



MSD Capital, L.P.

Eric J. Rosen
Partner

August 10, 2009

Chairman Sheila Bair
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions

Dear Chairman Bair:

MSD Capital, L.P. appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's proposed Statement of Policy on Qualifications for Failed Bank Acquisitions.

MSD Capital is a private investment firm that was established in 1998 to exclusively manage the capital of Michael S. Dell. Our firm currently manages approximately \$10 billion of assets in a multi-disciplinary approach encompassing private equity activities, real estate and investments in publicly-traded securities. The firm's principal investment objective is to build a portfolio focused on maximizing long-term capital appreciation. Unlike traditional private equity investors, our capital base is not limited by typical limited partnership restrictions, allowing us the flexibility to take a longer term view of the business and deploy additional capital as needed to fund organic growth and acquisitions. Given our long-term goals and ability to view investments with a longer time horizon, our investment decisions and our management of these investments are keenly focused on the long-term health of the underlying businesses.

As you may be aware, MSD Capital is a member of the consortium that acquired IndyMac Bank (now OneWest Bank). Our interaction with the FDIC and OTS during the acquisition process has given us an appreciation for your agency's considerations in such transactions. Accordingly, MSD Capital fully supports efforts to formulate guidelines that will help increase transparency and clarify the appropriate form of private capital participation in failed bank acquisitions. However, we are concerned that certain aspects of the proposed guidelines could impede the flow of much needed private capital into the U.S. banking system and run counter to the aim and interests of the FDIC.

In response to your request for comment, first, MSD Capital believes that requiring private investor owned banks to maintain a Tier 1 leverage ratio of fifteen percent will lead to higher resolution costs for the FDIC. Specifically, the proposed capital requirement (when compared to the current five percent requirement for existing banks) could lead private

investors to bid lower than strategic acquirers as the economics of carrying higher levels of capital are factored into asset prices. This skewing of advantage to strategic acquirers may result in reduced participation from private investors in resolution processes. Reduced competition for assets and resulting lower prices would likely increase the cost of resolutions for the Depositors Insurance Fund.

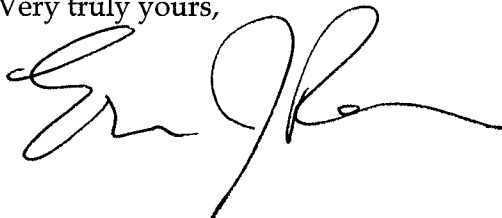
To the extent the FDIC chooses to guide private investors to a floor above the “well capitalized” level of a five percent Tier 1 leverage ratio, MSD believes that the current eight percent regulatory requirement for de novo bank charters is the most appropriate target. The eight percent requirement has historically proven sufficient in ensuring the safe and prudent management of banking assets by new entrants into the U.S. banking system. We believe that an eight percent Tier 1 leverage ratio would not materially disadvantage private investors in failed bank transactions and would foster competition for these assets.

Second, we are also concerned that the proposed cross-guarantee and source of strength requirements would serve to increase the risks associated with minority investments in banking institutions. The potential for unlimited liability for existing investments and a cross guarantee amongst unrelated and uncontrolled investments would certainly discourage us and other private investors from participating in future resolution transactions.

Lastly, we would also like to note that the proposed guidelines represent a significant change to the regulatory framework that existed at the time of our investment in IndyMac Bank/OneWest Bank. These changes may impact our ability to grow our OneWest platform through acquisitions, which is a key element of our investment thesis. In the normal course, private investors apply meaningful risk premiums to asset valuations if they believe the rules and regulations that govern their investment could change. Therefore, we would suggest that any retroactive application of these guidelines would likely encourage other private investors, going forward, to apply a regulatory risk premium to their pricing of banking assets. This, in turn, would result in lower asset values and associated higher resolution costs to the FDIC.

We would like to reiterate that we fully support the formulation of guidelines that will help the FDIC create a clear framework for bank resolution processes, so long as the guidelines do not have the unintended effect of increasing resolution costs to the FDIC by limiting private investment in the U.S. banking system. We greatly appreciate the opportunity to submit this letter and will be pleased to discuss the proposed Statement of Policy and our comments upon request. If you have any questions, please do not hesitate to call me at 212-303-1650.

Very truly yours,

A handwritten signature in black ink, appearing to be "E. J. [unclear]", written in a cursive style.