Bank of America Corporation
Legal Department
NC1-002-29-01
101 South Tryon Street
Charlotte, NC 28255

September 22, 2006 BY ELECTRONIC MAIL

Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Attn: RIN 3064-ADO9 and RIN 3064-AD02
comments@fdic.gov

Re: Proposed Regulations regarding Deposit Insurance Risk-Based Assessments

Dear Madams and Sirs:

Bank of America Corporation ("Bank of America") appreciates the opportunity to comment on the proposed regulations of the Federal Deposit Insurance Corporation's (the "FDIC") relating to risk-based deposit insurance assessments. Bank of America, with almost $1.5 trillion in total assets, operates the largest and most diverse banking network in the United States, with full-service consumer and commercial operations in 30 states and the District of Columbia. Bank of America provides financial products and services to over 33 million households and two million businesses in the United States, and provides corporate financial services for clients around the world.

Bank of America supports and agrees with the overall principle that deposit insurance assessment rates should be based on the level of risk of failure posed by a financial institution. Institutions that pose greater risk of failure should pay higher assessment rates than institutions that are strong and pose low risk of failure. Bank of America supports the FDIC's proposed use of objective measures (such as debt ratings and CAMELS ratings for large banks) as the appropriate method of setting risk levels and assessment rates. These objective factors are reliable measures of the financial strength of an institution, as they are based on information derived from both market data and supervisory information from the primary federal banking regulator in the best position to assess the risk of an institution.

Bank of America has a number of serious concerns about certain aspects of the FDIC's proposal, however.

FDIC Discretion to Adjust Risk Ratings

The FDIC's proposal would initially set assessment risk ratings based upon objective criteria using available market and supervisory information from primary banking regulators. However, the proposal would grant the FDIC discretion to adjust a bank's risk ratings up or down. The proposal outlines three broad factors that the FDIC should consider in making discretionary adjustments, which include other market information (including information from peer institutions), financial performance and conditions measures, and stress considerations.

Bank of America has substantial concerns over this proposed discretion to override objective measures of risk, safety, and soundness for the following reasons.

First, the FDIC has not substantiated why it is necessary or appropriate to employ discretion to adjust risk ratings. The objective factors that the FDIC itself has proposed to use to make initial assessments appear to take into account all of the major measures of risk. If the FDIC believes that those objective factors are not entirely adequate, it should propose additional objective measures of risk rather than seeking such extensive discretionary powers.

Second, even if some discretionary factors were appropriate, the factors outlined for consideration are too vague, with no articulation of how such factors would potentially be applied, how the FDIC would develop the factors, and how they would justify a change in risk ratings. The proposed factors are so broad that the FDIC could potentially pick and choose information it deems relevant in any given case. This use of subjective factors could, and likely would, lead to inconsistent results across similarly situated financial institutions. It also would lead to uncertainty that would make it difficult, if not impossible, for a financial institution to plan its deposit assessment liability and measure its risk ratings.

Third, there is not sufficient accountability in the process for the FDIC to exercise this proposed discretion and inadequate opportunity for review of the FDIC's decision. There is no proposed or established process to articulate what specific factors the FDIC applied, how the FDIC applied them, or to challenge the validity or fairness of the FDIC's conclusions.

Finally, the primary banking regulators already consider all of the factors described by the FDIC in setting CAMELS ratings. This risk information is regularly updated by the primary banking regulators who are in the best position to opine on the risk of a particular institution. There is no articulated justification for the FDIC to usurp the power of the primary banking regulator and override its judgment in evaluating risk ratings.

Large, Diverse Financial Institutions Present a Lower Risk of Failure

Bank of America disagrees with any explicit or implicit conclusion that a large financial institution presents a higher risk of failure simply because the institution is large. The factors outlined in the FDIC's proposal for discretionary adjustments to risk ratings (particularly relating to stress considerations) could be interpreted as establishing a justification for higher premiums based solely on a financial institution's size or organizational complexity.

To the contrary, large institutions with diverse operations, varied sources of revenue, and broader geographic reach present lower risk of failure than smaller institutions with limited operations, single or limited revenue streams, and strong geographic concentration. Risk ratings should be based upon objective measurements of the likelihood of a bank failure. Hypothetical considerations about the costs or complexity of a bank resolution are irrelevant if the risk of the bank failing is too small to reasonably calculate.

Base Assessment Rates and Target Designated Reserve Ratio

Bank of America has concerns about the FDIC's proposed Designated Reserve Ratio ("DRR") (proposed as 1.25%, even though the FDIC has the authority to set the DRR to as low as 1.15%), as well as the assessment rate structure (beginning at a minimum of 2 basis points with the FDIC having discretion to increase it to 7 basis points without additional public notice and comment). The purpose of the Federal Deposit Insurance Reform Act was to give more flexibility to the FDIC in setting the DRR to reflect the risk in the banking industry of potential failures and to manage assessments in a way to maintain the DRR without exorbitant "cliff" premiums being imposed on banks.

The proposed DRR and assessment rates over the next several years are premised on the notion that the current Deposit Insurance Fund ("DIF") is underfunded relative to the risk of bank failures in the industry. While FDIC's projections show that the ratio of the DIF to total deposits will drop below 1.25%, and the FDIC looks to increase the DIF to at least that ratio, the FDIC has not justified that 1.25% is the correct ratio based on actual risks and market conditions. The changes in the DIF ratio are in fact a product of deposit growth resulting from overall economic growth and a healthy banking industry, not an indication of industry weakness.

Furthermore, the FDIC's proposed assessment rates will amount to an enormous financial burden on all banks, notwithstanding the purported risk-based nature of the assessments. Before imposing such rates, the FDIC should present sufficient analysis to justify these very high premiums it intends to charge all banks. The proposal can be read to suggest that the FDIC intends to continue increasing the DIF even beyond 1.25% to build a cushion for the future, without analysis or justification that such a cushion is necessary.

Bank of America believes that the FDIC should reexamine the DRR and assessment rates periodically in light of actual and documented bank failure risks. Bank of America believes that, to the extent additional assessments are needed to grow the DIF, now or in the future, that such assessments, rates and the FDIC's process, analysis and conclusions should be subject to public review and comment. Changes in assessment rates should be carefully considered and adopted in a way that minimizes the financial burden on banks. If assessments are necessary, the DIF should be increased gradually, not in one or more large bursts. Banks should be given sufficient advance warning of potential assessments and changes to assessment rates to manage proactively the financial burden it will impose. Even the proposed minimum assessment rate of 2 basis points for the lowest risk institutions is high and will result in significant expense for banks.

Most important, the proposal to charge such high assessment rates, even for the lowest risk institutions, is inconsistent with the concept of risk-based assessments. Charging even minimum assessments at all for banks that are the least likely to fail in essence amounts to a subsidy for riskier institutions. Higher risk institutions with a greater possibility of failure should bear a higher portion of the costs.

Timing of Assessment Rate Changes

The FDIC has proposed that changes in risk ratings and assessment rates should be effective immediately upon the FDIC becoming aware of changes in supervisory ratings, other objective financial criteria, or the exercise by the FDIC of discretion to change assessment rates. As proposed, these rate changes could occur at any time and without advance warning or opportunity for the financial institution involved to plan for such changes. Bank of America believes that any changes (particularly increases) in risk ratings and assessment rates should be done in a methodical manner. Banks should have advance notice of potential changes, have the ability to discuss the changes with the FDIC and have a dialogue about the appropriateness of such changes. Changes should be phased in with sufficient warning to banks to plan for and mitigate the financial impact of new assessments on the bank's balance sheet and forecasts.

New Institutions

The FDIC has proposed assigning a maximum risk rating and assessment rate for "new" institutions, which it defines as a bank charter in existence for less than seven years. Bank of America believes that the FDIC should include an explicit exception to this rule for banks that are wholly-owned by a bank or financial holding company that otherwise has a bank that is older than seven years in its family. The premise behind the FDIC's proposal is that new institutions are more likely to fail and therefore warrant a higher risk premium. That assumption is not true for banks under a common bank holding company. The banks typically share common management (particularly at the bank holding company level). Existing regulations require a bank holding company to serve as a source of strength for each of its banking subsidiaries. Each subsidiary bank has a cross-guarantee from its affiliate banks in the event of the bank's insolvency. There is no rational explanation why a new bank charter in a well-established bank holding company should be treated differently relative to its more seasoned sister banks.

Failure to make such an exception in the FDIC's regulations could lead to unintended results. Bank holding companies that have seasoned banks would be reluctant to form additional bank charters because of a potential increase in assessment premiums, even though there was a legitimate business purpose for creating and using a sister bank charter. In the context of mergers and acquisitions, the deal structure could be influenced to retain the seasoned banks post-consolidation solely for the purpose of avoiding high assessments, even though a different structure would otherwise be more appropriate.

Although the FDIC has contemplated that banks may apply for a case-by-case determination that a new institution should be treated as seasoned, Bank of America believes that an automatic exception for banks commonly controlled by the same bank holding company is warranted and appropriate. Any uncertainty about whether the FDIC would grant such a case-by-case exception in itself may have negative and inconsistent effects.

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Bank of America appreciates the opportunity to comment on the FDIC's proposed regulations, and we thank you for your consideration of our comments.

Sincerely,

Timothy J. Mayopoulos
Executive Vice President and General Counsel
Bank of America Corporation