



October 19, 2012

Thomas J. Curry  
Comptroller of the Currency  
250 E Street, SW  
Mail Stop 2-3  
Washington, DC 20219

email: [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)

**RE: Basel III OCC Docket ID OCC-02012-0008, 0009, and 0010**

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

email: [comments@FDIC.gov](mailto:comments@FDIC.gov)

**RE: Basel III FDIC RIN 3064-AD95, RIN 3064-AD96, and RIN 3064-D97**

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

email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

**RE: Basel III docket NO. 1442**

Subject: Comments: Proposed Rulemaking, Basel III Regulatory Capital Reforms

Ladies and Gentlemen:

Fidelity Bank (FB) is a \$1.5 billion closely held community bank based in Wichita, Kansas with branches in Wichita and Oklahoma City, Oklahoma. The bank is a 4<sup>th</sup> generation family business owned and managed, since 1975, by the Bastian family of Wichita. We appreciate the opportunity to submit comments on the above-referenced

notices of proposed rulemaking (NPRs) concerning the BASEL III capital proposals approved in June, 2012 by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Board.

As EVP/CFO of Fidelity Bank, I have strong concerns that these proposals will do much to harm community banks such as ours. FB has strong capital ratios with a Tier 1 leverage ratio of 11.86%, a Tier 1 risk-based ratio of 13.60% and Total risk-based capital ratio of 14.73%. We recognize that capital and liquidity are the two main drivers of the industry's ability to weather economic challenges such as is currently being experienced. As such, I support increasing the capital requirements for banks in the country to assist in ensuring their survival for the future. However, following are the issues within these proposals that I feel may not achieve their intended result:

**I. Requirement that gains and losses on available for sales securities must flow through to regulatory capital**

Requiring AFS investment securities gains and losses to flow through regulatory capital will add unnecessary and unwanted volatility to the balance sheet. Interest rates will undoubtedly rise and what are now gains will turn to losses even though the likelihood exists that these securities will be held for an extended period of time. This requirement will take away flexibility in managing our investments and result in classifying them other than we would prefer. Without this flexibility, we will be less likely to be active in these markets, as will others, and the resultant negative impact on the housing market could also be an unintended consequence.

**II. Elimination of Trust Preferred Securities**

Trust Preferred Securities have been an important part of our capital structure since 2001. We have issued a modest amount of approximately \$32 million in the interim. As a closely held private institution, we have very few ways in which we can access the capital markets. Trust Preferreds have been a cost effective way to grow our business. TRUPs were grandfathered under Dodd-Frank but the Basel III proposal would eliminate this capital for our Holding Company and force us to either allow our capital ratios to diminish, shrink our balance sheet or seek additional capital in the public markets, the result of which would be to lose our closely held stature. This will have the unintended consequence of reducing credit for small business and consumers.

**III. Increased risk weighting for residential mortgage loans**

As a community thrift institution, residential lending is a core strategy for our bank. Our loss experience is minimal and nearly non-existent. We pride ourselves in our underwriting and ensure that we lend to those that can afford their financial undertakings. We structure corresponding loans so that borrowers can manage their finances and be confident in the retention of their home. We were not involved in the "liar" loan financing that contributed to the current crisis. The new risk weighting proposed for residential mortgages will cause us to reconsider our product lines as higher capital costs will force changes in the way we view this line of business. Additionally, risk weighting of individual residual loans would be an administrative challenge and a distraction that we want nothing to do with. Again, the unintended consequence of this change will be to reduce the amount of mortgage credit available to consumers.

**IV. Requirement to hold capital for credit enhancing representations and warranties on 1-4 family residential home loans which have been sold into the secondary market.**

This portion of the proposal will clearly drive community banks further from residential lending. We regularly sell properly underwritten loans to many secondary market partners as a normal course of business and have had no issues with this very fluid process. This change would now require a significant amount of additional capital to be unnecessarily directed to this area and once again force us to change our accepted business practice and limit the amount of credit we make available for this line of business.

**V. Change in risk weighting for home equity and second lien loans**

We have been in this line of business for years without significant losses or credit concerns. This line of business supplements our secondary mortgage market delivery and allows us to maintain many customer relationships that otherwise might be lost. This change in risk weighting will cause us to seriously consider abandoning this needed customer service as we will likely discontinue making any kind of home equity loan.

**VI. New rules regarding "High Volatility Commercial Real Estate"**

We agree that there is potential merit in recognizing the different risk profiles within these types of loans. Fidelity Bank has been in the development



lending business with varying levels of concentration over the years. We believe that we can effectively manage and underwrite this type of business and have demonstrated that we can exit this lending when economic conditions dictate. However, this proposal will diminish the number of development projects on a nationwide basis. More importantly, the administration of assigning a risk rating to every single loan based upon a litany of criteria will be challenging and require additional overhead and infrastructure.

**VII. Proposal to increase risk weights on delinquent loans**

We are very proud of our record of delinquencies and have a very dedicated staff that work with and remediate our customers who find themselves in a credit challenging situation. As a matter of course, we establish reserves for all delinquency categories and our historical tracking of this process demonstrates that we are reasonably good at this prognostication. Our management and accounting for these types of credits have rarely been challenged by regulators or external accountants.. By increasing the amount of capital we hold based on a loan's past due status, we are being required to set aside capital a second time beyond our normal loss reserve calculation. We believe the loss reserve process stands alone and is sufficient to provide for losses on potential problem credits.

**VIII. Proposal to exclude unrealized gains on cash flow hedges**

While we are not a heavy user of off-balance sheet hedging vehicles, we have used this approach in the past and currently have several small positions in place. These hedges provide a very effective means by which we can manage our short term liabilities by effectively extending them to match the duration of the assets that these liabilities are funding. For example, as interest rates move upward, the market value of the asset moves down. If properly designed, the cash flow hedge that extends the funding liability will move up in value to offset the decline in asset value. If this asset is in a mark-to-market classification in the balance sheet, the related hedge should be allowed the same treatment in order to reduce unintended volatility. These hedges are designed to provide protection to tangible equity from the negative impact of higher rates on the AFS bond portfolio and are effective in doing so. The other half of the equation cannot be eliminated.

**IX. Proposal to limit the mortgage servicing intangible (MSA) to 10% of**

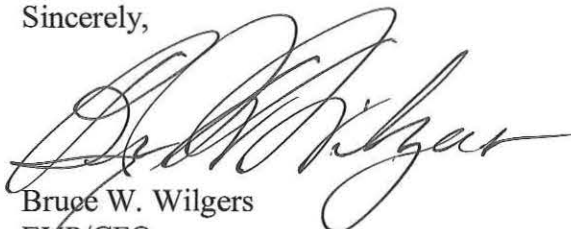
### **Tier 1 capital**

Prior to our ownership's purchase of Fidelity Bank in 1975, their business heritage was deeply vested in the mortgage banking and servicing business. As such, our bank has retained that heritage and is very active in the origination, purchase and sale of MSA and it has proven not only to be a profitable business line but an extremely good natural hedge to our longer duration asset portfolio. Without our servicing portfolio hedge characteristics, we could not so readily fill our customer's need for longer term, fixed rate commercial and business loans, let alone those legacy loans in our residential portfolio. This proposal has forced us to limit our pursuit of this natural hedge and we have already suspended that activity pending our need to comply with the new requirement. I am sure we are not alone in this curtailment and the unintended consequence will be further consolidation into larger "too big to fail" entities as smaller servicers, similar to us, drop out. This will tend to diminish home ownership and its support through the mortgage product over time.

In conclusion, we believe that this proposal is an over reaction to the economic crisis that the world finds itself embroiled in and the proposal is not well vetted. The unintended consequences of some of the aspects within the proposal will result in the curtailment of credit to small business and consumers at a time when credit availability is vital to the continued recovery of our economy. Basel III will undoubtedly eliminate many community banks through consolidation and those banks deemed "too big to fail" will simply grow much larger in a fashion similar to the way they have since 2009 when the focus was to rein them in. There is no question that subprime and Alt A lending, that was created largely outside the banking system and facilitated by the investment banking shadow system, contributed significantly to the banking crisis. However, by and large, community banks played little role in the outcome. Now community banks will pay a disproportionate the price as a result of this proposal. I urge you to significantly limit the proposal to only the largest banks in the system.

Thank you for your consideration.

Sincerely,



Bruce W. Wilgers  
EVP/CFO