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

Attention: Comments

Re: Proposed Policy Statement on Qualifications for Failed Bank Acquisitions

Dear Mr. Feldman:

As public pension fund fiduciaries, we oversee investments on behalf of tens of millions of beneficiaries, including retired policemen, firefighters, teachers and public employees of all stripes. Particularly since many public funds face significant long-term funding challenges, we also very much represent the interests of the taxpayers who stand behind public pension promises.

We commend the FDIC for its pro-active role in stabilizing the banking system and, in particular, for its early leadership in anticipating and developing policy tools to address the severity of the mortgage foreclosure problem. We are sympathetic to the complexities inherent in creating rules governing private capital, and recent experience confirms the importance of rigorous regulatory oversight once capital is invested.

We know that the safety and soundness of the banking system is a core objective of FDIC policy. Respectfully, our judgment is that the proposed policy statement governing the role of private capital in FDIC-assisted transactions may limit the inflow of private capital and thus increase the risk to the banking system.

In the narrowest sense, we write as investors with a direct economic interest in the returns generated by various private equity partnerships and other forms of private capital. Indeed, many private capital pools are predominantly amalgamations of the assets of public funds, universities, and other non-profit entities; to a large degree, the economics of their general partners are a derivative of the returns they generate for public pension fund beneficiaries. It is worth noting that our individual views on policy issues may diverge from the economic interests of the general partners of private equity and other entities such as hedge funds. Some of us testified before Congressional panels opposing the views of many in the private equity and hedge communities on the tax treatment of carried interest.

Our core concern, however, is not with the potential loss of investment opportunities as limited partners in various private investment entities. While our individual perspectives on the condition of the banking system may vary, our concern is that for several trillion dollars of depository assets – commercial real estate, construction, commercial and industrial, home equity, jumbo and prime residential loans – the bulk of cumulative credit losses remain unrecognized and lie ahead. Some of us suspect that the most recently published FDIC problem bank list may materially understate the number of institutions which will ultimately be at risk of failure. While there are legitimate policy concerns attendant upon injections of private capital, it is possible that the need for further capital may be underestimated in some quarters. Hence, we are deeply concerned about unduly inhibiting the recapitalization of depository institutions. As depositories are the coronary system of the economy, any

unnecessary prolonging of the rehabilitation of the credit creation mechanism would slow economic recovery and reduce overall public pension fund investment returns. The banking system, in our judgment, would greatly be strengthened through material injections of private capital. Obstruction of this capital will have real costs to pension funds as well as state and local governments.

We applaud the FDIC for the principles articulated in its discussion draft, which we believe represent sound public policy. We certainly support broad ownership disclosure, the prohibition of incestuous lending, and a bar against the major shareholders of a depository pre-failure winning the institution in an auction post-failure. The objective of this letter is not to provide a detailed response to the FDIC draft proposal. We would, however, make several broad points.

First, we respectfully believe that the 15% capital requirement is unduly restrictive and will limit the ability of these banks and thrifts to be recapitalized. Bidding on a bank by a prudent investor involves substantial due diligence and commitment of significant up-front expenses. High quality investors will undertake extensive due diligence on many institutions for each one that is ultimately purchased. The most problematic effect of excess capital requirements is that those subject to such requirements will not do the work and will not bid. In other instances, they may bid but at materially lower prices, creating a less robust auction process and higher resolution costs for the FDIC. In the limited instances in which serious private capital bids materialize, the prospective owners will presumably have identified higher risk operating strategies which can produce competitive returns with lower levels of leverage. The combined effect of discouraged participation, low-ball bids, and induced focus on high-risk activities would make this program unsuccessful by all measures.

Fundamentally, any excess capital requirements relative to what is demanded of other players – for example, even a 10% leverage ratio – will reduce the availability of otherwise useful and necessary capital inflows.

Second, some of the other major provisions may well be problematic. If the source of strength doctrine were expanded to include a claim on the underlying investors – a topic on which you sought comment - we believe that would drive away capital. For many of us, as fiduciaries, the risk of potentially open-ended capital calls would constitute a poison pill which would discourage involvement with any investor subject to those terms. The cross guarantee provision would effectively mean only one bank investment for any investment vehicle; this would be detrimental to us as limited partners and again appear to constrain the bidding pool on FDIC transactions.

We appreciate that the FDIC draft was essentially intended as a discussion document. However, we are concerned that it reinforced the belief that may exist in some circles that private capital in the financial services industry has a particularly high risk appetite, which might theoretically justify stricter regulation. Some of us have, in our private sector lives, invested in and served as directors of multiple financial institutions, including depositories. In light of the recent history with numerous publicly owned financial institutions, our own experiences, and the empirical evidence we have seen, the association of private capital with elevated risk in financial services seems, for some of us, misplaced.

A central reason that public pension funds and others invest in the higher quality private capital partnerships is that they have historically added value by attracting relatively strong management. If we compare the directors of privately controlled financial firms with their publicly owned peers, among some of us the perception is that the level of direct experience in financial services tends on average to

be higher among the private firms. Investors in publicly owned financial firms have sometimes suffered losses through a counterproductive mix of short-term compensation incentives and agency issues which arise when management and ownership are largely separate; these risk-inducing dynamics are not as prevalent with private capital. Risk can obviously be heightened when private firms take ownership of public companies through added leverage, but this pattern does not exist for depositories.

From a policy perspective, we are concerned by the lack of clarity surrounding both the definition of "private capital investors" and the ownership levels at which the restrictions imposed by the FDIC proposed policy statement would apply. What is clear is that the cumulative effect of the commitments embodied in the policy statement – with respect to capital, source of strength, and cross guarantees especially – would have a chilling effect on private capital participation in the acquisition of failed banks or thrifts, or their deposit franchises, from the FDIC. What is also clear is that public pension funds and other non-profits, operating through their investments in various forms of private partnerships, constitute a large share of what others term private capital. Beyond our direct economic interests in the opportunities available to the partnerships in which we have invested, our primary concern is that impediments to private capital flows may raise safety and soundness risk and slow the healing of the credit creation process. If that judgment were proven correct, the effects would be detrimental to the overall performance of our investment portfolios.

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