THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy

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May 31, 2011

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

Re: Proposed Assessment Rate Adjustment Guidelines for Large and Highly Complex Institutions

File Number: FR Doc. 2011-9209

Dear Mr. Feldman:

The Financial Services Roundtable (the "Roundtable"[1]) appreciates the opportunity to respond to the Federal Deposit Insurance Corporation's (the "FDIC's") request for comment (the "Request") on proposed guidelines published in the Federal Register on April 15, 2011,[2] to determine adjustments to the total scores used in calculating Deposit Insurance Fund ("DIF") assessment rates for large and highly complex insured depository institutions ("IDIs").

Background

The FDIC recently amended the assessment regulations applicable to large and highly complex IDIs.[3] The amended assessment regulations eliminate risk categories for large and highly complex IDIs, and combine CAMELS ratings and certain other measures to produce a scorecard composed of two scores: a performance score and a loss severity score. The performance score is combined with the loss severity score to produce a total score. Although the total score cannot be greater than ninety or less than

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1 The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

2 Proposed Assessment Rate Adjustment for Large and Highly Complex Institutions, 76 Fed. Reg. 21,256 (Apr. 15, 2011) (to be codified at 12 C.F.R. pt. 327).

3 Assessments, Large Bank Pricing, 76 Fed. Reg. 10,672 (Feb. 25, 2011) (to be codified at 12 C.F.R. pt. 327). "Large and highly complex IDIs" are IDIs with assets of $10 billion or more as of December 31, 2006. *Id*. at 10,707.

thirty, the amended assessment regulations allow the FDIC to adjust an IDI's total score upward or downward by up to fifteen points. The total score is converted to an IDI's initial base assessment rate. The initial base assessment rate is subject to further specific adjustments,[4] and is then converted to the total assessment rate.

In the Request, the FDIC proposes guidelines that would govern the FDIC's determination of an adjustment to the total score. The proposed guidelines would supersede the previously applicable adjustment guidelines for large IDI assessments, which were published in May 2007.[5] The guidelines describe the process that the FDIC would follow when considering whether to make an adjustment and the size of a potential adjustment. In the request, the FDIC indicates that when determining whether to make an adjustment and the size of a potential adjustment, it will consider three categories of factors: (i) scorecard measure outliers, (ii) complementary quantitative risk measures not directly captured in the scorecard, and (iii) qualitative risk considerations.

We offer comments on the Request in two areas: (i) the objectivity and transparency of the proposed guidelines, and (ii) the need for the guidelines to provide for downward adjustments in assessments for IDIs that pursue mortgage workout and loss mitigation efforts.

The Need for Objective and Transparent Guidelines

We request that the FDIC's final adjustment guidelines provide for greater objectivity and transparency. In this regard, we have two specific requests.

First, we request that the FDIC specifically enumerate the complementary risk measures not directly captured in the scorecard that it will look to when considering an adjustment. In the Request, the FDIC states that the complementary risk measures it will consider "are readily available for all [IDIs] and include quantitative metrics and market indicators that provide further insights into an [IDI's] ability to withstand financial adversity."[6] If the complementary risk measures are "readily available" for all IDIs, we request that the FDIC enumerate the specific list of risk measures that it will consider under the adjustment guidelines. While the Request's reference to two specific complementary risk measures is helpful,[7] we believe that a completely enumerated list

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4 The revised assessment regulations provide for adjustments based on the amount of an IDI's brokered deposits, unsecured debt, and debt held by another IDI.

5 Assessment Rate Adjustment Guidelines for Large Institutions and Insured Foreign Branches in Risk Category I, 72 Fed. Reg. 27,122 (May 14, 2007) (to be codified at 12 C.F.R. pt. 327).

6 76 Fed. Reg. at 21,262.

7 *Id*. (noting the IDI's total equity ratio and ratio of other comprehensive income (OCI) to Tier 1 Capital as examples of complementary risk measures that would be considered).

would be helpful to an IDI seeking to better align its risk profile with the FDIC's assessment regulations. If IDIs remain uninformed of which risk measures the FDIC will focus on for purposes of the adjustment, they will be unable to tailor their risk to the metrics that the FDIC is concerned with.

Second, we request that the FDIC provide additional certainty on the specific sources of qualitative information it will look to when considering an adjustment. For example, the FDIC notes in the Request that for purposes of determining which qualitative factors should inform an adjustment, an important source of qualitative information is "available information pertaining to an [IDI's] ability to withstand adverse events."[8] The FDIC further notes that such sources of information "*may* include analyses produced by the . . . supervisory authorities, such as stress test results, capital adequacy assessments, or information detailing the risk characteristics of the [IDI's] lending portfolio and other businesses."[9] Thus, even though the Request enumerates specific factors that will inform the qualitative analysis, the FDIC leaves open the possibility that it will consider qualitative factors not mentioned in the Request. In order to provide additional certainty to IDIs, we request the FDIC to provide further clarity on which specific sources of qualitative information it will look to when considering an adjustment. Additional certainty on this issue will help IDIs to effectively predict how changes in risk will affect their final assessment payments. This planning process serves the interests of IDIs, because it provides for additional certainty. It also serves the supervisory goals of the FDIC because an IDI that can predict how its risk profile will affect its assessment payments will better be able to structure its operations in accordance with the risk-based assessment system as a whole.

Favorable Adjustments for Mortgage Workout and Loss Mitigation Efforts

We request that the adjustment guidelines specifically provide for downward adjustments to assessments for IDIs that engage in mortgage workout and loss mitigation efforts. In this regard, we note that the FDIC has explicitly articulated a desire for IDIs to: i) "avoid unnecessary foreclosures and consider mortgage loan modifications or other workout strategies that are affordable and sustainable,"[10] and ii)"work constructively with residential borrowers who are financially unable to make their contractual payments on their home loans."[11] Indeed, the FDIC has indicated that IDIs "do not face regulatory

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8 76 Fed. Reg. at 21,264.

9 *Id.*

10 *FDIC Supervisory Insights* 6 (May 2011).

11 FIL-35-2007, *Working With Residential Borrowers: FDIC Encourages Institutions to Consider Workout Arrangements for Borrowers Unable to Make Mortgage Payments*, http://www.fdic.gov/news/news/financial/2007/fil07035.html.

penalties if they pursue reasonable workout arrangements with borrowers who have encountered financial problems."[12]

Due to the policy embedded in the Request, we respectfully disagree with this statement. Although the FDIC has explicitly encouraged IDIs to take an accommodative approach to mortgage workouts, mortgage loans are punitively assessed under the FDIC's revised assessment regulations. Under the revised assessment regulations, "non-traditional mortgage loans" and "subprime mortgage loans" are broadly defined, and hence strongly assessed against for purposes of the ratio of higher-risk assets to Tier 1 Capital and reserves, which is included as part of the concentration measure component of the large and highly complex IDI assessment scorecard.[13] Similarly, the asset loss rate assumptions underlying the loss severity score assign extremely high loss rates to certain categories of mortgage loans.[14] Because a modification of a mortgage keeps on the IDI's balance sheet a loan that would not otherwise be assessed against had the IDI foreclosed on the mortgage, an IDI's efforts to pursue mortgage workout and loss mitigation efforts are effectively penalized under the revised assessment regulations. In order to align the assessment regulations with the FDIC's specifically articulated policy goals, we request that the guidelines provide for downward assessments for IDIs that follow the FDIC's policy with respect to mortgage workouts and loss mitigation strategies. Such an adjustment could be tailored to the amount of mortgages that an individual IDI modified: for example, an IDI could receive a single point downward adjustment to its final score for every one-thousand mortgages modified on more favorable terms for the borrower.

<u>Conclusion</u>

We reiterate our request that the FDIC provide further clarity on the adjustment guidelines. Objective and transparent guidelines for adjustments are in the interest of both the FDIC and the IDIs subject to assessment. More objective and transparent guidelines would allow IDIs to plan their operations according to the risk-mitigating objectives encapsulated in the new assessment regulations. Similarly, more objective and transparent guidelines would allow IDIs to plan their operations and manage their operational and assessment risk in a manner most consistent with safety and soundness.

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[12] *Id.*

[13] 76 Fed. Reg. at 10,720-25.

[14] *Id.* at 10,725.

We thank the FDIC for the opportunity to comment on the Request. If you have any questions, please contact me or Brian Tate at (202) 289-4322.

Sincerely,

Richard M. Whiting
Executive Director and General Counsel