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BY FEDERAL EXPRESS AND EMAIL

Alfred M. Pollard, General Counsel and
Christopher T. Curtis, Senior Deputy General Counsel
Federal Housing Finance Agency
Fourth Floor
1700 G Street, N.W.
Washington, DC 20552
Attention: Comments/RIN 2590-AA21

RE: Capital Classifications and Critical Capital Levels for the Federal Home Loan Banks

Gentlemen:

On January 30, 2009, the Federal Housing Finance Agency (FHFA) issued an interim final rule (the Rule) with respect to capital classifications and critical capital levels for the Federal Home Loan Banks (FHLBanks). This letter sets forth the comments of the Federal Home Loan Bank of Des Moines (the Bank) with respect to the Rule. We thank you for the opportunity to be heard on this important matter.

The Rule established new capital classification and prompt corrective action regulations set forth in 12 C.F.R. Part 1229 (the Regulations). In the preamble to the Rule, FHFA also discussed the possibility that the agency might issue additional regulations relating to a potential fifth "well capitalized" capital classification, and solicited specific comment on both that possibility and a series of related questions.

Following the structure of the Rule, this comment letter is divided into two parts. The first sets forth comments on the Regulations as promulgated, while the second addresses the potential "well capitalized" category and related issues. Most of the comments in this letter were developed in collaboration with the other FHLBanks. Our comments may differ with regard to the desirability of having a "well capitalized" category and our strong support for an overhaul of the current risk-based capital framework.

I. The Regulations

We offer the following comments, suggestions, and requests for clarification in respect of the Regulations:

- Exclude Advances from Section 1229.6(a)(4) Quarterly Asset Growth Cap. Section 1229.6(a)(4) of the Regulations provides that an undercapitalized FHLBank may not permit its average total assets in any calendar quarter to exceed its average total assets during the preceding quarter, unless certain requirements are met. Such a sanction would cut at the primary mission of FHLBanks. It could force an affected FHLBank to essentially ration advances to members or otherwise restrict their access to liquidity. In light of both the safety of advance assets and their self-capitalizing nature, we believe that this cap on quarterly asset growth should not restrict growth in advance balances, as such growth generally results in an improvement (not a worsening) of an FHLBank's capital position. This is true even if the ratio of tangible equity to such a bank's total assets is not then increasing at a rate sufficient to enable the bank to become adequately capitalized within a reasonable time (as Section 1229.6(a)(4)(ii)(B) requires). We request that FHFA modify Section 1229.6(a)(4) to exclude advance assets from the quarterly asset growth cap, or, in the alternative, otherwise amend the cap requirement in a way that does not limit the making of capital-enhancing advances.

- Increase Time Period for Submission of Capital Restoration Plan. Section 1229.11(b) of the Regulations requires an FHLBank to submit a proposed capital restoration plan no later than 10 calendar days after receiving notice from the Director of the FHFA. Depending on when the notice is received, the FHLBank could have as few as 5 business days to formulate and submit the plan,[1] and that is likely not a long enough period of time to permit an FHLBank to create a truly effective capital restoration plan. We ask that Section 1229.11(b) be amended to extend this time period from 10 calendar days to 30 calendar days.

- Clarify Scope of Section 1229.6(a)(5) Prohibition on Acquisitions. Section 1229.6(a)(5) of the Regulations provides that an undercapitalized FHLBank may not "acquire, directly or indirectly, any interest in any entity" unless certain requirements are met. Please clarify how this prohibition would operate in the context of an FHLBank's business and in particular confirm that it would not interfere with an FHLBank's exercise of its authority to make advances, acquire member assets, provide AHP or CICA funding, issue standby letters of credit, or purchase authorized investments.

- Modify Definition of "Executive Officer". In order to provide both more clarity as to which employees constitute "executive officers" and a more appropriate scope to

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[1] For example, if the FHLBank received the notice on Friday, May 15, 2009, the submission would be due no later than Monday, May 25, 2009. However, since that latter date is a federal holiday, Friday, May 22 would be the last business day prior to the deadline, effectively giving the FHLBank only 5 business days to develop and propose the plan.

that definition, we ask that the definition of "executive officer" under Section 1229.1 be amended to reflect the following three comments:

- clause (3)(i) of the definition should be modified to include only those individuals in charge of a principal business unit, division or function who have been notified in advance by FHFA that they constitute "executive officers" for purposes of the Regulations;

- clause (3)(ii) of the definition should be modified by changing "chief operating officer" to "chief executive officer;" and

- clause (3)(ii) of the definition should provide a carve out for administrative support staff reporting to the chairman of the board of directors, the vice chairman of the board of directors, the president, or the chief executive officer.

- Clarify Application of Executive Compensation Limits to Pre-existing Contracts. Please clarify whether, in light of contractual and constitutional concerns, employment agreements entered into prior to the effective date of the Rule are subject to the restrictions set forth in Section 1229.8(e) and (f) of the Regulations.

II. Potential "Well Capitalized" Classification and Related Issues

We offer the following comments on the five specific questions posed by FHFA in the preamble to the Rule:

1. Would a well-capitalized classification category provide incentives to the Banks to hold more than the minimum amounts of capital and increase retained earnings as a percentage of capital?

Your question suggests two methods for defining well capitalized. The first goes to the amount of capital while the second goes to the mix of capital. We believe that the FHLBanks have sufficient total capital under the current regulatory framework and do not believe that the FHFA should implement a well capitalized category that will have the practical effect of raising the minimum capital standards for the FHLBanks above the amounts provided for under current regulations.

A definition of well capitalized based on holding more than the minimum levels of capital requires an FHLBank to decrease its leverage thereby reducing its earning assets and net income. A definition of well capitalized that is based on increases in retained earnings as a percentage of capital requires an FHLBank to pay less in dividends than it might otherwise pay. In either case, an FHLBank would be unlikely to seek such well capitalized status unless offered clear incentives that enable it to offset the lost earnings from decreased leverage or to forego the benefits of higher dividends. We are doubtful that either higher capital levels or the accumulation of more retained earnings will provide any market benefits for individual FHLBanks in their dealings with capital market counterparties (e.g., swap counterparties and fed funds counterparties). We believe these counterparties rely significantly on external credit ratings and, in the case of interest rate swaps documented on ISDA forms, on the collateral provided by counterparties.

Examples of regulatory incentives that might sufficiently motivate FHLBanks to become well capitalized are discussed below under question 4.

2. What criteria may be appropriate to define such a category?

As noted above, we believe the FHLBanks have sufficient total capital under the current regulations to support their businesses. Therefore, we believe that any definition of well capitalized should focus on the composition of capital. We suggest two possible formulations to implement this approach. Under the first approach, a well capitalized FHLBank would be any FHLBank that is adequately capitalized <u>and</u> has at least a specified percentage (e.g., 10%) of its total regulatory capital in the form of retained earnings. Under the second approach, well capitalized would be defined as a capital ratio above the 4% total capital ratio (e.g., 4.25%) but with retained earnings computed in such calculation as a multiple (e.g., 2.0 times) of actual retained earnings. Under this second approach, an FHLBank with modest retained earnings that did not wish to sharply accelerate its accumulation of retained earnings could still meet the well capitalized standard simply by having a higher amount of capital stock.

If retained earnings were used as an element of the definition of well capitalized, the Rule should clarify that OCI would not be added to or subtracted from retained earnings for the purpose of determining well capitalized status.

3. Would a MVE/PVCS or a retained earnings target be appropriate in defining a well-capitalized category, and if so, what should the targets be?

As discussed above, some element of retained earnings might be an appropriate component of the definition of well capitalized. Any such element, however, should be developed in the context of an incentive for an FHLBank to become well capitalized rather than as effectively an additional requirement to be adequately capitalized.

Also as discussed above, to encourage the FHLBanks to build the amount of retained earnings, we favor a methodology that provides retained earnings a higher weighting in the composition of the capital definition, such as using a multiple (e.g., 2.0 times) of the amount of actual retained earnings.

While MVE/PVCS targets have a certain surface appeal, they do not provide a sound basis for defining well capitalized, in part because such measurements look to liquidation values rather than going concern values. Recent market conditions show the distortions that can result from using MVE as a measurement of capital adequacy.

4. What restrictions on adequately capitalized Banks may be appropriate to create an incentive to Banks to achieve and maintain a well-capitalized rating?

The Housing and Economic Recovery Act of 2008 established four capital classifications which do not include a well capitalized category. Therefore, we do not think it is appropriate to use restrictions on an adequately capitalized FHLBank as a lever to force or entice it to comply with a higher capital standard not contemplated by the statute. Rather, implementation of a well capitalized category should be driven by incentives that encourage and reward an FHLBank for achieving that status.

As noted above, we do not believe that any market benefits will accrue to well capitalized FHLBanks. Thus financial incentives would likely have to be in the areas of expanded investment authority. For well capitalized FHLBanks, the Rule might make permanent the recent temporarily expanded MBS authority; explicitly expand the scope of authorized MBS investments to include, for instance, private-label MBS currently trading at substantial discounts; or add new permitted investment categories such as certain government-guaranteed student loans.

In the same vein, the Rule might offer regulatory incentives for an FHLBank to become well capitalized. For example, a well capitalized FHLBank might receive expedited consideration of a new business activity notice or a waiver of the requirement to file such a notice with respect to specified activities that are new for the well capitalized FHLBank but that have previously been approved for other FHLBanks. Certain aspects of the annual examination of a well capitalized FHLBank might be more limited in scope (either in every year or in alternate years) or less intrusive than is the case with an FHLBank that is only adequately capitalized.

5. **Alternatively, should the FHFA adopt a MVE/PVCS and/or retained earnings requirement as a separate risk-based capital rule that would be applied to the Banks in addition to the current risk-based capital requirement in 12 CFR 932.3, and incorporate this new requirement into the criteria for defining either the adequately capitalized category or a new well-capitalized category? Should MVE/PVCS or retained-earnings targets be adopted other than as part of the risk-based capital structure?**

As noted above, using MVE measures to establish any capital requirement is problematic. These problems are illustrated by current events in which MVEs have been driven lower by discounts in securities prices that do not reflect real interest rate risk and that overstate credit risk.

Any element of retained earnings that is used to define a capital category or to provide an incentive to achieve well capitalized status should be based on clearly articulated risk factors and how increased retained earnings mitigate those risk factors.

6. **Are there any changes that should be made to the RBC framework?**

We believe significant changes are needed to the RBC framework. We would encourage the FHFA to form a working task force of FHFA and FHLBank personnel to review the current RBC framework with the goal of developing a comprehensive framework that includes the appropriate significant risk factors and appropriate quantification methodologies. The review should include the following items, among others:

- For the reasons mentioned above regarding MVE, we believe the proposed task force should consider eliminating the incremental market risk capital requirement imposed by 12 C.F.R. §932.5(a)(ii) to the extent that an FHLBank's MVE is less than 85% of its book value of total capital.

- The weightings of sundry assets under the credit risk component of the current RBC are based on ratings migration tables that probably should be revisited and updated.

- We believe the proposed task force should revisit the operations risk capital requirement which is an amount equal to 30% of the sum of the FHLBank's credit risk capital requirement and market risk capital requirement. At a minimum, the operations risk capital requirement should be decoupled from the component of the market risk requirement generated by the MVE deficit (if that component is retained). The operations risk requirement should be determined based on some measurement of actual risks arising from operational failures rather than expressed as merely a function of credit and market risks. One potential alternative would be an internal assessment process consistent with the approaches developed under Basel II.

Thank you for your consideration of our comments.

Sincerely,

Richard S. Swanson
President & CEO
Federal Home Loan Bank of Des Moines