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September 22, 2006

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

Re: RIN 3064-AD09: Proposed Risk-Based Assessment System

Dear Mr. Feldman:

Merrill Lynch Bank USA, a Utah-chartered industrial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation ("FDIC") ("MLBUSA"), and Merrill Lynch Bank & Trust Co., FSB, an FDIC-insured federal savings bank ("MLBT-FSB"), appreciate the opportunity to comment on the proposed rulemaking issued by the FDIC relating to the Risk-Based Assessment System, 71 Fed. Reg. 41910-41972 (July 24, 2006) ("Proposed Rule"). MLBUSA and MLBT-FSB are wholly-owned subsidiaries of Merrill Lynch & Co., Inc. ("Merrill Lynch"). The Proposed Rule has been issued by the FDIC pursuant to the provisions of the Federal Deposit Insurance Reform Act of 2005, Title II of Public Law 109-171 ("Reform Act").

MLBUSA and MLBT-FSB would like to express their appreciation for the significant amount of time that the FDIC has devoted to drafting the Proposed Rule. We also greatly appreciate the efforts of the FDIC staff to construct a proposed risk-based assessment system that is more risk sensitive and therefore more equitable to insured depository institutions based on their respective risk profiles. We are, however, concerned about several aspects of the Proposed Rule and have provided below our comments and recommendations regarding the proposed risk-based deposit assessment system.

Summary of Recommendations

In summary, our comments to the FDIC on the Proposed Rule are as follows:

- **A more simplified risk-based assessment system should be adopted for large institutions.** The proposed rule as drafted appears overly complex and can be made less complicated and more straightforward. In our view, a simpler system (summarized in our comments below) could be implemented that would be more effective because it would more closely align assessment rates with the actual risk an institution presents to the Deposit Insurance Fund ("DIF").

- **The assessment rates imposed on Risk Category I institutions should be in accordance with an institution's relative risk of loss to the DIF.** Institutions presenting a greater risk to the DIF should bear more of the assessment burden, while institutions presenting less of a risk to the DIF should bear less of the assessment burden. To implement this concept, the assessment rate should be based on a continuous scale, with institutions paying premiums based on their respective risk assessment.

- **We believe that the institutions within Risk Category I that present the lowest risk should be assessed less than 1 basis point, and those institutions that present a higher risk should be assessed more as appropriate.** The risk of failure of Risk Category I institutions is extremely low, particularly those with a CAMELS rating of 1, and thus, the assessment rate imposed on those institutions should be set at 1 basis point or lower to reflect the very low risk these institutions present to the DIF. Furthermore, the number of institutions paying this lowest rate should not be capped: all institutions presenting the *lowest* risk to the DIF should pay the same.

- **The base schedule should be structured as a continuous function, not a step function.** Rather than placing larger institutions in Risk Category I in one of the six assessments "steps," we suggest that the base schedule for Risk Category I insurance premiums instead be a continuous function so that any increased risk posed by an institution will result in a corresponding increase in the assessment rate. A continuous function is superior to a step function in incenting an institution to improve its safety and soundness. By "continuous function" we mean a function where risk would be specifically linked to different assessment rates such that slight changes in risk assessment result in small changes in the premium rate.

- **The assessment rate for all Risk Category I large institutions should be based solely on the institution's CAMELS component ratings, not any other factors such as long-term debt issuer ratings or separate financial ratios.** We respect the judgment of federal bank regulators in determining an institution's CAMELS rating

based on their examination of that institution. Federal bank supervisors have access to an entire pool of information, both public and non-public, and therefore the CAMELS component ratings assigned by federal bank regulators are the best indications of an institution's risk profile for deposit insurance assessment purposes.

- **Market factors should not be used to determine the assessment rate.** Market information is already reflected in bank supervisors' examination ratings. The use of market factors to set assessments rates would not, therefore, add any additional risk sensitivity to an institution's risk-profile. In fact, market analysts do not have access to the non-public information that is readily available to federal bank regulators. Therefore, market analysts' recommendations (which in most cases directly relate to the institution's stock price volatility) are not as reliable as federal bank examination findings.

- **The FDIC should let the designated reserve ratio ("DRR") drift towards 1.15 percent until the one-time assessment credit proposed by the FDIC in a separate rulemaking is fully utilized, and then, *only if conditions warrant*, increase the DRR over several years so as to minimize the "premium shock" that will result from a rapid increase in the ratio.** We also recommend that any increases in the DRR be phased in to prevent sharp swings in assessment rates.

- **If the FDIC concludes that there is a need to increase the base schedule to achieve a targeted DRR, any additions to the base schedule should vary depending on an institution's relative risk to the DIF, in the same way the initial assessment rates should vary based on such risk.** For instance, we believe that a 5 basis point addition across the board for all Risk Category I institutions would not be consistent with a continuous function risk-based approach because it would penalize *all* institutions instead of only those institutions that pose the most risk to the DIF. Any basis point "surcharge" should be risk-weighted, so that an institution with a lower risk profile would be charged a lower "surcharge" (*e.g.*, 1 basis point or lower), and an institution with a higher risk profile would be charged a higher "surcharge" (*e.g.*, 5 basis points).

- Below is a summary of our comments in response to additional questions raised by the FDIC in the Proposed Rule:

    - **The FDIC should provide notice to institutions of potential assessment increases, and, to the extent possible, such notice should specify the reasons for the possible change.** Advanced notice from the FDIC would allow an institution to manage its expenses and evaluate the effect of any potential changes in the deposit insurance assessment on deposit pricing.

- **Time deposits in excess of $100,000 and Federal Home Loan Bank advances should not be considered volatile liabilities.** The use of a volatile liabilities ratio without regard to how those liabilities are generated and deployed is meaningless, and thus, the FDIC should not use a volatile liabilities ratio or other market factors when setting assessment rates.

A. The Proposed Rule

The Reform Act, enacted on February 8, 2006, amends the deposit insurance system, by among other things, providing for a reform of the risk-based insurance assessment system.[1] The Reform Act provides the FDIC with the authority to make substantive improvements to the risk-based assessment system. The Reform Act requires the FDIC to provide that each institution pay insurance assessments under a risk-based system, including those institutions that are well managed and well capitalized, even when the DIF is at or above the DRR (although dividends also are provided for).[2] The Federal Deposit Insurance Act ("FDIA") currently defines a risk-based system as one based on an institution's probability of incurring loss to the deposit insurance fund due to the composition and concentration of an institution's assets and liabilities, the amount of loss given failure, and the revenue needs of the DIF.[3] The FDIA, as amended by the Reform Act, also allows the FDIC Board to use its discretionary authority to set the DRR within a statutorily prescribed range of 1.15 percent to 1.50 percent.[4]

In the Proposed Rule, the FDIC proposes to consolidate the existing nine categories into four, to be called Risk Categories I, II, III and IV. Risk Category I would replace the current 1A risk category and would be comprised of all well capitalized institutions with CAMELS composite ratings of 1 or 2. Within Risk Category I, the FDIC proposes one method of risk differentiation for small institutions, and another for large institutions (proposed as institutions with $10 billion or more in assets).

The FDIC proposes to adopt a base schedule of rates in which institutions in Risk Category I would be assessed between 2 and 4 basis points. Moreover, the FDIC proposes that it continue to be allowed, as it is under the present system, to adjust rates uniformly up to a maximum of 5 basis points higher or lower than the base rates without the necessity of

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[1] Fed. Deposit Ins. Reform Act of 2005, 120 Stat. 12 (2006) (codified as amended at 12 U.S.C. § 1817(b)(2) (2006)).

[2] *See id.*

[3] 12 U.S.C. § 1817(b)(1)(A) and (C) (2006).

[4] Fed. Deposit Ins. Reform Act of 2005, 120 Stat. 14 (2006) (codified as amended at 12 U.S.C. § 1817(b)(3) (2006)).

further notice-and-comment rulemaking, provided that any single adjustment from one quarter to the next could not move rates more than 5 basis points.

We acknowledge the considerable efforts of the FDIC staff in drafting this proposed risk-based deposit assessment system. We also greatly appreciate the attention the FDIC staff has paid to construct a proposed risk-based assessment system that is more risk sensitive and thus more equitable to insured depository institutions based on their respective risk profiles. Nevertheless, we are concerned about several aspects of the Proposed Rule. Below we discuss our comments and recommendations regarding the proposed risk-based deposit assessment system.

B. A More Simplified Risk-Based Assessment System Should Be Adopted for Large Institutions

The majority of the Proposed Rule is focused on establishing a very complex, multi-factor assessment system for large institutions in Risk Category I, which are the institutions that virtually never fail and thus pose the least amount of risk to the DIF. In fact, the Proposed Rule indicates that the failure rate for composite CAMELS 1-rated BIF-member institutions for the 1985 through 2000 period was 0.39 percent.[5] This data shows that composite CAMELS 1-rated institutions have close to a non-existent five-year failure record, and thus present a similar virtually non-existent risk of loss to the DIF. In our view, the FDIC's efforts to differentiate risk among the least risky large institutions has resulted in a proposed risk-based assessment analysis for large institutions that is too complicated. In addition, the Proposed Rule appears to create artificial differentiations among strong, well capitalized and well managed institutions that do not seem warranted. In fact, under the Proposed Rule, small institutions would not be subject to such a complicated and step-based assessment scoring system.

We believe that a simpler assessment analysis could be put into place for all institutions, whether large or small, that would be more effective because it would more closely align assessment rates with the actual risk of loss to the fund presented by each insured institution in Risk Category I. The extremely low failure rate of composite CAMELS 1-rated BIF-member institutions, and the accompanying low risk of loss to the DIF, support the simpler assessment structure we recommend in this letter. Deposit insurance system losses have historically come from lower-rated depository institutions, not from institutions with composite CAMELS ratings of 1 or 2. This argues that the

[5] Notice of Proposed Rulemaking on Assessments, 71 Fed. Reg. 41910, 41913 (July 24, 2006).

CAMELS ratings alone are effective in differentiating risk among institutions, and therefore should be relied upon by the FDIC in determining assessment rates.

C. The Assessment Rates for Risk Category I Institutions Should Be Set in Accordance with an Institution's Relative Risk

We believe that institutions within Risk Category I that pose more of a risk of loss to the DIF should bear more of the assessment burden, while those institutions within Risk Category I that present the least risk of loss should bear the least assessment burden, perhaps as little as 1 basis point or lower. Furthermore, the number of institutions paying this lowest rate should not be capped: all institutions presenting the *lowest* risk to the DIF should pay the same.

For example, under our proposal, all Risk Category I institutions with component CAMELS scores of all 1's would be assessed the lowest fraction of 1 basis point, while all Risk Category I institutions with component CAMELS scores of all 2's would be assessed a higher assessment rate. Risk Category I institutions with component CAMELS scores between these two types, *e.g.*, those with a combination of 1 or 2 component CAMELS ratings, would be assessed a rate based on a continuous scale between the lowest fraction of 1 basis point and, for example, 1 basis point or higher. A continuous function is superior to a step function in incenting an institution to improve its safety and soundness.

D. The Base Schedule Should Be Structured as a Continuous Function, Not a Step Function

The Proposed Rule states that the FDIC would use the insurance scores to set cutoff scores for the minimum and maximum assessment rate categories. Specifically, the FDIC proposes to establish a floor of 2 basis points, a cap of 4 basis points, and four step functions in between this cap and floor. Institutions that have insurance scores between these two cutoff scores would be placed in one of four additional assessment rate subcategories. These subcategories would be set by setting equal cut-off score ranges (*i.e.*, 1.45, 1.60, 1.75, 1.90). The FDIC would then set the base assessment rates for these 4 intermediate subcategories based on the assessment rates applicable to the small institutions in Risk Category I.

We believe that the Proposed Rule's assessment rate system based on the step functions, caps and floors described above would have the effect of watering down the process of accurately calculating the actual risk that each institution poses to the DIF and could distort an institution's incentives and behaviors. By necessity, moving an institution from one step to another will result in a jump in assessment levels. Thus, no matter how slight the increased risk, once an institution moves to a higher step level, the assessment will increase by the amount of the jump, which is not necessarily commensurate with the

amount of the additional risk. As noted above, we believe that the base schedule for Risk Category I insurance premiums should instead be structured as a continuous function, not a step function, so that increased risk will result in a corresponding increase in the assessment rate.

Under the Proposed Rule's system of setting premiums based on a step function, if an institution's score places it very close to or far away from the next (more expensive or less expensive) step, the institution would have different incentives to maintain and/or improve its CAMELS component ratings. For example, if an institution is very close to a less expensive step in deposit premiums, even a slight improvement in its internal controls or practices could result in a disproportionately large drop in assessment rates. In contrast, if another institution could use the same internal control improvement, but is not close to such a step, the institution may not have as much incentive to improve its practices because there is no comparable reduction in assessment rate for doing so. In fact, if an institution is relatively far away from a less expensive assessment rate step, it might have an incentive to take on greater risk and forego an improvement in operations that would actually be beneficial to the institution from a safety and soundness perspective. We believe that if the assessment risk weighting were structured as a continuous function and not a step function, these types of distortions of incentives would be reduced if not eliminated. Any institution that could benefit from an improvement in internal controls and practices would then have the same potential proportionate reduction in assessment rates, resulting in a potential improvement in a component ratings and a reduction in risk to the DIF.

The FDIC's proposed system of imposing different risk assessment structures based on the size of an institution's balance sheet could also distort an institution's incentives and behaviors. For example, if an institution's long-term debt issuer rating is stronger than its financial ratio factor, an institution close to the next higher step could be incented to inflate its balance sheet to jump into the next step, so that the institution's long-term debt issuer rating would have a greater weight than its financial ratio factor. If the institution's long-term debt issuer rating is weaker than its financial ratio factor, the institution could be incented to keep its balance sheet just under the threshold.

We also note that the FDIC proposes to set the cutoff scores so that initially there are similar proportions of small and large institutions being charged the minimum and maximum rates in Risk Category I. The FDIC estimates that a cutoff score of 1.45 or lower would result in roughly 46 percent of large institutions being at the lowest rate, and a cutoff score of greater than 2.05 would result in roughly 5 percent of large institutions being charged the maximum assessment rate.[6] We believe that deciding that 45 percent of

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[6] *Id.* at 41922.

Risk Category I large institutions should get the lowest score and 5 percent should get the highest score is subjective and arbitrary. If a large number of institutions, regardless of institution size, in Risk Category I end up being eligible for the lowest rate, the FDIC should implement that rate and adjust overall assessment rates accordingly.

E. The Assessment Rate for Risk Category I Large Institutions Should Be Based Solely on the Institution's CAMELS Component Ratings, Not Any Other Factors

1. Only CAMELS Component Ratings Should Drive the Assessment Rate

For large institutions within Risk Category I, the Proposed Rule would combine CAMELS component ratings with long-term debt issuer ratings, and, for institutions with between $10 billion and $30 billion in assets, financial ratios, to develop an insurance score and an assessment rate. Assessment rates might be adjusted based on considerations of additional market, financial performance and condition, and stress considerations.[7]

We respect the judgment of federal bank regulators in determining an institution's CAMELS rating based on their examination of the institution. We believe that the CAMELS component ratings assigned by federal bank regulators adequately reflect an institution's risk profile for deposit insurance assessment purposes. Therefore, we believe that the insurance score for large institutions in Risk Category I, regardless of asset size, should be based solely on the institution's CAMELS component ratings and should not be based partly on either the institution's long-term debt issuer rating or a financial ratio. We believe that federal bank supervisors have access to an entire pool of information, both public and non-public, and thus their ratings alone should drive the insurance score and therefore premiums. Rating agencies have access to information that is generally only a subset of the larger pool of information that federal bank regulators have at their disposal.

Therefore, we believe that the use of rating agency information (such as long-term debt issuer ratings) or the financial ratios set out in the proposal is not necessary to determine the insurance score. Indeed, using the long-term debt issuer ratings or financial ratios would actually result in placing double emphasis on these factors because both an

[7] Specifically, the FDIC proposes that the insurance score be a weighted average of three elements: (A) a weighted average CAMELS component rating with a value between 1.0 and 3.0; (B) long-term debt issuer rating converted to a numerical value of between 1.0 and 3.0 (1.0 being the best and 3.0 being the worst) as set forth in a conversion chart in Appendix B of the proposal; and (C) for institutions between $10 billion and $30 billion in assets, a financial ratio factor converted to a value between 1.0 and 3.0.

institution's long-term debt issuer rating and financial ratios are reviewed by the examiners and taken into consideration in arriving at the CAMELS component ratings.

Notwithstanding our strong views on this issue, if the FDIC nevertheless decides to include the long-term debt issuer rating as part of a large institution's insurance score, we believe, for the reasons set forth above, that the weight for such element should be no more than 25 percent of the score. Additionally, if such long-term debt issuer ratings are used, then the insurance score should reflect the long-term debt issuer ratings of any institution's parent holding company. The debt ratings of the parent holding company take into consideration the financial strength of the institution, and likewise the financial strength of the holding company to the insured institution and its subsidiaries, the likelihood that the regulators will look to the holding company to be a "source of strength" to the institution in the event of financial stress, and the Prompt Corrective Action provisions of the FDIA that require holding companies, among other things, to guarantee the performance of any uncapitalized insured institutions in meeting their required plans to regain "adequately capitalized" status and otherwise regain financial stability.

2. Market Factors Should Not Be Used to Determine the Assessment Rate

The Proposed Rule also proposes that the FDIC be able to make adjustments to an institution's assessment rate subcategory assignment based on additional risk information. Specifically, the Proposed Rule provides in Appendix D a list of other factors that the FDIC may consider in setting assessment rates, including: (A) other market information, such as subordinated debt prices, spreads on credit default swaps, equity price volatility in the institution's parent company stock, and debt rating agency's "watch list' notices; (B) financial performance and condition measures, such as information contained in regulatory financial reports, SEC periodic reports and other financial performance measures; and (C) stress considerations, including the ability of in institution to withstand stress and the potential resolution costs implicit in the institution's business activities, asset composition, and funding structure (*i.e.*, loss severity considerations).

As discussed previously, market analysts do not have access to the non-public information that is readily available to federal bank regulators. Therefore, market analysts' recommendations (which in most cases directly relate to stock price volatility) are not as reliable as federal bank examination findings. Furthermore, market analysts and stock purchasers are often more focused on an institution's short-term performance than they are on an institution's long-term safety and soundness. An institution with higher short-term returns earned by adopting riskier business strategies may receive more favorable treatment by the market, but is not necessarily a safer or sounder institution.

With regard to the FDIC assessing funding structures, the use, for example, of a volatile liabilities ratio without regard to how those liabilities are generated and deployed would be, in our view, meaningless. For instance, short-term treasury securities funded by repurchase agreements should not by themselves indicate a significant increase in the probability that an institution would fail. The fact that such instruments are used does not impact risk, but rather it is how an institution deploys such instruments that impacts an institution's risk.

F. In Light of Potential Large Increases in Assessment Rates under the Proposed Rule, the DRR Should be Set at the Lower End of the Range Established by the Reform Act, and Any Increases in the DRR Should be Phased In

Under the Proposed Rule, the FDIC proposes to be able to adjust rates uniformly across Risk Categories by 5 basis points higher or lower *per quarter* without any further notice and comment. Due to the anticipated effect of the one time assessment credit and the possible continued decrease of the DRR below 1.23, the Proposed Rule is candid that rates for 2007 could be up to 5 bps higher than these base rates.[8] As credits are used up, the FDIC stated that it could reduce the rates to 2 bps higher than the base for 2008 and 2009 and then back to the base rate in 2010.[9] The proposal notes that rates could increase even higher, or on a non-uniform basis across risk categories with notice and comment.[10]

Given the potential significant increases in assessment rates discussed in the Proposed Rule, we would like to emphasize our recommendation, made in our prior comment letter,[11] that the FDIC should let the DRR drift towards 1.15 percent until the credit is utilized, and then, *only if conditions warrant*, increase the DRR over several years so as to minimize the "premium shock" that will result from a rapid increase in the ratio. A 1.25 percent DRR is not necessary given the supervisory and enforcement tools[12] available to the FDIC and the other federal bank regulatory authorities and the current and projected financial condition of the industry.

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[8] Notice of Proposed Rulemaking on Assessments, 71 Fed. Reg. 41910, 41928 (July 24, 2006).

[9] *Id.*

[10] *Id.*

[11] *See* Merrill Lynch Comment Letter to the FDIC on RIN 3064-AD02: Proposed Rule Setting the Designated Reserve Ratio, 7-13 (August 16, 2006).

[12] These supervisory and enforcement tools include, for example, higher capital requirements, tougher enforcement provisions, prompt corrective action authority, cross-guarantee liability, enhanced affiliate transaction restrictions, and the increased use of business plans.

If the FDIC nevertheless feels compelled, as it has proposed, to set the reserve ratio at its historic level of 1.25 percent and not at the lower end of the permitted range as we recommend, we urge the FDIC Board to allow for the 1.25 percent DRR to be phased in over a period of time. A phased-in increase in the DRR will prevent sharp swings in premium assessment rates. Without such a phased-in approach, setting the DRR at or near historic levels would have a significant, profound, and disproportionately negative impact on institutions that would also face significantly increased assessments under the Proposed Rule. Any dramatic increase in assessment rates to achieve a high DRR (even one at 1.25 percent) over a short period of time also could prevent those institutions with little or no credits available and that might also face higher assessments under the Proposed Rule from fairly competing in the financial services marketplace. It could also discourage new institutions from forming and entering that marketplace.

G. Any Additions to the Base Schedule Should Be Consistent With Relative Risk

If the FDIC nevertheless determines to increase the base schedule for all institutions to achieve a targeted DRR, any additions to the base schedule should vary depending on an institution's relative risk to the DIF, in the same way the initial assessment rates should vary based on such risk. Thus, for instance, a 5 basis point addition across the board for all Risk Category I institutions, in our view, would not be consistent with a continuous function risk-based approach because it would penalize *all* institutions instead of only those institutions that pose the most risk to the DIF. Any basis point "surcharge" should be risk-weighted, so that an institution with a lower risk profile would be charged a lower "surcharge" (*e.g.*, 1 basis point or lower), and an institution with a higher risk profile would be charged a higher "surcharge" (*e.g.*, 5 basis points).

H. Comments in Response to Additional Questions Raised by the FDIC in the Proposed Rule

We also have comments on specific issues raised by the FDIC in the Proposed Rule. These comments are set forth below.

1. Notice That Includes Specific Reasons Should Be Given to Warn Institutions of Potential Assessment Increases

The FDIC requested comment as to whether institutions should be given advance notice that changes in their assessment rate are likely. We support the FDIC giving advanced notice of possible assessment rate changes. We also strongly urge that, to the extent possible, the notice specify the reasons for the possible change in order to give the institution the opportunity to take remedial action, if possible, before any future increase is implemented. Advanced notice from the FDIC would allow an institution to manage its

expenses and evaluate the effect of any potential changes in the deposit insurance assessment on deposit pricing, thereby allowing the institution to plan ahead for potential increases.

2. The Definition of Volatile Liabilities Should Not Include Time Deposits In Excess of $100,000

The Proposed Rule provides the ratio of volatile liabilities to gross assets as one of the proposed financial factors to be used in the new system. The proposal asks for comment as to whether time deposits in excess of $100,000 should be considered "volatile." We reiterate our belief that the use of a volatile liabilities ratio without regard to how those liabilities are deployed is meaningless, and that the FDIC should not use a volatile liabilities ratio when setting assessment rates.

If the FDIC nevertheless adopts a volatile liabilities ratio, we believe that time deposits in excess of $100,000 should not be considered volatile liabilities subject to this ratio. Jumbo time deposits represent a stable source of funding for many institutions. It would be unfair to penalize banks that use this relatively low cost source of funding, regardless of how these funds are employed. Instead, as noted above, in evaluating risk the FDIC should look to how an institution generates those funds and how it uses such funds, rather than the funds' source.

3. Federal Home Loan Bank Advances Should Not Be Considered Risk Factors or Volatile Liabilities

The Proposed Rule asks for comment as to whether secured funding, such as Federal Home Loan Bank ("FHLB") advances, should be considered a risk factor. We believe that such secured funding should not be considered a risk factor. FHLB advances do not pose risks to an institution except in terms of how an institution uses such advances. Institutions generally do not use such advances in a risky manner. Instead, many institutions, especially smaller institutions that do not have access to alternatives, such as direct access to the capital markets, utilize FHLB advances as a stable, highly useful and inexpensive source of funding. Penalizing the use of such advances would be harmful to our mortgage finance system, and would be especially unfair to our nation's smaller mortgage lenders. Further, there is no evidence that these advances create safety or soundness risks to depository institutions, rather they can be used to enhance a depository institution's safe and sound operations by providing a reliable source of low cost funding. We note that the FHLB System was established by Congress to provide such funding, and it would be against public policy to penalize depository institutions that utilize this system. For these reasons, we also believe that FHLB advances should not be considered volatile liabilities.

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In conclusion, we appreciate the FDIC's efforts to propose a risk-based assessment system that is more risk sensitive and therefore more equitable to insured depository institutions based on their respective risk profiles, but we respectfully urge the FDIC to adopt a more simplified assessment system that more closely tracks an institution's relative risk of loss to the DIF. The more risky an institution is to the DIF based on its CAMELS ratings, the more that institution should be charged in assessments. By contrast, the less risky an institution is to the DIF based on its CAMELS ratings, the less that institution should pay in assessments. We believe that the recommendations we have made in this letter would result in a more equitable risk-based deposit assessment system, and therefore we urge the FDIC staff to give strong consideration to our views as discussed herein.

MLBUSA and MLBT-FSB greatly appreciate this opportunity to comment on the Proposed Rule. If you have any questions or would like to discuss our comments with you in further detail, please contact the undersigned at 212-236-2660.

Sincerely,

Mark S. Leiman