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James S. Keller
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August 9, 2006

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

Re: Proposed Rulemaking: One-Time Assessment Credit, RIN 3064-AD08 ("Proposed Rule")

Dear Mr. Feldman:

PNC Bank, National Association ("PNC Bank"), Pittsburgh, Pennsylvania, appreciates the opportunity to comment on the Proposed Rule issued by the Federal Deposit Insurance Corporation ("FDIC") as part of the implementation of the Federal Deposit Insurance Reform Act of 2005 ("Reform Act") (71 Federal Register 28809 (May 18, 2006)).

PNC Bank is the principal subsidiary bank of The PNC Financial Services Group, Inc., ("PNC"), Pittsburgh, Pennsylvania, which is one of the largest diversified financial services companies in the United States, with $94.9 billion in assets as of June 30, 2006. PNC engages in retail banking, institutional banking, asset management, and global fund processing services. PNC Bank has branches in the District of Columbia, Florida, Indiana, Kentucky, Maryland, New Jersey, Ohio, Pennsylvania and Virginia. PNC also has a state non-member bank subsidiary, PNC Bank, Delaware, Wilmington, Delaware, which has branches in Delaware.

De Facto Merger

PNC participated in the drafting of, and is generally supportive of, the comment letters being submitted by the Financial Services Roundtable and American Bankers Association on the Proposed Rule. By this letter, PNC seeks to set forth its strong support for inclusion in the definition of "successor" a business combination that results from a *de facto* merger. We believe that to do otherwise would be contrary to Congressional intent and to the best interests of the FDIC.

The Reform Act provided the FDIC broad discretion in defining the term "successor" for the purposes of the one-time assessment credit set forth in the Reform Act. In its proposal, the FDIC defined ''successor'' as the resulting institution in a merger or consolidation, as it found such a definition to be "consistent with the clear purpose of the one-time assessment credit—that is, to recognize the contributions that some insured depository institutions made to capitalize the deposit insurance funds and conversely to recognize the fact that many newer institutions have never paid assessments because they were chartered after the reserve ratios of BIF and SAIF reached 1.25 percent and most institutions were charged nothing."

The broad Congressional definition of "successor," and the FDIC's recognition that the utilization of the term successor should advance the Congressional purpose of recognizing those entities that have made the requisite capital contributions to the fund, make good sense from a public policy perspective. Good public policy should:

- Encourage business combinations that make sense for the fund, advancing safety and soundness goals; hence, not differentiate among "successors" on the basis of a narrow legalism.

- Make sure that the reward goes to a business combination that fully reflects predecessor entities that did in fact capitalize the deposit insurance funds, rebuilding them up to the required 1.25% statutory minimum.

There is at least one class of de facto mergers that meets these standards – a purchase and assumption transaction where both the purchasing and selling institutions contributed to the capitalization of the deposit insurance funds and where the acquiree in essence ceases to do business. Indeed, determining that a purchase and assumption transaction is fully included in the Reform Act credit program meets other worthy public policy goals.

- Typically a purchase and assumption transaction of this sort is done where the acquiree is or is suspected to be a troubled institution or where the acquiror either does not have the time or ability to assess the problems of the acquiree. Facilitating this type of transaction is of great benefit to the FDIC fund for at least two reasons:

    1. it encourages the more rapid acquisition of a troubled institution, decreasing the likelihood that the FDIC fund will have to engage in a liquidation and/or make payments from the insurance fund to claimants; and

    2. it decreases the likelihood that the acquirer will itself get in trouble by acquiring a troubled institution, thus further insulating the FDIC fund from a potential liquidation and claims.

- Such a transaction would result in the successor bank having all of the characteristics that the FDIC deemed to be critical for a "successor" determination. Importantly, like true mergers and consolidations, a de facto merger requires federal bank regulatory approval under section 18(c) of the FDI Act, pursuant to the same procedural and substantive rules that apply to true mergers and consolidations.

PNC believes that the acquisition by PNC Bank of Riggs Bank, National Association ("Riggs Bank"), provides a compelling example of why a de facto rule generically, and a purchase and assumption transaction as part of that rule in particular, is consistent with good public policy and the legitimate concerns of the Congress and the FDIC.
When PNC Bank initially applied to the Office of the Comptroller of the Currency ("OCC") to acquire Riggs Bank, the acquisition was structured as a merger of Riggs Bank with and

into PNC Bank.[1] If the acquisition had gone forward as originally structured, PNC Bank would have been the "successor" to Riggs Bank under the FDIC's Proposed Rules. However, subsequent to the filing of that initial application, certain legal actions regarding Riggs Bank made it inappropriate for the Riggs Bank charter to be merged into the PNC Bank charter, and the transaction at the bank level was restructured as a purchase and assumption transaction.

- The transaction was a purchase and assumption in form, but for all practical purposes was, in fact, a merger.
    - It changed Riggs Bank from a stand-alone operating banking organization to part of PNC Bank. Accordingly, after the transaction, which was pursuant to an application filed with and approved by, the OCC,[2] all the Riggs Bank branches and deposits, and essentially all the assets, became PNC Bank's, and all of the Riggs Bank deposit-taking and lending business is now conducted under the name of PNC Bank.[3]

- Riggs Bank terminated its deposit insurance pursuant to an application filed with, and approved by, the FDIC;

- Riggs Bank was merged out of existence into a de novo nonbank subsidiary of PNC pursuant to an application filed with, and approved by, the OCC.

- The only reason that the three transactions did not take place essentially simultaneously is that PNC had to await receipt of the FDIC certification of termination of Riggs Bank's deposit insurance before merging Riggs Bank out of existence. Nevertheless, the final result was exactly the same as if Riggs Bank had been merged with and into PNC Bank as originally contemplated.

- Doing the transaction as a purchase and assumption was a benefit from a safety and soundness perspective for the fund, protecting the successor bank.

- Both PNC Bank and Riggs Bank had contributed to the recapitalization of the fund.

It would be a perverse result -- and one not contemplated either by Congressional intent in the Reform Act nor in the concepts that underlie the FDIC's proposed rulemaking in this area -- if a transaction designed in large part to be safer and provide better protection for the fund

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[1] Immediately prior to the bank merger, Riggs National Corporation, the bank holding company parent for Riggs Bank, was to be merged into PNC, the parent bank holding company for PNC Bank.

[2] The only portions of the initial application to the OCC that were amended as a result of changing the form of acquisition from a merger to a purchase and assumption were: (1) the submission of a draft purchase and assumption agreement to be entered into by PNC Bank and Riggs Bank; and (2) revised resolutions and shareholder consents.

[3] The only assets not transferred from Riggs Bank to PNC Bank were two leases.

was disadvantaged because of certain, practically irrelevant, legalisms. In every real sense, PNC Bank is the "successor" to Riggs Bank as contemplated by Congress and the FDIC.[4]

In sum, we would urge the FDIC to include a de facto test as part of its final rule implementing the Reform Act, and include purchase and assumptions arrangements like the PNC Bank/Riggs Bank transaction as part of that de facto test.

We believe that the FDIC has set forth in the Preamble the essential elements of a *de facto* merger that should be included in the final rule. Attached to this letter is a recommended possible amendment to the proposed rule.

Conclusion

PNC Bank appreciates the opportunity to comment on the proposal, and hopes that these comments will be useful to the FDIC in its further actions on this matter.

Sincerely,

James S. Keller

James S. Keller

cc: Gary TeKolste
Michael Carroll

Attachment

[4] In the Preamble to the proposed rule, the FDIC discussed the operational issues regarding its ability to maintain the appropriate records on transactions if it were to implement a "follow-the-deposits" rule, with branch sales or other deposit transfers, to determine which depository institution is the "successor."

PNC believes that a purchase and assumption transaction as described above would not raise these issues because (1) there would be little difficulty in obtaining the necessary data, since the information retained by both the surviving depository institution and its primary federal bank regulator would be as comprehensive as that retained for true mergers and consolidations; (2) such transactions would be relatively few in number; and (3) there would be no other depository institution claiming the assessment credit. Accordingly, the potential record keeping issue should not be a reason to exclude purchase and assumption transactions, as described above, from the definition of "successor."

RECOMMENDED AMENDMENT TO THE PROPOSED RULE
TO INCLUDE CERTAIN ACQUIRORS BY PURCHASE AND ASSUMPTION
TRANSACTIONS IN THE DEFINITION OF "SUCCESSOR"

"Section 327.31 Definitions.

For purposes of this subpart and subpart C:

* * *

(c) *Conveying institution* refers to the institution that merges or consolidates with the resulting institution or transfers its assets and liabilities to the resulting institution in a merger.

(d) An *eligible insured depository institution* means an insured depository institution that....

(e)(1) Merger means any transaction in which an insured depository institution merges or consolidates with any other insured depository institution. Notwithstanding part 303, subpart D, for purposes of this subpart B and subpart C of this part, *merger* does not include all transactions in which an insured depository institution either directly or indirectly acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution.

(2) Notwithstanding section (e)(1) above, *merger* does include the following transactions in which an insured depository institution either directly or indirectly acquires the assets of, or assumes liability to pay any deposits made in, any other depository institution:

(a) the resulting institution directly or indirectly acquires substantially all the assets of, and assumes liability to pay all deposits made in, the conveying institution, and this transaction is approved by the resulting institution's primary federal bank regulator pursuant to the Bank Merger Act;

(b) the conveying institution terminates its deposit insurance pursuant to FDIC approval; and

(c) the conveying institution is liquidated or merged out of existence.