



INDEPENDENT COMMUNITY
BANKERS of AMERICA

November 20, 2008

Jennifer J. Johnson, Secretary
Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Regulation Y; Docket No. R-1336; Treatment of Perpetual Preferred Stock Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to offer comments in connection with the Federal Reserve's interim final rule regarding the treatment of perpetual preferred stock issued to the United States Treasury under the Emergency Economic Stabilization Act of 2008 or EESA. Under the interim final rule, bank holding companies that issue new senior perpetual preferred stock to the Treasury under the capital purchase program (CPP) announced by the Secretary of the Treasury on October 14, 2008 would be able to include such capital instruments in Tier 1 capital without limit for purposes of the Federal Reserve Board's risk-based and leverage capital rules and guidelines for bank holding companies.

ICBA's Position

ICBA agrees with the Federal Reserve's position that bank holding companies should be able to include senior perpetual preferred stock issued to the Treasury under the CPP as part of their Tier 1 capital for purposes of the Board's risk-based and leverage capital rules. While we understand that the Federal Reserve Board as a matter of policy and practice has disallowed capital instruments with a dividend rate step-

¹*The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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up to be included in Tier 1 or Tier 2 capital because the rate step-up undermines the permanence of a capital instrument, we believe that other terms and public policy considerations related to the issuance of the senior perpetual preferred stock mitigate concerns over the rate step-up feature.

For instance, issuers will not be allowed to repurchase other stock or increase common dividends for three years after the issuance of the senior perpetual preferred stock. These restrictions will encourage issuers to retain their common equity and therefore will promote the safety and soundness of the issuers.

Furthermore, certain features of the senior perpetual preferred stock will encourage issuers to redeem the stock and replace it with Tier 1 qualifying perpetual equity as soon as practicable. For instance, the stock will be callable by the banking organization at par after three years from issuance and may be called at an earlier date if the stock will be redeemed with cash proceeds from the bank organization's issuance of common stock or perpetual preferred stock that qualifies as Tier 1 capital. Following the redemption of all the senior perpetual preferred stock, the bank holding company shall also have the right to repurchase any other security of the organization including any warrants that were issued to the Treasury.

ICBA believes that these unique features of the senior perpetual preferred stock should offset the supervisory concerns with regard to the step-up feature of the stock. Furthermore, ICBA believes that the interim final rule will help achieve the goal of the CPP which is to promote the stability of banking organizations and the financial system. We therefore agree with the Federal Reserve that the interim final rule should be adopted.

ICBA appreciates the opportunity to offer comments in connection with the Federal Reserve's interim final rule regarding the treatment of perpetual preferred stock issued to the United States Treasury under EESA. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,

/s/ Christopher Cole

Vice President and Senior
Regulatory Counsel