Statement of Policy on the Acquisition of Failed Insured Depository Institutions

In order to provide guidance about the standards for more than de minimis investments in acquirers of deposit liabilities and the operations of failed insured depository institutions, the FDIC has adopted this Statement of Policy ("SOP"). It is the intent of the FDIC Board of Directors that this Statement of Policy applies to investors and is not intended to interfere with or supplant the preexisting regulation of holding companies. The Board of Directors will review the operation and impact of this SOP within 6 months of its approval date and shall make adjustments, as it deems necessary.

Applicability. Except as provided below, this SOP will apply prospectively to:

(a) private investors in a company, including any company acquired to facilitate bidding on failed banks or thrifts that is proposing to, directly or indirectly, (including through a shelf charter) assume deposit liabilities, or such liabilities and assets, from the resolution of a failed insured depository institution; and

(b) applicants for insurance in the case of *de novo* charters issued in connection with the resolution of failed insured depository institutions (hereinafter "Investors").

This SOP shall not apply to acquisitions of failed depository institutions completed prior to its approval date.

Following application to and approval by the FDIC Board of Directors, taking into consideration whether the ownership structure of such bank, thrift or holding company is consistent with the objectives of this SOP, this SOP shall not apply to an Investor in a bank or thrift, or bank or thrift holding company where the bank or thrift has maintained a composite Camels 1 or 2 rating continuously for seven (7) years.

This SOP shall not apply to:

(a) investors in partnerships or similar ventures with bank or thrift holding companies or in such holding companies (excluding shell holding companies) where the holding company has a strong majority interest in the resulting bank or thrift and an established record for successful operation of insured banks or thrifts. Such partnerships are strongly encouraged; or

(b) investors with 5 percent or less of the total voting power of an acquired depository institution or its bank or thrift holding company provided there is no evidence of concerted action by these Investors.

Under expedited procedures established by the Chairman, the FDIC Board of Directors may waive one or more provisions of this SOP if such exemption is in the best interests

of the Deposit Insurance Fund and the goals and objectives of this SOP can be accomplished by other means.

B. Capital Commitment: The resulting depository institution shall maintain a ratio of Tier 1 common equity to total assets of at least 10 percent for a period of 3 years from the time of acquisition. Thereafter, the depository institution shall maintain no lower level of capital adequacy than "well capitalized" during the remaining period of ownership of the Investors.

If at any time the depository institution fails to meet this standard, the institution would have to immediately take action to restore capital to the 10 percent Tier 1 common equity ratio or the "well capitalized" standards, as applicable. Failure to maintain the required capital level will result in the institution being treated as "undercapitalized" for purposes of Prompt Corrective Action triggering all of the measures that would be available to the institution's regulator in such a situation.

Tier 1 common equity is defined as Tier 1 capital minus non-common equity elements. Non-common equity elements are defined as qualifying perpetual preferred stock, plus minority interests and restricted core capital elements not already included.

C. Cross Support: If one or more Investors own 80 percent or more of two or more banks or thrifts, the stock of the banks or thrifts commonly owned by these Investors shall be pledged to the FDIC, and if any one of those owned depository institutions fails, the FDIC may exercise such pledges to the extent necessary to recoup any losses incurred by the FDIC as a result of the bank or thrift failure. The FDIC may waive this pledge requirement where the exercise of the pledge would not result in a decrease in the cost of the bank or thrift failure to the Deposit Insurance Fund.

D. Transactions with Affiliates: All extensions of credit to Investors, their investment funds if any, and any affiliates of either, by an insured depository institution acquired by such Investors under this SOP would be prohibited. Existing extensions of credit by an insured depository institution acquired by such Investors would not be covered by the foregoing prohibitions.

For purposes of this SOP the terms (a) "extension of credit" is as defined in 12 C.F.R. § 223.3(o) and (b) "affiliate" is any company in which the Investor owns, directly or indirectly, at least 10 percent of the equity of such company and has maintained such ownership for at least 30 days. Investor(s) are to provide regular reports to the insured depository institution identifying all affiliates of such Investor(s).

E. Secrecy Law Jurisdictions: Investors employing ownership structures utilizing entities that are domiciled in bank secrecy jurisdictions would not be eligible to own a direct or indirect interest in an insured depository institution unless the Investors are subsidiaries of companies that are subject to comprehensive consolidated supervision ("CCS") as recognized by the Federal Reserve Board and they execute agreements on the provision of information to the primary federal regulator about the non-domestic

Investors' operations and activities; maintain their business books and records (or a duplicate) in the U.S.; consent to the disclosure of information that might be covered by confidentiality or privacy laws and agree to cooperate with the FDIC, if necessary, in obtaining information maintained by foreign government entities; consent to jurisdiction and designation of an agent for service of process; and consent to be bound by the statutes and regulations administered by the appropriate U.S. federal banking agencies.

For the purposes of this paragraph E, a "Secrecy Law Jurisdiction" is defined as a country that applies a bank secrecy law that limits U.S. bank regulators from determining compliance with U.S. laws or prevents them from obtaining information on the competence, experience and financial condition of applicants and related parties, lacks authorization for exchange of information with U.S. regulatory authorities, or does not provide for a minimum standard of transparency for financial activities.

F. Continuity of Ownership: Investors subject to this policy statement are prohibited from selling or otherwise transferring their securities for a 3 year period of time following the acquisition absent the FDIC's prior approval. Such approval shall not be unreasonably withheld for transfers to affiliates provided the affiliate agrees to be subject to the conditions applicable under this policy statement to the transferring Investor. These provisions shall not apply to mutual funds defined as an open-ended investment company registered under the Investment Company Act of 1940 that issues redeemable securities that allow investors to redeem on demand.

G. Prohibited Structures: Complex and functionally opaque ownership structures in which the beneficial ownership is difficult to ascertain with certainty, the responsible parties for making decisions are not clearly identified, and ownership and control are separated, would be so substantially inconsistent with the principles outlined above as not to be considered as appropriate for approval for ownership of insured depository institutions. Structures of this type that have been proposed for approval have been typified by organizational arrangements involving a single private equity fund that seeks to acquire ownership of a depository institution through creation of multiple investment vehicles, funded and apparently controlled by the parent fund.

H. Special Owner Bid Limitation: Investors that directly or indirectly hold 10 percent or more of the equity of a bank or thrift in receivership will not under any circumstances be considered eligible to be a bidder to become an investor in the deposit liabilities, or both such liabilities and assets, of that failed depository institution.

I. Disclosure: Investors subject to this policy statement would be expected to submit to the FDIC information about the Investors and all entities in the ownership chain including such information as the size of the capital fund or funds, its diversification, the return profile, the marketing documents, the management team and the business model. In addition, Investors and all entities in the ownership chain will be required to provide to the FDIC such other information as is determined to be necessary to assure compliance with this policy statement. Confidential business information submitted by Investors to the FDIC in compliance with this paragraph I shall be treated

as confidential business information and shall not be disclosed except in accordance with law.

J. Limitations: Nothing in this policy statement is intended to replace or substitute for any determination required by a relevant depository institution's primary federal regulator or a federal bank or thrift holding company regulator under any applicable regulation or statute, including, in particular, bank or thrift holding company statutes, or with respect to determinations made and requirements that may be imposed in connection with the general character, fitness and expertise of the management being proposed by the Investors, the need for a thorough and reasonable business plan that addresses business lines and strategic initiatives and includes appropriate contingency planning elements, satisfactory corporate governance structure and representation, and any other supervisory matter.