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October 19, 2012

The Honorable Thomas J. Curry, Comptroller
Office of the Comptroller of the Currency
Regs.comments@occ.treas.gov
Docket ID OCC-2012 0008

The Honorable Ben S. Bernanke, Chairman
Board of Governors of the Federal Reserve System
Regs.comments@federalreserve.gov
Docket R-1442

The Honorable Martin J. Gruenberg, Acting Chairman
Federal Deposit Insurance Corporation
comments@FDIC.gov
RIN 3064-AD95

Re: Basel III Capital Proposals: Regulatory Capital and Standardized Approach

Heads of the Agencies:

Thank you for the opportunity to comment on the Basel III proposals.

As a bit of background, I am the principal shareholder and chairman of Sturm Financial Group, a $2Bn bank holding company headquartered in Denver, serving borrowers, depositors and trust customers in Colorado, Wyoming and Kansas City through our bank subsidiary, ANB Bank, a state-chartered member bank.

Our company has commented separately about the impact of these proposals on the banking industry and our customers. However, these proposed rules are not just important banking questions but extremely important matters of wise public policy. Therefore, I write separately today in my capacity only as a concerned citizen to address what I see as very poor public policy.

1. **Two critical aspects of the proposal promote greater reliance on government instead of incenting the private sector to take responsibility for its own needs.**

    a. **The proposal goes far beyond what Dodd-Frank requires and phases out Trust Preferred as Tier 1 capital for all banks, not just those over $15 billion.**

    Banks that prudently shored up their capital on their own by tapping the Trust Preferred marketplace will be penalized for that decision to participate in the private market for capital. By contrast, banks that did not manage their capital

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prudently and turned to a government bailout with TARP dollars have that government bailout money permanently grandfathered as Tier 1 capital.

This sends exactly the wrong signal to markets. Prudent self-reliant bankers should not be penalized versus those who looked to the government to compensate for their own poor risk management.

b. **The proposals to increase capital requirements while also raising risk-weights on loans made directly to borrowers in our communities will only increase the already-voracious demand for additional credit to flow through government guarantees. Freddie Mac and Fannie Mae have gone bankrupt on the taxpayer's dime; the Federal Housing Administration may be next.**

Together, these rules push banks to own federally-guaranteed mortgages, rather than credit to local borrowers that they themselves underwrite and hold. Even the worst mortgages, once stamped with the federal guarantee (as Freddie and Fannie found to their dismay), can be transformed into low-risk banking assets via the risk-weighting process. The profits thus produced by Freddie and Fannie proved ultimately to be illusory. The political pressures for any government agency to continually lower its underwriting standards will once again prove to be irresistible, to the detriment of safe and sound credit markets.

The federal government should reduce its role as a supplier of credit, and let private credit providers fulfill their proper role in markets. The proposals lead down exactly the opposite path.

2. **Banking regulators already have the critical tools they need to address perceived problems — loan loss reserves, concentration guidelines, and strong examination teams.** Regulators need to use these tools — by and large they are – and if so most of these new requirements will be superfluous.

Higher capital requirements will never be a substitute for good safety-and-soundness regulation.

3. **The proposal to include unrealized gains and losses on available-for-sale securities restricts banks' ability to do exactly what banking regulators are trying to promote — prudent lending, proper risk management and strong liquidity management.**

    a. As bank managers will need to artificially protect the bank's capital levels, their ability to manage the three basic risks in banking — liquidity risk, interest-rate risk and credit risk — will be materially reduced.

    b. There is already a mechanism for banks to write off true credit losses in bank securities portfolios against Tier 1 capital — the requirement that banks charge off Other Than Temporary Impairments (OTTI). This rule does not appear to be broken.

c. Community banks today have well-developed mechanisms for evaluating interest rate risk. The days when many thrifts went into crisis because of interest rate mismatches are long gone.

d. Prudent and conservative community banks will see their ability to lend to good borrowers and to their communities as a whole whipsawed when interest rates rise because a) their lending limits to individual customers will fall sharply and b) the pressure on capital ratios will force them to shrink their overall balance sheets. The opposite will be true when rates fall. This start/stop approach to lending will dangerously amplify the effect of economic cycles.

Flowing unrealized gains/losses on available-for-sale securities through Tier 1 capital does not promote a healthy banking system or a healthy economy. It has exactly the opposite effect.

4. **The proposals do not cover credit unions, which are significant providers of mortgage loans and other banking services.**

   Safe and sound banking practices are safe and sound banking practices, whether practiced by a bank or a credit union. Any new regulations on the Basel III topics should be extended to cover credit unions.

5. The proposals frequently reiterate the idea that higher capital is a solution for problems that arose over the last few years. Notably lacking is careful financial analysis of what actually caused the problems, what steps have already been taken to address the problems, and evidence that additional capital will actually make the system better off.

   In addition, the proposals are so far-reaching, complex and often vaguely worded that it is impossible to truly understand the impact that the entire package would have on our communities and economy.

   Thus, I believe the Agencies run the risk that the proposed rules if adopted could be challenged as arbitrary and capricious. The substantial delays associated with such challenges would not serve our country well; regulatory clarity and certainty are sorely needed by our economy.

For all of the above reasons and more, I agree with FDIC Director Thomas Hoenig when he recently said that regulators should start over and focus on "a simpler alternative that takes us back to the basics." I look forward to that process.

Sincerely,

Donald L. Sturm