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July 17, 2009

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

Re: Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions

Dear Chairman Bair,

Paulson & Co. Inc. ("Paulson") welcomes the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") proposed Statement of Policy on Qualifications for Failed Bank Acquisitions.

Paulson is a New York-based hedge fund founded in 1994 with additional offices in London and Hong Kong. We manage approximately $28 billion and invest globally with a focus on the U.S., Western Europe and Canada. Our investment strategy is known as event arbitrage where we invest in companies undergoing a corporate event such as a merger, bankruptcy or recapitalization. Our clients include a wide range of both domestic and foreign investors including pension plans, institutions, foundations, endowments and high net worth individuals.

Our primary current investment focus is to provide capital to restructuring companies hurt by the financial and economic crisis in both the financial and other sectors. In the financial sector, in addition to investing $400 million in the equity of the recapitalized Indymac we have also provided equity capital to Bank of America, Goldman Sachs, Morgan Stanley, State Street, Regions Financial, and SunTrust to help them meet their "stress tests" and to repay the government's TARP capital. In total we have invested close to $4 billion in equity in this area. We are interested in providing additional capital to Indymac, if needed, to fund acquisitions by Indymac of other banks, and in investing additional capital in recapitalizing banks, which we did recently for Marshall & Ilsley as that banking company sought to improve its capital base.

While we appreciate the FDIC's mandates to ensure the strength of banks and to protect the deposit insurance fund, investments in failed banks must be competitive with alternatives in order to attract private investment firms. Although Paulson wants to invest more in failed banks, as the complexity, capital requirements, risks and limitations of such transactions increase we have to consider other potential investments. For instance, we can put new capital into existing banks through the public markets, which have far lower capital requirements, unlimited government guarantees on deposits, TLGP

support, and no restrictions on our liquidity. We are also pursuing investments in a broad range of non-financial industries, having recently put $1 billion into Dow Chemical and $200mm into CB Richard Ellis to help them address near-term financing issues. Although Paulson is interested in investing in failed banks and wants to be constructive, we have to evaluate them against other alternatives.

Furthermore, financial institutions are a risky area for investment by private firms, with no guarantees of success. In April 2008, Texas Pacific Group and other institutional investors purchased a $7 billion equity stake in Washington Mutual to help strengthen the bank's capital position. Less than six months later, Washington Mutual was bankrupt and the investors lost 100% of their investment. Hundreds of billions have been lost by investors globally in bank equities including large firms like Citibank, Merrill Lynch, Lehman and Bear Stearns as well as countless foreign and smaller banks.

Before addressing the proposed Statement of Policy, it should be noted that there are already all kinds of constraints on private investment firms' investments in FDIC-insured banks to negate findings of control that would require the firms' regulation as bank or thrift holding companies. These already-in-place constraints require "club deals" involving participation by several private investment firms, each having a minority stake, to acquire failed banks. These structures are extremely complex and cumbersome in practice. In addition, there are only so many private investment firms with the capital, skill sets and experience to participate in these deals, limiting the number of bidding "clubs" and diminishing competition in FDIC-managed processes. Many firms will simply not participate in investments of any kind if they cannot control the board and have hiring and firing power over the company's management. If the FDIC's goal is to attract private capital to purchase failed banks, it needs to make the rules on such investments less onerous, not more onerous, to investors. These rules in the proposed Statement of Policy are more onerous, and if adopted as proposed, will reduce, if not eliminate, private equity interest in recapitalizing failed banks in receivership.

On the proposed Statement of Policy –

1. Parties to whom the Statement of Policy should apply. The FDIC says it is concerned that owners of banks have the experience, competence and willingness to run those institutions in a prudent manner and accept the responsibility to support those institutions when they face difficulties. The proposed Statement is based on the premise that private investment funds do not meet those conditions. We believe that private investment funds are responsible custodians of the public interest and do not believe they should be treated differently than other passive investors.

2. Previously used investment structures and so-called "silo" structures. The FDIC has a fiduciary duty to ascertain beneficial ownership of financial institutions, to clearly identify parties responsible for making management decisions, and to assure that ownership and control are separated. Structures that impede the FDIC and other banking regulators from fulfilling these requirements should not be allowed. However, in contrast to so-called "silo" structures, the firms that invested in IndyMac met these requirements by strict limits on ownership stakes, board representation, private disclosures to regulators and formal rebuttal of control agreements. The structures and limitations of the IndyMac investment met FDIC requirements and we see no reason why this previously-approved structure should not continue to meet these requirements in future transactions involving private investment firms.

3. Capital adequacy of acquired depository institutions. Requiring 15% capital under the tougher Tier 1 *leverage* ratio test for financial institutions acquired by private investment funds, and allowing 4% capital under the looser Tier 1 *risk-based* test for the SCAP banks with which they compete, significantly disadvantages private versus public investments and would clearly shift our investment focus away from

private transactions. Paulson recommends that the capital requirements for an acquired failed bank be consistent with the FDIC's long-standing guidance, based on the "common" Tier 1 risk-based requirement of 8%. Imposing new, higher capital requirements on private investment firms seeking to acquire failed banks places them at a considerable economic disadvantage relative to strategic buyers. This would produce less competition and lower bids for failed banks in receivership, and thereby increase potential losses to the FDIC's deposit insurance fund. Moreover, we believe that focusing on the leverage ratio as opposed to one that is risk-based wrongly penalizes banks acquired by private investment funds for holding low-risk, highly liquid assets, which should characterize both a de novo bank and one that is well suited to acquire a troubled or failed bank.

Separately, imposing these new, higher capital requirements on IndyMac would limit this extremely strong institution's ability to grow through acquisitions and its future ability to participate in recapitalizing troubled banks.

4. Source of strength. We appreciate that the FDIC wants to make sure fresh capital can come in to help distressed banks so they do not fail. However, instead of requiring parties that do not control a bank to provide additional capital, the FDIC could require parties with substantial ownership stakes and board representation to either provide additional capital or not to use their limited corporate governance rights to block capital from other sources.

5. Cross-guarantees. As a policy matter, if a private investment fund does not exercise control over a bank, it should not have to put at risk assets other than its investment in that bank if it should fall into distress. Such a provision would reduce the pool of potential investors and result in higher-cost bank resolutions. The cross-guarantee requirement should be removed from the proposed Statement of Policy.

6. Transactions with affiliates. No issues.

7. Entities in bank secrecy jurisdictions as bidders. While we agree with the FDIC's prohibition against using *new* offshore structures set up specifically to acquire banks, we believe pre-existing offshore funds should be exempt from this restriction. Restricting capital from pre-existing offshore funds would eliminate the ability of firms like ours to recapitalize failed banks. In the ordinary course of business, U.S. entities not subject to tax (e.g. charitable organizations, endowments, pension funds, etc.) and non-U.S. entities invest through our offshore funds which are domiciled in the Cayman Islands. The purpose of doing so is proper management of tax reporting and withholding, not avoiding U.S. taxes that are otherwise payable. Furthermore, our offshore master-feeder fund structures are used to invest capital from U.S. and offshore investors in parallel, and restricting capital from offshore funds would make investments in failed banks impossible for us. We believe private investment firms, such as ourselves, with pre-existing offshore funds and with proper anti-money-laundering controls managed by U.S.-based SEC- registered investment managers should be exempt from this requirement.

8. Continuity of ownership. We appreciate the need for a long-term holding period but we think the three-year proposed minimum holding period is too long. If a fixed minimum holding period is necessary, we would support eighteen months instead. In assisted transactions like the IndyMac acquisition, the FDIC already has the power to block corporate transactions through its control over continuing financial relationships with the failed bank that was acquired.

9. Special owner bid limitation. No issues.

10. Disclosure to regulators on a confidential basis. No issues.

11. Phase-out of limitations. No issues.

I would be pleased to discuss the proposed Statement of Policy and our comments in this letter upon request. If you have questions or comments, please do not hesitate to call Michael Waldorf or me at 212-956-2221.

Very truly yours,

John Paulson
President