deposit programs, these deposits are similar in that the deposits are priced similar to core deposits and are relationship based as the customer has a pre-existing business relationship with an affiliated insured depository institution. In addition, the deposits stay within the banking organization's footprint and have a very high reinvestment rate.

Sweep Accounts from a Broker-Dealer with its Affiliated Bank[3]

Many institutions provide their customers investment services through their broker-dealer operations. As part of this service, excess cash in the customer's brokerage account is swept daily into interest bearing or transaction accounts at the broker-dealer's affiliated bank.[4] These are ***relationship***-based deposits that provide a very stable source of funding.

In the aggregate across all these accounts (which total tens, and even hundreds, of thousands of accounts at a given institution), there are daily flows into the deposit account and daily withdrawals made by the customers. Over time these aggregate flows in and out tend to offset one another. Therefore, these deposits are predictable, stable and behave like term funding. Thus, these deposits have characteristics similar to core deposits.

There are several other important characteristics of broker-dealer affiliated sweeps that do not raise the issues about high-interest rate funding of risky banks that is of such concern to the FDIC:

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[3] The customer is fully informed about the deposit account established at the affiliated bank. However, the account relationship is between the customer and the broker-dealer, not between the customer and the bank. The broker-dealer, as agent for the customers, is responsible for sending the customer periodic account statements of all assets held by the broker for the customer, including the deposit accounts, and year-end IRS 1099 tax statements).

[4] The excess cash in a customer's brokerage account is derived from interest payments and dividends on securities, sales of securities and funds deposited to the brokerage account by the customer.

- ***Broker-Dealer Affiliated Sweeps are Neither High Interest Rate Nor Rate Sensitive Accounts***.
  The FDIC is naturally concerned with weak banks that may seek to raise large amounts of deposits quickly by paying very high interest rates. In contrast, broker-dealer-affiliated sweeps are not rate sensitive nor carry high interest rates. The interest rates paid on these accounts are typically below yields on money market mutual funds. Moreover, these arrangements are designed to manage excess cash better, and are not established to compete with high rates paid by other institutions.

  The affiliated bank also benefits from these sweep arrangements since the costs of managing the account relationship (customer statements, tax reporting, personnel) are at the broker-dealer, not at the bank. Thus, these deposits are considered an inexpensive source of funding for the bank.

- ***Functionally the Same as Other Bank Accounts***.
  Even though the account relationship is technically with the broker-dealer, the deposit account is functionally the same as if it were the bank’s account. In fact, customers may choose the broker-dealer account ***because*** of the relationship with the affiliated bank, as the broker-dealer may market this relationship. Thus, these are essentially established accounts among a family of companies. The long-term account relationship – which connects the brokerage account with a bank deposit account – means that these function much like core deposits. In fact, the establishment of the brokerage account reinforces the customer’s relationship with the financial institution and may make it less likely that the customer will terminate the relationship.

Thus, the FDIC should exclude broker-dealer sweeps to affiliated banks from the definition of “brokered deposits” under the rule. As is the case with reciprocal deposit programs, the FDIC has said that current reporting by banks in the Call Report precludes separation of various types of brokered deposits. ABA believes that the FDIC should permit depository institutions to file voluntarily a supplement to their Call Report or Thrift Financial Report that provides relevant information about reciprocal deposits or sweep arrangements offered by an affiliated broker-dealer. Such deposits could, therefore, be identified and excluded from the brokered deposit adjustment.

We would also support excluding from the definition of brokered deposits those broker-dealer sweep programs involving both affiliated and unaffiliated banks where the deposits have the characteristics of core funding. Some of our members sponsor programs that permit broker-dealers to invest customer cash balances in certain affiliated and unaffiliated well-capitalized banks. Interest paid on these deposits is neither high nor rate sensitive. In fact, one of the hallmarks of these programs is that all program banks pay the same interest rate, which eliminates any possibility of a weak or aggressive bank raising rates to attract additional deposits. Similar to broker-dealer sweeps to affiliated banks, these programs are relationship based as the broker-dealer maintains the relationship with the customer, including providing customer account statements and 1099s regarding the monies swept into deposit accounts. Therefore, these programs have provided a stable source of deposits to the program banks without the moral hazard problem that is of concern to the FDIC.

Excluding both reciprocal deposits and broker-dealer sweeps from the definition of brokered deposits for the purposes of the premium calculation would go a long way to improving the unfair treatment of these stable sources of funds under the proposed rule. Even with these two types of deposits excluded, however, there are several additional concerns with the proposed rule for brokered deposits that are not excluded:

- ***The 10 percent threshold is too low.***
  Given the recent market volatility which has been characterized by a flight to safe, liquid, and FDIC insured deposits, a much higher threshold rate is more appropriate. This has been a natural flow of funding and has enhanced the liquidity of banks during this time frame. There needs to be sufficient flexibility so that banks are not pushed over the threshold and forced to pay an additional penalty. The bank regulators always possess the authority to limit an individual bank's use of secured liabilities when it appears that the use of such funding is becoming unsafe and unsound. Moreover, as noted above, many forms of secured liabilities enhance the safety and soundness of a bank, thereby reducing the likelihood of failure. Thus, the threshold should be increased significantly (e.g., greater than 25 percent at a minimum) so as to not impair normal funding that would occur over the full economic cycle.

- ***The asset growth rate test is too low.***
  The linking of "excessive" brokered deposit use and "rapid" growth at least attempts to tie the funding with some measure – albeit not a direct nor particularly accurate measure – of risk. However, a growth rate of 20 percent over four years is hardly rapid. In fact, nominal GDP growth between third quarter 2004 and third quarter 2007 was ***22½ percent***; a bank growing by 20 percent during that time period would actually have been ***underperforming*** the economy. Moreover, weak banks that seek to raise large amounts of deposits by offering very high interest rates have done so in a much shorter period of time.

  Moreover, the test fails to make allowance for asset growth that resulted from accounting rule changes (*e.g.*, the SFAS 140 proposal that would bring off-balance sheet assets onto a bank's balance sheet), and asset growth that has resulted from a temporary shutdown of the securitization market that required banks to hold assets rather than to sell them to investors.

  In addition, a concept worth exploring is to look at growth of ***risk-weighted*** assets rather than total assets. This would be a more direct measure of risk taking by institutions.

  For all these reasons, the growth rate threshold should be raised.

In summary, by excluding reciprocal deposits and sweep deposits and by increasing the appropriate asset growth trigger and the general brokered deposit threshold, the FDIC program would – while still imperfect – be much improved from what has been proposed.

Reductions for High Tier 1 Capital and for Subordinated Debt are Appropriate.

ABA agrees that reductions in premiums for banks with high levels of capital and subordinated debt are appropriate as they clearly reduce FDIC's losses dollar for dollar.

The Expanded Range between the Base and Ceiling Premium Rate has Drawn Criticism.

Some banks have also expressed a concern about the expanded range of premiums for the healthiest (Category I) banks, which can range from 8 to 21 basis points. The greater the difference between the floor and ceiling rate, the more important the distribution becomes. For a small change in any financial ratio or CAMELS ratings, the wider spread would make the financial consequences more severe than is the case with a smaller spread. The treatment of secured liabilities, which can add up to a 50 percent premium penalty, is particularly troubling. If the variation is too large relative to the actual risk, then some institutions will bear a disproportionate cost and will be unfairly competitively disadvantaged. A more reasonable approach to secured liabilities will certainly improve this disparity. Moreover, the lowest rates – currently 8 basis points – should not be raised any higher (and indeed, as ABA has argued above, could reasonably be reduced).

The Large Bank Adjustment Should Not be Increased to One Basis Point

The proposal would expand, from ½ to one basis point, the maximum adjustment the FDIC is authorized to make in the assessment rate for banks under the large bank model. ***ABA continues to object to overrides of objective criteria in setting risk assessments.*** We feel that it would be inappropriate to expand the FDIC's authority to make arbitrary adjustments in the assessment rate, which should not be needed with the increases in risk factors being contemplated.

ABA has always objected to subjectivity in adjustments to individual institution's assessment rates. When risk-related assessments were first instituted, we wrote:[5]

> Of particular concern is that application of the premium-adjustment authority relies upon significant elements of subjectivity. Subjectivity enters both through the weights assigned to objective factors and through factors such as stress testing and other, less well-defined, variables. Because of the subjectivity that permeates this rule, any upward adjustments could be viewed as arbitrary and misguided and will likely be disputed vigorously by the affected institutions.

Now, with two years experience with the rule, several institutions report that these concerns have been borne out in their actual experience. The bankers report being hit with, in their views, unreasonable adjustments for which they were not provided sufficient justification. Further, the bankers felt that they were not allowed to effectively challenge the adjustments through the FDIC's

[5] ABA, America's Community Bankers and Financial Services Roundtable letter to the FDIC of March 23, 2007, pages 2-3, www.fdic.gov/regulations/laws/federal/2007/07c05ag.pdf.

appeals process. ABA requested that the FDIC publish aggregate statistics on adjustments, challenges and final results;[6] to date, this data has not been forthcoming from the FDIC.[7]

Moreover, the extensions of the risk-rating factors under consideration in the large bank model should make subjective adjustments in assessment rates unnecessary. As proposed, the large bank system would be augmented with a range of financial ratios and funding factors. In this case, it becomes increasingly unclear how the FDIC would justify additional arbitrary adjustments to the risk rating of individual institutions.

Recognition of Large Banks' Capital in the Unsecured Debt Adjustment

ABA believes that banks subject to the large bank model should be given credit for their capital in the unsecured debt adjustment. Institutions subject to the large bank model generally feel that capital is over-weighted in their risk determination. We note that capital enters the risk-based assessment evaluation in several ways:

- The Risk Category that a bank is assigned to depends on how much capital it has (in addition to supervisory ratings);
- Capital is a component of the CAMELS supervisory ratings – one that receives extra weighting in the risk assessment model; and
- As proposed, the Tier One capital leverage ratio is among the financial ratios that will be added to the risk weighting for large banks.

Such overweighting is inconsistent with efforts to tie risk more accurately to capital under the Basel II and Standardized Approach capital standards. On this note, the FDIC and other federal banking agencies need to consider the interaction between risk-based premium and risk-based capital rules. It is counter-intuitive to encourage greater capital under the Basel standards yet give no credit for the Tier 1 capital held by the banks. In contrast, under the small bank model, institutions would receive credit for half of their Tier 1 capital between 10 percent and 15 percent of adjusted average assets, and all Tier 1 capital above 15 percent. From the FDIC's perspective, Tier 1 capital serves the same function as unsecured liabilities: should the institution fail, they both absorb losses before the FDIC.

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[6] The trade associations wrote: "To allow the industry to evaluate the use of this premium-adjustment authority better, the FDIC should disclose the number (but not the names) of institutions that have had an adjustment of rates. The FDIC should also distinguish between the number of upward and downward adjustments and their magnitude." (See ABA, America's Community Bankers and Financial Services Roundtable letter to the FDIC of March 23, 2007, page 2.)

[7] We also have repeatedly requested that the FDIC vest its Ombudsman with additional authority to resolve disputes; premium increases present another instance where such authority would be very helpful. It would enhance the understanding of both the bank and the agency of the final outcome and thereby enhance the credibility of the process.

Conclusion

The banking industry understands the importance of assuring the financial strength of the FDIC and to have a premium structure that truly represents the risk to the FDIC. There are many concerns and suggestions for improvements to the proposal. For example, the ABA believes that the proposed penalty premium on secured liabilities is excessive. Secured liabilities are a natural and important complement to deposit funding, are stable and reliable sources of funds which reduce FDIC's risk, and are subject to regulatory oversight already. Moreover, the proposed threshold unfairly penalizes savings associations that have used Federal Home Loan Bank advances as a regular part of their funding strategy and have done so in a prudent fashion. We are also very concerned about the impact on premiums should the Financial Accounting Standards Board adopt the Statement of Financial Accounting Standards – Accounting for Transfers of Financial Assets (an amendment of FASB No. 140). It will have significant unintended consequences and it is critical that the rule address this problem.

The ABA also believes that the brokered deposit calculation should exclude reciprocal and brokered-dealer sweep programs (and other similar relationship-based programs). These are neither high interest rate deposits nor are they rate sensitive. Thus, these relationship-based programs do not have the characteristics that are most troubling to the FDIC.

The ABA also believes that the reductions for Tier 1 capital and subordinated debt are appropriate. Finally, ABA continues to object to overrides of objective criteria in setting risk assessments and, therefore, we believe that increasing to one basis point the ability of the FDIC to adjust rates is not appropriate.

The ABA appreciates the opportunity to comment on the proposal for premium assessments starting in the second quarter of next year. We stand ready to work with the FDIC to improve the rule. Should you have questions or seek further explanation of these recommendations, please do not hesitate to call me at 202-663-5130 or Rob Strand at 202-663-5350.

Sincerely,

James Chessen