



BANKERS' BANK OF THE WEST

December 31, 2010

Robert E. Feldman
Executive Secretary
Attention: Comments, Federal Deposit Insurance Corporation
550 17th Street NW
Washington D.C. 20429

Re: RIN 3064-AD66

Dear Mr. Feldman:

After reviewing the new FDIC assessment proposal dated November 9, 2010, Bankers' Bank of the West wishes to express support of the proposed rule with one qualification: that the FDIC use the bankers' bank definition contained in 12 U.S.C. 461 (b)(9) and the standards contained in 12 C.F.R. 204.121 in lieu of 12 U.S.C. 24 to afford bankers' banks use of the statutory assessment adjustment.

This recommendation is aimed at the bankers' bank descriptive designation. It is intended to clarify and advance a sound and consistent interpretation of the attributes that distinguish a bankers' bank. Such a distinction is needed to prevent unintended consequences and promote consistent application by regulatory agencies.

In our opinion, the FDIC does not intend to change the regulatory structure that has been used to define a bankers' bank since the 1980s, as contained in 12 U.S.C. 461 (b)(9) and the standards detailed in 12 C.F.R. 204.121. For this reason, Bankers' Bank of the West asks that Section III Assessment Base Changes, *Bankers' Bank Adjustments* specify that the definition for a bankers' bank will be interpreted consistent with 12 U.S.C. 461 (b)(9) and the standards detailed in 12 C.F.R. 204.121.

Under 12 U.S.C. 24, a bankers' bank is required to be **exclusively** owned by depository institutions or holding companies for depository institutions.

According to the subsequent interpretation contained in 12 C.F.R. 204.121, **only** depository institutions that meet all of the following requirements are deemed bankers' banks:

1. Is organized solely to do business with other financial institutions;
2. Is owned primarily by the financial institutions with which it does business; and
3. Does not do business with the general public.

Moreover, regulatory agencies applying 12 C.F.R. 204.121 to specific institutions have used the following standards:

1. A depository institution may be regarded as organized solely to do business with other depository institutions even if, as an incidental part to its activities, it does business to a limited extent with entities other than depository institutions. The extent to which the institution may do business with other entities and continue to be regarded as a bankers' bank is specified in paragraph (a)(2)(iii) of this section.
2. A depository institution will be regarded as being owned primarily by the institutions with which it does business if 75 percent or more of its capital is owned by other depository institutions. The 75 percent or more ownership rule applies regardless of the type of depository institution.
3. A depository institution will not be regarded as doing business with the general public if it meets two conditions. First, the range of customers with which the institution does business must be limited to depository institutions, including subsidiaries or organizations owned by depository institutions; directors, officers or employees of the same or other depository institutions; individuals whose accounts are acquired at the request of the institution's supervisory authority due to the actual or impending failure of another depository institution; share insurance funds; depository institution trade associations; and such others as the Board may determine on a case-by-case basis consistent with the purposes of the Act and the bankers' bank exemption. Second, the extent to which the depository institution makes loans to, or investments in, the above entities (other than depository institutions) cannot exceed 10 percent of total assets, and the extent to which it receives deposits (or shares if the institution does not receive deposits) from or issues other liabilities to the above entities (other than depository institutions) cannot exceed 10 percent of total liabilities (or net worth if the institution does not receive deposits).

We urge you to consider that the narrow definition outlined under the proposed rule could exclude entities that have operated as bankers' banks for decades, setting the stage for a number of unintended consequences. Examples of those consequences might include:

1. A strict interpretation of the proposed rule could exclude bankers' banks that have received TARP funds under the Capital Purchase Program from receiving the adjustments.
2. A strict interpretation of the proposed rule could exclude bankers' banks that participate in the Small Business Lending Fund (SBLF) from receiving the adjustments.
3. A strict interpretation of the proposed rule could prompt a bankers' bank to change its status should a shareholder bank receivership occur. Because bankers' banks are owned by financial institutions, shares could be transferred to the FDIC in the case of a receivership, causing a bankers' bank to change status under the proposal as a consequence of this action.
4. A strict interpretation of the proposed rule could force a bankers' bank to exclude executive officers, employees and directors from owning shares. Yet employees' ownership of stock is a best-practices strategy for aligning employees' interests with those of the firm and its stakeholders. Such an approach fosters congruence between long-term goals and appropriate risk management. Restricted stock, vested over years and subject to a look-back (or clawback) mechanism intended to account for the outcome of risks assumed earlier is an effective risk management tool.

For the reasons stated above, Bankers' Bank of the West respectfully asks that the FDIC:

1. Amend the definition for a bankers' bank to be consistent with 12 U.S.C. 461 (b)(9) and the standards detailed in 12 C.F.R. 204.121. (Intent: To ensure assessment adjustments are applied to bankers' banks only); and
2. Stipulate that federal capital infusion initiatives such as TARP, the new Small Business Lending Fund, any future federal capital initiatives, and FDIC equity ownership of failed institutions be excluded when bankers' banks self-certify that they meet the definition. (Intent: To enable bankers' banks to participate in programs of this nature without jeopardizing the Dodd-Frank assessment adjustment treatment).

These changes, when applied to the proposed rule, will allow bankers' banks to continue their indispensable support of community banks—Main Street institutions whose small-business clients are vital to employment growth and a vigorous economic recovery.

Sincerely,

A handwritten signature in blue ink that reads "William A. Mitchell Jr." with a stylized flourish at the end.

William A. Mitchell Jr.
President and Chief Executive Officer
Bankers' Bank of the West