

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

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Banks Ineligible for TARP Funds Should Be Exempt from Interim Rule
RIN 3064-AD35

Dear Mr. Feldman:

We are submitting this comment letter on behalf and at the instruction of our client, the China General Chamber of Commerce – USA (CGCC), to comment on the interim rule to impose a 20 basis point emergency special assessment published by the Federal Deposit Insurance Corporation (FDIC) on March 3, 2009 (the **Interim Rule**). CGCC's members include a wide cross-section of Chinese corporations and financial institutions doing business in the United States, including FDIC-insured U.S. branches of Chinese banks. CGCC works to advance the interests of its members and to serve as a bridge between the Chinese and American business communities.

CGCC is concerned that the Interim Rule would have a negative impact not only on the FDIC-insured U.S. branches of Chinese banks, but also on other Chinese businesses operating in the United States and U.S. businesses that rely on such branches' services. CGCC believes that the Interim Rule should be amended along the following lines to ensure a more equitable distribution of the burden of replenishing the Deposit Insurance Fund's depleted funds.

1. FDIC-Insured U.S. Branches of Foreign Banks Should Be Exempted from the Levy of the Special Assessment

The recent precipitous decline in the balance of the Deposit Insurance Fund was not the result of ordinary course bank failures which the Federal deposit insurance was designed to cover, but rather the result of an extraordinary financial crisis unseen in recent decades. To resolve this financial crisis, the Federal Government has deployed a variety of resources and tools at its disposal, including the Troubled Asset Relief Program (TARP). In implementing the TARP program, the Federal Government made it clear that no U.S. branches of foreign banks would be eligible for receipt of funds under the program. CGCC believes that it is inequitable to require the FDIC-insured U.S. branches of foreign banks to pay a special assessment to resolve a problem that is extraordinary in nature while the very same U.S. branches of foreign banks are being excluded from being considered for receipt of the TARP funds. For this reason, CGCC proposes that the FDIC-insured U.S. branches of foreign banks which have not received any TARP funds be exempted from the requirement to pay the special assessment described in the Interim Rule. Furthermore, CGCC is concerned that a failure to amend the Interim Rule to exclude FDIC-insured U.S. branches of foreign banks could provide a basis for bank regulators in foreign countries to single out U.S. banks operating there for treatment such as that contemplated by the Interim Rule on the basis of national treatment leading to unfair treatment of U.S. banks abroad.

2. Small Institutions Should Be Exempted, in Whole or in Part, from the Special Assessment

Many small FDIC-insured banks, including FDIC-insured U.S. branches of foreign banks, are already operating with little or no profit margin. Levying a 20 basis point special assessment on these institutions, on top of the recently increased regular assessments, will only increase the burden on these entities, aggravating this already severe financial crisis. Although such institutions may currently appear strong, because of the smaller margins on which they operate, a special assessment of 20 basis points – which you estimate would lower a profitable institution's pre-tax income by 10 to 13% – could have a disproportionate burden on these institutions. Small banks are central to their communities' development and, in the case of FDIC-insured U.S. branches of foreign banks, to supporting business endeavors between such banks' home countries and the United States. If this measure forced them to further decrease their lending, the entire business community they serve would feel the effects. For these reasons, CGCC proposes that institutions with a regular assessment base below a certain threshold, for example, between \$1.5 billion and 2 billion, should also be exempted from the special assessment.

3. Levying Special Assessment on Small Banking Institutions Would Have Unintended Consequences

Chairman Bair's letter to the CEOs of affected banks dated March 2, 2009 implies that under the Federal Deposit Insurance Act (FDIA), it is not possible to base assessment on size in any way, because the FDIA "restricts us from discriminating against an institution because of its size." We recognize that section 7(b)(2)(D) of the FDIA provides that "[n]o insured depository institution shall be barred from the lowest-risk category solely because of size." We do not, however, read this provision to mean that the FDIC could not set a minimum size threshold below which an assessment – especially an extraordinary assessment such as this one – would not be applicable. Further, section 7(b)(1)(D) explicitly recognizes that large and small institutions in some respects require different treatment, allowing that separate risk-based assessment systems may be established for each. We encourage you to consider exempting small banks (including FDIC-insured U.S. branches of foreign banks) from the special assessment based on the disproportionate impact that the assessment will have on them.

CGCC believes that small banks (including FDIC-insured U.S. branches of foreign banks) that are not exempted from the special assessment will naturally seek to neutralize the cost of the special assessment by (1) reducing the interest they pay to their depositors and (2) increasing the interest they charge on new loans. Both of these events will work against the interests of U.S. consumers and the fostering of growth in the U.S. banking sector since lower savings interest rates will act to discourage saving patterns and thereby reduce funding and higher loan interest rates will likewise discourage borrowing. As such, this marginal cost will have a disproportionate impact on the ability of small banks in the U.S. to grow competitively.

CGCC appreciates this opportunity to comment on the Interim Rule and views it as one of its missions to let the government regulators hear the candid and unvarnished views of the constituencies it represents so as to help build a more equitable regulatory framework. CGCC would appreciate it if the FDIC would take into consideration the above views in refining the Interim Rule before promulgating the final rule.

Sincerely,



Allen & Overy LLP