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Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429-9990
Attention: Comments RIN #3064-AD66
File Numbers: FR Docs. 2010-29137, 2010-29138
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Mr. Feldman,

On behalf of SunTrust Bank, I would like to take this opportunity to provide certain comments to the Federal Deposit Insurance Corporation's ("FDIC") notices of proposed rulemaking that significantly change the risk assessment system applicable to large banking institutions, published in the Federal Register on November 24, 2010 (the "NPRs"), which implement some of the changes brought about by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act").

As stated in the NPRs, comments were requested to address several different areas. We would like to echo those comments made by The Financial Services Roundtable in their comment letter (the "FSR Letter"). Furthermore, we would like to address certain requests for comment in the NPRs that were not addressed in the FSR Letter as well as certain points that were made in the FSR Letter, but which we believe are worthy of further exploration. Specifically, we would like to address (i) the treatment of goodwill and core deposit intangibles, (ii) the use of brokered deposits in the assessment rate calculation, (iii) the pro-cyclicality and unpredictability of certain aspects of the proposed assessment rate methodology, (iv) certain loss severity assumptions, (v) risks associated with complexities and confidential information used in the proposed assessment system, and (vi) the discretionary adjustments.

Treatment of Goodwill and Core Deposit Intangibles

The proposed definition of the assessment base using average consolidated total assets minus average tangible equity is punitive given the treatment of goodwill and core deposit intangibles. The calculation of average total assets includes goodwill and core deposit intangibles which will increase an institutions' assessment base without a corresponding offset in equity given the proposed definitions. We agree goodwill and core deposit intangibles should be excluded from the definition of average tangible equity as it is not a tangible source of capital given a bank failure. However, we believe goodwill and core deposit intangibles should also be excluded from average consolidated total assets in order to correct the imbalance in the calculation and to remove intangible and other assets from those the FDIC relies on to liquidate in times of financial turmoil. In considering a situation where you have two comparable institutions, one with and one without goodwill and core deposit intangibles, the institution with goodwill and core deposit intangibles will end up paying a higher assessment all other things equal. Moreover, the future cost of assessments on goodwill would be a consideration in potential mergers and acquisitions, including purchasing failed or failing institutions from the FDIC, that are a disincentive to moving forward with these transaction. These potential unintended consequences make us question whether or not it was truly congressional intent to specifically target goodwill as a factor leading to the recent financial turmoil.

We have heard it argued that the FDIC believes goodwill must be included within the definition of “average consolidated total assets” because of the manifested congressional intent to have goodwill and core deposit intangibles be included within that definition. However, this conclusion seems incongruous with the opinion expressed by the November 2, 2010 memorandum of Arthur J. Murton and Bret D. Edwards to the Board of Directors of the FDIC in which they state that “[a]lthough the [Act] requires the FDIC to use average consolidated assets and average tangible equity to calculate a new assessment base for insured depository institutions, the Act does not define these terms.” Moreover, the NPR itself notes that to implement the requirements of the Act “the FDIC must establish the appropriate methodology for calculating “average consolidated total assets” and “average tangible equity.” Far from suggesting that the FDIC must adhere to rigid statutory requirements in defining “average consolidated total assets,” the FDIC seems much freer to define the term in the NPR in accordance with standards of its own choosing. Given this apparent freedom with respect to defining this term, it makes little sense for the FDIC to adopt a definition that produces the absurd result of greater assessments against banks that perform well and are not required to write-down goodwill and core deposit intangibles than those banks that perform poorly and must write-down goodwill and core deposit intangibles. In light of this fact, it is questionable whether maintaining goodwill and core deposit intangibles within the definition of “average consolidated total assets” countermands the express congressional intent of 12 U.S.C. §1817(b) that the FDIC adopt a risk-based assessment system based upon the probability that the deposit insurance fund will incur a loss, which mandate does not appear to be limited to the rate of insurance applied to an insured depository institution, but rather the entire assessment system.

Use of Brokered Deposits

The NPR uses a brokered deposit adjustment with respect to all large institutions and all highly complex institutions if the ratio of brokered deposits to domestic deposits is greater than ten (10) percent as reported on the quarterly Reports of Condition and Income (“Call Reports”); however, what depository institutions should report as a brokered deposit on Call Reports appears to be a question in some flux. My reading of section 1506 of the Act leads me to believe that Congress has expressed its view that the current definition of brokered deposits is flawed and in need of review and revision. Congress may have reason when considering the number of conflicting advisory opinions published by the FDIC on this topic over the years, which adopted a very broad understanding of the meaning of “brokered deposits.” For instance, reconciling (i) advisory opinion 94-15[1], which states that a broker-dealer who never has possession of a client’s principal or interest and is not compensated by a depository institution or client but who casually refers deposit customers to a bank is a deposit broker because of the matchmaking function provided with (ii) advisory opinion 92-50[2], which states that a listing service is not a deposit broker if it is compensated by means of subscription fees and such fees are not calculated on the basis of the number or dollar amount of deposits placed as a result of information provided by the listing service. There appears to be a common thread that deposits which

1 1994 WL 393703 F.D.I.C.
2 Explained, in relevant part, in Advisory Opinion 04-04 (2004 WL 1962081 F.D.I.C.).

come through a third party by whom a client is advised are brokered deposits versus deposits placed by the client themselves after consulting with a third party, but even this thread snaps when one considers advisory opinion 94-40[3] where a depository institution partners with a company providing accounting services to health care facilities and offers such health care facilities a single NOW account in which the accounting firm sub-accounts for the residents in the health care facilities, allocating expenses out of the account and occasionally depositing checks to the account on behalf of residents in the health care facilities. What is certain is that the directive of section 1506 of the Act requires a study specific to the definition of various deposit types. Consequently, it would be premature to start assessing on the basis of a concept that is also in the process of being redefined. Therefore, we request the FDIC follow section 1506 to determine an appropriate definition of brokered deposits and complete the required deposit study prior to implementing a brokered deposit adjustment.

Pro-Cyclicality & Unpredictability

In the Act, Congress attempted to address the topic of pro-cyclical deposit assessments in section 332 of the Act "Elimination of pro-cyclical assessments"[4] and the FDIC has publically stated in its final rule setting the designated reserve ratio at 2% (the "DRR Rule") that one of its goals is to "reduce pro-cyclicality in the assessment system and allow moderate, steady assessment rates throughout the economic and credit cycles." However, **the proposed deposit assessment is completely pro-cyclical**, assuming credit, funding and liquidity risk increases during bad economic times and decreases in good economic times. During times of high unemployment or economic stress generally, underperforming assets and criticized and classified items change significantly to reflect the economic stresses being experienced and in a way that is generally disproportional to the changes in tier 1 capital and reserves.

Although the commentary to the proposed rulemaking suggests the pro-cyclicality of assessments is mitigated by a focus on long-term risk, in reality many of the measures; earnings, criticized assets, & ALLL act to penalize financial institutions with higher assessments once they are facing a crisis. Our view is the FDIC should develop a methodology for assessing a consistent low fee base. This will allow financial institutions to forecast costs over the long-term horizon and be subject to fewer pro-cyclical adjustments. Given the inability to predict the exact cause or timing of a future crisis, we believe it is prudent to establish a consistent assessment methodology.

Furthermore, given the factors on which the CAMELS ratings are based, the FDIC should recognize the level of pro-cyclicality within the CAMELS ratings themselves. Individual CAMELS components such as asset quality, earnings, and liquidity react more rapidly to changes in economic conditions. In sum, it seems that a substantial portion of the proposed methodology is pro-cyclical which will lead to higher assessments, perhaps substantially higher assessments, against financial institutions when they, and the American economy, can least afford it.

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3 1994 WL 566357 F.D.I.C.

4 The substance of Section 332 eliminates the requirement that the FDIC automatically commence or stop dividends out of the deposit insurance fund once the fund reaches certain levels and gives the FDIC the discretion to continue to make or not make dividend payments. The FDIC announced in it October Notice of Proposed Rulemaking and Request for Comment on Assessment Dividends, Assessment Rates and Designated Reserve Ratio, 75 FR 66271 (the "October NPR"), that it proposes to eliminate dividends and, instead, reduce assessment rates. In light of the inconsistency between proposed deposit assessment methodology in the NPR and the stated intent of low, consistent deposit assessment rate in the October NPR, it's unclear whether the stated goals in the October NPR were intended only for banks with assets of less than $10 billion or the industry as a whole.

Loss Severity Assumptions

The loss severity score proposed is supposed to measure the magnitude of the potential loss to the FDIC in the event of an institution's failure and the assumptions developed to apply to this score were developed based on recent failures. For example, deposit runoff assumptions are based on the actual experience of large banks that either failed or came close to failure during the 2007 to 2009 period. An examination of the data suggests that the banks in question became almost exclusively dependent upon insured deposits as a source of funding when they failed or came close to failure. In the context of a large bank like SunTrust, however, the data suggests a bizarre result. Applying the 32% increase in insured deposits to our present amount of insured deposits, as suggested by the runoff rate assumption, would mean our insured deposits would increase by approximately $30 billion, an extraordinary amount of growth and it is difficult to fathom such an influx of deposits in a short amount of time in increments of $250,000 or less. With respect to this particular example, there appear to be two flaws: (i) the model assumes the large IDI does not have access to capital markets or other sources of funding and must rely on deposits alone – a fact which may apply to a subset a large banks, but not true of others; and (ii) the model assumes that a "credit crunch" will continue to replicate itself going forward with no institution, not even relatively healthy large banks, having access to credit elsewhere and the public taking cash out of the stock market and depositing in banks for safety. Many of these same critiques would also apply to other loss severity assumptions, such as the assumptions for loss rates on loans. Using this set of assumptions will routinely result in overestimates of the loss the FDIC could face with failure when applied to all large banks and, thus, is inaccurate and overly punitive.

Complexity and Confidentiality of System

The entire new assessment system, both the change in the assessment base from deposits to assets and the new proposed risk-based assessment rate, introduces certain complexities that we don't see reflected or appreciated in the NPR. First, there are certain proposed changes in accounting principles, such as changes to accounting for leases, derivatives and the consolidation of off-balance sheet entities, which may expand the balance sheets for banks tremendously and, by extension, the assessment base. There doesn't appear to be any mechanism in either the assessment base or the assessment rate to account for these changes in accounting which could, in the long run, reduce or eliminate the statistical correlation between actual risk and the assessment system in unanticipated ways. Second, the complexity of the system requires that a calculator be made available to depository institutions to complete the various scorecards and tabulations to estimate and determine deposit premium assessments, which calculators are available on the internet. Although certain confidential information, such as CAMELS ratings, are not included explicitly on the calculator for a depository institution, any member of the public could insert a particular institution's name and play with CAMELS ratings until the assessment roughly equals what is reported to back-into the CAMELS ratings for an institution. I reiterate that the complexities of the system require a public calculator for institutions to plan for future assessments, but this introduces risk that confidential information may be less protected. Moreover, faith in the statistical correlation achieved by the assessment system may be used as a proxy for evaluating the riskiness of banks, resulting in the use of the information by the public to identify risky banks and start deposit runs. These sorts of considerations ought to be evaluated as well in determining the prudence of the proposed assessment system.

Discretionary Adjustment

While the rationale of subjective changes to assessments appears to capture elements of risk that can't be adequately quantified, such subjective changes are as likely to be wrong as they are to be right since implementation requires assessing future risk using non-empirical judgment with no discernable basis. Moreover, the fifteen point range is significant and should be subject to a set of defined implementation parameters in order to ensure consistent application throughout the banking system. Even with a comprehensive set of guidelines in place, the assessment is still a matter of judgment for the assessor and subject to inconsistent application. Worse, the exercise of subjective adjustments runs the risk of being understood as wholly arbitrary and may be seen by some as being politically motivated. Consequently, we encourage the FDIC to reconsider the necessity of discretionary adjustments, particularly when such adjustments may reduce the statistical accuracy of the model generally.

Conclusion

In implementing a risk based methodology, the FDIC should balance both the relative value of a complex system that seeks accuracy against a simple understandable assessment that is easy to forecast and mitigates pro-cyclicality. As noted by the FDIC in the its October 27, 2010 proposed rule on assessment dividends, assessment rates and designated reserve ratio[5], a low steady rate of 7.44 bps without paying any dividends would have been enough to sustain the DIF during the past two crises. While assessing a uniform, consistent rate would not meet the FDIC mandate to adopt a risk-based assessment system[6], it does indicate that a simpler system that assesses risk using a more basic and predictable methodology may also achieve the FDIC goal of maintaining a deposit insurance fund adequate to meet the nation's needs. Issues pointed out with the proposed assessment system suggest that any statistical correlation achieved by the current system and risk may be eroded or eliminated over time due to changes in other factors that influence the proposed assessment system and, in turn, erode confidence in the fairness and accuracy of the proposed assessment system. In the quest to adequately assess financial institutions for deposit protection, the best solution for the American economy and achieving FDIC policy may be one that is relatively simple and easily understood, which would also mitigate the risk of participants "gaming" the system.

5 75 FR 66271-01.
6 12 U.S.C. §1817(b).