BNY MELLON

May 16, 2011

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Office of the Comptroller
of the Currency
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Washington, D.C. 20219
Attention: 1557-0081

Gary A. Kuiper
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Federal Deposit Insurance Corporation
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Washington, D.C. 20429
Attention: Comments 3064-0052

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Office of Information and
Regulatory Affairs
U.S. Office of Management
and Budget
New Executive Office Building
Room 10325
725 17th Street, N.W.
Washington, D.C. 20503

Re: Consolidated Reports of Condition and Income (FFIEC 031 and 041)

Ladies and Gentlemen:

The Bank of New York Mellon Corporation ("BNYM"), a bank holding company with its headquarters in New York, New York, appreciates the opportunity to comment on the proposed revisions (the "Proposal") to the Consolidated Reports of Condition and Income (the "Call Report") and the instructions thereto jointly proposed by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (hereinafter collectively the "Agencies"). Our comments to the Proposal are presented below.

Executive Summary

BNYM is concerned that the Proposal's incorporation of changes to the definitions of *subprime consumer mortgage loan* and *leveraged loans* for Call Reporting purposes will burden most banks with a significantly increased and much more expensive information collection obligation that surpasses by a wide margin that required under present rules. We are informed that many banks, particularly large and complex institutions, harbor substantial concern over their ability to comply with the new information collection and

reporting requirements in time for the June 30, 2011 – and in all likelihood several subsequent quarters' – Call Reports. We understand that many banks have not been able to determine just when they will be able to collect and submit a Call Report that complies with the Proposal and the new definitions it incorporates. BNYM recommends, therefore, that:

- The Agencies and representatives of the banking industry should promptly begin to work together to refine or adjust, in an appropriate and reasonable manner consistent with the safety and soundness goals of the Final Rule and the Dodd Frank Act, the definitions of the said two terms and the associated reporting requirements.

- Until that joint effort at refinement and adjustment is completed, the Agencies should delay implementation of those new definitions.

- During the delay, the Agencies should permit banks, particularly large and highly complex institutions, to report subprime and leveraged loan information using information, definitions and methods that are being used at present.

What may at first review appear to be a subtle textual change to certain definitions used for Call Reporting purposes is in fact a change of rather broad proportion. Some examples of the changes appear below.

1. *Subprime consumer loans.*

The Proposal's suggested definition of subprime loans would include many loans that we believe are not made to subprime borrowers. Most problematic is the definitional element that characterizes a loan as subprime if the borrower has had two or more 30-day delinquencies in the previous 12 months or one or more 60-day delinquencies in the previous 24 months. Many borrowers are temporarily delinquent on various bills in the course of a year. The occurrences of such isolated, temporary delinquencies are seldom evidence, or a result, of the borrower's credit deterioration. Accordingly, there should be no requirement to record loans to these borrowers as subprime.

In addition, we note that the definition of subprime lending incorporated into the Proposal deviates from the definition included in prior joint guidance from the Agencies issued in 2001 (the "2001 Guidance"), which many institutions have relied on for Call Reporting for nearly a decade. Under the Proposal, a bank would classify a loan as subprime on the basis of circumstances at loan origination or upon refinancing; conversely, the 2001 Guidance limits such determination to an examination of facts at time of origination. Accordingly, this element of the Proposal will result in additional information gathering and reporting – in some cases the additional effort will be quite substantial.

The deletion of the word "may" from the Proposal's subprime loan definition is significant and somewhat puzzling. The 2001 Guidance provides that subprime borrowers display a range of characteristics that **may** include one or more from a designated list. The Proposal, on the other hand, provides what appears to be an exhaustive list of characteristics when it states that "subprime loans include: loans made to borrowers that display one or more of the following

credit risk characteristics". Despite this apparent change to a finite list of characteristics, the Proposal still refers to the 2001 Guidance regarding subprime lending which, significantly, describes its definition as illustrative and not an exhaustive list of characteristics. We believe it is axiomatic that all customers are unique and subject to their particular situation and circumstances – what may be a most troubling set of facts for one borrower may not present nearly as difficult a situation for another borrower. The classification of a loan as subprime for one borrower may not be justified for another with similar circumstances. The Proposal runs contrary to such considerations and therefore should be appropriately adjusted to be more in line with the 2001 Guidance.

The Proposal's new definition poses a very real and profound practical problem. At present, many lenders are not organized to gather and report all the additional information that would be necessary to comply with the Proposal. As just one example, some companies do not report more-than-thirty-day delinquencies to credit agencies; in addition, certain delinquency information may no longer be in a credit agency's system if the loan is quite aged. Even when the information is available, many banks would have to review customers' files and check with credit agencies to obtain it - an intensively manual process. Not only are many banks not equipped at present to address such matters, but because banks will be required to obtain a significantly expanded amount of information from a variety of sources – not all of which are internal to the bank – there is substantial doubt by many members of the industry as to their ability to implement the necessary changes in time for the June 30, 2011 Call Report and perhaps several subsequent quarters of Call Reports as well.

2. *Leveraged lending.*

The definition of *Leveraged Lending* for purposes of the Proposal is far too prescriptive and ignores the fact that the term has been interpreted by both banks and regulators in a more flexible fashion.

For example, the FDIC's May 2010 assessment change proposal recognized the fact that loan leverage is a concept that varied when it noted that: "A loan is considered to be leveraged when the obligor's post-financing leverage as measured by debt to-assets, debt-to-equity, cash flow-to-total debt, or other such standards unique to particular industries significantly exceeds industry norms for leverage."

In the Proposal, the definition of leveraged loans is consistent with that in Appendix C of the Final Rule on deposit insurance assessments that was issued on February 25 (the "Final Rule"):

(1) All commercial loans (funded and unfunded) with an original amount greater than $1 million that meet any one of the conditions below at either origination or renewal, except real estate loans;

(2) Securities issued by commercial borrowers that meet any one of the conditions below

at either origination or renewal, except securities classified as trading book; and

(3) Securitizations that are more than 50 percent collateralized by assets that meet any one of the conditions below at either origination or renewal, except securities classified as trading book.

- Loans or securities where borrower's total or senior debt to trailing twelve-month EBITDA (i.e., operating leverage ratio) is greater than 4 or 3 times, respectively. For purposes of this calculation, the only permitted EBITDA adjustments are those adjustments specifically permitted for that borrower in its credit agreement; or
- Loans or securities that are designated as highly leveraged transactions (HLT) by a syndication agent.

The Proposal asserts that its criteria are consistent with guidance issued by the Office of the Comptroller of the Currency in its Comptroller's Handbook. A review of the criteria in the Proposal and May 2010 proposal, however, reveals that the guidance in the OCC Handbook (February 2008) is far less prescriptive and states, expressly, that numerous definitions of leveraged lending exist in the financial services industry. The OCC Handbook goes on to recognize that the definitions in use by various industry participants commonly contain one or more of several conditions. The OCC broadly considers a leveraged loan to be a transaction where the borrower's post-financing leverage, when measured by debt-to-assets, debt-to equity, cash flow-to-total debt, or other such standards unique to particular industries, significantly exceeds industry norms for leverage.

Recognizing the fact that the concept of leveraged lending can and should vary on the basis of various factors, the OCC Handbook provides that banks should "define leveraged lending within their lending policy". The Handbook goes on to explain that OCC examiners should "expect the bank's definition to clearly describe the purpose and financial characteristics common in these transactions."

Inconsistencies between the Proposal's and the OCC's definitions of leveraged lending present significant issues. The Proposal's definition would encompass all loans (including securities and securitizations) across an institution, not just those associated with an acquisition, recapitalization, buyout, and those that are sub-investment grade subsequent to the financing event.[11] Further, the concept of assuming the funding of undrawn commitments for purposes of leverage covenant calculation further penalizes borrower leverage. In fact, in many situations, we find that undrawn commitments are not utilized.[2] As banks have not, as a general rule, had to address such matters for purposes of leveraged lending purposes, they will be required to design and implement a new,

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[1] We also respectfully submit that the inclusion of securities and securitizations within the scope of leveraged lending should be revisited.

broader, more extensive information collection and reporting mechanism in order to meet the new Call Report requirements of the Proposal – just as they will have to do with the proposed re-definition of subprime consumer loan.

To maintain consistency with prior concepts recognized by bank regulators and the financial services industry, the Proposal's definition of leveraged loans should be delayed and banks should be permitted to report such loans in accordance with the approach taken through the first quarter of 2011. [2]

3. Summary

In general, banks report loans in a manner that is consistent with their own lending policies, the 2001 Guidance, and, in many cases, the leveraged lending guidance in the OCC's Comptroller's Handbook; such reporting has been reviewed and audited by each bank's primary regulator. Current reporting methods, the result of significant consultation with and guidance by the Agencies, differ from the new definitions and criteria for subprime loans and leveraged lending introduced by the FDIC in its Final Rule. This new information has not been tracked by banks in the form now required by the FDIC. Including such information in the June 30, 2011 Call Report will necessarily create a significant and unwarranted reporting burden on banks, particularly large and highly complex banks, as they will be required to review thousands of loan files, an intensely manual process, in an attempt to provide such data for the June 30, 2011 Call Report. Moreover, certain information required by the Proposal may not be available at all for certain aged, purchased or otherwise acquired loans if the prior creditor neglected to obtain or maintain the information that would be required for reporting under the Proposal.

In view of the forgoing, BNYM suggests that the Agencies adopt, as an interim solution, a rule allowing banks, especially large banks, to report the information currently being reported to their primary regulators with respect to subprime and leveraged loans.[3] This treatment would conform to FDIC practice for new Call Report items not readily available by the initial reporting deadline. It

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[2] For various reasons, some banks, BNYM included, have not had to report leveraged loans, and therefore have not developed a method of reporting. We recommend that the Agencies permit such institutions, if required to submit information on leveraged loans under the Proposal, to report on the basis of the definition in the OCC's Handbook. Such definition is a recognized, independent standard and has been followed by many banks for approximately a decade.

[3] Banks that have not had to report leveraged loans in the past should be permitted to report such loans in accordance with the OCC Handbook until such time as the Agencies and industry agree upon a final definition and reporting standard.

would also be consistent with the way in which the large bank pricing model was developed by the FDIC and therefore validate the assumptions used when developing the model. Such an interim solution does not resolve the issue of how to report, in compliance with the Final Rule, subprime and leveraged loans on the balance sheets of banks as of June 30, 2011, as well as those originated or acquired after June 30, 2011. We submit, therefore, that the Agencies and banks can and should promptly begin a joint effort to develop an approach to ensure consistent reporting to the FDIC and the banks' primary regulators. The joint effort should seek to achieve Call Report requirements that will serve the safety and soundness considerations of the Dodd Frank Act and Final Rule, while allowing banks appropriate time to develop complete and robust information collection and reporting procedures and systems at reasonable cost and effort.

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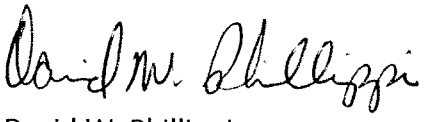
We greatly appreciate your consideration of our comments and would welcome the opportunity to discuss them further with you at your convenience. If we can facilitate arranging for those discussions, or if you have any questions or need further information, please contact me at 412-236-8733 or david.phillippi@bnymellon.com .

Sincerely yours,



David W. Phillippi
Deputy Controller