FIRST NIAGARA

October 22, 2012

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

Office of the Comptroller of the Currency
250 E Street, SW.
Mail Stop 2-3
Washington, D.C. 20219

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

Re: Federal Reserve Notice of Proposed Rulemaking regarding Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions and Prompt Corrective Action (Docket No. R-1430, RIN 7100-AD87), Office of Comptroller of the Currency Notice of Proposed Rulemaking regarding Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions and Prompt Corrective Action (Docket ID OCC-2012-0008, RIN 1557-AD46), Federal Deposit Insurance Corporation Notice of Proposed Rulemaking regarding Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions and Prompt Corrective Action RIN 3064-AD95

Ladies and Gentlemen:

First Niagara Financial Group, Inc. and its wholly –owned national bank subsidiary, First Niagara Bank, National Association (collectively referred to herein as "FNFG") appreciates the opportunity to comment on the notice of proposed rulemaking ("NPR") by the Board of Governors of the Federal Reserve System (the "Board"), the Office of the Comptroller of the Currency (the "OCC") and the Federal Deposit Insurance Corporation (the "FDIC" and together with the Board and the OCC, the "Agencies") implementing the changes to regulatory capital rules consistent with the agreements reached by the Basel Committee on Banking Supervision ("BCBS") in "Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems" ("Basel III") as well as sections 171 and 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd Frank Act") .

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FNFG is a $36 billion multi-faceted bank holding company, headquartered in Buffalo, New York, with a community banking model that provides customers with a full range of products and services. FNFG is a community based lender that focuses on a simple banking business model where we provide funding for small businesses and use local dollars to provide consumers with personal financing for a variety of purposes such as purchasing homes or automobiles. As a community based lender, FNFG competes in its markets with local teams empowered to make lending decisions in their markets, enabling us the ability to deliver a real "community bank" experience. FNFG prides itself on its disciplined credit underwriting practices as evidenced by its Best-In-Class asset quality metrics through and after the credit crisis. Given the importance of regulatory capital requirements to the banking industry, FNFG is interested in all aspects of the proposed changes in the NPR regarding Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital ratios, Capital Adequacy, Transition Provisions and Prompt Correct Action ("Basel III NPR") as well as the recently released NPR regarding the Standardized Approach for Risk-weighted Assets; Market Discipline and Disclosure Requirements ("Standardized NPR").

FNFG supports the goals and objectives of the Agencies to establish an integrated capital framework that aligns with the requirements of Basel III and understands the need to address possible enhancements to current regulatory capital requirements. While the Basel III NPR largely appears to accomplish these goals, there are key elements that should be modified to prevent significant disruptions in the banking industry.

FNFG is a member of the American Bankers Association (ABA). We have worked with the ABA and its member banks to develop a thoughtful and constructive response and we whole-heartedly support the comment letter submitted by the ABA. In this letter, FNFG is commenting/highlighting three specific areas that warrant additional consideration:

(1) Proposed timeline of implementation – The timeline should be extended to January 2015 to allow time for more empirical data/research, a re-proposal of the rules and sufficient time to implement and prepare for such changes.
(2) Inclusion of unrealized gains and losses related to available for sale ("AFS") securities in common equity – Consistent with the viewpoint expressed in the ABA comment letter, inclusion of unrealized gains/losses on AFS securities should be eliminated as it will add substantial volatility without enhancing capital management practices and with the potential for significant unintended consequences.
(3) Phase-out of trust preferred securities – Consistent with the viewpoint expressed in the ABA comment letter, the Collins Amendment should remain unchanged as it has been the guiding operating model for banking institutions for several years and the NPR is more conservative than required by Dodd-Frank Act.

FNFG believes that a more thorough deliberation process for the Basel III NPR and other accompanying proposals related to regulatory capital rules and ratios is needed in order to establish the stable regulatory capital framework that achieves their intended improvements and minimizes what could be significant, unintended consequences.

1. **FNFG strongly urges the Agencies to move the effective date of the multi-year implementation schedule from January 1, 2013 to January 1, 2015.**

Given the release of the Basel III NPR in June, the timeline of a few months is insufficient to allow banking organizations to properly analyze, prepare and comply with the proposed requirements. The implications of the Basel III NPR and other related proposals require changes to a bank's processes, data management, systems and business plan and FNFG believes that phasing in the requirements beginning January 1, 2013 will not allow for banks to implement such changes in a thoughtful manner. To implement such deductions so suddenly is an abrupt change to capital positions that banking organizations should not be forced to address within a matter of months. Additionally, the impacts of the Basel III NPR along with the cumulative impact of other recent and pending regulatory changes under the Dodd Frank Act are particularly burdensome for banking organizations with less than $50 billion in consolidated assets. While FNFG recognizes and appreciates the efforts of the Agencies to try to minimize the burden on such banking organizations, we believe the burden to small and mid-size banks has been underestimated as it relates to the NPRs.

Furthermore, we believe the transition for the deductions provided for in Sections 22(a)(3)-(a)(6) should be revised to align with the transition for deductions in Section 22(a)(2). While the proposed timeline in Sections 22(a)(3)-(a)(6) allows for a gradual phase in of the deductions for CET1 purposes, any amount that is not deducted from CET1 is fully deducted from Tier 1 Capital. For example, on January 1, 2013, 0% of such deferred tax assets are deducted from CET1, but 100% of such deferred tax assets are deducted from Tier 1 Capital. We do not believe the nature of the differences in the deduction components warrants different treatment in the capital ratios, and we do believe that the transition in Section 22(a)(2) is reasonable.

With the significant overhaul to the regulatory capital framework that is being proposed, FNFG appreciates that all of the proposed changes to the current regulatory capital rules were issued at the same time so that the overall impact of the proposals could be understood in the drafting of comments. There are also a number of other items that that are pending changes, which would have an interrelated impact upon the measurement of capital ratios, such as the significant changes in accounting principles that are underway by the Financial Accounting Standards Board as well as proposed changes to liquidity requirements and the new stress testing requirements for banks between $10 and $50 billion. In order for banking organizations to fully understand the combined impacts and establish processes in a thoughtful manner, a significant amount of lead time prior to implementation is required, particularly for banking organizations that have not previously built out their capital management infrastructure and resources to address such needs as Basel II and SCAP or CCAR exercises. In light of these considerations, the effective date should be delayed until more clarity has been achieved in other interrelated areas or until 2015.

2. **FNFG urges the Agencies to exclude unrealized gains and losses associated with AFS securities from capital due to the volatility and significant negative impacts that would result from its inclusion.**

FNFG does not agree with the premise that unrealized gains and losses on all AFS securities should flow through to capital. The inclusion of unrealized gains and losses associated with AFS securities will create substantial volatility in the capital levels held by banking organizations. Depending upon the duration of securities held by banking organizations, there would be significant impacts to capital due to changes in interest rates. Although the impact of such inclusion would currently benefit the capital ratios of most banking organizations due to the current low interest rate environment, these unrealized gain positions would shift to losses as interest rates rise and reduce capital levels across the industry. Given the volatility that would be entailed with holding longer duration securities, banking organizations would be forced to shift some of their AFS securities into their held to maturity ("HTM") portfolios and focus on shortening the duration of the remaining AFS security portfolios. These actions would limit the liquidity of assets a bank has readily available for sale, contrary to the prudential focus on improving liquidity profiles, as well as a bank's ability to actively manage balance sheet risk. In addition, the ability for banking organizations to grow or maintain loan portfolios in a time of rising rates will be significantly constrained due to the declines in capital caused by the inclusion of unrealized gains and losses on AFS securities, which will ultimately hurt borrowers as there will be less appetite to lend even to creditworthy borrowers. All banking organizations, without regard to actual capital quality, would be simultaneously subject to the same pressures in a period of rising rates. As a result, there will be significant impact upon the markets, including decreased availability of credit for banking customers during periods of rising rates and decreased liquidity and increased borrowing costs for bond issuers seeking medium to long term funding.

Beyond the volatility and negative impacts that would result from the inclusion of unrealized gains and losses for all AFS securities in capital, the nature of the item does not appear to be relevant to a banking organization's fundamental capital position. As discussed above, rising interest rates will lead to lower levels of capital for a period; however, the unrealized losses will gradually decrease as time progresses and the fair value of the AFS securities returns to par. Given their temporary nature, including unrealized gains and losses in capital is counterintuitive. Although a view has been expressed by the Agencies that unrealized losses could materially affect a banking organization's capital position at a point in time, a banking organization must assert, subject to regulatory examination, that it has the ability to hold the securities until the losses are recovered in order to classify them as unrealized losses.

Losses that cannot be recovered by the banking organizations would be deemed other than temporary impairment ("OTTI") and would be recognized in earnings during the period they are identified and flow through as a reduction to capital. Accordingly, FNFG believes it is not appropriate to include any unrealized gains or losses related to AFS securities in capital.

As a potential alternative to including all unrealized gains or losses on AFS securities, the Agencies have requested comments regarding the pros and cons of excluding unrealized gains and losses on debt securities whose changes in fair value are predominantly associated with changes in a benchmark interest rate. Although the request isolates securities with changes in unrealized gains and losses that are primarily attributable to interest rates, it appears that such a request acknowledges the Agencies' recognition that temporary losses that are expected to be recovered are less relevant to a banking organization's fundamental capital position. FNFG strongly maintains that any unrealized gain or loss on AFS securities has the same temporary nature and expectation for recovery regardless of whether that unrealized gain or loss is associated with a change in benchmark interest rate or another market condition, which makes their inclusion in capital unnecessary. If the Agencies continue to believe it is necessary to include some aspect of unrealized gains and losses on AFS securities, an exclusion of unrealized gains and losses on debt securities whose changes in fair value are predominantly associated with changes in a benchmark interest rate must be made at a minimum. Further, while the Basel III NPR specifically provides U.S. government agency debt obligations and U.S. GSE debt obligations as examples for the possible exception, the exception should also apply to any securities that are guaranteed by a U.S. government agency or U.S. GSE, including mortgage backed securities, as well as the debt obligations of state and municipal governments. If such an exception is made for those assets, it should be noted that allowing an exception for only U.S. government agency debt obligations and U.S. GSE debt obligations places all other issuers at a disadvantage in the funding markets.

3. **FNFG urges the Agencies to uphold the grandfathering of Tier 1 capital status of debt or equity instruments explicitly provided by section 171 of the Dodd Frank Act (the "Collins Amendment") to depository institution holding companies of under $15 billion as of December 31, 2009 ("grandfathered institutions").**

Under the Collins Amendment, it was specifically stipulated that Tier 1 capital status of debt or equity instruments issued before May 19, 2010 by grandfathered institutions, such as FNFG, would be grandfathered and excluded from the capital deductions. Subsequent to the Collins Amendment, banking organizations have been running their businesses relying upon the grandfathering of such instruments that was explicitly provided for by Congress. The reversal seems unjustified given there does not appear to have been a change in the overall risk in the industry related to the use of such instruments as Tier 1 capital by banking organizations since the Collins Amendment. While the need to improve the quality of capital in light of the recent financial crisis is understood, the elimination of trust preferred securities for banking organizations that had previously been grandfathered under the Collins Amendment is unnecessary.

Further, should the Agencies choose not to uphold the grandfathering of Tier 1 capital status of debt or equity instruments for grandfathered institutions, the NPR requires clarifying language as to what the phase-out timeline is for banking organizations under $15 billion at December 31, 2009 that have grown above $15 billion at the effective date of the NPR. The language in the NPR states that if a depository institution holding company under $15 billion as of December 31, 2009 makes an acquisition and the resulting organization has total consolidated assets of $15 billion or more, it is subject to the three year phase-out schedule. We interpret the language to indicate the three year phase-out is triggered only if grandfathered institutions make an acquisition subsequent to the effective date of the final rule that result in institutions with combined assets greater than $15 billion. To interpret otherwise would add a qualifier not in the Collins Amendment. Additionally, the NPR is silent regarding how institutions would be treated when they exceed $15 billion by organic growth after the effective date of the NPR. Clarification is needed to align with the Collins Amendment.

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FNFG appreciates your consideration of its comments on the Basel III NPR. Please contact the undersigned at (716) 270-8611 (e-mail: gregory.norwood@fnfg.com) with any questions about FNFG's comments.

Very truly yours,

Gregg W Norwood

Gregory W. Norwood
Chief Financial Officer
First Niagara Financial Group, Inc.