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Glen Wakeman
President & CEO
Doral Financial Corp.

August 10, 2009

Ms. Sheila Bair, Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

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

Dear Chairman Bair:

Doral Financial Corporation ("DFC") is pleased to provide the FDIC with comments concerning the proposed Policy Statement on Qualifications for Failed Bank Acquisitions, as published in the Federal Register on July 9, 2009 (the "Proposal").

DFC and its subsidiary banks, Doral Bank Puerto Rico and Doral Bank New York, FSB (collectively, "Doral Bank") are in a unique position to comment on the Proposal, because in 2007 they were recapitalized by an investor group backed by private equity in an unassisted transaction in which the investor group contributed over $610 million of new capital. If not for this recapitalization, it is likely that FDIC intervention would have been necessary at a cost to the FDIC of hundreds of millions of dollars. In the two years since our recapitalization, through our well capitalized banking subsidiaries, DFC has served its communities well by providing high quality banking products and services in Puerto Rico and New York, some of the nation's most challenging banking markets. Notwithstanding the challenges of the markets in which we operate, DFC recently concluded a profitable quarter. Because of DFC's revived financial strength, DFC is able to be part of the solution to the challenges facing the markets in which it operates. Adoption of the Proposal, however, would eliminate DFC's ability to engage in assisted transactions in the future.

The Proposal applies to private capital investors in a company other than a bank or thrift holding company that has come into existence or has been acquired by an Investor at least 3 years prior to the policy statement. As DFC was significantly recapitalized within the past three years, subject to a comprehensive review and approval by the Federal Reserve Board and with full knowledge of the FDIC and other regulatory agencies, DFC will fall squarely within the ambit of the Proposal and thereby will be precluded from participating in FDIC assisted transactions in the future. [1] This could adversely impact the FDIC's ability to achieve a "least cost resolution" relating to failing banks in our

[1] Under the Proposal's three-year look back provision, it is possible that in the case of Doral Bank, the Proposal's applicability would initially last for only one year and then, DFC and its shareholders, would be released from the restrictions and obligations set forth in the Proposal. However, if the FDIC interprets the look-back provisions to recommence upon the acquisition of a failed institution, DFC, and its shareholders would once against be subject to the requirements and obligations of the Proposal. The fact that DFC has private equity investors as shareholders should not create an air of uncertainty each time DFC or Doral Bank seeks to participate in an assisted transaction.

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market areas because we will be unable to bid to assume deposits and purchase assets of such failing banks.

This result will be particularly harmful to the FDIC because Puerto Rico is literally an insular market and the FDIC's "least cost resolution" policy requires that the FDIC adopt policies that encourage and not restrict potential acquirers from participating in FDIC assisted transactions. However, many of the requirements contained within the Proposal would effectively eliminate DFC's participation in FDIC assisted transactions.

The first requirement that would eliminate DFC's participation in FDIC assisted transactions is the enhanced capital commitment of 15% Tier 1 leverage ratio for at least three years after an acquisition. This requirement effectively makes the expected return against capital put at risk of participating in any assisted transaction too high for banks with private equity investors and unfairly advantages other potential bidders, principally out-of-market banks.

DFC has "public" shareholders in addition to its private equity investors. DFC's recapitalization involved maintaining a public component to DFC's equity base. DFC sees little difference between its shareholder base and that of other entities such as Bank of America Corp. that has both the United States government as a stockholder but also has significant institutional ownership consisting of other banks, pension funds, mutual funds and hedge funds in addition to individual public holders. The Proposal unfairly impairs the value of our common stock in the public market because DFC will be precluded from participating in FDIC assisted transactions and therefore is disadvantaged from competing in its markets against other banks. This possible unintended consequence also will impact DFC's ability to raise capital in the public markets to assist in any transaction or strengthening of its own balance sheet. Effectively, the Proposal would require one group of shareholders to take on additional risks and make additional capital commitments that other shareholders are not obligated to make. Because DFC cannot realistically approach one group of its shareholders to take on additional obligations, DFC is automatically precluded from participating in FDIC assisted transactions.

Another requirement that will eliminate DFC from participating in any proposed FDIC assisted transaction is the three year holding requirement. DFC's recapitalization occurred on July 19, 2007. Although our public holders have been able to freely sell their common shares, since then our non-public shareholders have continued to maintain their investment and have stood by the company. DFC believes it is inconsistent to now require one class of shareholders to "double down" on their investment horizon while the other class of shareholders is free to sell at any time.

A third requirement that will impact DFC is the ability to engage in any transactions with portfolio companies of our shareholders -- transactions that would be fully permissible if Doral Bank did not seek to help resolve failed banks within its markets. In reality, this rule does not currently impact Doral Bank's business as to our non-public shareholders' other portfolio companies are not in the markets served by DFC. However, this rule

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could become a barrier to engaging in an FDIC assisted transaction, particularly where the relationship is pre-existing, at arms' length and immaterial to the overall operations of the bank.

A fourth requirement would require that DFC's existing private equity shareholders act as a source of strength to Doral Bank and provide for cross-guarantees for other banking investments. Imposition of requirements such as cross-guarantees on non-controlling shareholders violates basic principles of corporate structure, including the principle of limited liability, and DFC realistically cannot reach out unilaterally to its non-controlling shareholders advising them of their new obligations. While DFC has a significant number of private equity shareholders, DFC also has a significant number of individual common shareholders, whose interests were maintained throughout our recapitalization. While no individual private equity shareholder is deemed to control DFC, application of the Proposal would impose significant obligations on DFC's shareholder base. While our shareholder base may not precisely be the shareholder base that the Proposal was intended for, our shareholder base provides a vivid example of the unintended consequences being created by applying restrictions and limitations based upon shareholder type.

We believe that creating separate legal obligations within a company's equity capital structure is inappropriate and contrary to existing law. For example, under the Bank Holding Company Act the Federal Reserve Board only seeks to impose a source of strength obligation on companies that control a bank and are bank holding companies. Similarly, the FDIC is authorized to impose a cross-guarantee obligation under the Federal Deposit Insurance Act on commonly controlled institutions. The common theme under the banking laws is that controlling shareholders have obligations. The Proposal, however, seeks to expand existing statues by imposing obligations on a class of shareholder, without regard to whether they actually control a bank. Imposition of requirements such as cross-guarantees on non-controlling shareholders is inconsistent with the principles of corporate structure, including the principle of limited liability. Entities receiving government approval to control an institution voluntarily consent to greater obligation, but entities that do not satisfy any long-standing governmental tests of control should not be subjected to requirements that expand their liability because of their perceived deep pockets. Moreover, as noted, many banks that do not fall within the three year rule in fact have similar institutional holdings to DFC.

As the FDIC is mandated by Congress to resolve failing banks in the least cost method of resolution, we believe that it is not in the public's best interest to eliminate potential acquirers of failed bank because they have private equity shareholders who purchased their shareholdings in transactions blessed by the FDIC. In DFC's case, the recapitalization was recognized as the best possible outcome for DFC and its public shareholders. Implementation of the Proposal would be severely detrimental to the FDIC's Deposit Insurance Fund by increasing the cost of failed bank resolutions, adversely affect the local economy in which the failed bank operates by eliminating jobs and restricting lending that leads to job creation, and would remove an important source of community leaders and civic involvement in towns, cities, and states. Moreover, in an

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insular market such as Puerto Rico, in reality there will only be a limited number of qualified potential buyers of failed banks and DFC should not be precluded from being part of the solution.

We believe that now is the time to encourage capital investment in insured depository institutions by qualified investors to recapitalize banks that will then make loans that will create jobs and support the economic recovery, and it is not the time to create artificial barriers to level playing field competition that will stifle lending and innovation and restrain the economic recovery. DFC believes that the Proposal is not necessary as the FDIC already has sufficient ability to control the failed bank sale process. The FDIC's least cost resolution process should encourage all potential acquirers to present their proposals; and the FDIC is free to evaluate DFC's proposed transaction under the same terms and conditions as all other potential bidders – existing banks or investors seeking to enter the banking industry. Willing investors that satisfy the stringent managerial, financial and activities criteria of the Bank Holding Company Act or Home Owners' Loan Act should be qualified to engage in failed bank acquisitions. The FDIC, in coordination with other federal bank regulators, can apply its well-recognized guidelines relating to its evaluation of the "least cost resolution." These include the financial stability of the acquirer, the capability of the management team, the purchase price for the assets as well as other criteria. Given the significant need for additional and new capital in the banking industry, we strongly believe that it is the wrong time to create unneeded or artificial impediments to failed bank acquisitions. Compliance with the restrictions and limitations set forth in the Proposal in its current form would restrict DFC from taking on the business, economic and increased regulatory risks of acquiring, restructuring, and leading a failed depository institution to profitability and to embrace the role as a community leader.

DFC agrees that it is beneficial for the FDIC to issue clear and transparent guidance with respect to the agency's expectations and requirements of private equity in assisted acquisitions of banks on a going forward basis. Such guidance could provide future private equity investors with a roadmap for analyzing potential acquisitions of failed banks and the level of assistance required, result in capital investment proposals that are worthy of the FDIC's consideration upon their initial submission, and accelerate the resolution process by reducing the FDIC's burden of sifting through the myriad of structures and proposals to find the diamond among the detritus. The requirements in the Proposal are not necessary to accomplish this objective as the FDIC in conjunction with other federal and state banking regulators already determine who should control a depository institution. These same regulatory agencies are also capable of appropriately supervising the resulting entity and timely identify issues, requiring corrective actions through the ongoing examination process, and ensuring compliance using existing enforcement mechanisms.

As an alternative to the Proposal, we suggest that the FDIC, in conjunction with the Federal Reserve Board, publish a whitepaper or other guidance discussing the parameters of a successful private equity or other outside investor bid. The whitepaper should explain why some features or structures enhance the proposal, and why other features and

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structures are untenable. The whitepaper should not establish any bright lines or litmus tests that are more restraining than what is currently required by statute or regulation, but should clearly identify those key constraints and matters of concern to the regulators such as:

- Exclusion from consideration those proposals where ownership interests and control are clearly identified in the acquisition proposal.
- Guidelines regarding consideration of senior management team experience and expertise.
- Guidelines limiting specific unsafe and unsound practices that are more restrictive but address the specific circumstances the regulatory agencies are concerned about such as tighter limits on transactions with affiliates and commonly controlled entities, payment of dividends, etc.
- A process to manage safety and soundness and compliance risks through increased examination and reporting rather than through an abundance of capital.
- Circumstances in which the FDIC would be willing to make exceptions in order to facilitate a clearly lower cost solution to the insurance fund.

Making successful acquisition characteristics transparent, and utilizing the existing powers of the agencies, can accomplish the FDIC's many different objectives without stifling the flow of capital and creativity that private equity investors can bring to the process. We believe that clear guidance along these lines will help result in least cost resolutions of failed institutions and help the deposit insurance fund, banking industry, economy and ultimately the United States taxpayer.

Finally, we also believe that if any final guidance establishing higher thresholds than those required by statute or regulation of an ongoing bank or bank holding company is adopted, it should apply only to investors in FDIC assisted transactions as currently proposed. Assisted transactions have federal involvement associated with them that are not characteristic of unassisted transactions.

The attachment to this letter contains our responses to the specific questions posed in the Proposal. I appreciate the opportunity to comment on this matter of upmost importance to DFC, the banking agencies, and the potentially affected communities in which failing banks may operate. I hope our views as shaped by our unique experiences are helpful in your deliberations.

Sincerely,

Glen R. Wakeman
CEO and President

cc: Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation

Appendix

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Appendix

The following comments are provided in response to the requirements of the Proposal:

Comment 1: The Proposal will be applied to (a) private capital investors in certain companies, proposing to assume deposit liabilities, or both such liabilities and assets, from a failed insured depository institution (including all entities in such an ownership chain) and to (b) applicants for insurance in the case of de novo charters issued in connections with the resolution of a failed bank. Is some other definition more appropriate?

Response 1: While we believe it is very helpful to publish definitive guidelines upon which investment decisions can be made, we do not believe that there is a supportable need to single out private capital investors for the purposes of imposing significant restrictions and conditions that are not applicable to other potential acquirers of failed institutions. Such actions will at worst serve to drive away potential capital to an industry facing significant capital shortfalls, or at best, substantially increase future resolution costs to the insurance fund. If requirements are to be posed, they should be applied to all potential acquirers regardless of source of funding. This will ensure a level playing field that will in turn yield consistent and competitive bids from all participants.

The application of such requirements on private equity investors is not supported by historical experience. There is no connection between private equity ownership and an increased likelihood of a bank failure. An investor's source of capital does not correlate to the increased likelihood of failure as most of the bank failures over the last 24 months were publicly traded entities. In our particular case, private equity invested $610 million to rescue a seriously troubled institution without any FDIC assistance. The private equity recapitalization allowed our company to compile a team of experienced bankers and a world class Board of Directors that would normally be associated with a significantly larger and more complex financial institution. Under this vastly improved governance structure, new management at DFC was able to successfully remediate and terminate two Cease and Desist Orders and two Memorandums of Understanding issued by the FDIC, as well as the rescission by the OTS of restrictions imposed at our thrift subsidiary.

In addition, the imposition of these requirements is not practical in situations such as DFC's where less than 100% of the outstanding stock was acquired leaving the original shareholders in place with a minority interest. Not only do we believe that the market price of their shares will be impaired by the competitive disadvantage of preventing it from bidding on potential assisted acquisitions, but how would the rights of the minority shareholders be treated with respect to the Prompt Corrective Action treatment should the leverage ratio fall below 15% or a trigger under the Cross Guarantee Commitment?

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Comment 2: Silo structures would not be considered to be eligible bidders for failed bank assets and liabilities since under these structures beneficial ownership cannot be ascertained, the responsible parties for making decisions are not clearly identified, and/or the ownership and control are separated. Are there any reasons why they should not be considered to be eligible bidders?

Response 2: We fully support the need for a transparent ownership structure and control determination. As such, we believe that the Federal Reserve's holding company process provides for a comprehensive review and supervision of an investor's ownership structure.

Comment 3: The Proposal requires a Tier 1 leverage ratio of 15% to be maintained for a period of three years, and thereafter the capital of the bank shall remain at Well Capitalized. The FDIC seeks the views of commenters on the appropriate level of initial capital that will satisfy safety and soundness concerns without making investments in the assets and liabilities of failed banks and thrift uncompetitive and uneconomic. Should there be a further requirement that if capital declines below the required capital level, the institution would be treated as "undercapitalized" for purposes of Prompt Corrective Action and the institution's regulator would have available all the measures that would be available in such a situation?

Response 3: We strongly believe that the proposed capital requirements of three times the regulatory well capitalized requirements will materially decrease or even preclude the participation of private equity in the resolution of failed institutions, and will significantly increase the cost to the deposit insurance fund. The proposed capital requirements are a disincentive to participating in assisted transactions as private equity-rescued institutions will be at a significant competitive disadvantage to other banks as the burdensome capital requirements will severely diminish the capacity to make loans and/or engage in other acquisitions. While, in our experience, private equity investors are willing to risk investments in turn around situations, a market rate of return for that investment is required. The increased cost to the deposit insurance fund will come from having to seek further assistance up front to offset the loss of growth potential caused by the higher capital requirements. Additionally, fewer participants in the process will reduce the incentive to develop the lowest possible cost solution to the FDIC.

The undercapitalized PCA trigger and the related consequences at a 14.99% leverage ratio is excessive and will further limit the involvement of private equity in the resolution process. This provision would impose consequences that are normally reserved for very poorly capitalized institutions. Our recommendation is to apply the existing prompt corrective action requirements equitably to such depository institutions and limit risks to the fund by more frequent and in-depth off-site monitoring and on-site safety and soundness examinations. If the examiners determine that there is a greater risk associated

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with the practices of an institution, they currently have the regulatory tools to increase the required capital levels of the acquired entity.

Comment 4: Should the Source of Strength commitment included in the Proposal be retained in the final policy statement? Should the commitment be enhanced to require from the shell holding company and/or the investors a broader obligation than only a commitment to raise additional equity or engage in capital qualifying borrowing?

Response 4: This requirement would effectively eliminate the ability of private equity to participate in the resolution process as rational investors are not willing to take on unlimited contingent liabilities or incur an unnecessary dilution of their interest. As rational investors with a substantial equity position, sufficient financial incentives exist for investors to protect their existing investment where feasible to do so. Additionally, those entities that are deemed to be holding companies are subject to the source of strength guidelines of the Federal Reserve. Finally, the Proposal would seem to reach into the private equity investor's perceived "deep pocket" through a legal structure intended to limit the investor's exposure to the amount invested should the bank again founder. This is a particularly troublesome element that we suggest be removed from the Proposal.

Comment 5: Should the Cross Guarantee Commitment included in the Proposal be retained in the final policy statement? Should the Cross Guarantee Commitment contained in the Proposal be enhanced by requiring a direct obligation of the investors?

Response 5: The Cross Guarantee Commitment would have an equally chilling impact on the willingness of private equity to participate in the resolution process. The Federal Deposit Insurance Act provides for cross-guarantees of commonly-controlled institutions. Imposing such a requirement on non-commonly controlled institutions is beyond the scope of the FDIC's statutory mandate. Moreover, such a commitment is not practical in cases where there are several unrelated cross-bank investments. As a result, this requirement would drive investors to invest in only one institution.

Comment 6: The Proposal limits the use of entities in an ownership structure that are domiciled in bank secrecy jurisdictions unless the investors are subsidiaries of companies that are subject to comprehensive consolidated supervision as recognized by the Federal Reserve Board. Should entities established in bank secrecy jurisdictions be considered to be eligible bidders without being subject to comprehensive consolidated supervision?

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Response 6: The Proposal does not sufficiently define "bank secrecy jurisdiction" so for the purpose of this discussion we will assume the reference is to entities domiciled outside of the US. There are many legitimate business reasons for domiciling business entities offshore that are not related to avoiding the requirements of the Bank Secrecy Act. As stated previously, we fully support transparent ownership structures and believe that the regulatory vetting process for new acquirers and the Federal Reserve's holding company approval process are sufficient safeguards to identify illegitimate acquirers. We suggest that if the ultimate owners or beneficiaries cannot be clearly identified that the application be denied, an action available to the FDIC under its current authority.

Comment 7: Under the Proposal, investors would be prohibited from selling or otherwise transferring securities of the investor's holding company or depository institution for a three year period of time following the acquisition without the prior approval of the FDIC. Is three years the correct period of time for limiting sales, or should the period be shorter or longer?

Response 7: Although DFC's investors are long-term, a three year holding period does not change or reduce the risk to the insurance fund. The bidding process ensures a market price at the time acquisition. Investors should not be unreasonably penalized for a successful turn around in a timely manner. We suggest that there not be a limit on the ownership term. The subsequent sale of an acquired entity to new investors must be reviewed and approved by federal and/or state regulators prior to execution, and if unsafe or unsound can be denied under existing authority.

Comment 8: The Proposal provides that investors that directly or indirectly hold 10% or more of the equity of a bank or thrift in receivership would not be considered eligible to be a bidder to become an investor in the deposit liabilities, or both such liabilities and assets, of that failed depository institution. Is this exclusion appropriate on the basis of the need to assure fairness among all bidders and to avoid an incentive for the 10% or more investor to seek to take advantage of the potential availability of loss sharing by the FDIC if the subsidiary bank or thrift enters into receivership?

Response 8: We concur with the recommendation.

Comment 9: Should the limitation of the Proposal be lifted after a certain number of years of successful operation of a bank or thrift holding company? If so, what would be the appropriate timeframe for lifting the conditions? What other criteria should apply? Should all or only some of the conditions be lifted?

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Response 9: The limitations of the Proposal center around a three year timeframe including the applicability of the Proposal to entities that have been acquired by private equity within the last three years. We assume this timeframe has been established in order for the FDIC to fully assess the competency of the management team in place. We believe that a two year time frame is sufficient for the regulatory agencies to develop a level of comfort with the new management team and ownership structure. In our particular case over the last two years, our holding company and banking subsidiaries have been subject to multiple and exhaustive examinations by the Federal Reserve, FDIC, OTS and our local regulator. These examinations have provided the regulatory agencies with more than enough information to make an accurate assessment of the management team and the governance of the Board of Directors. As previously noted, new management at Doral has successfully remediated and terminated numerous formal and informal regulatory enforcement actions within the two year timeframe.

It is also not appropriate to equate the operations of a rescued bank with the FDIC's experience with *de novo* institutions. Unlike a start up, a rescued bank will start business on day one with an operating platform, deposit and loan customers, a sustainable balance sheet, and full staffing enhanced with a new executive management team that was fully vetted during the regulatory application process.

Comment 10: Restrictions on loans to affiliates

Response 10: We generally concur with the concept of restricting loans to statutorily-defined affiliates, but note the significant regulatory burden of establishing compliance controls as investors typically have numerous and frequently changing investments in other companies non-controlling shareholder may not necessarily shareholder a bank their confidential listing of portfolio companies. Sections 23A and 23B of the Federal Reserve Act, and Regulation W promulgated thereunder currently limit a bank's transactions with affiliates. As the Proposal fails to address any inadequacies in such regulatory structure, we believe there is no reason to impose another set of requirements.