WELLINGTON MANAGEMENT®

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

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

Dear Mr Feldman:

Wellington Management Company, LLP appreciates the opportunity to provide comments in response to the Request for Comment by the Federal Deposit Insurance Corporation (the "FDIC") on the Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions (the "Proposed Policy Statement").

We are an investment adviser registered with the US Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended (the "Investment Advisers Act"), with approximately $448 billion in client assets under management. We offer investment management services to separate account clients, US and non–US mutual funds sponsored by unaffiliated parties, and our own privately offered investment vehicles, including collective investment funds, common trust funds, non–US domiciled funds and US and non–US domiciled hedge funds. We regularly invest in U.S. financial institutions on behalf of our investment advisory clients.

We generally support the concepts underlying the Proposed Policy Statement and recognize their role in addressing safety and soundness considerations. Private capital can play a meaningful role in resolving failed insured depository institutions in a manner that benefits both the financial system and US taxpayers through reduced costs to the Deposit Insurance Fund. However, in our view the Proposed Policy Statement will unnecessarily deter private capital investors from participating in the acquisition of failed depository institutions and failed depository institution assets. At a high level, we believe that the goals underlying the Proposed Policy Statement would be achieved without the provisions applying to institutional investors that acquire non-controlling positions in entities that invest in the assets and liabilities of failed insured depository institutions.

Our comments below address certain of the specific questions posed by the FDIC in its Request for Comment.

**1. The definition of "Investor" should exclude non-controlling investors.**

We strongly believe that "Investor" should be defined so as to exclude investors that individually or collectively own less than 10% of any class of voting stock of an institution or otherwise do not control the institution for purposes of the Bank Holding Company Act of 1956, as amended.

It is inappropriate to impose the source of strength requirements, cross guarantee obligations, continuity of ownership requirements and other standards in the Proposed Policy Statement to investors who do not have the ability to control a bank's operations. While the capital provided by such investors may ultimately contribute to an institution's success, such investors will have little, if any, role in preventing an institution's failure given their inability to influence the operations, management or strategy of the institution. Rather than promoting the public interest in safe and sound institutions, imposing the standards of the Proposed Policy Statement to non-controlling investors could have the opposite effect by deterring such investors from participating in the resolution of failed institutions, thereby unnecessarily limiting important sources of capital.

**2. The Proposed Tier 1 leverage ratio of 15% is too high.**

We understand the FDIC's concern that newly established banks, as a general matter, do not always have a strong record of performance in the early years of activity, and agree that a modestly higher capital level is appropriate. However, we believe that a Tier 1 leverage ratio of 15% is unnecessary to provide reasonable assurance of the safety and soundness of financial institutions formed from the assets and/or liabilities acquired from failed banks. This is particularly so in instances where the FDIC is providing loss sharing. In addition, this requirement would impose significant costs on the FDIC by rendering investments in failed depository institutions unattractive to private capital. A Tier 1 leverage ratio requirement of 15% would either discourage private capital investors from submitting bids to the FDIC or cause such investors to submit significantly lower bids in order to generate a reasonable return on their investment. This would ultimately increase the costs for the Deposit Insurance Fund and the FDIC in its capacity as receiver, with little offsetting benefit.

**3. The cross-guarantee provisions should be modified to avoid aggregating the holdings of unaffiliated investors.**

The final policy statement should not contain a cross-guarantee provision that is more extensive than the existing cross guarantee provisions in the Federal Deposit Insurance Act, as amended. At a minimum, we urge the FDIC to clarify that the cross guarantee commitment would not apply to a situation where multiple unaffiliated

investors collectively hold a majority interest in two or more unrelated institutions, but do not act in concert in connection with such investments. Without such a clarification, a potential investor would not know at the time of making an investment whether it could become subject to a cross guarantee commitment in the future. Private capital investors are unlikely to assume such a risk, and many are structured in ways that preclude them from being able to assume such liabilities.

**4. The bank secrecy jurisdiction provisions should be clarified.**

The Proposed Policy Statement should specify the jurisdictions that would be covered by this restriction. There are a variety of valid and well-accepted reasons why investors make investments through a fund or vehicle that is organized or domiciled in an offshore jurisdiction, including to facilitate tax efficient investment by US tax exempt entities and non-US persons. Such funds should not be precluded from participating in the acquisition of failed depository institutions and failed depository institution assets. To do so would cut off a significant source of potential capital. In addition, we believe that entities domiciled in a secrecy jurisdiction should nevertheless be considered eligible bidders if they delegate their investment discretion to an investment adviser registered under the Investment Advisers Act.

**5. The continuity of ownership provision should be shortened and apply only to management.**

We believe the 3-year holding period in the continuity of ownership provision is too long, and in any event should only apply to the equity held by members of management. Modifying the provision in such a manner would not interfere with the FDIC's legitimate objective of ensuring continuity in servicing its loss sharing agreements, and would appeal to a much larger pool of private institutional capital. Additionally, we believe the final policy statement should not contain a blanket prohibition on transfers, but should instead subject such transfers to the FDIC's prior approval.

We appreciate your consideration of our comments and would be happy to discuss them with you in greater detail.

Sincerely,

Nicholas C. Adams
Senior Vice President

Mark T. Lynch
Senior Vice President