December 16, 2013

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20552

The Honorable Thomas Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve
System
20th and C Streets, NW
Washington, DC 20551

Re: Volcker Rule and the Treatment of CDO TruPS

Dear Chairman Gruenberg, Comptroller Curry and Chairman Bernanke:

When the final Volcker Rule was issued last week, community banks were surprised by the FDIC's community bank summary of the rule which indicated that ownership of collateralized debt obligations (CDOs) backed by trust preferred securities (TruPS) could be considered ownership in a prohibited "covered fund." However, the surprise has turned into shock now that many community banks have been advised by their investment banks and brokers that not only do they have to divest themselves of their holdings by July 2015, but that there may be an immediate impairment to their investment under the "other than temporary impairment" (OTTI) accounting standards that must be recognized prior to yearend.

As you know, the intent of the Volcker Rule was to prohibit proprietary trading by the large banks and the ownership of hedge funds and private equity funds. How did this intent ever evolve into including the divestiture of legitimate portfolio holdings of community banks? Under the Volcker Rule proposal, community banks were under the impression that if CDO TruPS were subject to the rule, it would only be in the case where they owned an equity tranche in the CDO. They had no idea that a non-equity investment in CDO TruPS that yields only interest and principal and has no other rights to ownership would ever be considered ownership in a "covered fund."

If community banks are forced to write these investments down, they may have to do so at "fire sale" prices that would result in a permanent loss of capital. In most, if not all cases the true fair value is much greater than the current market value used for financial accounting and reporting. Significant recovery can be expected over time due to the improving health of the nation's community banks and the overall economy. If community banks are forced to permanently write down these investments and divest them, the recovery opportunity will be lost. Pooled TruPS were always highly rated and performed well until the latest economic crisis. Community banks had every reason to believe they would be able to hold these investments to maturity to recoup temporary impairment losses.

The Volcker Rule was written to curb the risky activities of the TBTF banks. It should not be interpreted in a way that arbitrarily damages the capital and earnings of community banks.

We therefore urge you to issue guidance as soon as possible clarifying that banks do not have to permanently write these instrument down to liquidation value prior to yearend under OTTI accounting standards. Furthermore, we urge you to reconsider these investments as ownership of "covered funds" under the Volcker Rule particularly in cases where the community bank is only receiving interest and principal from the investment.

Thank you for your help with this issue.

Sincerely,

Camden R. Fine

Camden R. Fine
President/CEO

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