



HOLDING COMPANY

12345 WEST COLFAX AVENUE LAKEWOOD, COLORADO 80215 303-232-3000

September 24, 2012

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

Dear Ms. Johnson:

This letter is in response to the request for comment on the joint notice of proposed rulemaking (OCC Docket ID OCC-2012-0008 and OCC Docket ID OCC-2012-009 and Federal Reserve Docket No. 1442) implementing BASEL III regulatory capital and the risk weighted asset framework. FirstBank Holding Company is a privately held bank holding company with approximately \$12 billion of assets and will be subject to the standardized approach of the NPR. FirstBank has serious concerns about the proposed definition of instruments that qualify as Common Equity Tier 1, the inclusion of the Accumulated Other Comprehensive Income (AOCI) account in Tier 1 capital and the risk weighting of residential mortgage exposures and highly volatile commercial real estate exposures.

Comments for Docket ID OCC-2012-0008:

Question 8: What are the pros and cons of the proposed definition for eligible retained income in the context of the proposed quarterly limitations on capital distributions and discretionary bonus payments?

Setting criteria that will further restrict the payment of dividends and other capital distributions, based on the assumption that "most banks" will be able to meet the minimum capital requirements including the capital buffer is premature and should be postponed until an actual evaluation of the impact on the industry can be made. Until the changes to risk weights and capital restrictions are fully measured, the limiting of capital distributions may have a severely negative impact on the industry, causing disruption in the capital markets. There are sufficient regulations in place currently available to examiners to influence the payment or non-payment of dividends without forcing these additional changes at the front end of implementation of Basel III.

Question 14: 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?

In general, the criteria are too prescriptive, which will have a negative impact on the amount of common equity that can be included in capital. The prescriptive nature of the characteristics unfairly lean toward promoting publicly held banks over privately held companies. Specifically, criteria (3)

specifies that the agency must approve discretionary repurchases, and that the stock can not contain any term or feature that creates an incentive to redeem. As an institution that is not publicly traded, the ability to redeem shares for shareholders who want to sell shares in a timely manner without waiting for regulatory approval has been an integral part of maintaining good relations with our shareholder base. Absent the ability to redeem shares in a timely manner, shareholders of private banking companies will invest elsewhere, depriving private banking institutions of a valuable base of potential investors. Further, the mere existence of a term or feature that creates an incentive for the company to redeem should not be sufficient to preclude the instrument from capital treatment. The call options provide an opportunity for the company to redeem the shares as opposed to requiring the company to redeem the shares. For a private company that tries to actively manage its capital base, call options and rights of first refusal are prudent terms that the company has used in most of its stock issuances. The decision to redeem is ultimately based on capital adequacy, and appropriate cash levels so this criteria is just regulatory overburden.

Criteria (4) precludes the company from creating shareholder expectations that the company will buy back, cancel, or redeem the instrument, and precludes instruments that have terms or features that might give rise to such an expectation. First, it is not realistic to think that investor expectations can be regulated. Second, it is quite common for stock instruments and the underlying stock option purchase agreements to have terms such as rights of first refusal and call options. Again these types of options give the company the ability to redeem the shares but does not require the company to do so. Put options, in the case of shares obtained through an Employee Stock Ownership Plan(ESOP), by their nature raise expectations that stock can or will be redeemed in the future. For privately held institutions with Employee Stock Ownership Plans, the Put Option is required by the Employee Retirement Income Security Act of 1974 (ERISA) in order to provide a market for the stock of a retiring employee. This type of criteria is entirely unworkable for a private company that tries to limit the extent of ownership to its officers and employees, and further to the point, investor expectations ultimately have no bearing on management decisions relating to stock redemptions, with the exception of put options relating to ESOP distributions which are required by ERISA. In addition, private companies also have buy/sell agreements in order to protect shareholder interests, and the company can be a party to such agreements in order to have a right of first refusal on certain transactions. I would estimate that over half of the common stock of our company is subject to either a buy/sell agreement, a call option, a future put option from the ESOP, or a right of first refusal, none of which has had a significant negative impact on the company, but excluding these shares from "Common Equity" will obviously have a detrimental impact to the company's capital position. Rather than referring to investor's expectations, I suggest that an approach restricting the company from entering into a contractual obligation to buy back, cancel or redeem the instrument, with an exemption for "other than as required by existing law" to accommodate the ESOP put options would be more manageable.

Criteria (9) indicates that the amounts need to be classified as equity under GAAP. This I agree with.

Criteria (10) indicates that the banking organization or its subsidiaries cannot purchase or directly or indirectly fund the purchase of the instrument. ESOPs are by their nature, funded by the company, for the retirement benefit of their employees, and those benefit costs are often allocated to the subsidiaries of the banking organization. Stock Award Plans would also fall under this criteria. The FirstBank Holding Company ESOP currently owns 12% of the common stock of FirstBank and historically owned as much as 28%. ESOPs are a strong source of capital for the company and the industry, since the stock is held in a trust for the benefit of employees, while the cash from the sale of the stock to the plan is able to be reinvested in the business to grow the company.

Criteria (11) precludes any arrangement that may otherwise legally or economically enhance the seniority of the stock instrument. Once again, shares distributed from an Employee Stock Ownership Plan carry a put option that requires the plan and or the company to be able to redeem the shares, which would obviously be considered an economical and legal enhancement to the seniority of the stock.

Question 15: To what extent would a requirement to include unrealized gains and losses on all debt securities whose changes in fair value are recognized in AOCI (i) result in excessive volatility in regulatory capital; (ii) impact the levels of liquid assets held by banking organizations; (iii) affect the composition of the banking organization's securities portfolios; and (iv) pose challenges for banking organizations' asset-liability management?

The banking industry has just been through one of the most volatile markets in history. During these times of volatile markets, it is very important for banks of all sizes to maintain an investment portfolio that has liquidity, but by including the AOCI in regulatory capital, banks will need to do one of three things to lessen the impact: (1) keep fewer securities in the Available For Sale (AFS) category, (2) purchase securities with shorter durations, or (3) maintain significantly higher capital levels in order to provide an additional cushion to absorb the inevitable unrealized losses that will result from rising interest rates.

By encouraging institutions to keep fewer securities in the AFS category, and thereby placing them in the Held to Maturity(HTM) account where gains and losses will not be required to be recorded in Tier 1 capital, the operational restrictions imposed on the HTM account will greatly reduce management's ability to properly adjust its portfolio for liquidity and funds management purposes. The inclusion of the AFS gain or loss is not consistent with the treatment of any other asset on the institution's balance sheet. Deposits increase in value as interest rates rise, but there is no corresponding capital treatment for this increase in value. The AFS portfolio is one of the strongest tools available to manage interest rate and liquidity risk and this proposal will severely restrict its effectiveness.

Encouraging banks to purchase securities with shorter durations in order to reduce volatility will inherently reduce the ability of the institution to use the investment portfolio to generate income, thereby negatively impacting the ability to lend in the community. Alternatively, banks may seek other investments with higher levels of credit risk and / or greater levels of unrecorded market volatility in order to generate yield. At a time when the Federal Reserve Bank is major participant in the market for mortgage backed securities and treasury securities, does it make sense to discourage banks from participating as buyers in the marketplace?

The last alternative of keeping higher capital levels in order to provide an additional cushion to absorb interest rate driven losses will have a negative impact on the bank's ability to attract capital as the return on the bank's capital will decline, driving investors to other investments, further reducing the ability to lend to the community. FirstBank maintains a \$3 billion AFS portfolio representing approximately 25% of assets. The volatility in the AFS portfolio with a 300 basis point increase in interest rates can easily reach 10% of this portfolio, thereby having a significant effect on the capital position of the bank if included in regulatory capital, even after it is tax effected. This very issue of including AOCI in regulatory capital was addressed in 1993 when FAS 115 was first implemented by the FASB. It was a bad idea then, and it is a bad idea now.

Another issue that should be considered is that since the Federal Reserve relies so heavily on manipulating interest rates to either stimulate or slow the economy, the future actions of the Federal

Reserve Bank will have a significant immediate impact on the capital levels of every financial institution in the country, effectively bloating the capital positions as rates are driven down and lowering capital as interest rates are pushed up.

Question 17: 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 non-cumulative perpetual preferred instruments?

Please refer to all of my comments above in response to Question 14, as they are all equally applicable to Question 17. May I suggest that the Additional Tier 1 Capital Criteria (10), which requires that the instrument be classified as equity under GAAP is all that is truly needed. All of the other criteria unduly burdens private institutions by restricting their ability to manage capital, and placing a large regulatory burden on management any time a shareholder needs to liquidate its shares. For a private company shareholder, the ability of the company to provide liquidity in a short time frame is a major consideration. Our company routinely redeems between \$10 million and \$25 million per year from our shareholders, and this proposal will certainly have a large negative impact on our shareholders willingness and ability to hold our stock.

Criteria (5) Only callable after five years following issuance. Our company issues preferred shares to junior management as part of its compensation plan to encourage officers to think like shareholders as soon as possible in their careers. This allows our company to manage to long term goals rather than by short term quarter to quarter expectations of the public stock market. These shares have a call option that enables the company to redeem the shares after the officer terminates employment. This is important to the company in order to limit the number of shareholders. Call Options are not inherently a negative characteristic as this proposal insinuates. Call options give the company "options", it does not require the company to take actions. The ability of the company to exercise its "options" should be left to management and the Company's Board of Directors.

Comments for Docket ID OCC-2012-0009:

Question 5: The agencies solicit comments on all aspects of this NPR for determining the risk weights of residential mortgage loans, including the use of the LTV ratio to determine the risk-based capital treatment.

The majority of our loan portfolio is comprised of residential mortgage loans. Our conservative underwriting philosophy protected the bank from many of the problems experienced by the industry during the most recent economic downturn. Therefore, we are generally supportive of expanding the use of Loan to Value in determining the appropriate risk weighting for these exposures. However, the various requirements needed in order for a loan to be considered "Category 1" will severely restrict the consumer's ability to access credit. It appears that any factor that may have contributed to an increase in risk has been thrown into a list of bad practices, which when combined together, will force a large number of loans into "Category 2" loans at a significantly higher risk weight. This in turn will be met with a higher necessary yield in order to meet the banks' return on capital requirements. By having such a long, prescriptive approach to what qualifies at "Category 1" it precludes the bank underwriter from taking into consideration mitigating factors and unnecessarily places equal weight to each requirement, when an ability to repay and appropriate loan to value is all that are needed. This is evidenced by FirstBank's historical performance during the most recent economic downturn. Our three year average loss rate is less than .10% on 1-4 family 1st Deeds of Trust, and demonstrates the ability to mitigate the risk in the portfolio with conservative LTV and ability to repay being the driving factors in our performance. It further demonstrates the fact that the risk weights being proposed for "category 2"

loans are severely more restrictive than necessary. Unsecured lending, including credit cards that have no secondary source of repayment would carry an equal or lower risk weight than "category 2" loans, which is illogical.

Criteria (2) prescribes (i) no negative amortization loans, (ii) no deferral relating to principal, and (iii) no balloon payment. Since subsequent criteria number (8) indicates that even junior liens must meet all the criteria of a "Category 1" loan, a 1st lien home equity line of credit by definition will not meet the requirements, no matter what the loan to value, due to the fact that the line can be completely advanced at maturity, conflicting with both the deferral of principal and balloon criteria.

Criteria (4) prescribes a maximum increase in rate over a 12 month period of 2 percentage points and a maximum lifetime increase of no more than 6 percentage points. To the extent that the borrower's ability to repay is determined with the maximum interest rate or fully indexed rate, a maximum annual change in rate will restrict the customer's financing options. FirstBank offers a Fixed Initial Rate Mortgage that is fixed for 7 years, and then varies as an adjustable rate mortgage afterwards. The only reason FirstBank was comfortable in offering the product was the ability to increase the rate by 3 percentage points at the first rate change opportunity. If the borrower is able to qualify with a 6 percentage point increase over the life of the instrument, why shouldn't the bank be able to minimize its interest rate risk and still receive a lower risk weight based on the loan to value? This type of prescriptive requirement will inevitably result in fewer choices for the consumer, higher interest rates and less credit availability in addition to having a negative impact on the Bank's interest rate risk management.

The inability for the bank to consider Primary Mortgage Insurance when calculating LTV will increase the cost of credit for consumers as these loans will fall into higher risk weight categories and therefore need to be priced accordingly. Although many providers of PMI have varying degrees of financial strength currently, this will not be the case for long, as new capital will move into the market and therefore strengthen the product in the future. In addition, excluding PMI will have a disparate impact on low to moderate income borrowers, severely restricting their ability to obtain credit at a reasonable rate of interest. Discounting PMI is not warranted.

Junior liens are unnecessarily lumped into the "category 2" bucket where the risk weights are twice as high as the "Category 1" loans due to "their performance during the most recent economic downturn" per the NPR. I think the performance during the most recent economic downturn had more to do with underwriting and loans that exceeded the value of the home, where lenders, and not necessarily banks, were betting on continued increases in property values. This is an ill-timed reaction to the poor underwriting during an overheated real estate market, which will increase the cost of credit to consumers for years to come. In addition, the combining of 1st and 2nd lien mortgage exposures places the 1st mortgage lender at a competitive disadvantage to other lenders when pursuing a 2nd mortgage, because of the negative impact the 2nd mortgage will have on the risk weighting of the 1st mortgage. Since the first mortgage was already priced based on the risk weight at the time of its origination, the second mortgage would have to be priced at a substantially higher rate in order to compensate the bank for the increase in risk weight on the 1st mortgage. This can have the unintended consequence of pushing the consumer to borrow from two unrelated lenders. In addition, the added complexity of combined LTV calculations is an unnecessary burden to the industry. For this reason, subsequent junior liens should not be linked to the 1st mortgage.

Although assigning risk weights based on loan to value seems logical, the assigning of risk weights for loans that are prudently underwritten and performing should never deserve a risk weight that is higher than 100%. The risk weight for junior liens should be based on LTV as well, however, to

propose a 100% risk weighting for a low LTV junior lien does not seem reasonable. Junior lien category 2 loans should be slotted in the same risk weighting categories as category 1 loans, strictly by loan to value. The ability to repay requirements should significantly reduce the credit risk of junior lien loans in the future, and it seems that the proposal is relying too much on the negative lending practices of the past, most of which were not taking place in the banking sector.

The proposal indicates that a risk weight of 150% must be assigned to past due or nonaccrual exposures that are not guaranteed or that are unsecured. During periods of economic stress, normal cyclical increases in past due and nonaccrual loans are expected. If the allowance for loan and lease losses (ALLL) are calculated properly and are reflective of the risk in the loan portfolio, there should be no need to create an additional capital charge to reflect temporary and expected fluctuations in the economic cycles. Assigning a higher risk weight to past due loans is not a proactive measurement of risk, but instead is a retroactive penalty that has the potential to lower capital ratios at a time when a bank would most need to sustain those ratios. This provision would discourage institutions from working with troubled borrowers during times of economic stress as the bank would merely be interested in resolving the problem immediately. Further, the ALLL is already arbitrarily limited to 1.25% of risk weighted assets and there is no reason to add an additional charge based solely on past due status.

Highly Volatile Commercial Real Estate Loans

The agencies propose that any loan classified as High Volatility Commercial Real Estate (HVCRE) be assigned a 150% risk weighting. We do not believe that this is necessary. As stated elsewhere in this letter, we don't believe that any credit underwritten to prudent standards should be assigned a risk weighting higher than 100%. The agencies have previously limited the amount of exposure that an institution may have for all acquisition, development and construction loans based on capital through the Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices guidance issued in December 2006. That guidance essentially limits concentrations in this type of credit to 100% of capital. It also places increasing scrutiny on institutions nearing that cap and requires enhanced risk management monitoring on the part of the institution. While the guidance doesn't provide the 100% level as a hard cap on lending, our understanding and experience indicates that it has been treated as an absolute cap in practice by the agencies. The proposal to require higher risk-based capital for this type of lending seems to be more of an effort to deter certain lending practices. The agencies already have sufficient ability to assess the underwriting and loan standards being employed by any institution under its supervision. If it is believed that there are deficiencies at an institution, the agencies have sufficient authority and ability to correct the issues through normal supervisory action. It is not necessary to increase capital standards for this type of lending across all institutions. If properly structured and mitigating factors are present, HVCRE loans would not necessarily carry any higher risk of loss compared to other types of development lending.

While we disagree with the need to have a higher risk weighting category for HVCRE exposures, we generally agree with the manner in which the agencies have defined HVCRE. For commercial real estate projects, we agree with the Loan-to-Value requirements and the need to maintain the borrower's equity contribution throughout the life of the loan. However, we believe that the 15% cash or marketable asset capital contribution from the borrower should be based upon the project's cost as opposed to the "as completed" appraised value. The proposed definition already provides for loan-to-value restrictions. Any loan exceeding these ratios will automatically be considered HVCRE. While both cost and value can fluctuate over time, value can be subject to more significant swings in a shorter period of time depending upon market conditions. In times where value increases outpace increases in cost, the percentage of required capital contribution would need to escalate relative to the project's

total cost in order to avoid being classified as HVCRE. In these situations, the risk of the transaction doesn't increase correspondingly with increases in value. In many respects, the overall credit risk lessens as value rises, with the collateral providing greater coverage of the loan amount. Requiring the holding of additional capital to support a transaction without increased credit risk does nothing more than unnecessarily restrict capital and ultimately raise costs to developers. Basing the borrower capital contribution requirements on cost as opposed to value will ensure that borrowers have adequate cash equivalent equity into a project and not unduly restrict or increase the cost of credit.

Securitizations

With regard to the requirement for understanding securitization exposures, the proposal has set forth specific points of consideration to demonstrate and document for the regulators that an institution has a comprehensive understanding of a specific securitization's risk. We question whether examiners will be able to apply these points consistently across and between all organizations. It is conceivable that two banks holding the exact same security could receive significantly different capital treatments based solely on a perceived management deficiency, rather than the underlying risk of the asset. The assignment of a 1,250% penalty risk weight is extreme and should at least correspond to the actual risk weight of the asset and not create capital disparities that are grossly dissimilar for assets of equal risk. In addition, the proposal should give consideration to a purchase discount in evaluating the credit risk of a securitization exposure, as it creates a tangible level of credit protection that would not exist in a comparable security purchased at par.

Applicability to Small Banking Organizations

The complexity of the proposal and the necessary systemic changes in order to implement the NPR's is so significant, I am not able to provide a ball park estimate of the number of hours necessary to implement the changes. The NPR sets the level of applicability based on the Small Business Administrations' definition of a "small entity" exempting small bank holding companies, but still applies the changes to small state member banks and small savings and loan holding companies. The Board also states that it believes that most small state member banks hold capital in excess of the proposed minimum ratios, and that the proposals would affect an insubstantial number of small state member banks. Since the NPR would apply to every small state member bank, I don't understand how the Board can indicate that the NPR would not affect these small banks. They will still be required to make significant changes to systems and comply with significantly more complex reporting requirements, which will be an "affect". If such a large number of institutions that are small would have no difficulty meeting the new capital ratios, why require them to dedicate so much effort to implement these changes. Not only should they be exempted from the changes in the NPR, but I think the threshold for that exemption should be significantly higher than \$175 million. I would suggest institutions with \$1 billion or more in assets would provide a significant level of relief to the industry, although I would prefer to throw the whole proposal out as I think the costs of implementation and ongoing reporting outweigh the perceived benefits.

Sincerely,



Donald L. Thunte
Chief Finance Officer, SVP