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12 CFR Parts 3, 5, 6, 165, 167
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12 CFR Parts 208, 217, and 225
Regulations H, Q, and Y;
Docket No. R-1442; RIN 7100-AD 87

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12 CFR Parts 324 and 325; RIN 3064-AD95; "FDIC" and "RIN 3064-AD 96"; RIN 3064–AD97

Re: 008- **Comment To/For Docket Name**: **Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action**

009- Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements - I will include this shortly related to Joint Regulatory Flexibility Analysis 30Aug12 published in the Federal Register 63763 Vol. 77, No. 201, October 17, 2012 due on or before 16 Nov12

0010- Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule

Guide: Introduction pgs 2-10; Comment to FIL-25/NPR -008 pgs 10-25; (End) Notes pgs 25-49.

Dear Ma'am(s)/Sir(s):

Thank you, many THANKS for accepting and using my comments regarding the above referenced Notice of Proposed Rule-marking ("NPR"(s)) of Proposed Regulatory Capital Rules including implementation of Basel III from the Basel Committee on Banking Supervision ("BCBS") of the Bank for International Settlements, a multilateral or supra-national financial institution based in Basel, Switzerland.

The 9 November 2012 delaying implementing Basel III across the US banking system, versus enforcing our own regulatory framework including Prompt Corrective Action, alerts and at the very least reminds us, **certifies to us that we've got sufficient regulation we need to enforce and have needed to enforce (See Note 12b) pg 42 GAO Study on PCA "What the GAO Found"). This is the issue. And adopted Basel accords become a non- issue, and thus is removed and REJECTED from consideration.**

Mostly political reasons exist that the Fed would want to use Basel to cover for failure to enforce sufficient, robust regulation we have and have had which is legally and more than sufficiently useable against unsafe and unsound banking practices. Failing to enforce what we have while attempting to override it with foreign interests has its own lurch into more lawless, outlaw ad hoc, capricious self dealings all of which are a part of that which has masqueraded as one of our regulators or a regulator that abdicated its role to regulate. Politics as a supervisor has interfered with regulation and enforcement that in the past our supervisors and banking regulators usually competently had practiced.

Basel Accords are far more than the camel's nose in the tent; importing any of that in any way we need to reject. Many of the G20 countries go without a deposit insurance fund, at the most simple level their regulators, economic, and thus financial frameworks with their capital ratios aren't consistently as high and as monitored generally in the United States.

Perhaps for US regulators, this step with these NPRs was a way to attempt to convince authoritative bodies like Congress and the G20, that our financial system will reach 'global regulation' and maintain exemplary levels of compliance, or perhaps our regulators are ambitious. If it's the former rather than the later, the former is noble if adopting Basel III and what the NPRs proposed were the best thing for us.

I do not think that is the case however, and suggest rejecting what I perceive is the Bank for International Settlements' insult to us and our financial system, or its ambition to serve as our regulator and 'dominate' us if it could. The BIS' Basel Accords, seem to co-opt our regulators and our Fed. BCBS is an insolent attempt to bully pulpit us and by way of flawed multilateral agreements and multilateralism such as the G20 Transatlantic Agreements, have co-opted our 1%, who in turn have our policy makers, which then have our regulators co-opted into further hamstringing our financial and depository system with unnecessary regulation when what we needed to do was to apply what we have.

Considering that for the "Advanced Approach" Banks, which are our largest financial institutions, that the Fed has been asking for and requiring stress testing and capital plans, indicates the Fed has sufficient power to discipline and enforce against systemic abuse by prohibiting payment of dividends for example to help maintain or improve capital adequacy at these very large, 'systemically important' financial institutions. This including actions such as requiring capital restoration plans already exited even before 1991 and Prompt Corrective action in Federal Statute and never needed Basel. Basel doesn't solve if PCA isn't perceived to be enough or sufficient when that regulation and enforcement are properly applied (and there were times when it was and times when it was not or applied permissively). Basel fails to deter the unsafe and unsound banking practices that our properly and appropriately enforcing our regulatory framework itself would solve.

So why had we allowed or would we allow ourselves to be either played for fools, or cede our regulatory framework to foreign organizations both unaccountable to the American people and influenced by foreign interests in direct competition and self interests against those of the American Voters and the American financial system? This is a key question.

Introduction: (Note 1)
My comments do not reflect those of colleagues regarding the referenced matters for which you have issued these NPRs and have engaged in the public due process to obtain important public feedback on the matters published in the NPRs. My interactions with the regulators and the Fed have given me the general impression that their work is, or attempts to be bona fide, sincere, and professional to maintain the commercial financial system framework in which our financial (including depository) institutions in the US are to operate. In the face of many evident and subtle conflicting and absurd political pressures, you have had to perform your roles as public servants over our depository and associated financial system. Thank you for doing what you've attempted to do - your best.

My comments however DO contribute to determining if what is published in the NPRs is sufficient in their scope to enable those commenting from providing the most appropriate, fitting comment. The NPRs make assumptions Basel Accords in Basel III is already adopted albeit delayed. This also shows –all along-- the power of the Fed and the banking regulators to have properly supervised and regulated, unless in fact BASEL III is not only delayed, but the Fed doesn't have the full power to enforce a foreign political banking 'framework' but attempts to misrepresent that it does and needs public comment to attempt to obtain buy-in, and thus some force for foreign/multilateral political interests against the US financial system.

As it were, thank you for accepting this comment letter for your use, and to add to the public due process to determine merits for acceptance and use of Basel Accords and a great deal of what is proposed in these NPRs.
To the contrary, I urge among other things that we reject adopting Basel III and other forms of it now in finalized rules.
We also MUST restore our robust, thorough examinations process for ALL depository AND financial institutions.

My impression is that Basel is a very political, petit quant-technocrat ploy, an ambitious, officious, well-crafted, detailed again ploy to beguile you and many others who believe our regulation framework failed, when in fact our financial regulatory framework was not applied, nor administered properly or enforced appropriately.

Those attempting to obtain adoption of Basel also want people to think that we need foreign regulation. Again, quite the contrary to THAT!

By no means will Basel accords rectify the problems produced from failing to enforce our regulatory framework. Basel is a foreign attempt to facilitate a globalized financial framework, and in its nets, snagging the US financial system, that given our Fed's failure to enforce our functional successful regulatory framework, or it and politics to thwart the US banking regulators' efforts to enforce our own, this was perpetrated to attempt to serve political purposes to represent argument for Basel over our financial system and our own regulatory framework.

There is a difference between not having the framework, versus the thwarting or hamstringing or circumvention of an effective, thorough framework fully in place.

Research of FDIC website and examination manuals and difficult to find OTS thrift information is showing the later is the case to confirm the thwarting and impeding of what is our robust, effective regulatory framework with associated enforcement action when judiciously applied with appropriate timing.

We have effective, robust regulation that can be required to be accountable. As a result, with regard to the Basel Committee, which is a committee of a private organization, not accountable to the American voters or American government, is not a body or its rules that we need. Without accountability to the voters/taxpayers and our government, Basel is ad hoc, foreign construct for our financial system. Its Accords similarly are a deleterious attempt towards a global, foreign paradigm for our financial system. In that the International Swaps and derivatives Association and European interests also have the power to override Basel, this represents conflicts of interest and abuse for the US financial system. In a permissive way with Basel and ISDA, there exists their 'rules' and interests fostering moral hazard with and for the largest US Financial institutions which are ISDA members, because of the nature of their operating strategy including writing, using and trading Over The Counter "OTC" derivatives contracts.

Pressure and conflicts with the administrative agents like the Fed, have facilitated and enabled moral hazard by bank management. This is demonstrated in huge degree of agency discretion, the power to engage in unsafe and unsound banking practices, or with little restraint of unsafe and unsound banking practices.

The writing and proliferation of virtually all OTC derivatives contracts inflates their balance sheets. As publicly traded companies according to US GAAP, these instruments have to be fair valued, although they do not have to be, because management can decide these still are contingent items, and not trade them. Management could value them based on Lower of Cost or Market or Amortized Cost if that value exists, or a value based on likelihood of exercise, although standard options contracts exchange clear and have a market value.

While enjoying preemption power over the banking regulators in part because it enjoys the perception that it is a banking and financial regulator, the Fed like BIS and Basel is a private organization not subject to the voters or the government except at its Board of Governors level. As form of a mix of commerce and politics, the Fed is more intertwined with politics, than enforcing and maintaining a sound banking and financial system. Enjoying prestige and conflicts, courting and currying favor with corporates, domestic politicians, and foreign politicians but definitely their financial counterparts, give to that its loyalty, however against the voters' interests. Corporate senior management and bankers sit on its regional boards, such as GE sitting on the board of the NY Fed.

As a result, those and foreign interests the Fed favors over reasons to enforce regulation such as Prompt Corrective Action which have been a part of US federal statute since at least 1991 and the associated disciplinary actions to deter problems in the financial and banking system that would hurt capital adequacy.

In any event, agency discretion with the proliferation of writing, trading and then the 'fair valuing' of the OTC derivatives contracts to the degree that we see and have seen, is agency self dealing and abuse. Even when used to hedge, these are offsetting Balance Sheet items are/serve as a poor match that also assumes using Fair Market Value to obtain the off-setting amount that unless the hedging instrument itself has monthly loan-like cash flows, also has NON CASH Income Statement impact, gaming earnings but not producing operating CASH FLOW.

This then has these financial institutions needing to obtain Cash Flow from 'financings' or 'Investing' rather than being self-sustaining from their operating activities.

The Fed's political expedience and permissiveness of unsafe and unsound banking practices evidences itself in the Balance Sheets and Cash Flow statements of the largest financial institutions, specifically the ISDA members many of which have to borrow in order to have sufficient liquidity to avoid or abstain from using depositor money, or rely on investor infusions such as trust preferred capital instruments.

Basel III's requisite for more, higher quality liquidity is its attempt to solve for the liquidity problem in the ISDA members, however, assuming there is sufficient, high quality liquidity in the financial markets and US and foreign economies of the largest OECD countries, is also an extremely flawed assumption for the following reason. Those higher quality instruments rather than borrowings, before and in times of crisis for sufficient liquidity would have all these financial institutions buying and inventorying sovereign debt rather than engaging in customary banking activities such as trading, and in the case of pre-Glass Steagall, underwriting debt and equity.

By no means will Basel accords rectify the problems produced from failing to properly and appropriately enforce the US regulatory framework. Basel is a clumsy, foreign attempt to facilitate a globalized financial framework that given our Fed's failure to enforce our functional, successful regulatory framework services political purposes contrary to those of the voters and the commercial health of the US economy to attempt to represent argument for Basel over our own.

OTC derivatives contract proliferation activities and instruments are unsafe and unsound banking practices which also are agency self-dealing/abuse. Supporting these instruments and their proliferation/inflation of the Balance Sheets, also gives Basel a form of bone-of-the-bone/flesh-of-the-flesh symbiosis with what champions these unsafe and unsound banking practices and agency self-dealing/abuse.

The multinational ISDA trade association and its members also override Basel and exercises forms of de facto power over it. Notice that Basel doesn't say to remove government backstops from ISDA master netting agreements, in order deter moral hazard and to spur improved capitalization and more cautious banking practices at agency of the largest ISDA members in the US and Europe, with German banks among the largest of the ISDA members. German banks were significantly advantaged by lack of capital adequacy in Basel II, while even in all generations of Basel 'risk-weighted' capital fallaciously still favor with lowest capital weights on Sovereign debt, than the most stable, highest credit quality corporate in terms of credit quality.

AND big banks are no longer examined nor were they examined by the Fed (or the banking regulators) in the previous decade, and now have relied on approval of their 'advanced' approaches/models for their regulation by the Fed. The banking regulators give and gave a pass to the Fed as if the captain on the turf, while it was more that which threw gasoline on the fire and facilitated thwarting the banking and other financial regulators from doing their own jobs. The banking regulators give that a pass, but while the misrepresentations made by the Fed and the banking regulators that the Fed is a regulator of its member depository institutions and the primary supervisory body over the financial system. In the last decade it failed however, in 'parental' responsibility in that role as well as in perhaps subtle or overt ways thwarting supervision efforts by the banking regulators.

Given the aforementioned, MANY egregious practices and untoward commercial activities were perpetrated in the US economy when ordinarily very little of this corrupt activity would have happened, and/or would have been deterred, restrained or cease and desisted because of the remarkable and significant reach of the Fed and the FDIC which I discuss farther on in this comment letter.

Back to Basel, at the Fed's Annual Conference in September at Jackson Hole (11Sept12) Andre Haldane of the Bank of England in referring to the Basel Committee, said… **Their purpose is to give politicians and the public a sense that "something is being done", while enabling banks and regulators to continue operating as close as possible to the way in which these activities were conducted before 2007. Few processes meet this requirement for irrelevant busyness as meetings of the Basel Committee…"**

Aside from very occasional relaxation of regulatory framework by way of what in policy is called 'forbearance', our financial regulatory system, if in any way when tied to the FDIC, had NO HOLES. Again, having holes in the regulatory framework or nothing in the rules that provides for enforceability of regulation, versus failing to act and enforce are different things.

Not throughout the entire time before, during and after 2008, the 'crisis', did we **NOT** have sufficient regulation, but where there also **was** sufficient enforcement framework in our regulation, without even needing the Dodd-Frank-Act.

Even thrifts' when reporting their quarterly Thrift Financial Reports "TFRs", these too were able to be monitored by the FDIC, because the thrifts' insurer was/is the Deposit Insurance fund and although after Financial Institutions Reform Recovery and Enforcement Act of 1989 FIRREA when the Savings Association Insurance Fund was established, it was still the Deposit Insurance Fund (**Note 11** and "off-site" **Note 14**). Even if Investment Banks after Gramm Leach Bliley 1999 with the Fed which were to have 'registered' or chosen their choice of operating structure – Financial Holding Company, Banking Holding Company or Savings & Loan Holding company, except for 'financial holding company', all of this was connected to the FDIC and also again with the Fed.

Any financial organization even foreign ISDA members that were operating in the financial US system and/or to enjoy deposit insurance or had a depository sub, the FDIC (and in most cases again, the Fed) had every power by way of legal and existing regulatory framework that it and the other regulators deny existed, but in fact and according to their internal documents and manuals with dates mostly from 2005, long before the 2008 meltdown, Lehman, Bear Stearns, AIG, Fannie and Freddie, even the fund that 'Broke the Buck', if it was connected in any way to a depository institution or what would enjoy deposit insurance, it cross paths directly or indirectly with the FDIC. Manzullo's Countrywide and Indy Mac, what Killinger lost in WAMU (while adequately capitalized, was resolved in 2008 – sold to JPMorgan Chase), although we don't know if the FDIC decided that many no doc or option ARMs were "criticized" or 'classified' and when for those WAMU had to make provisions to increase its reserve, this steepened the losses to set up WAMU to beef up JPM Chase's balance sheet, similar or attempting to achieve the size of the 'National Champions' in the EU, but using these other oblique means to achieve that), even if a mortgage broker originated a 'liar' mortgage loan and it was re-hypothecated 900 times by private label many of which were banks-investment banks, if it was even structured by UBS or any other foreign bank doing business in the US and its territories, the FDIC (and the Fed similarly) had access to that information if it wanted it by way of its discretionary power under **Prompt Corrective Action "PCA"** and the **Memorandum of Understanding**, also known as the "**MOU"**. (**see Notes 2 and 26**)

Upon reviewing the FDIC Examiners Manual virtually all of which on the website indicates it was of this great detail and exactitude and every bit more than what Basel Accords and now Basel III pretends to do with its seeming quant, bank analyst/depository sector earnestness. **But like all emperors without clothes pretty much in this case, again, I urge we reject Basel III from our Regulatory Framework and either the FDIC, the OCC, and the Fed hire more examiners, which really isn't what Basel III or these NPRs would solve, but if Examiners reports were insufficient contrary to what the FDIC Annual Reports from 2002 through 2012 states they were, then the OIG and the Department of Justice should investigate this – (Notes 11 and 12a and 12b discuss the Examiner's Manual and the FDIC Annual Reports discussing performance).**

Even before the existence of **1991's Federal Deposit Insurance Corporation Improvement Act "FDICIA"**, mandated that the regulatory authorities adopt five capitalization categories, ranging from well capitalized to critically undercapitalized, to serve as the basis for **Prompt Corrective Action "PCA" there were other disciplinary measures.** Before FDICIA was legislated into federal statute, our regulators enjoyed and continue to enjoy discretionary power such as **"Forbearance"** and the **POWER WITH THE MOU – The Memorandum of Understanding as part of a well worn groove of enforcement actions. Forbearance discretionary powers in part were corralled somewhat with FDICIA, by Prompt Corrective Action (PCA).** PCA provisions were designed to limit regulatory forbearance by requiring more-timely and less-discretionary intervention, with the objective of reducing failure costs. PCA more quickly triggered MOUs issued by regulators to a depository institution by way of its Board of Directors and/or its Senior Management to do what the regulators want for whatever – WHATEVER - the reason they issued the MOU.

And for this reason and power, again, the US banking regulatory framework has NO HOLES, nor does it need Basel Accords in any form for us to improve our own supervision over ourselves. Nor did it need any statute treatment for Basel in the Dodd Frank Act of 2010. Even with passing of the Gramm Leach Bliley Act 1999 and the Commodity Futures Modernization Act 2000, there were NO holes in our regulatory framework with the discretionary power the regulators have and had had under **"PCA" and using disciplinary actions. ((2) see NOTE 2 and see NOTE 26)**

As an institution's capital position declines, the appropriate regulator is required to increase the severity of its enforcement actions. These actions range from restricting asset growth or dividend distributions, (for undercapitalized institutions) to closing banks (those that are critically undercapitalized for a prescribed period). The top four capital categories are defined in terms of risk-based capital and leverage ratios **(See Note 2)**. Critically undercapitalized institutions are those with tangible capital ratios of 2 percent or less. In general, a receiver must be appointed for any institution that is critically undercapitalized for up to 270 days" found on page 51 of **"History of the Eighties"**.

Whereas PCA was not perfect, politics made it fail in the manner seen during the credit bubble then 'crisis' in the last decade. If people think the Eighties and Nineties is too far back to address that we don't need Basel at all, with its Trojan Horse ploy of its quant-scientific strategy to beat down resistance, then those people will fail to see the same, periodically repeated inflate/collapse, enron-esque scam that Basel has facilitated, aided and abetted.

CAPITAL DEFINITIONS: Exposing 3 issues regarding **1.discretionary power of our regulators** and whether we need **2**.additional **political intrigues, conflicts and outside self interests** of foreign parties in our **3. existing regulatory framework which was restrained from functioning properly according to what is in statue within its powers** is seen here. For example, my research found that in some cases where pre PCA enforcement was applied to OCC banks versus state chartered member banks, if the OCC had to wait until a national bank was insolvent and declared insolvent, which would have made resolutions of OCC banks more expensive, WITHOUT BASEL OR A NOTICE OF PROPOSED REGULATION, OR FEDERAL LAW, THE OCC CHANGED THE DEFINITION OF THE CAPITAL THAT HAD TO BE EXHAUSTED BY A NATIONAL BANK BEFORE IT COULD BE DECLARED INSOLVENT SO THAT IT COULD BE SEIZED BEFORE UTTERLY EXHAUSTING ALL OF ITS CAPITAL (see **NOTE 2** – "**History of the Eighties"** pg52 and its footnote 91 OCC, *Bulletin BB-89-39* (December 13, 1989). Again, no Basel or federal law change or even NPR were needed in order for the OCC to unilaterally change its definition of capital that had to be exhausted before it could SEIZE a depository institution. WOW!

ADDRESSING MANAGEMENT COMP AND INCENTIVES FOR SELF DEALING AND ABUSE: Without what the NPRs propose, without what Basel III proposes, long pre-DFA, discretionary power included the power then and now to reign in agency self-dealing and other agency problems such as comp and skewed incentives that the FDIC would find in banks under its jurisdictions because it insures all of them.

Moreover, the FDIC or other banking regulators then had and now without DFA have MOUs with EACH OTHER when abuses would arise and trigger Enforcement Actions at jointly regulated institutions. This again already had existed for the regulators, unenforced laws and the outlandish situation to which the financial system had eroded under Greenspan during Reagan and Bush 1, then Clinton's administration, and later under Bush Administration and even now (as if Greenspan's teflon presence shepherded the financial sector's Enron-esque problems which plumed to produce what we saw during the "credit crisis' and currently still exist).

With regard to Basel Accords, whereas Basel II attempted to remedy these and other flaws about the Basel Accords, although not quite a *Rube Goldberg* attempt to recommend capital and other banking regulatory regimes to stabilize Banks and sovereigns' financial sectors, perhaps it would work for a) less developed OECD members and/or b) those members whose financial systems are more cozy and insular than the US, which again although not perfect had enjoyed arguably the most robust and functional banking regulatory framework in the world.

TAKE-AWAY ON BASELL IIII: All in all, these NPRs and relevant public literature look and read like a regulatory way to induce foreign and domestic bank managements to sell their 'shops'. **(Note 3)**

And perhaps management would sell into the hands of dominant foreign and domestic banking players in the US. Perhaps these desired re-regulations will attempt to eliminate the prohibition of mixing banking and commerce, with any sales or divestitures of banking/depository assets while our "Too-Big-to-Fails' will be hamstrung from buying divestitures of competitors or smaller players but commercial players will be able to acquire. This is another form of abuse of power, although that's been a focus by SIZE such as Too-Big-to-Fail. And then for THOSE there are their Resolution Plans and Orderly Liquidation Authority, DFA Titles I and II respectively.

I actually do not condemn Too-Big-to-Fail per se, which some confuse with the power they have enjoyed that they've been able to abuse. This abuse of power includes 'free' rider, such as having the Fed provide quantitative easing to flush the markets and in turn enabling ISDA member balance sheets (all these are International Swaps and Derivatives Association "ISDA" members) to stay above water by way of Fair Value/Mark-to-market accounting shadowing stable and liquid markets. Furthermore, although size did not have to produce abuses of power, however it seems sadly that size has enabled concentrations of power and that's facilitated agency abuse, self dealing, a somewhat cozy/co-opted regulatory framework and convoluted Congressional and Executive Branch conduct about these very large financial institutions, none of which Basel Accords in the past had, or in the future will solve. **(Note 4)**

LEVEL PLAYING FIELD – A DISCUSSION: Although again the Fed's international interests seem to have persuaded the other regulators to attempt what's said to level-the-playing-field with foreign and international jurisdictions, I urge rejecting this because it's somewhat disingenuous and a false dichotomy between foreign depository institutions in foreign commercial and legal regimes and cultures, versus what we have here. Moreover, foreign interests have always had a hidden agenda and the Founders were generally shrewd enough to avoid all of that, whereas over the past 150 years, our 1% here has had difficulty avoiding manipulative snares by foreign interests playing into our ambitions and conceits. Meanwhile the large foreign players are not constrained by banking laws in their own countries that cap their size, or deem their national champions as 'Too-big-to-Fail". Thus these remained unconstrained by even 'resolution' plans, even if required to file because they're considered systemically important financial institutions "SIFIs" in the US.

Additionally, the originally established **Prompt Correct Action** and the **Capital Adequacy** framework in the US didn't require the use of Credit Rating Agency credit ratings. Large, sophisticated financial institutions employed and used experienced counter-party credit risk analysts to dig more deeply than rating agency credit ratings and ratios derived from the public financial reports of their financial counterparties.

So why again had we allowed ourselves to be either played for fools, or cede our regulatory framework to foreign organizations both unaccountable to the American people and influenced by foreign interests in direct competition and self interests against those of the American Voters and the American financial system?

It is said that the BCBS created Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems, 2010 in response to the financial 'crisis' which upon failure of over 400 banks in the US from years 2007 until Summer 2012 are said generally are a result of a lack or deficiency in "**Capital Adequacy"**, (although depository institutions fail as a result of a confluence of reasons) which I discuss later in this Comment.

Whereas in part it is true that over time, when the US regulations for **Prompt Corrective Action "PCA"** sequence are triggered as measured by capital, **it is because often capital adequacy has eroded from poor asset quality and/or market problems contributing to poor earnings, and/or other perhaps unsafe and/or unsound operating activities that fail to produce quality earnings and/or sufficient operating cash flows.** Additionally, when management in the banks are suitable enough to be there and survive any regulatory gauntlet, a reasonably healthy or healthy economy facilitates improved earnings and thus, improved capital adequacy. **(see NOTE 2 on PCA and see NOTE 26)**.

Even with delayed compliance, Basel Accords fail to address the problems in the US economy that have eroded the domestic commercial environment into which all banks operating would lend. Basel Accords would foul with ability to produce sufficient quality lending that produces sufficient earnings to produce sufficient quality retained earnings for improved capital adequacy. Of our Basel II compliers, however our regulators had examined and disciplined for their compliance while foreign banks have operated their non capitalized subs in the US and made commercial and industrial loans to US and foreign companies doing business in the US without the associated full capital cost to back those C&I loans. Foreign banks enjoyed implicit capital support (government backstop) from their countries' governments while US institutions were expected to be accountable for the relative health of their franchises.

Additionally, Advanced Approaches ISDA banks actually had elements of circumventing Basel Capital risk-based capital weights, however while flawed US governmental policy has been de-industrializing US commercial environment. Even if our largest financial institutions have been facilitating de-industrialization by S&P500 companies off-shoring into cheap labor regions, the quality of life with associated 'cost of living' is lower in those areas, fairly quickly playing out any balance sheet/income statement gains enjoyed from off-shoring into those cheap labor regions. Understanding the money flow from off-shoring production and the externalities of this and the de-industrializing of the US economy has hurt the top line of US companies, even those which repositioned themselves to enjoy the short term gains from the 'labor' saves. As it were, ISDA banks traded one set of costs for others, while the free' rider fair valuing of OTC derivatives contracts from the 2008-2010 period of various market corrections, enjoyed voter bailout or 'TARP, or other coverage by way of liquidity arrangements from the regulators and quantitative easing and low interest rates by the Fed.

What appears to be perhaps well-meaning, but more likely is a political tactic that Basel, a political organ for BIS is using, thus should not be by that which our depository institutions should be regulated. Our leverage ratios in earlier forms functioned very well although those forms existed in better, more economically viable operating environments into which our banks could make sufficient performing loans that produced sufficient operating cash flows. To this we need to return and restore, however neither Basel nor its 'banking' forms of politics should we adopt or use.**(Note 5)**

Additionally, NPRs propose regulation 'higher' than the EU? For example, if our proposed guidelines use Dodd Frank amendments such as Collins, that for "Advanced Approaches" banks require higher capital minimums than those for the EU and other non-US banks, then our banks are hobbled, and likewise again hobbled with foreign banks operating here and abroad.

Additionally, this new Accord does not like securitizations and in Europe and the EU, these are not done except as 'covered bonds' on the balance sheets of their large banks. In IFRS and Europe, there is no accounting/financial reporting rule to report these Securitization vehicles and those 'national champions' had no accountability to comply with capital ratios and capital adequacy, however, Basel Accords has heavily penalizing these structures done in the US AND we have capital adequacy compliance **(see Note 11)**.

Other commenters have complained that even in what was issued in these NPRs, the international proposals of Basel III were not diminished from their original. And the US NPRs are actually ratcheted to higher levels, which has many US based depository Institutions concerned.

Nor are the European national champions operating on high capital ratios, unless that already was how they operated. Inside and outside the EU' Free' Trade zone, many of those depository institutions outside the EU zone are not facing 'free' trade and thus enjoy somewhat more stable operating environments although they are operating against German national champions which are advantaged inside the EU's 'free' trade zone, and with German government backstops. In the EU 'Free' trade zone, those depository institutions have their sovereigns as their backstops whether or not those sovereigns like that.

Furthermore, over time there had not been a deposit insurance fund established in many other G20 and EU jurisdictions. Now while there is commercial distress by way of the structure and design of the EU and Euro, their many banks are in financial distress. We're to equalize or comply with Basel to have us on a level playing field with that? Why?

A level playing field with foreign banks in good or distressed condition is counterproductive (unless counter-productive is the aim, and the US banking regulators are functionaries to facilitate more 'planned obsolescence' ie, in 'rigging' our financial system, because the design of Basel Accords is prosper a counterproductive environment for our financial system) given differences in legal frameworks across jurisdictions and economic frameworks across sovereigns and geographies including taxing policies and things that the FDIC and our regulators have nothing to do with there, nor are those jurisdictions, even BIS and Basel accountable at all to the US voters, Congress and the Executive Branch. Not even the US 1% is able to control the issues, problems, and corruptions in Old World jurisdictions, those politics, and that form of commercial war that again has most of Europe constrained.

LEVEL PLAYING FIELD IS CODE FOR ENFRANCHISING FOREIGN INTERESTS OVER THE US COMMERICAL ENVIRONMENT AND FINANCIAL SYSTEM: Multilateral agreements such as G20 Agreements perversely have called for NO NET NEW JOB GROWTH in the US beginning with NAFTA. Any policy from G20 including Basel Accords and any support domestically or abroad for G20 is perverse WITHOUT QUESTION. If our 1% were too naïve and ignorant about flawed multilateral agreements which if allowed are leading to world government with a single financial system coded in language such as 'level-playing-field', they'd had influence over our legislators and regulators who similarly contributed to a broken, abusive system on US domestic commerce and the voters. I do not bully people that the ***emperor has no clothes***, but we're there with G20 and Basel Accords.

Even the erosion in our own system by our own systemic 'planned obsolescence' has to shock us into deep POICY correction and purging flawed policy rather than outsource this and regulation to the BIS and its Basel Committee, and the European national champions which influence THOSE, as if we're too sick, pathetic and incompetent to properly frame and administrate/regulate our own financial system. Additionally, we risk that foreign ISDA members and those interests will be bullies on our turf and/or attempt to control yet more US assets. I have decried these going into the hands of foreign and/or commercial interests.

Indeed, Bank for International Settlements and its Basel Committee for Banking Supervision is a foreign organization controlled by interests that do not really serve the interests or needs of the American voter and the American financial sector and our regulatory framework. Given we have and have had a robust regulatory framework that the BIS and its Basel Committee and Accords all along failed to, nor could it improve, even if it attempted in some bona fide way to endeavor to improve what we'd had that was successful, but itself could not fully solve legislative abuses and those of campaign contributors and the 1% which influence Congress, the Executive Branch, and in turn our regulators and regulatory framework, we still do not need the BIS and Basel Accords in any version. **(Note 6 and Note 13)**

SYSTEM RIGGED PRODUCING INTENDED CONSEQUENCES FOR INSIDERS BUT UNINTENDED CONSEQUENCES FOR THE MASSES: Finally, with what influences BIS contrary to US voters and US financial system interests, neither the BIS or nor its Basel Accords in any version, including Basel III have, or will stop the pretended or exploited wrinkles that enabled 'rigging' of the system to create these 'free' rider situations. These intended/'free rider' situations seem like the unintended consequences to the many, although as 'free rider' are a gravy train for the few connected insiders. In realizing this, that Basel III doesn't itself solve, but rather it is a part of what fosters these problems, the scheme has been to grease the wheel a little for everyone. As a result, while these abuses are prospering, free rider for the inside track, but are 'unintended'' consequences to the Voters, and the multitudes, while everyone is getting what they want, no one will do anything about it (American Enterprise Institute- Washington, DC, March 27, 2007: Nuriel Roubini, Chris Whalen, Alex Pollock, Andrea Psoras). This is what happened last decade before, during and after the credit bubble and 2008 meltdown. Qui Bono?

Basel III or any version will not solve this. Examples of rigging or 'gaming' the system whereby unintended consequences to many are really part of the ploy veiled by what is seemed to be earnest multilateral regulators' attempt to prevent the next "Lehman Brothers". A smaller competitor purposely removed from competition by former the CEO of a large wallstreet investment banking competitor who became Treasury Secretary, used liquidity and collateral tactics while the financial markets were correcting in the summer and fall of 2008. Basel is using what Treasury Secretary Paulson had the NY Fed and JPMorgan do to Lehman as a bully pulpit however, to prevent capital and liquidity problems, when neither were Lehman's problems that the other ISDA members also didn't have similarly.

We need to solve rigged system and it's not done through deleterious multilateralism and veiled forms of commercial or cultural war. The Germans may be jaw-boning against Basel III however it has a great deal of influence with BIS. If Germany at all follows through with it perhaps it will with relaxed implementation, or at some point down the road, it will reject it if this suits itself. This is what the US needs to do and again demure on unnecessary acceptance of deleterious multilateralism.

Basel and proponents say to large participants of the financial sector to embrace Basel or run the Lehman risk –which may be their way of an off-hand threat that their Central Bank too will reject their liquidity/collateral arrangement in a time of turbulence –all of which can be contrived- that is, set up. Bank execs respond to that by saying that except for 'stress tests and risk disclosure transparency that will serve to 'placate' their investors, when or if:

> "To comply with the new regulations, 65% of respondents are re-evaluating portfolios, and almost half (45%) report they are moving away from complex, less liquid instruments into more stable asset-based funding sources. One-third of respondents, particularly in Europe, report they are exiting or selling part of their business to reduce the impact of the new rules. Some are exiting certain countries and moving business back to their home country. Others note the importance of diversifying into new investor bases, such as retail banking and new global markets, to tap new capital and funding sources for long-term planning. Respondents also expect many standard corporate banking products will be impacted and the cost of funding will continue to rise. As a result, there is concern investors will be more hesitant to put money into industries with low returns because of high capitalization required under Basel III. However, stress testing and risk disclosure transparency are viewed as possible ways to keep investors on-board."
> **(Note 7)**

Issues of multilateral agreements and multilateralism's deleterious effect on US commerce, the health of the US economy, and now with Basel based Bank for International Settlements' ("BIS") Basel Accords version III, the interest to use Basel III to serve as partial regulation for the entire US depository system, I suggest we had had sufficient regulatory framework even before the Dodd Frank Act of 2010 ("DFA") that we had failed to keep. And whereas politics has been known to give us double-speak, penny ante, and self-seeking one-up-manships, perhaps these characterizations fit this ambitious, reaching title: "A Global Regulatory Framework for More Resilient Banks and Banking Systems".

And I am not mocking or deriding Basel's attempt in III along with the G20, the desire to obtain:
Financial supervision, Derivatives regulation, Hedge funds regulation, Accounting adoption, Credit rating agencies regulation and de-recognition from capital frameworks, management pay regulation, a new capital ratio

named Core tier-one capital, and addressing "**Too Big to Fail" although this only has been addressed somewhat so far in the US, while in EU and Europe/UK, this has NOT been dealt with. (Note 8)**

Furthermore, the Germans obtained an additional 6months to comply, whereby Reuters suggested that other nations' regulators may grant their banks more leeway in meeting Basel III requirements. Reuters also questioned of the delay the German government is giving its banks, will have the EU delay its official start to make banks and financial institutions in its zone, comply with Basel **(Note 9)**

Again, consider that our US statute for **Prompt Corrective Action** has existed since 1991 with the FDICIA. This framework gives the regulators a significant amount of power and discretion as to when they would shut down a depository institution, even the depository sub of a non banking financial intermediary like Goldman Sachs if the sub were run in an unsafe and unsound condition and at risk for being a cost to the Deposit Insurance Fund. The Regulators would have forced the parent to inject capital and for the Parent to file and comply with Capital Restoration Plans; this power fell under Prompt Corrective Action **(see NOTE 2 on PCA and NOTE 26).**

The US didn't need, nor does it need Basel Accords at all; in other words saying that we needed or need expensive, affected, foreign originated alterations such as Basel Accords and now Basel III to a framework we already have, had and use, versus the regulators not doing their jobs, or 'called-off' from doing their jobs, again are saying 2 different things.

Let's not confuse the two. If one listens to 'Basel' and some interests, it's been made to appear to be that over the last decade as if we had a lack of a suitable, effective framework to manage our depository and associated financial system. Some are confusing this with whether the 'keepers' and other bodies of one sort or another like the Fed, or Congress or the Treasury Department all are knowledgeable enough and bona fide enough to know how to handle and thwart aggressive efforts at legitimized agency self-interests, and what would be what are made to appear to be the unintended consequences which in reality are well crafted, intended consequences for those positioned to enjoy their profiteering, free-rider position.

That again is different than not having had a regulatory framework and needing what Basel's provided, like we're a "Third World Country".

When one understands the nature of what is self-sustaining in commercial banking, and the healthy going concern status of enterprises, we'd had these, versus now lurching away from this when we've been experiencing the Fed by way of Quantitative Easing having the power to prevent large financial institutions from going into distress mode of which Basel is a part of THIS. This also now is a 'free' rider situation enjoyed by the Fed, managements at these large financial institutions engaging in non-traditional banking activities that arguably are unsafe and unsound which are evident in what has to be done to cover for these practices, and peripheral participants in the system which are able to profiteer from their roles and position in this scheme.

Whereas as that is outside of the technical analysis of the NPRs, that is the issue and therefore also needs to be acknowledged in this Comment.

Thank you again for accepting this comment letter to add to your use and the public due process to determine merits for acceptance and use of Basel Accords, on which we need to demure.

Comment-

Using the FDIC FIL-25-2012 AND the "Community Bank Informational Session" presentation:

Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, and Transition Provisions

These include revisions to the **Minimum Capital Requirements-Components, Capital Tiers and ratios, adjustments to Capital, Prompt Corrective Action "PCA", and "Capital Conservation Buffer".**

Revisions to the Minimum Capital Requirements:
Arguably the US depository institutions sector does need to improve its capital health and rebuild their Shareholders' Equity. In any generation **of Basel** and its **Accords** however, **fail to solve this**. These were/are also-ran's back-end, look-back efforts to present itself as a suitable supra-national regulatory body. Where are there words? We need to solve our problems, not allow worse and foreign to co-opt or 'regulate' us.

I suggest this is achieved by the most holistic way using healthier performing loans and lending to produce quality earnings which flow into Retained Earnings. This **needs a better economy into which to lend, not Basel and political self** interests which have had a tendency to favor 1% interests over those of the voters and responsible operating the US financial system.**(10)**

Inferior quality **capital instruments** came into existence in part because the biggest depository institutions which are the ISDA members **also are** investment banks, which in turn generate investment banking and corporate finance revenue from arranging these corporate financings which many of the larger banks have used as means to generate cash flow. In place of quality levels of capital adequacy and sufficient operating cash flows, depository institutions have turned to, or been courted by their larger peers, underwriting capital and financings instruments such as TruPS which are legitimized but vulnerable to economic and market vicissitudes which the big ISDA members have and are the power to produce in the financial markets, although themselves are now vulnerable to Fair Value –Mark-to-Market accounting/financial reporting. The Fed's Quantitative Easing has given us liquid, 'stable' markets to nurse the balance sheets of ISDA members, but also exposed the flaws of the lack of self-sustainability of the many of the ISDA members of the depository sector here and abroad. Again this is the 'free' rider problem and with a crippled financial system, a pathological one.

Phasing out these inferior quality instruments to be replaced by higher quality instruments however still needs a better economy again which Basel does not solve and is from and a part of that problem with Basel's roots with the G20 **(see NOTE (6) on G20) multilateral agreements.** I mention this because what has affected commerce and the US economy has a great deal to do with the health of the financial and depository sectors. What affects the macro-economic environment affects the condition of the trade/market areas and regions in which depository institutions operate.

Moreover, "the **new minimum capital requirements** would be implemented over a transition period, as outlined in the proposed rule….. As noted in the NPR, **banking organizations are generally expected, as a prudential matter, to operate well above these minimum regulatory ratios, with capital commensurate with the level and nature of the risks they hold.**" (FDIC: FIL-25-2012, p3)

Whereas I do not think it is necessary to increase the capital ratios in the **Prompt Corrective Action grid** or adding the new **Tier I Equity Ratio** (the former of which already is effective in its current form when enforced appropriately, and the later which isn't necessary), the NPR and FIL say that banking organizations are generally expected to operate well above minimum regulatory ratios. In this acknowledgement, without or without an even the MOU to require a depository institution to meet prudential standards, the NPR and FIL indicate depository institutions were incumbent to maintain that. There isn't even need for Basel at all or DFA because capital adequacy already was a part of our regulatory framework.

Recall in the Introduction, I also mentioned that given current, and what had been the reliable framework of **Prompt Corrective Action** "PCA" already existing since FDICIA 1991, the MOU process existed prior to that. Regulatory discretionary power using these also existed regardless of the capital condition, however, Prompt Corrective Action also used "Capital Restoration Plans" mentioned in and established by FDICIA 1991 for "Section 38 of the FDI Act (which) establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized (or perceived to be in this condition in the judgment of the regulators). The principal purpose of this subpart is to define, for insured national banks (this particular example section was under OCC reg in US Code), the capital measures and capital levels, and for insured federal branches, comparable asset-based measures and levels, that are used for determining the supervisory actions authorized under Section 38 of the FDI Act. This Part 6 also establishes procedures for submission and review of **capital restoration plans**." **(see NOTE 2 and NOTE 26)**

Capital Restoration Plans required extensive information on all material aspects of the enterprise, its subsidiaries, its operating systems, financial and systems IT, full report with full, detailed interactive spread sheet models of all and subsidiary financial statements of the enterprise, its divisions, subs and all large assets in their specific conditions at point in time and over time. Interviews of management and board were included, with reports on/about search and all meaningful efforts to find/security equity into the bank or thrift if required to have filed a Capital Restoration Plan for any reason in statute. This meant if the PCA was triggering because of slippage into lower capital levels by erosion of asset quality and other operating activity, then more demanding Enforcement actions would require more aggressive and operational action by management and/or the board of the depository institution.

Today's "Resolution Plan' is a relatively fair example of this. Even without the Resolution Plan which the Systemically Important Financial Institutions "SIFIs" have to file, without Basel in any form, **the MOU** and other enforcement directives and actions can achieve this expectation to improve capital adequacy.

Former Fed Governor, Laurence Meyer in 2001 of PCA said, "Although the Act provided for certain exceptions to this charge, to which I shall return in a moment, the general thrust of least-cost resolution was to encourage market discipline by putting uninsured depositors and other liability holders at greater risk…" (so why are they doing and having Orderly Liquidation Authority? "OLA"? which is slush fund for sophisticated, big wallets which should be able to handle credit risk analysis, practicing due diligence on their financial counterparties, and haircuts if they stayed in contrary to having monitored the financial health of their financial institution(s)).

What this means is that depositors, especially sophisticated depositors with deposits greater than insured amount in any single depository institution, is to do due diligence on the financial health of their bank or thrift. Moreover, Basel will make it difficult for depositors to move their deposits to other and often smaller institutions, that either need to deploy deposits profitably and/or already face the burden of having to increase their capital. For the reason that PCA was/is successful, and depositors attempted to avoid depository institutions that would be suspected of engaging in moral hazard, moving deposits to another bank or thrift, rather than something like a credit union, with the additional deposits and the CAMEL (see NOTE 11* for CAMEL) process, unless rejected, potentially Basel III will deal these smaller banks an unfair hand by the government when they were the better or at least, least abusive alternative. This was 10 years after FDICIA was passed and Prompt Corrective Action began being applied with the force of federal statute. (see Note 2; Remarks by Governor Laurence H. Meyer- At the 37th Annual Conference on Bank Structure and Competition of the Federal Reserve Bank of Chicago, Chicago, Illinois / May 10, 2001 **http://www.federalreserve.gov/boarddocs/speeches/2001/200105102/default.htm.)**

On exam reports, Examiners would fully explain the condition of the depository institutions they examined **(11)**. Even repealing Glass Steagall, had NOT repealed FDICIA 1991 and use of Capital Restoration Plans, MOUs, and Prompt Corrective Action. Moreover, depository institutions with capital in any condition could be required to file even a Business Plan, if hit with a MOU, or other Enforcement Actions such as Cease & Desists or Written Agreements. **(12a). WE know all of this is still in force whether or not it is enforced.**

If in process of the **Delegations of Authority** (mentioned on the FDIC website) which review the Exam reports believe that a depository institution warrants an Enforcement letter such as an MOU or more onerous directive, the managements and boards are notified and also public disclosure is made of these **Enforcement Notice of Action,** although these can be negotiated somewhat. All of this framework and associated discretionary power already existed to support the operating health of the depository institutions and to protect the Bank Insurance Fund. Basel Accords can't cover-up for nor resolve the crimes of the inside tract that has produced their Enron on the depository and financial system.

Consider this: the credit bubble goosed the economy for more banking activity, producing more earnings the entire financial sector enjoyed as described in the GAO report Feb 2007, " Assessment of Regulators' Use of Prompt Corrective Action Provisions and FDIC's New Deposit Insurance System " **(See Note 12b "What GAO Found", GAO-07-242, pg2)**. "In recent years, the financial condition of depository institutions generally has been strong, which has resulted in the regulators' infrequent use of PCA provisions to resolve capital adequacy issues of troubled institutions. Partly because they benefited from a strong economy in the last decade, banks and thrifts in undercapitalized and lower capital categories decreased from 1,235 in 1992, the year regulators implemented PCA, to 14 in 2005, and none failed from June 2004 through January 2007."

Our regulators' 'job' is to perform these roles. If there were UNREPORTED problems in the last decade with the health of the depository institution sector, Basel did not solve that nor would it going forward. More capital also would not have solved that, because in distress these also had had other problems that eventually affected their capital adequacy, however, neither Basel and nor more capital responded to what was also eroding the quality of the US economy and its commerce here producing other problems affecting banks' operating performance. **(13) and if the 'banks' were not the problem, what then and why is Basel for the banks?**

Bad credit decisions were what were happening however, and depository institutions are examined and monitored for those flaws (except the 'Advanced Approaches/ISDA member banks, which provide their 'stress' tests and models and no longer are examined by the Fed or other exam teams. FDIC research also has shown that banks examined more closely reflect their CAMELS scores than banks not examined – supporting my argument again that ISDA and 'Advanced approaches Banks need to be examined and to restore that and aggressive dealer surveillance that Corrigan suspended at the NY Fed in 1993 before he went to work for Goldman Sachs). Again corrections to this so as to avoid problems of eroding capital and risk of resolution and cost to the Deposit Insurance Fund, aside from on site exams, the monitoring process is on-going through the quarterly reports they file/filed with their regulators.

Basel also isn't needed to improve management incentives to remain properly capitalized nor could Basel control the Fed's decision to keep interest rates abnormally low for an abnormally long time. The Regulators and Fed respectively, have had that power that Basel isn't needed to solve but only by political machinations were our Fed and FDIC sidelined during the Fed's low interest rates and pulling back from the commercial lurches happening in the US after Congress passing NAFTA

Asset quality and associated impact on Capital: And, with all due respect to the FDIC, the OCC and the Fed, Basel Accords and III, and Federal Register Notices of Proposed Regulations were already dealt with in 1991 legislation. When the credit bubble had reached its full impact with non conforming product and that originated at depository and other financial institutions and sold to GSEs and/or Private Label, the regulators were lax in addressing potential safety and soundness issues in product type of non conforming mortgage underwriting AND also given the (6 month) seasoning period after mortgages are originated; this had existed in the 90s when mortgage originators would underwrite mortgages which they'd want to sell to Fannie Mae or Freddie MAC.

Although the FDIC, Fed, and OCC are not/were not responsible if FNM and FRE suspended their practice for what was their framework for 'conforming' mortgages they would purchase – and purchase the mortgages without seasoning time, the FDIC, OCC, and Fed (and states') **Examiners** and the FDIC's **"Call Reports" or** The Fed's **FRY-9Cs** would expose if depository institutions were underwriting mortgages that were non-conforming, but also if these were going to non perform and what the performance status of these in Call Report Schedule RC-N or Fed's FRY-9C Schedule HC-N . "**Past Due, Nonaccrual Loans, Leases, Other Assets"** consistent for FDIC and Fed from 2002 and as of 6/30/12. These schedules require reporting of the loan 'aging', that is, the Performance and Past Due status with categories of Past Due 30 days to 89 Days, Past Due 90 Days and still 'Accruing' (the interest for these loans although 90 days non performing, continues to be recognized in Interest Income in the Income Statement rather than deducted as in the case of non accruing loans), respectively Schedules RI and HI. All of this however is examined for and reported by the examiners on the Exam reports. The Fed in not examining the ISDA/Advanced Approaches banks apparently then themselves and fouled with the FDIC from requiring due diligence on the structures, the Specialty Purpose Entities, and like what Enron had had, although those structures were no longer permissible however the FDIC and Fed had the power to have due diligence done on Structures and structured product.

Basel doesn't add schedules to the Call Report and Y9-C that didn't exist already. Basel doesn't improve filers' reporting in these schedules to better reveal asset performance or non performance. Filers and off-site 'examination'/monitoring satisfies these needs AND these reports for consolidated enterprise and bank subsidiary have existed for a number of years, and at least through the credit bubble during the last decade.

Whereas I am describing what affects asset quality rather than capital adequacy, the later doesn't get better if the former is bad and/or if a depository institution's regulator has ignored that. Moreover, asset quality was no mystery to the regulators none of which Basel Accords solved in the past and given that, in the future. **(14)**

Common Equity Tier I Capital and Deductions such as Mortgage Servicing Assets, "MSAs" and Accumulated Other Comprehensive Income: Aside from already having a regime on how to deal with MSAs, which wasn't very broken, with regard to proposing **Common Equity Tier I Capital (which is affected and pretentious)**, and from Tier I or Equity Capital to removing or deducting Accumulated Other Comprehensive Income "AOCI", we need to change how we account for those securities and redefine this as an asset class, and receive treatment at amortized cost.

I have opposed the harmonization of US GAAP with IFRS and the increasing amount of banks' balance sheets with instruments that unlike performing loans, except perhaps Interest Rate Swaps, virtually all OTC derivatives instruments produce little cash flow. OTC derivatives also don't usually perform in terms of cash flow characteristics such as Available-for-Sale "AFS" Securities. AFS Securities in most cases produce interest income or have monthly realized cash streams. At the present time however, these are marked to market under ie, Fair Valued while under an assumption these Securities are traded but not like NYSE cleared and traded, but more the OTC traded and thus inferior. Granted, these often are or could be moved to the Held to Maturity "HTM" portfolio and should be, and with balance sheet treatment recognized at amortized cost like HTM. Given these securities anyway generally do NOT enjoy the sort of clearing and trading like NYSE, it revisits the agency abuse power of the ISDA members and their dominant efforts to attempt to build fee income, inflate the size of their Balance Sheets (however reduce what would have required risk-weighted capital backing – which we've also needed to eliminate –'risk-weighted capital' used to advantage the "National Champions" in Europe) and confuse/proliferate **Reciprocal Cross-holdings**. All of this all I oppose.

Notwithstanding, I urge treating **AFS Securities at amortized cost and removing AOCI** produced by 'fair value' and "mark-to-market' which seems to fit with a self-immolation cult that has snared or infatuated our SIFIs. Again, we need to de-recognize these AOCI by also eliminating any recognition of unrealized non cash gains and losses from inflating the Balance Sheet Assets and Shareholders' Equity and in turn gaming the income statement. Thus derecognition has to be equalized by derecognizing OTC derivatives from the Balance sheet and returning them to their former contingency status off-balance sheet.**(15)**

The number of bank failures over the past 4 years is more than likely related to poor asset quality which erodes the capital of a depository institution which typically are 'resolved' when critically undercapitalized is triggered. If this erosion was happening however, that is, if a depository institution(s) already was/were growing in increasingly poor condition, given PCA without Basel and these NPRs; it would or presumably should have been issued an MOU and/or a Cease and Desist or some other Enforcement directive. If this was the first wave of Failures, these problems without correction had built up over time by way of the regulators which had the power to deter any sort of abusive or unsafe, unsound practices **(16)**

Meanwhile, unless what would, or should have been revealed quickly in the seasoning process of mortgages for sale to GSEs, while a depository institution would warehouse, or hold in inventory over the period of time these mortgages would reside on the balance sheets of depository institutions, over time if performance deteriorated, regardless, with quarterly Call Report or Thrift Financial Report "TFR" filings would expose this. The FDIC has been at this a long time – 2008 was its 75th Anniversary. Using Dodd Frank and NPRs for new regulatory capital and foreign banking standards of foreign organizations such as BIS and Basel, are needed to get regulators to do their job for which they'd had the 'rules' for, and had done until the Credit Bubble in the last decade? I hope this isn't the case.

Deducting Deferred Tax Asset "DTA" and Deferred Tax Liability "DTL" Intangibles, and of Sales of Securitization exposure, from Equity and Assets.

Against M&A derived Goodwill other than Core Deposit Intangibles - one can make an argument that management M&A overspending should experience some punishment against equity. With regard to DTA and DLA unless the depository institution did NOT ordinarily have the right to enjoy the Deferred Tax Assets and Deferred Tax liabilities – and for which then if deciding to haul out RAP accounting as these should or would NOT be permitted to shelter earnings or be permissible in Shareholders' Equity Calculations, otherwise these are not balance sheet items which exist to game equity.

Basel seems to want to penalize that if a bank experienced losses, future benefits Congress granted for those which the benefits would take place in the form of what enjoys balance sheet treat as Deferred Tax Assets, or the liability account, Deferred Tax Liabilities again are a part of our balance sheets and exist in part because of our tax system. How was our treatment of these prior to late 2007 or 2008 when we relaxed treatment of these so as to use indirect methods to shore capital in turbulent times?

Speaking to the ad hoc power our regulators have, our regulators didn't need Basel to relax the use of these in late 2007 or 2008 when the FDIC allowed these items to serve to help support equity and serve as a form of Regulatory "Relief" or forbearance like a Net Worth Certificate, although not quite that contrived. At least what's from one's own Balance Sheet has more legitimacy than a regulatory infusion in the form of a Net Worth Certificate which if the regulators wasn't to do that again, the FDIC could do this.

Selling Securitization Exposures and taking gains on these ordinarily are run through the Income Statement? I don't see the reason for deducting these, unless there is some form of abuse here. Minimizing Securitization Exposures costs isn't bad however, which agency used anyway for liquidity and balance sheet 'flexibility' purposes often at the cost to the shareholders. For example in 1999, JPMorgan Chase's10K revealed it had securitized Credit Card Receivables, however a few more pages further into the 10K revealed that quarterly it was spending $25MM to produce these securitizations. At $100MM over that year for securitizing some of its Balance Sheet, did the investors realize that agency had great deal of power to spend money the way it wanted while its regulators weren't going to publicly take action against JP Morgan with some sort of MOU to address agency forms of self-dealing by spending $100MM on securitizing credit card receivables off of its books and into structured product.

NPR 'punish' structured investments such as Specialty Purpose Entities ("SPEs") /Specialty Purpose Vehicles ('SPVs") with higher capital requirements. This isn't necessary bad, especially if there is ANY re-hypothecation of securities, ie synthetic product in these structures referencing mortgage paper or referencing other instruments. Actually re-hypothecation should be completely prohibited although Basel cannot nor has it condemned that, and in the US able to get this prohibited, although all structured product (securitizations) are required to have increasing amounts of capital. The regulators already have the power to prohibit re-hypothecation and if they'd ruled recently against this, I'm ignorant but would be prudent for them to prohibit those abusive practices and products.

The NPR and Basel also remove the use of credit agencies' credit ratings; this was/is not something for which we needed to look to the Bank for International Settlements ("BIS") to advise us, since it was its Basel Committee for Banking Supervision that had the **use of credit ratings in their capital calculations, and not something prior to that in the US the bank regulators had used for their Enforcement practices**.

For political reasons, we have allowed foreign and multilateral interests to snare us in these Accords, which have been crafted to serve multilateral and foreign interests deleterious to our domestic interests. Whereas in some ways we've been our own worst enemy, we do not need the BIS to grease any slope for punishment by our own iniquities, while favoring European national champions because each country adopts its own version of the rules and within time frames of its own choosing, whether or not BIS/Basel agree. Even if the European 'regulators' ridiculed and condemned the US for having side-stepped adopting Basel II, we didn't need it given Prompt Corrective Action we needed to enforce but that was obstructed by the Fed as well as examinations of the largest banks. (**See Note 2).**

The Fed's attitude is that's for community banks and fumbles when having to answer for failing to apply and enforce PCA, which given Section 38 has a wealth of what fits the entire US Financial sector with its MOUs and directives able to be applied to depository institutions of ALL SIZES. Board of Governors and many of the senior level management at District banks repeat the same memes and rhetoric or dissembling when they have to interact with the public. Because the Fed enjoys the perception and in its on self-proclaimed label as 'supervisor', it tends to deflect challenge while it's behaved more like the Sheriff of Nottingham in failing to enforce, and obstructing enforcement of the ROBUST regulatory evenly framework across the entire financial system. (**See Note 2).**

Speaking again of Credit Ratios, these by the **credit ratings agencies' ratings** were never perfect proxies for financial health. Especially these were flawed if for structured product and complex financial statements such as those of our largest financial institutions, although ratings for these had been better before passage of Gramm Leach Bliley ("GLB", 1999) and the Commodity Futures Modernization Act ("CFMA", 2000) and the proliferation of Credit Default Swaps and referenced mortgage paper, ie re-hypothecations of mortgage paper that needs to be ceased and desisted and prohibited as abusive.

Among other things, the 1999 legislation enabled financial institutions to claim that credit default swaps "CDS" are insurance however, without supervision or capital required for regulated insurance products. For these and other financial contingencies/bi-lateral contracts (which I suggest are varying degrees of self dealing and regulatory circumvention) the 2000 legislation obtained legitimization to trade these **contracts over-the-counter ("OTC")** without any regulatory and/or institutional framework to regulate or control their ad hoc contracts, proliferation of these contracts, and their OTC 'markets' for transparency and fair-dealing in regulated markets. Basel Accords neither stopped nor condemned these contracts and their trading.

Although Basel II Pillar 3 attempted to calculate the impact of OTC derivatives contracts inflating ISDA members' Balance Sheets, none of these filings (showing a bank's Pillar 3 status) to the regulators were publicly available AND in the regulatory filings, the noncash fair value impact from the balance sheets were not separated, even memo'd from the cash revenues in interest income in the Income Statements filed in the Call Reports and Y9-Cs **(17)**

Categorical Risk Weights, Quality of Capital Instruments such as Sub-Debt and Limited Life Preferred Shares, and the Basel affects on liquidity and collateral schemes such as Repos and Commercial paper, other borrowings.

Some argue using the Tangible Common Equity % of Tangible Assets would solve many ills. Moreover, this also addresses the Standardized Approach NPR for comment on "Revised Risk-Weighted Methodology for On-Balance Sheet Assets" which is a severe departure from the power for bankers to work out Past Due assets, which already often are not earning assets with that providing its own punishment (and which in reality OTC derivatives and barter for these instruments have been – but THESE have enjoyed a pass by the regulators, nearly all of Congress and Basel, with punishment only coming when the fair valuing hammers their values when financial markets correct. See http://benfranklinrepublic-gmail.blogspot.com/201010/no-barter-in-revenue-especially-for.html).

Meanwhile, some banking law experts had said that Basel I achieved uniform risk-weighted categories, this has been considered among the framework's greatest flaws. Basel and our NPRs risk weighting is contrary to commercial banking. Our banking regulators more so than the Fed, were able to judge what were safe and sound banking practices and prudentially should allow in terms of permissible activities. These words over time became empty, double speak however Basel Accords will not solve that. If adopted it would add layers of Basel's own abuse and double speak.

The Basel I **categorical risk weights** were said to be crudely quantified, while encouraging regulatory arbitrage. Is it worth asking if we need/needed "Risk Weighting"? Additionally corporate debt regardless of credit quality of the issuer all encountered 100% capital weights while smaller sovereigns' debt all enjoyed 0% capital weights similar to larger sovereigns' debt such as the US and UK. As a result many banks purchased higher yielding sovereign debt of smaller sovereigns and rank, have been risking values from greater volatility of those holdings, while this subsidized the powerful player in that region- Germany, while other layers of capital became funded with financial instruments of inferior quality.

Minimizing or diminishing use of inferior quality financial and capital instruments in higher quality Common Equity calculations. These sorts of structured capital instruments which apparently disintegrate during crises arguably face a checkered future, which our own regulators can prohibit and do not need Basel to achieve that **(again see NOTE 2 – "History of the Eighties"** pg52 and its footnote 91 OCC, *Bulletin BB-89-39*. December 13, 1989.)

I support the NPRs' **recommendation for Tier II capital to eliminate existing limits including Subordinated debt, Limited-life Preferred Stock, and the amount of Tier II included in Total Capital.** Additions to capital and removing caps of these included in additional Capital, even inferior quality additions are something rather than nothing at all. We do not need Basel nor European and G20 politics for this either!

With regard to inferior quality financial instruments such as structured product used for Repo activity and liquidity/borrowing arrangements, for commercial banks' and even investment banks', Balance Sheets inflated with nonperforming assets such as OTC derivatives, produces demand for liquidity Basel in the past failed to resolve, could not resolve nor in the future address what results from instruments, products and practices that are forms of Basel supported agency self dealing, and unsafe and unsound banking practices that contradict PRUDENTIAL BBANKING, unless the expression prudential banking is political double-speak to protect the forms of 'free' rider power of the status quo.

What cripples our depository system is what interferes with it from functioning properly, and which impairs the quality of earnings. Quality earnings in healthy or stable economic conditions produce sufficient operating cash flows and Retained Earnings, and thus liberate depository institutions from needing marginal quality **capital instruments** including versions of **Limited Life Preferred and TruPS for Tier 2 capital instruments.**

Strategies for using **Noncumulative** versus **limited life preferred** with cumulative dividends have other moral hazard issues, however different than the past. Not too dissimilar to FDIC preference for non-cumulative preferred capital, the Basel preference for **Non-cumulative perpetual preferred stock** traditionally issued by U.S. banking organizations, gives regulators power over creditors at any time, but most easily in the time of crisis. When banks need to raise capital however, these conservative, non-cumulative products receive less interest because investors-creditors KNOW regulators have capricious power to dictate to bank management that these dividends get shed and ignored in the future.

Less conservative instruments such as **trust preferred instruments, cumulative preferred,** and **traditional subordinated debt instruments** which are expected to remain Tier 2 eligible at least help a capital layer. Although there is no specific limitation under the proposal on the amount of Tier 2 capital that can be included in total capital traditionally issued by certain bank holding companies, investors prefer these because these yields are higher and enjoy legal force to press management to pay these dividends, which get cut-off usually only in bankruptcy court but under the **D'Oenche Duhme** doctrine, enables the FDIC power over debt owed to creditors to make such parties take haircuts.

The NEW and unique moral hazard issue arises now: because it's not a common equity, Non-cumulative preferred does not dilute equity, but a secure capital layer limiting risk for hitting the fund for Orderly Resolutions-liquidations fund "OLA" if the institution is put through resolution, ie taken over and either recapitalized, sold in whole or pieces.

A defacto form of 'forbearance' or coverage for creditors, this fund was legislated by way of Dodd-Frank Title II Orderly Liquidation Authority "OLA", which established a $50billion fund of voter money to help regulators 'resolve' or address these thorny issues with potential investors and creditors the regulators do not want to frighten away and thus OLA would be there to cover for investor and/or creditor losses. The regulators don't want counter-party lack of due diligence however, much earlier in the life and health of a financial institution to facilitate moral hazard by investing and depositing in a weak or sick bank, thus opting or preferring to choose to do business with banks and thrifts in better condition.

And so, inferior quality capital instruments that would not qualify in higher capital ratios, however in the event a financial institution would have to be resolved, creditors and investors which ordinarily would face haircuts in the post failure legal process, WOULD potentially enjoy payout of the tax-payer funded OLA without facing haircuts.

This does not discipline bank management from taking reckless steps, rather than operating with higher standards, regulators going through the legal process of making counter-parties take haircuts on their debt, or motivating big investors and creditors to doing business with healthier banks.

In any event our regulators also have/had power to shut down dividend payments to investors and creditors if the instruments are non-cumulative preferred shares. This also is part of this moral hazard problem which Basel does not solve, and commensalistically as in the past gets the same sorts of incompetence or inflate/collapse scenarios to which Basel contributes rather than the US using and applying our own effective Regulatory framework.

While the US economy has eroded over time, financial institutions' managements continued to and further became incentivized to grow their presence in their markets and contiguous ones. Generally slow economic conditions had fouled with what would have produced better operating cash flows in their own 'footprints' – ie, in their own markets. Sufficient quality earnings producing sufficient operating cash flow for liquidity that doesn't come from financing such as Repos-Commercial Paper or investing strategies, which have been the reasons for cheesy capital instruments to maintain regulatory capital levels and provide some liquidity.**(18)**

The problems of using Fair Value accounting in US GAAP and also IFRS issues and overlap with incentives.
Regardless, what caused the financial markets to correct in 2008 in the past did not burn through banks' balance sheets when the balance sheets were full of performing loans, and using US GAAP based on Accrual Basis Accounting with the Revenues realizing to cash in the Reporting Cycle. As a result of what would be produced from that, would be **better quality profits to be retained in Retained Earnings and not face deduction. These would those which existed before Fair Value/Mark to Market Accounting hijacked US GAAP (19)**

Because of fair value accounting, unlike ever before, financial market corrections now have the way of burning anything that relies on the financial markets for their 'values', although that also included the balance sheets of the ISDA members packed with OTC derivatives contracts, which in case they explode themselves, enjoy government backstop by way of what's said to be the 'Master Netting Agreement'.

To improve incentives - remove Government backstop that support the ISDA members, and more than likely managements will write less of those contracts. Eliminate management's ability to trade these and even more so, management more than likely will write less of this unsafe and unsound business. Repealing CMFA2000 to eliminate trading of OTC derivatives can get them derecognized from the balance sheets. There were vastly fewer problems in the financial sector and with these banks when these instruments could NOT TRADE. Unwind of these OTC derivatives contracts will be costly, although shrinking the balance sheet when this happens, some capital backing should exist and be sufficient while they again will have to be regulated or what satisfies regulatory framework for off-balance sheet contracts. Banks' balance sheets also will stabilize.

If they're considered insurance, then regulate them. Hit them with capital requirements the way real insurance is regulated and require writers to charge periodic premiums, etc so that these instruments produce periodic cash flows. Otherwise, these should be utterly ceased and desisted. Perhaps while contingent contracts, these would be regulated and require capital similarly to insurance contracts and if any trading of true insurance contracts, then that regulatory framework would serve to address OTC derivatives contracts, except for CDS which I would prohibit.

We don't need Basel to help us with that and Basel has been quite facile to ISDA's self interests. Financial users and writers of these contracts probably should once going off the balance sheet again, be required to hold capital similar to them the way again that insurance companies are required to hold capital against the insurance contracts they underwrite, and cannot write these contracts unless the user is paying again periodic fees to keep the insurance in force.

Basel hasn't deterred banks from writing flawed product that is toxic and by way of OTC derivatives contracts, shifts the risk of some of that problem to balance sheets of financial counter-parties, other ISDA cartel members. If it were only hedges even though many were flawed, the models for the hedging instruments were/are flawed models producing hedges that don't offset sufficiently. FASB now is reconsidering its hedging statement FAS133 to widen the offset exposure of the hedge to the underlying loan or that which is being hedged so as to make an accounting representation the hedge offsets better when the market reality would produce or be producing something different. This will show up in market turbulence and taking aggressive valuations versus abstaining from proliferating these contracts probably will do serious damage to a large financial institution because the accounting will not reflect economic realities or crisis outcomes.

Again Credit Default Swaps "CDS" would be ceased and desisted. These came by way of the big financial institutions which knew which companies would be hurt by 'free' trade and began to write CDS on the debt of those companies. In time, also knowing that the mortgage markets would blow up in a credit bubble and subsequent surfacing of the underwriting/originating debacle, CDS were written on those referenced mortgages and added to tranches or other structured product that contained non-performing mortgage paper and/or that were also full of re-hypothecations of non-performing mortgages' paper that would never pay, and thus immediately trigger payout to chummy buyers of the structured product in which the CDS were going to trigger because of the non-performing paper in the structures.

Basel failed at all to correct any of this then and doesn't look to solve problems at all that our own due process providing insight to our regulators won't solve.**(20)** CDS are also said to bring more players into this market without the players having to have purchased the debt or loans underlying the CDS. These are the capital markets, not gaming tables. Investors and traders in these markets should have sufficient substance to facilitate capital formation, not capital piracies.

Our regulators which have research staffs, including the Fed and its significant research efforts, along with the academics I am not certain if they analyzed using Interest rate swaps versus associated opportunity costs calling or rescheduling the loan rather than organizing a swap to protect the borrowers from interest rate risk, when floating rate would have worked fine. Interest rate swaps versus calling or selling loans are said to enable more traders in this market for these instruments but the shareholders are hurt by the swapping of the caps rather than writing new loans to the borrowers.

I suggest that the true economic costs of agency self-dealing from having done Interest rate swaps and CDS are not properly captured by the slow, eroding, externality harm that the shareholders, smaller banks and public over time have subsidized and although not felt in their wallets have felt in again ways characterized in economics as 'externalities' by way of ISDA bank and abuse of power –free rider – power of the largest banks. Meanwhile by way of CDS bank management and other agency interests' have enjoyed this subsidization/free rider power while harming the status of stable companies, or even weak companies with public debt. This abuse of power again some have labeled TooBigtoFail, without understanding this is a non-visible characteristic of TooBigToFail. Whereas it's more practices that have had the appearance of being bona fide, but in reality again more accurately are characterized as Agency Self-Dealing and Agency Abuse that enjoys protection and deflection/kid glove treatment aggravated by the corporate structure and what corporate power enjoys in the US. Others and recently Christopher Bruner, Associate Professor at Washington and Lee University School of Law authored a book on these matters, but blogged in "The Exchange" how the modern corporate structure contributed to the financial crisis (http://finance.yahoo.com/blogs/the-exchange/modern-corporate-structure-contributed-financial-crisis-o11950780.html)

For these agency problems, boards and managements can be sued by their shareholders. Regulators examine and monitor for this and have power and framework to punish these deviations and bad acting. CAMELS ratings assess **management quality and their performance**; "M" includes the assessment of management quality while the other ratios in the CAMELS score matrix describe to regulators and analysts if management has been doing its job properly.

Back to 2008 governmental support into ISDA members under Basel II Approaches - perhaps Basel has done the quantitative estimations given what's been known publicly about infusion trillions made into virtually all the largest ISDA members. Given the liquidity facilities/arrangements and the Quantitative Easing by the US Fed the financial support continues to climb into the many trillions. Thus it is improbable Basel has properly estimated the true risk, the true cost and thus the way to achieve the appropriate capital framework for US ISDA members (although Basel and foreign National Champions are probably licking their chops for our many larger community banks and thrifts), or it may not have wasted its time, except in knowing that what it proposed at all in its Accords benefits a survival-of-the-fittest Old- World tactic, which occurs when a country, its regulators and its largest financial institutions accepted the politics that control the Bank for International Settlements and Basel.

Again, eliminating government backstops for ISDA members will more than likely produce more management accountability than Basel at all has required in the past or would going forward.

If the carrot was to thwart our banks from engaging in international banking on European/EU turf, we'd have a better economy anyway by repealing US compliance with G20 Agreements which were for the US to de-industrialize **(see Note 6)**. Also as it is NOT the role of Basel, however IS the Role of US Congress to help to support better **Capital Conservation –** not by Basel's scheme proposed, rather, by way of improving our economy by repealing of US compliance with G20 Agreements and repealing associated 'free' trade and flawed multilateral agreements that are bad for domestic commerce. Congress and the Executive branch taking these actions would enable the US economy to stop bleeding and in ceasing anti-Constitutional non-tariffed imports coming into the US, encourage production to remain in the States or re-shore and facilitate the appropriate environment for banks to engage in performing lending. It's easier to do that than perverse contortions that are going to be used to consolidate the depository and financial sector and give more turf to mixing commerce and banking and to our foreign competitors. **(21)**

IFRS and fair value increasingly dominating US GAAP, facilitated(s) the "incentives" problem. Basel II attempted to rectify the flaws of Basel I however Basel II failed to capture major on-balance sheet and off-balance sheet risks as well as major derivatives exposures which IFRS and 'fair-value' accounting aggravated those balance sheets full of instruments that were 'fair valued' to the inflated financial markets. What at the banks that had produced breaking earnings in 2007 were from the same balance sheets that needed Treasury bailout and other liquidity facilities in 2008 when the financial markets corrected.

Where the Fed obstructed or avoided enforcing full enforcement of our regulatory framework ie, our bank regulators have the power to sanction and punish reporting and associated valuation abuse perpetrated by agency abuse/self-dealing and moral hazard by skewed **incentives** such as senior management comp schemes, the Fed however accommodated ISDA members using aggressive operating tactics writing contracts of unsafe and unsound now legitimized financial instruments. Over time some/all of this has contributed to eroding the health of the banks' balance sheets, while knowing that gamed financial markets would make their franchise appear more profitable from the fair valuing of their inflated balance sheets full of non-performing items such as OTC derivatives and barter activity from the collateral connected to their OTC derivatives. The Fed again was a form of a partner in this conspiracy of agency abuse rather than deterring it, which it and the FDIC have the power to punish **(see Notes 11 and 12 b).**

During difficult economic periods resulting from 'free' trade, which contributed to eroding the health and quality of the US economy, both IFRS and harmonization of IFRS with US GAAP also encouraged and promoted agency's aggressive lobbying and adoption of using fair value accounting and instruments such as Swaps including CDS. Commodity Futures Modernization Act "CFMA" 2000 legislation achieved legitimization to trade these ad hoc contracts whereby the trading of these permitted balance sheet status, and given IFRS and the US financial reporting model, eventually required management to mark to market or 'fair value' these instruments using the financial markets for the 'market' proxy.

Without cash flows from these instruments like performing loans, however, when fair valued produces 'gain', these unrealized non cash gains from fair valuing those balance sheet items, would be run through the Income Statement which inflates and are used to game earnings. Whereas earnings and earnings per share often key items that management and the public use to view management performance, what about those items that are corrupt are what need to be disciplined. The Fed has failed to do this, but IFRS feeds the problems of the flawed characteristics of OTC derivatives contracts which management can manage well enough now to yield want they want by fair valuing these with those non cash gains run through the income statement, producing a huge gravy train for themselves. If management at ISDA members reward themselves even 1 basis point on the notional over $600 Trillion in OTC derivatives contracts, that is a HUGE amount of money and will stop at virtually nothing to protect this gravy train- free rider cycle and machinations that derive this bounty.

Regulators examine for management incentives, and also interview management during the examination period once annually or once every 18 months. Regulators have the skill sets and body of experience and research that enables them to properly monitor and discipline for skewed- counterproductive, or higher quality management incentives.

If our regulators especially the Fed are supporting Basel III and use of some characteristics of it for the entire US depository system above $500MM of assets size, if this is to deter misaligned incentives, Basel will not solve that when our regulators already have had the solutions for that **(see Note 11 and 12b)**.

All along our regulators have had the power to alter and align incentives. In order to maintain or obtain bona fide management behavior, bank charters are not rewarded, or are threatened to be rescinded, or Enforcement/regulatory actions can be administered if there existed/exists misaligned incentives. All of what is being proposed to adopt Basel III as the regulatory framework is a significant, expensive undertaking to attribute amnesia on group think at the Regulators about what can control and align agency incentives. Congress also does not deserve a pass, especially since the laws typically are not repealed; they're only ignored, or replaced with something often worse.

Not only because our economy isn't that great, both Advanced Approach and non-Advanced Approach banks have been providing less commercial and Industrial ("C&I") lending in order to minimize on their balance sheets of what would be hit with higher capital costs given the risk weight categories, and minimizing redeployment into loans in a weakening/shrinking economy while they're attempting to meet capital regulations. This has had them lusting for fee revenue generating activities. **The Fed has facilitated that as a characteristic of recognizing Basel!**

Many esoteric contracts had no apparent values, not even by way of OTC trading markets. Basel II and given market turbulence, even with **Capital Buffers,** Basel III will fail to solve balance sheets' contractions when banks' balance sheets are full of these quasi assets which are inferior to performing loans and exchange trading/market making and issuance of "cash" instruments versus the synthetics such as the OTC derivatives. Basel Accords again are part of the problem, not the solution. Whereas even in the US for the US to repeal CFMA and/or prohibit trading OTC derivatives, or strictly limit agency contracts/underwriting and use of these contingencies would add to stability in the financial markets, and the balance sheets of these financial institutions, which would be made less complex by prohibiting these unsafe and unsound banking practices.

Also FT:"Law that explains bank multilateral regulation folly"; 11Sept12, Jackson Hole – "of Andre Haldane (Bank of England) "...The principal measure of bank resilience prescribed for and by regulators around the world – the **capital ratios** calculated according to principles laid down by the Basel Committee on Banking Supervision – had no value whatever in predicting the probability that a bank would fail. But a simple measure of the bank's leverage ratio, which anyone with a calculator could compute, did. More in the article also condemned complexity, saying Basel Accords failed to deter previous crises and deter misaligned incentives of senior management and participants such as decision makers and policy makers in the financial system. The Fed has deterred none of the problems. **(22)**

Trading **OTC derivatives** conveniently fit the bill for 'fee' revenue, whereas these instruments anyway as far back as 2004 were ridiculed for their way of hiding and pretending to minimize risk, when as experts have said, the true risks are up to 10fold what management and the traders ruminate that they have, and without systems capable to do effective data capture, and clean enough data to properly know their risk in spite of their need for fee income. By way of OTC derivatives contracts, risk shifted to the balance sheets of themselves, ie the ISDA members, as well as large counterparties such as hedge funds. Although I am not certain how the OCC defines what it considers OTC derivatives, current notional derivatives exposure as of June is said to be only $222 Trillion although from the ISDA site I calculated Notional at an estimated $680 Trillion **(23)** most of which resides on the balance sheets of the 5 largest ISDA members.

US financial institutions have been engaging in use of these sorts of private, non-exchange traded contracts from the time of Interest Only ("I/Os") and Principal Only "P/Os") or "Strips" instruments. These have been issued by the bigFinancial players for which they charged fees of smaller financial institutions which used these seemingly benign instruments in order to manage balance sheet risk to interest rate fluctuations, rather than rely on block and tackle asset/liability management with loan and associated deposit maturities **(24)** which systems now can calculate.

Call it an effort to level the unlevel playing field, notwithstanding US use of Collateralized Loan Obligations and similar structured vehicles although not perfect, also seem now to have received punishment by BIS and Basel. Meanwhile US banks have been pulling back from lending to midsized companies, whereas earlier this fall reported by Bloomberg Radio, foreign "national champions" such as Deutsche Bank are lending more to US companies. It also had reported in the media, that Germany had little interest any time soon to comply with Basel Accords III. This isn't a level playing field; Basel II did not correct for all non US ISDA members (of which DB is among the most large) to operate without capital adequacy although Basel I started the Risk-based capital and Risk-based Assets calculations which the German National Champions have used to their advantage. And we've allowed foreign national champions to operate in the US largely without constraint while not actually deterring DB for its un-capitalized US units lending to US companies. Basel is a political contrivance that doesn't correct for these political problems to truly solve capital adequacy, leveling the playing field, and improving incentives alignment.

If even the former Chairperson of the FDIC felt that financial institutions in the US must improve incentives alignment while also needing stronger, and that in her estimation meant higher capital levels, however, then her agency was partly responsible for the erosion in capital adequacy and laxity in Prompt Corrective Action diligence that would have achieved this, which Basel Accords will not resolve. Keep in mind, I've mentioned and footnoted Inspector General, GAO and senior FDIC staff that made not a word of complaint or issue while the credit bubble and interest correction were happening and the markets were beginning to correct. Nothing in their reports indicated issues and complaints that surfaced and achieved substantial media attention during the financial market correction and after mid 2008.

Among its other issues such as DATA error and definitional flaws with Operations Risk characteristics, Basel although having made attempt to address operational risk, it cannot nor will not in any form in the past or future address lack of data quality, integrity and the systems that track, manage and make useable the huge amount of financial data and financial information. It is requisite these Management Information Systems and Information Technologies properly track, process and report the financial data. FDIC has enforcement for this; the Fed also may have obstructed this.

In order for the IT systems to be up to speed enough to properly track the data necessary to model and calculate the risks of the hedging and the business strategy of writing and trading OTC derivatives contracts, this spend per each large ISDA member according to experts would cost roughly $5billion with these grand scale projects taking up to 10 years. It would take using the best minds for this work, which sadly are not many of the former rocket scientists, physicists and high math experts wallstreet has employed. Few of these are monetary economists, trained sufficiently in economics, finance and accounting to understand the complexity, details and the bigger picture of the overall risk of these intertwined balance sheets. Moreover, it would take a number of supercomputers and associated costs to solve the unknown about the OTC derivatives 'risk' profile for all of the ISDA OTC derivatives contracts writers and their counterparties, and users of OTC derivatives contracts. And the complexity of these instruments which their systems can't model properly nor can wallstreet's former physicist risk managers understand properly often are so complex, that what risk their traders assume in their instruments often have up to 10 times more risk than believed. The systems fail to capture this enormous risk profile when aggregated, and the collateral held for use if a trade fails, is insufficient in amount and quality in covering for the risk. Basel solves NONE of this.

Moreover, negative correlations are assumed to have been achieved in the use of FAS 133 hedges which usually are flawed, however in crisis times, correlation goes to 1. **Most liquidity dries up; there isn't enough good quality liquidity IN THE WORLD. Only the Fed's quantitative easing has helped somewhat to diminish crisis and as a result, correlation risk hitting 1. Regardless of all of Basel's ambitions, it cannot solve correlation or model risk and failed to in the past.**

Collateral for the contracts also serves as barter. For a publicly traded company, the barter fails to provide cash flows that meet the economic and operating 'cash flow' needs to handle the enterprise's obligations, or the model flaws. These often are produced by younger, less experienced, improperly trained quants, who make model assumptions and estimations that fail to capture the true risks of the moving, monte carlo profile of these instruments risks together.

For these reasons, relying on what often is inferior quality collateral, while also pluming this line of business over, or sacrificing other operating cash flow generating business is bad for a bank and especially large publicly traded banks. Abuse of power has enabled them to enjoy power to borrow rather than regulators issuing Enforcement Directives and PCA Letters; thus with political abuse, ignorance and regulatory laxity, the contrived crisis that triggered the Bear Stearns resolution and the Lehman bankruptcy are lurking outside of Quantitative easing and stable markets and economy. Basel solves none of this.

Or as another example of data integrity and definition, FICO (FAIR/ISSA) scores failed to measure **debt** as percent of borrower **income "DTI"**. Although the private mortgage insurance companies used their **"FIAR" metric** to track debt to income and minimum necessary annual wage/salary and/or income levels for a borrower applying for an adjustable rate mortgage **"ARM"** with a 90% loan-to-(equity) value mortgage for insuring conforming ARMs sold to Fannie and Freddie, FICO apparently failed to capture DTI for its score. In time loans were underwritten to borrowers in any financial health condition, then securitized and re-hypothecated many times over. In time FIAR was ignored or rejected, whereas FICO become a dominate consumer credit score metric mortgage writers used to originate mortgage product. **By way of**

Enforcement and **Prompt Corrective Action,** AGAIN, the FDIC and the Fed had examination access and the discretionary power to override ALL of this product underwriting problem, that in ANY direct or indirect way came in contact with the FDIC and the Deposit Insurance Fund. We have the functioning regulatory framework. Basel not at any time would improve the competency or diligence of our regulators. We have the laws and regulations however what had the regulators practice subtle steps to contribute to the financial crisis, which is not over nor solved, isn't for what the NPR asked.

To respond to subtle behavioral changes over the past 15 years in our regulators, answers perhaps can be found in understanding **Enron,** the change in laws and in the case of Enron, an actual lack of a regulator other than the Federal Energy Regulatory Commission **("FERC")**. Enron's auditors eventually reported closer to its true financial condition that surfaced upon the 2000-2001 post-dotcom correction in the US financial markets. Enron's energy OTC derivatives contracts, it could begin trading after passage of the 2000 Commodity Futures Modernization Act.

When required to be fair valued, ie, 'marked-to-market', the OTC energy derivatives contracts were marked/priced to strongly correcting financial markets and/or traded at strongly falling trading prices. Our ISDA members similarly experienced this in 2008. After 2007 when they when reporting record breaking earnings in strongly upward moving (goosed) markets, but with 'fair-value' when shadowing correcting markets in 2008, all of this on these instruments produced unrealized non cash losses when 'marking to market'. In turn those losses were reported in the Income Statement, and producing their de facto bankruptcy. The Fed directly or indirectly deflected or obstructed discipline and enforcement that produced this serious disconnect between that and how the system should function per 1991 statute.

These 'energy' OTC derivatives contracts in general additionally suffered from oversight problems. This market for energy commodity contract products suffered from lack of liquidity – a serious problem occurring in many different ways for difference products and associated markets throughout the financial markets.

Indeed, understanding the Enron debacle gives one understanding about what has happened in our financial sector. Basel Accords in any form would not have stopped the Enron debacle. Comparing the financial crisis with Enron's path and subsequent post mortem, Enron failed ie, it went into bankruptcy when its bankers failed to continue to allow it to borrow for more liquidity it needed because its OTC derivatives were not producing period cash flows like performing loans, or gas utility user fees. Its senior management and accounting firm Arthur Anderson understood this and for this reason several high level Anderson partners resigned from the relationship knowing about the manner in which deception and agency abuse risks were being perpetrated to the public, shareholders and creditors.

Non Banking Financial Intermediaries "NBFIs" such as Bear Stearns, Lehman Brothers, and AIG engaged in trading similar OTC Derivatives items. All failed in one form or another when their counter-parties also failed to honor their need for liquidity. As there isn't enough liquidity in the world to address liquidity matters at the big ISDA members, let alone in a crisis when all of these financial institutions and the rest of society need liquidity, this also is one of the flawed assumptions of OTC derivatives writing, the associated 'risk management' and Basel, and the veil senior management uses to write profitable but inferior quality, legitimized nonbanking business, while the regulators with the Fed as the dominant political functionary giving a pass to all of this, knowing it's bogus.

Sufficient capital would not have solved any of these situations, although there is a liquidity proposal in Basel, however the Basel Accords already have proven themselves as flawed regimes. Additionally, there also isn't enough quality liquidity in the world to respond to what Basel III is suggesting for improved liquidity, while financial institutions are attempting also to satisfy increased demands for high quality collateral and other Available for Sale "AFS" and Marketable Securities where depository institutions may invest their available means before or without making poor quality, or aggressive loans, or for asset liquidity available for daily banking needs such as depositor withdraws and redemptions or provide to borrowers under lending/facilities arrangements.

Again, if there are insufficient **Cash flows from Operations**, and the enterprise has to rely on **Cash Flow from Financing**, or **Cash flow from Investing**, these in inferior sources vanish in times of stress. Market correction in 2008 was that time when liquidity-financing instruments such as Repurchase Agreements or Commercial Paper, dried up. The NBFIs then needed to find investors to infuse equity of any sort, although these similarly often burned down.

All US banks and thrifts and large foreign banks with large operations active in the US, except the ISDA members, at least annually are examined or subject to regulatory review for safe and sound banking practices, conduct and activities. Although no longer examining the largest banks, typically at least by the Fed examiners for US financial institutions which have bank holding companies, examiners review/ examine for cash flows quality. Sufficient operating cash flows indicate that the enterprise is self-sustaining, while not having to rely on Cash flows from Financing, and/or Cash flows from Investing.

BHC Supervision Manual pg, 11: **"Loan Administration and Lending Standards" 2010.2.3.1.1.4 Credit Analysis.** Because enterprise value is commonly derived from the cash flows of a business, it is closely correlated with the primary source of repayment. And ***2125.0.2.5.1 Credit Risk*** **"Trading Activities of Banking Organizations (Risk Management and Internal Controls)"** A self-sustaining enterprise is making a sufficient number of performing loans and engaging in other typical banking activities that are earning sufficient quality income all of which contributes to producing sufficient operating cash flow. This is so that the enterprise does not or is not inclined to risk using liquidity from deposit liabilities or have to engage in financing, ie borrowings of other sorts such as repurchase agreements and/or commercial paper to have sufficient liquidity for which to engage in its banking activities.

If self-sustaining, it also would not have to rely on 'Investing' activities such as issuing securities and associated hybrids such as 'Trust' Preferred securities to provide sufficient cash flows to sustain banking activities. Smaller banks are disciplined if lacking sufficient operating cash flows and exhibit reliance on cash flows from financing in order to have sufficient liquidity to operate in a safe and sound condition and not using depositor money and/or eroding their capital and triggering Prompt Corrective Action sanctions. And other than Washington Mutual, Wachovia, and IndyMAC which failed in one form or another from balance sheets full of sour loans again in part related to a bad economy, no large banking institution failed aside from life support provided by the Treasury Department's use of Troubled Asset Relief Program ("TARP") infusion and the Fed and FDIC's use of liquidity programs/arrangements in part because we have a functioning framework that was held back-was THWARTED and OBSTRUCTED from function fully and with full accountability in favor of agency self interests and virtually unchecked ISDA member abuses of the system.

What I have described has been the general pattern of our regulatory agencies and their oversight/supervision and regulation of Bank Insurance Fund ("BIF") insured depository institutions and until 1993, over the largest US and foreign broker/dealers involved in US Treasury securities activities monitored, examined and supervised by the New York Federal Reserve Bank. **(25)**

Again referring to the **BHC Supervision Manual** for its examiners, this is more than 1861 pages with robust, exact discussions regarding examining and analyzing cash flow origin and quality. In the BHC Supervision Manual, we see in this section: **Section "4010.0.2 CASH FLOW STATEMENT** This is an effective tool used in understanding how a particular bank holding company operates. Its primary objective is to summarize the financing and investing activities of the holding company, including the extent to which the entity has generated funds (externally and internally) during the period. The cash flow statement is related to both the income statement and the balance sheet and provides information that otherwise can be obtained only partially by interpreting each of those statements."

An analysis of past cash flow statements can supply important information regarding the uses of funds, such as internal asset growth or acquisitions, as well as data on the sources of funds used and the financing needs of management. One ratio that may be used to calculate the strength of a parent company's earnings to meet its fixed charges or obligations is the *Fixed Charge Coverage Ratio* (FCCR). The components of the ratio are included on the ''Cash Flow Statement (Parent)'' page. The Fixed Charge Coverage Ratio (FCCR) measures the parent company's ability to pay for *fixed* contractual obligations if management is to *retain control of the organization,* thereby satisfying the expectation of creditors and preferred stockholders. Net income *after taxes* is used in the formula the above section about Cash flow analysis is from *BHC Supervision Manual* (as of) December 1992.

These Cash Flow Statements the Fed Examiners derive again are non public information used in Exam reports for internal analysis, although for publicly traded companies, in the SEC 10K and 10Q financial reports are made available to the public. Typically for the **Statement of Cash Flows** "SCF" that the public sees of a publicly traded company, this financial statement has 3 sections: Cash Flows from: Operating Activities, Investing Activities, and Financing Activities. The "Consolidated Statement of Cash flows" is one of the 3 required financial statements of companies with more than 300 shareholders. As late as 2007 or 2008, however, although financial institutions lobbied the FASB to attempt to eliminate filing and reporting of their SCF, notwithstanding, using Goldman Sachs' 2011 Annual Report as an example, one will find its Statement of Cash Flows on page 103. For JP Morgan Chase one will find this on page 181 of its 2011 Annual Report.

More than likely many of the banks and thrifts that 'failed' or in actually were seized and either shut down and/of reopened as branches of a competitor, were smaller companies whose shares perhaps were exchange-traded or over-the counter-traded, or perhaps not. Notwithstanding these depository institutions are regulated in a robust framework, required quarterly with their regulators to file **robust financial reports** (quarterly reports – CALL, Y9-C, and OTS required TFR) expecting compliance of providing significant amounts of detailed financial data leaving virtually no question about the financial health of these enterprises. This is known as 'off-site' monitoring. Depository institutions' financial status is also viewed also in relation to peers' performance. Descriptive ratios are derived from the financial data provided the regulators (bank and BHC "Performance Reports). I do not believe European banks are examined and/or monitored in this same, exacting way.

Moreover if in the US we have bank failures, when our regulatory framework exists between permissible activities in which banks may engage and impermissible activities that breach safety and soundness concerns, as I'd mentioned above, since 1991 in the Federal Deposit Insurance Corporation Improvement Act of 1991, the US has had a regulatory regime known as "**Prompt Corrective Action**". **(See Note 2 and Note 26 on PCA)**

Even with Savings & Loans, in 1989, Congress passed Financial Institutions Reform Recovery and Enforcement Act of 1989, ("FIRREA"), establishing the Office of Thrift Supervision ("OTS"), and the Resolution Trust Corporation ("RTC") which was funded with $150 Billion of voter money to resolve financial institutions seized by the OTS and put into conservatorship eventually to be bid/sold to highest bidders of any sort bank or otherwise, or receivership, upon which they'd be dissolved and pay out depositors. Perhaps the Dodd Frank Act Title II for Orderly Liquidation Authority ("OLA") is modeled after this established to serve as a fund to bridge the dismantling of complex, Systemically Important Financial Institutions ("SIFIs"), such as the largest US based ISDA members.

During the off-site monitoring review process that the regulators practice reveals deterioration of the financial condition of a depository institution, even if the management and/or operating practices at an enterprise concern the regulators, if the financial condition has yet to reveal any material erosion in the financial condition of a depository institution, **(iv) of Subsection 6.4 of 12USCBanks, Banking Part 6- Prompt Corrective Action ("PCA")**, indicates that even satisfying all that which would deem a bank 'well capitalized', if it is under some sort of regulatory directive it still is not considered "Well Capitalized". Whereas this section of the US Code applies to OCC supervised banks, i.e., "National Banks" or "National Associations", this law was passed for all depository institutions and applies with adoption by all financial regulators to all depository institutions chartered by the State banking departments or the US Treasury **(26)**

Although once PCA is triggered, there are costs to having examiner teams examine a bank or thrift causing concern to the regulators, however there are 'examiner' teams on site at the largest US financial institutions full time, virtually every week of the year. In times of crisis aside from the bad assets on the balance sheet of the resolved institution, the regulators often cannot receive full value on all or most of the assets other than bids high or so for the deposit franchise. Aside from other operating costs issues such as examiner expense in resolutions, the regulatory agencies are 'self-funded' by fees charged or deposit insurance premiums charged of foreign banks chartered to operate in the US and US depository institutions insured by the BIF. For any logical business concern, however, even if not evident in the financial condition detectible in the quarterly financial reports of condition required to be filed by all US and foreign operating depository institutions, to any of these depository institutions, the regulators may and have the federal statute authority to issue regulatory directives and/or trigger examiner teams to investigate issues that are perceived to be potentially causing safety and soundness concerns.

In virtually all cases the US depository sector is annually examined and/or monitored off-site and on-site for every aspect of their health. We may not have been perfect about this; we may have allowed politics to foul what had been a successful process – this political lurch which we need to rectify so that our supervision practices yield the historically good results we'd enjoyed for many decades. Thus for the BCBS to say that capital adequacy is its reason for the financial crisis in the US and thus its reason to issue another version of its regulatory Framework, it shows some disconnect between the truth/reality, and what's part of the steam roller attempt to use 'bully-pulpit' tactics spurred by G20 multilateralism that the US does not need, nor Basel's quasi advisory bodies that also are not accountable to the Voters, nor our legal framework.

Our Congress has been beguiled in the past, however and recognizing Basel Accords in the Dodd Frank Act, by no means gets a pass to look to foreign interests which had not in the past solved our problems nor in the future will address what happened to bring us to where we've crippled our system. In the case of the ISDA members – using Basel II – these all went de facto bankrupt and were bailed out by the US Treasury Department using Trouble Asset Relief Program ("TARP") rather than the FDIC's Open Bank Assistance ("OBA"), which would have required the FDIC to fire and litigate guilty senior managements at OBA recipients.

Basel in any version not at any point stopped any financial problems over the last 24 years at least in the US. Basel I with "Risk Weighted Assets" and "Risk Based Capital" calculations, came into existence in 1988 after the US financial markets corrected after the US Board of Governors of the Federal Reserve system had been raising interest rates, and after 1986 when US Congress passed legislation that altered tax policy with regard to forms of tax deductions on real estate investments. Flaws in Basel I's Risk Weighted Assets have been discussed earlier in this Comment, but even with that should have abstained from paying any mind or giving any ground to that as a 'Regulatory Framework' **(See pg 16 "Categorical Risk Weights" discussion)**.

After the effects of the combination of those began to surface in the US real estate markets, along with the Fed raising interest rates, when in October 1987 the US financial markets began to correct strongly, however Basel 1 with its 'Risk-Based' capital calculations and its subsequent Basel II to which the largest US banks complied, not at all in any way deterred other more harmful or when taken with other financial system digressions while not alone would cause the financial crisis, then together with the other financial system digressions-cripplings produce the need in time to trigger ISDA government backstop for members. This has been occurring into the present, from and through the late 2007- 2009 corrections in the financial markets for bailing out the US, and global financial system using numerous liquidity arrangements and direct infusions in 2008 such as the "TARP", a program of direct financial infusion by way of capital instruments proposed and administered by former Treasury Secretary Henry Paulson in 2008 after approval by US Congress.

For this NPR to address the need to require increase in capital adequacy and alter the grid of Capital category definitions for Prompt Corrective Action, the US financial system did not in the past nor now need Basel for those important standards or upgrades to them although no crisis was because we didn't have those or fail to keep those or not have had Basel Accords. Distress at the bank brews for other reasons which eventually become capital problems when the others are on purpose ignored, which would have to be the case given the thoroughness of our regulatory framework.

Perhaps the Fed's enthusiasm and support for multilateralism, multi-lateral agreements such as the Basel Accords, and the complex reciprocal cross-holdings controlling capital, but also complex reciprocal cross-holdings in general, has this NPR issued not only from the Fed, but from remaining depository institutions' regulators. In part perhaps because of multilateral agreements such as the G20 Transatlantic Agreement or legislation coming out of Congress such as Dodd Frank Act recognizing Basel Accords, the US Executive Branch regulators which regulate US depository institutions have been obliged to issue this NPR. If this is the case, thank God there is public due process whereby you, the issuing regulators are interested and have used this process to seek public comment about the materials of the NPRs. **(27)**

Use of 2 Leverage Ratios by Advanced Approaches Banking organizations AND Proposed Supplemental Leverage Ratio; the Capital Buffer and use of what's called 'bail in capital' in Europe are to attempt to prevent the "Lehman" situation. As a preface, Lehman Brothers was one of the 5 largest investment banks in the US. In 2004, former Treasury Secretary Henry Paulson was chairman at one of the largest US investment banks, Goldman Sachs. That year from the SEC he obtained the "Net Capital Rule" which in effect was the power for these 5 broker/dealers to inflate their balance sheets well over their former legal or regulatory 'leverage' ratios. This de-regulation from the SEC came after their balance sheets were already inflated with increasing amounts of contracting/underwritings, and trading of OTC derivatives however it also was to facilitate further inflating of their balance sheets for an eventual 'financial terrorist' collapse scenario which was virtually inevitable when the markets corrected, fair value/mark to market accounting would have to be used on these instruments inflating these balance sheets, and would produce results similar to the Enron use of OTC derivatives' for that inflate/collapse scenario.

Moreover, it seems as if what was done to Lehman Brothers, ie, removing a competitor from the pool and lessen the number of domestic and large foreign ISDA members from feeding on the US and global 'pie', Lehman Brothers is being used as a bully pulpit and jaw-boning tactic by the G20 as 'what to avoid' **(28)**

At the present time, all of our remaining 'investment' banks now have Bank Holding Company 'charters' or are owned by commercial banks. As a result, even without the Basel Accords they are subject to PCA, its capital regime including capital and associated **'Leverage' and/or Supplemental Ratios**, and/or by Enforcement Actions and to be required to comply with if issued **"Capital Restoration Plans"** according the joint nature of US depository regulation.

Moreover, if not having to refer legal and/or enforcement action to the Department of Justice, our regulators have their own legal departments, however can still rely on the Department of Justice and other Executive Branch organs such as the Federal Trade Commission, which itself relies on the Department of Justice. If internal Executive Branch issues are hindered, hobbled and thwarted or frozen, that speaks of other problems that Basel will not solve. And in that vein, the US did not need FSOC, the Financial Stability Oversight Council. Any complaints from or by regulators that the others ignored the pluming problems during the credit bubble and ensuing 'crisis', are dealing with an elephant in the Room that isn't solved by Basel Accords.

Moreover when laws are passed, if in cases such Federal Deposit Insurance Act for banks versus the Homeowners Lending Act for 'thrifts' (Savings & Loans, Savings Associations, Savings Banks), cross jurisdictional access has existed by MOUs and/or joint regulatory efforts between the regulators. Fictions about the forms of balkanization serve for political and self interests of inside players who know and are looking for their gravy train or 'free' rider situation **(29).** The Fed is confusing the choice here. Presumptions made in the NPR by the Fed and the banking regulators is what we've got here, rather than we had not adopted Basel Accords and going forward **to presume that we need them, and comment on the details in the NPRs because Basel III is what the Fed and its political wants is continuing the problems. For this and other reasons, we've never needed Basel Accords, Basel 1 or 2, or III.**

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Notes:

1) As an administrative note, while looking through the PDF for all NPRs, I noticed in the HTML Text Federal Register versions, the formulas that were the TIFF files were omitted. Although it is handy to have the FR in HTML perhaps RTF would be better than text. RTF would preserve the TIFF or whatever is used to put the formulas into the proposed regulation. Thank you.

2) See Table I and **See NOTE 26** also discuss 'appeals' process that if on glide path in pca, what year was that and which were those and change for collateral for small business owners using their properties for their businesses)

Table I. Proposed PCA Threshold Requirements*
PCA Capital Category **Threshold Ratios**

	Total Risk-based Capital ratio	**Tier 1 Risk-based Capital ratio**	**Common Equity Tier 1 Risk-based Capitai ratio**	**Tier 1 Leverage ratio**
Well capitalized	10%	8%	6.5%	5%
Adequately capitalized	8%	6%	4.5%	4%
Under-capitalized	< 8%	< 6%	< 4.5%	<4%
Significantly under-capitalized	< 6%	< 4%	< 3%	<3%
Critically under-capitalized	**Tangible Equity/Totai Assets</= 2%****			

***Proposed effective date, Jan 1, 2012. This date coincides with the phasing in of the new minimum capital requirements, which would be implemented over a transition period.

Source: "Table 2" in the FIL-25-2012 of 18 June 2012 released by the FDIC and originated and with purpose and authority derived from *Authority.* This part is issued by the Office of the Comptroller of the Currency (OCC) pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o). (b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this subpart is to define, for insured national banks, the capital measures and capital levels, and for insured federal branches, comparable asset-based measures and levels, that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This part 6 also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38.

**** Regulatory Enforcement Actions have begun long before this stage of equity % however at this point the depository institution in effect is required to reach higher capital levels or be shut down in 60 days, nicknamed the 'glide path'.

Also: Discussion of Federal Deposit Insurance Corporation Improvement Act of 1991 "FDICIA 1991"
http://www.federalreserve.gov/boarddocs/speeches/2001/200105102/default.htm
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Remarks by Governor Laurence H. Meyer- At the 37th Annual Conference on Bank Structure and Competition of the Federal Reserve Bank of Chicago, Chicago, Illinois / May 10, 2001

"…The incentives provided by a policy of **Prompt Corrective Action "PCA" for deterring moral hazard** and limiting taxpayer losses were reinforced by the **least-cost-resolution** requirements of FDICIA. Under **least-cost resolution**, the FDIC was directed to resolve a failed institution, and protect insured depositors, in a way that was "the least costly to the Deposit Insurance Fund "DIF" of all possible methods for meeting the Corporation's obligation." Although the Act provided for certain exceptions to this charge, the general theme of least-cost resolution was to encourage market discipline by putting uninsured depositors and other liability holders at greater risk [**What this means is, that sophisticated depositors with assets deposited at greater than the insured amount in any single depository institution, is to do due diligence on the financial health of their bank or thrift. Moreover, Basel will reward national champions aka 'TooBigtoFail" by making it difficult to depositors to move their deposits to other and often smaller institutions, that either need to deploy these deposits profitably and in turn those institutions encounter the additional burden of having to increase their capital. For the reason that PCA and attempts to avoid depository institutions that the depositor would suspect is engaging in moral hazard, attempting to move deposits to another bank or thrift, rather than something like a credit union, with the additional deposits and the CAMEL process and potentially Basel III unless rejected, these smaller banks will be dealt an unfair hand by the government when they were the better or at least, least abusive alternative. AMP]**. Of the eighty-two banks that failed between 1993 and 2000, uninsured depositors have suffered losses in almost three-quarters of the resolutions, and in the balance of the cases the FDIC received higher bids to acquire the failing institutions with the uninsured creditors than without. Not surprisingly, research suggests that market discipline has increased in the post-FDICIA period until 2008 and Dodd-Frank.

FDICIA reinforced the importance of risk-focused supervision and regulation by requiring the FDIC to implement a system of risk-based deposit insurance premiums. This system, first implemented in 1993, has had some success. It has also been hampered, in part, by the technical difficulty of estimating an appropriate premium. But it has also been hampered by the limitations imposed on risk-based pricing by the requirement that the reserve ratios of the FDIC's insurance funds for banks and savings associations be capped at 1.25 percent.

The so-called "systemic risk exception" in FDICIA has been one of the act's most controversial provisions. Under this provision, resolution of a failed depository need not be least-cost, and uninsured creditors may be protected if it is determined that a least-cost resolution would "have serious adverse effects on economic conditions or financial stability" and that a resolution that is not least-cost would "avoid or mitigate such adverse effects." Some critics have argued that the systemic risk exception maintains a policy of Too-Big-to-Fail, thus undermining FDICIA's other efforts to reduce moral hazard, encourage market discipline, and limit taxpayer liability, not to mention putting small banks that are "Too-Small-to-Save" at a disadvantage. Basel regime aggravates these issues and would fail to solve them.

In my judgment, these criticisms are off the mark. The systemic risk exception recognizes the reality that in a major crisis the benefits of preserving the stability of the banking and financial system may very well outweigh the costs, including future moral hazard, of extending some additional protection to uninsured creditors in a crisis. Moreover, in my view, inadequate attention has been paid to several mitigating factors.

Restrictions on the use of the exception, and the flexibility with which it may be employed, combine to substantially restrict its potentially adverse effects. For example, use of the exception is made difficult by FDICIA's requirement that in order for the exception to be triggered, two-thirds of both the Federal Reserve and the FDIC boards must determine that the circumstances necessary to invoke the exception are met, and both must recommend use of the exception to the Secretary of the Treasury. The Secretary must, in turn, consult with the President before determining that the exception is warranted. …" [**SO GIVEN THIS, AND MEYER SAID THIS IN 2001, WE SEE HERE NO NEED FOR Financial Services Oversight Council "FSOC". All of these parties had a factor in largest financial institutions engaging in unsafe and unsound operating activity that could have been deterred and often went beyond discipline of the framework applied to virtually all other financial institutions subject to regulation. We're guilty of the failures by allowing politics to foul with appropriate and timely enforcement.AMP]**

" **Impact of Prompt Corrective Action"** *http://www.fdic.gov/bank/historical/history/3_85.pdf* **History of the Eighties — Lessons for the Future, Volume I: An Examination of the Banking Crises of the 1980s and Early 1990s,** a study prepared by the FDIC's Division of Research and Statistics Last Updated 6/5/2000. Pg51.

The Prompt Corrective Action (PCA) provisions of FDICIA were designed to limit regulatory forbearance by requiring more-timely and less-discretionary intervention, with the objective of reducing failure costs. FDICIA mandated that the regulatory authorities adopt five capitalization categories, ranging from .well capitalized to critically undercapitalized, to serve as the basis for Prompt Corrective Action. As an institution's capital position declines, the appropriate regulator is required to increase the severity of its actions. These actions range from restricting asset growth (for undercapitalized institutions) to closing banks (those that are critically undercapitalized for a prescribed period). The top four capital categories are defined in terms of risk-based capital and leverage ratios. Critically undercapitalized institutions are those with tangible capital ratios of 2 percent or less. In general, a receiver must be appointed for any institution that is critically undercapitalized for up to 270 days.

3) Community banks - Basel III: The bane of smaller community banks? Bankrate, Inc. By Claes Bell | Bankrate.com – Mon, Oct 22, 2012 3:00 AM EDT "…they will realize that actually many of the community banks are in very reasonable shape when it comes to not only the amount of capital but also the quality of capital,". Moreover, while community bankers would no doubt agree that the safety and soundness of the financial system is a worthwhile goal, the Federal Reserve's proposed regulations have been met with a great deal of skepticism from community bankers. Oftentimes, raising capital comes down to asking a small group of shareholders to pony up the necessary funds, Cole says. "Many people do not realize that 85 percent to 90 percent of community banks are privately owned and about one-third of them have (fewer) than 100 shareholders," he says. "They have a small shareholder base."

Complicating matters is that because the new standards require a series of complex evaluations of banks' loan commitments and other factors, community banks probably will have to significantly retool their computer systems and even hire more workers to determine on a day-to-day basis what their capital requirements are, Cole says.

That concern was echoed by Federal Reserve Governor and former community banker Elizabeth Duke when the new standards were announced in June: "I would like to stress the importance of understanding the trade-offs between the costs of significant changes to bank accounting and reporting systems and the benefits of more granular calibration of risk. Some parts of these proposals seem to me likely to require significant reprogramming by smaller banks. Before we impose such burdens, it is important that we understand the costs involved with each data element and weigh it against the expected improvement in the resiliency of the financial system. "

For community bank owners already battered by a tough few years for the industry, that may be the last straw, says Nathan Stovall, New York bureau chief for SNL Financial, a financial analysis firm. "The capital hit is not going to be enough to where it forces somebody immediately to say, 'I can't do this.' I think if you're already there, you had a problem anyway," Stovall says. "But what they could say is, 'We're kind of considering (selling out). It's a tough environment right now. It's hard to grow loans. Compliance costs are going up across the board. There's heightened regulatory scrutiny in everything we do. And now all of a sudden, we're going to have a much more difficult capital regime? ... I don't want to do it.'"

The result could be increasing mergers and sales of community banks, Stovall says, effectively accelerating a process of thinning out the community banking sector that had slowed due to the bad economy. For consumers, such thinning out means fewer alternatives when larger banks catch the fee-hiking bug, Cole says. "It means that consumers and borrowers in those communities will have to deal with a bank that may not be familiar with the needs of that community," Cole says. "It often means higher rates on loans, lower rates on deposits, and it just loses the local connection that so many community banks have with their community." http://finance.yahoo.com/news/basel-iii-bane-smaller-community-070053533.html;_ylt=AhVjducbQhfmBPmmRrs6nMir3YdG;_ylu=X3oDMTNoazZwbGQ5BG1pdANGaW5hbmNlIEluZmlua XRlIEJyb3dzZSBTcGxpdARwa2cDOThkMzRhOTEtZjUyZS0zMmE1LTgyNzAtMTQwM2EzZDA2MDMzBHBvcwNsMgRzZ WMDbWVkaWFpbmZpbml0ZWJyb3dzZWxpc3R0ZW1w;_ylg=X3oDMTJuajE1dW92BGludGwDdXMEbGFuZwNlbi11cwR wc3RhaWQDN2RlN2RmZiYtODRlMi0zNiViLWIwNDctYTYyYzAyYmViMiA2BHBzdGNhdANuZXdzBHB0A3N0b3J5cGFnZ Q--;_ylv=3 AMP]

Also http://baselinescenario.com/2010/11/11/top-finance-experts-to-g20-the-basel-iii-process-is-a-disaster/

Top Finance Experts To G20: The Basel III Process Is A Disaster/ November 11, 2010 by Simon Johnson |

The Group of 20 summit for heads of government this weekend will apparently "hail bank reform," particularly as manifest in the Basel III process that has resulted in higher capital requirements for banks. According to leading authorities on the issue, however, the Basel process is closer to a disaster than a success.

Bank capital can be best thought of as the amount of financing of a bank's operations (lending and investment) that is covered by equity and not by debt obligations. In other words, it describes how much of the assets of the bank are subject not to the "hard claim" of debt but rather to a residual or equity claim, which would not lead to distress or insolvency when the value of the assets goes down against the liabilities. For global megabanks, equity capital is thus a perceived as the key element in preventing the failure of an individual institution (or a couple of banks) from bringing down the financial system however, more capital has NOTING TO DO WITH PREVENTING FAILURE. Florida's SOUTHEAST BANK CORP IN 1990 OR 1991 **WAS SEIZED** WITH A PRIMARY CAPITAL RATIO OF 7% ie, SHAREHOLDERS' EQUITY OF 5%). In a distressed depository institution, more capital only delays failure if a bank or thrift were operating in an unsafe/unsound condition, however more capital does not minimize the cost of a resolution because the capital is bled through by other problems often before a depository institution would be seized. In a bank or thrift failure, common stock did not/does not get standing in the pool of general litigants, and doesn't add more resources to the pool for more to use to cover against the loss on assets, any general creditors which may win some payment on their debt.

The framing of the Basel "success," according to officials, is that the big banks wanted to keep capital standards down — and this is definitely true — but that governments pushed for requirements that are as high as makes sense to delay facing a resolution if the bank or thrift is in increasingly weak condition unless it stabilized and rebuilds its capital from more profits and/or capital infusions.

The officials implicitly conceded the banks' main intellectual point, that higher capital requirements would be contractionary for the economy. [In having allowed in effect the ISDA members to have operated at extremely high leverage, to have engaged in unsafe and unsound banking practices under the premise that their balance sheets were 'hedged' by offsetting OTC derivatives contracts that were to have been presumed assuming their models used for the hedging instruments were suitable and well-specified to offset to zero, or zero risk and thus said to need very little if any capital to foot this activity. These instruments however were/are not only from flawed models that offset or 'net' poorly, but are no longer off –balance sheet or contingencies. Now as balance sheet instruments as if like earning assets, the updated accounting principles measures these contracts under the 'fair value' regime and putting the bank's balance sheet at risk in a correction of the financial markets. Whereas they may not have monthly operating cash-flows like performing loans, although in cases of interest rates swaps, actually they have monthly cash-flows, however the very vast majority of OTC derivatives have to be fair valued AND have no operating cash flows. Collateral is provided by the counterparty in the contract to help offset the contractual value (although if seized, in effect gives us barter and that also is bad for publicly traded financial institutions), but also snaring the bank's balance sheet with other counterparties.

When fair valuing these instruments, valued against the financial markets in 'marking-to-market', but without these instruments having monthly operating cash-flows, the difference from their previous quarter's balance to the current reporting quarter, as an unrealized non cash gain or non cash loss is run through the income statement. If the financial markets are correcting and the fair valuing is shadowing aggressively correcting markets and if longer than a quarter or if very deeply, the fair value produces large unrealized non cash losses, which if very deep or for a long time and/or if the enterprise's cash flows had relied on borrowing rather than having had sufficient operating cash-flow, would eat through layers of capital regardless of quality. More capital isn't what prevents failures; these are prevented by the holistic operating health of the enterprise we'd established and provided effective regulation, without political influence. Basel fails to solve our political problems, while adding another layer of political abuse and regulatory flaw that is contrived to financial institutions under European regimes and doesn't belong administrated on the US system.

Bank and other financial and Markets regulators before DFA and without Basel, or even the stock exchanges which also monitor financial health of listed companies and members with seats on the exchange, had had the official or unofficial power to tell the financial institution to seek capital infusion. It was the SEC in 2004 that had allowed the "Net Capital Rule" to the largest US based investment banks, also ALL registered with the Fed as Financial Holding Companies "FHCs" whereby these 5 largest US investment banks would be permitted to operate at significantly higher leverage levels.

Several also had thrift or bank subsidiaries. Lehman had a thrift subsidiary, while Merrill Lynch and Bear Stearns had bank subsidiaries. The FDIC (and OTS) and Fed had power to examine and/or discipline all of these financial institutions. AND they were US broker/dealers subject to NASD and/or other exchange regulator rules. Relationships of non-depository institutions with depository institutions gave the FDIC and/or the Fed the **POWER** at virtually anytime they wanted to investigate and ascertain safety and soundness of operating activities of units or the whole.

http://www3.cfo.com/article/2012/9/credit_basel-iii-liquidity-coverage-ration-banks-line-of-credit-revolver-commercial-paper-federal-reserve?currpage=0 Credit | September 28, 2012 | CFO.com | US Vincent Ryan
Bank Liquidity Rules Could Curb Corporate Credit/ Basel III's liquidity coverage ratio could dampen banks' enthusiasm for corporate lines of credit. Rules on liquidity levels set by the Basel III framework for bank capital could curtail banks' appetite for underwriting lines of credit for companies. So says a recent panel of bankers and risk managers

brought together by research firm CreditSights and regulators in the United States and Europe. In a report Thursday, CreditSights said executives from the International Association of Credit Portfolio Managers, Mizuho Securities, and Barclays Capital stated the liquidity coverage ratio (LCR), a part of Basel III, "changes the way banks think about uncommitted credit lines," including undrawn term loans, working capital facilities, and commercial-paper backstops. According to the panelists, the focus for banks will go "from one of managing credit costs to managing significantly increased liquidity costs" for lines of credit. Banks will either have to eat the costs or charge borrowers more, CreditSights analysts wrote. "[They] are also likely to be more selective about making such commitments, focusing on relationships that can make up the increased costs by cross-selling other products." **This is austerity, or in reality code for commercial war waged in different ways.**

4) I also have condemned concentrations of power by way of our largest financial institutions. My Jan 2004 Boston Fed comments about the proposed merger of Bank of America with Fleet/BankBoston, however I condemned and opposed concentrations of power, not "Too-big-to-fail" although in Bank of America we have both. Wednesday, Jan 14, 2004, at the Federal Reserve Bank of Boston: Unedited Transcript. Vol I, Pgs 1 – 423, line. 0263 beginning 23 http://www.federalreserve.gov/events/publicmeeting/20040114/20040114.htm)

5) Even 'swaps' which have been around since the early to mid 1980s in the US, have eroded the quality of earnings and the lending that banks should have been doing or strategies to earn better returns, or at least stable profit margins that swaps over time in the agency self-dealing characteristics of these, that the regulators permitted, in that swaps did not appear to be unsafe and unsound banking practices. Swaps also facilitated internationalized commercial banking at the non-management/ non-insider shareholders' expense. This revisits Adam Smith's observations about joint-stock companies' experiencing risk of agency abuse, except in cases like the Morgans or Rockefellers, these were shareholders along with the strangers and 'public' to whom the shares were sold, however the primary parties themselves remained among the managements at their banks. This isn't bad except for their expedience and interests to adopt forms of agency self-dealing that given the traction to the ploy that foreign markets were more profitable while over the last 20 years domestic markets have been eroded with 'free' trade to de-industrialize, the banks have contributed to their own problems and have among other things, hurt their revenue line.

Neither BIS nor Basel will resolve these problems nor push back against agency abuse and self dealing that our regulators had and have the Enforcement Tools, however lacked the political will to 'take-on' powerful turf controlling the US political environment.

6) It's like taking away a person's job. Will that person quickly or slowly still have savings and pay their bills? Or having to take employment paying less? Again to understand the analogy that depository institutions in the US have been experiencing since US political/policy makers and associated foreign parties after German reunification and Maastricht, had the US commit to carte blanche to support Germany. This included de-industrializing via the G20 Transatlantic Agreements. Virtually all of the countries with which the US went into a non-tariff'd importation agreement which violates the Constitution's Article 1 Section 8, were economies asymmetric with the US. This failed to work, for unlike Germany although Germany's only asymmetric economy, into which it put production, ie did what the US did with cheaper labor countries, was the former East Germany and very little elsewhere in the EU. This was a people of the same language and culture. Germany actually used its plan in its structure of the EU 'free' trade zone and the Euro to indirectly subsidize its funding to rebuild East Germany while dominating Europe. **[Although some information exists about the 'free' trade matter as a method to erode the US economy, it is more difficult to find information to help draw conclusions about ways to harm the financial sector other than by commercial contraction and political interference using the Fed on the regulatory framework and generally in the US, create a domestic operating environment again with the help of the Fed to use the weakened financial system to reflect and facilitate the eroded US economy. AMP**]

The Americans did not share the Europeans' and Russians' historical fears over German expansionism, but wished to ensure that Germany would stay within NATO. In December 1989, the administration of President George H. W. Bush made a united Germany's continued NATO membership a requirement for supporting reunification. Kohl agreed, although less than 20% of West Germans supported remaining within NATO; he also wished to avoid a neutral Germany, as he believed that would destroy NATO, cause the United States and Canada to leave Europe, and Britain and France would form an alliance. The United States increased its support of Kohl's policies, as it feared that otherwise Oskar Lafontaine, a critic of NATO, might become Chancellor (of Germany). http://www.tutorgigpedia.com/ed/German_reunification section: "**The Four Powers**" paragraph 2.

We're seeing German expansionism however, in the EU 'free' trade zone, the Euro and its 'austerity' policy, which is code for rules to join the EU that favor Germany's national champions and Germany's domination interests over Europe while the economic shriveling of other countries in the EU facilitate an argument Germany is attempting to make at any costs to obtain fiscal union and thus domination of Europe. US policy including the Fed's policies and practices are all to support this given what controls NATO, and those interests while off the radar screen, drive politics and as a result the Fed's decisions and role in the US such as a strong proponent of non-tariffi'd importation, which has been a driver in off-shoring production out of the US. Whereas some people like to think of non-tariff'd importation as a good thing because it is nicknamed 'free' trade, deindustrialization has been what's help support the Bush administration's support for former Chancellor Kohl to supposedly keep Germany in NATO, rather than to dissolve NATO and have Germany splinter off to join with France if NATO disintegrated. This politics has driven what's happened in the US economy and co-opted the Fed to facilitate what would make us less of an industrial export partner the Germans feared.

As a direction of formal US policy after George Bush's 1989 visit and support of NATO 'alley' Germany after Germany's reunification, US deindustrialization/off-shoring, and the 'new economy' came more aggressively as a result of this after Germany in 1991 at Maastricht proposed the EU 'free' trade zone, the Euro and Fiscal Union http://en.wikipedia.org/wiki/Maastricht_Treaty . The EU and Euro came into effect in 1999 and joined the 'G20' which prior to that had been the G8 http://en.wikipedia.org/wiki/G8

"Difference between G8 and G20" http://www.differencebetween.net/miscellaneous/politics/differences-between-g8-and-g20/ Ever since its inception, the G7 and G8 asserted several political and economic policies which affected other countries. The G7 and G8 became known in the international scene as the major policy-makers which can enforce or disrupt political and economic stability. While the G20 is supposed to acknowledge all members as equals, it cannot be denied that the countries which were included in its predecessor, the G8, have an advantage over other countries in terms of political and economic policy-making.

The "Net Capital Rule" of 2004, Gramm Leach Bliley Act of 1999 "GLB", the Commodity Futures Modernization Act of 2000 "CFMA", the credit-bubble pluming of non-conforming, non-performing mortgage product purchased by Private Label Structured Mortgage Backed Securities product issuers, The Garn-St Germaine Act of 1982, the FSLIC, the OTS, and other examples of where the 1% and its functionaries with access to levers of power to enjoy free rider abuse and self enrichment/profiteering here in the US in one way or another has obtained permissive legislation. Over time changes in legislation that have significantly disrupted the operating environment – one could, and some have called it 'deregulated' the operating environment significantly eroded stability of the financial system and also with tactics to weaken or foul or deter the regulators from doing their jobs. This has contributed to significant upheaval that often is covered by, also labeled as 'free' rider on the voters' wallet.

Shrewd players understanding the weaknesses and crippled points in the system, over time had exploited these. US regulators asking for Notice of Proposed Rule-making in attempts to either accept Basel or bury it, fits this pattern of what would shift the operating environment of the financial system creating what are made to appear as 'unintended' consequences for the many, such as virtually all the American Voters, while creating a free-rider situation for the shrewd few. Include also here for agency self-interest and self-dealing by way of the discretionary power of IFRS and Fair Value Accounting's further incursion into US GAAP and/or by way of the harmonization process of US GAAP with IFRS, even if we do not adopt IFRS. Basel furthermore also has nothing to do with the quality and the framework of financial reporting under US Generally Accepted Accounting Principles ("GAAP") or International Financial Reporting Standards ("IFRS"). Basel's interests as a political construct doesn't serve toimprove the quality of US GAAP and US financial reporting, rather than choose it to contribute to weakening the hand of the quality of US financial reporting, while Basel has facilitated the 'free' rider problems in the financial system.

Among the most abusive have been the government back-stops in the ISDA Master agreements, which in effect if an ISDA member explodes itself, its government picks up the tab. No question that is 'free' rider and what we've been seeing in spite of all the masks, the Basel III or Basel of any sort and in its agreements to those of its members in order to be in the club, the government has to be committed to bail-out the player for those with this supra-national favor by way of ISDA or otherwise with lobbying power in the US capitol and other OECD members.

The design anyway of writing contracts and trading OTC derivatives obtained under CFMA, is to inflate their balance sheets and to abuse the 'free' rider power enjoyed by these organizations and enjoy this 'free' rider power in a permissive legislative and regulatory framework. Basel hadn't solved this all along and was designed to suit the powerful players' interests over those of the weaker players or the larger, shrewd players over those of the fumbling and ignorant, or as a way to sell out.

Actually, what's also not been submitted for Public Due Process are use and influence at all by multi-lateral organizations, foreign competitors and 1% interests that influence those, and their collective interests on the US financial system or regulatory Framework. These collective interests are conflicted against those of the US voter and the US financial system. Although some Congress people who achieved their seats by way of ignorant voters and campaign contributors' large funding and that power, some experts on the these matters are solicited only now on the back end, while nothing has really deterred this from being made available directly to the voters to reject multilateral influence and abuse on the US economy, the US financial sector, and in this case now on US depository institutions. The Founders attempted to prohibit this with the former 13th Amendment to keep foreign borns and foreign interests out of the White House and keep foreign money out of US politics. The former many are questioning while the later seems to be a lost battle even with BCRA 2001 ie Bipartisan Campaign Finance Reform.

7) http://www.ey.com/GL/en/Industries/Financial-Services/Banking---Capital-Markets/Bank-risk-management-survey-2012---Impact-of-Basel-III Bank risk management survey 2012- Impact of Basel III

8) http://www.guardian.co.uk/business/2010/sep/12/banking-basel-capital-requirements-raised. Guardian 12Sept10: **"Basel III rules will force banks to hold more capital" The** new capital reserve rules will be implemented in stages, between 1 January 2013 and 1 January 2019, Trichet said. Going into the meeting, US and UK officials were pushing for Basel III to be implemented by 2018. Germany, though, wanted the process to last until 2023. Additionally, supporters of Basel III argue that bigger capital cushions will help banks avoid rights issues, government bailouts or full-blown collapses the next time the economy hits trouble. Critics, though, question whether it is sensible to force banks to hold more cash on their balance sheets at a time when small businesses are crying out for loans. Over the weekend, the head of the European Banking Federation (EBF) warned that Basel III could put jobs at risk. "EBF members are very concerned about the effect that [new regulations] may have on banks' lending,"

Financial supervision: Whereas perhaps in Europe, supervision over the EU financial sector and the banking/financial regulators in each of the European countries have had more demanding jobs over the past few years, the US has had a robust financial system with examiners of every depository institution, of deposit insurance of every depository institution, of off-site monitoring by way of all depository institutions filing quarterly financial reports to their regulators, and the Prompt Corrective Action **PCA** framework, which was included in federal statute more than 20 years ago, although from that point putting into federal law what previously had been monitored and up to the discretion of regulators. Actually there remains sufficient power by way of **discretion in Prompt Corrective Action** that does not need Basel to address, improve, or strengthen. Only because of G20 interests – a flawed multilateral regime dominated by the Europeans and their interests, to which the US needs to repeal its signatory status and compliance, has this attention and potential accommodation to consider Basel III as the regulatory framework, been published Federal Register by the 3 remaining banking regulators, and with comment period open to the Public Due Process (See NOTE (2) on PCA and FDICIA 1991).

Derivatives: We have needed to repeal Commodity Futures Modernization Act 2000, to prevent trading of OTC derivatives, whereas Basel not all has addressed the abuses former CFTC chairman Brooksley Born in 1998/9 indicated as reason to avoid allowing these contracts to trade, or pass permissive legislation to allow these contracts to trade. We also need to prohibit and cease in US ISDA master netting agreements, any US government back stop for any US and foreign institutions. Meanwhile, banking regulators' agencies are self-funding, however CFTC and SEC are not. These do not charge fees for their services. In the case of all regulators however they have budgets and more than likely limit what they'll spend on staff, oversight expenses, and feel political pressure although the Fed and bank regulators also have cowed to political pressure. Furthermore, no examiner team on site at an ISDA member probably interviews/ed the counter-party credit risk analysts. These examiner teams also are not always large enough to handle a thorough exam, and in the case of OTC derivatives and complex reciprocal holdings spend the time to closely capture in their reports the all-around, connected exposures, size and complexity of the counter-party exposures.

Basel III will not solve this, nor will Basel III address the flaws of fair value and requiring unwinding or reciprocal cross-holdings, whether or not OTC derivatives are claims on capital, or occupying the balance sheet and enjoying 'free' rider power by the markets and collateral swaps if necessary. There isn't a culture to deter agency self dealing and abuse in Old World commercial activity. Basel is a part of that and using that gets us more of how the Old world dysfunctions. Although some people look at our contrived disorder and what appears to be order in the EU, Europe and elsewhere, when our system is left be, it functions better than any other system in the world and produces better commerce and wealth than any other system in the World. Political and multilateral fouling with this has produced the problems we're having. Unwinding from our problems means drawing line and pushing back against the politics, that which controls that and the foreign interests which affect the commercial and political turf.

This is evident in the use of IFRS and Fair Value domination of the US GAAP financial reporting model. IFRS and its Fair Value reporting framework support and favor agency and its discretionary power. Given the inflating of the ISDA members' balance sheets, Fair Value is really bad for them by subjecting their balance sheets to the 'wallstreet' controlled financial markets – the bullies on the turf. These also are the ISDA members which already enjoy 'free' rider power that fair valuing the unrealized non cash gains, from the OTC derivatives contracts now enjoying balance sheet status, run through the income statement and become a way that banks are printing money or monetizing the Fair Value of their OTC derivatives, helped by quantitative easing. I oppose this and what they control deserves condemnation for conflicts of interest. There are no markets that are fair, no markets that are not without their abuse. They have cartel power and use it collusively when it suits them.

The examiners may mention this/these conflicts and abuses in their exam reports, however the ISDA cartel is/has one of the more powerful and well funded lobbies in Washington. Many members in Congress and the Executive branch receive ISDA member campaign contributions. Few regulators, their examiners, and among this group that look to the government for their professional path, have the ability or fearlessness to cross ISDA undertow on the turf.

Examiners reports are not public, nor are their "Delegations of Authority" within their Agencies which review their examiners' Exam Reports, themselves required to take action even in the case of fraud or abuse, or unsafe and unsound practices. There is an Inspector General Process. Annual Reports of these Agencies also include their Inspector General and the GAO's report on their effectiveness, however we do not know what slips through the cracks, what is ignored, what is frozen in their agencies, what gets thwarted for referral.

We've seen what's become evident, however with the inflate/collapse of the Credit Bubble, what they've demanded in Dodd Frank Act Title I and II, although that's also for other reasons like divestitures for M&A purposes –using each other's investment bankers – shopping to other companies and foreigns interested in pieces of SIFIs and ISDA cartel members themselves or using the Fed to cause market turbulence/disruption.

And they've used their power to bully the regulators or create an environment where insufficient or flawed data is collected by the regulators which obscure the problems that exist, build up.

The regulators and the ISDA members have avoided hiring strong, experienced analysts from the outside; the regulators' cultures can be too insular and, so as to avoid attack and accountability when they've done favors for large influential parties like the Treasury Department's OTS looking the other way on the Pritzker Thrift in Chicago which in 2001 failed for a costly hit to the Deposit Insurance Fund, or the IndyMac thrift debacle, the Countrywide nonconforming, nonperforming mortgage originations, the AIG London OTC derivatives trading unit. Influenced by the Fed and other organs of the Executive Branch, the OTS didn't not require nor release the financial assumptions that Sovereign Bancorp made on its acquisition application for Independence Community Bank. The OTS used the reason that the acquisition was not of a material enough size to trigger the OTS to release this information, while Sovereign needed a capital infusion to handle the cost and size of the acquisition. Santander's application to the Fed was given deference against US shareholders, meanwhile nothing financial that Sovereign's management claimed to justify Santander's acquisition of nearly 20% of Sovereign was available to the public for review and analysis.

On that transaction in part related to the need for sufficient capital and in this case coming from an infuser, the Fed also shepherded that transaction into the control of a large Spanish bank, Santander. After filing as a Financial Holding Company with the Fed, Santander also filed change in control application with the Fed to acquire more that 10% of Sovereign Bancorp, a Savings & Loan Holding company over which the Fed had no direct legal or regulatory control; Sovereign was a non-member OTS chartered Savings & Loan. A loose interpretation of federal law but nothing in federal regulation gave the Fed power over Sovereign, and at all to accept this application of Santander to buy a large ownership stake in a US thrift.

But the Fed notwithstanding exercised its power over Sovereign, and ruled in favor of Santander's application for 19.9% of Sovereign Bancorp. When the Fed wants to exercise ad hoc power, it does that with little or no restraint. Indeed, all along it could have overridden all unsafe and unsound banking practices or systemic trouble of any of the ISDA members but generally abstained from doing so because of political interests and multilateral interests to make our financial system dysfunction and fall apart.

Hedge funds: we already were taking steps to address this, didn't need Basel to bully pulpit us and Bill Donaldson years ago saw the risks of allowing large hedge funds to play in the financial system off the radar screen engaging in abusive practices. Requiring registration of these is outside of Basel Accords.

Accounting: This is absurd, idiotic and typical of something like the G20. There are very strong, widely shared reasons the US has rejected adopting IFRS. One can see those comments by going to the websites of the SEC and the US FASB. In Leviticus there is punishment God said to administer for unjust weights. Although US GAAP has eroded into using more fair value and that risk for agency discretion, and thus self dealing and abuse further increase, IFRS is worse. Aside from 'austerity' which is the way Germany is attempting to bring EU into fiscal domination or to get the EU to accept German fiscal domination, cozy, Old World economies do not grow or didn't grow like the US before the US began de-industrializing as a result of its signatory status to the G20 Transatlantic Agreements which the Germans dominate. Thus the discretion to 'judge' or fair value balance sheet items to inflate their values and run those unrealized noncash gains through the Income Statement, is coveted in the EU and other European and non US countries. In the US with what had been the world's largest group of investors many of which at one point were middle class investors, accountability had had to be higher.

Requisites for accountability have not changed however, the power of agency in the US has more traction given the more deindustrialization that has occurred giving management the appearance of greater profitability, while in fact this is only from labor saves run through the income statement after taking production out of the US and moving it to cheap labor regions. The dominant country in the EU, Germany, has moved virtually no production out of Germany except to the former East Germany, whereas, it's national champions enjoy a great deal of power and thus its interest for a reporting model favorable to discretion is what gives IFRS clout. Moreover there were not many middle class investors in the Old world economies and the degree of accountability was only to its royals and its largest institutional investors.

Divided and overruled? / Nov 12th 2009/ From *the Economist* print edition '
Accountants grapple with the fallout over "marking to market"
ACCOUNTING has become political. Fair-value rules, which require assets to be marked to market prices, are blamed by some for exaggerating banks' losses. Although it will take years to establish whether banks' accounts have painted too bleak a picture, the rows are already in full swing. Confidence in "efficient" market prices has been hammered, as has the principle that accounts are designed mainly for investors. The public has a big interest in banks' books now, too. "There are competing paradigms about what financial statements are for," says John Hepp of Grant Thornton, an accountancy firm. The International Accounting Standards Board (IASB), which sets rules for most countries apart from America, has made tactical concessions to avoid the nightmare scenario of banks and politicians writing the rules themselves. On November 12th it issued new rules for financial assets that will be optional from this year and mandatory from 2013. Loans, or securities similar to loans, will be held at the price banks paid for them, provided the bit of the firm that owns them is not engaged in trading.

Credit rating agencies: Basel Accords gave these traction whereas, most sophisticated financial sector analysts would never have stacked any regulatory ratio with a rating framework from a credit rating agency without a responsible off-set that given the true financial condition of an issuer, wouldn't show that. Moreover ratings on MBS until perhaps the dot com bubble typically reflected what was conforming, "A" paper known to perform to historical, letter perfect guidelines, with remarkably low default rates. Deviations from underwriting conforming performing mortgages, that were what became evident during the credit bubble, served to deceive and beguile investors all around the world while the few insiders pocketed the proceeds from the gravy train. The losses of many were the gains of a few.

Pay: The Fed and US banking regulators already disciplined and punished for misaligned incentives, however the largest banks over the recent years have enjoyed traction against that. This matter, although a worthy desire to prohibit misaligned incentives, the G20 has no bully pulpit here. Again, a foreign influenced and US1% influenced multilateral organization, we really don't need to tell us how to clean up our mess, although we do need to be about accomplishing that and be smarter about the 'money', rather than a crippled and corrupt system and commercial environment now using G20 spurred 'free' trade to take industry and growth out of the US and put it into many countries with asymmetric economies and the Roman Catholic Church as their national religions. Now with a German Pope, this and Rome's interests also don't survive the smell test given what's happened commercially and industrially in the US over the last 20 or so years including NAFTA.

Core Tier-I capital In the US regulatory framework, we've had sufficient capital adequacy all along and have the CAMEL rating process, which includes the degree of capitalization and that relation to peers.

"Too Big to Fail": in US decoupling the problems of Abuse of power by going after 'size' and in this case "Too Big To Fail", which I am not defending or supporting, however removing their lobbying power, those of the 1% and their campaign contributions and other forms of political influence, THESE are what need to be prohibited, rather than pretense that Basel III will solve this.

9) German banks gain extra six months to apply Basel rules: sources. [Alexander Huebner/Reuters, 19Sept12 http://www.reuters.com/article/2012/09/19/us-germany-banks-basel-idUSBRE88I10C20120919]

10) Additionally, lauding public ownership of Shareholders' Equity as if it's some panacea fails to understand the risks of agency abuse and 'free' rider problems after a private enterprise such as a bank issues common stock to bail out or cash out the partners which before this, themselves faced the entire responsibility for their actions and thus limited agency abuse, self dealing, and 'free' rider problems unless they had access to levers of power and like the Morgans and Goldmans were able to lend to the Germans and French during the Franco-Prussian War and have the voters pick up the risks of loss. Basel is a part of the problem of agency self-dealing and 'free' rider, and fails to resolve those issues that now are somewhat a part of the US, but with the abuses we've needed ourselves to solve.

11) Examiners, Examinations (also for the thrifts/Thrift holding companies) were/are virtually always at least annual, comprehensive unless targeted for as mentioned below of the Largest banks such as the ISDA members, Systemically Important Financial Institutions "SIFIs" These instructions apply to all safety and soundness Reports of Examination (ROE) except those targeted reviews of banks included in the Large State Nonmember Bank Onsite Supervision Program. http://www.fdic.gov/regulations/examinations/index.html http://www.ots.treas.gov/?p=ThriftFinancialReports for the thrift call reports however there was information on the exams/exam handbook on the website in pdf. http://www.occ.gov/static/news-issuances/ots/exam-handbook/ots-exam-handbook-010.pdf
An entire exam manual is found at a similar link. The exam instructions in virtually all of these sections date from 1Q2005. The comprehensiveness of the exams as of that date, show that comprehensiveness existed at least through later periods than 1Q2005 when many of the problems said to cause bank and thrift failures and to have been syndicated at "Private Label" were said to have not known, when that contradicts the truth, or that the Regulators needed Dodd Frank, or a Financial Services Oversight Council 'FSOC", when all along they've had the power, protocols, instructions, every tool needed to have exposed this all along and get us to whether we need Basel III or any of the Basel Accords, when our regulatory framework is more than sufficiently capable and able to handle without increasing the PCA grid, which the FDIC and the Fed could alter unilaterally without even public due process!

Additionally, there are layers of review called **Delegation of Authority** at the FDIC which review the exam reports, process, and oversee the status of the depository institutions insured by the DIF. Moreover, if there is insufficient staff for effective exams, these issues are dealt within the FDIC and its OIG. None of this a Basel issue. There are efforts to thwart effective regulatory operating and administration however, and that contributed to how the financial sector problems occurred and in the financial –depository system, that which the thwart produced grew to many trillions in sour assets, flawed product, with the opposite side of those transactions going into the pockets of a few, all of which the regulators had the power to deter.

Formal Administrative Actions) http://www.fdic.gov/regulations/safety/manual/section15-1.html "**Section 15.1 - Formal Administrative Actions/ Introduction**
"While the use of reason and moral suasion remain the primary corrective tools of the FDIC, the Board of Directors has been given broad enforcement powers under Section 8 of the FDI Act. The Board has the power to terminate insurance (Section 8(a)), to issue Cease and Desist Actions (Section 8(b)) and, if deemed necessary, to immediately invoke a temporary Cease and Desist Action (Section 8(c)). In addition, the Board has been given the power to suspend or remove a bank officer or director or prohibit participation by others in bank affairs when certain criteria can be established (Sections 8(e) and (g)). Each of these powers and their scope and limitations are more fully discussed below…."

If much of The **Manual of Examination Policies**, also known as RMS (For example - **Risk Management Section 15.1 – section above)** in this form is from early 2005 and is extremely comprehensive with the PCA power to use Enforcement Actions such as Memorandum of Understandings "MOUs" then anything that while on-site examining or off-site monitoring through the quarterly financial reporting of Call Reports, FRY-9C, and TFRs, ANYTHING they saw or heard that would give rise to concern, they had the power to issue MOUs, to request referral with other agencies which are banking related. Two banking regulators under the Treasury Department however, along with the Fed, were/are very politically manipulated by forces outside of the control of examiners and most staff and senior levels of the banking regulatory agencies, and if attempting to make referral to the Department of Justice there probably would be problems made by complex protocols and internal legal divisions that may have political concerns about taking appropriate punitive action against abuse, unsafe and unsound conditions, practices and products.

This also would include the proliferating of OTC derivative contracts, and 'hedging' using OTC derivatives which the FDIC examiners had/have every power to hit with enforcement action, or prohibit or cease and desist when these were legitimized to trade however were unsafe and unsound banking practices. Trading didn't change the characteristics of these instruments, as we saw with Enron's inflation from their use and collapse.

Enron served as an example that was perfectly appropriate for all banking and affiliated regulatory agencies to prohibit, to limit and constrain their use, the writing of these contracts to the expansion many times more than the credit profiles of all ISDA banks and their counterparties together were able to handle – this too the regulators could have sanctioned with Enforcement Action, but failed to until Tim Geithner while President of the NY Fed called a meeting of the ISDA members and in effect urged them to begin their efforts to clean up the documentation problems associated with writing and trading these OTC derivatives contracts. FASB eliminated Qualified Specialty Purpose Entities after the Enron debacle, and established accounting for a better structure with more transparency and accountability. All banking regulators and the Fed had the power to take similar steps to deter abuse, but did not.

RMS Manual of Examination Policies

Table of Contents (for **Reports of Examination (ROE)**

Section *Title* *Section Number*

RMS Manual of Examination Policies Table of Contents (3/12) **Federal Deposit Insurance Corporation**

REFERENCES
Use the following reference material in preparing the **Report of Examination** "ROE":
• The instructions contained herein
• Federal Deposit Insurance Act, FDIC Rules and Regulations, and related statutes and regulations (Prentice-Hall Volumes/FDIC Bank Examiner's Reference CD)
• FDIC and other applicable Statements of Policy
• Instructions for the Preparation of Reports of Condition and Income (Call Reports)
• The Users Guide for the Uniform Bank Performance Report (UBPR)
• DSC Risk Management Manual (Manual)
• General Examination System (Genesys) embedded help files
• Applicable State Statutes and Regulations
• FFIEC Information Technology Examination Handbooks
• Outstanding memoranda
• Financial Institution Letters
• Uniform Financial Institutions Rating System
• Uniform Rating System for Information Technology
• Uniform Interagency Trust Rating System

Unless otherwise specified, complete Report pages according to Call Report Instructions.
Reminder: Changes to definitions, laws and regulations, Call Report treatment, and regulatory policy within the aforementioned references impact the Report. Be aware of the effects of such changes. When significant Report changes have occurred since the previous examination, use footnotes (on the applicable Report pages) to explain the difference(s) between the current Report and the previous Report. Insignificant or minor changes need not be footnoted.

***)CAMELS-** Moreover, come capital adequacy and monitoring for it, even under the "CAMELS" rating which the FDIC gives to depository institutions it insures, this acronym stands of Capital adequacy, Asset quality, Management quality, Earnings quality, Liquidity, and Sensitivity to Market Risk. We've' got,' whether or not we use it. Basel likewise cannot solve if we don't use what we have. Adjusting our capital adequacy and as an increased minimum in Prompt Corrective Action, likewise Basel Accords nor Basel III are not needed nor will it solve these issues of and for any US depository Institution.

12a) FDIC Annual Report info on performance including examinations, and link to Annual Report. Performance section of 2005 Annual Report is included by example. This information only became available after 2000. These Annual Reports say that examiners performed their roles. The Inspector General and the Chief Accountant of the GAO (now standing for the General Accountability Office) both report on the integrity on how the FDIC performs and what it publishes.

If there were question about what representations it made to the public, or questions about while attempting to fully operate and administer in its full capacity as the Deposit Insurer, none of that sort of issue was available by itself and/or other authoritative bodies in the public domain but the OIG and GAO both say the FDIC and its staff fully did their jjbs.

Moreover if while in administrating its full role and that was thwarted by other agencies, it would be not only its responsibility, but that also of all organs around it that have cross jurisdictional power to address problems that the FDIC for its own reporting and operational integrity over the DIF and the depository system to determine flaring problems and issues, no reporting about that sort of effort by the FDIC, or rather that while the problems plumed, the FDIC not at all took aggressive steps in its power to address the problems, deter the problems other than after the 'crisis' and the 2008 market correction, the TARP etc, others and now former FDIC people gave public representations that the FDIC had no control over the problems and as if it had no power at all to thwart them.

This is not the case when reviewing and understanding what representations it made at those times as regulator and about what its true power was/is as the Deposit insurance regulator and about what was happening in the financial system that in any and all ways it had had access to know and/or address and perhaps affect/deter. **It had full reach at all times whenever and wherever it wanted, and had the powerto thwart political obstacles even those by the Fed.** https://www.**fdic**.gov/about/strategic/**report**/index Given this power there should never have been a crisis or one that the FDIC couldn't have diffused with the power it had and has even without DFA and certainly doesn't need Basel Accords in any generation.

2005 Annual Report / III. Performance Results Summary - Multi-Year Performance Trend

Multi-Year Performance Trend				
Depositor Payouts in Instance of Failure				
Annual Goal	2002 Results	2003 Results	2004 Results	2005 Results
The FDIC responds promptly to financial institution closings and emerging issues.	Timely payments made to all depositors of the 11 insured depository institutions that failed in 2002.	Timely payments made to all depositors of the three insured depository institutions that failed in 2003.	Timely payments made to all depositors of the four insured depository institutions that failed in 2004.	There were no failures in 2005.
Risk Classifications				
Annual Goal	2002 Results	2003 Results	2004 Results	2005 Results
Maintain and improve the deposit insurance system.	BIF and SAIF reserve ratios maintained at or above the statutory ratio of 1.25 percent. Chairman testified before the Senate Committee in support of deposit insurance reform.	BIF and SAIF reserve ratios maintained at or above the statutory ratio of 1.25 percent. Chairman testified before the Senate Committee in support of deposit insurance reform.	The FDIC completed implementation of enhancements to the reserving process and methodology in March 2004. During 2004, reserve ratios were maintained at or above the designated reserve ratio as required by statute.	Through September 30, 2005, BIF and SAIF reserve ratios were maintained at or above the statutory ratio of 1.25 percent.
	Legislation on deposit insurance reform was introduced in the House and the Senate.	Legislation on deposit insurance reform was passed in the House and was pending in the Senate when Congress recessed for the year.	Deposit insurance reform remained under consideration in the Senate, but no action was taken prior to the end of the 108th Congress.	Congress included deposit insurance reform legislation in the conference report to reconciliation legislation, S. 1932. The measure was adopted by the Senate in December and was passed by the House February 1, 2006. The President signed the bill enacting deposit insurance reform legislation on February 8, 2006.
Risk Management, Safety and Soundness				
Annual Goal	2002 Results	2003 Results	2004 Results	2005 Results
Conduct on-site risk management examinations to	Conducted 2,534 or 98 percent of required safety and	Conducted 2,421 required safety and soundness	Conducted 2,515 required safety and soundness	Conducted 2,399 required safety and soundness examinations in

assess an FDIC-supervised insured depository institution's overall financial condition, management practices and policies, and compliance with applicable laws and regulations.	soundness examinations.	examinations in accordance with FDIC policy.	examinations in accordance with FDIC policy.	accordance with FDIC policy.
Safety and Soundness Enforcements Actions				
Annual Goal	2002 Results	2003 Results	2004 Results	2005 Results
Take prompt and effective supervisory action to address issues identified during the FDIC examination of FDIC-supervised institutions that receive a composite Uniform Financial Institutions Rating of "4" or "5" (problem institution). Monitor FDIC-supervised insured depository institutions' compliance with formal and informal enforcement actions. (Revised – 2005)	Eighty-four institutions designated as problem (composite "4" or "5" rated). Forty-eight were removed from problem status and 63 were added.	Seventy-three institutions designated as problem (composite "4" or "5" rated). Fifty-eight with total assets of $6.98 billion were removed from problem status and 47 with total assets of $4.99 billion were added. Additionally, the FDIC issued the following formal and informal enforcement actions: 40 (5 contained BSA provisions) C& D Orders, 157 (6 contained BSA provisions) MOU.	Forty-four institutions designated as problem (composite "4" or "5" rated). Fifty-seven with total assets of $6.3 billion were removed from problem status and 28 institutions with total assets of $4.8 billion were added. Additionally, FDIC issued the following formal and informal actions: 38 (11 contained BSA provisions) Cease and Desist Orders and 145 (31 contained BSA provisions) Memoranda of Understanding.	Twenty-nine institutions designated as problem (composite "4" or "5" rated). Thirty-six with total assets of $2.8 billion were removed from problem status and 19 institutions with total assets of $802 million were added. Additionally, FDIC issued the following formal and informal actions: 15 (8 contained BSA provisions) Cease and Desist Orders and 152 (69 contained BSA provisions) Memoranda of Understanding.
Compliance Examinations				
Annual Goal	2002 Results	2003 Results	2004 Results	2005 Results
Conduct CRA and compliance examinations in accordance with FDIC examination frequency policy. (Revised -2005)	Conducted 1,840 comprehensive compliance-only and CRA examinations in accordance with FDIC policy. There were no delinquencies in 2002.	Conducted 1,919 comprehensive compliance-only and CRA examinations in accordance with FDIC policy. There were no delinquencies in 2003.	Conducted 2,136 comprehensive compliance-only and CRA examinations in accordance with FDIC policy. There were no delinquencies in 2004.	Conducted 2,020 comprehensive compliance-only and CRA examinations in accordance with FDIC policy. A small number of exams were postponed to early 2006 to give financial institutions time to recover from the effects of the Gulf Coast hurricanes.
CRA Outreach				
Annual Goal	2002 Results	2003 Results	2004 Results	2005 Results
Provide effective outreach and technical assistance on topics related to	*Money Smart*classes attended by approximately	The FDIC supplied more than 111,000 copies of *Money Smart* curricula to	Targets for the following were met: added 200 new*Money Smart* Alliance	Targets for the following were met: added 306 new *Money Smart* Alliance members; distributed

CRA, fair lending and community development.	2,800 participants.	organizations. FDIC sponsored 65 public outreach initiatives, 111 community development activities, and 67 technical assistance activities.	members; distributed 20,000 copies of *Money Smart* curriculum; additional 294,000 members reached; and conducted 125 outreach and technical assistance activities.	95,283 copies of *Money Smart* curriculum; additional 195,000 members reached; and conducted 163 outreach and technical assistance activities.
Compliance Enforcement Actions				
Annual Goal	2002 Results	2003 Results	2004 Results	2005 Results
Take prompt and effective supervisory action to monitor and address problems identified during compliance examinations of FDIC-supervised institutions that receive a "4" or "5" rating for compliance with consumer protection and fair lending laws. (Revised - 2005)	Eight of nine institutions entered into a Memorandum of Understanding (MOU) with the FDIC; the ninth was in the process of reviewing the recommended MOU at year-end.	The only "4" rated institution entered into a MOU with the FDIC.	Of the five institutions rated "4" as of December 31, 2004, two entered into Memoranda of Understanding with the FDIC; and two were subject to outstanding Cease and Desist Orders. A Cease and Desist Order for the fifth institution was issued during the second quarter of 2005.	Of the three institutions rated "4" as of December 31, 2005, one entered into a Memorandum of Understanding with the FDIC; and two are subject to outstanding Cease and Desist Orders. There are no institutions currently rated a "5."
Risk Management Safety and Soundness				
Annual Goal	2002 Results	2003 Results	2004 Results	2005 Results
Increase industry and regulatory awareness of emerging/high-risk areas. (Added - 2005)				The Anti-Money Laundering (AML) goal has met targets and the advanced training for all BSA/AML subject matter experts has been accomplished.
More closely align regulatory capital with risk in large or multinational banks. (Added – 2005)				Final results of the 4th Quantitative Impact Study (QIS- 4) show a 15.5 percent decline in minimum regulatory capital from current levels, with a wide dispersion in results that was primarily due to banks' assessment of risk, rather than actual risk.
Basel Capital Accord				
Annual Goal	2002 Results	2003 Results	2004 Results	2005 Results
Ensure that FDIC-supervised institutions that plan to operate under the new Basel Capital Accord are making satisfactory progress				Initial Basel II outreach efforts or baseline reviews continue at FDIC-supervised institutions that have indicated their possible intent to opt-in for treatment under the new

toward meeting required qualification standards. (Added - 2005)				rules. FDIC is integrally involved in domestic and international policy and implementation processes to help ensure a smooth transition to Basel II.
Consumer Complaints and Inquiries				
Annual Goal	2002 Results	2003 Results	2004 Results	2005 Results
Meet the statutory mandate to investigate and respond to consumer complaints about FDIC-supervised financial institutions.	FDIC received 8,368 consumer complaints and closed 95 percent of them. Of the complaints closed, 94 percent were closed within policy time frames.	FDIC received 8,010 consumer complaints and closed 99 percent of them. Of the complaints closed, 94 percent were closed within policy time frames.	FDIC received 8,742 consumer complaints, closing 95 percent of them. Of the closed complaints, 95 percent were closed within policy time frames.	FDIC received 8,851 consumer complaints, closing 96 percent of them. Of the closed complaints, 97 percent were closed within policy time frames.
Asset Management				
Annual Goal	2002 Results	2003 Results	2004 Results	2005 Results
Value, manage and market assets of the failed institutions and their subsidiaries in a timely manner to maximize net return.	For all 11 institutions that failed, at least 87 percent of all marketable assets were marketed within the 90-day time frame, thus exceeding the target of 85 percent.	For all three institutions that failed, at least 98 percent of all marketable assets were marketed within the 90-day time frame, thus exceeding the target of 85 percent.	Five financial institutions reached their 90-day threshold during 2004. One hundred percent of all marketable assets were marketed within the 90-day time frame.	No financial institutions reached their 90-day threshold during 2005.
Least-Cost Resolution				
Annual Goal	2002 Results	2003 Results	2004 Results	2005 Results
Market failing institutions to all known qualified and interested potential bidders.	There were 11 failures in 2002. One hundred percent of the qualified potential bidders were contacted.	There were three failures in 2003. One hundred percent of the qualified bidders were contacted.	There were four failures in 2004. One hundred percent of the qualified bidders were contacted for the sale of three failed institutions. One failed institution was not offered for sale.	There were no failures in 2005.
Conduct investigations into all potential professional liability claim areas in all failed insured depository institutions and decide as promptly as possible to close or pursue each claim considering the size	Two of six institutions that reached the 18-month milestone during 2002 had 100 percent of professional liability investigations completed. The other four institutions had at least 80 percent of	Four of ten institutions that reached the 18-month milestone during 2003 had 100 percent of professional liability investigations completed. The other six institutions had at least 80 percent of professional liability	All five institutions that reached the 18-month milestone during 2004 had 100 percent of professional liability investigations completed, meeting the goal of 80 percent.	All four institutions that reached the 18-month milestone during 2005 had 100 percent of professional liability investigations completed, meeting the goal of 80 percent.

and complexity of the institution. (Revised -2005)	professional liability investigations completed, meeting the goal of 80 percent.	investigations completed, meeting the goal of 80 percent.		
Manage the receivership estate and its subsidiaries toward an orderly termination.	For the eight failures from 1999 that matured in 2002, the FDIC terminated six receiverships, meeting the target to terminate 75 percent within three years of failure.	For the seven failures that occurred during 2000 that matured in 2003, the FDIC terminated four receiverships, below the target to terminate 75 percent within three years of failure.	For the four failures that occurred during 2001 that matured in 2004, the FDIC terminated three receiverships, meeting the target to terminate 75 percent within three years of failure.	For the eleven failures that occurred during 2002 that matured in 2005, the FDIC terminated four receiverships. This did not meet the target to terminate 75 percent within three years of failure date due to various impediments to terminations.

Last Updated 04/10/2006

12b) Also GAO 07-242 **Assessment of Regulators' Use of Prompt Corrective Action Provisions and FDIC's New Deposit Insurance System** www.gao.gov/cgi-bin/getrpt?GAO-07-242.p2

GAO reviewed regulators' PCA procedures and actions taken on a sample of undercapitalized institutions. GAO also reviewed the final rule on changes to the insurance system and comments from industry and academic experts.

Why GAO Did This Study: The Federal Deposit Insurance Reform Conforming Amendments Act of 2005 required GAO to report on the federal banking regulators' administration of the prompt corrective action (PCA) program under Section 38 of the Federal Deposit Insurance Act (FDIA). Congress created section 38 as well as Section 39, which required regulators to prescribe safety and soundness standards related to noncapital criteria, to address weaknesses in regulatory oversight during the bank and thrift crisis of the 1980s that contributed to deposit insurance losses. The 2005 act also required GAO to report on changes to the Federal Deposit Insurance Corporation's (FDIC) deposit insurance system. This report (1) examines how regulators have used PCA to resolve capital adequacy issues at depository institutions, (2) assesses the extent to which regulators have used noncapital supervisory actions under Sections 38 and 39, and (3) describes how recent changes to FDIC's deposit insurance system affect the determination of institutions' insurance premiums.

What GAO Found: In recent years, the financial condition of depository institutions generally has been strong, which has resulted in the regulators' infrequent use of PCA provisions to resolve capital adequacy issues of troubled institutions. Partly because they benefited from a strong economy in the last decade, banks and thrifts in undercapitalized and lower capital categories decreased from 1,235 in 1992, the year regulators implemented PCA, to 14 in 2005, and none failed from June 2004 through January 2007. For the banks and thrifts GAO reviewed, regulators generally implemented PCA in accordance with Section 38. For example, regulators identified when institutions failed to meet minimum capital requirements, required them to implement capital restoration plans or corrective actions outlined in enforcement orders, and took steps to close or require the sale or merger of those institutions that were unable to recapitalize. Although regulators generally used PCA appropriately, **capital is a lagging indicator and thus not necessarily a timely predictor of problems at banks and thrifts.** In most cases GAO reviewed, regulators had responded to safety and soundness problems in advance of a bank or thrift's decline in required PCA capital levels. WOW!

Under section 38 regulators can take noncapital supervisory actions to reclassify an institution's capital category or dismiss officers and directors from deteriorating institutions, and under section 39 regulators can require institutions to implement plans to address deficiencies in their compliance with regulatory safety and soundness standards. Regulators generally have made limited use of these authorities, in part because they have chosen other informal and formal actions to address problems at troubled institutions.WOW! According to the regulators, other tools, such as cease-and-desist orders, may provide more flexibility than those available under sections 38 and 39 because they are not tied to an institution's capital level and may allow them to address more complex or multiple deficiencies with one action. Regulators' discretion to choose how and when to address safety and soundness weaknesses is demonstrated by their limited use of section 38 and 39 provisions and more frequent use of other informal and formal actions…."

13) (Relates to **Note (6)** discussing the G20 With regard to that, something that should be noted was the condition of the economy in the regions around the US and generally across the US. Whereas before NAFTA it was not great, however because of US compliance with the G20 Transatlantic Agreements to deindustrialize the US, multi-lateral agreements such as North American "Free" Trade Agreement "NAFTA" facilitated that. NAFTA began waves of commercial upheaval and economic contraction in areas where industries would leave and left to go to cheap labor regions such as Mexico and Canada. As a result of these economic and commercial contractions around the US, what formerly were "A" mortgage credits in those economically contracting regions negatively impacted by de-industrialization, depository institutions in those areas were going to experience increasing difficulty such as business contraction, earnings problems, asset quality problems and capital erosion. NAFTA spurred financial industry consolidation; however NAFTA often is ignored in most research that looks at macroeconomic affects on the micro economic operating activity of depository institutions and the sector.

14) OTHER SCHEDULES in FRY9C and CALL; there is/was very little information for which the FRY-9C doesn't ask and with all the analytical tools and the extensive requisites in their exams and that have to be put into their exam reports, there isn't anything that they can't obtain and if determined, to obtain through their channels. Although this example is from 2002, at any point the Fed and banking regulators had full power to ask for any data, and administer any enforcement action for any logical reason and especially what would be reason according to regulation or statute

Consolidated Financial Statements for Bank Holding Companies /FR Y-9C December 31, 2002
Schedule HI-Consolidated Income Statement
Schedule HI-A— Changes in Equity Capital
Schedule HI-B— Charge-Offs/ Recoveries on Loans, Leases + Changes in Allowance for Loan, Lease Losses
Notes to the Income Statement

Schedule HC— Consolidated Balance Sheet
Schedule HC—B Securities
Schedule HC-C — Loans and Lease Financing Receivables
Schedule HC-D— Trading Assets and Liabilities
Schedule HC-E— Deposit Liabilities (1)
(1) The sum of items 1.a through 1.e and items 2.a through 2.e must equal the sum of Schedule HC, items 13.a.(1) and 13.a.(2).
Schedule HC-F— Other Assets
Schedule HC-H —Interest Sensitivity
Schedule HC-I— Insurance-Related Underwriting Activities (including reinsurance)
Part I— Property and Casualty Underwriting
Schedule HC-I must be completed by all top-tier bank holding cos. (See instructions for additional info.)

Part II— Life and Health Underwriting
Schedule HC-K— Quarterly Averages
(Report only transactions with nonrelated institutions)
Schedule HC-L/Derivatives and Off-Balance-Sheet Items
Schedule HC-M— Memoranda
Schedule HC-N— Past Due and Nonaccrual Loans, Leases , and Other Assets
Schedule HC-R— Regulatory Capital
This schedule is to be submitted on a consolidated basis only by the top-tier bank holding company when the total consolidated assets of the company are $150 million or more.
Schedule HC-S— Servicing, Securitization, and Asset Sale Activities
All of Schedule HC-S is to be completed beginning June 30, 2001.
Notes to the Balance Sheet - Enter in the lines provided below any additional information on specific line items on the balance sheet or its supporting schedules that the bank holding company wishes to explain, that has been separately disclosed in the bank holding company's quarterly reports to its shareholders, in its press releases, or on its quarterly reports to the Securities and Exchange Commission (SEC). Also include any transactions which previously would have appeared as footnotes to Schedules HC through HC-S. Each additional piece of information disclosed should include the appropriate reference to schedule and item number, as well as a description of the additional information and the dollar amount (in thousands of dollars) associated with that disclosure.

15) Credit Default Swaps "CDS" are not insurance and only obtained that from legitimization legislation in 1999, Gramm Leach Bliley, which also legitimized unsafe and unsound, agency abusive instruments as insurance. These unsafe and unsound instruments had existed, however never to the degree until upon receiving legitimization with GLB. This didn't change their remote and systemically abusive nature; this legislation only permitted their use with impunity both to inflate the balance sheets of the ISDA writers and game their income statements with the unrealized gains from the Fair Valuing reported in Accumulated Other Comprehensive Income ("AOCI"), while also circumventing laws and exchanges.

Additionally, to address another abuse, ISDA members writing OTC derivatives enjoy government backstop. This means if they explode their banks, their governments bail them out. Basel doesn't prohibit any of this and as it were, remains part of the 'free' rider problem the ISDA members enjoy. Historically this sort of 'free' rider power was known as Feudalism. It's not a commonly used expression, but it puts into perspective the abuse and abusers of 'free' rider and the ability to make that power and in turn protect it.

With regard to the problems of permitting OTC derivatives to enjoy balance sheet treatment, AOCI and recognized in the Income Statement and Shareholders Equity, in 2007 and especially in 2008 when the markets began their necessary correction, the unrealized non cash losses from 'fair valuing' the OTC derivatives and similar asset items that were fair valued, following downward the correcting financial markets, banks' balance sheets contracted along with the correcting markets, which had been severely inflated. Although Commodity Futures Modernization Act enabled OTC derivatives contracts to trade and as a result enjoy on balance sheet treatment legitimized from their former contingency status, banks' balance sheets not only are inflated with these instruments, which I have urged repealing the CMFA and prohibit the writing of these contracts, the use of fair value accounting was gasoline on the fire. The Fair Value regime rather than US GAAP's former framework of accrual basis accounting with revenues in the reporting cycle that realize to cash (which is why banks could engage mostly only in cash instruments), the balance sheets of the largest players of our financial arteries were circling the drain.

Without the Fed's quantitative easing and liquidity mechanisms by other government organs, if in a vigorous and more than 3 month long market correction, this would wipe out monost financial institutions regardless of Basel III and its CoCOs to be used in Europe's versions of Basel III.

16) Basel failed to discipline the proliferation of these contracts and failed to condemn the increasing impact of fair value accounting and barter on the financial statements and financial health of these ISDA members, which in their ISDA agreements enjoy government back stop if they explode their banks. Whereas it was not Basel's job to condemn this backstop facilitating agency impunity for proliferation of OTC derivates contracts packing 'ISDA balance sheets, BIS could have condemned hijacking of the voters' wallet, although those societies in Europe are contemporary version of feudalism, and those 'voters' are in effect at risk for the ways of tyrannies of those sovereign organizations. Given what BIS is, and IFRS is, however, there wasn't Basel's discipline. Meanwhile, BIS and IFRS favor and serve European "national champions" and their agency discretionary power, while disserving our financial system and our financial reporting. We do not need to self-immolate, nor this co-opting of the US voters' wallet.

Rather than favoring multilateral and foreign interests over our own, accordingly we need to apply the regulatory framework we've had since 1991 and also repeal or cease what's fouled our economy. We need repeal US compliance with G20 Transatlantic Agreements to deindustrialize the US, using methods such as non tariff'd importation also known nicely as 'free' trade which violates the Constitution's Article 1 Section 8 and fouls with the quality of the commercial and domestic economic environment into which our financials lend. European national champions, especially those of the Germans have enjoyed significant advantage from our signatory status to the G20 Agreements, while also enjoying dominating European 'trade' after 1991's Maastricht Agreement when it proposed the EU 'Free' trade zone, the Euro and Fiscal union which it was not able to obtain, although obtained 'free' trade and the Euro. **See also Note 6 "The Four Powers", pg2**

http://www.federalreserve.gov/boarddocs/speeches/2001/200105102/default.htm

Remarks by Governor Laurence H. Meyer/ At the 37th Annual Conference on Bank Structure and Competition of the Federal Reserve Bank of Chicago, Chicago, Illinois /May 10, 2001

As I suggested earlier, the 1988 Basel accord was a major step forward at that time. But, as my fellow Board members and I and many others have been arguing for a number of years, the existing risk-based capital standards are increasingly divorced from the realities of modern risk management for a small but growing number of banking institutions. In addition, the increasing estrangement between regulatory capital standards and economic reality has encouraged many firms to engage in regulatory capital arbitrage, by which I mean rearranging their portfolios in ways that allow them both to meet the capital standards and to take on more risk. As a result, the Basel accord capital ratios are an increasingly less reliable guide to the true capital strength of the firm and thus are less and less useful to both the public and private sectors. Importantly, the banking institutions for which the existing capital standards are the most distorted are in many cases the very institutions whose disorderly failure would be most likely to impose systemic risks.

17) No disrespect, however, the system is sort of rigged and the regulators have been used as sort of the fall-guys. If the later parts of the Prompt Corrective Action process for the 'glide-path' after the Capital Restoration Plans which the regulators required, failed to be successful, then a 60 day 'glide-path' (process to seize and 'resolve' a failing institution) would trigger. If there wasn't capital infused in one way or another into the distressed institution, then the regulators would have either bid out the shop and/or if the OTS, then seized it and at that point put into 'conservatorship', but FDIC tended to pre-bid the place and on a Friday shut down the old charter to have a winning bidder on Monday re-open the branches under the winner's name. **see NOTE 2**

18) What also cripples the system are not serious, less than bona fide regulators fully intending to do their jobs to their utmost. What also cripples it are foreign interests, the self interests of the 1%, and their corporate wards. For example, Enron's senior management were chummy with the Bush family from Connecticut and Texas, and Senator Phil Gramm (R, TX), who received campaign contributions from Enron, was chairman of the Senate Banking Committee. While he was its chairman, with former Goldman Sachs Chairman and President Bill Clinton's Treasury Secretary Bob Ruben they obtained Gramm Leach Bliley 1999 and Commodity Futures Modernization Act 2000. These 2 pieces of legislation to suit the interests of wallstreet and a large Texas gas utility company have proven to be seriously harmful pieces of legislation to the quality and stability of the structure of the US financial system. PCA and regulator discretionary power however remained in existence and I do not believe either GLB or CFMA diminished PCA and regulatory discretionary power, or Enforcement Action power in the least.

19) Perhaps regulators should haul out **"RAP" accounting which would prohibit unrealized non cash gains in earnings and prevent these in Retained Earnings. RAP accounting also would hold a higher standard in quality of cash flows and prohibit use of abusive instruments such as OTC derivatives, and AFS marked to market; thus that account would be treated like Held to Maturity at amortized cost.** These are a few examples, but Basel doesn't nor cannot touch any of this. Turning the clock on 'financial innovation', which generally already has been fraud (in forms of constructive fraud or fraudulent conveyance) and abuse of slick, quant sorts, will better serve the US financial system rather than the regulators finding themselves lackeys co-opted, and captive to the interests of the kleptocracy. **Comment Letter (letter#167): FASB Project: 2011-230- - Revenue Recognition (Topic 605): Revenue from Contracts with Customers Updated Exposure Draft comment letter for Public Due Process. 13Mar12**
http://www.fasb.org/jsp/FASB/CommentLetter_C/CommentLetterPage&cid=1218220137090&project_id=2011-230&page_number=2
20) REMOVE Government Backstops in the ISDA agreements. Where are there words? So if presumably at Congress' approval, this 'backstop' of the voters' wallet remains in the KEY agreement of this powerful trade association for the world's very largest financial institutions which also engage in banking, enjoy deposit insurance while proliferating writing and inflating their balance sheets with OTC derivatives contracts, come necessary market corrections, especially after the seriously inflated markets in during the credit bubble, is there a tangible equity capital ratio or flawed capital instrument, regardless that would stop ISDA members' balance sheets from circling the drain?If so, these would be? which also need healthy economic conditions to rebuild equity.

21) Additionally we would enjoy a better economic environment when we shed or repeal the anti-Constitution non tariff'd importation agreements called 'free' trade agreements, which have been the facilitator to de-industrialize the US by off-shoring production into cheap labor countries which also are economies which are asymmetric to the US. Germany doesn't have to deal with that other than what it encountered with integrating East Germany however all the first 11 EU countries were mostly symmetric economies with Germany. **Comment, analysis and other things from Wednesday's FT, /Martin Wolf: The eurozone is good for Germans:** Which country is the biggest gainer from the creation of the eurozone? Wolf's answer would be Germany
http://articles.businessinsider.com/2010-03-31/markets/30013685_1_fiscal-discipline-eurozone-fiscal-deficits

Martin Wolf's Excellent Explanation Of Why The German Model Is Ruinous For Europe
http://articles.businessinsider.com/2010-10-21/markets/30032271_1_eurozone-austerity-economic-performance
Here's Why Germany Is The Big Winner In The Eurozone/ Stratfor|October 21, 2010|

The German Central bank has a great deal of power and significant influence on the BIS and thus on Basel. Whereas its banks may be grumbling over Basel III in part because balance sheets of its financial institutions, especially those of its national champions enjoyed a great deal of protection and support by the German government, as it were, Germany is grand fathering capital instruments and will comply at its leisure with Basel III using 'phasing in periods'. http://www.germanbanks.org/press-room/press-releases/association-of-german-banks-calls-for-phased-and-globally-consistent-introduction-of-basel-requirements / **Press Release /Association of German Banks calls for phased and globally consistent introduction of Basel requirements -** The Basel Committee has also announced the introduction of capital buffers over and above minimum capital requirements. "This is tantamount to raising capital requirements, which is why we reject fixed capital buffers," Massenberg continued. By contrast, the German private banks support countercyclical buffers. "Nevertheless, a number of issues remain to be clarified, particularly with respect to precisely how the buffer will operate." In view of these uncertainties, it was difficult to understand why all the members of the Basel Committee – with the exception of the Germans – had already agreed to the requirements.

July 2012 http://www.reuters.com/article/2012/09/19/us-germany-banks-basel-idUSBRE88I10C20120919
German banks gain extra six months to apply Basel rules: sources / By Alexander Huebner FRANKFURT | **Wed Sep 19, 2012 12:02pm EDT** German banks voice Basel regulation fears **http://www.dw.de/german-banks-voice-basel-regulation-fears/a-5980763-1 .** The Switzerland-based Basel III committee is meeting on Tuesday to further discuss stricter banking regulations designed to prevent a repeat of the global financial crisis. Basel rules stress that banks need money to lend money. It also is taking these steps it appears in part related to Basel II having not been implemented in the US or Europe, and that Basel III is at risk for the same but perceived to be possibly allowing US banks to gain a competitive advantage. **DW.com ie, Deutsche Welle 7Jul10 "German banks voice Basel Regulation fears"; after "Germany wants Basel Agreement but clearer rules, Reuters 27 Jul 2010;** http://www.dw.de/german-banks-voice-basel-regulation-fears/a-5980763-1

Basel III — the analysts react /Izabella Kaminska /| Sep 13 2010 12:36 | The FT Alphaville
Existing public sector capital will be grandfathered until 1 Jan 2018. Local definitions of core T1 or T2 will be phased out over 2013-23. **German, French Banks** – German banks should have more breathing room as current State capital is being grandfathered until 2018 and local capital definitions are phased out over 13 years. And French banks such as Societe Generale and CASA should now have more time to augment capital adequacy.

That is why the safest bet in Europe today is that there will be no rebalancing of the eurozone on the basis of a stimulus to German consumption, which requiring higher capital ratios will further deter balance sheets' ability to handle more commercial activity in Germany and Europe/EU zone.

Moreover, the German banks want to be able to advantage themselves with fire sale prices of cheapened European assets. As a result among the largest German banks, there is disinterest in increasing capital ratios while commerce in Europe and the EU by design is slow in order for all these commercial and industrial companies to be cheap to acquire. Basel III framework for increased capital is a hindrance to German commercial tactics such as fiscal domination, acquisition of other European commercial gems and dominance of its own national champions and also their acquisition of cheapened competitors.AMP

"The Association of German Banks was also critical of certain aspects of the definition of Tier 1 capital and of some "inappropriately high deductions of valuable positions." And though the Basel Committee had shifted its stance on some other points, such as the recognition of participations in financial institutions, the impact would nonetheless be substantial. The association reiterated its criticism of a general limit on leverage. "We consider a leverage ratio counterproductive," said Massenberg. A ceiling without any weighting of risk runs counter to the objective of stabilizing the financial system. "According to our calculations, it would also further constrain lending." The association anticipates that an additional 36 billion Euros of capital would need to be raised in Germany to meet the Basel Committee's planned leverage ratio. This would mean a €1,ooo billion cut in lending if banks were unable to cover their capital needs.

With a view to the G20 summit in Seoul in November, the Association of German Banks urged that the Basel measures should be introduced in a globally coordinated manner. "We must act together, or there is a danger of Basel III not being implemented at all in some countries, thus distorting competition," Massenberg continued. He pointed out that the US had not even implemented Basel II up to now"
Association of German Banks calls for phased and globally consistent introduction of Basel requirements
http://www.germanbanks.org/press-room/press-releases/association-of-german-banks-calls-for-phased-and-globally-consistent-introduction-of-basel-requirements 06 September 2010]

[http://www.bloomberg.com/news/2012-08-22/schaeuble-urges-timely-basel-accord-as-german-banks-doubt-plan.html :
Schaeuble Urges Timely Basel Accord as German Banks Doubt Plan By Brian Parkin and Rainer Buergin - Aug 22, 2012 9:38 AM ET

German Finance Minister Wolfgang Schaeuble urged the European Union to press ahead with its plan to implement Basel III bank capital rules by Jan. 1, shrugging off calls by lenders to delay an "unrealistic" target. EU states "cannot afford" to delay implementing a cornerstone project that will bolster bank reserves to better offset losses and protect taxpayers from picking up the debt of failed lenders, Schaeuble said in an e-mailed statement after the Cabinet in Berlin today approved a bill to anchor the new rules in German law. "Basel III talks are being dragged out in Brussels,"Schaeuble said. Cabinet signed off on the bill to send a "signal" to institutions including the EU parliament and the European Commission "to share the urgency." German lenders criticized the appeal, while a senior government official said the proposed creation of an EU-wide supervisor is adding urgency to the Basel III schedule.

The Basel III accord remains "unsealed in Brussels, a moving target" that will take considerably longer to forge than Germany hopes, Stephan Rabe, the Berlin-based spokesman of the VOeB group that represents 62 state and development banks, said in an interview. VOeB seeks a one-year extension of Basel's implementation, as do Germany's private banks, the DSGV savings banks and the BVR cooperative banks.

Proposed in June at the last EU summit, a plan to create an EU-wide supervisor presupposes that the new capital rules are law, a German government official told reporters today in Berlin. The commission is preparing to present details of the step as part of proposals for a banking union that will also create an EU-wide deposit protection fund.

Adoption of the measures of the Basel Committee for Banking Supervision would more than triple the core capital that lenders must have to 7 percent of their risk-weighted assets. The Group of 20 nations said banks should boost their reserves to prevent any repeat of the wave of taxpayer bailouts that followed the 2008 collapse of Lehman Brothers Holdings Inc.

22) Financial Times- 11Sept12, Jackson Hole – "of Andre Haldane (Bank of England) ".
http://www.ft.com/intl/cms/s/0/e5436a62-fb49-11e1-87ae-00144feabdc0.html#axzz29blf2mwv
johnkay@johnkay.com; also see: http://blogs.wsj.com/deals/2012/09/14/fdics-hoenig-wants-simpler-rules-than-basel-iii/

September 14, 2012, 1:49 PM/ **FDIC's Hoenig Wants Simpler Rules Than Basel III**/ By David Benoit
A top U.S. banking regulator has some thoughts about the rules that are to govern the global safety of banks: scrap them and start all over.
As colleague Alan Zibel reports, Thomas Hoenig of the FDIC today blasted Basel III, and all its predecessors, as having failed the world's banks by setting up arcane and complicated rules to govern capital requirements, thereby enflaming the financial crisis instead of helping extinguish it.
"The poor record of Basel I, II and II.5 is that of a system fundamentally flawed. Basel III is a continuation of these efforts, but with more complexity," Hoenig's prepared remarks said. "It turns out that the Basel capital rules protected no one: not the banks, not the public, and certainly not the FDIC that bore the cost of the failures or the taxpayers who funded the bailouts. The complex Basel rules hurt, rather than helped the process of measurement and clarity of information." … Just last week, SunTrust sold its stake in Coca-Cola KO -0.42%, a 100-year-old investment the bank considered a medal of civic pride in Atlanta, where both are based, because Basel III would penalize holding onto it. Hoenig's advice may be too late to be heeded, given the advancements already made down this path. But Basel III is indeed a complicated morass of rules and standards, investors have signaled they agree with him, keeping a lid on bank stocks that haven't clearly spelled out how they will meet the new rules. 14Sept12- WSJ/David Benoit

23) "Who's Holding the Bag?" 27 Oct 2005 CFO Magazine,"…most of this attention (at the Fed's 2005 meeting regarding hedge fund and operating risk practices) focuses on the mounting interdependence of banks and hedge funds. Corporations, the so-called "reference entities", whose financial survival is the subject of most of these derivative bets and counter-bets are largely ignored. **CFO.com (http://s.tt/1oB4K).** Overall, global derivatives expanded geometrically in notional/netted exposures of OTC derivatives that the Basel III regime is said to identify that Basel II missed while the quality of capital has been eroding said to cause concern over banks' ability to absorb losses (King and Tarbert, May 2011, "Basel III: an Overview", Aspen Publishers: Banking & Financial Services Policy Report, Vol 30, No.5 p.3 also quoting BCBS bcbs198.pdf)

Meanwhile notional OTC derivatives exposures have exceeded estimated $678 Trillion (more than $121 Trillion FX, at DEC 2011 BIS, $504Trillion I/R swaps BIS website, $5.9 Trillion equity derivs, $45 Trillion CDS, $3.08Trillion commodities BIS website), with an estimated netted amount respectively possibly - $27.1 Trillion: $4.7T, $20Trillion , $679B, $486B, $384b (http://www.bis.org/statistics/derdetailed.htm; http://www2.isda.org/functional-areas/research/data-sources/). **These are NOT hedge-able numbers. Even the netted amounts and netting is questionable because the models are flawed, the data is flawed and the 'netting' which now is done by 'master' agreement, ie when a counterparty's exposure has many of these instruments, whatever the modeled exposures to and for the ISDA member is off-set against each other in order to obtain what the remaining uncovered exposure is to the system of other financial institutions and/or clearing and/or settlement organizations is the 'netted' amount. These enterprises are to obtain regulator approval to engage in these unsafe and unsound, non-standard banking activities and use these models and what those produce to represent to the regulators about this operating activity and its risk to itself and the system.**

24) For the fourth consecutive quarter, the notional amount of derivatives held by insured U.S. commercial banks and savings associations fell. Notional derivatives fell $5.5 trillion, or 2.4%, to $222 trillion. Derivatives notionals continue to fall due to aggressive trade compression efforts in credit and interest rate contracts.

☐ Derivative contracts remain concentrated in interest rate products, which compris 80% of total derivative notional amounts. Credit derivatives, which represent 6% of total derivatives notionals, fell 3% to $13.6 trillion.

A total of 1,332 insured U.S. commercial banks and savings associations reported derivatives activities at the end of the second quarter, an increase of 41 from the prior quarter. Derivatives activity in the U.S. banking system continues to be dominated by a small group of large financial institutions. Four large commercial banks (large ISDA members) represent 93% of the total banking industry notional amounts and 81% of industry net current credit exposure.
http://www.occ.gov/topics/capital-markets/financial-markets/trading/derivatives/dq212.pdf
http://www.occ.gov/topics/capital-markets/financial-markets/trading/derivatives/derivatives-quarterly-report.html]

25) Before former NY Fed President Gerald Corrigan left that role in 1993 to work for Goldman Sachs, he eliminated dealer surveillance by the NY Fed of these largest broker/dealers, which included eliminating examination of them by NY Fed staff well trained and experienced to understand the operating activities, and potential collusions and abuses in which these largest broker/dealers and largest US banks may engage. Also the Gramm Leach Bliley Act of 1999 was to have changed this however enabling Investment banks to chose if they wanted to register with the Fed as or under a Financial Holding company, a Bank Hold Company, or a Savings & Loan Holding company.

As "NonBanking Financial Institutions" US and large ISDA member Investment banks were not outside the regulatory framework. The Fed didn't act or failed to activate the compliance of those enterprises under a framework or establish or adopt a regulatory framework that would have held the Fed either more accountable for the unsafe and unsound banking practices and eventual failure of these large enterprises in that they needed TARP provided by Treasury and other liquidity arrangements provided by the Fed and the FDIC, as well as investments by sovereign wealth funds of foreign countries and not accountable to the voters, the shareholders or even by the US government, while with our Government, giving those foreign interests in a form of greater stead over those of voters. **See Note 12b) pg 42: "What the GAO Found")**

BHC Supervision Manual: It says things such as "However, structured notes can also have characteristics that cause them to be inappropriate holdings for many banking organizations, including depository institutions. They can have substantial price sensitivity; they can be complex and difficult to evaluate; and they may also reflect high amounts of leverage relative to fixed-income instruments with comparable face values. Their customized features and embedded options may also make them difficult to price and can reduce their liquidity. Consequently, banking organizations considering the purchase of structured notes should determine whether these factors are compatible with their investment horizons and with their overall portfolio strategies." (Structured Notes (Risk Management and Internal Controls) BHC Supervision Manual Section **2128.0 2128.0.1 SUPERVISORY POLICY— STRUCTURED NOTES)**

From the BHC Supervision Manual, Section 4(c)(8) of the BHC Act (Mortgage Banking) **3070.0/ *3070.0.5.6.2 Cash-Flow Analysis*** The liquidity analysis should also include a review of the net current items on the cash-flow statement pertaining to cash flow from operations, cash flows from investing activities, and cash flows from financing activities on a year-by-year trend basis. The examiner's analysis of cash flows may reveal transactional trends between cash inflows and outflows. *3070.0.5.6.3*

Asset/Liability Management. In general, funding liability maturities should closely approximate the maturities of underlying assets to mitigate the risk of a funding mismatch. Otherwise, the company is exposed to short-term interest-rate fluctuations unless appropriately hedged. **3070.0.5.7 Capital Adequacy** Capital must be adequate to absorb potential operating losses, provide for liquidity needs and expected growth, and meet minimum requirements set by third-party creditors and investors. **2020.5.3 INSPECTION PROCEDURES The subsidiary's or the holding company's ability to augment capital through earnings is also important. If a bank, nonbank or holding company has a consistently strong earnings record and its capital position is healthy, a higher dividend payout may be acceptable than would be otherwise. In analyzing the strength of earnings both quantity and quality must be considered.** The actual quality of earnings and earnings potential are related to operating income rather than extraordinary items, significant capital or securities gains, or substantial increases resulting from tax considerations. Analyze the parent's cash flow and income statements in accordance with section 4010.0 of this manual. Discuss any inappropriate funding with management and comment on, based on their severity, either on the "Cash Flow Statement (Parent)," or the "Analysis of Financial Factors" and the "Examiner's Comments and Matters Requiring Special Attention" pages.

Parent Only (Debt Servicing Capacity—Cash Flow) Section 4010.0 4010.0.1 INTRODUCTION AND SCOPE OF THE ANALYSIS The cash flow analysis is *applicable to all bank holding companies with consolidated assets in excess of $1 billion, those that have substantive fixed charges or debt outstanding,* as well as select others at the option of the Reserve Bank.

Key parts of the Cash flow analysis involve the use of: 1. A standardized "Cash Flow Statement (Parent)" page (refer to manual sections 5010.23 and 5020.13 for the illustrated pages) which includes computation of the cash earnings coverage ratios and analyses; regarding the results; 2. Earnings cash flow coverage ratios to measure the parent company's ability: a) To pay its fixed charges, including interest costs, lease expense, income taxes, retirement of long-term debt (including sinking fund provisions), and preferred stock cash dividends, and b) To pay common stock cash dividends. 3. Guidelines for supervisory determination of parent company debt servicing capacity.

26) USC Title 12: Banks and Banking Part 6 – PROMPT CORRECTIVE ACTION Subpart A – Capital Categories SS 6.4 Capital measures and capital category definitions (1) Well Capitalized Bank: (iv) (iv) Is not subject to any written agreement, order or capital directive, or prompt corrective action directive issued by the OCC pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation there under, to meet and maintain a specific capital level for any capital measure http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=e787b3ec0c04669953cc07ed07714166&rgn=div5&view=text&node=12:1.0.1.1.6&idno=12.

27) The Office of the Comptroller of the Currency ("OCC") is a part of the Executive Branch's Department of the Treasury. Until the Dodd-Frank Act of 2010 ("DFA"), the Office of Thrift Supervision ("OTS"), similarly was a part of the Treasury Department. In 2007 when seeing the role for its Director of Financial Institutions Policy was vacant, I applied for the role. At that time, that Treasury Secretary Henry Paulson had been come from US Investment bank and International Swaps and Derivatives Association ("ISDA") member Goldman Sachs to assume the role of Treasury Secretary after a former Bush Administration appointee left that Cabinet level position. How long the Treasury Department role for Director of Financial Institutions Policy was vacant I am not certain.

28) Hardball politics in US and international finance is now used as the bully pulpit to cajole counties and banking sectors to 'comply' with Basel Accords, at the present time, Basel III. **See Note 21 Paragraph 4**

Financial Times/"FT": **September 7, 2010 6:45 pm- John Plender: "German banking weaknesses come to light".** In response to the tightening of the Basel capital adequacy regime, German banks were this week begging for a last-minute dilution of the rules. Whatever capital ratios are formally agreed by central bankers and regulators on Sunday, this will not be the end of the story for the German banks. **Nor will Germany remain as strong a state as it might if it remains dependent on external demand in a world where the leading deficit countries seek to restore their balance sheets. And anyway, it's all for Germany's interest to dominate which gives this appearance to the outside and culturally inside that it must constantly rely on 'export' when that's really been its form of practicing commercial war and why it's national champions are given favor to dominate overall all other European and if possible American and foreign competitors.**

This underlines a curious feature of the financial crisis. While Anglo-Saxon banks are perceived to be the villains of the piece, **German banks are in reality the Achilles' heel of the European banking system.** They are seriously under-capitalized and use IFRS whereas in the States, the US is not using although sadly harmonizing and should NOT. Hence their wish to make a Basel-approved Augustinian vow to make their balance sheets chaste, but not yet. **The second leg of the story concerns the banks' role in financing southern Europe's deficits. By accumulating more and more**

financial claims on free-spending Club Med states, they made nonsense of the Maastricht treaty's "no bail-out clause". That demonstrates that a weak banking system is, in fact, the inevitable by-product of Germany's export-led growth model. In effect, the perception of currency stability within the monetary union encouraged the unstable financing of sovereign debt and the growth of huge imbalances between north and south." **And Bush in 1989 gave carte blanche to Kohl that's facilitated this at the expense of the US and actually Europe. If the US had not been enabling Germany in all of this, Europe would be in vastly better condition, because we've also subsidized the Germans while they've scorched earth their neighbors in order to dominate those sovereigns. AMP**

Meanwhile Peter Westaway, chief Europe economist at Nomura, "There was always the danger that these new regulations would undermine the ability of the banking system to provide financing to a recovering global economy. The fact that global policymakers have recognised these dangers by phasing in these measures slowly represents an important dose of common sense. **But no doubt, these measures will hurt banks as they are intended to. See also Reuters- 12Sept12, Davenport: "Europe's new banking plan gets cool German response." And FT-31mar10, Wolf,"Why the German Model is Ruinous for Europe, and Why the Eurozone is Good for Germany". And Business Inder-21Oct10 Strafor:"Here's Why Germany is the Big Winner in the Eurozone"** . Also -Reuters, 22Aug12," Germany's financial sector is pressing for the introduction of the rules to be pushed back until 2014 because of the failure of EU authorities and member states so far to reach consensus on how to implement them. German cabinet pushes ahead with Basel III bank rules- **BERLIN** | Wed Aug 22, 2012 10:43am BST (Reuters) The country's biggest banks have warned that introducing the new requirements too quickly risks disruptions to the economy, pointing to examples like Commerzbank's (CBKG.DE) decision in June to withdraw from shipping finance because of the new rules. Deutsche Bank (DBKGn.DE) co-chief executive Juergen Fitschen said in June the impact on liquidity of Basel III would have "indirect consequences" and in areas such shipping and aircraft finance, Europe could lose business to Asia. (Reporting by Stephen Brown and Matthias Sobolewski; editing by Patrick Graham) http://uk.reuters.com/article/2012/08/22/uk-germany-banks-basel-idUKBRE87L08O20120822 . **If Basel III is implemented, it will reduce competition and raise prices in finance sectors and products because of the capital hit rather than spurring economic activity and in that way increasing profit margins. Monopolies in the Old world with their national champions is OK, but our system functions better with competition rather than by concentrating commercial activies in the hands of a few, unless their fees are fixed and they're regulated like utilities**.

29) **See also Notes 11, 12b)** regulation between OCC and FDIC and Fed. Their Examiners' handbooks and protocols exist to instruct and recommend for any search for any reason, or any **referral TO EACH OTHER** for any reason of concern. Whereas their instructions and guidelines may say that some action isn't common practice, nevertheless if these regulators want to turn over stones, they have every, and all means to achieve this. If something thwarted this process, this isn't what Basel Accords will solve. For example, In the **FDIC's Division of Supervision and Consumer Protection "DSC" Risk Management Manual of Examination Policies "Report of Examiner Instructions**", under section "**SUMMARIZE THE EXAMINATION'S FINDINGS"** for the process of **Delegation of Authority** which is this regulator's name for its internal framework for reviewing Exam Reports, dealing with findings of what the examiners found, referring action up its chain of command and to other regulators on clear violations, for example if there is international activities and international branches, subs, or affiliates, DSC Associate Director of this regulator's International and Large Bank section. Criminal Activity is dealt with by this regulator's legal division.

Pg 16.1-90 "**GENERAL"** The FDIC typically does not request or review information on foreign banks or foreign bank holding companies during the examination process. If a Paralleled-owned Banking Organization "PBO" relationship is suspected, the examiner needs to request additional information to understand the ownership/control structure of the foreign entity.
The information on the foreign bank and/or foreign bank holding company could include, but is not limited to: • Shareholder list of the foreign bank and any of the companies that own/control it; • Minutes of the most recent shareholder meeting; • Annual Reports; • Composition of the Board of Directors and executive management; • Organizational chart; • Web site addresses, • Policies that the bank in the United States has been instructed to follow; • Products or services that the bank in the United States has been instructed to offer; and • Cross-border transactions or services.
http://www.fdic.gov/regulations/examinations/index.html http://www.ots.treas.gov/?p=ThriftFinancialReports for the thrift call reports however there was information on the exams/exam handbook on the website in pdf. http://www.occ.gov/static/news-issuances/ots/exam-handbook/ots-exam-handbook-010.pdf