August 16, 2006

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Dividends
RIN 3064-AD07
71 FR 28804 (May 18, 2006)

Dear Mr. Feldman:

America's Community Bankers (ACB)[1] is pleased to comment on the Federal Deposit Insurance Corporation's (FDIC) proposal to establish a dividend payment policy in its deposit insurance regulations.[2] This is one of several proposals recently issued by the FDIC to implement the Deposit Insurance Reform Act of 2005 (Reform Act).[3] The proposed rule would establish an interim process for the FDIC's annual determination of whether to declare a dividend or whether a dividend should be limited or suspended. The proposal would also set forth procedures for calculating the aggregate amount of any dividend, allocating the aggregate amount among insured depositories, and paying any dividend to individual institutions.

ACB appreciates the swift, thoughtful, and transparent process the FDIC has used to implement the changes mandated by the Reform Act.

ACB Position

ACB supports the FDIC's proposed implementation of the dividend provisions contained in the Reform Act. We believe that adopting a temporary, two-year framework for the payment of dividends will enable the FDIC to meet the timing requirements established in the Reform Act while ensuring that the banking industry and the FDIC are able to fully consider the various options for allocating dividends from the deposit insurance funds in the future. This methodology supports our belief that the FDIC should draw upon the flexibility provided under the Reform Act to develop a sound dividend policy plan which will best serve the banking

[1] America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit *www.AmericasCommunityBankers.com*.
[2] 71 Fed. Reg. 28804 (May 18, 2006).
[3] The Reform Act was included as Title II, Subtitle B of the Deficit Reduction Act of 2005, Public Law 109-171, 120 Stat. 9 (February 8, 2006).

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industry in the long run. Finally, we support the FDIC's proposed definition of "predecessor" for the purposes of allocating dividends, as it is logical and consistent with the general expectations of the banking industry.

Background

Deposit Insurance Reform Act. The Reform Act mandates the following key changes:

- Merges the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF) into a new fund, the Deposit Insurance Fund (DIF).
- Increases the coverage for retirement accounts to $250,000 and indexes the coverage limits for these accounts to inflation.
- Grants a one-time assessment credit to each eligible depository institution based on the institution's assessment base as of December 31, 1996.
- Allows the FDIC to price deposit insurance according to risk for all insured institutions at all times.
- Enables the FDIC Board of Directors to establish a Designated Reserve Ratio (DRR) between 1.15 percent and 1.50 percent and allows the FDIC to manage the pace at which the reserve ratio varies within this range.
- Allows the FDIC to update other operational policies concerning deposit insurance for assessment collections, dividend payments and advertising for insured accounts.

The Reform Act was signed into law by President Bush on February 8, 2006. The Act mandates a 270 day implementation deadline, giving the FDIC until November 5, 2006 to put the principles of the Reform Act into practice for all insured depository institutions.

Dividend Proposal. The Reform Act requires the FDIC to declare dividends from the Deposit Insurance Fund (DIF) if the reserve ratio equals or exceeds 1.35 percent of estimated insured deposits at the end of a calendar year. In addition, the FDIC must establish a method for calculating, declaring, and paying dividends and consider the following factors when allocating dividends:

- 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.
- The total amount of any assessments paid on or after January 1, 1997 by an insured depository institution (including any predecessor) to the deposit insurance funds.
- That portion of assessments paid by the institution that reflects higher levels of risk assumed by the institution; and
- Such other factors as the FDIC deems appropriate.

The FDIC proposes initially to adopt a simple methodology for allocating dividends from the Deposit Insurance Fund. This system largely tracks the factors the Reform Act requires the

FDIC to consider when allocating dividends. This initial rule would remain in place until December 31, 2008. In the meantime, the FDIC would undertake an additional rulemaking to develop a more comprehensive system for allocating future dividend payments.

Establishment of Temporary Framework

ACB agrees with the FDIC's proposed approach for implementing the dividend requirements set forth in the Reform Act. Creating a temporary dividend scheme will enable the FDIC to develop a more thorough methodology for declaring and allocating dividends than is possible given the short implementation time established in the Reform Act. We believe that this plan will enable the FDIC to create a fair and logical dividend system that is well-thought out.

Our support of this approach is reinforced by the fact that we do not expect the Deposit Insurance Fund to generate enough revenue to trigger dividend payments before the proposed rule sunsets on December 31, 2008. The reserve ratio of the DIF currently stands at 1.23 percent. Given recent rates of deposit growth, it is unlikely that the reserve ratio would increase to 1.35 percent over the next two years. In addition, many institutions will receive a credit against future insurance assessments that will, in effect, reduce or eliminate the deposit insurance premiums that those institutions would otherwise pay over the next few years.

ACB stands ready to work with the FDIC to craft a more permanent rule. We look forward to discussing with community bankers and the FDIC various options for distributing dividends that may be issued after the initial two-year period.

Definition of Predecessor

ACB also agrees with the FDIC's proposed definition of the term "predecessor." The Reform Act does not define the term "predecessor" for purposes of the distribution of dividends to insured depository institutions. Nevertheless, the definition of this term is important because it would affect the amount of a dividend an institution would receive if it has merged with or acquired another bank or savings association.

The FDIC proposes to define a predecessor as an institution that combined with another institution through merger or consolidation and did not survive as an entity. This term is consistent with the FDIC's use of the term "successor" in the agency's proposed rule that would implement the Reform Act's assessment credit provisions. ACB believes the proposed definition of predecessor is consistent with well-established principles of corporate law and general expectations of the banking industry.

In a corporate merger or acquisition, the rights and privileges of an acquired company are transferred to the resulting entity. Therefore, a financial institution steps into the shoes of a bank or savings association that it acquires or with which it merges. The resulting institution receives all of the rights, powers, duties, and liabilities of the terminated institution. We believe that it is reasonable and appropriate to apply this principle when calculating an institution's dividend allocation.

Furthermore, the proposed definition of "predecessor" will enable the FDIC to use readily available data to determine an institution's dividend allocation. By utilizing past regulatory reports and SEC filings, the FDIC will be able to clearly identify the 1996 assessment base of the resulting institution and any deposit insurance premiums paid by that institution or any of the institutions that it has merged with or acquired.

Conclusion

ACB appreciates the opportunity to comment on this important issue. We believe that adopting a temporary, two-year framework for the payment of dividends will enable the FDIC to ensure that the banking industry and the FDIC are able to fully consider the various options for allocating dividends from the deposit insurance funds while meeting the timing requirements established in the Reform Act. We look forward to working with the FDIC to develop a more comprehensive dividend scheme over the next two years.

If you have any questions about our comments, please do not hesitate to contact the undersigned at (202) 857-3121 or via email at pmilon@acbankers.org, Jodie Goff at (202) 857-3158 or via email at jgoff@acbankers.org, or Krista Shonk at (202) 857-3187 or via email at kshonk@acbankers.org.

Sincerely,

Patricia A. Milon
Chief Legal Officer and Senior Vice President
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