

From: United Bankers Bank, Charles C. Hokans
Subject: Correspondent Concentration Risks

Comments:

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Proposal: Correspondent Concentration Risks
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Name: Charles C Hokans
Affiliation: United Bankers' Bank
Category of Affiliation:
Address:

City:
State:
Country: UNITED STATES
Zip:
PostalCode:

Comments:

Ms. Jennifer J. Johnson
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW Washington, DC 20551

RE: Additional Comments

on Proposed Guidance on Correspondent Concentration Risks (Docket No. OP-1369)

Dear Ms. Johnson: This letter supplements United Bankers Bank's ("UBB") prior correspondence to your office dated October 26, 2009, and sets forth additional comments on the Proposed Guidance on Correspondent Concentration Risks set forth by the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the Office of Thrift Supervision, issued September 25, 2009 (the "Proposed Guidance"). The Proposed Guidance Does Not Account For Tier 2 Capital when Calculating Exposures The Proposed Guidance conflicts with the requirements of Regulation F (12 C.F.R. § 206, et. seq.) by eliminating or omitting Tier 2 capital when determining whether a concentration with a correspondent bank exists. The Proposed Guidance states that a credit exposure to a correspondent which is greater than 25% of an institution's Tier 1 capital is a "concentration" which should be avoided. Regulation F, however, only requires institutions to reduce credit exposure to a correspondent to below 25% of the institution's total capital (which includes both Tier 1 and Tier 2 capital), if the correspondent is no longer at least "Adequately Capitalized." 12 C.F.R. § 206.2(g). To eliminate confusion UBB recommends that in determining concentration limits, a bank should consider its exposure relative to its total capital, including its Tier 1 and its Tier 2 capital, under the final guidance to be issued. The Proposed Guidance Does Not Consider the Correspondent's Established Capital Levels Another significant conflict with Regulation F is created by the Proposed Guidance's failure to assure institutions that exposures exceeding 25% of Tier 1 capital are permissible if the correspondent bank to which they are exposed is at least "Adequately Capitalized." Currently Regulation F permits a bank to have a concentration with a correspondent in

excess of 25% of the bank's total capital if the correspondent is "Adequately Capitalized." 12 C.F.R. § 206.4(a). However, under the Proposed Guidance, a bank could be opening itself to criticism for any exposures exceeding 25% of Tier 1 capital, even if the correspondents to which it is exposed is "Adequately Capitalized" or better. Accordingly, UBB believes that the final guidance should clarify that banks can take into account the capital adequacy levels of the correspondent institutions with which they conduct business when determining whether a concentration presents a risk to the organization. The Proposed Guidance Fails to Adequately Discuss the Varying Degrees of Risk Associated with Different Types of Exposures The Proposed Guidance fails to address the varying degrees of credit risk inherent in particular transaction types, or indeed that banks can consider that different types of exposures carry varying degrees of risk when developing their policies and procedures under the Proposed Guidance. While concentrations with correspondents may be deemed to exist at certain thresholds, UBB believes that the true indicator of the risk presented by a concentration will be borne out by the various types of transactions underlying the concentration. In light of this, the final guidance to be issued should expressly provide that banks are permitted to consider the varying degrees of risk presented by different transaction types when monitoring and managing exposures. Further, given the relative safety of Fed Funds sold on an overnight basis, UBB would argue that Fed Funds should be exempted from the 25% Tier 1 capital limitation altogether. The Proposed Guidance May Violate the Administrative Procedures Act Because the Proposed Guidance deviates from the provisions of Regulation F in several different respects, the Proposed Guidance may represent a violation of the Administrative Procedures Act (the "Act"). Case law interpreting the Act has held that only legislative rules (i.e., rules having the force of law) can amend a prior legislative rule. While the Proposed Guidance has been published in the Federal Register, the Proposed Guidance's provisions, as drafted, can arguably be interpreted as amending, revising, and indeed repealing certain parts of Regulation F. As such, the Proposed Guidance may be invalid under the Act due to its being a procedurally invalid legislative rule. Accordingly, any final guidance issued should ensure that it does not amend, revise or repeal in any fashion Regulation F. UBB appreciates the opportunity to further comment and express its views on the Proposed Guidance and the willingness of the Federal Reserve to consider UBB's comments. Sincerely, United Bankers Bank William C. Rosacker.