Bond Street Bank, N.A. (in organization)
9 West 57th Street, 26th Floor
New York, New York 10019

August 10, 2009

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

Re: Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions

Dear Mr. Feldman:

Bond Street Bank, N.A. (in organization) ("Bond Street") is grateful for this opportunity to comment on the Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions (the "Proposed Policy Statement") published in the Federal Register by the Federal Deposit Insurance Corporation on July 9, 2009.[1]

We welcome the FDIC's decision to develop clearer standards and expectations for private capital participation in the banking system. However, we are concerned that the Proposed Policy Statement is unclear and capable of overly broad application in its present form and, if adopted, will discourage investment in failed financial institutions from the most "desirable" capital—capital which is not characterized by any of the risk factors identified by the FDIC and which can serve as a least cost solution for the FDIC and restore failed insured depository institutions to well capitalized status very quickly.

Important Considerations

The Definition of "Private Capital Investors"

The definition of private capital investors should be more clearly and more narrowly drawn to distinguish between sources of capital that present concerns with regard to the safety and soundness of the banking system and those which do not. The Request for Public Comment and the related July 2, 2009 Press Release leave unclear whether the proposed Policy Statement is targeted at *all* investors seeking to acquire a failed bank, or if it is targeted

[1] Bond Street Bank, N.A. (in organization), and its proposed bank holding company, Bond Street Holdings, LLC, are applicants for a national bank shelf charter and FDIC insurance.

at the particular kinds of investors viewed by the FDIC as especially high risk.[2] In addition, Question 1 implies that neither private capital investors nor certain *de novo* charter applicants are willing or able to accept the responsibilities incumbent upon owners of depository institutions. We believe that to be a gross mischaracterization and an unhelpful premise on which to base a regulatory policy.

According to the Proposed Policy Statement, the FDIC has identified potentially high risk acquirers as those which possess the following characteristics: having opaque or highly complicated ownership structures, uncertainty with respect to which responsible parties are in charge of decision making, separation of ownership and control of the bank, and the location of parties in secrecy law jurisdictions. However, the Proposed Policy Statement then arguably applies restrictions designed to address those risk factors to *every* non-bank purchaser of a failed institution—merely because the capital to be used is raised from individuals, institutions or other sources of "private capital." Not every private investor presents the risks identified by the FDIC, and investors that do not possess those risks should not be penalized by the adoption of an overly broad definition of "private capital investor" which would unreasonably and unnecessarily restrict such investors from purchasing and operating financial institutions.

A non-control investor—individual, mutual fund, family office, or otherwise—in a publicly-traded banking institution would seem to pose no more or less risk to the financial system than the same "private capital" does when it represents a non-control interest in a non-public company that has acquired or is proposing to acquire a banking institution. Similarly, those found to have the experience, competence and willingness to run a failed institution with an existing depositor base and existing infrastructure should not require significantly more qualification or a greater degree of regulation than those same individuals who seek to organize and operate a *de novo* institution.

For example, Bond Street's proposed bank holding company, Bond Street Holdings, LLC ("Bond Street Holdings"), was created as a bank investment vehicle for the sole purpose of acquiring insured depository institutions, and it was organized by, and is controlled by, individual investors who do not control any other significant business enterprise or entity. Thus, all of its direct and indirect significant activities are under the "regulatory umbrella." Although Bond Street Holdings' future investors may include other individuals, families and certain institutional investors, none will hold a controlling interest. Bond Street Holdings neither has the complex nor opaque ownership structure that is the stated concern of the FDIC, nor is it controlled by private equity firms that also control disparate other businesses. Yet, although potential acquirers like Bond Street Holdings do not present the risk profile that

[2] Question 1 in the Request of Public Comment states that 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….", but they *will* be applied to private capital investors "in certain companies" which propose to purchase a failed institution and to applicants for de novo charters in connection with failed institution resolutions. Further, the Press Release dated July 2, 2009 states that the FDIC is concerned that owners of banks and thrifts, regardless of whether they are individuals, partnerships, limited liability companies, or corporations, have the experience, competence and willingness to run the bank in a prudent manner.

is the FDIC's stated concern, they may be treated in the same manner and subjected to the same restrictions as those investors that do present such concerns. Therefore, we recommend the adoption of a more narrow definition of "private capital investor" which imposes additional restrictions on *only* those investors that possess the characteristics which the FDIC has deemed to be high risk or, in the alternative, allow for greater regulatory flexibility in how the restrictions are applied.

Flexible FDIC Licensing Analysis

Another potential approach that could protect against excessive risk to the Deposit Insurance Fund would be to rely upon the application, by the FDIC's licensing analysis staff, of flexible standards that identify relevant risk factors. Currently, with respect to *de novo* shelf charter applicants, the FDIC protects against excessive risk to the Deposit Insurance Fund by submitting such applicants to a rigorous application process in which the FDIC closely examines the institution's proposed board of directors and management team (in particular, the experience and expertise of such team), business model and business plan (including financial projections and sensitivity analyses), sources of capital, and access to additional capital. This application and examination process gives both the applicant and the FDIC's licensing analysts significant time and flexibility to adequately analyze and address any concerns in advance of the acquisition. If a purchaser's application does not raise any of the concerns discussed in the Proposed Policy Statement and other related materials, then such purchasers should not be required to meet the more restrictive provisions of the Proposed Policy Statement which are reserved for those who pose the most risk to the Deposit Insurance Fund. Therefore, rather than lumping all potential acquirers together and treating them in the same manner, the FDIC should assess the quality of each purchaser separately and tailor the post-acquisition requirements accordingly.

Once more, we want to express our gratitude for this opportunity to comment on the Proposed Policy Statement. If you have questions about any view expressed in this letter, please do not hesitate to contact us at your earliest convenience.

Sincerely,

Stuart I. Oran, Organizer
Bond Street Bank, N.A. (in organization)