THE FINANCIAL SERVICES ROUNDTABLE

Impacting Policy. Impacting People.

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October 15, 2009

Via E-Mail

Ms. Jennifer J. Johnson, Secretary
Board of Governors, Federal Reserve
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Docket No. R-1368

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

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn: FDIC—RIN 3064-AD48

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington DC 20552
Attn: OTS-2009-0015

RE: Risk Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modification to Generally Accepted Accounting Principles: Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues

Ladies and Gentlemen:

The Financial Services Roundtable[1] ("Roundtable") appreciates this opportunity to comment on the above-mentioned proposal ("Proposal"). The Roundtable represents various sectors of the financial services industry.

We appreciate that the regulators have proposed changes to the risk-based capital framework to clarify how accounting standards should apply to the banking industry. However, we recommend that regulators delay issuance of the final rule and instead issue immediate and interim guidance to help financial institutions make decisions in the long term.

Issuing a final rule that will be effective within 30 days of publication would not provide enough time for financial institutions to determine the impact of the rules both from a

[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine, accounting directly for $84.7 trillion in managed assets, $948 billion in revenue, and 2.3 million jobs.

regulatory and a business perspective. In fact, many financial institutions are still in the process of evaluating which assets will be initially consolidated in 2010 under Financial Accounting Standard ("FAS") 167.

If the Proposal were adopted, financial institutions would have to take elaborate steps in the short term to comply with the new rules that would not allow satisfactory consideration of their consequences. Instead, regulators should create a phase-in period that would eliminate the procyclical nature of the Proposal. This phase-in period should be at least a year long, through calendar year 2010 but with the recommendation of three years, consistent with the time period of some federal liquidity programs such as the Term Asset-Backed Securities Loan Facility. Financial institutions need time to develop an understanding of the proposed changes and to adapt their business model accordingly.

The Proposal creates a number of unintended consequences.

- Procyclical Effect: If this Proposal were to be strictly applied, financial institutions would need to build up loan loss reserves and capital at a time when financial institutions are being encouraged by regulators to increase lending. This will lead to reduced credit extensions or increased credit costs. These outcomes will further suppress economic growth and likely increase credit losses, which will further reduce capital. The procyclical effects of this proposal should be reflected in the final rule.

- Impact on Capital: The rule as currently drafted does not appropriately account for the risk of the bank. Capital would be required related to all consolidated assets (including loans) when in fact the institution's risk in most cases is far less. The proposal should take into account the actual risk of the assets before requiring capital to be held against them.

- Impact on Basel II Implementation: The proposal also eliminates risk-based capital requirements related to Asset Backed Commercial Paper (ABCP) programs included within Basel II at a time when Basel II is still being implemented here in the U.S., placing banks at a competitive disadvantage from their foreign competitors. Should the Agencies adopt the proposal to modify these rules, we request clarification that the Internal Assessment Approach (IAA) will remain available for risk-weighting of unrated exposures of consolidated ABCP programs.

- Possible Reduction in Use of Securitization: If this Proposal is implemented, it is possible that there will be a reduction in the use of securitization and a greater reliance on other alternative sources of funding such as brokered CDs and unsecured debt in the financing activity of banks. Asset types, other than credit cards, autos loans/leases, and mortgages, will be less frequently securitized, which will force banks to price deals with significantly higher spreads. Asset pools and product lines will be less likely sold/traded amongst banks, especially given the capital charge and/or balance sheet presentation of certain low margined businesses that attract large amounts of

capital. Overall, banks will be forced to charge more for providing both credit and liquidity support.

- Effect on Asset Management: One such consequence results from the inclusion of assets in entities consolidated under FAS 167, unless excluded from capital requirements. Financial institutions face the potential consolidation of asset management investment fund structures since performance fees and/or asset management fees earned for providing asset management services are not "insignificant" as defined under FAS 167. Asset management fund assets are not the company's assets and will not provide any future residual economic benefits to the company. Also, financial institutions may invest small amounts of "seed capital" in a new fund to begin the investment process, which are intended to be withdrawn when the fund achieves a critical mass of outside investors. There is no associated risk of loss related to these invested seed capital amounts beyond that already recorded as assets and risk weighted accordingly.

- Effect on Pension and 401(k) Plans: The Proposal, as currently written, will result in higher fees to pension and 401(k) plans and other investors or a reduction in the availability of investment offerings.

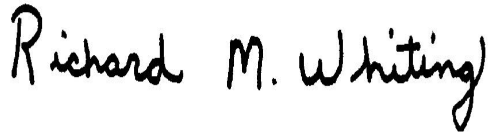
In addition, we believe consolidated loan securitization assets should not be subject to the same ALLL provisioning process. Losses on securitized assets would be absorbed by any third-party subordinated beneficial interest holders and then by the trust's debt holders.

Regulators must also take into account the ever-changing accounting standards and the current regulatory environment. In addition to the changes to Financial Accounting Standards ("FAS") 166 and 167, the Financial Accounting Standards Board ("FASB") has also made changes to fair value accounting. Due to current market conditions we could expect that FASB will make additional accounting changes over the next few years. The International Accounting Standards Board ("IASB") will soon follow with its own changes for fair value accounting and securitization reporting. Additionally, the regulatory structure of bank supervision is currently being debated in Congress and may impact the current banking community, as well as those not currently subjected to regulatory risk-based capital. As such, the final rule must account for these possible and imminent changes.

Lastly, the Proposal attempts to ensure that the Regulatory Accounting Principles ("RAP") continue to follow Generally Accepted Accounting Principles. However, this is not the correct approach. Rather, as noted above, the regulators should differentiate between control and economic risk when using the RAP to ensure that institutions are only holding capital against their economic risk and not the assets (loans, etc.) that are being consolidated.

Thank you again for the opportunity to share our views with you on this subject. If you have any questions, please feel free to contact me, Irving Daniels, or Melissa Netram at 202-289-4322.

Sincerely,



Richard Whiting
Executive Director and General Counsel