Meeting between Governor Powell and
Representatives of New York Private Bank & Trust Corporation
May 31, 2013

Participants: Governor Jerome H. Powell and Page Conkling (Federal Reserve Board)

Richard C. Wald and Harriett Edelman (New York Private Bank & Trust Corporation); Mike Chappell (Fierce, Isakowitz & Blalock)

Summary: Governor Powell and Federal Reserve Board staff met with representatives of New York Private Bank & Trust Corporation (NYPB&T). Representatives of NYPB&T briefly described its history, asset size and composition, and business model. Representatives of the bank expressed concern regarding the potential regulatory capital treatment of certain capital instruments pursuant to the requirements of section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act as a result of NYPB&T's level of total consolidated assets. NYPB&T's concerns are detailed in the attached letter.

Attachment

NEW YORK PRIVATE BANK & TRUST CORPORATION

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Via Federal Express

May 29, 2013

Scott G. Alavarez
General Counsel

Michael Gibson
Director of Supervision

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Gentleman:

New York Private Bank & Trust Corporation (NYPB&T), a financial bank holding company by virtue of its wholly owned banking subsidiaries Emigrant Bank and Emigrant Mercantile Bank (Emigrant), seeks the non-objection of the Federal Reserve Board legal and supervisory staff (Board staff) to the classification of NYPB&T and its subsidiary holding company as "smaller institutions" for purposes of Section 171(b)(4)(C) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). As a result of this classification, the debt or equity instruments issued by NYBPB&T and/or its subsidiary holding company before May 19, 2010, would not be subject to the deduction from regulatory capital otherwise required by Section 171 of Dodd-Frank (the so-called "Collins Amendment"). As described below, NYPB&T strongly believes this classification is appropriate because (1) it applies to any "depository institution holding company with total consolidated assets of less than $15,000,000,000 as of December 31, 2009"; and (2) as of that date, NYPB&T and its subsidiary holding company had – *for operational and investing purposes* – total consolidated assets of $13.4 billion. (Today NYPB&T has consolidated assets of only $7.3 billion.)

Emigrant Bank is a 160 year-old community bank specializing in lending to small businesses, homebuyers and homeowners. Emigrant Bank was rescued and stabilized by the Milstein family in 1986, and the Bank saved the Dollar Dry Dock Bank by acquiring virtually all of Dollar Dry Dock's assets and liabilities from the FDIC, as Receiver, in February 1992. In March 1994, Emigrant Bancorp, Inc. ("Bancorp") was formed by the Milstein family as a bank holding company to own all of the shares of Emigrant Bank. In June 2003, the Milstein family formed a top tier bank holding company, ESB Acquisition Corp. ("ESB Acquisition") to hold all of the shares of Emigrant Bancorp, Inc., and ESB Acquisition changed its name to New York Private Bank & Trust Corporation in December 2004. Both Bancorp and NYPB&T later qualified as financial holding companies. This ownership structure is in place today. All of those entities are currently 100% owned by the Milstein Family.

Emigrant is committed to community lending and sound and responsible management. It is these very principles that led the Bank to prudently secure additional "insurance" liquidity during the financial crisis on a basis that was *temporary* – which in turn led to an increase in the nominal amount of its balance sheet assets that was also *temporary*. As it turned out, this temporary additional liquidity proved unnecessary because, after it was obtained, various extraordinary (and unexpected) government programs were established, obviating the need for Emigrant's own prudent preparatory actions.

Specifically, in early 2008 Emigrant sought to ensure it had adequate liquidity in the event that uninsured depositors (at that time, those with deposits exceeding $100,000) decided to move the uninsured portion of their deposits to other depository institutions to ensure that they were completely covered by federal deposit insurance. At that time, Emigrant had approximately $2.3 billion in uninsured deposits. As a result, the Bank obtained approximately $2.5 billion in cash advances (on a previously established, collateralized account) from the Federal Home Loan Bank of New York. Thus, with this extra temporary cash on its balance sheet, Emigrant, because of its unique prudence, was fully prepared to address the potential withdrawal of all uninsured deposits – without disruption to its core lending business – during what it hoped would be the temporary duration of the financial crisis. Of course, because the Bank maintained its lending activities and the level of loans on its balance sheets, the temporary increase in borrowed cash resulted in a temporary increase of its total nominal assets – to just over $15 billion. The actual operating balance sheet of the Bank on a consolidated basis never exceeded $13.4 billion.

At the time it obtained these temporary cash advances, Emigrant did not anticipate – and could not have anticipated -- the later extraordinary measures that the Federal Reserve and the FDIC would adopt that made these advances unnecessary. That is, during the third quarter of 2008, the FDIC increased the deposit insurance limit to $250,000, which virtually eliminated the risk secured by Emigrant's borrowings from the Federal Home Loan Bank. Unfortunately, however, Emigrant's first opportunity to repay its Federal Home Loan Bank advances without substantial penalty did not arise until the first quarter of 2010. The terms of the advances were for 10 years, with a 2-year "no call" provision. Under this provision, the premium penalty for early repayment was approximately $40 million, which the Bank did not consider a prudent expenditure of funds during the financial crisis.

As it turned out, because of the government's extraordinary measures and the abatement of the financial crisis, deposit withdrawals did not surge, and the extra cash obtained from the Federal Home Loan Bank sat entirely unused until the advances were ultimately repaid. Indeed, from the end of the first quarter of 2008 when the advances were obtained through the end of the first quarter of 2010 when the advances were repaid, Emigrant treated the temporarily borrowed cash as if it were held in a virtual "lock box." Accordingly, during this entire period, Emigrant kept the amount borrowed in the most readily liquid accounts on its balance sheet: cash, money market investments, deposits at the Federal Reserve Bank of New York, or in 0% risk weighted GNMA securities. The purpose of holding such high levels of liquid assets was to be as prepared as possible should the crisis intensify and lead to an unprecedented surge in deposit withdrawals. This highly liquid position also maximized the Bank's ability to repay the advances at the first economically feasible opportunity, *i.e.,* after the deposit insurance limit was increased and at the first moment when the Bank would not incur a prepayment penalty.

At what later proved to be the critical statutory date, December 31, 2009, the Collins Amendment was not even drafted, let alone adopted. As a result, the Bank could not take proactive measures to avoid any loss of its consistent status as a "smaller institution" by paying the prepayment penalty on an early repayment of the advances to the Federal Home Loan Bank of New York in order to return its balance sheet below the $15 billion level. Both before the advances were obtained in early 2008, as well as when they were repaid in the first quarter of 2010, NYPB&T's (and Bancorp's) total consolidated assets were consistently substantially less than $15 billion. Indeed, after Emigrant's FHLB advances were repaid in March of, 2010, its balance sheet immediately returned to the lower level of $13.143 billion in consolidated assets. *It was solely due to the temporary cash obtained from the Federal Home Loan Bank liquidity advances – which ultimately went unused – that on December 31, 2009, NYPB&T's (and Bancorp's) consolidated assets just crossed $15 billion to $15.4 billion.*

Thus, in view of the unique circumstances described above, NYPB&T strongly believes that from the first quarter of 2008 through the first quarter of 2010, the total consolidated assets of NYPB&T and Bancorp that were used in banking and for operations were consistently approximately $2 billion less than the nominal amount reflected on its balance sheet. This is so because the temporary funds borrowed from the Federal Home Loan Bank of New York in the first quarter of 2008 were never utilized for operational, lending, or investing purposes. Instead, they were safeguarded in highly liquid instruments throughout the period, at levels of liquidity far higher than the Bank would normally hold. Accordingly, NYPB&T and Bancorp, for functional/operational purposes, had total consolidated assets of only $13.4 billion on December 31, 2009.

As such, NYPB&T seeks the non-objection of the Board staff to the classification of NYPB&T and Bancorp as "smaller institutions" within the scope of Section 171(b)(4)(C) of the Dodd-Frank Act, and, consequently, any debt or equity instrument issued by NYPB&T or Bancorp before May 19, 2010 would not be subject to the deduction from regulatory capital that would otherwise be required by the Collins Amendment provision of that Act.

Thank you for your consideration of the above.

Sincerely,

Howard Milstein

Cc: David Lowenberger
Examiner in Charge