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February 17, 2010

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

RE: RIN3064-AD56
Advanced Notice of Proposed Rulemaking

Dear Mr. Feldman:

On behalf of the Independent Bankers Association of Texas, I would like to take this opportunity to comment with regard to Proposed Rulemaking that would affect employee compensation by incorporating it into the Risk Assessment System. IBAT is a trade association representing over 500 independent community banks domiciled in Texas. The majority of these members have some form of incentive compensation through bonuses or some consideration of performance as part of salary review. However, the compensation plans typically are not extremely sophisticated nor are they tied to stock offerings.

The Advanced Notice of Proposed Rulemaking deals with the impact of employee compensation on the FDIC's risk based assessment system. Although it indicates that the FDIC does not seek to limit the amount by which employees are compensated but rather adjust deposit insurance assessment rates for risks, inevitably the end result of this proposal would be to add yet another layer of regulation in an area that is already regulated. It is particularly worthy of note that the Federal Reserve recently promulgated guidance in the area of compensation arrangements. In addition, Congress and Treasury are also reviewing this issue with a view to additional structure and limitations. Thus, we believe strongly that the proposed rulemaking at this time is both redundant and has the potential to create unnecessary confusion and perverse disincentives at a time when the industry needs to retain the best talent that it has. Properly structured incentive compensation plans are one way that industry can recruit and retain qualified employees.

It is also critical to note that the data used in support of this proposal is based on a review in 2009 of 49 material loss reviews. Of these, 17 cited employee compensation practices as a "contributing" factor. Seventeen reports seems extremely sparse as the bulwark for rules that will affect thousands of institutions and tens of thousands of locations around the United States. Furthermore, employee compensation practices were only a contributing factor and not the preeminent factor of failure. We would also suggest that the more significant and egregious cases of inappropriate incentive compensation were found in the very largest institutions and predominantly among senior or executive management. IBAT is aware of media hyperbole with regard to executive compensation. However, we would respectfully suggest that this proposal is a solution in search of a problem at least insofar as community banks are concerned.

It is critical to remember that incentive compensation is not limited to the lending function in institutions. Frequently, bonus programs may be as simple as a contest

among customer service representatives for the best on-time response to customer complaints or concerns. Such programs may be as simple as provision of pizza parties to the winning team or as complex as percentage calculations resulting in year-end bonuses. Certainly, a one size fits all approach is unwise and inappropriate for this industry.

The major focus of the notice is a requirement that a significant portion of incentive compensation should be comprised of restricted, non-discounted company stock. We would respectfully point out that many community banks articles of association include preemptive rights with regard to issuance of stock. Thus, a solution based on the issuance of restricted stock would violate the organic documents governing these organizations. Furthermore, even among those without preemptive rights, there is not likely to be a base of treasury stock that can be used for such compensation plans. Finally, a number of Texas institutions are organized under the Subchapter S rules of the Internal Revenue Code. Those rules absolutely prohibit more than one class of stock. Thus, the imposition of a restricted stock plan is likely to destroy important tax planning for those community banks.

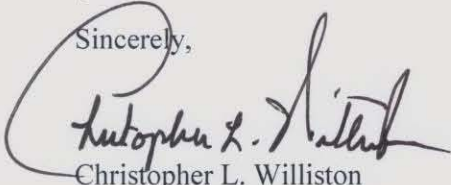
The notice indicates that the compensation program should be administered by a committee of the board composed of independent directors. That is certainly a worthy goal. However, many closely held banks may not have enough independent directors to set up such a compensation committee. Nonetheless, this is undoubtedly a wise approach and is in fact already mandated by other law such as Sarbanes Oxley, which applies to certain institutions. The proposal goes on to say that there should be input from independent compensation professionals. This requirement would significantly add to the cost of compensation plans for community banks, and, we believe, is unnecessary.

Next, we are concerned that this type of deposit insurance rule could inadvertently have an impact on retirement programs for community banks adversely affecting stock option plans, ESOPs, and 401(k) programs. These are not the sort of plans that we believe could present an undue risk to the Deposit Insurance Fund. However, they are certainly employee compensation plans and could be dragged into this rulemaking. Again, we would respectfully suggest that this type of retirement planning is adequately addressed by ERISA and other rules and should clearly be carved out.

In conclusion, we believe strongly that the issues of incentive compensation are best left to the primary regulators and should not have an additional overlay of Deposit Insurance Fund premium effect. Certainly CAMELS ratings are a factor in premiums. Such ratings already include a category for "M"-management. Incentive compensation is a part of the management evaluation. Adding an addition factor for incentive compensation would simply double count that issue inappropriately.

We strongly urge you to withdraw this Proposed Rulemaking as other guidance and efforts continue.

Sincerely,



Christopher L. Williston
President and CEO