STATE STREET.

Stefan M. Gavell
Executive Vice President and Head
of Regulatory and Industry Affairs

State Street Corporation
State Street Financial Center
One Lincoln Street,
Boston, MA 02111-2900

Telephone: 617-664-8673
Facsimile: 617-664-4270
smgavell@statestreet.com

August 16th, 2006

Via email: Comments@FDIC.gov

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

RE: RIN 3064-AD08

Notice of Proposed Rulemaking to Implement the One-Time Assessment Credit

Dear Mr. Feldman:

State Street Corporation ("State Street") welcomes the opportunity to comment on the Notice of Proposed Rulemaking ("NPR") issued by the Federal Deposit Insurance Corporation ("FDIC") to implement the One-time Assessment Credit ("Credit") as enacted by the Federal Deposit Insurance Reform Act of 2005 ("Reform Act").

Headquartered in Boston, Massachusetts, State Street specializes in providing institutional investors with investment servicing, investment management and investment research and trading. With \$10.9 trillion in assets under custody and \$1.5 trillion in assets under management as of June 30th, 2006, State Street operates in 26 countries and 103 markets worldwide. As a bank in existence on December 31st, 1996, and which paid Federal deposit insurance assessments prior to that date, State Street's subsidiary bank, State Street Bank and Trust Company, is an "eligible insured depository institution" under the Reform Act, and is therefore entitled to a share of the Credit that is the subject of the FDIC's pending NPR.

State Street is supportive of the approach proposed by the FDIC to implement the Credit. We are particularly supportive of the FDIC's proposed definition of a "successor" institution, which correctly follows the "merger or consolidation" rule, rather than the far less equitable and practical "follow the deposits" rule. We agree with the FDIC's view that the proposed definition is consistent with Congressional intent, and provides the most equitable treatment for institutions which capitalized the deposit insurance funds prior to 1997. Our comments are focused on this definition of "successor."

I. The Purpose of the Transitional One-Time Assessment Credit

We agree with the FDIC that the clear purpose of the Credit is, first, "to recognize the contributions that some insured depository institutions made to capitalize the deposit insurance funds," and, secondly, "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."

Since 1996, most banks have paid no premiums for deposit insurance. Nevertheless, all banks have benefited from the existence of strong, fully-capitalized Federal deposit insurance funds. This includes banks created after 1996 as well as those with significantly expanded deposit bases. The deposit insurance provided to these "free-riders" has in fact been subsidized by the payments of other banks, including State Street, through contributions made in previous years.

According to the legislative history of the Reform Act, a central purpose of the reforms is to "ensure that the value, benefit and costs of deposit insurance are allocated equitably and fairly."[1] Former FDIC Chairman Donald Powell made a similar point in early 2005: "the goal of reform is to distribute the assessment burden more evenly over time and more fairly across insured institutions."[2] As part of an integrated approach to creating a more equitable system for funding the deposit insurance system, the bill "returns assessments in the form of refunds, credits, and dividends to insured depository institutions."[3]

The Credit is intended to ensure that, during a transition period, relatively new entrants to the industry and fast-growers pay the bulk of the premiums. As James Gilleran, then Director of the Office of Thrift Supervision stated during a Congressional oversight hearing on FDIC reform, "providing credits to institutions that have paid assessments into the system would address existing inequities in the system attributable to free-riders that have not contributed to the fund."

In enacting the Credit, Congress recognized that the significant deposit insurance assessments paid by banks prior to 1997 to recapitalize the deposit insurance funds came at the expense of each bank's profitability --- a cost ultimately impacting each bank's shareholders. Other banks benefited from the assessments paid by others, but themselves contributed little or nothing to the fund. The Credit is intended to address this

---

1 House Report; http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr067&dbname=109&.

2 Statement of Donald E. Powell Chairman Federal Deposit Insurance Corporation on Deposit Insurance Reform Before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services U.S. House of Representatives March 17, 2005.

3 House Report; http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr067&dbname=109&.

inequity, and the definition of "successor" adopted by the FDIC should reflect this Congressional intent.

II. A Merger or Consolidation Rule Best Reflects Congressional Intent and the Purpose of the Credit

We agree with the FDIC that an approach that links the Credits to the institutions that capitalized the deposit insurance funds is most consistent with the Credit's intended purpose. This "merger or consolidation" rule recognizes that it is the original statutorily eligible institution—and not subsequent purchasers of its deposits or branches—that paid the deposit insurance premiums and shouldered the burdens of capitalizing the insurance funds.

As noted above, Congress intended the Credit to offset past payments by banks, not future payments to be paid on deposits. Congress created a separate mechanism, the dividend system, to address possible future overpayment of premiums by banks. The Credit is intended to provide relief for institutions that actually paid deposit insurance premiums prior to 1997. Only banks that helped capitalize the funds, or their successors by merger, should be permitted to use the Credit to offset future premiums.

As the FDIC notes in the NPR, there has been discussion of an alternative approach, which proposes that the Credit be somehow linked to deposits, not institutions, and that any transfer of deposits automatically results in a transfer of the Credit. This "follow the deposits" approach contravenes the intent of Congress, and would deny institutions that capitalized the fund prior to 1997 a fair allocation of Credits. Because a "follow-the-deposits" rule effectively treats the current location of the deposits as dispositive, its adoption could result in a situation where institutions that have never paid deposit insurance premiums receive Credits intended to offset past payments.

The arguments advanced by "follow-the-deposits" proponents are not persuasive. One such argument is that because the Credit is to be allocated based on past deposits, the current owner of any given deposits is entitled to the Credit. Such an interpretation ignores the intent of Congress --- by relying on a single snapshot from the past, Congress clearly intended the institutions that paid the pre-1997 assessments to receive the Credit.

Those who advocate a "follow-the-deposits" approach also argue that whatever purchase price they paid for the deposits somehow compensated sellers for previous payments to capitalize the fund, or for potential future Credits. In the case of State Street, which sold certain deposits to another institution in 1999, this is simply incorrect. Since no such credits existed at the time of the transaction, or had even been proposed by the FDIC, their potential value several years later, after protracted consideration by Congress, was not a factor in the pricing of these transactions.

Thus, the consequence of expanding the definition beyond the "mergers or consolidations rule" to encompass deposit purchases and assumptions would be to exacerbate the free-rider problem and inequitable distribution of fund capitalization costs that the one-time credit was designed to resolve. A "follow-the-deposits" approach should therefore be rejected.

III. "Following the Deposits" is Operationally Infeasible

We agree with the FDIC that operational viability is an important criterion in assessing competing definitions of "successor." A definition that takes into account technical feasibility and seeks to reduce unnecessary administrative burdens is within the FDIC's fair exercise of its discretion to implement the reforms. Effectuating the purpose of the Credit in a fair and equitable manner must take into account what is possible to accomplish in actual practice.

As the FDIC observes in its NPR, the past ten years of consolidation in the industry has featured at least 1,400 and possibly over 1,800 deposit transfer and branch sale transactions. A "follow-the-deposits" approach would therefore likely initiate costly disputes between deposit sellers and deposit purchasers. Adjudicating competing claims to credits arising from myriad deposit transfers would be an enormously difficult and uncertain process.

A major operational benefit of the proposed "merger or consolidation" rule is the simplicity, availability, and reliability of the data required to make accurate Credit allocations. The FDIC currently holds all the data it needs to make these allocations. Under a "follow the deposits" approach, collecting the necessary data to make accurate Credit allocations is far more complex. The FDIC does not routinely collect data regarding deposit transfers outside of a merger or a consolidation. As a result, the FDIC would have to collect additional information from the industry or from other, external, sources before the Credit could be fully implemented.

"Following the deposits" would impose undue burdens on both the FDIC and banking institutions. While the imposition of such regulatory burdens and potential litigation costs might be justifiable if the approach were clearly in line with Congressional intent, this is not the case. Instead, the approach undermines Congressional intent and is substantively unsound and inferior to the "merger or consolidation" definition proposed by the FDIC.

IV. De Facto Merger

As noted above and in the FDIC's NPR, one of the advantages of the "merger or consolidation rule" is the "clear, bright line" it provides for determination of a "successor" institution. We do not disagree, however, with the notion that there may be limited instances where the terms of a corporate transaction substantially mirror those of a formal "merger or consolidation." This would include situations where a firm acquired substantially all of the assets and deposit liabilities of an institution, which then terminated its deposit insurance and/or was liquidated out of existence. In such cases, it is reasonable for the FDIC to include within the definition of "merger" for the purposes of the Credit, a regulatory definition of a "de facto merger".

State Street is concerned, however, that adoption of an overly broad definition of "de facto merger" could undermine the clear and consistent standard provided by the FDIC's proposed definition of a "successor" institution. We therefore strongly recommend that any definition of a "de facto merger" promulgated by the FDIC be constructed as narrowly as possible so as to only include transactions which truly parallel the results of a merger or consolidation.

V. Conclusion

State Street appreciates having the opportunity to comment on the FDIC's approach to implementing the one-time assessment credit. We support the FDIC's proposed "merger and consolidation" rule for defining "successors" eligible for the Credit, and believe this approach best reflects the intent of Congress to provide equitable treatment for institutions which paid deposit insurance assessments prior to 1997.

Sincerely,

Stefan M. Gavell
Executive Vice President
Regulatory & Industry Affairs