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August 7, 2009

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

Re: Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions (RIN # 3064–AD47)

Ladies and Gentlemen:

This comment letter is being submitted on behalf of the private equity firms named at the end of this letter (collectively, the "Private Equity Commenters") with respect to the Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions (the "Proposed Policy Statement"), 74 Fed. Reg. 32931 (July 9, 2009), issued by the Federal Deposit Insurance Corporation (the "FDIC"). The Private Equity Commenters have worked together to prepare this comment letter because of their long-standing focus on investments in the U.S. banking system and their belief that private capital investors have a large and constructive role to play in stabilizing and supporting the banking system and minimizing the cost to the FDIC insurance fund of resolving future bank failures.

The Private Equity Commenters support the FDIC's decision to issue the Proposed Policy Statement. Greater clarity regarding the terms and conditions under which the FDIC will evaluate potential acquisitions of failed banks and thrifts will encourage more investors to participate in FDIC resolution transactions and enable bidders to maximize the value that they can offer the FDIC. Private equity firms had approximately $470 billion of committed available capital on a worldwide basis as of January 2009[1] and represent a tremendous resource that, together with other private capital investors,[2] could be effectively used to resolve failed banks and thrifts in a way that preserves jobs, enhances competition,

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1 As estimated by Prequin, an alternative assets research and consultancy group, January 2009.

2 The Proposed Policy Statement does not define the term "private capital investors" but doing so would provide important clarity. See page 9 below.

increases the availability of banking services to local communities, and strengthens the diversity of our banking system.

I. Benefits of Private Capital Acquisitions of Failed and Failing Banking Organizations

Private capital investors have participated in acquisitions of failed and failing banking organizations for decades, including during the thrift crisis of the 1980's, and have shown themselves to be responsible and supportive owners providing the necessary capital on a long-term basis for failed institutions to return to financial health. In two of the most prominent such transactions from the 1980's thrift crisis, for example – the acquisitions and recapitalizations of First Gibraltar Bank and American Savings Bank by private investors – the investors held their investments for more than five years and eight years, respectively, before exiting through capital markets sales or business combinations with publicly traded banking organizations. This reflects the investment goals of the investors in private equity and similar types of funds, which are principally public and private pension funds, endowments and similar institutional investors seeking long-term gains from the creation of fundamental shareholder value rather than short-term or speculative trading gains. There are a number of other examples of successful acquisitions and operation of depository institutions by private equity investors, both in the U.S. and abroad, and no evidence that such transactions have resulted in greater risks or higher failure rates than is the case with banking organizations generally.

Private capital acquisitions of failed banking organizations can bring significant benefits to customers, employees and communities, including:

- *Job Preservation.* Acquisitions of failed banking organizations by private capital investors are likely to involve minimal job redundancies. In fact, preservation of the organization as a platform for future growth and expansion creates new job opportunities.

- *Community Support.* In a typical acquisition of a failed banking organization by private capital investors, the branch network and retail banking operations are the cornerstone to rebuilding the organization. For example, the John Kanas-led consortium which acquired the failed BankUnited is implementing a growth strategy focused on branch expansion, increased local lending and development of a broader retail customer base. These steps expand the availability of banking services in the local community and preserve local lending relationships.

- *Increased Competition Benefits Customers.* By recapitalizing a failed banking organization and providing support for a new and stronger management team, private capital investors can make the organization an effective competitor in its banking markets. This can provide more banking alternatives at better prices for those communities.

The FDIC deposit insurance fund also benefits from having private capital investors as viable bidders for failed banking organizations. The number of troubled institutions has risen sharply over the past year, and a significant number of those institutions are expected to end up in receivership with the FDIC. Meanwhile, many strategic buyers will be focused on strengthening their own capital positions and dealing with increasing asset quality problems as consumer portfolios are stressed and commercial real estate conditions deteriorate. Accordingly, as the FDIC notes in the release accompanying the Proposed Policy Statement, having alternative sources of capital will be extremely important for the FDIC to fulfill its responsibilities for resolving the growing numbers of failed institutions. This is especially likely to be the case for the resolution of smaller banks and banks with weak franchises. The Private Equity Commenters note that in the three largest private capital acquisitions of troubled or failed banks of the past five years – BankUnited, IndyMac and Doral Financial – the winning private capital bid for one of those institutions represented a meaningfully lower cost to the deposit insurance fund than the competition, and no strategic bidder emerged for the other two institutions.

The BankUnited, IndyMac and Doral Financial transactions also reflect one of the key elements of a private capital acquisition of a troubled or failed bank: finding and supporting strong new management. Each of these banks operates with substantially new management teams and boards of directors drawn from major financial services companies and regulatory agencies, among other places, as shown in greater detail in Annex 1 to this letter.

While various private capital investors may have different investment strategies, in the event that private capital investors are discouraged or prevented from bidding to acquire failed banking organizations, it is unlikely that many of them would invest much of their otherwise-available capital in strategic buyers to fund the acquisition of failed banking organizations. An investment in an existing banking organization may expose a private capital investor to legacy asset and business risks, and the investor's return from the successful operation of the resolved institution would be diluted by the strategic buyer's other operations, which may be in business lines and geographies that the investor is not interested in. In addition, there are likely to be a number of situations where the characteristics of the failed banking organization result in little or no bidding interest from other banking organizations.

II. <u>Key Concerns with the Proposed Policy Statement</u>

Required Capital Level. Under the Proposed Policy Statement, private capital investors would be required to cause a depository institution that has acquired a failed banking organization to be initially capitalized at a minimum 15% Tier 1 leverage ratio for a period of at least three years, subject to further extension by the FDIC, and then at a "well capitalized" level of 5% for the remaining period of the investors' ownership. The Private Equity Commenters agree that strong capitalization is critically important for newly

formed institutions. However, setting the required capitalization ratio at too high a level will have several immediate and adverse consequences to both the FDIC and the banking system.

First, and most importantly, setting the required initial capitalization level at such a high level will place private capital investors at a fundamental competitive disadvantage to virtually all strategic bidders, which would ultimately undermine the FDIC's goal of achieving the least cost resolution of failed institutions. Based on the most recently available data (March 31, 2009), a 15% Tier 1 leverage ratio would be 65% greater than the median ratio for large and midsized U.S. banks and thrifts. (9.1%).[3] It would be 88% greater than the Tier 1 leverage ratio that the FDIC has historically required for start-up banking organizations – which are generally riskier operations than banks and thrifts purchased out of receivership because they have completely new managements, no infrastructure, no branch networks or customer bases and no loss sharing agreements covering any of their assets. Singling out private capital investors for this increased capital requirement would exacerbate the existing financial disadvantage faced by private capital investors resulting from their generally limited ability to realize the cost savings often available to strategic buyers from branch closures, job and overhead reductions and similar synergies.

Because even small changes in minimum required capital levels can have significant effects on investors' returns, requiring higher capital levels than industry norms will result in private capital investors being forced to significantly reduce the prices they can offer the FDIC to acquire failed institutions in order to realize an acceptable rate of return on investment. For example, on an illustrative basis assuming the acquisition of $10 billion in assets from a failed bank and an investment holding period of 8 years (among other assumptions), a bidder faced with an increase in required Tier 1 leverage ratio from 8% to 15% would have to reduce its bid by $1.8 billion in order to maintain a constant internal rate of return. Bidders could also increase the risk in the post-acquisition business strategy to mitigate the cost effect of higher capital levels, but such an approach would likely be inappropriate for a recapitalized institution, and accordingly private capital investors proposing a conservative business plan may be discouraged from bidding entirely due to a determination that the returns would be unacceptable. Neither a drastic increase in the cost of resolving failed institutions nor the elimination of potential qualified bidders seems consistent with the FDIC's goals.

In addition, the Private Equity Commenters believe that in comparing private capital investors to strategic investors, the quality of the capital must also be considered. In the precedent private capital transactions of the past few years, the investors capitalized the resulting banking organization entirely with common equity and not with any lesser-quality capital instruments such as preferred stock – including TARP preferred provided by the U.S.

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[3] Source: SNL Financial. Midsized includes U.S. banks and thrifts with total assets of $1-$25 billion, and large includes U.S. banks and thrifts with total assets in excess of $25 billion.

Treasury – or trust preferred securities (as is typically the case with existing bank holding companies). As a point of comparison, for example, OneWest Bank (which acquired the deposits and certain assets of the failed IndyMac Bank) had a tangible common equity to tangible assets ratio at March 31, 2009 of 9.8% compared to a median ratio at that date of 6.6% for midsized U.S. banks and thrifts and 5.1% for large U.S. banks and thrifts.[4]

It is also important to note that Tier 1 leverage ratios do not capture the extent to which different bidders may have very different asset risk profiles. For example, of the 70 banks that have acquired a failed institution from the FDIC since the beginning of 2008, 42 have Texas ratios (nonperforming assets as a percentage of tangible common equity and reserves) above 10%, including 13 with Texas ratios in excess of 25%, as compared to a long-term median Texas ratio of less than 10% for U.S. banks and thrifts.[5] In contrast, a bank acquired by private capital investors from the FDIC will have most of its legacy assets covered by loss sharing agreements with the FDIC and therefore can use its capital to support new lending to customers rather than to absorb future losses on its existing assets.

Because a large portion of the assets of a bank acquired by private capital investors from the FDIC will consist of the low risk-weighted categories of cash and assets subject to loss sharing from the FDIC, and because of the importance of common equity as a measurement of stable capital available for loss coverage, the Private Equity Commenters suggest that the FDIC consider replacing the proposed Tier 1 leverage test with a required ratio of Tier 1 common equity to risk weighted assets. The Private Equity Commenters believe that a three year requirement of a 6% Tier 1 Common ratio (as compared to the 4% Tier 1 Common ratio considered satisfactory in the recent Supervisory Capital Assessment Program), would provide a robust additional capital cushion compared to existing banking organizations. This ratio would more accurately reflect both the actual level of risk on the resolved institution's balance sheet as well as the amount of core common equity freely available to absorb losses in the future. If the FDIC would prefer to measure Tier 1 common equity against total assets, the Private Equity Commenters believe that a three-year requirement of a 5% ratio would be appropriate since it would equal the requirement for well-capitalized status but would rely solely on common equity (which, as noted above, is the method that private equity investors would typically use to capitalize a banking organization) rather than lesser-quality forms of capital. If, however, the FDIC prefers to retain the Tier 1 leverage ratio, the Private Equity Commenters respectfully suggest that the final Policy Statement set the minimum Tier 1 leverage capital ratio at not more than 8%, consistent with the FDIC's historic practice, and that any determination to set a higher capital level be done on a case-by-case basis taking into account the quality of the capital contributed, the strength and experience of the management team, the risks inherent in the business plan, and other similar factors.

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4 Source: SNL Financial.

5 Source: SNL Financial, median of U.S. banks and thrifts by quarter, 2003 through Q1 2009.

Source of Strength. The Proposed Policy Statement states that "Investors organizational structures" must agree to serve as a source of strength to their subsidiary depository institutions. The Private Equity Commenters understand this to mean that the top company in an ownership chain which is registered as a bank or thrift holding company, and all of its subsidiary holding companies, must agree to act as a source of strength to the subsidiary depository institutions, but that individual non-controlling investors will not be subject to any financial obligations to provide more capital or funds. If that understanding is correct, the Private Equity Commenters respectfully suggest that the Proposed Policy Statement be revised to state that clearly, given the great importance of this issue to all investors.[6]

In the release accompanying the Proposed Policy Statement the FDIC requested comment on whether a "broader obligation" from investors would be appropriate. The Private Equity Commenters strongly believe that imposing financial obligations on non-controlling investors would be unreasonable. Since these non-controlling investors by definition are not able to unilaterally implement measures to prevent or remedy the problems which gave rise to the need for additional capital, they should not be asked to assume unlimited liability for resolving those problems. As a practical reality, the Private Equity Commenters believe that few if any investors of any kind would make a non-controlling investment if they could be exposed to liability in addition to the loss of their investment. Such a requirement would also be unprecedented – there is no other provision in the federal banking laws that imposes support obligations on non-controlling investors. The Private Equity Commenters believe that the risks in acquiring a failed banking organization from the FDIC are, if anything, less than other situations (such as true *de novo* banks) where investors have never been, and will not be, subject to a source-of-strength obligation.

Cross-Guarantee Liability. The Proposed Policy Statement indicates that if investors holding a majority interest in one depository institution also own, in the aggregate, a majority of the shares in another depository institution, the investors' investments in the two institutions must be pledged to the FDIC to pay for losses the FDIC may incur as a result of providing assistance to or resolving either institution. As a general matter the Private Equity Commenters agree that liability of this type may be appropriate if a substantially identical group of investors were to acquire multiple banks and operate them in effect as common subsidiaries. As drafted, however, the Proposed Policy Statement raises

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6 Similarly, the Proposed Policy Statement states that "[i]f at any time the depository institution fails to meet this [capital] standard, the Investors would have to immediately facilitate restoring the institution to the 'well-capitalized' standards." The Private Equity Commenters respectfully suggest that the Proposed Policy Statement be revised to make clear that the term "facilitate" means that the investors, in their capacity as shareholders, take or approve reasonably necessary corporate actions to allow the holding company to raise capital (such as amending the holding company's charter to increase the number of authorized shares, if necessary) but does not require any financial commitment or support obligation by the investors themselves.

several difficult issues that would likely discourage private capital investors from bidding to acquire failed banking organizations:

- Private capital investors that do not "control" the institution they invest in are not permitted under the regulatory control rules to coordinate with each other their decisions to invest in unrelated banks or thrifts or to make multiple bank or thrift investments substantially as a group. Each "consortium" purchase of a failed or failing institution has therefore involved, and is likely to involve in the future, the organization of a group of investors assembled to invest in that particular investment, with a large element of chance as to which investors are in which consortiums. Since there are a finite number of private capital investors interested in investing in failed banking organizations, the possibility of a majority overlap will depend more on random chance than anything else.

- Cross-guarantee liability would be triggered by an overlap of investors irrespective of the size of their respective investments. Accordingly, an investor with a 24.9% investment in one institution would put that entire investment at risk if it made a minimal investment in another institution where majority ownership overlap existed. Similarly, a small investor in two institutions could be placed at risk if larger investors trigger the overlap standard.

The Private Equity Commenters note that incidental cross-ownership is extremely common among public banking organizations: the institutional investors that own common stock in all three of JPMorgan Chase, Wells Fargo and PNC hold, in the aggregate, a majority of the outstanding common stock of each of those institutions. If the Proposed Policy Statement were applied to public banking organizations, JPMorgan Chase, Wells Fargo and PNC would therefore be viewed as commonly controlled.

For these reasons, the Private Equity Commenters believe that a cross-guarantee provision will make it more difficult to assemble consortiums of investors to purchase failed banks and therefore respectfully suggest that it not be included in the final Policy Statement. If, however, the FDIC decides to retain such a provision, the Private Equity Commenters believe the triggering overlap percentage should be set at a sufficiently high level (such as 80%, which would be analogous to the common ownership threshold for banks to be exempt from the main restrictions of the Federal Reserve's Regulation W) that it applies to situations where investors are consciously acting together rather than coincidentally investing together in several transactions.[7] In addition, the Private Equity

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[7] The term "investor" would also need to be clarified to make clear that separate investment funds investing in different banks would not be subject to the cross-guaranty obligation even if advised by the same investment manager or general partner. Otherwise, investors in one fund would be put at risk for investments made for the benefit of investors in a different fund, which generally would not be permitted by fund agreements and would be fundamentally unfair, since the two investor groups would likely be different.

Commenters suggest that small ownership stakes (below 10%, for example) be excluded from the ownership overlap calculations in order to avoid discouraging small investors from participating in resolution transactions.

In its request for comments on the Proposed Policy Statement, the FDIC also asked whether the cross-guaranty commitment should be "enhanced by requiring a direct obligation of the Investors." For the same reasons that the Private Equity Commenters believe the source-of-strength provisions should not impose any financial obligation on investors, they believe any cross-guaranty obligation also should not.

Credit Extensions to Investors. The Proposed Policy Statement would prohibit extensions of credit by a depository institution owned by investors to all of those investors, their investment funds, affiliates, and portfolio companies.

As a general matter, the Private Equity Commenters strongly agree that a depository institution should not be used to subsidize the operations of its owners. That principle is embodied in various long-standing Federal laws, including the Federal Reserve's Regulations O and W which strictly limit credit extensions by a depository institution to entities which control that institution and their affiliates. These affiliate restrictions typically do not apply to smaller, passive investors in a depository institution because those types of investors do not have the power to cause the depository institution to engage in transactions that benefit the investor at the institution's expense. In addition, Federal bank regulators typically condition a significant (generally 10% or greater) investor's disclaimer of control on the investor agreeing not to enter into any new banking or non-banking transactions with the acquired depository institution, so even non-controlling investors can be subject to these restrictions if their stakes are large enough.

The Private Equity Commenters believe that existing Federal laws adequately protect depository institutions which acquire failed banks, just as they protect all other depository institutions, from inappropriate insider and affiliate transactions. If the FDIC decides the proposed additional restriction is appropriate, however, the Private Equity Commenters believe that the following changes to the Proposed Policy Statement would be critical for investors to be able to comply with it:

- The restriction should apply only to investors with a significant ownership stake (at least 10%) in the relevant depository institution. Many private capital investors are part of large and complex groups with numerous (sometimes hundreds) of portfolio companies. Implementing procedures to detect and prevent any of those entities from inadvertently obtaining an extension of credit from the relevant depository institution would generally be cumbersome and expensive. In the case of small investors, the risk of harm to the depository institution should be extremely low, since the larger owners of the depository institution would have no economic incentive to damage the value of their investment in the depository institution in order to benefit a smaller investor. Accordingly, the burdens on investors

contemplating a small investment would outweigh the benefits of such a restriction and would significantly discourage investors from making small investments, which would in turn tend to concentrate ownership in the hands of a few investors.

- The restriction as drafted covers not only the actual investors but also their "affiliates" (defined as ownership of 10% or more of the equity) and "portfolio companies" (defined as "companies in which the investors or [their] affiliates invest"). These definitions would include a broad range of companies over which the investors exercise no control or influence to ensure compliance with the Policy Statement, and may not even have access to enough information to determine whether violations of the Policy Statement are occurring. For this reason the Private Equity Commenters respectfully suggest that the FDIC adopt the relevant terms from the Federal Reserve's Regulation W, which reflect years of experience in appropriately tailoring the scope of affiliate transaction restrictions and dealing with complicated scenarios that arise in practice[8]. This would establish clear boundaries for covered entities which would enable investors to establish appropriate implementation procedures.

Threshold for Policy Statement Coverage. The Proposed Policy Statement indicates that it would apply to (i) "private capital investors in a company…that is proposing to directly or indirectly assume" deposit liabilities and/or assets from a failed depository institution, or (ii) applicants for a de novo charter issued in connection with the resolution of a failed depository institution. The Private Equity Commenters have several significant concerns with these definitions:

- The definitions do not specify what percentage ownership in a company by private capital investors will subject the company and its shareholders to the Policy Statement, nor do the definitions specify what a "private capital investor" is. As drafted, the Policy Statement could be applicable to a single minority investor in a bank holding company that does not meet the minimum age requirements, or multiple passive investors in a publicly-traded bank holding company that was recapitalized. The Private Equity Commenters respectfully suggest that the Policy Statement be limited to situations where a single investor, or "group" of investors, acquire "control" of a banking organization (using the terms "group" and "control" as defined in the Change in Bank Control Act) for purposes of bidding on failed institutions. Otherwise, the Policy Statement could have the unintended and undesirable effect of discouraging normal capital issuances.

- Companies which were formed or which were acquired by "an Investor" less than three years prior to the date of the final Policy Statement could become subject to the

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[8] For example, Regulation W has specific provisions dealing with the various complications that arise from investments in or through private capital funds. See 12 C.F.R. § 223.2(a)(9).

Policy Statement. The Private Equity Commenters respectfully suggest the following changes to these provisions:

- The three year period should be measured prior to the date of the bid for a failed depository institution, not the date of the Policy Statement. Once a banking organization has a three year operating history there is no policy reason to treat it differently than any other bank holding company.

- Under the Proposed Policy Statement a company would be subject to the Policy Statement if it were "acquired by an Investor" within the applicable three year period. The Private Equity Commenters recommend that this phrase be revised to refer to an investor "acquiring control of" the applicable institution in order to clarify that ordinary capital raises will not subject an institution to the Policy Statement.

Prohibition on Bank Secrecy Jurisdictions. The Proposed Policy Statement would prohibit private capital investors from utilizing entities domiciled in "bank secrecy jurisdictions" unless they are part of a group subject to comprehensive consolidated supervision as recognized by the Federal Reserve and satisfy certain other requirements. The Private Equity Commenters note that the Proposed Policy Statement does not contain any definition of "bank secrecy jurisdiction", which is not a term with an accepted regulatory or other meaning. More importantly, a prohibition on using any offshore entities in an ownership structure could restrict private capital investors from using traditional funding structures that provide tax and other efficiencies, thereby facilitating their ability to bid for failed depository institutions. The Private Equity Commenters believe that a non-controlling investor which satisfies the FDIC's information requests as specified in the Proposed Policy Statement should be permitted to use traditional offshore funding structures, particularly if the ultimate controlling person or entity of those offshore vehicles will be domiciled in the United States.

Prohibited Ownership Structures. The Proposed Policy Statement indicates that so-called "silo structures" would not be eligible bidders for failed banks because "under these structures beneficial ownership cannot be ascertained, the responsible parties for making decisions are not clearly identified, and/or ownership and control are separated." The Private Equity Commenters are concerned about several aspects of this restriction:

- The term "silo structure" has been used to describe various structures proposed by private capital investors that involve the formation of new funds (parallel to their existing funds) that can acquire banks and thrifts without causing the existing funds to be subject to regulation as bank or thrift holding companies. Many of the proposed structures are fairly straightforward and do not involve any different ownership or management characteristics than a typical private capital fund. Accordingly, the Private Equity Commenters respectfully suggest that the term "silo

structure" not be used in the final Policy Statement as a reference to prohibited structures.

- The Proposed Policy Statement also indicates that structures where "ownership and control are separated" will not be eligible bidders. The Private Equity Commenters respectfully note that the separation of ownership and control is characteristic of many, if not most, categories of institutional investors, including mutual funds, pension plans and endowments as well as private equity funds and hedge funds, and accordingly is not a reason to disqualify an entity as a potential bidder.

- The phrase in the Proposed Policy Statement "beneficial ownership cannot be ascertained" should be clarified to clearly indicate that disclosure of the identities of non-controlling limited partners and similar passive, non-voting investors in a structure (that is, less than 10% ownership) is not required by the Policy Statement. Disclosure of the identities of such investors is not typically required by the bank regulatory agencies in connection with control applications and would not provide useful information to the FDIC.

Continuity of Ownership. The Private Equity Commenters believe that most private capital investors considering the acquisition of a failed banking organization have a long-term investment horizon and expect to retain their investment for a substantial period of time while the institution is rebuilt. Almost by definition, a failed institution represents a damaged franchise that requires time and effort in order to create significant shareholder value. Accordingly, the Private Equity Commenters respectfully suggest that a continuity of ownership requirement in the Policy Statement is not necessary. If the FDIC does decide to include such a requirement in the final Policy Statement, however, the Private Equity Commenters believe that it should be for the same term (18 months) and have the type of *de minimis* exceptions that were included in the BankUnited loss-sharing agreements in order to accommodate normal commercial needs. More importantly, the holding company in which the investors invest, or its subsidiaries, should be able to conduct an initial public offering and follow-on offerings of its own securities without the need for FDIC approval. Such public offerings would only benefit the institution and the FDIC by providing new capital for the institution and access to the broader public capital markets, and it is difficult to imagine any situation where the FDIC would have reason to prohibit an IPO.

Termination of Policy Statement Restrictions. The Private Equity Commenters believe the Policy Statement restrictions should end on the earlier of (i) the third anniversary of the bid acceptance date, assuming at that time the banking organization is well-capitalized and well-managed (as defined in applicable banking regulations), and (ii) successful completion of an initial public offering, which indicates that the organization has achieved confidence from the public markets in its business, management and prospects.

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The Private Equity Commenters appreciate this opportunity to comment on the Proposed Policy Statement, and would be pleased to discuss any of the points made in this letter in more detail. The Private Equity Commenters believe that addressing these issues is important in developing a Policy Statement that encourages and facilitates private capital investments in failed banking organizations in a manner that reduces resolution costs and creates strong new institutions that serve the banking needs of the U.S. Should you have any questions, please contact Lee Meyerson at (212) 455-3675 or Ellen Patterson at (212) 455-2499.

Very truly yours,

SIMPSON THACHER & BARTLETT LLP
on behalf of the Private Equity Commenters:

THE BLACKSTONE GROUP
CENTERBRIDGE PARTNERS
CORSAIR CAPITAL
IRVING PLACE CAPITAL
LIGHTYEAR CAPITAL
OAK HILL CAPITAL PARTNERS
TPG CAPITAL

Annex 1

Institution	Management	Board of Directors
BankUnited	Entirely new executive management, including new CEO, CFO, Chief Lending Officer, General Counsel and Associate General Counsel, Chief Investment Officer and Enterprise Risk Management Officer, all with substantial prior banking industry experience	Entirely new board
IndyMac	New management includes new Chairman, CEO and President, CFO, Chief Risk Officer, and Head of Retail Bank	Entirely new board
Doral Financial	CEO recruited from GE Consumer Finance in connection with turnaround (mid-2006); all other executives joined thereafter	Replaced substantially in its entirety; now includes two former senior federal bank regulators and four former senior executives with major U.S. financial institutions