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Submitted by email to: Comments@FDIC.gov

Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: RIN 3064 – AD56; Incentive-Based Compensation Arrangements

Dear Sir or Madam:

We are submitting this letter in response to the FDIC's request for comments on the FDIC's proposed rules implementing Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Section 956 of Dodd-Frank requires, among other things, that the FDIC and six other federal agencies prohibit incentive-based compensation arrangements maintained by covered financial institutions that the agencies determine encourage inappropriate risks by providing excessive compensation or that could lead to material financial loss. Our comments below relate to (a) arrangements that were in effect prior to the enactment of Dodd-Frank, (b) arrangements for executives of family-owned banks, and (c) the proposed effective date of the final rules.

1. Treatment of Pre-Existing Arrangements

The proposed rules do not provide any grandfather rules nor do they make any distinction between new and pre-existing incentive-based compensation arrangements. We believe that the final rules should provide appropriate grandfather rules for certain arrangements in effect on the date of enactment of the Dodd-Frank Act. In addition, for any pre-Dodd-Frank incentive-based compensation arrangements that do not receive grandfathered treatment, the final rules should address a number of important factors that should be taken into account in evaluating whether the arrangement satisfies the rules.

With respect to providing grandfather rules, we recognize that not all incentive-based compensation arrangements in effect at the time of enactment of the Dodd-Frank Act should be grandfathered. Where, however, a pre-Dodd-Frank incentive-based compensation arrangement has been in effect for a substantial period of time so that it has a demonstrated track record of not encouraging the taking of inappropriate risks, the arrangement should be accorded grandfathered treatment for pre-Dodd-Frank participants. While grandfathered treatment may well be appropriate in a number of circumstances, we would propose a standard based on a bank's CAMEL rating over an extended period of time during which the incentive-based compensation arrangement has been in effect. Under this standard, where a bank has maintained an incentive-

based compensation arrangement for a substantial period of time, such as five or more years, and the bank has had a "1" or "2" CAMEL rating and has been well-capitalized for the entire period, the arrangement should be grandfathered with respect to pre-Dodd-Frank participants. Grandfathering incentive-based compensation arrangements on this basis would prevent forced reconsideration of arrangements that have a proven track record for safety and soundness and that have previously been reviewed by the FDIC through the examination process. It also would avoid potentially creating retention issues with respect to key executives who have managed the bank in a safe and sound manner over the long-term. Retention issues can be particularly problematic at a smaller banks (for example, those with under $5 billion in assets) since their executive leadership teams are typically small and key members can be difficult to replace.

To the extent that grandfathered treatment does not apply to a pre-Dodd-Frank incentive compensation arrangement, the final rules should recognize that the long-term performance of the bank while the arrangement has been in place should be a significant factor in evaluating whether the arrangement satisfies the requirements of the rules. The actual performance of the bank over the long-term while the arrangement has been in place is a strong indicator of whether the arrangement encourages inappropriate risk-taking by covered employees. Additionally, the final regulations should identify the impact of terminating or materially changing an existing incentive-based compensation arrangement on retention of key management and the potential financial costs arising from the triggering severance rights or potential breach of contract claims as factors to be taken into account in evaluating whether and to what extent an incentive-based compensation arrangement should be modified.

2. ***Family-Owned Banks:***

Family-owned banks have unique circumstances that should be taken into account in evaluating whether a particular incentive-based compensation arrangement encourages the taking of inappropriate risks. Frequently, one or more senior executives of a family-owned bank are members of the family who own the bank. Where this type of ownership/management overlap exists and there are a small number of family member shareholders, an incentive-based compensation arrangement covering an executive/family member should necessarily be treated as not encouraging the taking of inappropriate risks if amounts paid under the arrangement could otherwise, consistent with safety and soundness standards, be paid as dividends to family member stockholders. If the compensation could otherwise be paid out of the bank as dividends, the arrangement itself does not provide any economic incentive to engage in inappropriate risk-taking. The final rules also should recognize that where the employees covered by an incentive-based compensation arrangement are members of the family who own the bank, the family's stock ownership provides a strong counter-incentive to causing the bank to engage in

inappropriate risk-taking, particularly where there are only a small number of family member shareholders.

3. *Effective Date*

With respect to existing arrangements, the effective date of the new rules should not be earlier than six months after completion of the first examination by the applicable federal regulator occurring after the date the rules become final. The rules have a significant subjective element and a bank should have the benefit of regulator input before being put in the difficult position of determining whether it should modify or terminate an existing incentive-based compensation arrangement that the bank believes is permissible under the rules and that has served it well in the past. Moreover, as noted above, terminating or modifying an existing arrangement can result in the loss of key management and the triggering of severance rights or potential breach of contract claims.

We appreciate the opportunity to provide comments on the proposed rules and would be pleased to respond to any questions.

Sincerely,

Edward E. Bintz