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FEDERAL DEPOSIT INSURANCE CORPORATION

PROPOSED STATEMENT OF POLICY ON QUALIFICATIONS FOR FAILED BANK ACQUISITIONS

We refer to the Proposed Policy Statement (the "PPS") released in draft form on July 2, 2009, and the related request for comment. We are pleased to provide comments on the specific questions raised in the release, together with additional perspectives on the issue.

As background, Ivy Square Ltd. is a New-York based specialized investment advisory firm that presently manages approximately $1.5 billion in fixed-income assets on behalf of selected commercial banking institutions.

The core team has worked together since 2002, and substantially all of the key personnel have commercial banking backgrounds. Certain members of the team have recently been working to launch a new company (independent of Ivy Square) that will be dedicated to investing exclusively in the US banking sector. We anticipate that this company will be regulated as a Bank Holding Company, and will seek "control" positions (which may be majority or significant minority in nature) in small and medium-sized US banks. We anticipate reviewing so-called "failed bank" acquisition opportunities on a case-by-case basis, but we do not intend to focus solely or indeed predominantly on such opportunities. We plan to be long-term, committed investors focused solely on the banking sector, and consequently do not expect to be subject to the potential conflicts of interest applicable to investors in non-financial companies.

Question 1

The measures contained in the Proposed Policy Statement will not be applied to individuals, partnerships, limited liability companies, or corporations, that accept the responsibilities under existing law to serve as responsible custodians of the public interest that is inherent in insured depository institutions, but will be applied to (a) private capital investors in certain companies, proposing to assume deposit liabilities, or both such liabilities and assets, from a failed insured depository institution in receivership (including all entities in such an ownership chain) and to (b) applicants for insurance in the case of de novo charters issued in connection with the resolution of failed insured depository institutions (hereinafter "Investors"). Is some other definition more appropriate?

Response: The intention of this measure would appear to be to make a distinction between "regular" investors and certain types of "private" capital, as well as all applicants for de novo institutions. As proposed, we understand these measures would not be applied to investors "*…that accept the responsibilities under existing law to serve as responsible custodians of the public interest in insured depositary institutions…",* and we believe this is an entirely appropriate exemption. Existing law (including the Bank Holding Company Act and the Change in Bank Control Act), sets out the necessary standards for investors to demonstrate that they are appropriately qualified to accept these responsibilities. However, in reviewing the detailed measures, we note that in order to qualify for this exemption, a bank or thrift holding company must have been in existence or acquired by an investor at least 3 years prior to the date of the policy statement. **We believe that this qualification is not appropriate**. If an investor or group of investors is willing and able to undertake the meaningful commitment of obtaining approval to establish a Bank Holding Company, we believe they have already addressed the various requirements laid out in the proposed statement (including, but not limited to, the specific Disclosure requirements). A company such as the one we propose to establish seeks to be a long-term, committed, and singularly focused investor in the banking sector, and the decision to establish ourselves as a BHC is a clear sign of that commitment. To penalize such a BHC simply because it has not been in existence for 3 years, yet has submitted itself to the full regulatory approval process is, we contend, wholly inappropriate. Accordingly, we believe that the proposed measures should not apply to any pre-existing BHC, irrespective of when it was established. Adoption of this proposal would discourage private capital entering the market for failed banks, and discourage investments in healthy existing banking organizations that may see opportunities to acquire failed institutions as a source of growth and to attract capital.

Question 2

The Proposed Policy Statement indicates that so-called "silo" structures would not be considered to be eligible bidders for failed bank assets and liabilities since under these structures beneficial ownership cannot be ascertained, the responsible parties for making decisions are not clearly identified, and/or ownership and control are separated. Are there any reasons why they should be considered to be eligible bidders?

Response: To the extent that beneficial ownership by principal persons, decision-making responsibility and ownership/control issues are not transparently disclosed, we believe "silo" structures should not be eligible. An approved BHC (and potentially any other investor), by contrast, where such issues are fully disclosed, should be considered eligible. Of course, if such investor were deemed to "control" one or more banking institutions, it would need to submit to regulation as a BHC.

Question 3

One of the most important elements in the Proposed Policy Statement is the requirement that the acquired depository institution be very well capitalized. The text requires a Tier 1 leverage ratio of 15 percent, that this ratio be maintained for a period of at least 3 years, and thereafter that the capital of the insured depository institution remain at a "well capitalized" level. The capital adequacy of depository institutions formed from assets and/or liabilities acquired from failed banks in receivership is a matter of crucial importance for reasons of safety and soundness and for protection of the Deposit Insurance Fund. This is especially important in the case of newly established banks that, as a general matter, have a weak record of performance in the early years of activity.

In view of these considerations it has been suggested that a Tier 1 leverage ratio of 15 percent included in the text of the Proposed Policy Statement is entirely necessary and appropriate for at least some minimum period after the new depository institution acquisition. On the other hand, it has also been suggested that safety and soundness considerations can be satisfied with a lower, but a still high level, of Tier 1 capital more in line with the level normally applicable to bank or thrift investors subject to prudential regulation, activities restrictions and that serve as a source of strength for their subsidiary institutions. It is also suggested that exceeding such normal capital levels could have the effect of making investments in the assets and liabilities of failed banks and thrifts uncompetitive and uneconomic.

The FDIC seeks to accomplish both objectives in setting initial capital requirements for failed bank asset and liability acquisitions under this Proposed Policy Statement. Clearly, a high level, above normal levels, is necessary to deal with the unusual circumstances facing banking institutions, especially new banking institutions, today. The FDIC seeks the views of commenters on the appropriate level of initial capital that will satisfy safety and soundness concerns without making investments in the assets and liabilities of failed banks and thrifts uncompetitive and uneconomic.

As noted above, the text of the Proposed Policy Statement requires an initial Tier 1 leverage ratio of 15 percent, that this ratio be maintained for a period of at least 3 years, and thereafter that the capital of the insured depository institution remain at a "well capitalized" level. Should there be a further requirement that if capital declines below the required capital level, 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?

Response: By their nature, BHCs must act as a "source of strength" to their subsidiary institutions, and as noted earlier, we believe they should therefore be exempt from any incremental capital requirement at the level of their subsidiaries. However, for non-BHC investors, we believe that a level of 15 percent for a minimum period of at least 3 years is excessively restrictive, and a disincentive to potential providers of capital to the banking system, including healthy institutions that may seek to bid on failed institutions.

Question 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 the Investors a broader obligation than only a commitment to raise additional equity or engage in capital qualifying borrowing?

Response: No, it should not be retained except for organizations that would have the benefits of "control" of the bank and are BHCs. The FDIC should continue to require appropriate capital for each bank, which should be able to seek capital from any source. There is no statutory support for this position.

Question 5

Should the Cross Guarantee commitment included in the Proposed Policy Statement be retained in the final policy statement? Should the commitment contained in the Proposed Policy Statement be enhanced by requiring a direct obligation of the Investors?

Response: Again, there is no statutory basis for this proposal. We do not believe that any additional direct obligation of an individual investor should be required. This likely will impede investments in multiple banks, and discourage the flow of investments and add to the risks of funds that invest in banks.

Question 6

The Proposed Policy Statement limits the use of entities in an ownership structure that are domiciled in bank secrecy jurisdictions unless the investors are subsidiaries of companies that are subject to comprehensive consolidated supervision as recognized by the Federal Reserve Board. Should entities established in bank secrecy jurisdictions be considered to be eligible bidders even without being subject to comprehensive consolidated supervision?

Response: No they should not, although we note that private investors that do not control foreign banks are unlikely to be able to ever meet this standard.

Question 7

Under the Proposed Policy Statement, Investors would be prohibited from selling or otherwise transferring securities of the Investors' holding company or depository institution for a 3 year period of time following the acquisition absent the FDIC's prior approval. Is 3 years the correct period of time for limiting sales, or should the period be shorter or longer?

Response: We believe it is entirely reasonable to expect that investors in the banking sector should have a medium-term outlook, and should not anticipate the opportunity of short-term "flipping". Accordingly, a 3 year period appears appropriate.

Question 8

The Proposed Policy Statement provides that Investors that directly or indirectly hold 10 percent or more of the equity of a bank or thrift in receivership would not be considered eligible to be a bidder to become an investor in the deposit liabilities, or both such liabilities and assets, of that failed depository institution. Is this exclusion 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?

Response: This appears to be a reasonable exclusion.

Question 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?

Response: Our response to question 1 addresses this issue. We consider that a company which has submitted itself to the appropriate scrutiny, and has been approved as a BHC, should not be subject to the proposed measures.

Summary and Contact Details

In addition to the above comments, we believe it would be appropriate: (i) to have a process to approve qualified bidders expeditiously; (ii) to allow qualified bidders with access to capital to receive notices of the marketing of failed banks without regard to their size; and (iii) that this proposal should only apply to de novo banks formed solely for the purpose of acquiring failed institutions, and not to existing banks or BHCs.

Should you have questions, or would like to follow up with regard to our comments, please feel free to contact:

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