



March 23, 2007

BY FIRST CLASS MAIL AND
ELECTRONIC MAIL

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20549
Comments@FDIC.gov

Re: Comments on: Assessment Rate Adjustment Guidelines for Large Institutions and Insured Foreign Branches in Risk Category I

Dear Mr. Feldman:

Bank of America Corporation ("Bank of America") appreciates the opportunity to comment on the proposed adjustment guidelines issued by the Federal Deposit Insurance Corporation. The guidelines will be used to determine how adjustments of up to 0.50 basis points would be made to the quarterly assessment rates of insured institutions defined as large Risk Category I institutions, and insured foreign branches in Risk Category I, according to the Final Assessments Rule.¹

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 52 million households and two million businesses in the United States.

We appreciate that the FDIC has published these guidelines and is accepting industry comment. We respectfully request the same opportunity to comment should future changes to the adjustment guidelines be considered.

Basis for Adjustment

Under the Assessment Rule, the assessment rates for Risk Category I institutions are based on supervisory ratings (CAMELS ratings) and long-term debt issuer ratings. The

¹ 71 FR 69282 (Nov. 30, 2006).

Assessment Rule reserved for the FDIC the additional authority to make adjustments to the assessment rate of a particular institution based on consideration of additional risk information.

We believe that in the vast majority of cases the two factors used under the Assessment Rule will serve as an accurate and sufficient measure of a bank's risk for deposit insurance premium purposes. In particular, with respect to the risks posed by a bank's *assets*, we find it difficult to imagine a case where the judgment of the market and the appropriate federal banking agency should be overturned.

For example, the current proposal identifies a bank's return on assets and net interest margin as two of the over 40 potential factors that may be considered in reevaluating a risk-based premium. While these are legitimate numbers to consider in evaluating an institution's health, they are also numbers that are fully transparent to, and well understood by, both the markets and the federal banking agencies. It is not clear on what basis the FDIC would wish to substitute its judgment about the quality of a given institution's return on assets or net interest margin for those of the market and the primary regulator.

There may be cases where a bank's mix of *liabilities* argues for a different outcome – in particular, where a substantial percentage of a bank's assessed deposits are uninsured. This could arise, for example, with private bank where the substantial majority of its deposit balances are above insurance limits. A similar case is presented by a bank with substantial foreign deposits. Either of these banks could present less risk to the deposit insurance fund than a bank with an identical asset mix but more traditional reliance on insured deposit liabilities.

For similar reasons, while we understand that the FDIC may not wish to foreclose the possibility of using this authority to impose a higher risk-based premium, we believe that a reevaluation should rarely if ever result in such an outcome. The risks of a company's assets will be accurately reflected by its market and examination ratings. On the liability side, the FDIC's Assessment Rule effectively assumes a worst-case scenario – that is, that deposits generally will be insured. Any adjustments therefore should result in a lower, not higher, assessment.

Independence from Other FDIC Rulemaking

Under a separate Advanced Notice of Proposed Rulemaking, the FDIC is seeking comment on the need for and method of tracking the status of insured accounts. We commend the FDIC for its diligent and thoughtful work on that proposal, and are committed to assisting that effort. That said, we do not believe that the adjustment guidelines should consider the capabilities of deposit account systems in determining an assessment. If the FDIC determines that an institution's systems are inadequate under any rule it may eventually adopt, the FDIC will have adequate authority to require the institution to change its practices, or change its approach to potential resolution of the institution. We do not believe that the FDIC needs to use its premium adjustment authority to enforce that rule, and are concerned

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about any precedent whereby an institution's premium is set by factors other than its risk to the fund. *At the very least, we believe it is premature to adopt an enforcement mechanism now, for a rule that has not even been proposed.*

Provide Adequate Procedural Due Process

Again, any upward adjustment to any bank will be a significant event for the particular institution. If in a rare circumstance the FDIC finds it must consider an upward adjustment under these guidelines, then strong due process rights should be afforded the affected institution. We believe that more process is due under the adjustment guidelines than under the FDIC's Assessment Rule because the process under the proposed guidelines is very subjective. The current proposal anticipates that the FDIC will provide notice to the affected institution and consider any additional information provided. We believe that, in the event of a proposed upward adjustment, the affected institution should be entitled to written notice of the grounds on which the adjustment is proposed, an opportunity to object in writing and through the presentation of other evidence, and the opportunity to have its objections heard by a neutral third party.

Conclusion

Bank of America appreciates the opportunity to comment on the proposed guidelines. Please contact the undersigned should you have any questions or require additional information regarding our comments.

Sincerely,



Gregory A. Baer
Deputy General Counsel