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February 13, 2012

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

Dear Mr. Feldman:

The Independent Community Bankers of America¹ (ICBA) welcomes the opportunity to comment on the proposed rule, *Permissible Investments for Federal and State Savings Associations: Corporate Debt Securities* and the proposed guidance, *Guidance on Due Diligence Requirements for Savings Associations in Determining Whether a Corporate Debt Security is Eligible for Investment*, published by the Federal Deposit Insurance Corporation (FDIC).

The FDIC states that the proposed rule and guidance is consistent with alternative creditworthiness standards proposed by other Federal agencies under Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act and existing guidance regarding securities investments and credit classification of banks and savings associations. Section 939A directs the Federal agencies to review any regulation that requires the use of an assessment of creditworthiness of a security or money market instrument and any reference to, or requirements in such regulations regarding credit ratings. The Act requires the agencies to remove any references to, or requirements of reliance on credit ratings and substitute such standard of credit worthiness as each agency determines is appropriate. The FDIC proposes to amend its regulations to prohibit any insured savings association from acquiring and retaining a corporate debt security unless it determines, prior to acquiring such security and periodically thereafter, that the issuer has adequate capacity to meet all financial commitments under the security for the projected life of the investment. Under the proposed rule, an issuer would satisfy this requirement if, based on the assessment of the savings association, the issuer presents a low risk of default and is likely to make full and timely repayment of principal and interest. The proposed guidance would assist savings

¹ *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing over 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

associations in conducting due diligence to determine whether a corporate debt security is eligible for investment under the accompanying proposed rule.

The FDIC's regulations generally prohibit a state savings association from acquiring or retaining a corporate debt security that is not of investment grade. The term "corporate debt securities that are not of investment grade" is defined as "any corporate security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization." The proposed rule would amend existing rules by deleting the definition of corporate debt securities not of investment grade and replacing it with a requirement that federal and state savings associations, prior to acquiring a corporate debt security, and periodically thereafter, must determine that the issuer has adequate capacity to meet all financial commitments under the security for the projected life of the investment. In making this determination, the FDIC would expect savings associations to consider a number of factors commensurate with the risk profile and nature of the issuer.

Although savings associations would be permitted to consider an external credit assessment for purposes of such determination, they must supplement any external credit assessment with due diligence processes and analyses that are appropriate for the size and complexity of the investment.

ICBA Views

We recognize the need for savings associations to ensure that the issuer of any corporate debt security that they purchase and hold has adequate capacity to meet all financial commitments under the security for the projected life of the investment. We agree that savings associations should consider factors that are commensurate with the risk profile of the issuer as there will be different levels of risk related to different issuers and different securities. We also recognize the challenges and constraints that the FDIC faces in implementing the requirements of Section 939A, but we are concerned that bankers will find the rule and guidance confusing as to the type and depth of analysis needed to determine if a corporate debt security is a permissible investment. While the guidance provides a list of factors for consideration, savings associations may find it difficult to determine how far examiners will expect them to go in conducting due diligence for each corporate debt security. ICBA is particularly concerned about the ability of small savings associations to meet expanded internal analytical requirements and the greater burden it places on them, due to their limited resources, as compared to larger institutions. Recognition of the need to balance an adequate process with the size and complexity of the institution and its investments should be communicated in the guidance and to examiners.

Previously, savings associations could use credit ratings as a ready, understandable tool to help them make investment decisions. However, now a greater focus will be placed on their own internal credit analysis. Federal and state savings associations should be permitted to consider external credit ratings and other external data and credit analyses provided by third parties to help make credit worthiness determinations to help them manage the analytic burden. As the improvements to the regulation of credit ratings agencies is implemented, as called for in the Dodd-Frank Act, credit ratings should improve greatly in quality and hopefully can once again be relied on as a useful analytic, tool. The ability to use credit

ratings and other third-party resources is particularly important for small savings associations with limited resources.

We appreciate the efforts of the FDIC to review the creditworthiness standards proposed by the other federal agencies to ensure, to the extent feasible, that the FDIC adopts a consistent creditworthiness standard. In our view, creditworthiness standards should generally be consistent across rules and regulatory agencies to the extent feasible. The Office of the Comptroller of the Currency, Securities and Exchange Commission and the Federal Reserve are among the agencies that have proposed rules addressing creditworthiness standards. Creditworthiness standards may be used for risk-based capital standards and other regulatory requirements. Ensuring consistency, to the extent feasible, of definitions and requirements, would foster transparency, limit confusion for investors and aid compliance with credit risk management requirements.

We urge the FDIC to provide savings associations at least one year to comply with the new requirements to provide time to implement the needed changes to their analytic process and review their existing portfolio holdings. While the FDIC proposes that there would be no provision to grandfather investments, we ask that savings associations be permitted to retain current long-term investments where there is no manifestation of credit deterioration, even though changes to the analytic process result in a different creditworthiness determination. A savings association could face significant negative accounting implications if it were forced to sell securities it had purchased with the intent of holding them over the long-term until maturity.

We ask that as the FDIC monitors the implementation of a final rule and guidance that it revisits the documents as needed to insure that they are not overly burdensome for small savings associations and that the increased requirements of internal analysis are resulting in useful information.

We appreciate the opportunity to comment. Please contact me by email at ann.grochala@icba.org or by phone at 202-659-8111 if you would like to discuss our comments further.

Sincerely,

/s/

Ann M. Grochala
Vice President, Lending and Housing Policy