Bank of America

Bank of America Corporation
Legal Department
NC1-002-29-01
101 South Tryon Street
Charlotte, NC 28255

March 31, 2009 BY ELECTRONIC MAIL

Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Attn: RIN 3064-AD35
comments@fdic.gov

Re: Emergency Special Assessment Proposal

Dear Madams and Sirs:

Bank of America Corporation appreciates the opportunity to comment on the proposed regulations of the Federal Deposit Insurance Corporation (the "FDIC") authorizing the FDIC to charge special deposit insurance assessments. Bank of America, with over $2.5 trillion in total assets and over $1 trillion in worldwide deposits, operates the largest and most diverse banking network in the United States with full-service consumer and commercial operations in 33 states and the District of Columbia. Bank of America, through its subsidiary banks, operates over 6,100 retail branch locations and over 18,700 ATMs.

The FDIC has proposed to charge a special assessment of 20 basis points, above and beyond ordinary FDIC deposit insurance assessments (which the FDIC has just substantially increased), as a means to quickly replenish the Deposit Insurance Fund (the "DIF"). This charge would be assessed on June 30, 2009 and would be payable on September 30, 2009. The FDIC has also proposed the ability to impose an additional special assessment of up to 10 basis points in the future. While not reflected in the proposed rule itself, press accounts indicate that the FDIC has considered a reduction of the proposed special assessment from 20 basis points to 10 basis points on the condition that the U.S. Treasury Department increases its existing line of credit to the FDIC. Since the proposal was issued, the FDIC also recently proposed to amend the regulations governing the Temporary Liquidity Guarantee Program (the "TLGP"), such that new fees under the program would directly fund the DIF. The FDIC has made encouraging statements that this action may help offset some of the need for special assessments by approximately 4 basis points.

Bank of America has several comments and concerns about the FDIC's proposal.

First, the magnitude of the proposed special assessment, particularly imposed in a single quarter, would have dramatic impacts on the liquidity and earnings of the banking industry. With access to bank liquidity limited, such an assessment would have the additional impact of reducing funds available to banks to make loans to customers, thus prolonging the process of economic recovery.
Bank of America recommends that the FDIC postpone any special assessments until at least 2011 or such later time as the global economy and the banking industry has demonstrated a sustained recovery.

Bank of America acknowledges the need to ultimately replenish the DIF and the FDIC's obligation to maintain a target DIF ratio. As evidenced by the FDIC's recently adopted restoration plan, increasing the DIF through assessments can and appropriately should be spread over a reasonable period of time (7 years in the new restoration plan) in order to minimize the impact on earnings and liquidity for banks. Given current funds in the DIF, the crediting of fees from the TLGP to the DIF and the availability of the FDIC's line of credit with the U.S. Treasury (which is expected to be increased) postponing or foregoing the proposed special assessment should not impact the ability of the FDIC to continue to pay deposit insurance claims in the event of future bank failures and would not create systemic risks to the financial system.

We welcome the news that the FDIC is considering reducing the special assessment based on the FDIC's ability to draw on the Treasury line of credit. We also support the FDIC's proposal to use TLGP fees to directly fund the DIF. The combination of these action helps reduce some of the urgency for a special assessment, or at least should reduce the amount of any such assessment. Based on the FDIC's statements and estimates of the benefit of these other initiatives, we would hope and expect that the FDIC would adjust its target for special assessments to no more than 6 basis points. While this would represent a substantial improvement over the current proposal, this would still represent a burdensome amount for the banking industry in the present economic environment.

Second, if the FDIC decides to proceed with special assessments, they should be broken into multiple smaller special assessments that are assessed over a longer period of time. Bank of America recommends that any special assessments be spread over at least eight quarters to reduce the impact to earnings and liquidity of banks for any quarterly period. As a technical matter, it would be important from an accounting standpoint that these be separate quarterly special assessments rather than a single large special assessment that is assessed in total immediately but that is payable periodically in installments. Essentially there should be a series of quarterly individual special assessment in order to prevent adverse accounting treatment.

Third, the FDIC should avoid any changes to the methodology of calculating assessments that would result in disproportionately allocating the burden of assessments to larger depository institutions. The Deposit Insurance Reform Act of 2005 states that "No insured depository institution shall be barred from the lowest-risk category solely because of size".[1] The intent

[1] 12 U.S.C. §1817(b)(2)(D).

behind this statutory provision is to prevent discrimination by assessing larger banks with higher relative premiums merely because an institution is large. It would therefore be inappropriate and not legally permissible for the FDIC to assess large banks at higher rates than smaller banks based on size of assets or deposits. Using any measure for assessments other than deposits (and more specifically insured deposits) would be arbitrary and potentially punitive given that the only risk of losses to the FDIC and the DIF arise from insured deposits.

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Bank of America appreciates the opportunity to comment on the FDIC's proposed special assessment, and we thank you for your consideration of our comments.

Sincerely,

Phillip A. Wertz
Assistant General Counsel
Bank of America Corporation