KELSO
& COMPANY

James J. Connors, II
Managing Director & General Counsel

August 10, 2009

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:

Kelso & Company, L.P. welcomes the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC's") Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions (the "Policy Statement"). I am James J. Connors, II, Managing Director & General Counsel of Kelso & Company. Kelso & Company is a private equity firm that manages investment partnerships, which make investments in a variety of industries.

We support the FDIC's desire to establish clear guidelines and standards for acquiring failed bank assets. We believe that establishing a set of guidelines and standards applicable only to private capital investments is not ultimately in the best interest of the banking sector, banking consumers, or investors. We also believe that there is no apparent evidence that would justify singling out private equity investors in this fashion.

The guidelines and standards as currently written will have a chilling effect on private capital investors, depriving the banking sector of an important source of capital. The Policy Statement acknowledges that private capital investors are interested in acquiring failed bank assets and that "substantial additional capital in needed in the U.S. banking system." To make more challenging the already daunting barriers to entry into failed bank acquisitions will discourage private capital investors from steering much needed capital into the banking system and could, in fact, ultimately place a greater burden on the deposit insurance fund ("DIF") due to fewer bidders on failed bank assets.

We note that the scope of the Policy Statement is unclear, as it would appear to cover an investor of any type or amount and therefore include banks in many situations that we imagine are beyond the intended scope of the Policy Statement.

The "source of strength" proposal to subject investors in a holding company or bank to liability for the capital of the institution in which they invest will discourage the very investment which government policy should seek to foster.

The proposal to place the investments of investors that in the aggregate amount to a majority of a bank at risk where some combination of those investors also hold a majority interest in another institution, even though such investors do not control the institution individually or through any organized effort, other than in their capacity as individual investors, would impose a cost that would likely preclude any bid on an insolvent institution by such investors for fear of the loss of their investment in the first institution.

The Policy Statement would put any bank that private capital investors acquire at a competitive disadvantage relative to other banks. The substantially higher capital requirements would increase such a bank's cost of capital and decrease the ability to lend profitably in its communities. As a result, consumers may face higher interest rates on loans, lower rates on deposits, and fewer credit opportunities with such a bank.

The Policy Statement would also prohibit a special purpose fund organized by an advisor as a means of placing investors into a fund that would be a regulated bank or thrift holding company, without bringing the advisors other funds under regulation, suggesting that such arrangements are not transparent. We suggest that such funds which are organized from time to time for regulatory or tax reasons do not present an issue, that through the process of seeking prior approval to become subject to holding company regulation the holding company supervisors have ample opportunity to investigate the relevant facts, and that such vehicles should not be prohibited per se from bidding under the Policy Statement.

The retroactive application of the Policy Statement will also discourages private capital investments. All investors – not just private capital investors – need assurances that the deals they negotiate and the contracts they sign will be honored and that they will not be subject to retroactive standards that would have precluded their investments in the first instance.

Finally, we note that many of the concerns stated in the Policy Statement are capable of being addressed through enforcement of existing laws and regulations and through transparency in bidding and application processes. We encourage the FDIC to take this into consideration and to create a more even playing field for all potential investors.

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We thank the FDIC for the opportunity to comment on its proposed policy statement. Please do not hesitate to contact me to discuss any aspects of this letter or the proposed policy statement.

Sincerely,

James J. Connors, II
Managing Director & General Counsel