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VIA E-MAIL: *Comments@FDIC.gov*

T. Richard Shier | Executive Vice President

May 29, 2012

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

Re: Assessments, Large Bank Pricing
Definition Revisions Notice of Proposed Rulemaking

RIN 3064-AD92

Ladies and Gentlemen:

City National Bank ("CNB") appreciates the opportunity to provide the Federal Deposit Insurance Corporation (the "FDIC") with comments regarding the FDIC's proposal to amend its regulations to revise some of the definitions used to determine assessment rates for large and highly complex insured depository institutions as set forth in the FDIC's Notice of Proposed Rulemaking and Request for Comment published in the Federal Register on March 27, 2012 (the "NPR"). Capitalized terms not otherwise defined herein are as stated in the NPR.

CNB is the largest bank headquartered in Los Angeles, California, with more than 77 offices in California, Georgia, Nevada, New York and Tennessee. CNB is a "Large Institution" as defined at 12 CFR 327.8(f) but is not a "Highly Complex Institution" as defined at 12 CFR 327.8(g).

CNB commends the FDIC for its thoughtful consideration and response to the industry's previous comments respecting the proposal for assessment as stated in the NPR, including redefining subprime and leveraged loans and raising the category of higher-risk commercial and industrial loans and securities to an original amount greater than $5 million.

We join in the positions taken in the comment letter dated May 29, 2012, submitted respecting this NPR by the *Mid-Size Bank Coalition of America* ("MBCA").

We are commenting separately from the MBCA to emphasize our concerns about:

1. The inclusion of <u>all</u> interest-only residential loan products as nontraditional loan products within the definition of residential loan products that allow the borrower to defer

repayment of principal or interest. This inclusion will have an adverse impact on us respecting our anticipated assessment.

2. The requirement that the calculation of the probability of default apply to all consumer borrowers even when that probability is very low given historical experience and will be costly for an institution to determine.

3. The determination not to exclude from the definition of higher-risk C&I loans and securities loans which are fully collateralized with marketable bonds or stocks and appropriately margined.

We thank you for your consideration of our comments.

General Comment Respecting Determination of an Institution's Assessment Rate

12 USC 1817(b)(1)(C)(i) is clear that the probability of risk to the Deposit Insurance Fund ("Fund") is to be determined with respect to the individual insured institution. To that end we urge the FDIC to be cautious and not to apply so strict a mathematical or definitional approach to the determination of an institution's total assessment rate that it fails to consider the true probability of risk to the Fund presented by the assets of the particular insured institution. We believe a prudent history of lending by an institution is relevant to assessing the probability of risk to the Fund and that history should be a factor considered by the FDIC when calculating an institution's assessment. [see 12 USC 1817(b)(1)(C)(i)(III)]. We are concerned that by not allowing other relevant credit factors such as credit history of the borrower, the resources of the borrower, the loan to value ratios, and other relevant factors, the FDIC may stifle otherwise prudent and needed lending to borrowers. Each institution should at least be entitled to present its case respecting the determination of its total assessment rate.

Nontraditional Mortgage Loans: Interest-Only Mortgage Products

We continue to urge the FDIC to reconsider the definition of nontraditional mortgage loans to allow institutions and the FDIC the flexibility to exclude from that definition interest-only residential mortgage loan products which are substantially similar to fully amortizing residential mortgage loan products demonstrably posing little or no greater probability of risk to the Fund than do traditional residential loans. We believe the FDIC should look to the underlying criteria used by the institution when making interest-only mortgage loans to allow loans with little historical probability of default to be excluded from the definition.

We offer interest-only residential mortgage loans. Most of our residential mortgage loans, including our interest-only residential mortgage loans, are made as an accommodation to our private banking clients with higher FICO scores. These private banking clients have strong liquidity and are not as susceptible to economic downturns as are less affluent consumer clients. The median loan to value ratio at origination for our interest-only residential mortgage loans was

62% compared to 61% for our entire mortgage portfolio. Our resulting experience is that the performance of our interest-only residential mortgage loans has been excellent and has been excellent throughout the current economic recession. As at December 31, 2011, the overall performance of our interest-only residential mortgage loans was not materially different from the remainder of our residential mortgage portfolio. In fact the performance of our interest-only residential mortgage loans was slightly better than our fully amortizing residential mortgage loans, 99.8% to 99.6% current and performing. In each measured category our interest-only loans were performing better than our fully amortizing residential loan including the fact that none were past due.

When underwriting interest-only residential mortgage loans, we use a fully indexed or fully amortizing payment determined from an amortization period equal to the years remaining after the end of the interest-only period which, in turn, results in an amortized qualifying payment from the inception of the payment period. This higher interest-only qualifying payment is then used for calculating the borrower's debt to income ratio. We utilize both the client's FICO scores and the home price values as major factors in determining the risk of the loan. If the loan experiences a decline in FICO score or there is a change in home price valuation, we adjust our loan loss allowance to reflect the increase risk. Again, the demonstrable result has been that asset quality performance for interest-only residential loans is no different than for fully amortizing residential loans.

Given this demonstrable performance, we believe we should be able to exclude these loans from the definition of nontraditional mortgage loans and as they are not, and should not be classed as, higher risk assets to the Fund. We would be pleased to expand upon our comment.

Request for Comments

With respect to the specific comments sought by the FDIC, CNB responds as follows:

1. *Deposit Insurance Pricing Definitions*

a. Is the collateral test in the higher-risk C&I loans and securities definition appropriately specified?

COMMENT: While it is specific, we believe it is too narrowly drawn and should exclude from the definition for higher-risk C&I loans and securities loans that are fully secured by marketable bonds or stock collateral. Cash and government guarantees should not be the only form of security. We believe loans fully collateralized with marketable bonds or stock have a very low probability of default or loss in the event of default, typically much lower than ABL and dealer flooring lines which the NPR already excludes from the definition. We fail to understand why such secured loans with an appropriate advance rate of, for example 60%, are not excluded and urge the FDIC to do so.

In Appendix C, A. 2, (page 18120 of the NPR) the definition of higher-risk C&I loans and securities excludes, among others "loans that are fully secured by cash collateral, provided that the cash is in the form of a savings or time deposit held by the insured depository institution…(etc.)." [emphasis added] This definition does not address the possibility that the cash collateral is held by another financial institution and is secured for the benefit of the lending financial institution by a deposit account control agreement under the provisions of Article 9 of the Uniform Commercial Code. A borrower may not want all its cash on deposit in a single institution to enable it to have the benefit of FDIC insurance. The exclusion is, therefore, too narrow as it does not allow for cash deposits held at another institution and appropriately secured for the benefit of the financial institution lender.

This appears to be in contrast to the Asset-Based Lending Exclusion (page 18121 of the NPR), the second bullet of which allows for the exclusion of cash controlled by the insured depository institution with an account control agreement where the account would presumptively be held at another depository institution as an account control agreement is unnecessary under the *Uniform Commercial Code* §9104(a)(1) where the secured party is the bank with which the deposit account is maintained.

b. Is the purpose test in the higher-risk C&I loans and securities definition appropriately specified?

COMMENT: We join in the MBCA's comment.

c. Can institutions identify and report C&I loans as higher-risk?

COMMENT: Given clear definitions, we believe we can.

d. Is the definition of material appropriate?

COMMENT: We join in the MBCA's comment.

e. Should other risk measures, besides PD, be considered to define higher-risk consumer loans and securities?

COMMENT: We join in the MBCA's comment.

f. Can institutions report all of their consumer loans into the proposed product and PD bands?

COMMENT: We currently do not have the ability to generate the PD as anticipated by the proposal. Our alternatives, as stated in the proposal, are to purchase the necessary data from external vendors (although we are advised that the vendors may not currently have the data in the form needed to complete the matrix) or to develop the data from our internal sources with the help of outside consultants to develop and populate the model. Either alternative will be expensive and may be a waste of time and resources when the experience of our institution is well below the proposed PD level.

g. Is the proposed PD level of 20 appropriate to identify higher-risk consumer loans?

COMMENT: We believe the PD level of 20 may be appropriate for institutions which are generally characterized as consumer banks and which do not have demonstrable experience of PD at a much lower rate. Our own experience of PD at below 1 suggests that the calculation of PD will be an unnecessary act and expense for us. We urge the FDIC to determine a demonstrable floor greater than 1 but certainly not higher than 10 below which institutions with such an appropriate history may exclude consumer loans at origination or refinance from the definition of higher-risk consumer loans and securities and not have to estimate and report the PD of loans in the portfolio. This change and exclusion will avoid a burdensome and truly unnecessary act of no benefit to the Fund.

h. Is the definition of refinance appropriate?

COMMENT: We join in the MBCA's comment.

i. Are all definitions clear and are institutions able to implement the definitions as proposed?

COMMENT: We join in the MBCA's comment. Please see our comment respecting deposit account control agreements in Request 1.a above.

2. *Regulatory Matters*

a. What are the costs and what is the extent of regulatory burden of the proposal compared to the February rule?

COMMENT: Unknown

b. Will the new effective date for the transition guidance (October 1, 2012) allow institutions sufficient time to update systems to accurately identify and report higher-risk assets as defined in the proposed definitions? If not, what date should the transition guidance be extended to?

COMMENT: We do not have the systems presently in place to calculate the PD nor are we assured that third-party vendors will be in a position to assist us by the new effective date.

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We respectfully request the effective date be extended to no less than 12 months from the effective date of the final rule.

c. Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?

COMMENT: See 1.a. above.

d. Does the proposed regulation contain language that is not clear? If so, which language requires clarification?

COMMENT: See 1.a. above.

e. Large institutions and highly-complex institutions would be required to define their higher-risk assets as outlined in Appendix C. Is the direction and language used in Appendix C clear?

COMMENT: We join in the MBCA's comment.

We thank the FDIC for the opportunity to comment and we continue to appreciate the thoughtful consideration being given to the industry's comments by the FDIC.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly,

T. Richard Shier

T. Richard Shier
Executive Vice President

cc: Russell Goldsmith, CEO, City National Bank
Michael B. Cahill, EVP & General Counsel, City National Bank
Christopher J. Carey, EVP & Chief Financial Officer, City National Bank