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VIA ELECTRONIC DELIVERY OF PDF AND U.S. FIRST-CLASS MAIL

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

Re: Assessments Proposal: RIN 3064-AD66

Dear Mr. Feldman:

This letter is submitted on behalf of Wells Fargo & Company and its subsidiary insured depository institutions, including Wells Fargo Bank, N.A., (collectively, "Wells Fargo"),[1] in response to the Notice of Proposed Rulemaking (the "Proposal" or "NPR") issued by the Federal Deposit Insurance Corporation (the "FDIC") to amend its regulations regarding the assessment system applicable to large insured depository institutions ("IDIs"). Wells Fargo is a nationwide, diversified, community-based financial services company, with $1.2 trillion in assets and $815 billion of deposits as of September 30, 2010.

We support the FDIC's continuing efforts to identify and manage risks to the Deposit Insurance Fund (the "DIF"), and appreciate the agency's issuance of a second Proposal in an effort to clarify and simplify the first NPR issued in April. However, we believe that this second NPR continues to remain excessively complex and falls short of the FDIC's goal to create an assessment scheme that is transparent to IDIs, deposit customers, investors and the public at large. Furthermore, the Proposal does not permit adequate time for affected institutions to fully evaluate or prepare for implementation, and does not promote the FDIC's mission to assess individual depository institutions based on the risk they pose to the DIF. Thus, we continue to believe the current Proposal threatens to

[1] Wells Fargo is a diversified financial services company providing banking, insurance, investments, mortgages, and consumer and commercial finance through more than 10,000 stores, 12,000 ATM's, and the Internet (wellsfargo.com and wachovia.com) across North America and internationally. As of September 30, 2010, Wells Fargo had six insured depository institutions: Wells Fargo Bank, N.A.; Wells Fargo Bank Northwest, N.A.; Wells Fargo Bank South Central, N.A.; Wells Fargo Central Bank; Wells Fargo Bank, Ltd. and Wells Fargo Financial National Bank.

produce unintended consequences and harm IDIs and their depositors. We therefore respectfully urge that the Proposal be withdrawn in its current form and receive further study and revision before it goes forward as a final rule.

Executive Summary

- The FDIC's Scorecard Model Continues to Lack Sufficient Clarity and Transparency to be Valid
- The Revised Proposal Continues to Grant an Excessive Amount of Discretion to the FDIC to Adjust Scorecard Outcomes
- Consideration Needs to be Given to the Composition of Criticized/Classified Assets; Purchased Credit Impaired ("PCI") Loans Should be Excluded Because Such Loans Have Already Been Written Down at Acquisition and Should Not Further Impact the Performance Scorecard
- The Proposal Should Explicitly Provide for an IDI to Receive Credit to the Extent its Portfolio Holds Assets That Pose Little or No Risk or That Are Highly Liquid
- The Proposal Should Expressly Provide for a Maximum Ceiling on Cumulative Assessments Not to Exceed the Amount of an IDI's Insured Deposits
- The Proposal Will Impede the Important Public Policy Objectives of Stimulating the Economy and Increasing the Flow of Capital, and as a Result, May Hurt Bank Customers

Discussion

I. The FDIC's Scorecard Model Continues to Lack Sufficient Clarity and Transparency to be Valid

The scorecard for Highly Complex Institutions published on the FDIC's website reflects a combination of standard, publicly available data reported in an IDI's Call Report and other measures that have not been consistently maintained or reported. Because the information related to this second group of measures has not been fully developed in the Proposal, IDIs are unable to validate the accuracy of the scorecard process, much less fully determine if the scorecard portrays an accurate depiction of risks posed to the DIF.

There are various reasons for the unavailability of such data. In some cases, it may not have been maintained by the IDI in a reportable form, even though the FDIC may have compiled statistics based on its interpretation of underlying information collected by examiners from time to time as part of the supervisory process. In other cases, the data to be used are described using terms that lack standard definitions, such as nontraditional and subprime consumer loans, and may be subject to varying interpretations. In testing the model, Wells Fargo became aware that the data was yielding unsubstantiated results. As a result, we are very concerned that the scorecard model was designed using nonpublic data that may not be specifically identifiable to a particular IDI, may have been provided at a consolidated, holding company level, may be outdated, or may be based on regulatory agency estimates rather than actual data.

These fundamental issues must be remedied before a full and accurate evaluation of the Proposal can be completed. To assist the industry to properly evaluate the Proposal, the FDIC should: 1) provide the actual statistics it is using in its own scorecard calculations with respect to each data element involved in the measure's calculation; and 2) establish clear and uniform definitions for each data element to be applied and followed by the FDIC, other bank regulatory agencies, and all IDIs.

Without using amounts on which an IDI and the FDIC agree, or amounts derived from clear, standardized definitions of data elements known and accepted by the FDIC and all IDIs, the results derived in the calculations cannot be validated and will vary widely between and among the FDIC and IDIs.

The FDIC contemplates making certain of the data elements that have traditionally been nonpublic subject to call reporting. While this step would aid in gaining further transparency, the FDIC should first publish for comment precise definitions for each such measure to ensure that IDI's and the FDIC are capturing the same information. For the present, however, no such definitions have been developed, and proceeding without them will yield outcomes for individual IDIs that are suspect and have wide variances with the FDIC's calculations and those of other IDIs, depending on the interpretation of a particular data element's definition by each IDI.

Indeed, call reporting of the data elements may be difficult, as the different businesses and products among IDIs, particularly large and highly complex IDIs, will complicate efforts to develop universally-accepted definitions. A good example of this problem is identifying and reporting "subprime" and "non-traditional" lending, terms which have never been widely agreed on by industry and regulatory commenters.

For these reasons, much more deliberation is needed to develop definitions that are both valid across the board for all IDIs subject to the calculations, and useful in accurately analyzing an individual IDI's position with respect to the particular data element. Initial testing of the model in its present form by Wells Fargo personnel yielded results suggesting an adverse impact to an IDI's capital from the increased assessment burden. Anecdotal evidence suggests that other large and highly complex IDIs have derived similar test results. The consequences to large IDIs are not insignificant and the models should not be applied before they are fully complete and validated.

Wells Fargo is appreciative of the constraints and pressures faced by the FDIC and its fellow financial regulatory agencies to promulgate and implement the high number of complex regulations required by the Dodd-Frank Act. We are also supportive of the need for regulators to act swiftly in matters of national concern, such as the recent financial crisis. However, the complexity of the current Proposal demonstrates the need for additional deliberation and more careful analysis, particularly in view of certain external factors that will impact the Proposal.

II. The Revised Proposal Continues to Grant an Excessive Amount of Discretion to the FDIC to Adjust Scorecard Outcomes

Although Wells Fargo appreciates the agency's modification of the April NPR to change the proposed ability of the FDIC to adjust both an IDI's performance score and its loss severity score, the FDIC's power to add or subtract up to 15 points to or from the IDI's total score still has the potential to have an outsized effect on changes or adjustments to the IDI's total score and resulting assessment. Depending on where an IDI falls on the overall scorecard, a 15-point change could cause the assessment premium to nearly double. If the scorecard has been properly designed and validated, there should be no need to provide for discretionary adjustments.

Indeed, the overall amount of discretion the FDIC has under the Proposal to adjust score outcomes makes it exceedingly difficult for IDIs to reasonably anticipate the potential impact of adjustments in planning for costs related to insurance assessments. Building this degree of discretion into the model is a fundamental problem, and will serve as a major impediment to acceptance of the scorecard scheme as a fair and credible system. Without additional limits on the FDIC's discretion to make adjustments to scorecard results, budgeting and reserving for DIF premium expenses and managing liquidity and assets to achieve expected outcomes are impossible for an IDI's financial managers. Creating these difficulties for large IDIs is squarely at odds with the very public calls from government and business leaders for increased lending and financing from the nation's large banks.

For example, the FDIC discusses the importance of adjusting for "idiosyncratic factors or other relevant risk factors that are not included in the scorecards" in assessing the probability of failure or the potential for loss. However, there is insufficient information in the Proposal as to the meaning and application of the quoted phrase. The NPR indicates that the discretionary adjustment for such factors would be similar to the assessment rate adjustment that large IDIs are subject to under current rules, citing 12 C.F.R. § 327.9(d)(4), which discusses such risk factors in Appendix C to that rule. Does the FDIC propose to limit such risk factors to those listed as "examples" in Appendix C, or will it apply adjustments based on any additional factors only after explaining them in the updated guidelines on assessment rate adjustments it states will be submitted for approval by the FDIC Board?

The agency expressly acknowledges the concern and uncertainty surrounding the potential effect of discretionary adjustments under the Proposal, stating at page 72623, "[t]he FDIC acknowledges the need to clarify its processes for making any adjustments to ensure fair treatment and accountability and plans to propose and seek comment on updated guidelines for evaluating whether assessment rate adjustments are warranted and the size of the adjustment." IDIs are helpless to prepare themselves from a budget and cost perspective for what to expect under the proposed new system when the administering agency itself openly concedes that transparency and clarity is lacking.

Because there is no legislative mandate to expedite implementation of the proposed system, let alone establish it in the form proposed, Wells Fargo strongly urges the FDIC to take further time to define and clarify the discretionary factors and other critical aspects of the Proposal. If the Proposal proceeds without this further analysis and refinement, the FDIC and the industry face a painstaking implementation process and will be forced to backfill the details necessary to come up with an acceptable assessment system. The consequences to the economy and the DIF while this experimentation occurs are not predictable.

III. Consideration Needs to be Given to the Composition of Criticized/Classified Assets; PCI Loans Should be Excluded Because Such Loans Have Already Been Written Down at Acquisition and Should Not Further Impact the Performance Scorecard

The Proposal indicates that data elements for criticized/classified assets and other performance scorecard measures are currently gathered from IDIs during the examination process, but that beginning with the second quarter of 2011, these data elements will be collected directly from IDIs. The FDIC notes that changes will have to be made to current Call Reports to enable this reporting.

There are a number of questions left unanswered regarding the change in how these data will be collected. First, the FDIC does not indicate when IDIs can expect to see the changes to the Call Reports, which will necessarily include amending the Call Report instructions in addition to providing new line items for entry of the data. The FDIC's statement that it "anticipates that the necessary changes would be made" beginning with the second quarter of 2011 ignores the possibility that other issues and complications may arise in changing the current Call Report instructions and forms, and that implementing these changes might be problematic.

Second, with specific regard to criticized/classified assets, it is unclear whether the data for criticized/classified assets will be based on an IDI's own internal classification system or whether an IDI is expected to report data based on conclusions reached by examiners. It is also unclear how disagreements between an IDI and the FDIC and/or the IDI's primary regulator as to asset classification findings are to be resolved. Because of the importance of this measure -- asset credit quality is weighted in the scorecard at 35% -- the bases for asset classification must be established and accepted among IDIs, the primary regulator and the FDIC.

Furthermore, criticized/classified assets under this approach could inappropriately reflect purchased credit impaired ("PCI") loans acquired through a business combination. Under generally accepted accounting principles, such PCI loans, where there is evidence of credit deterioration since origination and it is probable at the date of acquisition that not all contractually required principal and interest payments will be collected, are initially recorded at fair value. Because PCI loans have already been written down at acquisition to an amount estimated to be collectible, such loans are not classified as nonaccrual even though they may be contractually past due, and based on Call Report guidance, must still be included in reported past due totals. Accordingly, an IDI with PCI loan portfolios may not be directly comparable to an IDI that does not have PCI loans, and inclusion of such loans that have already been written down in FDIC criticized/classified measures would overstate any potential risk that an IDI with PCI loans may have to the DIF. For these same reasons, the definition of subprime consumer loans should also exclude PCI loans.

In addition, Wells Fargo continues to believe that the "subprime" and "nontraditional" loan classifications do not evaluate asset quality (and therefore risk), and, as such, are not narrow enough criteria for inclusion in the scorecard. While we find it helpful that government-insured or guaranteed (FHA and VA) loans are specifically excluded from the "subprime" classification, no other risk-related factors appear to be applied.

Finally, with respect to the relative weight assigned to asset quality, Wells Fargo believes 35% is excessive and unwarranted, particularly for an IDI that has demonstrated an ability to manage and improve troubled and problem assets. If the FDIC decides to maintain this weight for criticized and classified assets, it should also credit an institution for the quality of its programs for asset servicing and disposition, and for policies and procedures that mitigate risk and address deficiencies in asset quality.

IV. The Proposal Should Explicitly Provide for an IDI to Receive Credit to the Extent its Portfolio Holds Assets That Pose Little or No Risk or That Are Highly Liquid

No discussion is provided of the FDIC's intended treatment of assets that have a zero or near-zero risk weight, including assets that are highly liquid. Even though holding such assets, including cash and government-insured securities, poses little risk to the DIF, such assets will nonetheless be assessed under the FDIC's Proposal. IDIs should receive credit for holding such assets to the same extent as they are proposed to be penalized for higher-risk assets. Credit for zero or near-zero risk-weighted assets, including highly liquid assets, should be built into the scorecards or made the basis of adjustments to an IDI's total score.

V. The Proposal Should Expressly Provide for a Maximum Ceiling on Cumulative Assessments Not to Exceed the Amount of an IDI's Insured Deposits

In no event can the loss caused by an IDI to the Deposit Insurance Fund (DIF) exceed the amount of the IDI's insured deposits, since the DIF's resources are solely for the purpose of paying insured depositors. Although the purpose of the scorecard is to measure the risk that an IDI will have to the DIF, some IDIs will be required to pay a DIF premium in excess of the amount of deposits they hold. This result is most likely to occur in the case of certain limited or special purpose banks that do not have or seek a retail deposit franchise, but are nevertheless FDIC-insured.

Such a result is inconsistent with any legitimate deposit insurance scheme, whether the assessment base is calculated using deposits, total assets less tangible equity, or some other methodology. Accordingly, the maximum cumulative assessment should be limited to an IDI's total insured deposits.

VI. The Proposal Will Impede the Important Public Policy Objectives of Stimulating the Economy and Increasing the Flow of Capital, and as a Result, May Hurt Bank Customers

Although the worst of the recent economic crisis is widely thought to be over, businesses and households have not yet seen meaningful improvement in the employment or housing markets. At a time when most of the extraordinary actions taken by the Federal Reserve Board have been wound down, it is imperative that the nation's banking system be allowed to function under normal market conditions again to achieve a full recovery. The FDIC's Proposal will unfortunately work directly against this objective.

The Proposal may have the unintended consequence of further constraining credit. For example, if the Proposal is implemented in its current form, IDIs may be penalized by higher assessment costs to the extent they seek to increase lending activities to pre-crisis levels.

Customers of large IDIs are not only consumers and private businesses, but frequently include state and municipal governments, hospitals, educational institutions and many other public institutions that have experienced financial difficulty in the recent crisis. Large IDIs are frequently the only banking choice available to these institutions due to the deposit balances they must keep on hand. IDIs will have to make difficult choices as to how to defray the increase in assessment costs, including whether and how to pass a portion of increased assessment costs to these and other customers. We believe the FDIC has not adequately considered the ultimate impact of the Proposal on all sectors of the economy, including the financial services certain customers rely on large IDIs to provide.

SUMMARY

For the reasons set forth above, Wells Fargo opposes adoption of the Proposal as a final rule and respectfully requests that it be withdrawn for further study and revision. The Proposal has not been fully clarified and defined, and is premature in light of other proceedings currently pending to fully implement the Dodd-Frank Act, and the expected U.S. implementation of what finally emerges as the final Basel III accord. It may also act as a disincentive to increased credit availability and financing to spur the economic recovery.

Wells Fargo, an owner/member of The Clearing House Association L.L.C., which represents the interests of large commercial banks participating in the U.S. automated payment and clearing systems, fully supports The Clearing House's recent letter of December 10, 2010 requesting an extension of the comment period for the Proposal, due to its complexity and expected impact. We have serious concerns whether the FDIC and large IDIs will be in a position by the second quarter of 2011 to implement the changes necessary to begin accurately reporting and analyzing the data elements proposed to be newly collected through the call reporting process. Given the profound impact the FDIC's Proposal will likely have on the banking industry and its customers, and the lack of any statutory mandate as to the substance or timing for the Proposal, no valid reason appears for this rulemaking to be on such an aggressive timeline. As evidence that the need for more time is a concern widely shared in the industry, the American Bankers Association, on December 13, 2010, also submitted a letter request to extend the comment period, a request in which we also join.

If the Proposal is adopted as a final rule, it is, in our opinion, important that several adjustments be made to the final rule. These include: (i) providing clear and transparent definitions of the scorecard components the FDIC proposes to use; (ii) limiting the FDIC's discretion to adjust an institution's scorecard results; (iii) giving further consideration to the composition of criticized and classified assets, and specifically excluding PCI loans already written down at acquisition; (iv) providing credit on an IDI's scorecard for portfolio assets that have little or no risk; (v) providing for a maximum cap on cumulative assessments to no more than the amount of an IDI's insured deposits; and (vi) granting additional time for the FDIC and IDIs to properly validate and back test results.

In closing, we want to again express our appreciation to the FDIC for this opportunity to comment on the Proposal. Should you have any questions or desire to further discuss the matters raised in this letter, please contact me at (704) 374-4977.

Sincerely,

George O. Barnwell

George O. Barnwell
Senior Company Counsel