CONTINENTAL BANCORPORATION

October 18, 2012

The Honorable Thomas J. Curry, Comptroller
Office of the Comptroller of the Currency
regs.comments@occ.treas.gov
Docket ID OCC-2012-0008 and OCC-2012-0009
RIN 1557-AD46

The Honorable Ben S. Bernanke, Chairman
Board of Governors of the Federal Reserve System
regs.comments@federalreserve.gov
Docket R-1430 and R-1442
RIN No. 7100-AD 87

The Honorable Martin J. Gruenberg, Acting Chairman
Federal Deposit Insurance Corporation
comments@fdic.gov
RIN 3064-AD95 and RIN 3064-AD96

RE: *Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III*

Dear Chairmen and Mr. Comptroller:

I am writing for and in behalf of Continental Bancorporation, a Sub Chapter S Corporation bank holding company and its bank subsidiary Continental Bank. Continental Bank is a Utah State Chartered FDIC insured bank and a qualified Sub Chapter S Subsidiary (QSSS). Continental Bancorporation and Continental Bank are both Utah domiciled corporations. Continental Bank is completing its ninth year of operations.

I am writing to ask that you give more consideration to the unfavorable tax treatment that, if I understand correctly, shareholders of banks or bank holding companies that have made the S Corporation election will be subjected to under the proposed Basel III recommendations. Under present regulatory practices, a bank or bank holding company that has made a Subchapter S election is able, either inside its de-novo period with regulatory permission or outside of its de-novo period and absent any regulatory order, to pay a dividend or distribution to its shareholders equal to at minimum, its shareholders estimated tax liability on its pro-rata share of the bank's taxable income plus some return on their original investment. Under the proposed Basel III regulations, if an S Corporation bank were to fall below the definition of well capitalized and the S Corporation bank were profitable, it would automatically be unable to declare a cash dividend

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to its shareholder(s) even in a minimal amount equal to their individual tax liabilities resulting from the S Corporation bank's taxable income. This is different than the current situation where an S Corporation bank would only be prohibited from paying a cash dividend to its shareholders to pay their estimated individual tax liabilities on the bank's taxable income that is passed through to them if they were prohibited by a regulatory order whether or not their capital ratio met the definition of well capitalized. Under the proposed Basel III regulations' dividend provisions, all S Corporation banks would automatically be prohibited from paying a cash dividend to their shareholders to pay their individual estimated tax liability from the S Corporation bank's taxable income if the S Corporation bank's capital ratio fell below the definition of well capitalized.

In considering the treatment of shareholders invested in C Corporation banks and those invested in S Corporation banks, the S Corporation bank shareholder(s) are unfairly disadvantaged. In these cases, a profitable C Corporation bank shareholder is not personally taxed on the C Corporation's taxable income where the C Corporation Bank may fall below the threshold of a well capitalized bank and therefore be prohibited from paying a cash dividend to its shareholders. But in the case of a profitable S Corporation Bank who has fallen below the well capitalized threshold the S Corporation bank is prohibited from paying a cash dividend to its shareholder(s) who have incurred an individual tax liability as a result of the profitability of the S Corporation and have to pay their individual tax liability on their share of the taxable income of the S Corporation bank with other funds.

I would propose that you give the same flexibility to regulators and their approval of cash dividends to shareholders of profitable S Corporation Banks in their de-novo period or those situations where they are under some form of regulatory order but are still able with regulatory permission to pay a cash dividend to their shareholders to enable their shareholders to pay their individual tax liability from their S Corporation bank taxable earnings.

It is my understanding there are as of June 30, 2012 2,293 or 32% of all of the 7,255 FDIC insured banks that have made the election to be S Corporation banks and this would have a possibly significant impact in those cases where they were profitable but not well capitalized.

Sincerely,

Nathan J. Morgan

Nathan J. Morgan
Chairman, President and CEO