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July 24, 2009

By Electronic Mail; United States Mail

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Re: Proposed statement of Policy or Qualifications for Failed Bank Acquisitions

Ladies and Gentleman:

We appreciate the opportunity to comment on the Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions, ("Proposed Policy"), pursuant to the disposition of failed banks by the Federal Deposit Insurance Corporation (the "FDIC"). We also appreciate the opportunity to have been part of the 26-member roundtable discussion on July 6th regarding the Proposed Policy. In addition, we are sympathetic and supportive of the FDIC's position to protect the stability and security of the nation's banking system and balancing that mission with incentivizing support and investment with capital from many sources, including private capital.

We will first provide you with comments and/or responses to the questions in Section II of the Proposed Policy:

1. ***Is some other definition [of Investors] more appropriate?*** Much of the private capital is available from private equity firms and most private equity firms are partnerships. We think the application measures should be consistent with the definition applied by the Federal Reserve. The ownership structure itself does not necessarily provide more or less transparency, which we recognize will be essential to the FDIC. The requisite levels of transparency are as much a function of the investor's willingness to provide this information as any additional requirements placed upon them. The definition applied by the Federal Reserve provides adequate flexibility and an initial background check by appropriate regulatory and law enforcement agencies will ensure that appropriate sources of new capital with well qualified management enter the system.

2. ***Are there any reason why they [silos] should be considered eligible bidders?*** The prohibition of "silo" structures eliminates investors who would be *willing* to meet transparency requirements. While we recognize that some "silo" structures have been set up by firms to avoid becoming a bank holding company and therefore serving as a source of strength, others have been set up as bank holding companies, and as a source of strength, yet to avoid the cross-guarantee risk. We think that with the proper transparency and willingness to submit to the Bank Holding Company Act, the FDIC should allow "silo" structures. We also believe that the FDIC and the Federal Reserve would have much more influence, and a more accessible source of strength, over a "silo" bank holding company than a "club deal" of many minority investors.

3. ***Should there be a further requirement that if capital declines below the required capital level [a leverage ratio of 15 percent], 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?*** We agree with the statement that the acquired institution must be very well capitalized for a period of at least 3 years for the protection of the Deposit Insurance Fund. However, if the purpose is to combine qualified management teams with new sources of capital to the system, we consider requiring a Tier 1 leverage ratio of 15% as prohibitively high for the following reasons:
    - The institution may make riskier investments in order to achieve private equity's desired return on the investment;
    - Private equity bids for a failing institution will likely be lower due to the higher capital requirement, and unless other bidders are available, could result in a higher cost to the Deposit Insurance Fund;
    - Private capital investors may choose not to bid on failing institutions in favor of investments in other market sectors at lower capital amounts.

    Instead of a 15% Tier 1 leverage ratio, we would suggest an 8% Tier 1 leverage ratio as currently required for de novo institutions during their first three years of operation as well as a 15% total risk-based capital ratio or a lower capital requirement for assets covered in loss sharing arrangements. This would help protect the Deposit Insurance Fund from additional failures by providing extra capital against riskier assets. Particularly given that those assets in which the FDIC is sharing in the losses are more than likely to be 20% risk-weighted. While new capital is important, an emphasis should be placed on the identity and qualifications of the management teams to avoid a repeat or exacerbation of the problems that resulted in an institution's failure or near failure.

4. ***Should the source of strength commitment included in the Proposed Policy Statement be retained in the final policy statement? Should the commitment be enhanced to require from the shell holding company and/or Investors a broader obligation than only a commitment to raise additional equity or engage in capital qualifying borrowing?*** We would not object to a requirement for the depository institution holding company to commit to sell equity or engage in capital qualifying

borrowing in the event the depository institution's capital fell below required levels. However, we believe it would not be feasible to require the investors to directly make such a commitment and such investors would be unlikely to make such a commitment until a clearer understanding of the regulatory structure under which they will operate is finalized through the enactment of financial/depository institution regulatory reform and the regulations promulgated thereto.

5. ***Should the Cross Guarantee commitment included in the Proposed Policy Statement be retained in the final policy statement? Should the commitment be enhanced by requiring a direct obligation of the Investors?*** We agree that the cross guarantee commitment can be useful in improving a problem institution; however, we believe that private equity investors will, by necessity, need to protect investments in other institutions by the use of the "silo" structure described above. We also believe that it would not be feasible to require the investors to directly make a cross guarantee commitment. Many sources of private capital have multiple investments in banks that are unrelated, and a cross guarantee requirement would make investing infeasible, and would thereby drive away a potential source of capital with bank investing experience.

6. ***Should entities established in bank secrecy jurisdictions be considered to be eligible bidders even without being subject to comprehensive consolidated supervision?*** Entities established in bank secrecy jurisdictions should be considered eligible bidders if they commit to the comprehensive consolidated supervision as required by the Federal Reserve Board. This will allow those off-shore entities which were established for specific legal purposes to bid on failing depository institutions to participate in the process as they will disclose any information which is necessary to be deemed an eligible bidder.

7. ***Is three years the correct period of time for limiting sales, or should the period be longer or shorter?*** We support the FDIC's prohibition of selling or otherwise transferring the securities of the investor's holding company or depository institution for three years. We believe that good management teams will require at least that amount of time to resolve problem assets and to restore a failed institution to effective and efficient operation.

8. ***Is this exclusion [Investors that directly or indirectly own hold 10% or more of a depository institution in Receivership] from bidding eligibility appropriate on the basis of the need to assure fairness among all bidders and to avoid an incentive for the 10 percent 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 a receivership?*** While we share the FDIC's concerns regarding this limitation, we believe that a blanket exclusion of such investors may not be in the FDIC's best interest. We believe that such investors should be carefully scrutinized by the FDIC on a case by case basis with the application of particular scrutiny to whether 10% investors were active or passive.

Such an investor would, at a minimum be subject to an initial determination that the Investor does not pose an excessive risk to the new institution based on its influence on or participation in the causes of the failure of the old institution. In addition, to assure fairness, we propose that bids from such investors should be disclosed to other bidders.

9. ***Should the limitations in this Proposed Policy Statement 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?*** If adopted, we believe that the limitations in the Proposed Policy statement should be lifted after three years of operation, similar to the limitations of other de novo institutions.

While no questions were asked with respect to limitations on transactions with affiliates, we note that the proposed standard is far more restrictive than the limitations that apply to existing banks in Regulation O and Regulation W as well as Section 23A and 23B of the Federal Reserve Act. Given the potential unfamiliarity with these regulations by private capital investors we would propose that all extensions of credit to Investors, their investment funds if any, any affiliates of either, and any portfolio companies by an insured depository institution acquired or controlled by such Investors under the Policy Statement to be subject to regulatory approval for a period of 3 years concurrent with that of the capital requirement. After that period of time and on a case by case basis, a determination should be made as to whether or not this restriction needs to be extended.

In, general much of the FDIC's concerns relate to structure, transparency and source of strength. We believe the Proposed Policy puts such stringent requirements on private capital, that the FDIC will effectively exclude many groups with (1) a record of investing in banks, (2) proven management teams, (3) organizational structures that embrace regulation rather than avoid it and (4) a willingness to be transparent. With favorable entry prices, there are many newcomers interested in investing private capital in financial institutions. We believe that the new rules under the Proposed Policy will accommodate less experienced investors, and penalize those who are best positioned to resolve problem institutions. Pre-approving private capital investors will allow the FDIC to find which are acceptable to co-invest with those entities that have already have a charter.

Bids, structure, experience, management, capital plans, business plans and character of balance sheet risk have all been tools used by regulators under existing statutes to choose winning bidders. We agree that transparency should also be required from bank investors. We believe that much of the FDIC's concerns are currently addressed by existing regulations, which should be enforced. Twenty years ago, the FDIC asserted its claims against directors of failed banks for failure to supervise, and sent a message to the market about the reach of its ability to recover from a bank's board of directors as a source of strength. I can assure you asserting such claims in today's market would send the same message to private equity firms who want board seats, but may not fully understand the implications. Experienced private equity firms know that if they have board representation at institutions, they are going to be subject to regulatory scrutiny.

Private equity firms are not responsible for the banking crisis and can be a valuable part of the solution. We do not think that there should be undue and unnecessary restrictions put upon them, especially those firms that are willing to be transparent and even in certain situations embrace being a Bank Holding Company. Commerce Street Capital is one of those firms. We believe that private equity can introduce more systematic governance and compensation systems. The private equity firms that invested in problem bank resolutions in the last cycle provided capital and solutions that, in the end, worked to the benefit of all. Most private equity firms include investors such as foundations, endowments and pension funds for teachers, firemen, autoworkers, etc. The FDIC's efforts to open investment into the banking system to include those investors who did not participate in or profit from the collapse of the system will garner considerable public and political support, especially to the extent that community and regional investors and institutions are allowed to participate in FDIC transactions. The combination of new capital, experienced management, and thoughtful regulation, that permits reasonable returns to investors will provide a win/win resolution of this "crisis" and restore faith in the system for all of America.

We applaud the FDIC's effort in resolving the challenges of the current banking environment, and requesting input for solutions. We are honored to have the opportunity to contribute.

Sincerely,

Dory Wiley
President, Chief Executive Officer