August 16, 2006

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

RE: RIN 3064-AD08:
Proposed Rulemaking Implementing the One-Time Assessment Credit

RE: RIN 3064-AD02:
Proposed Rulemaking Setting the Designated Reserve Ratio for 2007

RE: RIN 3064-AD07:
Proposed Rulemaking to Specifying Dividend Requirements

Dear Mr. Feldman:

ING Bank, fsb ("ING DIRECT") provides retail banking services and financial products to individuals and businesses across the United States. Chartered in August 2000,[1] in six years ING DIRECT has grown from nothing to a savings bank with assets of $61 billion and deposits of $46 billion, while consistently remaining well-capitalized. ING DIRECT has done so through innovation and a strict focus on its brand vision: leading Americans back to saving.

ING DIRECT appreciates the opportunity to provide comment as part of the Federal Deposit Insurance Corporation's ("FDIC's") proposed rulemaking proceedings:

> (1) Implementing the one-time assessment credit required by section 7(e)(3) of the Federal Deposit Insurance Act ("FDI Act") as amended by the Federal Deposit Insurance Reform Act of 2005 ("FDIRA");
>
> (2) Setting the Designated Reserve Ratio ("DRR") for 2007; and,

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[1] Later that year, as a consequence of a merger of their holding companies, ING DIRECT acquired another thrift, ReliaStar Bank, chartered in 1990. As a result, ING DIRECT has a one-time assessment credit of $54,000.

(3) Specifying the dividend requirements mandated by section 7(e)(2) of that same Act.

FDIRA creates a one-time credit of $4.7 billion allocated among insured institutions based on their 1996 deposits. Another way of viewing this credit is as a $4.7 billion one-time catch-up assessment with respect to deposits obtained after 1996. Because deposit growth after 1996 is only one-half the size of the total deposits held by the industry, the credit imposes that catch-up assessment on only one-half of the deposit base of the industry – affecting only those institutions who have succeeded in growing (other than by merger) since 1996.

While Congress gave the FDIC great discretion in implementing this credit, that discretion is not without limit. Congress also *mandated* that when setting assessments under FDIRA the FDIC consider the "projected effects of the payment of assessments on the capital and earnings of insured depository institutions"[2] and when setting the DRR the FDIC is "to seek to prevent sharp swings in the assessment rates for insured depository institutions".[3]

Because of this catch-up assessment, ING DIRECT could face an increase in assessments in 2007 of over $60 million – when its net pre-tax income for 2005 was $370.3 million. This proposed sharp swing in assessments will have a severe effect on our earnings.

Like ING DIRECT, over 1300 institutions have been chartered since 1996. Unless the FDIC considers changes to the proposed rule, these insured institutions will face serious hardships -- hardships that the FDIC Board has not only the power but arguably the *statutory obligation* to ameliorate to the maximum extent possible.

Just as importantly, the revisions to the proposed rules suggested in this letter will enable the FDIC Board to avoid a negative impact on the economy, encourage savings, and prevent anticompetitive effects.

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[2] Sec. 2104(a)(1)(B)

[3] Sec. 2105(a)(3)(C)

Summary of Recommendations

In order to effect a smooth transition to the new deposit insurance program ING DIRECT recommends that the FDIC Board:

- set the DRR initially at the lower end of the statutorily mandated reserve range;
- establish a premium structure that recognizes the value of building up the reserves in the Deposit Insurance Fund ("DIF") gradually over a period of years rather than building the reserve balance abruptly by imposing substantial premiums in the short-term;
- prescribe the maximum assessment credit that can be used by an institution in a graduated way depending on the size of the assessment; and
- revise the proposed single-factor formula for determining dividends to be paid when the ratio of the fund exceeds 1.35 percent and instead utilize the multi-factor criteria provided for in the statute.

BACKGROUND OF THE PROBLEM AND GENERAL PRINCIPLES FOR SOLUTIONS

America's banking industry has never been stronger or more well-capitalized. On June 25, 2006, FDIC-insured institutions marked a true milestone when, for the first time in history, for an unprecedented two-year period there was not a single bank failure, a trend that has continued to date.[4] In addition, the number of problem institutions continues to drop, declining from 138 in 2002 to just 48 (holding only $5.4 billion in assets) at the end of the first quarter 2005. Banks have very deliberately built up their capital base and diversified their portfolios.

With the enactment of Federal Deposit Insurance Corporation Improvement Act of 1991 ("FIDICIA") and the implementation of Prompt Corrective Action ("PCA"), Section 38 of the FDI Act, bank regulators were given new enforcement tools that, to a large extent, have enabled them to prevent bank failures. The utilization of cross-guarantees provides

[4] "For the seventh consecutive quarter, no insured institution failed, extending the longest period since the creation of the FDIC in 1933 without a failure. The last time an insured institution failed was in June, 2004. Further underlining the health of the industry, the number of institutions on the FDIC's 'Problem List' declined for the twelfth time in the last fourteen quarters. At the end of March, there were 48 insured 'problem' institutions, down from 52 at the end of 2005." FDIC Quarterly Banking Profile First Quarter 2006.

a margin of safety that would otherwise be lacking; and PCA standards have enabled regulators to identify potential problems and implement remedial steps much earlier.

On the other hand, despite the strength of the banking industry, it is well-known that the rate of savings in the United States is distressingly low. According to the U.S. Commerce Department's Bureau of Economic Analysis, Americans spent more than they earned in 2005, resulting in a negative savings rate of 0.5 percent for the year. This is the first time since the Great Depression that our country has experienced a negative savings rate.

Since its inception six years ago, ING DIRECT has had a commitment to rewarding savers by paying rates designed to both attract and retain deposits, with no minimum deposit requirement and all transactions conducted exclusively online, by phone, or by mail. Our business model has proven to be highly successful precisely because ING DIRECT is responding to consumers' desire to use technology efficiently and to be rewarded for their saving. After just five years in operation ING DIRECT closed its books last year with $39.98 billion in consumer savings.

While we recognize that FDIRA requires all institutions (once any available assessment credits are exhausted) to pay their fair share of insurance assessments, we urge the FDIC to structure its transition rules so that institutions like ING DIRECT are not forced to significantly reduce the rates of interest with which we reward savers in order to meet our premium assessment obligations. One effect of a well-structured deposit insurance fund should be the encouragement of individual savings and an increase in the national savings rate.

Similarly, in a period of rising interest rates such as we are currently experiencing, it makes sense to moderate insurance assessments so that banks will have these funds available to make loans to America's homebuyers and business community. Dollars do a much more efficient job driving the engine of our economy when in the hands of America's consumers and businesses rather than held in reserve in the government's coffers.

We also believe it is essential that the FDIC's rules implementing FDIRA do not establish unnecessary or overly burdensome barriers to entry for those who otherwise would charter new banks and thrifts. This is a particular concern in this time of rapid industry consolidation.

The FDIC's Statutory Requirements

The FDIC is required to consider two statutory factors in setting assessments and in designating the reserve ratio. In setting assessments, FDIRA states that the FDIC Board of Directors "shall consider . . . [t]he projected effects of the payment of assessments on

the capital and earnings of insured institutions." Sec. 2104(a)(1)(B). In designating the reserve ratio, within a "reserve range", the FDIC "shall . . . seek to prevent sharp swings in the assessment rates for insured depository institutions." Sec. 2105(a)(3)(C).

In addition to these mandatory considerations, the FDIC also has certain discretionary factors that it may consider. For example:

- In replacing the fixed designated reserve ratio with the statutorily mandated "reserve ratio" (between 1.15 percent and 1.5 percent), Congress instructed the FDIC to "take into account such other factors as the Board of Directors may determine to be appropriate …". (Sec. 2105(a)).

- In setting assessments, including the projected effects of the payment of assessments on the capital and earnings of insured depository institutions, the FDIC is to consider "any other factors the Board of Directors may determine to be appropriate." (Sec. 2104(a)(1)).

- In determining the formula for the distribution of dividends, the FDIC is to consider a number of factors, including "[s]uch other factors as the Corporation may determine to be appropriate." (Sec. 2107(a)).

These discretionary factors, however, cannot override the statutory mandate that in setting assessments, the FDIC shall consider "the projected effects of the payment of assessments on the capital and earnings of insured institutions", and shall seek to "prevent sharp swings in the assessment rates for insured depository institutions."

Estimating The Impact of The One-Time Credit

Fundamentally, the $4.7 billion credit allocated to 1996 deposits has the effect of requiring that assessments in that amount be paid with respect to deposit growth after 1996 – the "catch-up assessment." Since the growth in deposits after 1996 is less than one-half of the total deposit base of the industry, the credit causes those who have been chartered or who have grown substantially since 1996 (new growth institutions) to pay a significantly larger proportion of that amount than the industry as a whole. In other words, the credit acts as a transfer of wealth from new growth institutions to old line institutions.

In the attached appendix we estimate the economic impact of that transfer. An institution like ING DIRECT, which by the end of 2006 could have $50.4 billion in post-1996 deposits, and on a best estimate basis faces a 2007 assessment of 12.1 basis points, could be required to pay $60 million more than the previous year.

Moreover, this catch-up assessment imposes over 12 basis points more on ING DIRECT than the assessment on a comparable well-capitalized and well-managed institution that has not grown other than by merger since 1996 - a competitive disadvantage for ING DIRECT of over $60 million. This is a dramatic contrast with the base assessment FDIC now proposes to charge all highly rated institutions of between 2 to 4 basis points.[5]

In 2005, ING DIRECT had succeeded in building its income to $370.3 million. Not only is the change from nothing to $60 million a sharp swing in its assessments, it also is a direct and significant threat to its earnings and capital.

There is no indication that Congress, when it expressed concern about sudden swings in assessment rates, was concerned only for old-line institutions rather than new growth institutions; nor is there any reason to believe that Congress would have wanted to cause any FDIC-insured institution to be competitively disadvantaged or even, perhaps, put out of business. Yet anything other than a gradual transition from the old paradigm to the new could well have that effect for some institutions.

FDIC's Decisions in 2006 Have Aggravated The Hardship Faced By New Growth Institutions

The decision of the FDIC Board to forego the assessment of an insurance premium for *all* insured institutions for the second half of 2006 will aggravate the hardship faced by growth institutions. The FDIC Board had the statutory authority to impose such an assessment. Doing so would have brought the level of the fund to or at least closer to 1.25 percent by the end of 2006. The FDIC Board chose not to do so knowing full well that it would result in a greater decline in the ratio level than would otherwise have been the case and fully aware that the need to replenish the fund balance was simply being deferred until 2007. What the transcript of the proceedings reveals is that the FDIC Board did not consider the *extent* to which a lack of a 2006 assessment shifted a burden that otherwise would have been shared among all institutions and instead guaranteed that the burden would fall sooner and far more heavily on new growth institutions, thereby aggravating and exacerbating the adverse impact of the credit (i.e., the catch-up assessment).[6]

One of the agenda items addressed at the FDIC Board meeting on May 9 was whether or not to assess a deposit insurance premium for the second semiannual assessment period

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[5] As the FDIC noted in 2001, 3.5 basis points is about the effective premium rate the FDIC charged from 1950 to 1980. "Keeping the Promise: Recommendations for Deposit Insurance Reform," FDIC April 2001 at p.11.

[6] Increased base assessments of about 2.6 basis points would have avoided this. (FDIC anticipated, in its best case, that the reserve ratio would drop to 1.20 percent. To preserve the ratio at 1.25 percent at year end 2006 would have required about $1.885 billion.)

of 2006. The staff memorandum outlining options available to the FDIC Board specifically cited Section 2109(b) of FDIRA and correctly noted that:

> The Reform Act contains *transition provisions* specifically preserving the FDIC's authority to set and collect deposit insurance assessments under the regulations in effect before the effective date of the revised assessment rules. These provisions specify that during the interim period between the funds merger and the effective date of new assessment regulations, the existing assessment regulations shall apply to all DIF members, even though the regulations still refer to BIF members and SAIF members.

Thus, until the implementing regulations are finalized and their effective date has arrived, the law related to assessments in effect prior to enactment of FDIRA remains the law of the land. That law states that:

> Except as provided in paragraph (2)(F), if the reserve ratio of any deposit insurance fund is less than the designated reserve ratio under paragraph (2)(A)(iv), the Board of Directors shall set semiannual assessment rates for members of that fund –
>
> (i) that are sufficient to increase the reserve ratio for that fund to the designated reserve ratio not later than 1 year after such rates are set …

Paragraph (2)(A)(iv) of the "old" law (which was in effect on May 9 and remains in effect today) sets a bright-line threshold for the DRR at "1.25 percent of estimated insured deposits … or … a higher percentage …" under certain circumstances as determined by the FDIC Board.

Against this statutory backdrop the FDIC staff on May 9 estimated that the reserve ratio as of March 31st was already below 1.25 percent and forecast a "single point estimate for the reserve ratio as of December 31, 2006 … of 1.20 percent." Yet the Board chose not to impose a premium assessment for the second half of 2006, recognizing that as a consequence of that decision "premium rates in 2007 and possibly 2008 would likely have to be higher than they otherwise would need to be … if the Board raised rates for the second half of this year."[7]

As a direct result, growth institutions like ING DIRECT will bear a far more significant cost of replenishing the FDIC's coffers than would have been the case if on May 9 the

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[7] Federal Deposit Insurance Corporation. Memorandum to the Board: *DIF Assessment Rates for the Second Semiannual Assessment Period of 2006*. Arthur J. Murton, Director, Division of Insurance and Research. May 5, 2006 at 4

FDIC Board had acted to bring the fund ratio back to its statutorily mandated ratio of 1.25 percent.

We recognize that, at the time of its decision, the FDIC Board did not have an analysis of how its decision would adversely impact new growth institutions. Now that the FDIC Board has this greater knowledge, however, it should be careful to remedy the hardships its actions have aggravated.

PROPOSED SOLUTIONS

There are several ways the FDIC Board can ameliorate the hardships faced by new growth institutions:

- set the DRR at the lower end of the statutorily mandated reserve range during the transitional period when credits are being used;
- establish a premium structure that recognizes the value of building up the reserves in the DIF gradually over a period of years rather than building the reserve balance abruptly by imposing substantial premiums in the short-term;
- prescribe the maximum assessment credit that can be used by an institution in a more graduated way depending on the size of the assessment; and
- revise the proposed single-factor formula for determining dividends to be paid when the ratio of the fund exceeds 1.35 percent and instead utilize the multi-factor criteria provided for in the statute.

Establish a Low Designated Reserve Ratio

One way to lessen the hardship on new growth institutions and to avoid sharp swings in assessments and adverse impacts on earnings and capital is to stretch out the imposition of new assessments. In that way, the "catch-up" assessment, i.e., the differential between growth institutions and old-line institutions, is imposed more gradually.

A good first step could be to set a lower DRR. FDIRA explicitly eliminates the traditional fixed reserve ratio of 1.25 percent and in its place requires the FDIC Board to exercise its discretion in setting the DRR at an appropriate level within the range of 1.15 percent to 1.5 percent.

While the proposed rule justifies retention of a DRR of 1.25 percent despite the fact that Congress gave the FDIC explicit authority to set the DRR anywhere within a range of 1.15 percent to 1.5 percent, the proposed rule does so by viewing the DRR essentially as

a "target". According to the proposed rule, if the DRR is left at 1.25 percent, the FDIC Board could also "allow a period of a few years for the reserve ratio to meet the DRR." Since the statute requires that the FDIC Board revisit the question of where the DRR should be set "[b]efore the beginning of each calendar year" and since Congress mandated that the FDIC Board should consider various specific criteria "[i]n designating a reserve ratio for any year …" we consider a more reasonable reading of the plain language of the statute to be that Congress actually intended that the FDIC Board utilize its discretion in determining an appropriate level for the DRR on an annual basis.

If that interpretation is adopted, ING DIRECT urges the Board to initially set the DRR at the lower end of the statutorily mandated reserve range. Establishing the DRR at the lower end of the permissible range is warranted for several reasons:

- The current capitalization level of the DIF is well within the acceptable range established by Congress in FDIRA;
- The banking industry is healthy, and the FDIC is currently enjoying the longest period of time since it was established in 1933 without a bank failure; and
- PCA standards have enabled regulators to identify potential problems and implement remedial steps much earlier than was the case previously.

Moreover, as the FDIC recognized in its proposed rule, Congress expected the FDIC to set the DRR at the lower end of the range when institutions generally would face difficulty making payments, such as in difficult economic times, while setting the DRR higher when the economy was good and payments could be made more easily. We are concerned that FDIC may be unrealistic in its optimism about the economy and the challenges the banking industry continues to face.

Further, though, the imposition of the credit as an extra assessment on just a portion of the industry creates a circumstance for the new growth institutions that is very much like facing a difficult economy. The FDIC can and should exercise its discretion to lower the DRR, and therefore overall assessment rates, so that the "catch up assessment" that growth institutions must pay, while old line institutions use their credit, is imposed over more than one year, rather than all at once.

Implement a Premium Structure That Gradually Builds DIF's Reserve

Even if the DRR is set at 1.25 percent, a second solution to lessen the hardship on new growth institutions is to stretch out the catch-up assessment by the FDIC exercising its authority to impose assessments in a way that delays achieving the DRR. ING DIRECT concurs with the recommendation put forward by the major bank associations (American

Bankers Association, America's Community Bankers, Consumer Bankers Association and The Financial Services Roundtable) that the FDIC should utilize the flexibility conferred on it by Congress to "assess premiums in an even and balanced way across an appropriate period of time rather than endeavor to build up the Deposit Insurance Fund (DIF) with considerable short-term premium increases."

Certainly, this was the expectation of the Congress. As noted in the House Report, describing the Congressional Budget Office's ("CBO") understanding of FDIC's likely implementation of FDIRA:

> CBO expects that the FDIC would attempt to limit volatility in premiums and avoid increases in premiums for temporary reductions in the fund. As a result, CBO assumes that the FDIC would ***try to set premiums at levels considered likely to achieve the desired reserve ratio over several years***. By expanding insurance coverage, H.R. 1185 also would affect the FDIC's decision about the reserve target, because increasing insured deposits would reduce the DIF's reserve ratio from 1.3 percent to less than 1.2 percent. For this estimate, *CBO assumes that the FDIC would opt to rebuild the reserve gradually following enactment of the bill, resulting in a reserve ratio of close to 1.20 percent over the 10-year period.* [8] [emphasis added].

The FDIC's own analysis of the need for change came to a similar conclusion. The FDIC's report, "Keeping the Promise: Recommendations for Deposit Insurance Reform," FDIC April 2001, urged the changes in law that became FDIRA. The FDIC's recommendations contemplated that even with losses as large as those suffered in the last banking crisis, FDIC expected to spread the recovery of the fund over several years, never raising assessments on well managed banks to more than 10.5 basis points. The FDIC contrasted its ability to adapt flexibly to such challenges under what would become FDIRA, where it ***could*** stretch out premiums over several years, to the cliff of a sudden change from 0 basis points to 23 basis points necessary under prior law. FDIC should live up to the promise of that report.

Allow Credits to Off-Set Assessments Only On a Graduated Scale

A third solution is to stretch out not just assessments but also the use of the credits. The FDIC proposal says that the FDIC will track each institution's one-time credit amount and automatically apply an institution's credits to its assessment to the maximum extent. For the fiscal year 2007 assessment periods, for most institutions, the FDIC proposes to allow their credit to offset 100 percent of an institution's assessment.

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[8] U.S. House of Representatives. Committee on Financial Services. *Federal Deposit Insurance Reform Act of 2005*. 109th Congress, 1st Session, 2005. House Report 109-67 at 28.

While on its face such an approach may have appeal because it is easily understood and simple to administer, we submit that it is neither required by statute nor equitable in its administration. A more reasonable and equitable approach, given the current economic environment and the growing chasm between the DIF's DRR and the actual reserve ratio, would be to allow institutions that have assessment credits to use them to off-set premium assessments according to a graduated schedule.

Specifically, we would recommend that institutions should be able to use assessments on a graduated scale:

For assessment amounts:	Credits Could Be Used to Off-Set
Up to 2 bp	Maximum (100% in 2007)
From 2 bp to 4 bp	75%
From 4 bp to 6 bp	50%
Over 6 bp	25%

An institution with credits that faced an assessment of 5 basis points, therefore, would use its credits to discharge 100 percent of the first two basis points, 75 percent of the next two basis points, and 50 percent of the last basis point. The net cash assessment it would pay would be 0 + .5 + .5 = 1 basis point.

The schedule proposed above would be far more equitable than allowing institutions to avail themselves of "the maximum … allowed by law."

All institutions should pay some assessment. To the extent that there has been a perceived inequity in that institutions chartered or that experienced substantial growth in insured deposits after December 31, 1996, paid no insurance assessments while enjoying the benefits of the full faith and credit of the United States standing behind their insured deposits,[9] the remedy should not be to embark on a "trading places" scenario in which those that capitalized the BIF and SAIF prior to December 31, 1996, now become (albeit briefly) "free riders" themselves. As Senate Banking Committee Chairman Richard Shelby stressed as he presided over hearings that ultimately led to passage of FDIRA: "the system would … be better served if every institution holding insured

[9] In fact, ING DIRECT has paid over $13 million in FICO bond payments. Those payments, which facilitated the recapitalization of SAIF no less than premium assessments, are not reflected in the calculation of assessment credits (or future calculations of dividend payments) since they technically are not "insurance assessments" but "bond payments."

deposits actually paid some amount for the coverage provided…” [10] That view was echoed by then-FDIC Chairman Don Powell, who stated: “I know … All should pay.”

Should the FDIC implement the assessment credit regulation as FDIC has proposed, it would have an immediate negative impact on rates paid on consumer savings accounts by new growth institutions because they will be required to bear the burden of the cost of deposit insurance not just for their own institutions, but also for those utilizing assessment credits. That outcome is particularly perverse in that in many instances it has been the new growth institutions that have been leading the market in the rates they pay savers. ING DIRECT is proud of its track record in that regard, having offered savers rates averaging 150 basis points above the national average for the past 10 quarters. We’ve been able to lead the market not because we have been exempt from paying insurance premium assessments – our marketplace competitors have been similarly exempt – but because we have implemented a business model that relies upon and rewards efficient use of time, talent and technology. Ironically, while savers should anticipate a marginal decline in savings rates paid by old line institutions if the proposed regulation were implemented allowing old line institutions to use the maximum credit available to off-set assessments, they should not anticipate a reciprocal increase in the rates paid by old line institutions because, like ourselves, these banks and thrifts have generally not been paying assessments for the past decade. For them, nothing changes; for us, we incur an additional operating expense.

All institutions enjoy the benefit of increased retirement account coverage. FDIRA provides for more than a doubling of the insurance coverage on retirement accounts at insured institutions, increasing the level of coverage from $100,000 to $250,000. This increase in coverage theoretically will enable all institutions – both old-line and new growth – to attract and retain substantially larger retirement account balances. Since both categories of institutions enjoy the benefit of this expanded coverage, it is only fair that both categories of institutions should also contribute to the cost of this significantly expanded coverage.

There should be no doubt that the FDIC has the discretion to impose such reasonable limits. Section 2107 of FDIRA creates 12 U.S.C. 1817(e)(3) establishing the one time credit. Paragraph D(iii) directs that the FDIC’s regulations issued under paragraph A shall also establish procedures governing the application of assessment credits. And paragraph A says that the FDIC shall issue such regulations “taking into account such factors as the Board of Directors may determine to be appropriate.” Clearly, the FDIC has discretion to take into account factors such as the impact of the catch up assessment on the earnings and capital of growth institutions.

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[10] U.S. Senate. Committee on Banking, Housing and Urban Affairs. *The Federal Deposit Insurance System*. 108th Congress, 1st Session, 2003. Senate Hearing 108-340 at 2..

Adopt A Multi-Factor Dividend Formula

The proposed rule would allocate dividends paid by the DIF when the ratio exceeds 1.35 percent based exclusively upon insured-institutions' 1996 assessment base ratio. As proposed, this rule would automatically sunset in two years; during the interim period a subsequent and more sophisticated approach to the allocation of dividends would be considered. While the likelihood of dividends being paid during the next two years may currently seem remote, we caution that accurately predicting future interest rates, deposit flows and the other economic variables that could affect the reserve ratio is difficult and we believe that the most prudent course would be for the FDIC Board to adhere to the multi-factor criteria established by Congress for calculating dividend payments.

To omit from the dividend calculation "the total amount of assessments paid on or after January 1, 1997 is patently unfair to new growth institutions. On the one hand, the rules as proposed would allow institutions with assessment credits to forego the actual payment of an assessment while simultaneously saying that only those institutions would enjoy the benefit of a dividend should one be paid. Based on both black letter law as well as principles of simple fairness, those institutions lacking assessment credits who, in fact, will be paying insurance assessments before any dividend is made, should also be entitled to their pro rata share of any dividend paid by the DIF. The regulations should provide for that from the outset, regardless of how remote the FDIC might consider the possibility of the DIF paying dividends.

If developing an appropriate rule is too difficult for FDIC to accomplish within the time frame set by Congress, FDIC should simply take the time necessary to develop a good rule rather than adopting a bad rule. There are fewer consequences for a federal agency from adopting a rule late than there are for adopting a rule that is contrary to statute. This would not be the first time a federal agency has missed such a deadline. If the FDIC is satisfied with achieving no more than technical compliance, as it is doing here by adopting a rule it acknowledges is insufficient, the life of the interim rule should be limited to the shortest possible additional time period within which the FDIC could formulate an appropriate rule – no more than 180 days.

CONCLUSION

In conclusion, ING DIRECT urges the FDIC Board to exercise the discretionary authority bestowed upon it by Congress to:

- initially set the DRR at the lower end of the statutorily mandated reserve range;

- establish a premium structure that recognizes the value of building up the reserves in the DIF gradually over a period of years rather than building the reserve balance quickly by imposing substantial premiums in the short-term;

- prescribe that the maximum assessment credit that can be applied by an institution to off-set its premium assessment in any one year be a graduated percentage of the institution's assessment; and,

- revise the proposed single-factor formula for determining dividends to be paid when the ratio of the fund exceeds 1.35 percent and instead utilize the multi-factor criteria provided for in the statute.

Thank you for the opportunity to share the views of ING DIRECT. If you have any questions or if I can be of further assistance please do not hesitate to contact me at 302-255-3008.

Sincerely,

Deneen D. Stewart
General Counsel
ING DIRECT

Appendix: **Estimating the Economic Impact of the One-Time Credit**

We begin the analysis with the assumption, accepted by the FDIC Board, that it is proper to rely on the FDIC's Best Estimate for 2006 submitted to the FDIC Board on May 9. If it comes true, those amounts will be the basis for FDIC's projections of 2007 outcomes.

That Best Estimate was:

		12/31/2006	
Fund Balance		50,067,000,000	
Insured Deposits		4,156,172,000,000	
DIF Reserve Ratio		1.20%	

We also estimated total deposits for 12/31/2006. The rate of increase in total deposits has been steadily rising over the period from 1993 to 2005, and with higher deposit insurance levels for retirement accounts, we expect that trend to continue. We used the percentage increase from 2004 to 2005, which is 8.8 percent, as the best estimate for increases from 2005 to 2006. We used a lower bound of 6.7 percent, the increase from 2002 to 2003, and an upper bound of 9.6 percent, which matches the increase from 2003 to 2004.

Total Assessable Deposits 12/31/2006 (base for 2007 assessments)	6,581,388,280,258	6,710,918,883,712	6,760,263,875,504

To further advance this analysis, we estimated what we expect the FDIC analysis of 2007 outcomes will reflect, using (as a rough approximation) straight line projections from the FDIC analysis for 2006. This resulted in the following estimate for 12/31/2007:

		12/31/2007	
	Lower Bound	Best Estimate	Upper Bound
Fund Balance	51,237,362,615	51,581,465,708	51,861,693,376
Insured Deposits	4,314,106,536,000	4,438,791,696,000	4,563,476,856,000
Estimated DIF Reserve Ratio	1.19%	1.16%	1.14%

Dollar Assessment Needed to Reach 1.15	0	0	618,290,468
Dollar Assessment Needed to Reach 1.20	531,915,817	1,684,034,644	2,900,028,896
Dollar Assessment Needed to Reach 1.25	2,688,969,085	3,903,430,492	5,181,767,324
Assessment (basis points) on all 2006 deposits, if no credits			
to Reach 1.15	0.0	0.0	0.9
to Reach 1.20	0.8	2.5	4.3
to Reach 1.25	4.1	5.8	7.7

Credits for each institution
= 0.5 bp x Total 2001 assessable deposits x (Inst 1996 assessable deposits/Total 1996 assessable deposits)
= 10.5 bp x (Total 2001 assessable deposits/Total 1996 assessable deposits) x Inst 1996 assessable deposits

Total 2001 Assessable Deposits =	4,477,613,120,000
Total 1996 Assessable Deposits =	3,347,337,947,000
Ratio of 2001 / 1996 =	1.337663896
If set constant Credit ratio (“Cr”) for each dollar of 1996 Assessable Deposits each bank holds Cr = 10.5 bp x 2001/1996 Total Deposits	0.001404547
Credit for a bank with deposits of $20 billion in 1996 = Cr * 20B =	28,090,942

Formula for each institution's insurance premium payment is P = A - C = R*(D+ΔD) - Cr*D = (R-Cr)*D + R*ΔD		Where D = 1996 deposits ΔD = Change in deposits from 1996 to 2006 R = Assessment rate in bp	
As an example, use three banks each of which now has deposits of $20 billion and assume the DIF Reserve Ratio target is 1.25	Bank A: No growth since 1996	Bank B: Twice as many deposits as in 1996	Bank C: All deposits received after 1996
Credit	28,090,942	14,045,471	0
Assessment (in dollars) assuming no credits			
Lower Bound	8,171,434	8,171,434	8,171,434
Best Estimate	11,633,073	11,633,073	11,633,073
Upper Bound	15,330,074	15,330,074	15,330,074
Sample Institutions' Assessment Net of Credit			
Lower Bound	0	0	8,171,434
Best Estimate	0	0	11,633,073
Upper Bound	0	1,284,603	15,330,074
Effective Assessment Rates on Each Sample Bank			
Lower Bound	0.0	0.0	4.1
Best Estimate	0.0	0.0	5.8
Upper Bound	0.0	0.6	7.7

But if credits are used, FDIC will not receive the dollar amount that it projects is needed, so FDIC must set assessments taking into account the projected use of credits.

Based on the same economic projections as above, therefore, but assuming that every institution will use its credits, the following is the assessment rate that FDIC must impose to assure receipt of the needed funds:

First, let's repeat the amount that FDIC will need:	Lower Bound	Best Estimate	Upper Bound
Dollar Assessment Needed to Reach 1.15	0	0	618,290,468
Dollar Assessment Needed to Reach 1.20	531,915,817	1,684,034,644	2,900,028,896
Dollar Assessment Needed to Reach 1.25	2,688,969,085	3,903,430,492	5,181,767,324

Formula for Total Payments
to FDIC is
P = A - C
= R * (D+ΔD) – Cr * D
= (R-Cr) * D + R * ΔD

Where	Lower Bound	Best Estimate	Upper Bound
D = 1996 Total Assessable deposits =	3,347,337,947,000	3,347,337,947,000	3,347,337,947,000
D + ΔD = 2006 Total Assessable Deposits =	6,581,388,280,258	6,710,918,883,712	6,760,263,875,504
ΔD = Change in Total Assessable deposits =	3,234,050,333,258	3,363,580,936,712	3,412,925,928,504
and R = Assessment rate in bp			

For each P (i.e., the amount the FDIC will project is needed), we can solve for the requisite assessment R = (P + Cr*D) / (D + ΔD)			
Requisite 2007 Assessment (bp), assuming all credits are used:	Lower Bound	Best Estimate	Upper Bound
to Reach 1.15	7.1	7.0	7.9
to Reach 1.20	8.0	9.5	11.2
to Reach 1.25	11.2	12.8	14.6

Under this scenario, the three sample banks identified above face the following assessments, assuming 1.25 is the target DRR:

	Bank A: No growth since 1996	Bank B: Twice as many deposits as in 1996	Bank C: All deposits received after 1996
Credit	28,090,942	14,045,471	0
Assessment (in dollars) assuming no credits with 1.25 DRR			
Lower Bound	22,458,675	22,458,675	22,458,675
Best Estimate	25,644,549	25,644,549	25,644,549
Upper Bound	29,239,276	29,239,276	29,239,276
Sample Banks' Assessment Net of Credit			
Lower Bound	0	8,413,204	22,458,675
Best Estimate	0	11,599,078	25,644,549
Upper Bound	1,148,334	15,193,805	29,239,276
Effective Assessment Rates on Each Sample Bank (Computed as Net Assessment/$20B)			
Lower Bound	0.0	4.2	11.2
Best Estimate	0.0	5.8	12.8
Upper Bound	0.6	7.6	14.6

If our best estimate of 12.8 basis points is correct, then ING DIRECT faces an anti-competitive catch-up FDIC premium assessment in excess of $60 million.