THE FINANCIAL SERVICES ROUNDTABLE

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October 28, 2009

Via email

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

Re: RIN # 3064-AD49: Prepaid Assessments Notice of Proposed Rulemaking

Dear Mr. Feldman:

The Financial Services Roundtable[1] ("Roundtable") appreciates this opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") Notice of Proposed Rulemaking for Prepaid Assessments ("Proposal") and recent FDIC Board actions to increase the Deposit Insurance Fund ("DIF"). As the Roundtable noted in its April 2, 2009 comment letter,[2] the FDIC's statutory mandate is to "take into account economic conditions generally affecting insured depository institutions so as to allow the reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions."[3]

General Comments

We believe that the Proposal and recent Board actions maintain the appropriate balance between current economic conditions and the need for the DIF to be restored. The FDIC Board's extension of the Amended Restoration Plan to eight years gives the industry significant time to restore the DIF. Additionally, while the Roundtable understands the current need to increase the assessments in 2011 and applauds the FDIC for taking such action in a few years from now, we recommend that the FDIC not include a rate increase into the Proposal at this time. Rather, the FDIC should revisit the rate increase in 2011, if circumstances warrant it at that time.

The Roundtable supports the Proposal for prepaid assessments as a means to provide liquidity to the DIF. Prepayment of these assessments, coupled with the proposed accounting

[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine, accounting directly for $84.7 trillion in managed assets, $948 billion in revenue, and 2.3 million jobs.

[2] Available at http://www.fsround.org/policy/regulatory/pdfs/fsroundtablecomments&whitepaper_emergencyassessment.pdf.

[3] 12 U.S.C. § 1817(b)(3)(C)(ii) (2006).

mechanism, is the right step at this time. This is another positive countercyclical action by the FDIC. The Proposal allows the industry to restore the DIF balance to the statutorily mandated reserve ratio of 1.15%, while also minimizing the impact on insured depository institution lending, deposit base, capital, and earnings prior to and during the impending economic recovery. More importantly, the Proposal replenishes the DIF over time *after* the industry—and the entire economy—has recovered. Although the prepayment will require the industry to provide liquid assets, the treatment as a prepaid expense—and accordingly a zero risk weighted asset—is favorable.

The Proposal is a positive alternative to requiring a special assessment from the industry in 2009. As the Roundtable mentioned in previous comment letters, special assessments are highly procyclical and would needlessly burden the banking industry as it is attempting to recover from the worst recession in decades.

Specific Recommendations

The Roundtable supports this Proposal but has a number of recommendations based on the business ramifications should the Proposal proceed as currently written.

Prepaid Assessments Based on Deposits

The Proposal is intended to operate in conjunction with the existing quarterly risk-based deposit insurance assessment framework. This includes the posting, as of each applicable quarter end, of an expense for an institution's regular deposit insurance assessment and an offsetting credit to the prepaid assessment balance. Therefore, the Roundtable supports the position that the prepaid assessment should be calculated on the basis of an institution's total domestic deposit base. Deposit insurance assessments based on some other measure, such as assets minus tier one capital (*i.e.*, as was used for the one-time special assessment) should not be extended to the prepayment framework.

Assessment Rate Changes

The Proposal states that the risk-based assessment rates are subject to change based on subsequent FDIC liquidity needs. The Roundtable appreciates that the assessments will be based on current liquidity needs and recognizes that such needs could change quickly given the current and immediate economic environment. If additional assessments are necessary in the future, the Roundtable recommends that the FDIC take into account the economic conditions of the industry and aim for a countercyclical approach for the payment of these assessments. The Roundtable urges the FDIC to consider other options, such as accessing its $100 billion (and up to $500 billion through 2010) line of credit at the Department of Treasury, if more working capital is needed for the FDIC to resolve failing insured depository institutions in the near term.

<u>Designated Reserve Ratio</u>

It is important to note that the Roundtable has long been an advocate for maintaining the DIF at the minimum Designated Reserve Ratio of 1.15%. The Roundtable would not support increased assessments to build the DIF above the 1.15% statutory minimum. Such a move would burden capital, acting as a *de facto* tax on capital and stifle economic growth.

<u>Mandatory Assessment</u>

The Proposal asks the question of whether the prepayment should be voluntary. To this inquiry, the Roundtable responds that the prepayment should be mandatory. As the Proposal states, a voluntary prepayment could adversely affect the favorable accounting treatment. Further, the Roundtable supports the extremely limited application of the exemption for insured institutions that cannot meet the liquidity required for the prepayment.

<u>Tax Issues</u>

The Roundtable requests that the FDIC charge and invoice the prepaid assessment amounts allocable to 2010, 2011, and 2012 as separate and distinct prepaid assessment amounts. Separate invoices would allow insured institutions to accurately determine annual allowable tax deductions with respect to the assessments for each of the three years of prepayment.

The Roundtable also recommends delaying the due date for payment of the 2011 amount until sometime in January 2010 and the due date for payment of the 2012 amount until sometime in 2011, rather than the designated December 30, 2009 date under the Proposal. If the due date for the prepaid assessment for the separately invoiced 2011 and 2012 amounts are delayed to 2010 and 2011, respectively, then the insured institution may be able to accelerate into 2010 the tax deduction for the 2011 amount and accelerate into the 2011 the tax deduction for the 2012 amount under current Treasury regulations.[4] This may provide cash tax savings that could be viewed as partially compensating for the loss of funds that would result under the proposed prepayment regime, adding to the otherwise favorable treatment of the prepayment as a government asset.

Thank you again for the opportunity to share our views with you on this subject. If you have any questions, please feel free to contact me or Melissa Netram at 202-289-4322.

Sincerely,

Richard M. Whiting

Richard Whiting
Executive Director and General Counsel

[4] Treas. Reg. Sec. 1.263(a)-4(f) (provides that capitalization is not required for amounts paid to create a taxpayer benefit that does not extend beyond the earlier of (1) twelve months after the first date on which the taxpayer realizes the benefit, or (2) the end of the taxable year following the taxable year in which the payment is made).