ING DIRECT

March 23, 2007

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Company
550 17th Street, N.W.
Washington, DC 20426

RE: Proposed Assessment Rate Adjustment Guidelines for Large Institutions and Insured Foreign Branches in Risk Category I

Dear Mr. Feldman:

ING Bank, fsb ("ING DIRECT") appreciates the opportunity to comment in response to the Federal Deposit Insurance Corporation's ("FDIC") proposed guidelines on evaluating risk assessment adjustments. ING DIRECT has approximately $63 billion in assets and provides retail banking services and financial products to individuals and businesses across the United States; and, as a large bank that qualifies for classification as a Risk Category I institution,[1] takes a significant interest in this issue.

ING DIRECT supports the FDIC's objective to implement a logical, reasonable, and fair risk-based assessment system. We agree that the ultimate goal of this system should be to impose proportionally greater premiums on those institutions that pose proportionally greater risk to the Deposit Insurance Fund ("DIF") and we appreciate the agency's efforts in drafting and publishing guidelines on this system for review and comment.

We are concerned, however, that the guidelines are not truly guidelines from the regulated institution's perspective. Rather, the guidelines are a summary discussion of the analytical framework that the FDIC will apply to calculate additional insurance premiums on a targeted population of large financial institutions. The guidelines fail to articulate, in any meaningful way, a process by which a regulated institution could prevent the imposition of an assessment adjustment. Thus, Risk Category I institutions are in an undesirable position where they cannot avoid a regulatory consequence that they cannot predict with any reasonable degree of certainty.

Given this concern, we respectfully recommend that the FDIC amend the guidelines in the following ways to provide additional transparency to their regulated institutions:

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[1] A "Risk Category I" includes all well-capitalized institutions in Supervisory Group A (generally those with CAMELS composite ratings of 1 or 2). 71 Fed. Reg. 69,282, 284 (Nov. 30, 2006).

- Impose adjustments only under circumstances that leave no ambiguity regarding the necessity of the FDIC's decision.

- Forego finalizing these guidelines until the FDIC has completed its Basel II and I-A rulemakings.

- Acknowledge that rank on a risk indicator is not a proxy for magnitude of potential loss to the DIF.

- Eliminate any negative implications arising from the absence of a rating on a risk indicator.

- Consider support from a parent corporation when determining overall risk to the DIF.

Proposed Recommendations

The Federal Deposit Insurance Reform Act of 2005[2] required the FDIC to adopt regulations requiring deposit insurance assessments consistent with Section 7(b) of the Federal Deposit Insurance Act ("FDI Act"). On November 30, 2006, the FDIC issued a final rule setting forth the assessment rates for large "Risk Category I" institutions.[3] This rule also permitted the FDIC, in consultation with the institution's primary regulator, to make adjustments to the initial risk assessment not to exceed 0.50 basis points higher or lower than the initial assessment. The current rulemaking focuses narrowly on this latter issue, seeking comment on the process for evaluating and calculating the assessment.

The FDIC Should Use Its Adjustment Authority Judiciously

As of June 30, 2006, approximately 95 percent of all insured institutions qualified as Risk I institutions.[4] Also as of June 30, 2006, approximately 45 percent of all Risk I institutions would have been charged the minimum assessment rate.[5] These statistics suggest that the FDIC has carved out a significant population of large, healthy institutions from which it may intend to extract additional monies to fund the DIF, even though it has failed to show a nexus between this particular population of institutions and any heightened risk to the insurance fund.

We believe that this approach had created a population of banks that are subject to disparate treatment in terms of the cost of insurance simply because of their size.

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[2] Pub. L. No. 109-171.

[3] 71 Fed. Reg. 69,282 (Nov. 30, 2006).

[4] *Id.* at 69,284.

[5] *Id.* at 69,285.

Because the FDIC has nominated this population of institutions to bear a greater proportion of the cost of the DIF than their smaller bank peers, we urge the FDIC to impose adjustments, and further add to the disparity in treatment, with great caution. We believe that the FDIC's use of its discretion in this area must be based on objective factors that are understandable and verifiable.

In the absence of certainty that a Risk Category I institution poses a greater risk to the insurance fund, we believe that the FDIC should refrain from imposing an assessment adjustment. Validity of the FDIC's assessment system from the viewpoint of its regulated institutions depends on the transparency and predictability of the assessment process. In the absence of transparency, the system gives the appearance of being an artificial device that the agency has created to increase premium dollars from its large insureds. The agency could avoid this appearance by ensuring that all such adjustments are revenue neutral: i.e., commit to implementing upward premium adjustments in amounts not greater than the amount of downward premium adjustments.

We also urge the FDIC to take this opportunity to reconsider its decision to create a minimum premium threshold below which institutions are not eligible for downward adjustments. Exceptionally low risk institutions should be able to pay less than what is otherwise a floor. Even if a rule change is needed to accomplish this, such a modification is necessary and appropriate for the FDIC to achieve its goal of creating a regulatory system under which entities pay premiums based on their representative risk to the DIF.

Forego Finalizing Guidance Until Basel is Complete

Generally speaking, ING DIRECT supports the FDIC's efforts to ensure that insured institutions develop sound risk management practices. We are concerned, however, that the disparate approaches taken by the agency in this rulemaking as compared to the Basel II rulemaking[6] could undermine the agency's efforts in both rulemakings.

We strongly recommend that the FDIC table this guidance until after it has worked through all of the capital and risk-based issues in its Basel rulemaking. More specifically, we believe that the FDIC should use the results of the Basel rulemaking to differentiate the risk among institutions rather than develop a unique method of evaluating risk solely for the purposes of insurance assessments. Our reasons for this are twofold. First, adoption of a unique risk-measuring method by the FDIC is superfluous and a poor use of regulatory resources. The institutions' primary regulators are otherwise tasked with the job of determining the amount of capital that the institution should hold to protect against failure. It would be redundant for the FDIC to then analyze the institution for its risk of failure using an entirely different paradigm. Second, we are afraid that the results of two separate and inconsistent risk measuring paradigms could result in a situation where an institution that is properly found to be low-risk for capital purposes could still be subject to a discretionary assessment adjustment to its DIF premium

[6] 72 Fed. Reg. 9,084 (Feb. 28, 2007).

payments. Thus, we urge the FDIC to take the steps necessary to avoid this result by tabling this guidance until after it has completed its Basel rulemakings.

Rankings on a Risk Indicator Do Not Equal Magnitude of Risk Exposure

Risk rankings cannot adequately predict the magnitude of a particular risk indicator where the differences between the rankings are not defined. Said differently, the difference between a first place ranking and a tenth place ranking on any particular risk indicator could be very small depending upon the differences between the intervening rankings. In contrast, the differences in ranking between tenth and twentieth place could be significant where there are large differences between the intervening rankings.

To determine whether an assessment adjustment is necessary, the FDIC is proposing an analytical process, the basis of which requires it to compare risk rankings. This process is intended to identify those institutions whose risk measures appear to be significantly different than other institutions with similarly assigned initial assessment rates. The FDIC provides three charts in the rulemaking to visually demonstrate its proposed analytical process. The charts, however, do not depict the most important piece of information, which is the degree by which these rankings vary. For example, if an institution is in the third percentile for three risk indicators, and is in the tenth percentile for another, we do not believe that the mere fact that it is in the tenth percentile for one risk ranking is, in and of itself, significant. To determine the significance of this "outlier" ranking we would need to know how it compares to the other rankings. It is certainly possible that the differences in rankings between one and three for one risk indicator constitute a significant difference and potential increased risk to the insurance fund, while the difference between one and ten for another risk indicator is small and not nearly as significant.

Because risk to the insurance fund does not rise lock step as rankings on a risk indicator increase, we believe that rankings do not adequately dimension increased risk to the insurance fund, and that this fact should be reflected in the final guidance.

Eliminate Negative Effect of Non-Ranking on a Risk Indicator

We applaud the agency for including in the guidance the concept that no one single factor or risk indicator will control the decision of whether to make an adjustment.[7] We recommend that the FDIC take this concept one step further and eliminate any potential negative effect that the absence of a ranking on a risk indicator could have on the analysis. For example, as an institution that does not hold public debt, ING DIRECT is not rated by any rating agencies. The absence of a ranking on this risk indicator, however, is meaningless from the perspective of risk to the insurance fund. As such, we recommend that the FDIC revise the guidance to expressly eliminate any negative implications to the nonexistence of a risk indicator.

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[7] 72 Fed. Reg. 7,881 (Feb. 21, 2007).

Look to Parent Corporations for Risk Mitigation

You asked us to comment on whether it is appropriate for the FDIC to:

> [C]onsider the willingness and ability of an institution's parent company or its affiliates to provide financial support to the institution or to mitigate the FDIC's loss in the event of failure[.][8]

ING DIRECT's ultimate parent is ING Groep, N.V., which is based in the Netherlands and is subject to Basel II standards in the European Union. Because our parent company is safe, sound and well-capitalized, and because ING DIRECT can rely on the resources of its parent, we believe that ING DIRECT represents a lesser risk to the DIF. Thus, we strongly recommend that the FDIC take into consideration the financial health of the parent company when calculating ING DIRECT's potential risk.

Conclusion

We strongly support the FDIC's efforts to properly construct a risk-based deposit insurance system that eliminates the practice whereby "safer banks unnecessarily subsidize riskier banks."[9] We are concerned, however, that the guidance as currently drafted permits the agency to perpetuate this problem by providing the agency the ability to ratchet up an institution's insurance premiums at its discretion. For this reason, we respectfully recommend that the agency consider and adopt our above recommendations.

Thank you for the opportunity to share the views of ING DIRECT. If you have any questions or if I can be of further assistance please do not hesitate to contact me at 302-255-3008.

Sincerely,

Deneen D. Stewart
General Counsel
ING Bank, fsb

[8] 72 Fed. Reg. 7,886 (Feb. 21, 2007).

[9] Remarks of FDIC Chairman Powell before the U.S. House of Representatives, Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit. *Financial Deposit Insurance Reform Act of 2005* (H.R. 1185). 109th Congress, 1st Session, 2005. Serial No. 109-10 at page 40.