ING DIRECT

November 19, 2007

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

Comments@FDIC.gov

**Re**: ANPR on Assessment Dividends

Dear Mr. Feldman:

Thank you for this opportunity to comment in response to the Federal Deposit Insurance Corporation's ("FDIC") request for comments on alternative methods for allocating dividends. By way of background, ING DIRECT has roughly $78 billion in assets and provides retail banking services and financial products to individuals and businesses across the United States.

The FDIC has asked the public to comment on a number of questions in this Advance Notice of Proposed Rulemaking ("ANPR"), not all of which we address in this letter. Rather, the purpose of this letter is to recommend that the FDIC adopt "Variation #2" of the "payments method" as modified in the following three ways:

(i) Define the premium period as five years;
(ii) Include premiums paid for the years 1997-2006 in the calculation; and
(iii) Exclude "credits" from the calculation.

## I. Background

The Federal Deposit Insurance Reform Act of 2005 requires that the FDIC prescribe by regulation the method for the calculation, declaration and payment of assessment dividends.[1] In October 2006, the FDIC issued a temporary final rule implementing these dividend requirements with the goal of later fine-tuning the regulations via subsequent notices and requests for comment. In keeping with that goal, this ANPR presents two general approaches to allocating dividends – the "fund balance method" and the "payments method." Under the "fund balance method," "every quarter each institution would be assigned a dollar portion of the fund balance solely for purposes

[1] This final rule will implement the dividend requirements of the Federal Deposit Insurance Reform Act of 2005 and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005.

of determining the institution's dividend share."[2] Unlike the fund balance method, the payments method, would not depend on either fund performance or dividends paid. Rather, dividends would depend on the institution's (and its predecessors') 1996 assessment base or its 1996 ratio.[3]

We agree with the FDIC's staff's assessment that the fund balance method is more complex, less transparent and is more likely to benefit "older" institutions.[4] We are concerned that if the FDIC were to adopt the fund balance method that it would unreasonably alter the competitive balance between "newer" and "older" institutions and would promote the concept of the Bank Insurance Fund as an annuity for "older" banks. This could well be the unintended consequence if, at some future date, a dividend is paid to reduce the year-end ratio of dollars in the fund to insured dollars to 1.35%. The situation would be further aggravated if the ratio of the fund were to grow to the point where it exceeded 1.5%. Regardless of the reason *why* the ratio of the fund came to exceed the triggering threshold[5], the resulting refund of excess payments would be tantamount to a redistribution of dollars from "newer" to "older" banks. Thus, we strongly urge the FDIC to adopt the "payments method" as modified in the manner that we suggest below.[6]

## II. Recommendations

Presently, the ANPR suggests that one way to implement the payments method would be to:

> [C]onsider only premiums paid over some prior period (such as the previous 15 years). When the prior period covered any year before 2007, the years 1997 through 2006 would be skipped, since the great majority of institutions paid no deposit insurance premiums then . . . However, . . . eligible premiums after 2006 would include eligible premiums offset with credits.[7]

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[2] 72 Fed. Reg. 53,181, 53,183 (Sept. 18, 2007).

[3] 72 Fed. Reg. 53,181, 53,187 (Sept. 18, 2007).

[4] *See* Memorandum to the FDIC Board of Directors from Arthur J. Murton, Director, Division of Insurance and Research dated September 5, 2007. ("In general, the fund balance method would rely on more data than the payments method ... and would be more complex, which would reduce transparency.").

[5] This could result from a decline in insured balances; fewer losses than anticipated; greater return on Fund investments than forecast; intentional or inadvertent "overcharging" in the assessment of premiums; or, some combination of these factors.

[6] The "payments method" in the rulemaking is further divided into two variations – our recommendation and comments relate to "Variation 2." 72 Fed. Reg. 53,181, 53, 192 (Sept. 18, 2007).

[7] 72 Fed. Reg. 53,181, 53,192 (Sept. 18, 2007).

Although we appreciate the simplicity of this approach and agree with it conceptually, which is to say that we recommend that the FDIC calculate the dividend based on the premiums paid over a prior period; we disagree with the FDIC's specific determinations as they relate to the length of this relevant premium period, the exclusion of premiums paid from 1997 to 2006 and the inclusion of "credits" in the calculation. Thus, we recommend the following:

- **Shorter Premium Period.** We recommend that the FDIC consider a five-year or 60 month premium period, which constitutes a significantly shorter timeframe than the 15 years suggested in the ANPR. We recommend this timeframe for two reasons. First, the 15 years suggested by the FDIC appears to be *ad hoc*. The agency provides no persuasive reasons to support this choice. And, it appears to have chosen a number that, similar to the fund balance method, unreasonably benefits older institutions. Second, our recommendation roughly approximates the length of a "business cycle" as measured from peak to peak by the National Bureau of Economic Research.

  Although we concede that there is no standardized definition of "business cycle" and, thus, certainly no standard term for such, the National Bureau of Economic Research has been examining the "ups and downs of the U.S. economy" as far back as 1854.[8] The NBER's data suggests that post-World War II business cycles have lasted, on average, 60 months.[9] We believe that tying the premium period to a business cycle is appropriate and reasonable given that a business cycle will allow sufficient time for the fund to absorb the effects of any one particular period of expansion or recession.

- **Include the Years from 1997-2006.** Irrespective of the small number of insured institutions that paid premiums, *all* insured institutions enjoyed the benefit of government insurance during this timeframe. We are concerned that by excluding these years the FDIC is setting a poor precedent. At this time, the FDIC has the benefit of hindsight and the luxury of being able to isolate this timeframe as a time during which only high risk institutions paid premiums. Going forward, however, the FDIC will not have this luxury and, thus, will not be able to foresee and exclude comparable time

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[8] *Macroeconomics, 4th Edition,* Richard N. Waud, p. 131 (1989).

[9] *Macroeconomics, 4th Edition,* Richard N. Waud, p. 132 (1989). ("The eight cycles since the end of World War II had an average duration of 60 months. The average length of the expansion phase of these cycles was 44 month, and the average length of the recession phase was 11 months."). Current data from the NBER is posted to their Web site at www.nber.org/cycles.html/. Data from the Web site's most current table suggests that the length of business cycles post-World War II has expanded slightly to an average of 67 months. www.nber.org/cycles.html/.

periods. Thus, we recommend that the FDIC not exclude these years from the calculation.

- **Exclude "Credits."** Footnote 19 of the ANPR suggests that if eligible premiums did not include an offset with credits, newer[10] institutions would actually benefit relative to older institutions via higher dividend shares after 15 years. Although we generally support efforts by the FDIC to provide parity, we do not believe that the FDIC should include credits as part of the calculation. We understand that the initial purpose of these credits was to strike a balance between older and newer institutions. Arguably, however, once this balance was obtained, to further perpetuate the effect of the credit on a going forward basis would be punitive.

## III. Conclusion

For all of the reasons set forth above, we urge the FDIC to adopt "Variation 2" of the "payments method" with our suggested modifications. Additionally, we look forward to future rulemakings related to this issue (such as timetables for determining and paying dividends) and plan to provide the FDIC with our unique industry insights and recommendations.

Respectfully,

Deneen D. Stewart
General Counsel
ING DIRECT

[10] For purposes of this rulemaking, "newer" and "older" institutions are not defined solely by age. Rather, the smaller an institution's 1996 assessment base is compared to its current assessment base, the newer it is. Fed. Reg. 53,181, 53,182 (Sept. 18, 2007).