THE FINANCIAL SERVICES ROUNDTABLE

Impacting Policy. Impacting People.

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March 7, 2007

Mr. Robert E. Feldman
Executive Secretary
Attn: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: Advance Notice of Proposed Rulemaking: Large-Bank Deposit Insurance Determination Modernization Proposal, RIN 3064-AC98

Dear Sir:

The Financial Services Roundtable[1] (the "Roundtable") appreciates the opportunity to comment on the Advanced Notice of Proposed Rulemaking (ANPR) published on December 13, 2006.[2] This ANPR is a revision of an ANPR the FDIC issued on December 13, 2005 as the first step in the process of developing new rules for determining the insurance status of deposits held by larger depository institutions. The revised ANPR would apply to 159 institutions with (i) over 250,000 deposit accounts and $2 billion in domestic deposits, or (ii) less than 250,000 deposit accounts but total assets exceeding $20 billion and total domestic deposits over $2 billion. Roundtable members comprise approximately two-thirds of the institutions to which the new rules would apply.

The Roundtable commented on the earlier ANPR in a letter dated March 10, 2006. In that letter, the Roundtable expressed concern about the proposed rule's excessive cost to the industry; the availability of data with regard to deposit accounts; the privacy of depositors' information; the timing of the implementation of the proposed rule; and other aspects of the proposed rule. We have most of those same concerns with the reproposed ANPR.

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[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine accounting directly for $50.5 trillion in managed assets, $1.1 trillion billion in revenue, and 2.4 million jobs.

[2] 71 *Federal Register* 74857 (Dec. 13, 2006).

While the Roundtable appreciates the policy goals behind the reproposed ANPR, we continue to believe that the burdens that it would place on the industry at this time and in the proposed fashion are not warranted. We note that the revised proposal would impose new regulatory burdens on large banks that are not required by Congress. In addition, these burdens would come shortly after a time when many new mandates are being imposed pursuant to legislation that was enacted by Congress to authorize the overhaul of the deposit insurance system and also at a time when the banking industry is preparing for revision of the Basel capital accords . It continues to be our belief that the revised ANPR should be abandoned until a more practical and less burdensome approach can be vetted and until a real need for its implementation can be demonstrated.

<u>Background</u>

In reproposing this ANPR, the FDIC has retained the essence of the 2005 ANPR. The new ANPR also provides an extensive analysis of the 28 comment letters filed with regard to the earlier ANPR and supplies data in support of the reproposed rule. The industry comments on the earlier ANPR generally were not supportive of the proposed rule, with the majority of the comment letters expressing opposition to the proposed rule, stating that the costs of the proposed rule outweighed its benefits or that the three options offered under the proposed rule were not needed.

The depository institutions ("Covered Institutions") affected by the rule would continue to included all banks and thrifts which have at least $2 billion in domestic deposits and at least 250,000 domestic deposit accounts. The 2005 ANPR estimated that 145 institutions would meet this size test, based on June 30, 2005, data. Due to continuing industry consolidation, charter collapsing within holding companies, and deposit growth, the pending ANPR estimates that the proposed rule now would apply to 152 institutions. Continued deposit growth undoubtedly will raise this number over time. Additionally, the reproposed rule encompasses a new class of institutions – i.e., those with less than 250,000 deposit accounts, but more than $2 billion of domestic deposits and $20 billion in total assets. The FDIC estimated that seven institutions presently fall in this category.

Perhaps the greatest change in the proposed rule, though, is the concept of dividing Covered Institutions into two categories – Tier 1 ("the largest, most complex institutions") and Tier 2 ("institutions of lesser complexity"). Tier 1 institutions would be required to be prepared to supply a unique depositor identification number for each depositor while Tier 2 institutions would not be subject to that requirement. However, the pending ANPR does not provide any specific insight as to how the FDIC would categorize a Covered Institution as Tier 1 or Tier 2 or under what circumstances an institution would move from Tier 2 to Tier 1, or vice versa.

<u>Cost-benefit trade-off</u>

New rules governing the determination of the insurance status of deposit accounts in large failed banks should be implemented only if the <u>incremental net benefit</u> of doing so will exceed, <u>on a present-value basis</u>, the cost of implementing and maintaining the proposed deposit-insurance determination system. Whatever is implemented will impose costs on the FDIC as well as on the banks required to implement the proposed data system. While the FDIC would be the initial beneficiary of any reduction in the cost of resolving large, failed banks, that reduction would flow through to the entire banking industry, in the form of lower deposit-insurance premium assessments.

Benefits The FDIC states in the pending ANPR that "benefits also will accrue" and that "even if the likelihood of a failures [sic] among Covered Institutions is perceived to be low, it is not zero." However, the FDIC provides no hard statistics as to the incremental benefit to it, and therefore to the banking industry, that the proposed rule would generate relative to the present rules and procedures for resolving a failed bank or thrift. The Roundtable recommends that before issuing a Notice of Proposed Rulemaking (NPR) related to any changes in determining the insurance status of deposit accounts in large banks it publish for public comment its calculations as to the range of additional benefits that the proposed rule would generate under various economic scenarios.

As a complement to those calculations, the Roundtable recommends that the FDIC publish for public comment the stages that a large bank and its supervisor would go through before the bank reached the point where it would be deemed to be a 'failed' institution. This analysis is needed so that the probability of a large institution becoming a failure can be assessed. These stages, which almost certainly would be spread over several years, include recapitalizations, downsizing, management changes, strategic redirections, acquisition by a healthy bank, supervisory interventions, and other actions which would steer the institution away from failure long before it became a failed institution. As a point of fact, there have been instances when this has occurred among larger banks - most recently when Riggs Bank was acquired by PNC. It may be that, given these stages, the probability of a large bank failing at a cost to the FDIC is so low and the cost upon failure being so low, that the additional benefit provided by the proposed rule, relative to the FDIC's present procedures, is essentially zero.

Costs The Roundtable is concerned that the FDIC has not properly estimated the cost of implementing the proposed rule and maintaining the related information systems. In particular, the Roundtable is concerned that the FDIC has not gathered any cost information in a systematic manner as to what it would cost Covered Institutions to not only implement the proposed rule, but also to maintain deposit data in a manner that complies with the proposed rule. The implementation cost data provided in Table 4 of the ANPR does not constitute a rigorous cost estimate gathered from a representative sample of Covered Institutions which could then be extrapolated to a realistic cost estimate for all Covered Institutions. Instead, these cost estimates are fairly ad-hoc and not prepared in accordance with a predetermined cost-survey methodology. The FDIC should conduct a systematic study of the cost of implementing the proposed rule, including its own costs in ensuring compliance with the proposed rule.

Perhaps of greater importance, the cost figures in Table 4 do not include any estimate of the ongoing costs Covered Institutions would incur in gathering the necessary data for new deposit accounts and maintaining data integrity for existing accounts. It may be that the annual ongoing costs of complying with the proposed rule far exceed the initial implementation costs. For example, the data in the ANPR's Table 1 show that the ten largest institutions had 183.9

million deposit accounts in 2006. Assume that 20% of these accounts experience some type of change every year – an account is closed, to be replaced by a new account, or data about an account changes – that would equate to almost 37 million new accounts, closed accounts, and account changes annually. While much of the data for these transactions already is being collected, there will be costs associated with collecting data required by the FDIC that the bank does not believe it needs to collect for business purposes, specifically determining the account's deposit-insurance status as that relates to a customer's other accounts with that bank. For example, ten dollars of <u>additional cost</u> per account transaction would equate to $370 million of additional cost <u>per year</u> for just these ten institutions.

The FDIC apparently has relied on the statements of software vendors that the cost of implementing various aspects of the proposed rule, such as the provisional hold, would be "fairly modest." The Roundtable recommends that the FDIC heavily discount software-vendor observations about the potential cost of the proposed rule to the Covered Institutions since the vendors have an obvious self interest with regard to the reproposed rule – it would generate substantial additional revenue for them. The ANPR states that "many Covered Institutions use deposit software supplied by a common vendor or have their deposits serviced by a common servicer" and that "the FDIC believes this common usage would mitigate implementation costs." In fact, there is very little commonality across the deposit-accounting systems of Covered Institutions because each institution, over the years, has customized its systems to meet its own needs and to integrate the acquisition of other banks. This absence of systems commonality will greatly increase the cost of implementing the proposed rule.

<u>Differentiating Tier 1 from Tier 2 institutions</u>

The Roundtable is concerned that the new ANPR provides no indication as to how the FDIC will differentiate Tier 1 Covered Institutions from Tier 2 Covered Institutions or how Covered Institutions will be shifted between the two tiers. The terms "the largest, most complex institutions" and "institutions of lesser complexity" hardly provide the basis for such a differentiation. The distinction between the two tiers is quite important because Tier 1 institutions, which are even less likely to fail than Tier 2 institutions, will be required to "to have in place systems that could provide a unique depositor identification ("ID") for each depositor," while Tier 2 institutions will not have to install such systems.

The cost differential between being a Tier 1 institution and a Tier 2 institution could be quite significant, particularly given the number of customer relationships the largest banks maintain. For example, according to Table 1 in the ANPR, the three largest institutions, in 2006, had respectively, 50.6 million, 30.4 million, and 22.7 million deposit accounts. Assuming an average of three accounts per depositor, that would translate into, respectively, the assignment of 16.9 million, 10.1 million, and 7.6 million unique depositor IDs. A cost of even a few dollars for establishing each depositor ID would add up to tens of millions of dollars of cost that Tier 1 banks would incur, but that their Tier 2 competitors would not. Further, as noted above, due to constantly changing customer relationships, the Tier 1 institutions would have to spend millions of dollars annually handling these changes, costs their Tier 2 competitors would not incur.

The Roundtable strongly recommends that before proceeding to an NPR for its deposit-insurance determination proposal that it develop and publish for comment data that third-parties can analyze in a rigorous manner as to the additional cost the unique depositor ID requirement would impose on Tier 1 institutions and the additional benefit that would be derived from imposing the additional cost on Tier 1 institutions. That is, in the unlikely case that the overall additional benefit of the proposed rule exceeds the additional cost of implementing and complying with the proposed rule on an ongoing basis, the FDIC should provide a comparable additional cost-additional benefit analysis for any unique-depositor-ID requirement imposed on Tier 1 institutions, but not on Tier 2 institutions.

Privacy

The Roundtable continues to be concerned about the privacy implications of the proposed rule. Regardless of the safeguards taken, the existence of information opens the door to the use of that information in illegal or unintended ways. Given the ease with which data can be transmitted today, it has become more important than ever not to collect, or aggregate, personal information unless there is a strong, ongoing need to do so. Data should not be collected or aggregated by depositor only for use in the highly unlikely situation that the depositor's bank will become a failed institution. The potential misuse of such data is a difficult-to-quantify cost of the proposed rule, but certainly a negative benefit the FDIC should take into consideration in evaluating the merits of the proposed rule.

Timing of the proposal relative to other regulatory demands

As mentioned above, the Roundtable continues to be gravely concerned about the cost implications for the American banking industry of expensive new regulatory burdens and particularly the burden new regulations impose on bank management and scarce technical resources. This is an especially keen concern in light of the forthcoming changes in the Basel capital requirements and the FDIC's new risk-based premium assessments. Now is not the time for the FDIC to be layering on a costly new deposit-insurance determination requirement whose net benefit will be speculative. Instead, the FDIC should defer further consideration of a new deposit-insurance determination rule until after the new Basel capital rules and the risk-based deposit-insurance assessment system have been fully implemented.

Other ways of accomplishing the goals of the proposed rule

The Roundtable continues to remain highly skeptical of the net additional benefit of the proposed rule. However, if the FDIC believes it needs to be prepared to deal with the potential failure of a large bank, then it should limit those preparations to just those large institutions that are approaching failure. The signal that a depository institution is headed towards failure could be its deposit-insurance premium rate, its CAMELS rating, or some other measure of supervisory concern. For instance, the FDIC might start to install systems to administer a least-cost resolution of a large bank only if that bank had been rated CAMELS 3 or worse for at least six months.

Limiting the deposit-insurance determination process to the most troubled banks would, among other things, minimize the resources the FDIC must expend in carrying out its deposit-insurance responsibilities. The Roundtable's concern for resource utilization parallels Chairman Bair's recent call for "fiscal responsibility" at the FDIC.[3]

Conclusion

The Financial Services Roundtable understands the FDIC's continuing concerns that have led it to repropose this ANPR and sincerely appreciates the importance of the ability of the FDIC to determine quickly the insurance status of all deposit accounts in a failed institution. However, we continue to believe that the reproposed solutions outlined in the pending ANPR would be excessively costly and burdensome to large banks without providing any benefit to the FDIC, they raise implementation and feasibility questions, and they could trigger public concerns about the privacy of their banking data. We would welcome the opportunity to work with the FDIC to develop alternative solutions to addressing the FDIC's concerns regarding the resolution of a failed FDIC-insured institution. If you have any questions, please feel free to contact me.

Sincerely,

Richard M. Whiting

Richard M. Whiting

[3] Adler, Joe, "Bair Expects Congress to Tackle ILC Issue," American Banker, March 1, 2007.