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April 9, 2019

Office of the Comptroller of the Currency (OCC)
400 7th Street, SW
Suite 3E-218
Mail Stop 9W-11 (RIN 1557-AE59)
Washington, DC 20219

Ann E. Misback,
Secretary (RIN 7100-AF29)
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS (RIN 3064-AE91)
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations; Docket ID OCC-2018-0040

Dear Madam or Sir:

Pursuant to notice published in the *Federal Register* of February 8, 2019 (84 *Fed. Reg* 3062), this letter is filed on behalf of a coalition of community banks adversely affected by the Basel III capital rules requiring the deduction of Trust Preferred Securities (TruPS) from Tier 1 capital in instances where those securities represent more than ten percent of common equity.

The commentary to the Notice of Proposed Rulemaking observes that in "September 2017, the agencies proposed simplifying certain capital requirements for all banking organizations, except advanced approaches banking organizations (simplifications proposal),"[1] and further notes that in "an effort to provide immediate relief, the agencies also extended transition provisions for certain regulatory capital requirements that would be affected by the simplifications proposal."[2]

Among other things, the simplifications proposal provided an increase in the deduction threshold for TruPS from ten to twenty-five percent of common equity. We commend the federal supervisory agencies for that action in late 2017 and the important relief it would provide to a number of community banks with operations primarily in rural states.

In our comment letter to the simplifications proposal (copy of Dec. 26, 2017 letter enclosed), we requested that the TruPS provision be separated from the other asset categories and the deduction threshold eliminated as unnecessary. We respectfully urge the same treatment with respect to the even broader changes now under review by way of implementing Section 201 of the "Economic Growth, Regulatory Relief, and Consumer Protection Act" signed into law on May 24, 2018.[3]

In this connection, our coalition institutions were certainly heartened to see the recent remarks by FDIC Chair McWilliams at a recent bank symposium that: "One step in this process will be the finalization of the Economic Growth and Paperwork Reduction Act (EGRPRA) capital simplification proposal issued last September, which would simplify and modify the capital treatment for mortgage servicing assets, certain deferred tax assets, and investments in unconsolidated financial institutions, such as Trust Preferred Securities (TruPS), among other provisions. While the agencies have thus far delayed finalization in light of consideration of other changes to the capital regime, *I see no reason to delay any further*. Finalizing the capital simplification proposal will provide certainty and clarity to community banks and take a step toward simplifying the risk-based capital rules" (Emphasis added).[4]

TruPS investments continue their post-crisis improvement, and, at this point in the financial cycle, represent positive balance sheet assets. They are long-term investments with book values that are regularly adjusted in accordance with GAAP accounting rules to reflect any impairment to value.

For these reasons, there is no longer a justification for the punitive capital treatment of TruPS vis-à-vis other bank investments and relief in this regard should be finalized as soon as possible. This view has widespread support at the national level by the American Bankers Association and the Independent Community Bankers Association of America, and at the state level by the Illinois Bankers Association, the Community Bankers Association of Illinois, the Louisiana Bankers Association, the Mississippi Bankers Association and the Wisconsin Bankers Association.

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[1] 82 *Fed. Reg.* 49984 (Oct. 27, 2017).

[2] 84 *Fed. Reg.* 3064 (Feb. 8, 2019) referring to 83 *Fed. Reg.* 55309 (Nov. 21, 2017).

[3] Public Law 115–174; 132 Stat. 1296 (2018).

[4] Thirteenth Annual Community Bankers Symposium "Back to Basics"; Federal Reserve Bank of Chicago (Nov. 16, 2018)

Thank you for taking these views under consideration. Please contact the undersigned regarding any questions or requests for additional information.

Respectfully submitted,

James J. Butera

Enclosure

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James J. Butera
Ryan D. Israel

December 26, 2017

Via Electronic Delivery

Hon. Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Hon. Janet L. Yellen
Chair
Board of Governors of the Federal Reserve System
Eccles Board Building
20th and C Street, NW
Washington, DC 20219

Hon. Joseph Otting
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Re: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996

Dear Chairman Gruenberg, Chair Yellen, and Comptroller Otting:

Pursuant to notice published in the *Federal Register* of October 27, 2017 (82 Fed. Reg. 22093), this letter is being submitted on behalf of a coalition of community banks adversely affected by the Basel III capital rules requiring the deduction of Trust Preferred Securities (TruPS) from Tier 1 capital if those securities represent more than ten percent of common equity.

Approximately 30 community banks are covered by this particular provision with an aggregate capital amount of almost $250 million being subject to deduction per the rule as it was finalized in 2015. These institutions are located in a number of states but especially Illinois, Mississippi and Wisconsin. Many of these institutions operate in rural areas, often have total assets of less than $100 million, and, as we have found, include many institutions which are still family-owned.

In no instance do these institutions, either individually or in the aggregate, pose a systemic risk to the banking system. In fact, in most cases these are banks which have been in business for over 100 years and have never been less than well-capitalized until the Basel III capital rules went into effect.

For this reason, we commend the federal supervisory agencies for the action taken earlier this year by way of deferring the fourth and final year of the transition period accorded for the capital deduction for investments in TruPS issued by other financial institutions. The pending proposal would raise the ten percent threshold to 25 percent on a permanent basis.

We applaud this step for a number of reasons beginning with the fact that these investments have already been written down to reflect both past and projected losses in accordance with current accounting rules. Secondly, the existing risk-based capital rules constitute a further risk adjustment with respect to these assets which is more than adequate underpinning from the standpoint of safety and soundness. Third, the current issuers of the notes have by now survived the financial crisis making the risk of further default unlikely. Fourth, these assets have generally been improving over recent years from an investor standpoint and, lastly, market trends also indicate that the instruments are regularly being recalled and paid off by the issuing banks.

Our analysis shows that the pending rule, were it to be adopted as proposed, would eliminate the capital deduction for 90 percent of the banking institutions subject to a capital deduction imposed by the TruPS provision of Basel III. For all the reasons stated above, however, it remains unnecessary and unwarranted to penalize any institution for holding these long-term, floating rate, and performing assets on their books.

On the other hand, removing the TruPS capital deduction from the Basel III capital rules for each and every institution now subject to it would be of immediate and significant benefit to the reporting companies and, most importantly, the communities they serve. A bank's lending capacity is of course directly tied to its capital levels and we estimate that the elimination in full of the Basel III capital deduction rule for banks holding TruPS would result in a lending capacity increase in excess of $2.5 billion. This action would be clearly consistent with the Treasury Department's recommendations to reevaluate "regulatory factors that are unnecessarily limiting the flow of credit to consumers and businesses and thereby constraining economic growth and vitality."[1]

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[1] *Report to President Donald J. Trump Executive Order 13772 on Core Principles for Regulating the United States Financial System*, U.S. Treasury Department (June, 2017), p.13.

Of added significance in this regard is the fact that a very large number of the affected banks are in rural or other underserved communities. Many are or could be designated as Community Development Financial Institutions serving low- to moderate-income areas. For these companies, there is no realistic way to effectively replenish the capital deducted as a consequence of the existing rules and in these cases the only option has been to shrink the bank or find a merger partner.

Community banks are disappearing at an alarming rate as the number of FDIC-insured banks has dropped over the last ten years from 9,155 to less than 5,800 today.[2] In one of the merger announcements involving a community bank adversely impacted by the Basel III TruPS provision there was no other independent bank headquartered within a 25-mile radius. For consumers and businesses finding themselves suddenly in a community lacking a hometown bank or even a branch office, the implications go far beyond customer convenience. An entire town and its surrounding area can be severely impacted by the diminishment of local decision-making on credit availability. According to an article just published in the *Wall Street Journal*, "of America's 1,980 rural counties, 625 don't have a locally owned community bank—double the number in 1994, federal data show. At least 35 counties have no bank, while about 115 are now served by just one branch."[3]

The elimination of the Basel III TruPS provision would be an important step in the process of reversing the regulatory pressure on community banks to seek out merger partners. This initiative is importantly supported by the comment letters already filed by the American Bankers Association and the Independent Community Bankers Association of America. This recommendation also enjoys the support of the Illinois Bankers Association, the Community Bankers Association of Illinois, the Louisiana Bankers Association, the Mississippi Bankers Association and the Wisconsin Bankers Association.

Thank you again for the opportunity to submit these comments in support and further expansion of the proposed changes to the capital treatment of TruPS investments. We also want to recommend in the strongest possible terms that the proposed changes in the capital treatment of TruPS investments be implemented on a joint agency basis as promptly as possible and within the time period that could be reflected in the first quarter Call Reports to be filed in 2018.

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[2] This number, 6,000, is actually an over count as it includes many banks which are not individually independent but separate bank subsidiaries of a multibank holding company.

[3] "Goodbye, George Bailey: Decline of Rule Lending Crimps Small-Town Business;" Wall Street Journal (Dec. 25, 2017).

Please contact the undersigned with regard to any questions or requests for additional information.

Respectfully submitted,

James J. Butera
Ryan D. Israel
Counsel for the Basel III TruPS Community Bank Coalition