From: mascully [mailto:mascully@erols.com]
Sent: Sunday, March 08, 2009 2:36 PM
To: Comments
Cc: 'Kathleen Murphy'; info@icba.org; 'Mary Ann Scully'
Subject: RIN3064-AD35

I am writing to comment on the above Interim Rule related to the proposed special assessment of 20bps on all deposits held in insured institutions as of June 30, 2009. First,. I want to acknowledge the need to look NOW… and begin to work NOW…. towards a solution for the low reserves held in the depository insurance fund. I also want to thank Chairman Bair for her personal letter to all CEO's like myself to share the rationale as well as the obvious angst associated with this decision. It was a welcome departure form the bureaucracy so often associated with government pronouncements. And I want to thank Chairman Bair for her subsequent willingness to request an immediate increase in the credit facility made available by US Treasury to the FDIC in lieu of the full 20bps special assessment. The willingness of public leaders to ask for feedback from other experts and to listen to that feedback is an increasingly rare characteristic of many public servants today and is most sincerely appreciated.

However, I would like to ask for an adjustment in the residual 10bps assessment remaining. In part, I suggest further adjustment because this assessment comes on top of generally increased permanent assessments but more importantly because its flat (rather than graduated) application to all institutions – no matter what their risk rating- seems to be patently unfair and counter to the best practices of an insurer. I approach this argument from my view that the FDIC is an insurer not just a regulator and these assessments are premiums. Some parts of the insurance industry have for too long- and the FDIC may be retrospectively guilty of this as well – kept premiums too low in light of the inherent risks associated with many industries. Therefore, when an insurer determines that premiums no longer accurately reflect those risks and furthermore, that their ability to pay claims will at some point be impacted by drops in reserves , they raise rates. I accept and support that need. The FDIC made the decision that this year was probably going to be the time to do this , signaled that intention well in advance , and will soon proceed to increase premiums for institutions like my own. We are prepared for that, we have budgeted for that and we have , where necessary, planned certain actions to allow us to pay those premiums. As a lower risk bank, my premiums were scheduled to double. Again, I do not disagree that premiums need to increase.

However, I am not engaging in especially risky business practices. I do not have suspect assets in my investment portfolio- I actually have a relatively small investment portfolio structured purely to provide liquidity not high returns - as I practice the old fashioned business model of lending to small business people in my local community; and I try to funds those loans with deposits generated in my local community. I have historically tried to restrict using brokered deposits and FHLB borrowing – even if cheaper- so that those sources of funds are a secondary funding not primary funding source. In other words we are a pretty old fashioned community bank. I have had one foreclosure - commercial-; have experienced losses on two other commercial loans and have one troubled residential mortgage- of less

than $100,000. I have over $200MM in assets so I think this performance in a down economy is reasonably good. And yet, I am to pay the same sudden special assessment that troubled institutions are paying. My insurance analogy would be that my business is located on Main Street in a town far from any nuclear plants or any hurricane prone beaches . And yet, I am about to be charged the very same special assessment related to Hurricane Katrina as a business in Miami or Panama City or Nags Head. What is the risk based justification given my prudent business model and my success in executing on that model vs the business model of those who have engaged in very different funding and investment practices- those on wall Street, those in bubble markets , those who just got greedy. Again, to be perfectly clear, I actually support higher premiums as planned last year because I support a healthy insurance fund. My banks has ,in local banking association discussions, signaled a willingness to pay for more bank examiners- and better qualified (thus better paid) examiners to see problems in institutions earlier rather than later.

But I believe that this special assessment is badly structured and I suggest that if a special assessment must be applied, that it be graduated according to risk . I also think that the timing of the increase as structured is purely procyclical- it will exacerbate the challenges faced by community bankers who are just trying to do the right thing. My bank is a young bank – opened in 2004- and therefore subject to more frequent examination- appropriately so. My commercial oriented business model was approved by the FDIC that year and given our staff expertise, systems purchased and controls put in place has been deemed consistently to be safe and well capitalized .When two of my regulators wrote to all bank CEO's in late 2008 to suggest that, as a healthy bank I consider applying for an infusion of capital via the issuance of preferred shares through the Capital Purchase Program, I spoke to my FDIC relationship manager and then applied. We were approved and after much deliberation, we accepted those funds, thus raising our capitalization levels even more. We accepted the funds despite a higher than well capitalized ratio because we thought it prudent to have more capital in a downturn and we thought it opportunistic to have more capital when the community bank model is being more valued than ever by prospective clients . We also thought it important to be able to continue to support our small businesses and their owners and employees for the foreseeable future in the event that the capital markets continue to be unreceptive to bank shares . We prepared for some criticism from consumers ignorant about the distinction between this program and other programs for distressed institutions. We did not look forward to that criticism because we are very respected in our community. We were named small business of the year by our state chamber of commerce two year ago- not small bank but small business. We were named last year as the leading corporate philanthropist by our state chamber last year- not bank philanthropist but corporate philanthropist – and not just because we try to contribute a certain percentage of revenue to local not for profits but because we give our time and our expertise and sit on many local not for profit boards. So the thought of criticism was not welcome but we prepared for it. What we were less prepared for was the decision of a majority of our country's Congressional representatives to take a blunt ax – rather than a scalpel – to executive compensation programs. So , after 36 years of dedication to and success in this industry - rising through the ranks, I no

longer have an employment agreement that protects my family fully in the event of my disability or a termination not associated with any negligence or malfeasance on my part . And I am told that I will not be allowed to repeat the $5000 bonus that I received for my work in 2008 until 2013. I only mention these things to put into perspective the dismay that many of us- your clients- feel today with programs that paint us all with the same brush. The special assessment is now one of those brushes. I will always try to do what is right for my shareholders, clients and employees .. and hopefully my community. I would not consider returning the capital I just received just because it is temporarily bad for me and my family . I will try to do what is right . The same holds true for the assessment. I know that I will pay higher premiums... and we all should .But if I must pay for- and record as expense this year, an additional 10bps assessment – on top of the 7-9 bps that I already anticipated- I must look at some of the following additional tactics:
Cutting deposit rates more heavily ;
Utilizing my FHLB line more aggressively to modify the growth in my deposit base
Increasing loan rates;
Holding back on new hiring associated with my company's growth- so potentially less employment of experienced bankers being laid off by other institutions;
Dropping expenditures on marketing- which affects the employment of my local community vendors;
Cutting back on charitable contributions

Is this really what the FDIC wants me to do- I think not and I am sorry.... but 10bps on top of everything else might be the proverbial straw.

I suggest the following:
1.Use the Treasury line as much as possible to mitigate the "procyclicality" of all these increases.
2.Make any residual special assessment relate to the DEMONSTRATED risk of the institution as all insurance is supposed to do; if applied, it should be smaller than 10bps for a well capitalized community bank like mine .
3.Assessments should be a function of funding levels with deposits accorded a higher weighting certainly but large banks who cannot raise deposits sufficient to meet their needs should not be advantaged in this process.
4. Maximum rates should be considered for ALL institutions. Maximum rates for very risky institutions alone seem to me after much thought inappropriate - if an institution will fail because of an assessment , what does that tell us about the institution; it simply seems counter intuitive. Of course, more failures are not good for the industry but those troubled institutions should be " supported " in some other way .The creation of 1990's style bad banks should be reconsidered.
5.Allow the assessment to be stretched over a longer period of time. Based on the many discussions around fair value accounting this year, I do not believe that FASB will modify their accounting rules. I think the additional increase needs to, ideally, be formally spread over a longer period of time.
6. Alternatively, the banks could lend the DIF the money today to be repaid over time – perhaps with a credit against future (maybe higher) rates

I apologize for the length of … and the passion embedded in this response . I have always viewed community banking as an honorable profession and am just looking for some signal from the government that they really view it that way as well. I appreciate the fact that Chairman Bair seems to understand that and hope that the FDIC will reconsider this remaining 10bps assessment.

Mary Ann Scully