

GERALD J. FORD

August 10, 2009

Via Email and U.S. Mail

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

Re: Request for Public Comment on Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions (RIN 3064-AD47)

Ladies and Gentlemen:

We understand the reason for the Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions (the "Proposed Policy Statement") is the Federal Deposit Insurance Corporation's ("FDIC") concern that owners of banks and thrifts, regardless of the form of ownership, have the experience, competence and willingness to run the institution in a prudent manner, accept the responsibility to support their respective institutions when they face difficulties and protect them from insider transactions. In particular, the FDIC has expressed concerns regarding the complexity and transparency of the ownership structure of institutions. We understand those concerns. In certain instances, we, however, believe that there are alternative methods to address those concerns in a manner that is more effective to stated objective.

I will initially address the specific questions posed to the public with respect to the Proposed Policy Statement and then address other items in the Proposed Policy Statement. While I have set forth a particular viewpoint on each item of the Proposed Policy Statement, the significance of the Proposed Policy Statement to investors and institutions will be as a whole. I encourage you to consider seeking comment on any revised policy.

My comments on the proposed policy statement are predicated on thirty-five years of the management and ownership of federally insured deposit institutions. Over that time we have acquired over forty-five banks, ten of which were failed federally insured financial institutions. We have held our ownership privately, publicly and through bank holding companies. For me personally, being deemed a control party or our investment vehicle being deemed a bank holding company is acceptable. In general, I believe there are current policies in place to adequately address your concerns; however, I do think clarity at this point in time is necessary to attract additional capital.

A. Enumerated Questions.

1. Definition of Investor.

The definition and application of Investor, as currently provided in the Proposed Policy Statement, is vague. In order to cure this ambiguity, we suggest that the Proposed Policy Statement be applicable to all (i) *de novo* charters and (ii) charters obtained for the purpose of bidding for failed institutions with disproportionately greater assets and liabilities than the assuming bank (e.g., expandable charter).

2. “Silo” Structures Ineligible to Bid for Failed Institutions.

While we recognize the efforts of private capital to provide suitable and attractive means to comply with existing regulation, we do not view the current regulatory structure as burdensome. Accordingly, a fund that expressly elects to become a regulated bank holding company, including its governing structure, and, therefore, accepts the responsibilities under existing law, is appropriate. We do not, however, oppose the use of funds that consist of substantially the same investors as other funds. We note that this is very similar to “chain banking,” which has been an acceptable practice in the past. We encourage the FDIC not to prohibit per se any particular type of structure, but permit the supervisory application process at the FDIC and its sister agencies to determine in each case if a fund and its investors are prepared to be transparent and provide adequate disclosures to address supervisory matters.

3. Capital Commitment.

While the Tier 1 leverage capital ratio is a key element in ensuring the safety and soundness of financial institutions, we do not believe that it is the paramount capital ratio for that objective. A financial institution possessing a Tier 1 leverage ratio of 15% remains subject to ultimate failure as a result of its total asset mix. Additionally, we believe that the use of a heightened Tier 1 leverage ratio will incorrectly incentivize management to acquire riskier assets by alternative means to generate additional returns. This, in turn, may ultimately put Tier 1 capital at risk, despite its elevated amount. Therefore, we suggest that the more appropriate capital ratio requiring heightened awareness is the total risk-based capital ratio. We also propose that the FDIC permit the total-risk based capital ratio to decline over a three year period to reflect the decreased risk; provided that the applicable regulatory authority has the ability to require the institution to maintain a specific level at any given time. In the event that the institution fails to meet its commitment to maintain the specified floor of the ratio, we agree that the applicable regulator must be entitled to avail itself of all measures to restore the institution to that level. Moreover, we firmly believe that the total risk-based capital ratio will correctly incentivize investors and management and achieve the objectives of the Proposed Policy Statement. I believe to require a Tier 1 leverage ratio of 15% will effectively eliminate those investors required to provide it.

4. Source of Strength.

We view the source of strength of an institution as a set of two components, financial and managerial. With respect to a source of financial strength, we believe that requiring Investors to commit to make additional capital infusions into an institution at the outset will serve to summarily eliminate additional capital investments into the system. As a result, we believe a more constructive approach would be to ensure that organizations have the ability to raise additional capital for an institution without undue restrictions. We view requirements, such as approval of more than a majority of the current Investors to

issue additional securities or dilution protection that has effect of thwarting additional capital raising activities, as examples of impediments to being considered a source of strength to the financial institution.

The other component of source of strength should consist of managerial resources. We believe that the assuming institution should be assessed to determine whether there is demonstrable evidence that the managers of the assuming bank have the experience, competence and credentials necessary for an institution of similar size to the failing institution and the circumstances surrounding its failure. The foregoing, together with the views expressed with respect to "silo" funds, in our view, would support the objectives of the Proposed Policy Statement.

5. Cross Guarantees.

From our perspective, the cross guarantee provision in the Proposed Policy Statement would deter non-controlling investors from providing additional capital into the system. We recognize that it is important to avoid the gain of one institution at the expense of another; however, we believe that this should rest with the entity in common control. Accordingly, we believe that the cross guarantee provisions, as currently in effect, provide sufficient protection to support the objectives of the Proposed Policy Statement.

6. Secrecy Law Jurisdictions.

We support your efforts to maintain transparency in the system in this regard. We, however, understand there may be circumstance in which these structures may be beneficial for reasons other than the circumvention of regulation. While we see no reason that the regulated bank holding company of an institution be organized offshore, we believe that there are legitimate tax purposes why some investors would choose to do so. Accordingly, with respect to non-control investments in a financial institution, we believe the FDIC should determine such structures on a case-by-case basis and obtain commitments from those investors to provide any information it should so require.

7. Continuity of Ownership.

We do not believe it is necessary to include a provision in the Proposed Policy Statement in this regard. There may be situations for which a sale would be beneficial to the institution's safety and soundness (e.g., a person with greater resources to serve as a source of financial strength, deteriorating relationship with control person, etc.). As result, we believe that, with respect to non-controlling investors, this requirement may have unintended consequences that could adversely affect the institution. The disposition of control of an institution is already well regulated and understood and provides adequate protection to the institution and FDIC. If there is such a provision in the Proposed Policy Statement, it should not exceed eighteen months.

8. Special Owner Bid Limitation.

The prohibition on Investors who, directly or indirectly, hold ten percent or more of a failed institution from bidding on that failed institution is sound and effective policy. The primary reason that we support the inclusion of this prohibition in the Proposed Policy Statement is that it provides those Investors with the appropriate incentives to prevent the failure of an institution. In the event that an Investor would be permitted to acquire the institution following the resolution process, that Investor may view it the least costly approach to it rather than the public.

9. Effective Period of Policy Statement.

We believe that a set time period for the application of the Proposed Policy Statement to an institution will not incentivize a more expedient return of the institution to the objectives of the Proposed Policy Statement as would another criterion. Accordingly, we propose that the Proposed Policy statement be applicable to an institution, other than as previously set forth in item 3 above, until the earlier of (i) the completion of two examinations that result in satisfactory ratings and (ii) three years. We believe this will require management to focus on the institution, as a whole, as compared to parameters specified in the Proposed Policy Statement. Additionally, we are of the belief that the acquisition of additional failed institutions by an ownership structure that is already subject to the Proposed Policy Statement should not restart the time period.

B. Other Aspects of Proposed Policy Statement.

In regards to the other matters that were included in the Proposed Policy Statement, but not specifically addressed in the questions posed, we express the following views.

A. Transactions with Affiliates.

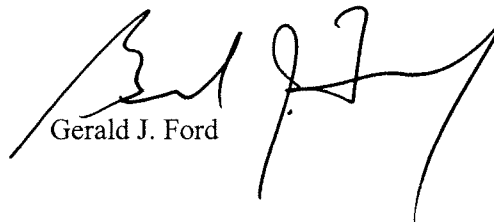
We view current regulation that addresses transactions with affiliates as sufficiently comprehensive and understood. As a result, we do not view the necessity, at this time, to provide additional regulation with respect to these matters.

B. Disclosure.

As part of the current application process, each investor of greater than ten percent is required to provide extensive information regarding its size, diversification, returns, marketing, management team and business model. It is unclear what additional disclosures are intended by the Proposed Policy Statement beyond those required as part of the FDIC's current rigorous and well understood regulatory application process. We believe that the chartering authorities and other regulators currently have the means and authority to obtain all additional information they may so desire.

I appreciate the opportunity to contribute to your efforts and remain committed to provide capital and management to assist in restoring financial institutions.

Very truly yours,


Gerald J. Ford