SVB›Financial Group

June 8, 2012

Office of the Comptroller of the Currency
250 E Street, S.W., Mail Stop 2-3
Washington, DC 20219
Submitted Via Email To: regs.comments@occ.treas.gov

Board or Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Jennifer J. Johnson, Secretary
Submitted Online Via www.regulations.gov

Robert E. Feldman
Executive Secretary
Attn: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Submitted Online Via www.regulations.gov

***Re:* Proposed Guidance on Leveraged Lending** (Docket Nos. OCC- 2011-0028 & OP-1439)

Dear Ladies and Gentlemen:

SVB Financial Group ("*SVB*") is pleased to submit these comments in response to the Agencies on the Proposed Guidance on Leveraged Lending ("Proposed Guidance" or "Proposal")[1]. At SVB, we have a strong interest in many aspects of the Proposed Guidance and focus our comments here on three major areas: (1) the Proposed Guidance seems intended to address a problem that most banks, including SVB, do not present; (2) the Proposal adds to an enormous new regulatory burden that banks already face; (3) the Proposal should be revised to define leveraged lending by focusing more on actual risk. For issues that go beyond the three that we raise here, we fully support and join in the comments submitted by the Loan Syndications and Trading Association ("LSTA") and the American Bankers Association ("ABA") in their joint letter of June 8, 2012.

[1] Proposed Guidance on Leveraged Lending, 77 Fed. Reg. 19,417 (proposed March 30, 2012).

I. Overview

At SVB we believe very strongly in the importance of identifying and mitigating risk on an enterprise wide basis, and we applaud the Agencies for continuing to focus on the need for financial institutions to provide leveraged finance in a safe and sound manner. We also support the Agencies' fundamental approach of issuing guidance, rather than issuing rules in this area. The Proposal provides criteria that can be applied across a variety of different circumstances. The SVB business model is unique, and working with our primary regulator, we have developed a process that works for us, our clients, our regulators and others in the area of leveraged lending. Rather than applying a one-size-fits-all regulatory approach, the Proposed Guidance could permit a more tailored application of regulatory principles. Accordingly, we express concerns about specific provisions of the Proposal, but we strongly support the Agencies' decision to apply guidance.

Leveraged lending fulfills a necessary and important purpose in providing credit to deserving businesses. In the high-growth technology and innovation sector we serve, leveraged finance is an important component of economic growth and job creation. We support and agree with the Proposed Guidance's conclusion that:

> *Leveraged finance is an important type of financing for the economy, and the banking industry plays an integral role in making credit available and syndicating that credit to investors. Institutions should ensure that they do not heighten risks by originating poorly underwritten deals that find their way into a wide variety of investment instruments*[2].

It is because we believe that leveraged financing is important to the economy that we express concern about the regulatory burden that <u>may</u> be present in the Proposal. We are a mid-size institution, and leveraged lending is a relatively modest part of our overall portfolio. Like all other financial institutions, we are facing an extraordinary increase in the cumulative regulatory burden that we must meet. At some point, that burden will reduce our ability to extend credit, and that inability to extend credit will not be due to substantive credit decisions; it will be due to the cost of regulations. The Proposed Guidance may result in extensive costs that bring institutions closer to the point where credit decisions are driven by the question of how to allocate resources made scarce by unnecessary regulations.

II. Background on SVB Financial Group

SVB is a publicly traded bank and financial holding company. Our principal subsidiary, Silicon Valley Bank, is a California-chartered bank and a member of the Federal Reserve System. As of December 31, 2011, SVB had total assets of $20 billion.

We are the premier provider of financial services for start-up and growing companies in the technology, life science, and clean technology sectors, as well as the venture capital

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[2] Proposed Guidance at 19,424.

funds that finance their growth. Over nearly thirty years, we have become the most respected bank serving the technology industry. We have developed a comprehensive array of banking products and services specifically tailored to meet our clients' needs at every stage of their growth. Today, we serve roughly half of the venture-backed high growth start-ups across the United States and well over half of the venture capital firms, working through 27 U.S. offices and international offices located in China, India, Israel and the United Kingdom.

While we have grown significantly over the last few years, [3] we maintain the highest standards for credit quality and capital and liquidity management. Our credit quality throughout the recent downturn was comparable to peer institutions at its worst and better than most peers through the recession's trough.[4] Our ability to lend actively to our clients while maintaining strong credit quality reflects our commitment to provide the credit our clients need to grow, our deep understanding of the markets we serve, and the fundamental strength of the technology sector. As one measure of our performance, Forbes Magazine recently listed SVB as one of the ten best performing banks in the United States, for the third year in a row.[5]

SVB maintains a portfolio of leveraged loans that reflects our focus on growing technology and life science companies. The portfolio is generally maintained at approximately $350 million and is defined, tracked and reported quarterly according to FFIEC 031 standards. The vast majority of the leveraged loans are sourced and managed by a dedicated leveraged lending team that is highly skilled at underwriting and monitoring leveraged loans and has strong relationships with a select number of equity sponsors some of which are SVB clients. The leveraged lending team has been in place for a number of years and has maintained an excellent credit track record. Most of our leveraged loans are either sole bank or smaller syndicated or club transactions, and we have de-emphasized the larger, widely syndicated, more aggressive loan structured credits. We monitor our leveraged loan portfolio quarterly and review each credit annually. As many of the leveraged loans are to companies which were clients at an earlier stage, the leveraged lending team is an important component of our strategy in helping our technology and life science clients grow.

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[3] Loan amounts are period-end balances net of unearned income as of December 31, 2007 and December 31, 2011. The loan growth comparison is based on an SVB analysis, using data from the Federal Financial Institutions Examination Council ("FFIEC"), which showed that between the third quarter of 2009 and the third quarter of 2011 SVB grew its loan portfolio by 36% while peer institutions, on average, grew their loan portfolios by 11%.

[4] SVB analysis based on FFIEC data.

[5] "America's Best and Worst Banks," Forbes Magazine, 2009, 2010, 2011. Forbes' rankings are based on institutions' financial performance (return on equity), credit quality (non-performing loans as a percent of total loans and loan loss reserves as a percent of non-performing loans), and capital/liquidity strength (tier 1 ratio and leverage ratio).

III. SVB's Leveraged Lending Portfolio Presents None of the Risks Identified as the Purpose of the Proposed Guidance

In the "Purpose" section of the Proposal, the Agencies state the reason they believe new guidance is required to update the existing 2001 Guidelines.[6] The Proposal states:

> *[T]he pipeline of aggressively priced and structured commitments has grown rapidly [since 2001]. Further, management information systems (MIS) at some institutions have proven less than satisfactory in accurately aggregating exposures on a timely basis, and many institutions have found themselves holding large pipelines of higher-risk commitments at a time when buyer demand for risky assets diminished significantly.*
>
> *In light of these changes, the Agencies have decided to replace the 2001 Guidance with new leveraged finance guidance.*

Fundamentally, SVB does not put itself at risk of holding large pipelines of leveraged loan commitments. We operate a leveraged loan portfolio within strict limits that are not aggressive by prudent industry standards. As noted above, most of our leveraged loans are either sole bank or smaller syndicated or club transactions. As a matter of policy and practice, we have generally avoided the larger, widely syndicated, more aggressive loan structured credits. As to SVB, the Proposal's concern about the consequences that result when demand for "risky assets" diminishes is misplaced. Leveraged loans provide an important service to our clients, and when conducted as part of larger credit portfolio and process, we believe they are entirely consistent with safety and soundness principles and with the prudent operations of a financial institution.

From our standpoint, the new Proposed Guidelines would not result in improved lending operations or increased safety and soundness for our institution. The Proposed Guidelines appear designed to solve a problem that most financial institutions, including SVB, do not face. In this way, the Proposal provides little benefit to either the public or consumers.

IV. The Proposed Guidance Adds to an Enormous New Aggregate Regulatory Burden that Disproportionately Harms Mid-Size Institutions

The cost of complying with the Proposed Guidance appears to be substantial. Mid-size and smaller institutions already face a disproportionate burden in meeting the compliance obligations imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The Dodd-Frank Act consists of 2,319 pages of text, and it requires a minimum of nearly 400 new rules and 87 new studies. This Proposed Guidance is not required by the Dodd-Frank Act, but it is another layer of regulation with which institutions must comply. Large institutions have the resources to meet the additional compliance obligations. Smaller and mid-size institutions must make decisions about where to get the resources to apply to meeting regulatory obligations. Some of those resources necessarily come from providing banking services to the

[6] SR 01-9, "Interagency Guidance on Leveraged Financing," April 17, 2001, OCC Bulletin 2001-8, FDIC Press Release PR-28-2001.

public. The result will be fewer loans and less credit for consumers and businesses. It also means that the government will strengthen the competitive advantage given to "too big to fail" large institutions and that those institutions will continue to grow.

We recognize that the Proposal contains guidance and is not a proposed Rule, and we appreciate the Agencies' analysis under the Regulatory Flexibility Act. It is difficult to analyze the precise regulatory demands of the Proposed Guidance because it is guidance. Much of the compliance burden appears to rest within the discretion of regulators and examiners. While this provides flexibility, it does not permit certainty. In today's environment of increased regulatory burdens, the lack of certainty makes it more difficult to plan.

The Proposed Guidance is likely to result in substantially increased compliance obligations. The ABA/LSTA Joint Letter estimates that one-time set ups of the MIS systems required by this Proposal would require 5,000-10,000 hours per institution. The Agencies' estimates of the average time required for an institution to comply with the Proposed Guidance seem to be low by orders of magnitude, even given that none of us know how the Proposed Guidance will play out in practice.

At SVB, we operate a constrained leveraged loan practice that is not a large portion of our overall credit portfolio. Even given that, we anticipate the MIS and other compliance demands may require something near the 5,000 hour estimate. Changing our existing MIS systems to comply with the new guidance will take an extended period of time, particularly when these changes rest on top of the numerous systems changes required by the Dodd-Frank Act. It is essential that once new requirements are identified and clarified, regulators provide for a substantial transition period. It may require 18-24 months or more for an institution like ours to design, build and operate the systems changes contemplated in the Proposal.

We agree strongly with the Agencies' general statement that smaller institutions should "discuss with their primary regulatory implementation of cost-effective controls appropriate for the complexity of their exposures and activities."[7] That principle should be explicitly extended to mid-size institutions, like SVB, so that we can develop a tailored response that avoids the unnecessary negative consequences that will follow such a large resource commitment to compliance.

V. The Definition of Leveraged Lending Should Be Revised to Reflect Risk More Accurately

We agree with the Agencies' assertion that financial institutions use a variety of definitions of leveraged finance and that flexibility in the definition is important. We support the use of criteria that may be used to define leveraged finance, but the definition ultimately should focus on the risk presented by the loan. Safe and sound underwriting decisions require qualitative judgments about a complex series of factors that provide a complete assessment of risk. These judgments will be specific to the practices and portfolios of individual banks and cannot be reduced to purely quantitative criteria.

[7] Proposed Guidance at 19,419.

As we read the Proposal, it seems to treat all leveraged loans as though they carry the same risk, regardless of the risk rating. The Proposal does not seem to distinguish between, for example, a CRR3 credit and a CRR5 credit. That is a distinction with a difference, and the Proposal should recognize that those different rated loans should require different levels of monitoring and reporting scrutiny. Moreover, the Proposal should be clarified to state that the character of loans can change over time, and loans can migrate out of the leveraged loan category. As a loan is repaid and/or EBITDA grows, leverage may be reduced below the leverage definition determined by the bank, such as 3x SFD/EBITDA and/or 4x TFD/EBITDA, and that loan should not be forever considered highly leveraged when it no longer presents such a risk.

VI. Conclusion

On behalf of SVB, I thank you for your willingness to consider our concerns and suggestions for improvements to the Proposed Guidance on Leveraged Lending. Please contact me if we may provide any more information or be of help in your consideration of this matter.

Sincerely,

Michael Lempres
Assistant General Counsel & Practice Head
SVB Financial Group
Direct: (650) 320-1142
Email: mlempres@svb.com