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Subject: Regs H and Y; Risk-Based Capital Guidelines

Comments:

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Proposal: Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commerical Paper Programs (Regulations H and Y)
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October 15, 2009 Office of the Comptroller of the Currency 250 E Street, SW., Mail Stop 2-3 Washington, DC 20219 Docket Number OCC-2009-0012 Jennifer J. Johnson, Secretary Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue, NW Washington, DC 20551 Docket No. R-1368 Robert E. Feldman, Executive Secretary Attention: Comments/Legal ESS Federal Deposit Insurance Corporation 550 17th Street, NW Washington, DC 20429 RIN 3064-AD48 Regulations Comments, Chief Counsel's Office Office of Thrift Supervision 1700 G Street, NW Washington, DC 20552 Attention: OTS-2009-0015 Re: Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues Ladies and Gentlemen: SunTrust Banks, Inc. ("SunTrust") appreciates the opportunity to comment on the Notice of Proposed Rulemaking ("NPR") published September 15, 2009, by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the "Agencies") regarding changes to the risk-based capital adequacy frameworks that would include consolidated asset-backed commercial paper programs in risk-weighted assets and the effects of the Financial Accounting Board's Statement of Financial Accounting Standards No. 166, Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140 ("FAS 166"), and Statement of Financial Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R) ("FAS 167"). SunTrust cautions the Agencies against reacting to the accounting changes described in FAS 166 and FAS 167 with immediate corresponding material changes in the capital levels described in the U.S. Department of the Treasury policy statement dated

September 3, 2009,
Principles for Reforming the U.S. and International Regulatory Capital Framework for Banking Firms. While the accounting rules have been materially changed, the economics and risks of the financial institutions remain unchanged. Changes to capital levels based on some of the activities described in the NPR should be made in conjunction with the international community such as the Bank for International Settlements Basel II Framework ("BIS II") so as not to create either an uncompetitive banking system or capital arbitrage opportunities among banks. Given the potential impacts to lending activities and the financial system at large, the proposed capital changes should be given proper time for consideration. SunTrust would like to respond to questions 1 through 6 and 8 and 10 posed by the Agencies in the NPR as follows: QUESTION 1: WHICH TYPES OF VIES WILL BANKING ORGANIZATIONS HAVE TO CONSOLIDATE ONTO THEIR BALANCE SHEETS DUE TO THE 2009 GAAP MODIFICATIONS, WHICH TYPES ARE NOT EXPECTED TO BE SUBJECT TO CONSOLIDATION, AND WHY? WHICH TYPES ARE LIKELY TO BE
RESTRUCTURED TO AVOID CONSOLIDATION? SunTrust first notes that the responses herein are based on its current understanding of the interpretative issues and, accordingly, certain conclusions may be revised before final implementation of FAS 166 and 167. The consolidation model in pre-codification FAS 167 is based on power and economics, as opposed to risk and rewards. While economics are an indicator of rewards and thereby generally the related risk, the FAS 167 model is based on potential economics that could exist without regard to realistic expectations or probability of occurrence. Additionally, interpretative guidance on paragraph 14 of FAS 167 indicates that the threshold to evaluate the significance of economics will be very low. Accordingly, the new consolidation model will result in a grossing up or a full consolidation of assets in a structure even in circumstances where a small percentage of residual interest or risk is held because it is considered to have "potentially significant" economics. The objective of the consolidation model is to improve transparency in financial reporting and not necessarily to reflect assets based on risk undertaken in a structure. Since the FAS 167 model is based on power and economics, it is possible that certain structures in which transferors have significant economics and associated risks will not be consolidated by transferors, such as certain non-agency mortgage loan securitizations, due to lack of power. Similar to Freddie Mac and Fannie Mae sponsored securitizations, certain non-agency mortgage loan securitizations are structured such that the transferor or originating banking organization is the primary servicer. However, the special servicer in such securitizations has the ability to replace the primary servicer without cause. In such securitizations, the primary servicer will lack power and, therefore, even ifthe primary servicer holds the residual tranche in such securitizations and receives servicing fees, they will likely not consolidate such non-agency securitizations. Other examples of structures that will not be consolidated include securitizations with shared power and pooled portfolios. The list detailed in Section II of the NPR based on the analysis by the Agencies of categories of off-balance sheet structures that will likely be subject to consolidation is fairly comprehensive. In addition to these exposures, certain securitizations of collateralized loan obligations and collateral debt obligations may also be consolidated. While SunTrust cannot comment on the likelihood and/or types of transactions that may be restructured to avoid consolidation, sponsoring entities that have the power and the economics could attempt to either sell off the residual tranches and hold limited amounts, if any, of senior tranches so as to not hold any economics. Alternatively, the sponsoring entities could look to restructure transactions such that they either no longer have any power or have a sharing of power with an unrelated

entity. In either case, SunTrust believes that any restructuring, whether reducing economics or relinquishing power, will need to be substantive, such that the entity can demonstrate that it will receive significantly less economics and/or exercise significantly less power. SunTrust recommends that in determining the risk implication of consolidating assets in accordance with FAS 167, the Agencies consider the following: The risk profile of the assets being consolidated may be significantly different from those that are currently held on a bank's balance sheet and should, therefore, carry a different risk weighting for capital purposes. In some instances, there is risk sharing with other beneficial interest holders in a securitization and, in other instances, there may be credit enhancement provided by other parties, such as sellers of receivables. The consolidation model and related accounting may not necessarily reflect all these forms of risk-sharing. In some cases, the economics and residuals retained by an entity may be low (often 10% or less) and the structure may yet be consolidated. The related capital ramifications based on the current proposal will not be in line with the amount of true risk and related economics. QUESTION 2: ARE THERE FEATURES AND CHARACTERISTICS OF SECURITIZATION TRANSACTIONS OR OTHER TRANSACTIONS WITH VIES, OTHER SPES, OR OTHER ENTITIES THAT ARE MORE OR LESS LIKELY TO ELICIT BANKING ORGANIZATIONS' PROVISION OF NON-CONTRACTUAL (IMPLICIT) SUPPORT UNDER STRESSED OR OTHER CIRCUMSTANCES DUE TO REPUTATIONAL RISK, BUSINESS MODEL, OR OTHER REASONS? COMMENTERS SHOULD DESCRIBE SUCH FEATURES AND CHARACTERISTICS AND THE METHODS OF
SUPPORT THAT MAY BE PROVIDED. THE AGENCIES ARE PARTICULARLY INTERESTED IN COMMENTS REGARDING CREDIT CARD SECURITIZATIONS, STRUCTURED INVESTMENT VEHICLES,
MONEY MARKET FUNDS, HEDGE FUNDS, AND OTHER ENTITIES THAT ARE LIKELY BENEFICIARIES OF NON-CONTRACTUAL SUPPORT. SunTrust believes that the current standards regarding capital and implicit support are sufficient and that the regulatory community should address concerns directly with those institutions, rather than create a broader set of rules that force all financial institutions to hold capital for similar activities. SunTrust suggests that some instances of implicit support are more consistent with previous classifications of operational risks, such as implicit support of money market funds. While recent support has been due to credit risks, the money market funds represent a core fiduciary activity typically associated with operational risk. As such, capital attributed to implicit recourse asset management activities should be specifically reflected for BIS II financial institutions as it is implicitly included in the current base capital standards, which were designed broadly to cover all risks.

Furthermore, there is no mandate or commitment by SunTrust to provide incremental support to the affiliated money market funds. QUESTION 3: WHAT EFFECT WILL THE 2009 GAAP MODIFICATIONS HAVE ON BANKING ORGANIZATIONS' FINANCIAL POSITIONS, LENDING, AND ACTIVITIES? HOW WILL THE MODIFICATIONS IMPACT LENDING TYPICALLY FINANCED BY SECURITIZATION AND LENDING IN GENERAL? HOW MAY THE MODIFICATIONS AFFECT THE FINANCIAL MARKETS? WHAT PROPORTION OF THE
IMPACT IS RELATED TO REGULATORY CAPITAL REQUIREMENTS? COMMENTERS SHOULD PROVIDE SPECIFIC RESPONSES AND SUPPORTING DATA. If the regulatory capital standards being proposed are adopted in their current form, SunTrust's lending activities using its sponsored ABCP conduit could change materially As discussed further below, at a minimum, in order to earn competitive returns on capital, SunTrust would need to increase its pricing on customer ABCP conduit securitizations, which SunTrust believes would have the effect of driving most cusomers to banks that are not burdened with the additional capital that would be imposed. SunTrust is concerned that certain asset classes may be permanently

impacted as a result of the accounting changes. In particular, with consolidation likely for most trusts, it is not clear that an active securitization market will appear for worthwhile lending activities, such as jumbo mortgages. Generally, SunTrust did not operate an "originate to securitize" model, so much of the impact will not directly impact SunTrust's lending activities. However, the accounting changes coupled with the proposed regulatory changes may create illiquidity in some vital asset classes, such as prime jumbo mortgages. There are no longer aggregators to buy and securitize such loans and to securitize such mortgages and retain regulatory capital, either risk based or tier 1 leverage, is constraining for the life of these transactions. While selling the residual interests provides potential relief from both, it contrary to some of the regulatory reform proposals. With the added costs of FAS 5 Allowance for Loan Loss and the timing in recognizing the extinguishment of subordinated bonds, the combined effect will be to create less liquid balance sheets for banks and potential concentrations of credit risk. QUESTION 4: AS IS GENERALLY THE CASE WITH RESPECT TO CHANGES IN ACCOUNTING RULES, THE 2009 GAAP MODIFICATIONS WOULD IMMEDIATELY AFFECT BANKING ORGANIZATIONS' CAPITAL REQUIREMENTS. THE AGENCIES SPECIFICALLY REQUEST COMMENT ON THE IMPACT OF IMMEDIATE APPLICATION OF THE 2009 GAAP MODIFICATIONS ON THE REGULATORY CAPITAL REQUIREMENTS OF BANKING ORGANIZATIONS THAT WERE NOT INCLUDED IN THE SCAP. IN LIGHT OF THE POTENTIAL IMPACT AT THIS POINT IN THE ECONOMIC CYCLE OF THE 2009 GAAP MODIFICATIONS ON REGULATORY CAPITAL REQUIREMENTS, THE AGENCIES SOLICIT COMMENT ON WHETHER THERE ARE SIGNIFICANT COSTS AND BURDENS (OR BENEFITS) ASSOCIATED WITH IMMEDIATE APPLICATION OF THE 2009 GAAP MODIFICATIONS TO REGULATORY CAPITAL REQUIREMENTS. IF THERE ARE SIGNIFICANT COSTS AND BURDENS, OR OTHER RELEVANT CONSIDERATIONS, SHOULD THE AGENCIES CONSIDER A PHASE-IN OF THE CAPITAL REQUIREMENTS THAT WOULD RESULT FROM THE 2009 GAAP MODIFICATIONS? COMMENTERS SHOULD PROVIDE SPECIFIC AND DETAILED RATIONALES AND SUPPORTING EVIDENCE AND DATA TO SUPPORT THEIR POSITIONS. The effect of removing the Exclusion was not contemplated in SunTrust's SCAP calculations. Removing the Exclusion would have the effect of increasing the regulatory capital required for eligible undrawn liquidity facilities to its sponsored ABCP conduit ten-fold. Such an increase would make it economically difficult for SunTrust to administer its sponsored ABCP conduit in a way that allows it to provide competitive securitization financing for corporate customers. We believe the Exclusion should be maintained until such time as individual affected US banks are operating under applicable Basel II capital requirements.
QUESTION 5: THE AGENCIES REQUEST COMMENT ON ALL ASPECTS OF THIS PROPOSED RULE, INCLUDING THE PROPOSAL TO REMOVE THE EXCLUSION OF CONSOLIDATED ABCP PROGRAM ASSETS FROM RISK-WEIGHTED ASSETS UNDER THE RISK-BASED CAPITAL RULES, THE PROPOSED RESERVATION OF AUTHORITY PROVISIONS, AND THE REGULATORY CAPITAL TREATMENT THAT WOULD RESULT FROM THE 2009 GAAP MODIFICATIONS ABSENT CHANGES TO THE AGENCIES' REGULATORY CAPITAL REQUIREMENTS. Please see response to question 6 below. QUESTION 6: DOES THIS PROPOSAL RAISE COMPETITIVE EQUITY CONCERNS WITH RESPECT TO ACCOUNTING AND REGULATORY CAPITAL TREATMENTS IN OTHER JURISDICTIONS OR WITH RESPECT TO INTERNATIONAL ACCOUNTING STANDARDS? SunTrust'

s answers to questions 5 and 6 are interrelated, and therefore these questions are answered together. Asset-backed commercial paper ("ABCP") remains an important funding source for commercial and industrial companies, financial institutions and finance companies in today's market. ABCP conduits sponsored by US banks and their affiliates represent a significant portion of this market. The Agencies have acknowledged the importance of ABCP to the health of the financial system and the economy by their consistent and critical actions to maintain this market during the recent financial crisis. In our view, imposing disadvantageous capital requirements on US bank sponsors would be harmful to this market and counterintuitive given these recent actions and the substantial continuing importance of this market and the participation of ABCP conduits sponsored by US banks to this market. Due to timing differences between the adoption of Basel II capital requirements as between US banks and their foreign counterparts doing business in the US, nearly all foreign banking institutions sponsoring ABCP conduits in the US currently, or will in the very near future, allocate capital to their ABCP conduit liquidity and credit enhancement exposures based upon external credit ratings of these exposures or their internal assessment f the credit risk inherent in these exposures. In addition, "core" US banks will operate under the Basel II internal ratings-based approach more quickly than "opt in" banks such as SunTrust. Maintaining the existing provisions in the risk-based capital rules (i.e., excluding an ABCP conduit's assets from the assets of a sponsor bank consolidating such assets for accounting purposes and applying a 10% credit conversion factor to eligible liquidity facilities (collectively, the "Exclusion")) would permit banks such as SunTrust to allocate capital to ABCP exposures in amounts that should roughly equal the capital that their counterparts allocate to equivalent conduit exposures under the Basel II rules until such time as such banks are permitted to operate under these rules. ABCP conduits sponsored by banks such as SunTrust are often in competition for transactions with conduits sponsored by their foreign counterparts and "core" US banks. As is also the case in the syndicated bank loan market, ABCP conduits sponsored by banks such as SunTrust are often co-participants in larger transactions with these bank-sponsored conduits. Without a continuation of the Exclusion, or some other form of capital relief, until Basel II rules become fully operational in the US, US banks sponsoring conduits that are not operating under the Basel II capital rules will face substantial competitive disadvantages unless they choose to earn returns on regulatory capital for identical risks that are substantially lower than the returns earned by their bank sponsor counterparts operating under Basel II. While affected banks could attempt to invoke industry standard contractual rights to increase their pricing for affected deals as a result of regulatory changes imposing increased costs (so called "increased costs provisions") in an attempt to earn competitive returns, such an increase is uncompetitive as it would likely cause customers to refinance their transactions with ABCP conduits sponsored by banks that are not affected by the increase. Either such result would lower the earnings of these US banks relative to their competitors and could also put further pressure on the ABCP market as these US sponsors determine whether to sharply curtail this business unless and until Basel II capital rules allow them to earn competitive returns. Such a result could also have the unintended consequence of driving such US banks to deploy capital to pursue higher-yielding but riskier opportunities in order to maintain existing returns. SunTrust agrees that the operation of certain portions of the ABCP market contributed to some of the concerns that led to the financial crisis. SunTrust notes however that the market, with the help of the regulators, has largely self-corrected with respect to these issues. Bank sponsored ABCP conduits, other than multi-seller conduits that primarily finance customer

assets, have largely exited the market. To the extent that they have not, SunTrust agrees that providing continued capital relief for these programs and structures would not be appropriate. Multi-seller conduits that fund customer assets on the other hand, generally fared well throughout the crisis after dealing with some contagion from the issues surrounding other conduit and structure types that affected liquidity but did not significantly impair the ability to ultimately repay the ABCP or liquidity facilities supporting this ABCP from customer assets and other available credit facilities. In addition, since SunTrust first became the sponsor of an ABCP conduit in 1999, SunTrust has never suffered a credit loss from a conduit-funded customer securitization transaction. Using an ABCP conduit as a funding source allows the conduit (and thus the sponsor bank for its supporting exposures) to obtain high quality collateral for its exposures. Other options available to banks to fund their customers would lack the structural protections inherent in a securitization, and may not for competitive purposes be structured to the same credit quality as the ABCP conduit securitization exposure. Also, well structured ABCP conduit customer securitization transactions of all types impose robust asset reporting and monitoring features. It is for such well structured multi-seller customer exposures that temporary capital relief should be provided. There is a seeming incongruity in the proposed changes in the capital rules compared to both certain well-structured transactions under current rules and the Basel II capital rules. By virtue of market standards and rating agency requirements multi-seller ABCP conduit customer securitization transactions are generally structured to at least an "A" rating level. Qualifying "A" rated securities are assigned a 50% risk weight under current capital rules. "A" ratings level senior granular liquidity facilities would attract 96 basis points of capital under the Basel II internal assessment approach.
Requiring 800 basis points capitl against these exposures prior to implementation of Basel II imposes much greater capital than is warranted based upon the Agencies' own views of what this capital should be under other circumstances. The effect of the proposed capital increase would result in an increase in the capital required on "A" rating level eligible liquidity facilities from 80 basis points today to 800 basis points under the proposed rules only to revert downward to 96 basis points under the Basel II internal assessment approach. Requiring that capital for these liquidity facilities be calculated at 800 basis points during the transitional floor period to Basel II could substantially reduce the capital reduction benefit a US bank would otherwise appropriately realize during this period. SunTrust would therefore respectfully suggest that the regulators continue the Exclusion, but would see the wisdom in narrowing its availability to customer exposures to multi-seller ABCP conduits. In determining an appropriate definition of an ABCP conduit eligible for the Exclusion in the future, SunTrust notes that the current definition of "asset backed commercial paper program" for purposes of these rules requires only that the conduit issue more that 50% of its debt securities as commercial paper. The breadth of this definition permitted non-traditional bank-sponsored ABCP conduits to benefit from the Exclusion and was far more expansive than is necessary to continue the Exclusion for traditional multi-seller ABCP conduits that primarily fund customer assets. QUESTION 8:
SERVICERS OF SECURITIZED RESIDENTIAL MORTGAGES WHO PARTICIPATE IN THE TREASURY'
S MAKING HOME AFFORDABLE PROGRAM (MHAP) RECEIVE CERTAIN INCENTIVE PAYMENTS IN
CONNECTION WITH LOANS MODIFIED UNDER THE PROGRAM. IF A STRUCTURE MUST BE CONSOLIDATED SOLELY DUE TO LOAN MODIFICATIONS UNDER MHAP, SHOULD THESE ASSETS
BE INCLUDED IN THE LEVERAGE AND RISK-BASED CAPITAL REQUIREMENTS?

COMMENTERS
SHOULD SPECIFY THE RATIONALE FOR AN ALTERNATIVE TREATMENT AND WHAT AN APPROPRIATE ALTERNATIVE CAPITAL REQUIREMENT WOULD BE. SunTrust believes that, generally, the incentive payment under MHAP will not be a determining factor in the determination of whether a servicer will consolidate a securitization structure. However, it is possible that any structure with significant modifications could cause the servicer to receive benefits that could be deemed to be 'potentially significant', although SunTrust believes this interpretation is unlikely. In such situations, if the primary servicer who makes these modification decisions and receives these payments cannot be kicked out by the special servicer, then the primary servicer may need to consolidate the structure. QUESTION 10: WILL SECURITIZED LOANS THAT REMAIN ON THE BALANCE SHEET BE SUBJECTED TO THE SAME ALLL PROVISIONING PROCESS, INCLUDING APPLICABLE
LOSS RATES, AS SIMILAR LOANS THAT ARE NOT SECURITIZED? IF THE ANSWER IS NO, PLEASE
EXPLAIN. IF THE ANSWER IS YES, HOW WOULD BANKING ORGANIZATIONS REFLECT THE BENEFITS OF RISK SHARING IF INVESTORS IN SECURITIZED, ON-BALANCE SHEET LOANS ABSORB REALIZED CREDIT LOSSES? COMMENTERS SHOULD PROVIDE QUANTIFICATION OF SUCH BENEFITS, AND ANY OTHER EFFECTS OF LOSS SHARING, WHEREVER POSSIBLE. ADDITIONALLY, ARE THERE POLICY ALTERNATIVES TO ADDRESS ANY UNIQUE CHALLENGES THE PENDING CHANGE IN ACCOUNTING STANDARDS PRESENT WITH REGARD TO THE ALLL PROVISIONING PROCESS INCLUDING, FOR EXAMPLE, THE CURRENT CONSTRAINT ON THE AMOUNT OF PROVISIONS THAT ARE INCLUDIBLE IN TIER 2 CAPITAL? COMMENTERS SHOULD
PROVIDE QUANTIFICATION OF THE EFFECTS OF THE CURRENT LIMITS ON THE INCLUDIBILITY OF PROVISIONS IN TIER 2 CAPITAL AND THE EXTENT TO WHICH THE 2009 GAAP MODIFICATIONS AND THE CHANGES IN REGULATORY CAPITAL REQUIREMENTS PROPOSED
IN THIS NPR EFFECT THOSE LIMITS. Bank organizations will not be able to reflect the benefits of risk sharing with investors under the current GAAP accounting model. The ALLL will be calculated using similar provisioning and estimation processes as loans in the portfolio. Assets that have insurance, guarantees and credit enhancement that are considered integral or related to assets that are being consolidated will be considered in the determination of on-balance allowance for loan losses, with the allowance reflecting the impact of such support. However, in securitizations where the assets will be used to pay liabilities that have recourse limited to such assets, risk to the sponsoring entity with the power is limited since the liabilities with recourse share in the risk. This limitation of risk cannot be reflected in the ALLL, unless the company decides to elect the fair value option on both the assets and liabilities of such a structure. There could be other similar instances such as when losses are allocated first to the interest-only strip or spread in a securitization. The sponsoring entity could have loss sharing benefits if such an interest-only asset that absorbs losses is ownedby a third-party other than the sponsoring entity which is consolidating the structure, however such benefits will not be reflected in the ALLL. Thank you for this opportunity to comment on the proposed regulations in the NPR. Should you have any questions regarding SunTrust's responses, please feel free to contact me at (404) 581 1594. Sincerely, Jorge Arrieta