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Via Regular Mail and E-Mail (Comments@FDIC.gov)

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

Re: Federal Deposit Insurance Corporation: RIN No. 3064-AD49

Dear Mr. Feldman:

This letter contains a brief comment regarding the above-referenced Notice of Proposed Rulemaking and Request for Comment ("Notice"). The Notice relates to a proposal by the Federal Deposit Insurance Corporation ("FDIC") for a special prepaid assessment for the fourth quarter of 2009 and all of 2010, 2011, and 2012.

I am sending this comment on behalf of my client, Fireside Bank ("Fireside"), a California industrial bank the deposits of which are FDIC-insured. At a meeting on March 20, 2009, Fireside advised representatives of the FDIC that it would be undertaking a voluntary liquidation plan. The plan contemplates the liquidation of Fireside's assets and the repayment of its deposits as they come due. Fireside is accepting no new deposits and, to date, the institution's deposits have been reduced ahead of schedule. Once all deposits have been repaid, Fireside will voluntarily terminate its FDIC insurance and complete the liquidation of the institution. The voluntary liquidation of Fireside has been publicly announced by Fireside's parent company.

My comment relates to a single, very narrow point – the treatment of prepaid assessments in the event an insured depository institution's insured status subsequently terminates. This issue is explicitly discussed in the Supplementary Information that accompanied the publication of the Notice in the Federal Register. The Supplementary Information states as follows: "In the event that an insured depository institution's insured status terminates, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy assessment obligations not yet offset against the prepaid amount) would be refunded to the institution." See 74 Fed. Reg. 51063, 51065 (October 2, 2009). This resolution is logical and fair to both the FDIC and the insured institution whose insured status is terminated (*e.g.*, in connection with a voluntary liquidation of the institution). I am concerned, however, because the proposed regulation itself, 12 C.F.R. §327.12, is silent regarding this issue. The FDIC's existing regulations, including 12 C.F.R. §327.6, also do not clearly address the treatment of prepaid assessments in the event an insured depository institution's insured status subsequently terminates.

This issue will be of concern for any insured depository institution that is currently in the process of a voluntary liquidation, or that initiates a voluntary liquidation at any time through 2012.

To make sure that the final regulation is absolutely clear on this issue, and to avoid any misunderstandings in the future, I strongly urge that the final regulation explicitly address the treatment of prepaid assessments in the event an insured depository institution's insured status subsequently terminates. More specifically, I recommend that a new subsection (h) be added to the final regulation, to read as follows:

> "(h) *Disposition in the event of termination of insured status.* In the event that an insured depository institution's insured status terminates, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy assessment obligations not yet offset against the prepaid amount) will be promptly refunded to the institution."

Thank you for the opportunity to comment on this proposal.

Sincerely,

Joseph Gabai