KUTAK ROCK LLP

THE OMAHA BUILDING
1650 FARNAM STREET

OMAHA, NE 68102-2186

402-346-6000
FACSIMILE 402-346-1148

www.kutakrock.com

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JOYCE A. DIXON
joyce.dixon@kutakrock.com
(402) 346-6000

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VIA EMAIL: thirdpartylending@fdic.gov

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Comments to Proposed Third Party Lending Guidance, FIL-50-2016 published for comments on July 29, 2016 (the "Proposed Guidance")

Our firm assists numerous financial institutions in their compliance with regulatory matters affecting lending activities. These activities include individual loans, club and syndicated lending, participations and wholesale funding techniques such as securitization facilities. The loans involve both consumer and commercial lending products. Often these are products involving Regulation W ramifications for affiliated parties. Numerous clients have requested that we advise them as to the applicability of the Proposed Guidance to these long-standing products and practices.

We understand that the purposes of the Proposed Guidance are to address concerns as to risks which may occur for banks who rely on and interact with third parties in the origination and servicing of their loans. Many of the risks identified by the Proposed Guidance reflect the FDIC's concern of growing merchant lending, rent-a charter products, and lack of control over non-regulated entities. For the most part these are consumer lending issues which raise the specter of failure to comply with the ever-expanding consumer compliance world. They also reflect risks for financial institutions of a sudden disruption in the third party relationship which results in loss of market origination or, perhaps more importantly, in liquidity and capital insufficiency for loans which the bank as originator did not intend to retain. We applaud these efforts but believe that the broad scope suggested by the Proposed Guidance may be overly inclusive to address the concerns.

There is no question that the Proposed Guidance will result in the commitment by banks of substantial resources to prepare and monitor a comprehensive compliance management system for these third-party lending relationships, not to mention the increased costs for more frequent examinations. We believe that these extra expenses may be unnecessary burdens in certain areas. In light of this concern, we would respectfully request that the FDIC consider the following clarifications and changes to the Proposed Guidance:

- First and foremost, we believe that third party relationships with related affiliates should not be included within the scope of loans covered by this Proposed Guidance. Affiliated transactions are already well-regulated by legislation and the related Regulation W. This law has provided thoughtful, well-established mechanisms to address capital and safety-and-soundness issues, but it also provides for efficiencies and economies of scale in coordinating lending activities among affiliates. For example, requiring additional credit models seems duplicative between affiliated entities and could result in affiliated community banks charging more and still earning less. The common control feature which is central to Regulation W assures that at the highest level there will not be blatant disregard for related financial institutions, a hazard which could occur with unrelated parties. The relationships between these affiliates are already subject to substantial oversight and examination by the applicable regulators. In the past, regulators and courts have recognized the all-encompassing nature of Regulation W and have determined that more general schemes, such as lending limits, should be deemed pre-empted by the lending limits of Regulation W for relationships among affiliated entities. As a result, we recommend that interrelated lending activities among affiliates (including those which are not treated as covered transactions) should not be deemed third party lending relationships for purposes of the Proposed Guidance.

- Similarly, we believe that customary commercial loan participation relationships between regulated financial institutions provide the full panoply of regulatory oversight and risk mitigation which the Proposed Guidance is addressing. There are already policy statements and guidance for financial institutions to cover loan participations. Within the last few years, the Financial Accounting Standards Board did a full examination of the proper accounting methods for such participations. It is well acknowledged that these long-established participation techniques strengthen correspondent banking relationships. They permit community banks to service their larger commercial customers through participations of overlimit facilities with other institutions. Subjecting these already well-regulated transaction types to coverage under the Proposed Guidance will add further complexity and originator/participant costs to this process without providing additional safety and soundness or filling a regulatory vacuum for these banks. We recommend that commercial loan participations between financial institutions be clearly excluded from the scope of coverage of the Proposed Guidance.

- Asset securitization has provided a valuable capital market funding source for many financial institutions. As this new technique has developed over the past generation, complex legal, regulatory and accounting structures and strictures have evolved with it. These are sophisticated wholesale funding mechanisms

with unique and highly defined terms. They already require careful monitoring and maintenance and are highly monitored by both securities and banking regulators. A broad reading of the definition of significant third party lending relationships as drafted could include these transactions. We recommend that these techniques are not needed to be covered within the scope of the Proposed Guidance.

- In reviewing the Proposed Guidance, we believe that it is possible to determine that it would apply to third party lending relationships for both consumer and commercial loans. Because of the very different regulatory structure which governs consumer loans as opposed to commercial loans, we believe that it might be advantageous to address these separately. Most of the concerns and risks which appear to be the focus of the Proposed Guidance arise in the context of consumer loans. We recommend that the FDIC consider limiting the Proposed Guidance to third party consumer lending relationships.

Thank you for the opportunity to present these comments on behalf of many of our financial institution clients. If we may provide additional background or answer questions related to our comments, we would be pleased to do so.

Very truly yours,

Joyce A. Dixon
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
(402) 231-8974
joyce.dixon@kutakrock.com