October 16, 2008

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Docket No. OCC-2008-0006

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Docket No. R-1318

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Regulation Comments
Chief Counsel's Office
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Attention: OTS-2008-0002

Subject: MBA's Comments for "Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Standardized Framework; Proposed Rule and Notice"

Ladies and Gentlemen:

The Mortgage Bankers Association[1] (MBA) welcomes the opportunity to comment on the proposed, optional changes to regulatory capital requirements for financial institutions (hereby banks) set forth in the recent Notice of Rulemaking, *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Standardized Framework*.

According to the Federal Reserve, home mortgage debt outstanding now totals over $11 trillion. Commercial and multifamily mortgages account for an additional $3.4 trillion. According to the Federal Deposit Insurance Corporation (FDIC), insured

1 The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 370,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

institutions in the U.S. hold about $2.2 trillion in 1-4 family mortgages. They hold another $1.2 trillion in commercial real estate assets. For these reasons alone, MBA and its member companies are quite interested in the proposed changes to capital adequacy regulations, as they have the potential to significantly impact an important part of the investor base for mortgages and related assets.

MBA lauds the efforts of the bank regulators to implement the Basel II New Accord that is designed to promote improved risk measurement and management processes and better align minimum risk-based capital requirements with risk. The proposed rules would be adopted by banks on an optional basis. Given the cost/benefit metrics for small banks and the concerns listed below, MBA would strongly oppose the proposed rules if their adoption was mandatory.

MBA assumes that capital requirements are among the issues that will be re-examined in light of current global credit crisis events, and this letter calls attention to several provisions that should be studied. For those items that are unique to the U. S. rule, U. S. regulators should study and discuss with international regulatory counterparts whether such provisions would improve the international rules. Other issues are appropriately discussed with the Basel Committee, as MBA believes harmonized global rules are preferable to a patchwork of regulations from country to country. These studies could go on independent of implementing the proposed "Standardized Approach" and not delay adoption by banks so electing to adopt.

MBA has two major concerns with the proposed regulation and several other observations.

Major Concerns:

Under Part IV, *Risk-Weighted Assets for Securitization Exposures*, when a bank securitizes mortgages and sells the Mortgage-Backed Security (MBS), it may still have to include that MBS in its risk-based capital calculation unless:

(1) The transfer is considered a sale under GAAP;
(2) The [BANK] has transferred to one or more third parties credit risk associated with the underlying exposures; and
(3) Any clean-up calls relating to the securitization are eligible clean-up calls.

On September 15, 2008, the Financial Accounting Standards Board (FASB) issued two exposure drafts. The first is a proposed amendment of FASB Statement No. 140, and the second is a proposed amendment to FASB Interpretation No. 46 (R). The proposed rules would significantly change the rules governing when a securitization and sale gets treated as a "sale" vs. a "secured financing" under GAAP and the circumstances that require a seller/servicer to "consolidate" the security vehicle's assets and liabilities in the seller/servicer's financial statements. These pronouncements are likely to cause many securitizations and sales, previously treated as sales to be "secured financings" and some that are considered as “sales” to be consolidated. Given the criteria in (1) above, there would appear to be no “relief” under the proposed “standardized approach” for the impact of this accounting principles change. This could have a significant impact on the risk-based capital requirements for many of our members, and could have an adverse pro-cyclical impact on the economy and financial markets during the current global credit and market crisis. MBA requests that the GAAP reference be deleted from the “standardized approach” or that the bank regulators provide transitional rules that would otherwise accommodate the impact of the proposed change in GAAP on banks and the economy.

MBA believes that regulators should not create competitive disparities among banks, including foreign and domestic banks, as a result of regulation. This would be contrary to one of the major intentions of the Basel Accords. Yet the proposed “standardized approach” diverges from the New Accord with respect to the risk weighting of residential mortgage exposures. In explaining this divergence from the New Accord, the proposed rules cite the “unique characteristics and risk profiles” within the U. S. markets. The MBA believes that the current globalization trends will likely reduce the differences in markets for specific products, and the proposed rules for MBS securitization exposures may put the domestic mortgage banking industry into a position of competitive disadvantage over time. MBA requests that the regulators study this issue further.

Other Observations:

Some members of our working group that are mandatory banks under the U. S. Basel II rule are already well on their way to implementing the “advanced approach”. Although the implementation cost was material even for large banks, those members feel that the implementation added value to the entity’s enterprise-wide risk management process and discipline. Our members believe that the implementation cost for the “standardized approach” will not be as large as the “advanced approach”. However, they believe that the “standardized approach” will not add much value to their existing risk management processes. The costs of implementation of the “standardized approach” may be still be prohibitive for some banks, and the MBA supports the “optional” language within the proposal. The MBA would oppose the proposed regulation if the new rules were mandatory.

Loan-to-value ratios (the ratio of a mortgage loans to the underlying property value) of mortgage loans have a significant impact on loss severity and a smaller impact on the frequency of default. Table 6 in the proposed rules provides guidance for risk-weighting residential mortgage exposures, and Table 7 provides risk weights for junior-lien residential mortgage exposures. The risk-weighting of mortgage exposures in these tables is based entirely on the loan-to-value ratios, excluding other credit factors like the credit score of the borrower, back-end debt ratios, product type, underwriting type etc. In light of the current crisis in the mortgage industry, MBA recommends that the bank regulators conduct a study to determine how predictive LTV ratios have been to determine if other attributes need to be added.

The proposed "standardized approach" permits banks to use external ratings to determine risk weights for a broad range of exposures, including sovereign risk, corporate exposures and securitization exposures, including exposures related to MBS. Such external ratings must come from recognized statistical rating organizations (NRSROs). In light of the performance of such ratings during the current credit and market crisis, other government agencies, including the SEC[2], appear to be moving toward less reliance on such ratings. MBA recommends that banking, insurance and securities regulators should develop a consistent policy regarding the future role of NRSRO ratings in the regulation of banks, insurance companies, and the capital markets in general.

The proposed rules for negative amortization mortgages would require a bank to calculate risk-based capital on the unfunded commitment. We believe that this requirement is appropriate for the added risk of such products.

Conclusion

MBA believes that the proposed "standardized approach" would move small to mid-size banks closer to the risk model envisioned in the Basel II "New Accord". However, with respect to mortgage-backed securities, the MBA has two major concerns. The first concern relates to the convergence of the potential impact of the proposed amendments of FAS 140 and FIN 46 (R) with the proposed risk-based capital rules related to securitization exposures. If the GAAP changes and the regulatory capital changes are both approved, as written, material amounts of assets will come back on the balance sheets of banks resulting in significant reductions in capital. The MBA requests that the proposed "standardized approach" be reviewed in light of the proposed changes to GAAP, and that changes be made to the "standardized approach" to soften the economic, pro-cyclical impact during the transition period.

The second concern relates to the divergence of the proposed risk-based capital rules from the treatment in other countries under Basel II. MBA believes that this divergence may result in a competitive disadvantage to the domestic mortgage banking industry over time.

As mentioned earlier, MBA supports the present intention in the draft for the adoption of the proposed rules to be optional. MBA would oppose any subsequent efforts to make

[2] See (a) *Reference to Ratings of Nationally Recognized Statistical Rating Organizations,* File Number S7-17-08; (b) *Securities Ratings,* File Number S7-18-08; and (c) *Reference to Ratings of Nationally Recognized Statistical Rating Organizations,* File Number S7-19-08, Securities Exchange Commission.

the adoption of the proposed rules mandatory or "highly encouraged" in the bank supervisory process, prior to addressing the preceding issues.

MBA greatly appreciates the opportunity to share its comments with the regulators on the proposed "standardized approach" to risk-based capital. Any questions about MBA's comments should be directed to Jim Gross, Associate Vice President and Staff Representative to MBA's Financial Management Committee, at (202) 557-2860 or jgross@mortgagebankers.org.

Most sincerely,

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Mortgage Bankers Association