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January 16, 2024

The Honorable Jerome Powell
Chair
Board of Governors of the Federal Reserve
20th Street and Constitution Ave, NW
Washington, DC 20551

The Honorable Martin Gruenberg
Chair
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Michael Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Dear Chair Powell, Chair Gruenberg, and Acting Comptroller Hsu:

As our nation's trusted banking regulators, your agencies have a shared duty to maintain public confidence in our banks and financial markets. While your respective actions often occur independently of one another, there are occasions that require critical collaboration to uniformly promote certain rules and regulations. One such occasion involves your recently proposed rule, commonly referred to as the "Basel III Endgame" (the Proposed Rule), that would reform capital requirements applicable to large banking organizations as well as those with significant trading activity. I am writing to express my concern that the Proposed Rule as drafted will harm American energy security and undo years of Congressional progress in this space.

As I understand it, the nearly 1,100-page Proposed Rule would overhaul the U.S. bank capital requirement regime established after the 2008 Global Financial Crisis. Primarily, the Proposed Rule seeks to alter certain asset risk weights that will result in increases in the amount of capital held across many banks. This includes changes to the risk weight associated with a non-publicly traded equity exposure. As you know, non-publicly traded equity currently holds a risk weight of 100 percent, so long as a bank's total equity investments comprise less than ten percent of its total capital. If tax equity investments were to exceed that ten percent threshold, then the risk weight would quadruple to 400 percent. Under your Proposed Rule, that threshold would be eliminated, thereby subjecting all non-publicly traded equity to a 400 percent risk weight.

In August 2022, Congress passed the *Inflation Reduction Act* (IRA), a historic piece of legislation designed to pay down our national debt and shore up America's energy security. Through the adoption of a number of new and enhanced tax credits – including the production tax credit, the energy tax credit, and the investment tax credit – Congress charted course for the United States to meet its energy challenges in an all-of-the-above energy approach. In total, the IRA is anticipated to invest more than $380 billion into the energy market, supporting innovative renewable and traditional products alike.

Unfortunately, the Proposed Rule will jeopardize these historic investments by making it more expensive for banks to support innovative energy projects. Given the elevated risk weights, non-publicly traded equity will become less desirable investments as a result of the increased reserves associated with their holdings. Banks will likely seek other investment opportunities, and developers and potential recipients of the credits may halt investments given the decreased financial incentives to actually obtain the credits. To put it bluntly, the Proposed Rule threatens the historic all-of-the-above energy approach created by the IRA. At a time of heightened geopolitical uncertainty from Europe to the Middle East, we must take every step to strengthen, not weaken, our nation's energy security.

Domestic banks play a major role in the nearly $60 billion tax equity market. In fact, by some estimates, banks provide financing to 80-90% of energy-related tax equity projects, which is estimated to soon provide roughly $40 billion in assistance to energy businesses nationwide. It is clear that the financial backing of our country's banks has and will continue to be paramount to ensuring that the tax credits Congress has authorized will work as intended. For a number of years, your agencies have seemingly understood the important role banks played in this space. For example, in 2020, the OCC issued a final rule that has provided a greater ability for certain banks and savings institutions to engage in tax equity transactions[1], expanding the tax equity market and resulting in historic levels of investments in domestic energy production.

For these reasons, I am asking that your agencies strike the proposed changes to the risk weighting for non-publicly traded tax equity exposures and maintain the current rules and regulations governing banks interaction with this section of the tax equity market. Our financial institutions participating in tax equity financing have shown the ability to strike a balance between maintaining sound banking practices and advancing a critical domestic market. It is imperative that we continue to find ways to allow this work to continue, not hamper it. While our banking regulators have the duty and responsibility to ensure the safety and soundness of our nation's banking system, that obligation should not jeopardize American economic and energy priorities, including our national security.

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[1] Activities and Operations of National Banks and Federal Savings Associations, 85 Fed. Reg. 83686, December 22, 2020, https://www.govinfo.gov/content/pkg/FR-2020-12-22/pdf/2020-26225.pdf

Many changes are needed to ensure this Proposed Rule avoids unintended consequences, including reversing the unfair changes of treatment of non-publicly traded tax equities. I implore you to make the necessary edits to this rule by maintaining the current risk weights associated with non-publicly trade equity exposures. Doing so will ensure that we can simultaneously maintain strong financial security, national security, and energy security.

Thank you for your prompt attention to this issue. I look forward to receiving your response.

Sincerely,

[redacted]

Joe Manchin III
United States Senator