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November 21, 2008 **Submitted Via E-Mail**

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

Re: Capital Adequacy Guidelines: Treatment of Perpetual Preferred Stock Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008; 73 Federal Register 62851; October 22, 2008; Docket No. R-1336

Dear Ms. Johnson:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Interim Final Rule published by the Federal Reserve System (Board) to facilitate the timely implementation of the Capital Purchase Program (CPP). The Rule specifically permits bank holding companies that issue new senior perpetual preferred stock to the Treasury under the CPP to include such capital instruments in Tier 1 capital for purposes of the Board's risk-based and leverage capital rules and guidelines for bank holding companies.

To be eligible for the CPP, the Senior Perpetual Preferred Stock must include several features, designed to make the stock attractive to a wide array of sound banking organizations. One of these features is an initial dividend rate of five percent per annum, which increases to nine percent per annum five years after issuance.

Under current risk-based capital rules, the Board recognizes that some of these government-required features would otherwise render the Senior Perpetual Preferred Stock ineligible for Tier 1 capital treatment or limit its inclusion in Tier 1 capital under the Board's capital guidelines for bank holding companies.

[1] The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.3 trillion in assets and employ more than two million men and women.

Significantly, bank holding companies generally may not include in Tier 1 capital perpetual preferred stock that has a dividend step-up rate. Moreover, the amount of cumulative perpetual preferred stock that a bank holding company may include in its Tier 1 capital currently is subject to a 25 percent limit.

This proposal would provide that the Senior Perpetual Preferred Stock issued as part of the CPP may be included without limit in the Tier 1 capital of bank holding companies. The Board notes that the CPP dividend step-up rate would help achieve a fundamental public policy objective - the replacement of the U.S. government equity capital with private capital in a prompt, safe, and sound manner. Furthermore, the Board requires other safeguards, including its expectation that bank holding companies that issue such stock would hold capital commensurate with the level and nature of the risks to which they are exposed and would incorporate the dividend features of such stock into the banking organization's liquidity and capital funding plans. Thus, these additional features provide unique additional safety and soundness protection for the dividend rate step-up for the Senior Perpetual Preferred Stock issued to the U.S. Treasury under the CPP. By providing flexibility under the CPP, this proposal would remove what could be a significant impediment to those banks that are interested in participating in the Capital Purchase Program.

While the ABA takes no position on the advisability of participation in the CPP by any given bank, we recognize the appropriateness of treating the Treasury investments as Tier 1 capital. Accordingly, we support this proposal and urge its adoption without change. We also urge the Board and other regulators to make comparable changes to their risk-based capital rules applicable to insured depository institutions to provide the same certainty.

The ABA appreciates the Board's prompt attention to resolving the issue how this stock will be treated under the capital rules. This will make participation in the Capital Purchase Program workable for banks that choose to do so.

Thank you for considering our comments. Should you have any questions, please contact Kathleen P. McTighe at (202) 663-5331 or kmctighe@aba.com.

Sincerely,

K. P. McTighe

Kathleen P. McTighe