October 11, 2012

Via Electronic Mail

Office of the Comptroller of the Currency ("OCC")
250 E Street, S.W.
Mail Stop 2-3
Washington, D.C. 20219
E-mail: regs.comments@occ.treas.gov
Re: OCC Docket ID OCC-2012-0008 and OCC Docket ID OCC-2012-0009

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System ("Board")
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
regs.comments@federalreserve.gov
Re: Docket No.

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation ("FDIC")
550 17th Street, N.W.
Washington, D.C. 20429
E-mail: comments@FDIC.gov
Re: FDIC RIN

Ladies and Gentlemen,

The undersigned would like to take this opportunity to provide comments to the OCC, the Board and the FDIC (collectively, the "Agencies") with respect to the notices of proposed rulemaking that revise the regulatory capital rules (the NPR); specifically regarding the risk weighting of other assets, such as gold and other precious metals.

In the NPR, the Agencies propose to apply a zero percent risk-weight to:

> *cash owned and held in all of a banking organization's offices or in transit; gold bullion held in the banking organization's own vaults, or held in another depository institution's vaults on an allocated basis to the extent gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no*

assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions

1. Support for Zero Risk-Weighting for Gold. This commentator supports a zero-risk-weighting for gold bullion held by a banking organization. While the NPR offers no specific basis for such a risk-weighting, a zero-risk-weighting is appropriate for assets such as gold because gold has no counterparty risk, provided that the banking institution holds the gold beyond any possessory or other third party claims (addressed below at paragraph (4)). Gold is money; more so than even federal reserve notes or clad coinage which are often referred to as "cash."

2. Zero Risk-Weighting Should Also Be Applied to Silver. The same justification for making gold a zero-risk-weight asset apply even more strongly to silver. Silver has been a monetary metal at least since Biblical times. See, for example, Matthew 27:3 ("When Judas, who had betrayed him, saw that Jesus was condemned, he was seized with remorse and returned the thirty silver coins to the chief priests and the elders.") Silver was widely used as money in the American colonies, and was recognized as money by Congress as early as the Coinage Act of 1792, which defined a "dollar" as a certain amount of gold or silver. Further, the U.S. mint produced silver coinage for circulation as recently as 1969 (40% silver content half dollars) while gold coins for circulation were last produced in 1933.

Curiously, the NPR provides no rational basis for applying a zero risk-weight to paper federal reserve notes and clad coinage (coins made from non-precious metals), and gold, but not to silver. Treating silver on an equal basis as gold would be consistent with Article I, Section 10 of the U.S. Constitution which contemplated gold and silver as the only money or "cash," and which put silver on an equal footing as gold when it states that "No State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts . . ." and would be in accord with the Founders' intent. See, for example, Federalist Papers No. 44 (discussing Article I, Section 10 with gold and silver referenced equally as money, and elevating gold and silver as superior forms of money to what we now call "cash" by prohibiting the issuance of "bills of credit")

3. Zero Risk-Weighting Should Also Be Applied to Platinum and Palladium. The justification for making gold and silver zero-risk-weight assets also applies to other monetary or precious metals such as platinum and palladium. While these metals have less historic use as money, they nevertheless have no counterparty risk provided that the banking institution holds them beyond any possessory or other third party claims (addressed below at paragraph (4)). Further, it is noteworthy that platinum and/or palladium bullion coins have been produces by the mint of several countries for a number of years, including the U.S. (platinum since 1997), Canada (platinum since 1988 and palladium from 2005 to 2009), Australia (platinum since 1988 and palladium from 1995 to 1997), the Soviet Union and Russian Federation (platinum since 1977 and palladium from 1988 to 1995); France (palladium in 1987); Portugal (palladium 1987 to 1990), and China (platinum since 1979 and palladium in 2004 to 2005).

The proposed rules should be revised to change all references to "gold bullion" to "precious metals," and "precious metals" should be defined to mean gold, silver, platinum and palladium.

This will have the effect of treating other precious metals consistent with gold in the context of other aspects of the proposed rules, such as collateral requirements.

4. Conditions for Zero Risk-Weighting. The NPR limits the zero risk-weighting to gold "bullion held in the banking organization's own vaults, or held in another depository institution's vaults on an allocated basis to the extent gold bullion assets are offset by gold bullion liabilities". As explained below, this language narrows the universe of gold bullion qualifying for a zero risk-weighting substantially, and no reasonable basis is proffered for such restrictions.

For example, to qualify for a zero risk-weighting, the gold must be in a vault. This means that gold in transit would appear not qualify for a zero risk-weighting. This is in contrast to "cash" which qualifies for a zero risk weighing while in transit. While it may be prudent in most circumstances for gold to be kept in a vault, existing supervision and regulation of operational practices would seem to be adequate and the fact that gold may occasionally be in transit should not be grounds to impose a higher risk-weighting, especially when "cash" which is in transit is not subject to a higher risk-weighting and especially when no reasonable basis for a higher risk-weighting is stated. In other words, there is no reason to disqualify gold and other precious metals in transit from a zero risk-weighting that does not apply equally to cash.

Also, the phrase "*or held in another depository institution's* ***vaults on an allocated basis to the extent gold bullion assets are offset by gold bullion liabilities***" should be clarified; gold bullion and other precious metals should not lose its zero risk-weighting based on how it is held; rather, any liabilities which might arise from the manner in which it is held should be netted against the value of the asset. This is because gold bullion is often held in special depositaries. These vaults may or may not be owned by the banking organization, and may be owned by a third-party which itself is not a banking institution (Brink's for example). While storing gold in a third party value may impose additional risks, doing so may also reduce risks; one cannot make blanket assertions. Therefore, zero-risk-weighting should not be limited to banking organizations that maintain their own vaults, and certainly the Agencies have not made a finding of fact that delegating precious metal storage to a non-bank depositary institution is per se imprudent. Instead, zero risk-weighting should be accorded to gold and other precious metals except to the extent they are subject to third party claims, such as being in a pooled account rather than held "on an allocated basis" or subject to offsetting liabilities such as swaps or forward purchase agreements. In other words, what is appropriate is to impose a greater risk-weighting if the manner of storage or ownership subjects the precious metal to additional claims, but such greater risk-weighting should apply *only to the extent of* such claims or liabilities. This commentator supports a zero risk weight only for the amount of such bullion net of potential claims.

In this respect, the NPR includes language includes the following language (emphasis added): *gold bullion held in the banking organization's own vaults, or held in another depository institution's vaults on an allocated basis* ***to the extent gold bullion assets are offset by gold bullion liabilities . . .*** " This is a cumbersome choice of words. Where gold is held subject to liabilities, it would be appropriate for only the amount of gold net of such liabilities to be accorded a zero risk-weight. If this was intended, then the final rule ought to so clarify. As worded, the language could be interpreted absurdly to mean that one applies a zero risk-weight to the amount of gold equal to the offsetting gold liabilities, rather than to the amount by which the gold exceeds any such offsetting liabilities.

5. Cost-Benefit Analysis of Unfavorable Treatment of Non-Gold Precious Metals. The Agencies should compare the costs of treating precious metals such as silver, platinum, and palladium different from how the Agencies treat gold. The Agencies have not set forth any rational basis for treating other precious metals differently. If the Agencies do not implicate the changes recommended in this latter (namely to apply a zero risk weight also to silver, platinum, and palladium), then the Agencies should (1) identify any benefit from treating silver, platinum, and palladium less favorably, if any, and compare any such benefit to (2) the estimated additional costs imposed upon banking institutions as a result of having to hold additional capital to support such assets or alternative collateral as a result of higher risk-weightings under the proposed rules.

Sincerely,

Donald Rickles