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Under President George W. Bush, American depositors were encouraged to step in to bailout the balance sheets of banks with an enticement that extended FDIC insurance to $250,000 per insured bank deposit. American depositors obliged. They inverted the troubling trend of negative savings and began depositing cash. Ironically, while the Bush administration was desperately seeking to stabilize the financial sector, they did not heed my, or others' warnings that this was neither a fix nor even a temporary logical step. Further, they were not carefully considering the now lamented decrease of cash-flow in the consumer sector now helping fuel the deepening recession. At the time of this ill-considered decision, we suggested that the FDIC consider a more appropriate action. By actually measuring the "real" assets of our economy, the risk criteria paralyzing banks could be modernized to reflect both present and future financial performance and the drivers thereof.

In its ***Federal Register*** publication on October 2, 2009 (12CFR Part 327, Vol. 74, No. 190), the FDIC has proposed a booking-keeping plan to raise liquidity which will have disastrous effects both prolonging the real reform of the financial service sector and actually increasing the likelihood that more banks will fail thereby further impeding access to credit. Under a book-keeping manipulation which is meant to satisfy quantitative investors but do nothing to actually fulfill its statutory requirements, the FDIC is proposing a "pre-funding" of assessments due by participating banks based on estimated risk as of the fourth quarter of this year. These "pre-fundings" are to be paid on December 30, 2009 and are to cover insurance premiums for 2010, 2011, and 2012. This strategy would raise an estimated, paltry $45 billion. There are two fundamental loopholes in the language of the proposed rule which are clearly advantageous to the FDIC and its member institutions but disadvantageous to the public. First, by calculating the assessments on December 24, 2009 – not at the end of a reporting or fiscal cycle – neither the FDIC nor the financial institution will have confidence in the appropriateness of the real position of any member bank and its reserves. Second, by allowing the pre-payment to be credited for special assessments, the FDIC cuts off its own capacity to respond to immediate liquidity constraints as it will have merely an acceleration of recognized cash – not genuine new liquidity at such time as a special assessment is required.

I would like to renew my call from 2008, that the FDIC immediately pursue another option which would: 1) more adequately reflect the current U.S. economy and its drivers; 2) align with economic development strategies promoted by the President and the Congress targeting the expansion of new and high technology businesses and the capital required therein; and, 3) correctly account for the correct value of assets both in its own portfolio of distressed and toxic assets and those of insured institutions. Specifically, it is vital that the FDIC and its member banks establish a means by which the intangible assets (executory contracts, licenses, franchise agreements, copyrights, patents, and trademark uses) are actually counted as bankable assets. Representing an estimated 80% of the value of the S&P companies, at present, neither the banks nor the FDIC are authorized to view any of these assets as investment grade. The irony of this is staggering in the face of the FDIC's present proposal in which they are using one of the least creative accounting manipulations to stem a short-term problem with a longer term calamity.

Should the FDIC's recommendation be adopted as presented, the banking system of the United States and the depositors therein, will be assured of decreased confidence in the FDIC and greatly reduced incentive to place funds into savings accounts. This, in turn, will further impair an already dysfunctional link in the capital system that has underpinned the U.S. business landscape for decades. However, in the event that the FDIC has the vision and foresight to plan for the present and future by adjusting its arcane metrics to those that reflect present reality and future aspirations, it can expand upon the nascent efforts that the FASB took in its impairment testing rules and that the IRS took in beginning to instill discipline around intangible asset opaque accounting loopholes that robbed the Treasury of billions of dollars.

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