CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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August 7, 2009

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: RIN # 3064–AD47; Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions

Dear Mr. Feldman:

The U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region, supports the use of private capital to fuel our nation's economic recovery, including the role of private capital investors in recapitalizing our nation's troubled banks. We appreciate the opportunity to comment on the Federal Deposit Insurance Corporation ("FDIC") Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions ("Proposal").

The number of U.S. bank failures has spiked during the recent economic downturn. The role of private capital is becoming increasingly critical to revitalizing our banking system and the recovery of the U.S. capital markets. The Chamber supports the FDIC's effort to clarify the rules of engagement for private capital investors investing in failed depository institutions. We agree that prohibiting an acquired bank from funding other private equity investments, improving disclosures, and discouraging short-term holdings will promote safety and soundness in the banking system and ensure the protection of the Deposit Insurance Fund. However, we are concerned that three of the proposed restrictions would deter private capital from entering the system and increase the risk that taxpayers will have to foot the bill for the growing wave of bank failures.

First, the Proposal includes a "super-capital" requirement that would require any bank purchased from the FDIC by private capital investors to maintain a 15% leverage ratio for at least three years. The Proposal appropriately recognizes that failed banks face special challenges in regaining stability. However, requiring a higher leverage ratio for private capital investors solely because they are classified as such ignores the central policy goal of higher leverage ratios. Modestly higher capital requirements are appropriate in new banks, yet are based on an assessment of the business plan, management, and balance sheet. The FDIC should not institute a different set of leverage requirements based solely on an investor's designation. Instead *every*

purchaser of a failed bank, regardless of their classification, should be required to produce a management team, business plan, and capital structure that will ensure the long term viability of the investment.

Second, the Proposal has asked for comment on whether private capital investors should be required to supply an unlimited amount of capital to serve as a "source of strength" for their subsidiary depository institutions if required by regulators. We agree that a troubled bank needs to have ready access to capital to prevent failure, but this requirement would make it prohibitively risky for a private capital investor with assets unrelated to the prospect bank to make an acquisition. Minority investors without control of the acquired bank should not be required to provide an unlimited safety net, but should have the full ability to infuse capital into a troubled bank. Market discipline will ensure that risks are appropriately managed and additional capital is provided when necessary to preserve the investment.

Third, the Proposal would require private investors in a bank to pledge their shares in a completely different bank to the FDIC if both banks had more than 50% of common private investors. The FDIC would take these shares to cover any losses at the first bank. This would apply even when the investors explicitly rebutted control and committed not to act in concert. Forcing private capital investors to enter into this type of contractual cross-guarantee would deter these investors from entering into collective deals and restrict the pool of available private capital for future failed banks. As with the "source of strength" rule proposal, this would apply even if none of the investors has the ability to control the banks operations. Such a cross-guarantee should apply only when two banks are operated in close coordination, not where they share private capital investors, none of whom controls the bank.

Private capital investors have a proven track record of strengthening the banking sector to the benefit of the FDIC and U.S. taxpayers. Although many of the FDIC's proposals support this role, the implementation of any one of these troubling proposals would restrict private capital from entering the system and cost taxpayers more over the long-term. It is in our nation's best economic interest during these challenging times to implement policies that attract, rather than deter, private capital investment to the banking system. Thus, the provisions mentioned above that conflict with this goal should be modified in the final policy statement.

Sincerely,

R. Bruce Josten

Cc: Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation
Martin J. Gruenberg, Vice Chairman, Federal Deposit Insurance Corporation
Thomas J. Curry, Director, Federal Deposit Insurance Corporation
John C. Dugan, Comptroller of the Currency
John E. Bowman, Acting Director, Office of Thrift Supervision