Massachusetts Bankers Association

February 18, 2010

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

RE: RIN 3064-AD56

Dear Mr. Feldman:

I am writing on behalf of the Massachusetts Bankers Association (MBA), which represents approximately 190 commercial, savings and co-operative banks, federal savings banks, and savings and loan associations throughout the Commonwealth and New England. MBA appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC) recent Advanced Notice of Proposed Rulemaking (ANPR) entitled Incorporating Employee Compensation Criteria Into the Risk Assessment System.

The ANPR outlines that the FDIC is exploring whether to incorporate employee compensation criteria into the current risk-based assessment system and is not seeking to limit the amount which employees are compensated. However, the FDIC is concerned about adjusting risk-based deposit insurance assessment rates to adequately compensate the DIF for the risks inherent in the design of certain compensation programs. The FDIC's stated goal is to provide incentives for institutions to adopt compensation programs that align employees' interests with the long-term interests of the firm and its stakeholders. The APNR asks for comment on whether an institution's assessment rate should change based on whether the institution could/could not attest that its compensation program met a number of criteria, including whether:

- A significant portion of compensation for employees whose business activities can present significant risk to the institution and who also receive a portion of their compensation according to formulas based on meeting performance goals would be comprised of restricted, non-discounted company stock. The employees affected would include the institution's senior management, among others. Restricted, non-discounted company stock would be stock that becomes available to the employee at intervals over a period of years. Additionally, the stock would initially be awarded at the closing price on the day of the award.

- Significant awards of company stock would only become vested over a multi-year period and would be subject to a look-back mechanism (e.g., clawback) designated to account for the outcome of risks assumed in earlier periods.

- The compensation program would be administered by a committee of the Board composed of independent directors with input from independent compensation professionals.

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MBA and our member banks strongly support the deposit insurance system, and believe that a risk-based assessment system is in the best interest of all of the stakeholders in the system. However, we have serious concerns with the FDIC dictating compensation arrangements at insured depository institutions via the assessment formula. We strongly believe that the FDIC, along with the other federal and state banking regulatory agencies, already have the statutory authority to limit activities at federally-insured depository institutions that create undue risk to safety and soundness or to the Deposit Insurance Fund (DIF). A narrow focus on compensation practices, particularly given other proposed changes to the assessment formula that could be enacted into law this year as well as overall economic pressures on the industry, is unwise at this time.

The Association's comments will focus on the following issues:

Current Statutory & Regulatory Authority

Under current law the banking regulatory agencies have a variety of tools to address risky compensation practices, including the issuance of supervisory guidance and the examination process. In fact, the Federal Deposit Insurance (FDI) Act provides general authority to the FDIC to preserve safety and soundness of insured depository institutions. Specifically, section 39 of the FDI Act contains specific statutory language regarding a number of compensation issues, including providing the agencies with the authority to prescribe standards "prohibiting as an unsafe and unsound practice any...compensatory arrangement that...could lead to material financial loss to the institution."

In addition, the regulations implementing this section specifically prohibit as an unsafe and unsound practice any compensation that could lead to a material loss. The FDIC also has regulations governing the use of golden parachutes. Finally, the FDIC maintains back-up exam authority for all insured depository institutions, including national banks, federal thrifts, and Federal Reserve member banks.

MBA believes that this authority, along with regular examinations of all institutions, would be a more effective method of addressing compensation practices that may result in excessive risk-taking by executives of insured depository institutions. Rigorous examinations of lending, investments and other business lines to ensure safe and sound banking practices will lower the risk to the DIF more than a "one-size-fits-all" compensation rule from a single regulator.

It is our view that should the FDIC move forward with the proposal, it could actually legitimize compensation plans that promote excessive risk-taking by allowing institutions to pay additional premiums to avoid compliance with any new restrictions. Unsafe and unsound banking practices, whether they emanate from poorly conceived compensation policies or other issues, should be curtailed by the regulatory agencies in all cases to ensure the continued health of the DIF and the banking industry.

Coordination with Other Regulatory Agencies

The Association strongly believes that the FDIC should work in concert with the other financial regulatory agencies on compensation issues so as to ensure that any rules or guidance are applied equally among all of the charters and corporate structures that exist in the banking industry. For example, the Federal Reserve recently issued for public comment a "Proposed Guidance on Sound Incentive Compensation Practices."

The proposed guidance does not impose a "one-size-fits-all" approach to incentive compensation. Instead, it emphasizes the responsibility of the institution's management and directors to develop

compensation programs that "do not encourage excessive risk-taking beyond the organization's ability to effectively identify and manage risk; and ... [are] supported by strong corporate governance, including active and effective oversight by the organization's board of directors."

By placing the primary responsibility for effective compensation practices on the board of directors, the guidance encourages directors to develop compensation programs to address the specific circumstances prevailing at the institution and that compensation strategy should be considered in light of the institution's overall risk management processes, controls and corporate governance practices. While MBA has some concerns with the Federal Reserve proposal, we believe it is a more balanced approach than the ANPR and we encourage the FDIC to work with the other regulatory agencies through the Federal Financial Institutions Examination Council (FFIEC) to address these issues.

Impact on Mutual Institutions

Massachusetts is home to more mutually chartered institutions than any other state in the nation and approximately 70 percent of MBA's member banks are mutual institutions or mutual holding companies. Unfortunately, the ANPR does not address the inherent difficulties of applying stock-based compensation plans to mutual banks, since stock is not available for issuance. Mutual institutions will never be able to attest to the three criteria listed above and will be charged higher deposit insurance premiums simply because of their corporate structure.

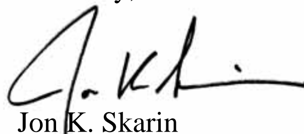
The ANPR also raises questions about the potential applicability of the compensation structure to holding companies. The FDIC does not regulate holding companies, including mutual holding companies yet the ANPR states that the practices of the holding company could be factored into deposit premiums charged to the insured depository subsidiary. As we stated above, we strongly believe that compensation issues should be addressed in a joint regulatory process that ensures that all institutions – regardless of governance form, charter or regulator – are subject to the same oversight.

Conclusion

MBA believes that executive compensation practices are an important issue for the regulators to examine. However, any rules or guidance should provide institutions with the flexibility to tailor their compensation practices to their business model, corporate structure, and local market conditions. The ANPR is a "one-size-fits-all" approach that will harm institutions such as mutual banks that are unable to comply with the requirements. We respectfully urge the FDIC to work cooperatively with the other banking regulators to address these issues.

Thank you for the opportunity to comment on the ANPR. If you have any questions or need additional information, please contact me at (617) 523-7595 or via email: jskarin@massbankers.org

Sincerely,



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