

Public Comments on Restrictions on Sales of Assets of a Covered Financial Company:=====

Title: Restrictions on Sales of Assets of a Covered Financial Company

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Submitter Info:

First Name: Kermit

Last Name: Kubitz

Mailing Address:

City: San Francisco

Country: United States

State or Province: CA

ZIP/Postal Code: 94127

Email Address:

Comment: It is appropriate to prohibit individuals or entities who profited or engaged in wrongdoing at the expense of a covered financial company or seriously mismanaged a covered financial company from buying assets of any covered financial company from the FDIC. Prohibiting the individual or entity from buying an asset of only the specific covered financial company that the individual or entity had been involved with could allow such persons to benefit or recover from prior wrongdoing and would perpetuate ownership of covered financial companies by persons or corporate entities which would continue to place them at risk for mismanagement or wrongdoing and expose the FDIC and its depositary insurance funding to further costs and liability.

The implementing regulations should also provide that no proxies or indirect purchasers may be used for purpose of avoiding these regulations with the objective of ultimately providing ownership, management or control to a person who would otherwise be unable to directly own, manage or control the covered financial institution. Layers of ownership should not be allowed to insulate persons or entities otherwise ineligible to purchase an institution under these regulations, and the direct

purchasers should certify that they are not acting on behalf of or for the benefit of any prohibited person or entity.

Any exemptions from the prohibition for such purchases for settlement with claims against FDIC should be subject to the requirement that such a settlement be submitted to, and approved by, as a good faith settlement of colorable claim, a court having the power to determine and resolve such claims. This would not necessarily include a bankruptcy court unless that Court had jurisdiction, under the principles of the Stern case, to resolve the claims involved. Only submission to a Court would protect the public by exposing the reasons for, and justification of, the proposed settlement in a public manner, without which the FDIC would be able to enter into settlements potentially exempt from the "wrongdoer purchase prohibition" without an adequate public record.

As a legal matter, it may be appropriate for the FDIC or Department of Justice to have standards and procedures under which it makes findings that a person, entity, or financial group has engaged in mismanagement or contributed to significant losses of a covered financial institution, so that persons, entities or groups so identified can be identified in legal, regulatory, or judicial findings and subsequently readily determined to be ineligible for purchase or acquisition of covered financial institutions under these sections implementing Dodd Frank prohibitions. Equally important, the regulations do not specify the actions to be implemented if an improper, prohibited purchase is later found. Regulations, to be effective, should provide that in the event a person or entity, prohibited by these regulations, is found to have engaged in a purchase or acquisition of a covered financial institution by failure to disclose or disclosing in a misleading manner, their prohibited status, such purchase or acquisition is voidable as a fraudulent purchase which would not have been permitted had the true nature and failure to conform to requirements of the purchasing person or entity had been known.

It is appropriate to prohibit individuals or entities who profited or engaged in wrongdoing at the expense of a covered financial company or seriously mismanaged a covered financial company from buying assets of any covered financial company from the FDIC. Prohibiting the individual or entity from buying an asset of only the specific covered financial company that the individual or entity had been involved with could allow such persons to benefit or recover from prior wrongdoing and would perpetuate ownership of covered financial companies by persons or corporate entities which would continue to place them at risk for mismanagement or wrongdoing and expose the FDIC and its depositary insurance funding to further costs and liability.

The implementing regulations should also provide that no proxies or indirect purchasers may be used for purpose of avoiding these regulations with the objective of ultimately providing ownership,

management or control to a person who would otherwise be unable to directly own, manage or control the covered financial institution. Layers of ownership should not be allowed to insulate persons or entities otherwise ineligible to purchase an institution under these regulations, and the direct purchasers should certify that they are not acting on behalf of or for the benefit of any prohibited person or entity.

Any exemptions from the prohibition for such purchases for settlement with claims against FDIC should be subject to the requirement that such a settlement be submitted to, and approved by, as a good faith settlement of colorable claim, a court having the power to determine and resolve such claims. This would not necessarily include a bankruptcy court unless that Court had jurisdiction, under the principles of the Stern case, to resolve the claims involved. Only submission to a Court would protect the public by exposing the reasons for, and justification of, the proposed settlement in a public manner, without which the FDIC would be able to enter into settlements potentially exempt from the "wrongdoer purchase prohibition" without an adequate public record.

As a legal matter, it may be appropriate for the FDIC or Department of Justice to have standards and procedures under which it makes findings that a person, entity, or financial group has engaged in mismanagement or contributed to significant losses of a covered financial institution, so that persons, entities or groups so identified can be identified in legal, regulatory, or judicial findings and subsequently readily determined to be ineligible for purchase or acquisition of covered financial institutions under these sections implementing Dodd Frank prohibitions. Equally important, the regulations do not specify the actions to be implemented if an improper, prohibited purchase is later found. Regulations, to be effective, should provide that in the event a person or entity, prohibited by these regulations, is found to have engaged in a purchase or acquisition of a covered financial institution by failure to disclose or disclosing in a misleading manner, their prohibited status, such purchase or acquisition is voidable as a fraudulent purchase which would not have been permitted had the true nature and failure to conform to requirements of the purchasing person or entity had been known.