1285 Avenue of the Americas
New York, NY 10021
September 22, 2009

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket R-xxxx

Robert E. Feldman, Executive Secretary
Attn: Comments/Legal ESS
Federal Deposit Insurance Agency
550 17th Street, NW
Washington, DC 20429
RIN 2064-AD48

Office of the Comptroller of the Currency
250 E Street, SW   Mail Stop 2-3
Washington, DC 20219
Docket OCC-2009-0012

Ladies and Gentlemen:

SF Solutions, LLC welcomes the opportunity to comment on the proposed regulatory treatment of special purpose entities ('SPEs') that will be consolidated into bank financial statements beginning in 1Q.2010. SF Solutions, LLC was founded in 2003 and maintains an active structured finance consulting practice, with clients both within and outside the banking industry. Each of its principals has 25 years or more experience in structured finance, mortgage finance, treasury, law or derivatives.

We applaud the agencies' effort to apply clear guidelines to the regulatory accounting. Increasingly, over the past few decades, manipulating the intricacies of the myriad regulations that financial institutions labor under seems to have become an end game in itself, as participants spent more time parsing the language of the regs than they did the loan production of their business lines.

Before providing comments on the specific questions, below, we will provide two general comments:

1) GAAP has, in fact, formed the basis of regulatory accounting, officially since 1995, and dating back to the 1980's on a case-by-case basis. This consistent treatment was requested by the banks that securitize assets and by 'Wall Street,' which generated considerable fees and trading income from asset-backed securities, and was intended to transfer the benefits of SFAS 77 to the regulatory regime. Since the banking troubles of the late 80's and early 90's securitzation has proven to be an effective method for banks to

sell assets and as a substitute means of raising capital (securitization had also proven valuable to such government entities as RTC in disposing of large quantities of assets in a consistent format). During previous periods of stress, securitization was a more 'market-trusted' means of capital and liquidity raising than standard capital securities. In fact, until this recent crisis securitzation was a 'countercyclical' force, allowing the financial sector to continue lending without raising expensive capital during a recession. In part, as a result, the recessions of 1990-1991 and 2001-2002 were relatively brief and not very deep. In addition, the public disclosures and ongoing reporting related to securization represented significant improvements in 'transparency' relative to previous line of business reporting.

However, since the original FASB statement, the accounting pronoucements affecting securitization and asset sales, generally, have been under constant reconstruction--SFAS 140, FIN 46 (and FIN 46R), now SFAS 166 and SFAS 167. In conjunction with other significant changes in GAAP (e.g. SFAS 133 and subsequent revisions, merger accounting, and, more recently, 'Fair Value' accounting), it is unclear whether GAAP is still the appropriate starting point for regulatory accounting. The agencies should consider whether GAAP changes too often and is too pro-cyclical to provide a basis for an effective regulatory regime. As an alternative, bank managements generally maintain a internal accounting system in which the economics of securitization are more clearly apparent, with an appropriate 'consolidation' of some off-balance sheet entities and 'deconsolidation' of others. I suspect that bank managements would not totally object to a regulatory environment that reflects their own consensus thinking about economic risk, transaction support and consolidation.

2) We believe that the current proposal exemplifies the tendency among regulators to return to 'basics,' simpler rules, simply implemented, and demand higher capital levels after a crisis. Unfortunately, there are significant non-bank intermediaries in the financial system. It sounds perfectly right to propose raising capital standards either explicitly, or implicitly, as this proposal does, while continuing to urge banks to maintain lending; but bankers, as would most of us, are likely raise the cost of lending to borrowers and/or reduce the availability of lending to risky credits before voluntarily reducing their own compensation in response to a higher required capital environment. Both the financial and general press have noted the higher costs and tougher lending terms imposed by bank lenders since the start of the crisis. In a more capital-intensive, more tightly regulated environment, more intermediation will transition to an unregulated 'offshore' location unless all nations agree to prevent that from happening—unlikely in my view. To be effective, capital regulations require a level of subtlety and stability that the current proposal lacks.

Specific Comments:
Q1: According to several industry sources, Credit Card Trusts, ABCP conduits and student loan transactions will almost certainly be consolidated; Also likely are closed-end consumer loan transactions (e.g. autos), some private label residential mortgage transactions (particularly sub-prime) and some CDOs/CLOs. Least likely are agency mortgage deals and CMBS.

Q2: Among traditional securitizations, 'socialization' of a bank issuer's credit card trusts would be a significant, but not determinative, indicator of likelihood of support, because the unwinding of a socialized trust is likely to place more immediate strain on a bank's liquidity. Perhaps more critical is the size of the aggregate exposure--credit card trusts, again, more than SIVs, MMFs or any single hedge fund.

Q3: With the proposed consolidation, it is unlikely that bank-related issuers will attempt to issue subordinated securities related to the securitized assets unless some capital value is ascribed to such securities. As a result, in markets where banks can increase borrower fees and rates to reflect higher required capital, they are very likely to do so. In addition, banks are likely to trim product offerings where pricing competition does not allow a market return on capital.

Q4: Citigroup Global Markets, Inc estimates that by 1Q.2010, 11 large banks (excluding Citi's bank subsidiaries) will be required to consolidate approximately $540bn of assets for GAAP, and $226bn of risk weighted assets (the difference being accounted for by assets with less than 100% risk weight and already consolidated credit card trusts). Based on total assets for the leverage ratio, we estimate that additional consolidated assets will increase by approximately $300bn. In addition, Citi estimates that required loan loss reserves from credit cards alone will increase by $12bn (if such reserves are required by the regulators--see below). Given that full consolidation, then would lead to a meaningful reduction in capital ratios and an need for large banks to raise approximately $30bn of additional capital, a phase-in of two years is required to prevent a slowdown in lending during the nascent phase of the economic recovery.

Q5: ABCP programs have operated successfully for over 25 years and generally have contained investment-grade assets which were capital-disadvantaged' under regulatory accounting rules. However, we agree that consolidation is appropriate (in the context of general consolidation) in cases were liquidity facilities have become de-facto credit enhancement or when affiliates of the sponsoring entity become the largest holder of the programs senior obligations. If anything, the current accounting exceptions create undue confusion among investors in the parent company.

Q6: We are not experts in IAS, but we believe that convergence foretells additional accounting changes for US financial institutions, which, under the current regulatory regime, would automatically be incorporated into RAP.

Q7: For credit cards, there should be some capital value (or asset value reduction) for outstanding subordinated debt and first loss pieces. We would suggest Tier 1 treatment for first loss pieces and Tier 2 for subordinated notes. As previously noted securitization has historically acted as a counter-cyclical source of capital and financing for banks. With banks of ever-larger size dominating the industry it is prudent to afford them the widest possible choice of markets to accomplish these goals. We prefer capital treatment over asset reduction schemes because they better reflect the activity.

Q8: Although we expect such forced consolidation to be rare under the GAAP revisions, servicers of MHAP modified mortgage loans should be given an exemption from consolidation for regulatory purposes unless they also incur direct recourse as a result. Otherwise progress in this important policy area will be slowed.

Q9: We are not aware of any.

Q10: Securitized assets already carry substantial cash reserves or over-collateralization. To require additional loss reserves on balance sheet further reduces the incentive to securitize, which seems to contradict administration policy in this area. In fact the Treasury Secretary has specifically emphasized the need to restart securitization markets, but not from the position of a handicap. Also note that the Treasury's framework for revised capital standards published on Aug 28, 2009 proposes allowing reserves to exceed the current 1.25% limit. This is a change that we support, and should be carried forward into regulatory accounting as the economic reserves for both credit cards and subprime mortgages significantly exceeds the current limit.

Finally, we again appreciate the opportunity to respond to regulatory proposals; we believe that banks will accommodate the new consolidation rules, and ultimately will accede to higher capital standards, but would serve all of us better if the new rules also represented a movement toward stability and recognition of economic reality.

###