October 13, 2011

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, DC 20429

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 2-3
Washington, DC 20219

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551

Re: Notice of Proposed Rulemaking Regarding:

Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action

http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/pdf/2012-16757.pdf

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Parts 3, 5, 6, 165, and 167
[Docket ID OCC–2012–0008]
RIN 1557–AD46

FEDERAL RESERVE SYSTEM
12 CFR Parts 208, 217, and 225
Regulations H, Q, and Y
[Docket No. R–1442]
RIN 7100–AD87

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903
Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

FEDERAL DEPOSIT INSURANCE
CORPORATION
12 CFR Parts 324, 325, and 362
RIN 3064–AD95

Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements

http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/pdf/2012-17010.pdf

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 3
[Docket ID OCC–2012–0009]
RIN 1557–AD46

FEDERAL RESERVE SYSTEM
12 CFR Part 217
[Regulations H, Q, and Y; Docket No. R–1442]
RIN 7100 AD-87

FEDERAL DEPOSIT INSURANCE
CORPORATION
12 CFR Part 324
RIN 3064–AD96

Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule

http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/pdf/2012-16761.pdf

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 3
[Docket No. ID OCC–2012–0010]
RIN 1557–AD46

FEDERAL RESERVE SYSTEM
12 CFR Part 217
[Regulation Q; Docket No. R–1442]
RIN 7100 AD–87

FEDERAL DEPOSIT INSURANCE
CORPORATION
12 CFR Parts 324 and 325
RIN 3064–AD97

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

Ladies and Gentlemen:

M•CAM, Inc.[1] (Mosaic Collateral Asset Management) is a global, financial services and collateral management firm with specialized expertise on capital risk management. Our focus on the assets secured within Senior Secured "General Intangibles Liens" of bank's corporate borrowers has afforded collateral stability for over USD 50 billion in Commercial and Industrial (C&I) loans for more than a decade. Our collateral focus specifically relates to statutorily defined (Uniform Commercial Code Article 9; Internal Revenue Code definition of "Personal Property"; etc.) intangible assets, intellectual property and other market rights. For the past 15 years, M•CAM has successfully deployed its underwriting platform (based on proprietary unstructured actuarial data management tools) for the benefit of regulators, sovereign treasuries, banks, non-bank lenders and investment corporations. We measure and quantify the market consequence, commercial fitness, and obsolescence risk of intangible assets such as executory contracts, patents, trademarks, copyrights, exploration contracts, development rights, licenses, permits, long-term supply contracts and other intangible assets. In addition to its commercial use across the global equity and debt markets, this platform has placed M•CAM as a principal advisor to help to set regulatory, audit, compliance and risk standards for certain intangible assets both domestically and internationally for entities such as:

- U.S. Treasury Department's Internal Revenue Service
- Organization for Economic Cooperation and Development
- World Trade Organization
- U.S. and European Patent Offices
- The Financial Accounting Standards Board
- Bank of International Settlements
- Lloyd's of London
- Dubai International Financial Exchange

M•CAM's borrower collateral risk management solutions have been beneficially employed to identify and manage global market intangible assets by many of the world's leading corporations, presidential and cabinet level ministers, government regulators and international institutions such as the World Bank and International Finance Corporation.

I. Capital Flow in the Knowledge Economy

Market pricing incentives for stimulating the development of new enterprises, products and services is a feature common to economic history. From the insignia of guilds to the trademarks of Japanese merchants to the conductive coatings for flexible semiconductors, conveying attributed value, quality assurance and price controls has been linked to intangible rights for thousands of years. In recognition of the societal value of rewarding the originator of innovation, numerous anti-competitive rights have

[1] M•CAM http://www.m-cam.com

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903
Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

been established. The ability to transfer, assign, or license these rights has also been an essential utility in the flow of capital.

While many think of intangible assets as a modern contrivance due to the popularity of the subject in the press, we are no more focused on them now then a century ago. Edison and Westinghouse locked horns in intractable conflict over the innovation rights to the use and distribution of electricity. J.P. Morgan and his International Mercantile Marine Co. were the ultimate beneficiaries of intellectual property rights conveyed in the bank liquidation of the liens on the White Star Line by the Royal Bank of Liverpool in 1868 - innovations which powered the ships that transported the Pacific gold rushes of Australia and the Yukon. The Allies secured German patents and innovations as reparations of war covering chemical dyes, materials sciences, and magnetic tape - the basis for the computer age. From plows to sewing machines to nanotechnology, the importance of technical innovation assets have been constant. These assets share a common attribute. They allow the holder of rights to control the profit margin on goods or services for a period of time thereby securing economic benefit and delaying competitive forces which would force commodity dynamics.

Financing intangible asset rich enterprises has involved a variety of interventions. In 1942, the United States Congress passed the Smaller War Plants Corporation Act which heralded[2] the modern economic focus on what is called "small business" today. Combining bank loan guarantees and procurement preference incentives, this program set in motion a national effort that has sought to provide efficient credit access to enterprises who lack sufficient property and tangible collateral. These two interventions (credit guarantees and procurement preference) remain as integral financing mechanisms for small, innovative companies now defined under the U.S. Small Business Administration, the European Small Business Act, and their international equivalents. These historical market manipulations introduced two unfortunate misconceptions. First, that innovation and intangible assets were uniquely the domain of "small business" to whom banks could not lend due to collateral inadequacy. Second, that government sanctioned market controls (intangible assets) required government-funded capital concessions for financing or growth.

These two misconceptions have fueled seven decades of increasingly inefficient interventions which have driven the cost of capital up (venture capital) and increased the economic incentive for business failure (tax-loss harvesting). Additionally, until the last decade, little credible attention was paid towards understanding intangibles for their true market effect - namely, the marginal control of cash-flows. Rather, accounting and market treatment of these were largely focused on ephemeral considerations of "goodwill". To date, bank regulators still overlook trillions of dollars and euros of fungible cash-flowing assets pledged in borrower liens while correctly scrutinizing the value of bank owned intangibles such as brand and goodwill.

---

[2] Alex H. Singleton. May 25, 1942. "Small Business to Get New Aid: U.S. to Act as Banker For Little Firms by Proposed Legislation." ***Oakland Tribune***. Page 5.

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

Realizing that the majority of assets supporting global businesses are intangible assets, traditional cash, tangible asset, and credit-based risk rating leaves considerable risk exposure unquantified in today's market.[3] This leads to unnecessary volatility. While no accounting standard setting body in the world has been able to establish financial disclosure guidance generally applicable to intangible properties and their derivative risks or benefits (outside of limited guidance for business combinations and impairment), the European Commission and Parliament have concluded that the International Accounting Standards 36 and 38 "meet the criteria of understandability, relevance, reliability and comparability required of the financial information needed for making economic decisions and assessing the stewardship of management."[4]

Recognizing that the Global Financial Crisis of 2007-2008 was exacerbated by abuse of tangible collateral in banking (the use of mortgaged real estate to provide consumer credit which have neither tenor nor repayment actuarial similarity), the banking industry has becoming acutely aware of the importance of understanding collateral. Without any capacity to confirm transferrable rights in intangible assets, despite their accepted importance in the management of enterprise profits and resulting credit quality, banks and their regulators have ignored the chief assets of our current economy to the detriment of the industry and the global economy.

Within every senior secured credit facility, a General Intangibles Lien secures all intangible assets into the collateral pool for the benefit of the creditor. Historically structured to enable a bankruptcy trustee to transfer operating businesses, this lien embraces patents, copyrights, trademarks, licenses and many contractual rights, but *provides no monetary or risk amelioration value* within credit risk metrics. During the industrial economy when companies owned physical real estate, raw materials and inventory, these assets were seen as ancillary. However today, these assets represent the ***majority of enterprise value yet are precluded from being used by our banking system in any fashion***.

In partnership with U.S. and European regulators and the U.S. Small Business Administration, M•CAM developed a collateral enhancement – an insurance product that guarantees a purchase of intangible assets in the event of foreclosure – for small business lending. This inaugural product was structured with counterparty risk supported by SwissRe. Built as a loan origination product, M•CAM's program provided commercial loans to credit-worthy, tangible collateral deficient borrowers. This private sector solution required ***no government appropriation and no legislative reform***. It

[3] Speech by Alan Greenspan, Chairman, U.S. Federal Reserve, Stanford Institute for Economic Policy Research Economic Summit, Stanford, California, February 27, 2004.

"It is, thus, no surprise that, as a result of the increasing conceptualization of our GDP over the decades, the protection of intellectual property has become an important element in the ongoing deliberations of both economists and jurists."

"If our objective is to maximize economic growth, are we striking the right balance in our protection of intellectual property rights? Are the protections sufficiently broad to encourage innovation but not so broad as to shut down follow-on innovation? Are such protections so vague that they produce uncertainties that raise risk premiums and the cost of capital? How appropriate is our current system--developed for a world in which physical assets predominated--for an economy in which value increasingly is embodied in ideas rather than tangible capital?"

[4] European Financial Reporting Advisory Group (EFRAG), June 4, 2004.

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903
Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

provided a bank an insurance product which guaranteed the purchase of borrower intangible assets in the event of foreclosure at a predetermined price. Upon exercise, the bank would simply credit-bid the liened assets, put those assets to the insurer, be paid the insured amount in cash, and transfer the salvage rights to the insurer.

Beginning in the fourth quarter of 2008, M•CAM began applying the same underwriting and structuring to credit assets held by the world's leading banks. We have received bank data covering over USD 130 billion in credit-worthy, current loans which are presently requiring excess reserve (Tier 1) capital due solely to tangible collateral insufficiency. Using the criteria in which we only underwrite those intangibles with a minimum of three (3) defined cash-flows controlled by the intangible assets, we have identified USD 28 billion in discounted cash-flows that could be immediately secured through our collateral enhancement program. In concert with the Bermuda Monetary Authority, reinsurers, and the world's largest banks, we have built the first Tier 1 Capital relief structure which addresses this first, high quality pool of assets.

II. Summary, Background, and Terminology Clarification

- Reserve Capital is an essential safeguard against banking and general economic failure. Recognized by its absence during the Great Depression, the need to insure that liquid capital (not synthetic instruments) was available in adverse capital markets events is paramount in our financial regime. M•CAM's comments herein are unique in our assertion that Tier 1 Capital ***must be based on the assurance of liquid capital at the time of borrower or institutional distress*** and not solely manipulated at the origination of credit obligations.

- Systemic (correlated) market risk is maximized when structured financial products are recursive (e.g. mortgage origination tied to mortgage securities and insured mortgage securitization). Risk is ameliorated when risk management is predicated on cash-flowing assets which are uncorrelated the credit origination. M•CAM's comments are unique in our advocacy for adding new capital into reserve capital regimes specifically for the purpose of monetizing uncorrelated asset utility.

- Marketable assets supporting Collateral security on a loan is preferable to a loan made with no security.

- Collateral positions serve their intended purpose as secondary means of repayment only if liens on the collateral are perfected.

- Marketable, cash-flowing assets in pledged collateral decreases the overall riskiness of a loan.

- Virtually all senior secured bank loans include a blanket "General Intangibles" lien on all of the intangible assets of a borrower at the time the loan is made. C&I loans in particular encumber a significant number of intangible assets.

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903
Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

Intangible Assets (e.g., anything covered under a UCC Article 9 definition of an "intangible asset") generally include executory contracts, permits, licenses, patents, trademarks, copyrights, and essentially any exclusive government-issued right. Banks currently have no pathway with which to receive regulatory capital credit or risk-weighted asset calculation credit for the intangible asset collateral that they hold in the General Intangibles Lien.

- Intangibles Assets are subject to lien assignment under U.C.C. Article 9 and are used in Bankruptcy U.C.C. § 9-501 (1) & 11 U.S.C. Specific laws governing the assignment and transferability of intangible assets including: (Patents) 35 U.S.C. § 261; (Copyrights) 17 U.S.C.; (Trademarks) 15 U.S.C.; and (Contracts) U.C.C. §9-102 liens, are already in place.

- To be clear, a General Intangibles lien is a lien taken against borrower intangible assets. General Intangibles liens are essentially ubiquitous in C&I lending.

- (As it appears on page 52818 of the Federal Register/Vol. 77, No. 169/Thursday, August 30, 2012/Proposed Rules (cited footnote 54 FR 4186, 4196 (1989) (Board); 54 FR 4168, 4175 (1989) (OCC); 54 FR 11509 (FDIC)), "Goodwill and other intangible assets have long been either fully or partially excluded from regulatory capital in the U.S. because of the high level of uncertainty regarding the ability of the banking organization to realize value from these assets, especially under adverse financial conditions." The view of intangibles put forth by the agencies has heretofore been meant to include only goodwill, Mortgage Servicing Assets (MSAs), and Deferred Tax Liabilities (DTLs). In most rulemaking proposals, goodwill, MSAs, and DTLs will be deducted from common equity Tier 1 calculations or denied risk-weighting reductions. Other *bank* intangibles may also be deducted. M•CAM's definition of intangible assets in this proposal excludes goodwill in all cases and refers specifically to the intangible assets of the borrower, not those of the bank lender.

- Bank intangibles also include items such as the "Brand" of a bank. These assets, as well as goodwill, MSAs and DTLs are all specifically separate from borrower intangibles encumbered in General Intangibles liens. M•CAM's definition of intangible assets does not include the bank's own intangibles, including the bank's brand, goodwill, MSAs, or DTLs. Instead, our definition of intangible assets only refers to borrower intangible assets held in 'General Intangibles liens'.

- In current practice, no bank lender is given any monetary value, risk amelioration, or credit by their respective regulators for the intrinsic value of the borrowers' intangible assets encumbered by a General Intangibles lien. However, in many distressed credit situations, intangibles (held in that lien) act as the primary assets sold in recovery. For example, when Nortel entered

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

bankruptcy, it recovered USD 4.5 billion from the sale of its patents, representing over 85% of the entire recovery from the estate.[5]

- Prior to the bankruptcy, neither Nortel's lender, nor Nortel itself, received any regulatory credit for what proved to be over 85% of the final recovery from the bankrupt estate due to the sale of the liened collateral assets. The Federal Reserve itself identified the "... exclusion of more than USD 3 trillion of business intangibles..." in a 2006 study and has done nothing to include cash-flowing, transferable assets in this class in bank oversight or stress testing.[6] In addition, this USD 3 trillion of business intangibles is in addition to the intangibles 'captured' in General Intangibles Liens.

- Therefore, significant latent value is "trapped" within the liened collateral of banks' C&I loan portfolios. The collateral is currently fully impaired but not currently accorded Tier 1 capital treatment nor used to reduce the risk-weighted asset calculation of banks.

- Intangible assets represent more than 78% of the S&P 500's value (PriceWaterhouseCoopers)[7]. Recent example - Google's USD 12.5 billion purchase[8] of Motorola's patent portfolio.

III. Regulated insurers and reinsurers claims-paying ability and solvency ratings

- Highly-rated (A or better) regulated property and casualty insurers and reinsurers have a long actuarial history of claims payments.

- Regulated insurance companies are rated for financial solvency and claims-paying ability by A.M. Best, not the credit-rating agencies.

- Regulated insurance companies cannot invest in common bank equity because bank equity is trading under book value. Such an investment would lower the solvency rating of the insurer and will not be permitted by the insurance regulators, nor countenanced by A.M. Best.

- Risk in the regulated property and casualty insurance and reinsurance industry is uncorrelated to the banking sector.

---

[5] http://www.reuters.com/article/2011/07/11/us-nortel-patents-idUSTRE76A51Y20110711

[6] Corrado, Carol, Charles Hulten and Daniel Sichel, "Intangible Capital and Economic Growth (2006)." *Finance and Economic Discussion Series,* Division of Research & Statistics and Monetary Affairs, Federal Reserve Board, Washington DC, 2006-24: http://www.federalreserve.gov/Pubs/feds/2006/200624/200624pap.pdf

[7] BusinessWire. Intellectual Assets Account for 78 Percent of Total Value of S&P 500, PricewaterhouseCoopers Analysis Finds. April 17, 2000.

[8] http://money.cnn.com/2012/05/22/technology/google-motorola/index.htm

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903
Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

- Regulated and rated insurers and reinsurers were affected internally on an uncorrelated basis. For example, the AIG regulated property and casualty units were relatively unaffected during the financial crisis, while the unregulated activities of AIG's credit default swap (CDS) unit failed due to inadequate collateral and trading in unregulated markets. The CDS unit of AIG was not carrying out regulated risk transfer.

- Property and casualty insurance companies issue insurance policies on collateral. Property and casualty insurers have a long claims paying history.

- Insured liquidation value for borrower collateral adds a new layer of security to a loan.

For the purposes of M•CAM's responses, ***the term "Intangible Assets" is used to refer to Borrower Intangible Assets pledged within General Intangibles Liens***, unless otherwise specified. It is not used with respect to Goodwill, DTLs, or MSAs. The term, "Insurance" is defined for these transactions as risk transfer executed via regulated property and casualty insurers and reinsurers. In addition, "insurers" and "reinsurers" are construed to be rated at an "A" level or above by A.M. Best.

IV. Background of the Certified Asset Purchase Price™ (CAPP™): Structure and Underwriting Process

In its initial iteration, M•CAM's Certified Asset Purchase Price™ program (CAPP™) was launched in December of 1999 and featured in the Winter 2000 Region Focus publication by the Richmond Federal Reserve[9]. In collaboration with the United States Small Business Administration (SBA), Richmond Federal Reserve, Federal Deposit Insurance Corporation (FDIC) and Bank of America, M•CAM formed a collateral enhancement program. Using the significant latent value "trapped" within the secured, pledged borrower collateral in banks' loans, M•CAM offered purchase agreements (fully backed by reinsurance provider Swiss Re) for the discounted cash-flow linked intangible collateral held in these liens. This collateral was fully impaired but not afforded any regulatory capital treatment by the banks. In 2008, M•CAM was approached by Treasury to investigate if it was possible to expand this program to a money center banking scale. M•CAM developed a process to underwrite the large portfolios of borrower intangible assets held in General Intangibles Liens. M•CAM then entered a significant reinsurance due diligence process to confirm the efficacy of this risk-transfer product at the money center scale.

The following is a description of the CAPP™ structure and the process for how a CAPP™ would be executed.

- The bank selects a pool of performing, under-collateralized senior secured loans. In our terminology, these loans are under-collateralized from a traditional GAPP

9 http://www.m-cam.com/downloads/10012000.PDF

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

view. However, these loans are receiving no collateral or regulatory capital credit for any of intangible assets held by the borrower but liened by the lender.

- In each of these loans, the General Intangibles lien will be detected. To reiterate, nearly every senior secured bank loan has a blanket lien over all the intangible assets (e.g., anything covered under a UCC Article 9 definition of an "intangible asset") of a borrower.

- M•CAM and its risk transfer partners in the regulated insurance and reinsurance sectors will then identify and underwrite the intangible assets taken as collateral within the identified loans. Upon completion, M•CAM will determine the price it would be willing to pay the bank (on any given date over an agreed upon period of time) to purchase the intangible assets should the bank come into control and ownership of the identified assets through the foreclosure process.

- M•CAM will then issue an irrevocable, springing forward purchase contract (essentially a "put" contract) to the bank lender for specified intangible assets. The purchase price will always be the lesser of: 1) the time–adjusted amount identified in the put contract as a result of M•CAM's underwriting and 2) the outstanding loan balance. This amount is known as the Asset Liquidation Value (ALV).

- The put contract obligation will be defeased through a combination of insurance capacity and cash, as required by the applicable regulator.

- The insurance is paid on a "credit bid" bank sale of foreclosed collateral at the time of foreclosure. The insurer acquires the salvage value of the collateral at that time.

V. Overview of the CAPP™ underwriting process

- M•CAM's underwriting standards involve several layers of austerity to arrive at an Asset Liquidation Value (ALV). To begin, M•CAM requires a minimum of three (3) identifiable and confirmable exit strategies ("Industry Comparable Values (ICV)") based on actual cash-flow transactions in the form of: an asset sale, an M&A transaction, R&D, a license or any other form of a cash transaction related specifically to the intangible asset(s) being underwritten.

    - One of these ICV's must be orthogonal (uncorrleated) to the primary sector in which the borrower currently deploys the intangible asset.

- Upon manually confirming the appropriateness and validity of the ICV, based on both the nature of the identified transaction (e.g., M&A, R&D, License) and the corporate finance activity within the sector, a haircut of 30-90% is applied to each of the pathways.

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903
Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

- The amount of the put contract is then tied to a depreciation curve dependant on the obsolescence/innovation cycle of the intangible asset.

Figure 1: Critical M•CAM CAPP™ Underwriting Factors

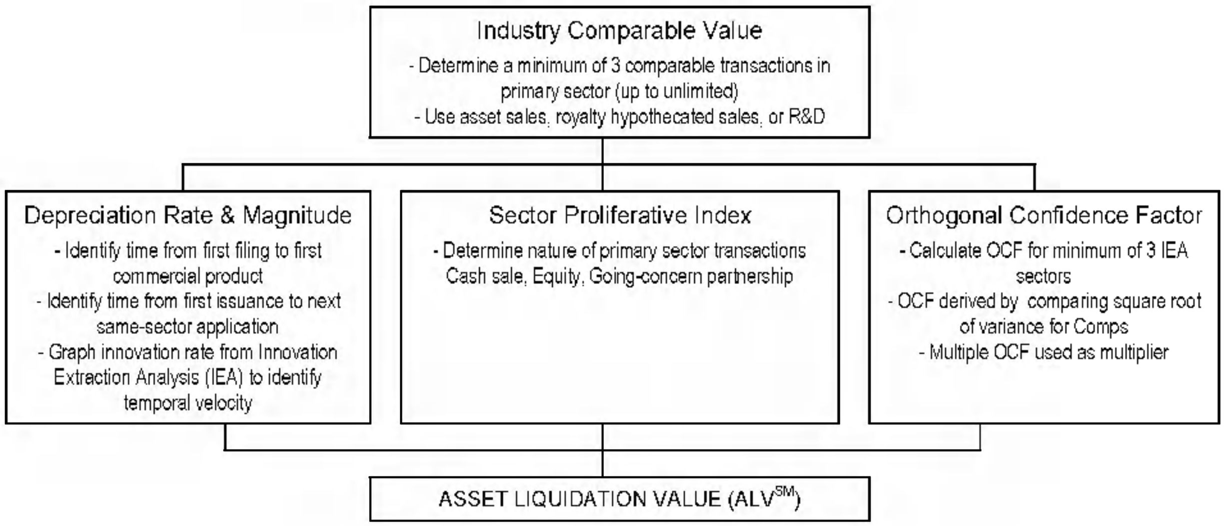
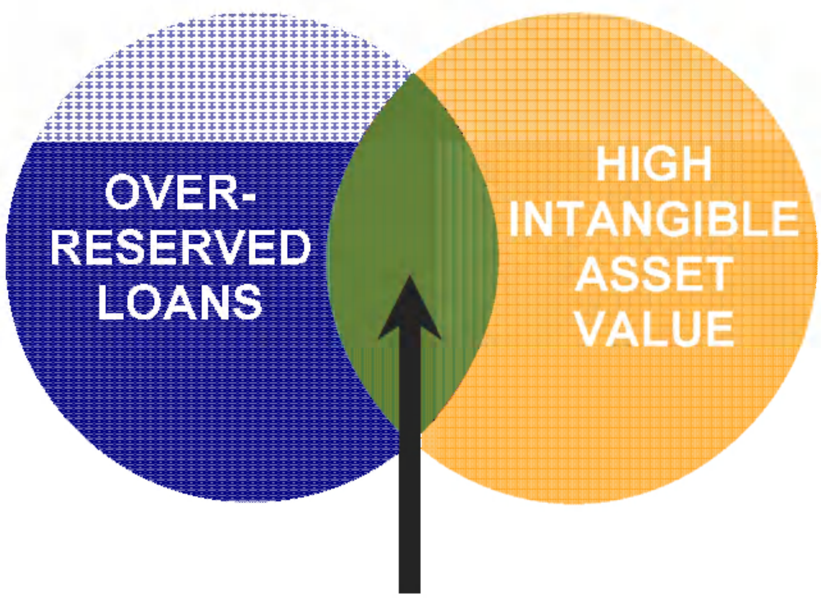


Figure 2: Schematic of Optimized Underwriting Targets

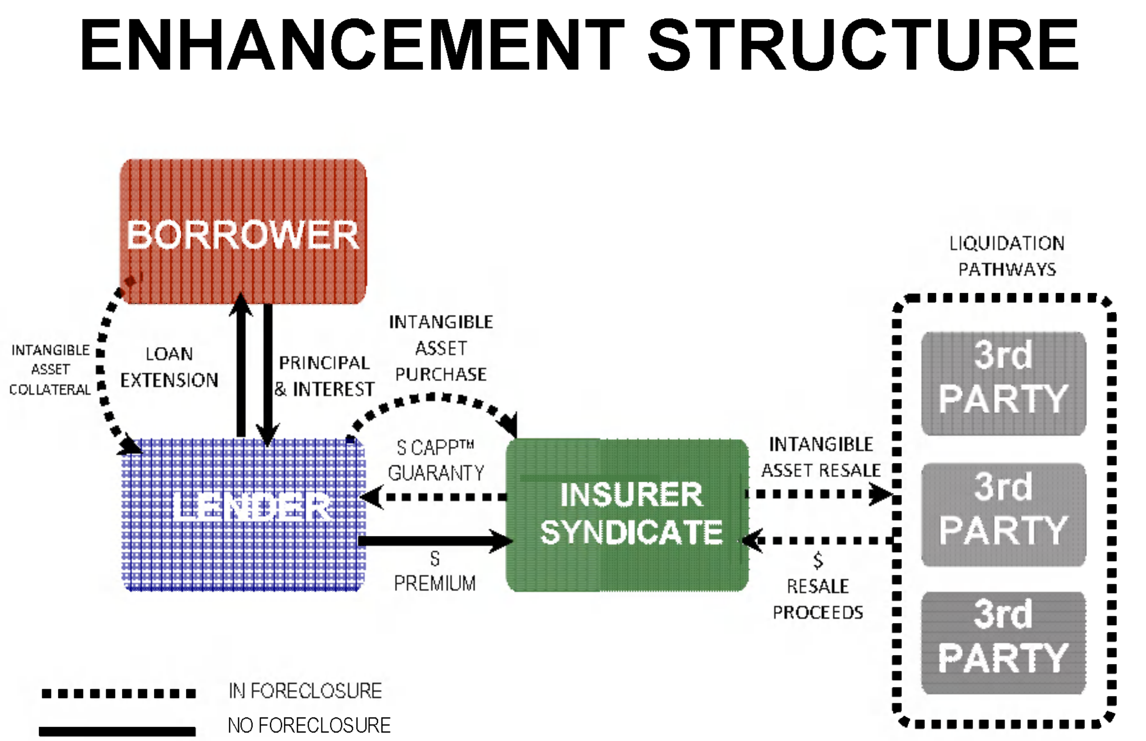


M•CAM has reviewed a portfolio of USD 128 billion in senior secured C&I loans syndicated by a group of the largest U.S. and European money center banks. That review has produced a total of USD 28 billion in cash-flow associated, underwritable intangible assets, which control actual multiple (more than three distinct market revenue sources) cash-flows and possess full transferability. We have, in cooperation

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903
Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

with our risk transfer partners, selected a diversified pool from those candidate assets in the amount of USD 8 billion, and risk transfer capacity has been committed.

Figure 3. Schematic flow chart of the CAPP™ collateral enhancement structure



210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

<u>Questions from the Agencies:</u>

<u>NPR 1 (Implementation of Basel III) -</u> http://www.occ.gov/news-issuances/federal-register/77fr52792.pdf

---

Question 4: Given differences in international accounting, particularly the difference in how International Financial Reporting Standards and GAAP treat securities for securities lending, the agencies solicit comments on the adjustments that should be contemplated to mitigate or offset such differences.

Answer to Question 4: Both IFRS and GAAP suffer from an inadequate scope of risk mitigation. "Securities" are not explicitly measured for: a) their useful life; and b) the correlation of their useful life with the underlying risk against which they are offset. This actuarial mismatch of performance duration contributed to the mortgage finance crisis and continues to diminish the suitability of post-2008 interventions. M•CAM has demonstrated the importance of insuring that the duration of utility (of a security or collateral) is not adequately assessed without a view to non-aligned sector secondary market liquidity - an assessment entirely held within unmeasured assumptions within IFRS and GAAP.

With respect to accounting issues that impact the stability of bank capital resources, it is important to consider the treatment of intangible asset accounting. M•CAM was directly involved with the Financial Accounting Standards Board (FASB) in the development of the accounting treatment of Intangible Assets in FAS 141 – Business Combinations, and FAS 142 – Goodwill and Other Intangible Assets , and with the IASB on the parallel standards IAS 36 – Impairment of Assets, and IAS 38 – Intangible Assets. The FASB and SEC focused on the accounting treatment of intangible assets obtained as part of an acquisition, and on subsequent subjective impairment testing. While those standards provided a starting point to deal more effectively with the accounting treatment of some intangible assets, our objective solution is focused on the actual cash-flows associated with specific assets, regardless of whether those assets were internally developed or acquired.

Our risk underwriting processes are applied to intangibles held by borrowers yet encumbered by lenders under the General Intangibles lien for each specific extension of credit, whether a term C&I loan or a revolving line of credit.

Specific borrower assets that control existing cash-flows are identified, and comparables identified in both aligned and non-aligned sectors. The underwriting processes do not distinguish between intangible assets developed internally or acquired by the borrower, and are applied objectively across the asset class.

Highly-rated risk transfer entities fully inform our underwriting processes and advise us on concentration of exposure to diverse sectors, such as semiconductors, automotive, or others. Asset liquidation values are determined for the selected intangible assets, and our risk transfer partners go on risk on the amounts specified in our put contracts.

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

The insurance instrument is exercised in the event of foreclosure on the specified extension of credit.

The collateral enhancement is achieved by the irrevocable purchase offer and the insurance instrument, not some subjective accounting treatment of the value of the intangible assets.

Question 15: The agencies solicit comments on the eligibility criteria for common equity Tier 1 capital instruments. Which, if any, criteria could be problematic given the main characteristics of outstanding common stock instruments and why? Please provide supporting data and analysis.

Answer to Question 15: The stability and adequacy of bank capital is undermined when most systemically important banks' common equity is selling below book value. Basel III implementation attempts to narrow qualifying Tier 1 capital closer to bank common equity, yet the approach sidelines extremely large capital pools, such as risk transfer entities that include the reinsurance sector. At a macroeconomic level, the focus on capital investment into banks through common equity is untenable. In a period of time when fiduciaries of all forms (insurers, re-insurers, sovereigns, pensions, etc.) hold record capital on their balance sheets, few, if any of them, can participate in investing in bank common equity for both rating preservation and investment quality absolute restrictions. Therefore, while the aspiration of capital infusion through common equity has desirable features, this view fails to understand the restrictions of the investors who are precluded from this pathway. For example, insurers and reinsurers, as entities subject to strict Solvency II regulation, are not permitted to acquire assets below book value such as bank common equity.

It is important to note that such risk transfer entities have minimal correlation to bank risk. Accordingly they are ideal for providing liquidity to banks particularly during times of bank distress when the mechanism of risk transfer is also uncorrelated to the bank's own balance sheet. It also should be recognized that despite an actual claims-paid amount of USD 65 billion over the past five years, the reinsurance sector has five times that amount of capital available to it, yet it is sidelined from participating in bank capital needs under the common equity model put forth in this proposed rulemaking.

Question 18: The agencies solicit comments and views on the eligibility criteria for additional Tier 1 capital instruments. Is there any specific criterion that could potentially be problematic given the main characteristics of outstanding noncumulative perpetual preferred instruments? If so, please explain.

Answer to Question 18: M•CAM and its reinsurance partners are advocating the use of a Tier 1 capital instrument which insures liquid capital infusion thus managing loss-given default experience. At a minimum, we endorse an instrument that would reduce risk-weighted asset calculations for bank lenders in the form of an irrevocable insurance instrument providing collateral enhancement for banks lending to credit-worthy but

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

tangible asset-deficient borrowers. The insurance guarantees the purchase of borrower intangible assets in the event of foreclosure at a pre-determined price.

One outstanding characteristic of the instrument is that it injects new capital into the bank lender at the time of distress. Second, the source of the irrevocable capital commitment is from the reinsurance sector, which is non-correlated with bank sector risk.

The cost and deep subordination of outstanding noncumulative perpetual preferred securities justifies their limitation in the Dodd-Frank Act. The insurance instrument we have described above is a straightforward risk transfer policy contract that pays out in the event of a specified foreclosure. It has been executed at the community bank level and is suitable for use at that scale. It is also suitable for regional, super-regional, and money center bank lenders, as intangible assets and the general intangibles lien are ubiquitous in C&I credit portfolios.

Question 20: What mechanisms could be used to ensure, contractually, that such a requirement would not result in an additional Tier 1 capital instrument being effectively more loss absorbent than common stock?

Answer to Question 20: As we have seen in recent bank distress, capital sourced through the sale of common stock does not necessarily express the necessary absorbency during times of institutional stress. By approaching the reserve capital challenge through the pathway of liquidation (salvage rights) of borrower-pledged collateral, institutional stability is insulated from binary loss events. By encouraging the confirmation of a liquid market for borrower-pledged collateral, regulators can invite the private sector to attenuate the institutional instability risks for which interventions like the Federal Deposit Insurance Act and related stability interventions are required.

As C&I loans are ubiquitous in their use of U.C.C. General Intangibles Liens, no new contractual instrument is required at the bank or borrower level. For a structural deployment of collateral enhancement, regulators would likely benefit from concentration risk policies which would be essential to mitigate systemic risk.

Additional Note: Corporate finance – the innovative use of intangibles as security

- In 1999, Citizens & Farmers Bank in Virginia issued the first M•CAM insured intangible asset collateralized loan to the manufacturer of specialty infant formula bottle liners. This transaction set the precedent for a program that offered intangible asset collateral insurance through a partnership between Bank of America, SwissRe, and M•CAM.[10]
- In June, 2004, the General Electric Corporation paid Motorola USD 50 million for certain patents and royalty payments arising from Motorola's patents

---

[10] http://www.m-cam.com/downloads/Wall_Street_Journal.pdf

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903
Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

licensed to the MPEG-LA. This transaction included patent asset underwriting by intangible asset financing specialist firm M•CAM.

- In 2004 the Virginia Center for Innovative Technology (CIT) launched a state-funded collateral enhancement program specifically linking economic development financing to intangible asset collateralized obligors.[11]

- Investment banks and boutique private equity (PE) firms have also raised and invested funds targeted on intangible assets and intellectual property.

Various areas of policy and institutional development help promote an environment conducive to intangibles-based financing. These include:

- Regulations on corporate financial and accounting disclosure which require specificity in identifying and objectively characterizing intangible assets;

- Further refinement of verifiable and reproducible evaluation standards, best practices, and risk underwriting protocols for intangible assets used in regulated financial transactions;

- Refinement of regulatory approaches (such as M•CAM is proposing in these Rulemakings), to facilitate properly underwritten transactions that contribute to lender safety and soundness. This may also include future regulations to maintain full transparency of the process and how they affect intangible-based financing;[12]

- Policies that facilitate robust and transparent secondary markets for intangible assets – including sales, licensing, use in the fulfillment of Trade Credit Offsets and - so as to allow for their timely liquidation, as necessary;

- Private and sovereign efforts to facilitate the further development of patent litigation insurance (*e.g.* preventing fraudulent products and promoting financially sound products), which can assist in connection with the preceding

---

11 http://www.cit.org/service-lines/cit-gap-funds/

12 The development of qualified intangible assets as a source of loan collateral has been part of a process of long-term economic transformation. Immovable property was historically the most valuable type of property, and mortgage laws were developed early in the emergence of financial systems. With the rise of manufacturing, legal systems were reformed to permit security interests in machinery and inventory. The central role of intangible assets in modern services-based economies will require new regulatory understanding of the factors affecting the use of those assets as collateral. As described by Cuming (2006), intangible assets have distinctive characteristics that affect their use as collateral. These risks include the facts that: some intellectual property rights have finite life spans; patents are subject to obsolescence risk; an intellectual property right can be lost through failure to pay maintenance fees; trademarks have specialized conditions that affect transferability; and copyrights have treatment dependent on their registration status. Accordingly, rigorous underwriting standards have been developed and commercially deployed by M•CAM and its reinsurance partners to discount or eliminate unsuitable intangibles as appropriate when enforceability, transferability or discrete cash-flow identification is problematic.

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903
Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

point. For example, the Danish Patent and Trademark Office has encouraged the creation of patent litigation insurance for SMEs in Europe. M•CAM has provided risk management underwriting for anti-infringement cover in the Lloyd's of London market;

- Sovereign loan or loan guarantee programs can be optimized to include provisions allowing for the purchase and collateralization of properly-diligenced intangible assets. Programs can also be improved to provide bank lenders efficient means to diligence credit-worthy but tangible collateral deficient firms to determine if collateral enhancement is appropriate. Sovereign loan programs can work with commercial lenders to develop additional diligence standards for the use of intangible assets as collateral.[13] In China, at the end of 2008, the Beijing arm of the State Intellectual Property Office created a program to help SMEs borrow against their intellectual property[14].

NPR 2 (Standardized Approach for Risk-Weighted Assets) - http://www.occ.gov/news-issuances/federal-register/77fr52888.pdf

---

Question 1: The agencies seek comment on the advantages and disadvantages of the proposed standardized approach rule as it would apply to smaller and less complex banking organizations (community banking organizations). What specific changes, if any, to the rule would accomplish the agencies' goals of establishing improved risk-sensitivity and quality of capital in an appropriate manner? For example, in which areas might the proposed standardized approach for calculating risk-weighted assets include simpler approaches for community banking organizations or longer transition periods? Provide specific suggestions.

Answer to Question 1: The provision of fresh capital to smaller and less complex banking organizations at their time of distress is a distinguishing hallmark of the transactions that we are recommending to the agencies. The insurance risk transfer instrument backing our irrevocable purchase offer for underwritten intangible assets inside a community bank C&I loan portfolio provides cash in the event of foreclosure of a covered loan. The lender receives the covered dollar amount under the insurance contract and we and our insurance partners take the specified intangibles as salvage.

At present, the calculation of Tier 1 Capital relies on a series of assumptions regarding Loss Given Default and the risk attendant thereto. M•CAM has observed, and the market has demonstrated, that the assumption of a secondary market for collateral-

---

13 CFE/SME(2009)4 - *SME Innovation and Intellectual Asset Management in Creative and Selected Manufacturing and Services Industries* - notes that public support for intangibles-backed debt financing may need to be complemented with advice and information on intellectual property and the management of intangible assets more broadly. In some cases, insufficient internal know-how may be a more binding constraint than access to finance. The report notes that some countries have implemented measures to assist SMEs in this respect, including "IP vouchers", government-sponsored IP consultants and IP funds, which assist SMEs (and Public Research Organisations) to prepare and file quality patents. These experiences need fuller assessment (see also Section 5).

14 http://www.chinaipmagazine.com/en/journal-show.asp?id=461

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903
Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

based recovery is an assumption that caused great harm in the past four years. Tier 1 Capital approaches will be constantly at risk of this assumption failure until Loss Given Default is targeted for intervention at every level of banking. By mandating an explicit capital injection to insure some salvage value for collateral pledges, bank credit origination and risk calculation will greatly benefit.

Question 2: The agencies also seek comment on the advantages and disadvantages of allowing certain community banking organizations to continue to calculate their risk-weighted assets based on the methodology in the current general risk-based capital rules, as modified to meet the new Basel III requirements and any changes required under U.S. law, and as incorporated into a comprehensive regulatory framework.

We urge that the agencies include in the risk-weighted assets calculation the ability to recognize the collateral enhancement provided by the insurance instrument backing of the irrevocable purchase offer described above.

Question 21: The agencies solicit comment on all aspects of the proposed treatment of insurance underwriting activities.

Answer to Question 21: While the proposed treatment of insurance underwriting activities in the NPR does not specifically deal with the transactions that we have described herein, which we strongly urge the agencies to allow to proceed, it is useful to restate the positive contribution to be made using the CAPP™ process with appropriate insurance instruments.

First, the CAPP™ irrevocable purchase offer and its accompanying insurance backstop provide a new source of capital available to the bank lender at the time of distress. This unique form of property and casualty insurance does not provide an inducement to altered lending practices commonly seen in credit insurance schemes. Further, as the salvage value of assets is central to the insurers' interests, securitization schemes that would separate the performing asset from the instrument are undesirable.

Second, the primary private sector capacity for these transactions – the reinsurance sector – is uncorrelated with financial sector risk. At a September 2012 presentation on these transactions at the Cato Institute, the chief underwriting officer of one of the world's premier reinsurers made that point, and added that despite claims payments of over USD 65 billion over the past five years, the reinsurance sector has approximately five times that amount of capital sidelined and unable to participate in the current structures provided for bank recapitalization. Accepting risk to backstop our purchase offer creates an opportunity for the risk transfer sector to participate in bank recapitalization via a stringently underwritten insurance product.

As the Solvency II regulatory regime continues into full effect, our highly-rated risk transfer counterparties in the reinsurance sector will be subject to stringent capital requirements.

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

NPR 3 (Advanced Approaches and Market Risk) - http://www.occ.gov/news-issuances/federal-register/77fr52978.pdf

---

Question 1: The agencies solicit comments on the proposed changes to the recognition of financial collateral under the advanced approaches rule.

Answer to Question 1: In order to achieve maximum capital efficiencies, it may be desirable to implement sovereign-backed regimes that encompass full utilization of the insurance instruments and CAPP™ contracts described above in our response to the NPR on capital standards, regulatory capital, and Basel III implementation. M•CAM participated directly in the promulgation of the initial trading regulations of the Dubai International Financial Exchange in 2005, which fully contemplate trading of sovereign and private risk-wrapped securitized instruments comprised of CAPP™ purchase guarantees. It is more likely that sovereigns would have economic development incentives to use treasury reserves to provide additional capital support for the intangible asset collateral enhancements. Those regulations are based on British Crown law and practice, and provide for a high level of transparency.

Under the international harmonization efforts for the Uniform Commercial Code, the incentive for sovereigns to increase the quality (and thereby the collateral utility) of intangible assets may be prioritized as these assets become more important to the collateral efficiency of the banking sector.

The scale of U.S. and foreign bank lenders' capital shortfall requires a structural solution which will eventually exceed the capacity of the international insurance and reinsurance sectors. As appreciable volumes of risk transfer sector capital worldwide are committed to back CAPP™ contracts, sovereigns are likely to find that a robust, transparent securitization regime is useful to provide additional capacity and clearing for this market.

Final Summary:

1. No new documentation or approval from a borrower is needed.

   NOTE: Lenders already have broad U.C.C. Article 9-defined intangible assets (e.g., patents, trademarks, executory contracts, and so forth) encumbered within their seasoned loan pools through the "General Intangibles" lien or specific liens on explicitly identified intangibles. This collateral currently receives no regulatory credit.

2. The Certified Asset Purchase Price™ (CAPP™) contract and its accompanying insurance instrument is new collateral added to the borrower's security.

   NOTE: We are not asking regulators to accept intangible assets as regulatory accepted collateral. We are asking them to accept regulated, creditworthy risk-transfer counterparties for banks just as the Federal Reserve Board already does

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

with other risk transfer products.

3. The CAPP™ contract represents a creditworthy (counterparties are rated 'A' or better), committed, irrevocable purchase offer in the event of foreclosure and the lender credit-bidding the assets from the bankrupt estate.

   NOTE: In many cases the bank can benefit from a positive credit arbitrage between the borrower and the CAPP™ counterparty's credit ratings.

4. The addition of new collateral, in the form of the standing purchase offer, backed by the insurance guaranty, represents accretive cash-flows previously unaccounted for by regulators in Loss Given Default (LGD) calculations.

5. **Figure 3: Exemplary CAPP™ Transaction**

	Loan Day 0	Loan Day 1	(With CAPP™)
Loan Outstanding	$500M	$500M	
Building	$500M	$250M	Building Loses Value - Collateral Decrease
IP	$0	$0	Intellectual Properties Still Recorded at $0
Insurance	N/A	$250M	CAPP™ - Adds New Highly Rated Collateral

6. The Fed itself estimates intangible assets to be worth more than USD 3+ trillion[15]

   NOTE: A recent example of a liquid and fungible transaction is Nortel at approximately USD 4.5 billion (representing more than 85% of the bankruptcy recovery).

[15] Corrado, Carol, Charles Hulten and Daniel Sichel, "Intangible Capital and Economic Growth (2006)." *Finance and Economic Discussion Series,* Division of Research & Statistics and Monetary Affairs, Federal Reserve Board, Washington DC, 2006-24: http://www.federalreserve.gov/Pubs/feds/2006/200624/200624pap.pdf

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

We hope this overview and the supporting documents will facilitate your deliberations. As always, if you should need any additional guidance or if you have any additional comments, questions, or requests, please do not hesitate to reach out to M•CAM, Inc.

Sincerely,

David J. Pratt

David J. Pratt
President

M·CAM Inc.

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

Appendices:

Appendix 1: Example of a General Intangibles lien in a New York jurisdiction

""General Intangibles" shall mean, collectively, with respect to each Pledgor, all "general intangibles," as such term is defined in the UCC, of such Pledgor and, in any event, shall include (i) all of such Pledgor's rights, title and interest in, to and under all Contracts and insurance policies (including all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for damages or other relief pursuant to or in respect of any Contract), (ii) all know-how and warranties relating to any of the Pledged Collateral, (iii) any and all other rights, claims, choses-in-action and causes of action of such Pledgor against any other person and the benefits of any and all collateral or other security given by any other person in connection therewith, (iv) all guarantees, endorsements and indemnifications on, or of, any of the Pledged Collateral, (v) all lists, books, records, correspondence, ledgers, printouts, files (whether in printed form or stored electronically), tapes and other papers or materials containing information relating to any of the Pledged Collateral, including all customer lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, appraisals, recorded knowledge, surveys, studies, engineering reports, test reports, manuals, standards, processing standards, performance standards, catalogs, research data, computer and automatic machinery software and programs and the like, field repair data, accounting information pertaining to such Pledgor's operations or any of the Pledged Collateral and all media in which or on which any of the information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data, (vi) all licenses, consents, permits, variances, certifications, authorizations and approvals, however characterized, now or hereafter acquired or held by such Pledgor, including building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation and (vii) all rights to reserves, deferred payments, deposits, refunds, indemnification of claims and claims for tax or other refunds against any Governmental Authority.

Intellectual Property Collateral" shall mean, collectively, the Patents, Trademarks, Copyrights, Intellectual Property Licenses and Goodwill.

"Intellectual Property Licenses" shall mean, collectively, with respect to each Pledgor, all license and distribution agreements with, and covenants not to sue, any other party with respect to any Patent, Trademark or Copyright or any other patent, trademark or copyright, whether such Pledgor is a licensor or licensee, distributor or distributee under any such license or distribution agreement, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements or violations thereof, (iii) rights to sue for past, present and future infringements or violations thereof and (iv) other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights or any other patent, trademark or copyright.

"Intercompany Notes" shall mean, with respect to each Pledgor, all intercompany notes described in Schedule 11 to the Perfection Certificate and intercompany notes hereafter acquired by such Pledgor and all certificates, instruments or agreements evidencing such intercompany notes, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof to the extent permitted pursuant to the terms hereof.

"Patents" shall mean, collectively, with respect to each Pledgor, all patents issued or assigned to, and all patent applications and registrations made by, such Pledgor (whether established or registered or recorded in the United States or any other country or any political subdivision thereof), together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's use of any patents, (ii) inventions and improvements described and claimed therein,

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903
Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

(iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and amendments thereto, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof.

"Trademarks" shall mean, collectively, with respect to each Pledgor, all trademarks (including service marks), slogans, logos, certification marks, trade dress, uniform resource locations (URLs), domain names, corporate names and trade names, whether registered or unregistered, owned by or assigned to such Pledgor and all registrations and applications for the foregoing (whether statutory or common law and whether established or registered in the United States or any other country or any political subdivision thereof), together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's use of any trademarks, (ii) reissues, continuations, extensions and renewals thereof and amendments thereto, (iii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present and future infringements thereof.

"Copyrights" shall mean, collectively, with respect to each Pledgor, all copyrights (whether statutory or common law, whether established or registered in the United States or any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished) and all copyright registrations and applications made by such Pledgor, in each case, whether now owned or hereafter created or acquired by or assigned to such Pledgor, together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's use of such copyrights, (ii) reissues, renewals, continuations and extensions thereof and amendments thereto, (iii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent's and the Secured Parties' security interest in any item or portion of the Pledged Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2.1. Grant of Security Interest. As collateral security for the payment and performance in full of all the Secured Obligations, each Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Secured Parties, a lien on and security interest in all of the right, title and interest of such Pledgor in, to and under the following property, wherever located, and whether now existing or hereafter arising or acquired from time to time (collectively, the "Pledged Collateral"):

(i) all Accounts;

(ii) all Equipment, Goods, Inventory and Fixtures;

(iii) all Documents, Instruments and Chattel Paper;

(iv) all Letters of Credit and Letter-of-Credit Rights;

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903
Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

(v) all Securities Collateral;

(vi) all Investment Property;

(vii) all Intellectual Property Collateral;

(viii) the Commercial Tort Claims described on Schedule 13 to the Perfection Certificate;

(ix) all General Intangibles;

(x) all Supporting Obligations;

(xi) all books and records relating to the Pledged Collateral; and

(xii) to the extent not covered by clauses (i) through (xi) of this sentence, all other personal property of such Pledgor, whether tangible or intangible,

and all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to such Pledgor from time to time with respect to any of the foregoing."

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com

Appendix 2: CAPP™ vs. CDS

Credit Default Swaps (CDS) were originally created for the purpose of providing the capital markets with a mechanism to hedge credit risk related to large corporate and sovereign borrowers. The unregulated nature of the market led to its meteoric growth from its inception in 1998 to its peak just nine years later (in late 2007) at nearly USD 60 trillion. Accordingly, the CDS market is a very highly leveraged "desk-to-desk" market which creates dozens of remote (e.g., distant from your direct counterparty) single-point failures. Compounding the systemic risks of a highly-leveraged "spider-web" is the scale of market participants that are unrated and loosely regulated. Additionally, market transparency is hampered by poor reporting/tracking requirements as much of the market's data is dependant upon voluntary participant reporting (as opposed to exchange listed/traded securities). This reduces the capability of participants to properly assess systemic counterparty-risk. The combination of these dynamics, coupled with the recent introduction of subjective and capricious "trigger" events, have all contributed to the appropriateness of CDS as an acceptable mechanism for banks to use as regulatory capital risk-transfer.

CAPP™	CDS
Counterparty Risk	
• Finite, determinable counterparty risk	• Back-to-back market subject to significant "systemic" risk
• Counterparties only rated A or better	• Significant number of *unregulated* and *unrated* market participants
• Leverage limited to counterparties holding capital to maintain A or better ratings	• Leverage limited by ability to hedge or "lay off" risk to other market participants (e.g., "netting")
Trigger	
• "Foreclosed Collateral Sale" trigger event	• Payment default trigger event
○ Minimum duration till attachment is typically 18-24 months *longer* than CDS trigger events	○ Immediate upon payment default (e.g., "jump-to-default" risk)
○ Less than 20% of defaults result in bankruptcy liquidations	○ ALL defaults are trigger events*
• Explicit attachment point	• Capricious attachment point
Salvage Value	
• Ability salvage value from the underlying assets in order to recover payouts on claims (e.g., asset-backed)	• No pathway to recoup claims
Losses (e.g., Interest in the Credit)	
• Explicitly tied to the extension of bank credit and *actual losses* incurred by a lender	• High degree of speculation absent any interest or connection to the credit (e.g., "naked")
Liquidity	
• Liquidity based on the latent value of intangible assets within regulated banks	• Lack of sufficient liquidity for credits outside of the Fortune 100 or sovereign obligors

210 Ridge-McIntire Road, Suite 300
Charlottesville, VA 22903

Telephone 434/979-7240 • Fax 434/979-7528
www.m-cam.com