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August 14, 2006

Via E-mail

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

Re: RIN 3064–AD07; Proposal to Implement the Dividend Requirements in the Federal Deposit Insurance Reform Act of 2005; 71 Federal Register 28804; May 18, 2006 (as revised in 71 Federal Register 36717; June 28, 2006)

Dear Mr. Feldman:

The Federal Deposit Insurance Corporation (FDIC) issued a Notice of Proposed Rulemaking (NPR) to implement the dividend provisions of the Federal Deposit Insurance Reform Act of 2005 (Reform Act)[1] and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Amendments Act).[2] The Amendments Act requires the FDIC to establish regulations by November 5, 2006, to implement the dividend provisions of the Reform Act, including rules governing the allocation, annual determination, and notification and payment of dividends, as well as administrative appeals for individual dividend amounts. The NPR would sunset in two years, after which the FDIC would apply a more comprehensive method for distributing dividends.

The American Bankers Association (ABA) appreciates the opportunity to comment on this proposal. ABA, on behalf of the 2.2 million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

In summary, ABA makes the following recommendations on the NPR's proposals:

- **Premiums Paid to FDIC Going Forward Should be Recognized in Calculating Any Dividend Payout.** Congress followed an important principle regarding dividends: that they be distributed based upon each bank's historical contribution to the capitalization of the insurance fund. This means giving proper credit to past

[1] Sections 2107(a) and 2109(a)(3) of the Federal Deposit Insurance Reform Act of 2005 (Title II of the Deficit Reduction Act of 2005, P.L. 109-171) amended Section 7(e)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(e).

[2] Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (P.L. 109–173) §5.

contributions as well as premiums paid going forward in calculating dividends.

- **Dividend Payouts Should be Made at the Same Time that Premiums are Assessed for the First Quarter of Each Year.** The current proposal would provide the dividend payment ***over a year*** after the year-end insurance fund exceeded 1.35 percent of insured deposits, the legislative trigger for initiating dividend payments. Such a considerable delay is counter to Congressional intent, particularly since the FDIC will continue to assess premiums throughout that time period, which will likely drive the reserve ratio of the fund even further above the statutory trigger during that year. The FDIC will have sufficient information at the time the first quarter assessment is made to pay dividends at that time. From a policy perspective, this is wise, since the payment of dividends is intended to avoid the excessive parking of banking resources (that can be used to fund economic growth) in the Deposit Insurance Fund.

- **Requests for Review Should Not Delay the Dividend Distribution.** The extremely long delay proposed in distribution of dividends is due to the resolution process for requests for review by individual banks. Clearly, the few requests for review that are expected can easily be handled on a case-by-case basis without having to delay the dividend distribution for all institutions.

I. Share of Dividends Should Account for Premiums Paid

An important principle underlies the distribution of dividends: that they be based on each institution's historic contributions to the FDIC. This includes contributions made to capitalize the FDIC fully in 1996 ***and premiums paid after that time***. The share of the 1996 assessment base was specified by Congress as the proxy for past contributions. Congress also provided that contributions since 1996, excepting that portion of the premium paid that reflects elevated levels of risk, be factored in when calculating the share of the dividend.[3]

Determining the methodology for past and future contributions will require care so that the dividend distribution is fair to all institutions. The low probability that dividends will be declared over the next two years allows the FDIC a window of time during which the agency may explore alternative methodologies for distributing dividends. We appreciate the FDIC's willingness to consider alternatives and to do so in a deliberate, open manner.

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[3] FDIC must consider the following factors:

(1) the ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date,

(2) the total amount of assessments paid on or after January 1, 1997, by an insured depository institution (including any predecessor) to the Deposit Insurance Fund (and any predecessor deposit insurance fund),

(3) that portion of assessments paid by an insured depository institution (including any predecessor) that reflects higher levels of risk assumed by such institution, [and]

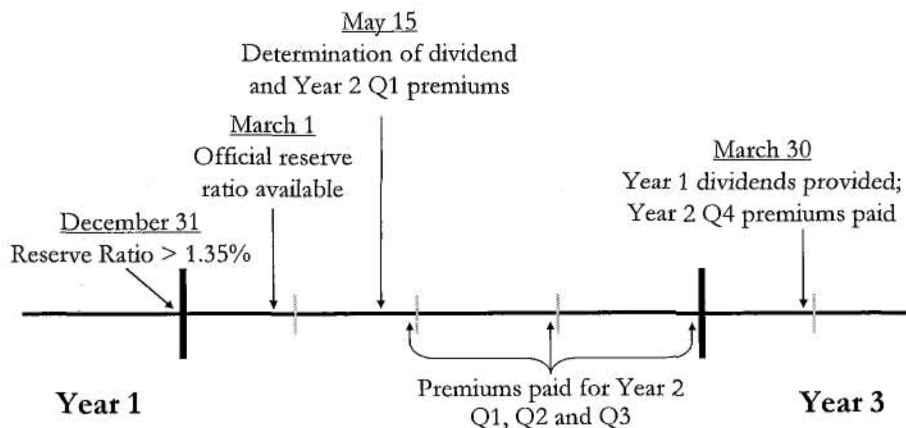
(4) such other factors as the [FDIC] may determine to be appropriate.

However, there may well be circumstances that would cause the reserve ratio to rise quickly – including a reversal of the very strong insured deposit growth as well as excessive premium assessments. Should it become apparent that a dividend may be declared during the next two years, the FDIC should move promptly to propose a permanent rule that would consider both past contributions (using the 1996 assessment base) and those paid under the new risk-based assessment system in calculating the dividend payout.

II. Dividend Payments Should Be Made Simultaneously With First Quarter Premium Assessments

In considering deposit insurance reform, Congress recognized that excessive funding of the FDIC had the potential to reduce lending and other financial services in banks' communities. In order to protect against an excessive build-up of the insurance fund and the sterile parking of valuable financial resources, Congress established the dividend system. Importantly, that system was designed to slow the growth of the fund automatically by requiring a dividend of half of any excess beyond 1.35 percent of insured deposits (except in extraordinary circumstances).

The FDIC, however, proposes an excessively long delay – ***over one year*** – before paying out dividends. At the same time, the FDIC would continue to collect premium income every quarter, thus compounding the excessive build-up in the fund, rather than checking its growth as intended.



The timing proposed is as follows:

- The Reform Act requires the FDIC to determine whether at the ***end of each calendar year*** the reserve ratio of the DIF exceeds 1.35 percent, thereby triggering a dividend requirement.
- The NPR proposes that the FDIC Board of Directors announce its dividend decision by ***May 15 of each year.***

- Once a dividend is declared, the proposal would provide it as an offset to the fourth quarter assessment – which is not billed until the ***first quarter of the following year, over a year after the fund exceeded the Congressionally-mandated trigger for dividends.***

Thus, any dividend declared for one year does not get paid for over a year. On top of this, the FDIC would continue to collect premium income for the first, second and third quarters, thus driving the excess reserve ratio even higher.

This timing is unreasonable. The FDIC has sufficient information to provide a dividend distribution ***at the same time as it assesses premiums for the first quarter***. The FDIC has by March an audited opinion of the Deposit Insurance Fund balance and the aggregate insured deposits level for December 31st of each previous year. Thus, at the close of the first quarter of each year, the FDIC will know what the reserve ratio was at the end of the previous year. ***The FDIC would use this very same information to determine the premium schedule for assessing institutions in the first quarter.*** Since both the decision on the amount of the dividend payout and the decision about the first quarter premium can be made simultaneously, it is both feasible and advisable to distribute the dividend (in either cash or via credits against the premium assessment) when the first quarter assessments are made.

It is true that the Reform Act allows the FDIC to override the dividend provision and suspend or limit the dividends – but only temporarily and under extraordinary circumstances, including a significant risk of large losses to the insurance fund over the next year. If the FDIC suspends or limits dividends, it must submit within 270 days a detailed explanation to the relevant committees of Congress. If the FDIC were to make such a determination in mid-May, as outlined in the proposed rule, then it would have nearly to the end of February of the following year to explain its decision. That would leave Congress with no more than three months to consider the report before the FDIC's next dividend decision. In the meantime, banks would continue to pay premiums to the FDIC. Surely Congress intended to give itself more time to review and evaluate the FDIC's decision.

The alternative schedule we propose is consistent with Congressional intent to slow the growth of the insurance fund and avoids sequestering resources that can otherwise be put to work by banks to fund economic growth and development in their communities. It also gives Congress the full period of time envisioned in the statute to review any FDIC decision to suspend or limit dividends.

III. Requests for Review Should Not Delay the Dividend Distribution

As discussed above, the proposed rule directs that the FDIC determine in May of each year what the dividend payout will be but delays payment of the dividend for several more quarters (even though premiums will continue to be billed). This schedule proposed in the NPR seems to rest on the assumption that some banks will request a review of the amount of their dividends, and it postpones payment of ***any*** dividends until these challenges are resolved.

There is no reason that the dividend distribution should be delayed until these individual requests are considered. It is expected that there would be few such requests, particularly since the FDIC will

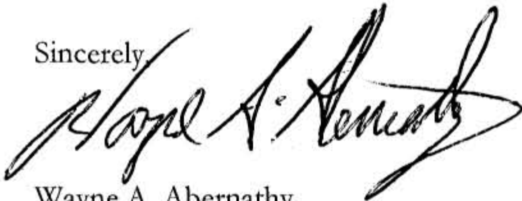
have already distributed credits (provided under the law) on nearly the same basis (except for yearly adjustments which should be easy to accommodate). Such remedies can be accomplished as part of the assessments billed for subsequent quarters.

Simply put, the few requests for review that are expected can be handled without having their resolution stop the distribution for all other institutions. The goal should be to return excess resources quickly to the industry, dealing with the few exceptions as they arise and not have the schedule for the few exceptions determine the schedule for the entire system.

IV. Conclusion

ABA appreciates this opportunity to comment on the NPR. The public, deliberative, and active approach of the FDIC in implementing this landmark legislation is to be commended. We are prepared to work with the FDIC staff throughout the imposition of the interim rule and revision to finalize the rule. If you have any questions, please contact Robert Strand at (202) 663-5350.

Sincerely,



Wayne A. Abernathy