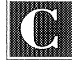

CALERA CAPITAL

David P. Lorsch
Managing Director

August 7, 2009

Via Electronic Mail (Comments@FDIC.gov)

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

Re: Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions

Dear Mr. Feldman:

Calera Capital ("Calera") is pleased to have the opportunity to comment on the Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions (the "Statement") issued by the Federal Deposit Insurance Corporation ("FDIC"). By way of background, Calera is a private equity firm founded in 1991 with offices in San Francisco and Boston that has $2.8 billion of capital under management. Our investors include public and private pension funds, endowments, institutions, and family offices.

While Calera has historically not invested in depository institutions, we have made significant investments in a number of financial services companies, including regulated businesses such as insurance companies. We have a strong interest in investing in banks and have pursued a number of investment opportunities in healthy banks as well as troubled and failed banks. However, our ability to invest in banks is predicated on an appropriate, fair, and certain regulatory framework.

Calera appreciates the need for the Federal Deposit Insurance Corporation ("FDIC") to protect the Deposit Insurance Fund and welcomes its role in ensuring the safety and security of the nation's banking system. We believe that private equity firms and other private capital investors can, as a result of their interest in investing in failed depository institutions, be of significant assistance to the FDIC in both of these areas. The participation of private capital investors in FDIC-managed processes to sell failed depository institutions increases competition for these

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deals and should thereby improve the terms under which the FDIC can sell these institutions and reduce the costs to the Deposit Insurance Fund. By backing experienced, talented bank management teams in these situations, private capital investors can also help bring needed operating expertise to failed depository institutions and ensure that these institutions are run more effectively and in a safe and sound manner going forward.

We understand the special role played by depository institutions in our nation's financial system and the need for substantial regulation to ensure that these institutions are appropriately managed. There is already a well developed regulatory framework in place governing bank ownership and bank management, but we believe that several of the proposed rule changes in the Statement are desirable and welcome complements to this existing framework. These include the efforts to ensure that beneficial ownership can be clearly ascertained and decision makers clearly identified under all approved transaction structures, the prohibitions against incestuous lending, and the prohibitions against bidding on failed institutions where a company or individual was already a significant owner prior to failure.

Calera nonetheless believes that the if the rules outlined in the Statement were adopted in their current form, it would significantly if not completely deter investment by private capital investors into the bank industry as it places these investors and the depository institutions in which they invest at a substantial competitive disadvantage to other investors. We believe it would not only substantially reduce the interest of private capital providers in recapitalizing failed depository institutions (or even in bidding for these institutions) but would also substantially reduce the interest of private capital providers in providing capital to existing depository institutions or de novo depository institutions, as these firms would then themselves in many instances be similarly constrained in their ability to participate in the recapitalization of failed depository institutions. This would lead to increased costs to the Deposit Insurance Fund, the banking industry as a whole and ultimately US taxpayers, in resolving the growing number of troubled and failed depository institutions.

The following comments address specific elements of the proposed policy statement:

<u>Parties to Whom the Statement Should Apply and Limitations</u>

Investments in depository institutions by all investors, including private capital investors, have historically been subject to comprehensive regulatory review and approval, in accordance with existing law. This includes processes for the prior approval, regulation, supervision, and examination of any investor that seeks substantial ownership in depository institutions of any type, including failed depository institutions. We believe these existing processes are effective in ensuring that all investors, including private capital investors, are capable and willing to act as responsible owners of depository institutions. In our view, the Statement's implication that private capital investors are able to operate outside normal regulatory scrutiny and requirements is not accurate.

We do not believe that the involvement of private capital investors in the resolution of failed depository institutions creates a unique set of concerns so as to demand additional regulation

outside of the normal regulatory framework. Importantly, there does not appear to be any rationale for imposing discriminatory burdens on private capital investors such as private equity firms based on empirical evidence or existing law. There is no track record of private equity firms providing poor oversight of depository institutions that they own and private equity firms were not significant owners of depository institutions leading into this banking crisis. In fact, to our knowledge, the only banks that have failed or required government assistance in the current credit cycle with significant private capital investment were in situations (such as Washington Mutual, Citigroup, etc.) where those private capital investors had provided equity to shore up an already distressed or undercapitalized bank (which ultimately led to a reduction in the losses born by the FDIC or the government). On the other hand, numerous banks with allegedly superior dispersed public or individual ownership have failed or are now seriously undercapitalized.

Capitalization Requirements

The requirement for higher mandatory capital levels in failed depository institutions acquired by private capital investors would place these investors at a substantial competitive disadvantage. Small differences in capital levels can have a significant impact on the economics of depository institutions, and a requirement for financial institutions acquired by private capital investors to hold much higher levels of capital than normal (as much as three times existing requirements) will result in bids for failed depository institutions that are either significantly lower in value than would otherwise be the case or fewer bids altogether. In either case, the result is higher prospective losses for the FDIC's Deposit Insurance Fund.

The requirement for higher mandatory capital levels at depository institutions with private capital investment post resolution would also have a significant, negative impact on the ability of these institutions to extend new loans to credit-worthy businesses and individuals. This reduces both the competitiveness and the profitability of the resolved institution, but it also reduces the total amount of credit available at a time when even the best businesses and creditors are finding credit difficult to obtain.

We certainly agree that acquired institutions must be well capitalized, but we believe that existing guidance and requirements in this regard are sufficient. To the extent a higher mandatory capital level for failed financial institutions acquired by private capital providers is nonetheless enacted, we believe it would be more logical to focus on a risk-based ratio. The use of a leverage ratio requirement would discourage depository institutions from holding lower-risk, lower-yielding assets and encourage them to hold higher-risk, higher-yielding assets; a risk-based ratio would eliminate this potentially perverse incentive.

Continuity of Ownership

Calera appreciates the need to maintain continuity of ownership, and we believe a mandatory minimum holding period post the acquisition of a failed depository institution is generally appropriate. We are concerned, however, about how this portion of the proposal will be enacted as it relates to depository institutions that may help recapitalize several failed institutions over

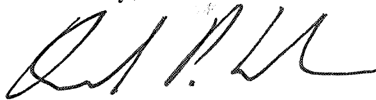
the course of time. For example, if a private capital provider helps recapitalize a failed depository and, three years later, that institution itself acquires another failed depository, then as currently proposed the private capital provider may effectively be subject to a six year mandatory holding period. As any individual private capital provider will not exercise control over the initially recapitalized institution under existing Federal Reserve requirements, that investor cannot prevent the a bank from acquiring other failed institutions and that investor could face an indeterminate and potentially indefinite mandatory holding period. Given that most private capital providers invest through funds or other structures that have limited lives after which point they are mandated to sell their investments, this risk would strongly discourage or even preclude the participation of private capital in the bank sector. We believe that if a mandatory minimum holding period is enacted, it should pertain to only the first acquisition of a failed institution by any given bank or thrift holding company in order to avoid this issue.

Source of Strength

Under current regulations, bank holding companies must act as a source of strength to their subsidiary institutions. We believe this requirement, whether in the traditional bank holding company context or in a thrift holding company context, is appropriate. Non-controlling private capital investors themselves should not be subject to a source of strength requirement, just as non-controlling shareholders of publicly traded bank and thrift holding companies are not subject to such a source of strength requirement. If this requirement were enacted it would require a passive equity investor to essentially act as a bank holding company and we believe it is certain that private capital would not invest in failed depository institution in that context.

We would be pleased to further discuss the Statement and any of our comments in this letter. We would also welcome the opportunity to address any questions you might have.

Sincerely,



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