REGULATORY CAPITAL RULES:
REGULATORY CAPITAL,
IMPLEMENTATION OF BASEL III,
MINIMUM REGULATORY CAPITAL
RATIONS, CAPITAL ADEQUACY,
TRANSITION PROVISIONS AND PROMPT
CORRECTIVE ACTION

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Parts 3, 5, 6, 165 and 167
Docket ID OCC-2012-0008
RIN 1557-AD46

FEDERAL RESERVE SYSTEM
12 CFR Parts 208, 217 and 225
Regulations H, Q and Y
Docket No. R-1442
RIN 7100-AD87

FEDERAL DEPOSIT INSURANCE
CORPORATION
12 CFR Parts 324, 325 and 362
RIN 3064-AD95

UNLESS BASEL III IS SIMPLE AND UNDERSTANDABLE, IT WILL NEVER BE EFFECTIVELY ENFORCED

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UNLESS BASEL III IS SIMPLE AND UNDERSTANDABLE, IT WILL NEVER BE EFFECTIVELY ENFORCED

In coordination with our fulltime Washington DC bank regulatory office, we have engaged in an analysis of the activities of the so-called non-community banks with $10 billion of assets or more and a partial analysis of banks with $1 billion to $10 billion in reported assets as they relate to the impact of Basel III.

We file these preliminary comments with a key caveat. Although we are greatly concerned about the premises underlying the direction of Basel III and its impact on (a) America's 29 million small businesses and (b) homeownership for the estimated 40 million additional potential new homeowners over the next decade, we lack the resources to offer specific recommendations as to the Basel III levels that would be most appropriate.

In our prior filed comments relating to the Volcker Rule, we emphasized a simplicity position that we believe is appropriate herein.[1] The National Asian American Coalition was apparently the only Asian American organization that filed comments relating to the Volcker Rule. (To date, over 16,000 comments have been filed.[2]) We also note that this simplicity principle is consistent with Federal Deposit Insurance Corporation (FDIC) Director Thomas Hoenig's recent observations.[3]

As set forth in our prior comments on the Volcker Rule, we favor regulations that are simple, understandable and enforceable. If the system is not simple and understandable, it is unlikely to be enforceable.

As Director Hoenig sets forth, to be understandable, the Basel III capital regulatory rules should be such that the public (including 18.5 Asian Americans represented by the National Asian American Coalition) and shareholders can understand, and that independent directors can monitor.

Most importantly, the National Asian American Coalition believes in the basic integrity of banking leaders. However, to the degree that Basel III moves away from simplicity, it will become unenforceable since it puts pressure upon the banking system to "game" the system. For example, we believe in the integrity of JPMorgan Chase CEO, Jamie Dimon. But, the derivative market (that in part the Volcker Rule might have applied to) was gamed by

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[1] See, comments of January 20, 2012, "Keep It Simple (Amendments to October 21, 2011 Minority Business Comments on 'Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships With Hedge Funds and Private Equity Funds')," available at http://www.sec.gov/comments/s7-41-11/s74111-79.pdf.

[2] Full list of comments filed before the Securities & Exchange Commission on the Volcker Rule available at http://www.sec.gov/comments/s7-41-11/s74111.shtml.

[3] See, remarks by FDIC Director Thomas Hoenig of September 14, 2012 before The American Banker Regulatory Symposium in Washington DC, "Back to Basics: A Better Alternative to Basel Capital Rules," available at http://www.fdic.gov/news/news/speeches/chairman/spsep1412_2.html. We also note that the National Asian American Coalition met with Director Hoenig on September 10, 2012 to discuss too-big-to-fail bank issues that are partially related to the Basel III capital regulatory rules.

JPMorgan Chase's leadership, apparently without the knowledge, although under the oversight, of Mr. Dimon.

As to the appropriate capital standards, such as, for example, whether it should be 7% or 10%, we lack the expertise to comment.[4] But, we would observe that public and shareholder confidence would best be ensured by appropriate reserves measured in part by historic capital requirements during periods of stability. Therefore at this time, we are not prepared, for example, to comment on what percentage of equity to tangible assets should prevail. This ratio in particular, as pointed out by Director Hoenig, depends on how tangible equity is defined.

Also see similar recent concerns as they relate to the gaming of the system within the British banking system as articulated by Reverend Justin Welby, Bishop of Durham. See, *Wall Street Journal* of October 1, 2012, "British Banks Face Heat From On High."

Impact of Basel III on Small Business Lending and Homeownership Necessary to Spur the Economy

At the time of these comments being submitted, second quarter gross domestic product grew at a rate of only 1.3%. This figure is far too low to solve the growing long-term unemployment problem or to effectively create opportunities for new workers who ordinarily would be looking for jobs rather than dropping out of the market or seeking multiple postgraduate degrees.

The best example relates to housing opportunities. With no exceptions, and we stress no exceptions, all U.S. banks with $50 billion or more in assets have failed to effectively originate home loans to the almost two-thirds of the population defined as 120% or below median income for the year 2011 or for the years 2009 and 2010.[5]

In significant measure, this is attributable to the present Basel requirements and the fear of Basel III capital requirements. Specifically, many banks have informed us of the fear that additional capital will be required under Basel III to address bank home loans that are not considered qualified mortgages even though these mortgages are relatively risk free. Separately, the National Asian American Coalition has been meeting with the Treasury Department, Federal Reserve, Office of the Comptroller of the Currency, Consumer Financial Protection Bureau (CFPB) and FDIC to address this problem through instruments, such as the "Dignity Mortgage."[6]

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[4] In general, we agree with former FDIC chairman Sheila Bair's position as set forth in her recent book, *Bull By the Horns,* that 10% is an appropriate capital standard for very large banks.

[5] Based on Federal Reserve HMDA data gathered on a national basis and broken down on a statewide basis.

[6] The Dignity Mortgage would provide opportunities for one million families annually at 120% or below median income to acquire homeownership or 10 million additional families over the next decade.

As virtually all commentators on Basel III will agree, including all the federal banking regulators, a major expansion in homeownership would spur the economy, including the creation of millions of additional jobs per year.[7]

A similar problem exists relating to loans to America's 29 million small businesses. Today, banks are making very few loans to the vast majority of small businesses.[8] For a variety of reasons, these loans are viewed as unduly risky despite the benefits of creating millions of new jobs (this is particularly the case for businesses with $3 million or less in annual revenue).

Once the CFPB develops a metric for reporting small business loans by banks, an effort we will be participating in, it will become abundantly clear that present capital requirements and the potential impact of anticipated Basel III capital requirements and measurements have had an extraordinarily negative impact on the creation and growth of small businesses, which are responsible for 60% or more of all new jobs.

Basel III and Small Financial Institutions

In our meeting with Director Hoenig on September 10, 2012, we stressed our concerns regarding the role of big banks in terms of their potential to both spur and/or create inadvertent roadblocks to an economic recovery.

We also discussed our concerns that the regulatory process failed to distinguish between banks too-big-to-fail and smaller banks. We are unclear as to what the cutoff point should be for the applicability of Basel III. However, we find it difficult to understand why any financial institution defined as a midsized bank ($7 billion to $30 billion in assets[9]) should be subject to strict Basel III requirements and believe it may be <u>unnecessary</u> for banks below $10 billion to be covered directly or indirectly by Basel III.

We also note, as Director Hoenig stated, few know the true size of banks, particularly very large banks. This, in large measure, is attributable to the varying and "befuddling" treatment of derivatives. See, *Wall Street Journal* of September 24, 2012, "Deriving the True Size of U.S. Megabanks is Far From Simple." This article states that the size of assets "can vary greatly due to the treatment of derivatives"[10] and there are far different treatments of derivatives in the

[7] A meeting has been requested by our legal counsel on behalf of 75 California Black pastors to meet with President John Williams of the Federal Reserve Bank of San Francisco on this issue.

[8] The National Asian American Coalition has raised these issues with the Comptroller of the Currency, Chairman of the FDIC, various Federal Reserve governors, and the Undersecretary and Counselor to the Secretary of the Treasury at meetings held during the week of September 10, 2012 in Washington DC.

[9] A group of banks with $7 billion to $30 billion in assets recent formed the Midsize Bank Coalition of America. This may be one of their issues. *American Banker*, "Group Stuck in the Middle is Striking Out," September 6, 2012.

[10] *Wall Street Journal*, "Deriving the True Size of U.S. Megabanks is Far From Simple," September 24, 2012.

U.S. accounting rules as contrasted with international accounting rules that our nation appears reluctant to embrace.[11]

Conclusion

Some regulators contend that big banks "don't get it."[12] However, it also appears that our regulators do not always "get it." We therefore reiterate the principle that for Basel III to be effective, it must be simple and understandable. If it is not, it will never be enforceable.

Respectfully submitted,

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/s/ Mia Martinez
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/s/ Robert Gnaizda
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/s/ Aaron Lewis
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October 3, 2012

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[11] The National Asian American Coalition has recommended to the Public Company Accounting Oversight Board (PCAOB) in its latest filing that adherence to international rules would be beneficial. See, filed comments before the PCAOB of July 19, 2012, "Transition from a Monopolistic Big Four to a Competitive Big Twenty-Five," available at http://pcaobus.org/Rules/Rulemaking/Docket037/670_BEC_LBCGLA_and_NAAC.pdf.

[12] *American Banker*, "Big Execs Just Don't Get It: FDIC's Hoenig," September 19, 2012.