Attachment

FDIC REFORM ACT

FDIC RULEMAKING TO DEFINE “SUCCESSOR” INSURED DEPOSITORY INSTITUTIONS

(For Purpose of Allocating One-Time Assessment Credits)

May 4, 2006

FDIC Reform Act

The Federal Deposit Insurance Reform Act of 2005 was signed into law on February 9, 2006, as part of the Deficit Reduction Act, P.L. 109-171. The law:

- Merges the Bank Insurance Fund with the Savings Association Insurance Fund.
- Creates revised method to assess risk-based premiums on insured depository institutions to finance the new Deposit Insurance Fund.
- Allocates credits to be applied against future premiums to institutions, or their successors, based on their deposit base as of December 31, 1996.

Credits: Statutory Language and Congressional Intent

Credits are to be allocated to insured depository institutions in existence as of December 31, 1996 **or "Successor" institutions**

- "Successor" in original House and Senate bills was undefined.
- Congress was concerned that "Successor" institutions not be limited only to institutions that acquire deposits through stock mergers, as might be the result by applying a technical traditional legal definition.
- Therefore, in the bill as enacted, Congress required the FDIC to define "Successor."
  - As such, Congress clearly intended to allow institutions, in addition to those which acquired deposits through stock mergers, to receive credits.
  - Congress recognized the need to provide the FDIC authority to allocate credits in a fair and equitable manner.

FDIC Rulemaking to Define
"Successor" Insured Depository Institutions

Congress provided the FDIC the authority to "consider any factors as the Board may deem appropriate" to define "successor" for the purpose of allocating the one-time assessment credit. These "Factors" could include:

- Tracking: Ability to reasonably identify and track deposits associated with a particular transaction
- Burden: FDIC's ability to reasonably consider competing claims
- Equity
- Defensible and Consistent Determinations

Applying Factors

Tracking: Methods to identify and track deposits include:

- Percentage of Deposits Purchased
  Calculate deposits purchased as a percentage of total deposits disclosed in seller's quarterly financial statements prior to sale.
- Branches
  Identify deposits for branches purchased using the June 30, 1996 Summary of Deposits published by the FDIC. Calculate percentage purchased of total deposits listed.
- Business lines
  Use deposits for business lines purchased that may be disclosed in the seller's December 31, 1996 financial statements.

Burden

- FDIC could place the burden on the petitioning parties to identify and track deposits.
- FDIC might establish a "de-minimus" rule only allowing institutions which purchased at least 10-20% of the deposits of another institution, or a minimum amount of deposits purchased, to apply to receive credits.
- FDIC already has information on the defined universe of deposit acquisitions since 1996.

Defensible and Consistent Determinations

- Any methodology adopted should be applied in a similar manner to any transaction, including use of publicly available information.

Equity

- Congress provided the FDIC the discretion to consider any appropriate factors to reach a fair and equitable result.

Example: Citizens Financial Group (CFG) acquisition of Mellon Financial Corporation (Mellon) Retail Deposits

CFG acquired virtually all of Mellon's retail deposits and virtually all of its branches

- Mellon exited the retail banking business; it maintained its charter to continue commercial and high net worth business.
- CFG purchased over 40% percent of the overall Mellon deposits

Applying factors to CFG purchase of Mellon deposits

Tracking

- Use the June 30, 1996 Summary of Deposits for Mellon Bank available on the FDIC website to identify deposits at branches purchased by CFG.

Burden

- CFG would provide the listing of branches purchased from Mellon that are contained in the purchase agreement along with the deposits at those branches on the June 30,1996 Summary of Deposits.

Defensible and Consistent Determinations

- Information regarding pre-sale assets and post-sale assets is publicly available in FDIC databases. See for example: *http://www2.fdic.gov/sod/dynaDownload.asp?barItem=6*
- Methodology may be applied to any other similar transactions.

Equity

- CFG bought an entire line of business.
- CFG paid a premium for purchased deposits.
- CFG/Mellon Contract provides that CFG assumes the rights and liabilities associated with the purchased deposits.
- Transaction is not de-minimus.