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October 9, 2009

Ms. Jennifer J. Johnson, Secretary
Board of Governors, Federal Reserve
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Docket No. R-1368

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Attn: Docket Number OCC-2009-0012

Re: Docket Number OCC-2009-0012, "Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues"

Ladies and Gentlemen:

We are writing in response to your invitation to comment on the proposed rule entitled, "Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues," as issued by the Office of the Comptroller of the Currency, the Federal Reserve, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision (collectively, the Agencies).

KeyCorp (Key), headquartered in Cleveland, Ohio, is a bank-based financial services company that, at June 30, 2009, had assets of approximately $98 billion. We appreciate the opportunity to comment on this proposed rule and support the Agencies commitment to consider the impact that the adoption of Statement of Financial Accounting Standards No. 166, Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140 (FAS 166) and Statement of Financial Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R) (FAS 167) will have on individual bank balance sheets, lending, securitization activity and the U.S. economy as a whole. We have provided responses on the specific questions raised in the invitation to comment following a summary of our views.

<u>Summary of Views</u>

Key believes the adoption of FAS 166/167 will result in many banks holding inappropriately large amounts of capital due to the consolidation of assets related to securitizations and asset-backed commercial paper programs, beyond the economic risk currently retained. Currently, Key has approximately $4 billion of securitized student loans with a residual interest asset and a servicing asset related to these securitization transactions. We fully recognize that there is economic risk associated with the residual interest and support a position that requires regulatory capital commensurate with that risk. The maximum amount of economic risk is limited to the book value of our retained interests, which is roughly equivalent to the underlying equity of the trusts (trust assets less trust liabilities). By consolidating the assets and using the standard risk-weightings for the securitized loans, we will be required to hold more capital than Key's economic risk related to these securitizations. We recognize that there are certain securitization structures where the sponsor has explicitly guaranteed the transactions with back-up liquidity facilities (commercial paper conduits) or through a continuing involvement in the transaction (revolving credit card/home equity line transactions) and agree that the continued involvement of the sponsor should require consolidation and appropriate regulatory capital against all of the assets. However, during the sixteen years that Key has securitized assets, it has never implicitly or explicitly guaranteed the securities issued in connection with any of its securitizations. Therefore, Key recommends that the proposal be modified to ensure that the capital required by the individual banks reflects the true gradation of risk inherent in the consolidated assets and structure of the related securitization transaction. Additionally, this proposal seems to run contrary to current international trends of analyzing specific components of financial risk based on the Basel I and II Accords.

We also urge careful consideration of the current economic setting. Potentially requiring additional capital in 2010 through the application of FAS 167 places additional financial requirements on the banking industry at a time when recapitalization is difficult and economic recovery is tenuous. Key supports the concept of a phase-in of capital requirements due to consolidation but suggests that a phase-in longer than 12 months be considered to ensure the economic recovery is fully underway prior to the implementation.

Detailed Responses to Individual Questions Posed

Question 1: Which types of VIEs will banking organizations have to consolidate onto their balance sheets due to the 2009 GAAP modifications, which types are not expected to be subject to consolidation and why? Which types are likely to be restructured to avoid consolidation?

From a securitization perspective, the change in GAAP will require Key to consolidate its "vanilla" senior/subordinated student loan securitization trusts where Key retains a portion of the residual risk (or "first-loss" piece). These structures are closed-end, bankruptcy remote, "brain-dead" trusts originally established to ensure a true sale and off-balance sheet treatment of the sold loans through the sale of securities by the trust and retention of a portion of the risk by the seller of the loans. It does not appear likely that such structures could be restructured to avoid consolidation.

Question 2: Are there features and characteristics of securitization transactions or other transactions with VIEs, other SPEs, or other entities that are more or less likely to elicit banking organizations' provision of non-contractual (implicit) support under stressed or other circumstances due to reputational risk, business model, or other reasons?

Key does not provide any implicit support for its securitization transactions other than obligations that are contractually required as a result of the residual interest and the servicing asset that are both reflected on the balance sheet. Due to the structure of these securitizations, if the residual asset associated with a particular trust is extinguished due to credit or other related issues, Key does not have any contractual obligation to further support the given structure from a credit, liquidity or any other perspective. Key's only ongoing involvement would relate to our contractual obligations as servicer for the trusts. Although there could be some degree of "reputational risk" by not supporting a given trust by a seller of the securitized loans (in terms of purchasing the underlying bonds), this risk relates to any potential future securitizations and the willingness of prospective bondholders to participate in any of those securitization transactions. During the past 16 years of securitizations including the recent financial crisis, other than its obligation as master servicer, Key has not considered supporting nor is it contractually obligated to support any of its trusts, even as several security classes suffered ratings downgrades due to performance issues.

Question 3: What effect will the 2009 GAAP modifications have on banking organizations' financial positions, lending, and activities? How will the modifications impact lending typically financed by securitization and lending in general? How may the modifications affect the financial markets? What proportion of the impact is related to regulatory capital requirements?

Key will no longer utilize securitizations as a strategy for the funding of assets, primarily due to the negative impact on regulatory capital. Key has been using securitization structures, as described in #1 above, since 1993 using the product with student, auto and home equity loans. Based on the potential increase in regulatory capital that will result due to consolidation, *with no change in risk*, there is no longer any rationale to employ securitizations as a funding method, considering also the cost of structuring and underwriting of the trusts. During the last two years, the securitization markets have been severely disrupted; however, in more normal times, Key had considered securitizations as a cost-effective method of funding assets.

From a greater capital markets perspective, Key believes that many in the banking industry will refrain from using securitizations as a way to achieve efficient, off-balance sheet funding of assets. This will result in decreased bank-based lending for assets such as auto, home equity, credit card and student loans as funding and capital are a precious commodity. Unfortunately this will reduce credit availability to consumers at a time when the economy is struggling to grow. Furthermore, many ancillary businesses associated with securitization activity, such as law, tax, accounting, rating agency and print firms will also be negatively impacted from the resulting loss of business.

Question 4: Are there significant costs and burdens associated with immediate application of the 2009 GAAP modifications to regulatory capital requirements of banking organizations that were not included in the SCAP, and if there are significant costs and burdens (or benefits), or other relevant considerations, should the Agencies consider a phase-in of the capital requirements that would result from the 2009 GAAP modifications?

Key is in the process of implementing FAS 166/167 and anticipates that there will be significant additional costs associated with adopting the new GAAP requirements. The additional efforts will include tracking, reconciling, recording and consolidating the activities of these trusts that will now be reflected on Key's books as well as additional financial disclosures and retrospective accounting, reporting and disclosure. These costs are an unfortunate, but frequent byproduct of adopting new GAAP statements. We urge the Agencies to carefully consider whether it is prudent to adopt FAS 166/167 given it will result in regulatory capital in excess of the economic risk, as it stands now. There are precedents where regulatory accounting and reporting deviate from GAAP, with the recognition of deferred tax assets and the capital treatment of other comprehensive income as two examples.

Due to the current financial crisis, capital has become extremely precious and costly to banks. We do not think it is sensible to require banks to hold considerably more capital for this risk at a time when raising capital is challenging and the ability of banks to generate capital through earnings is strained. The efforts of the US Treasury, Federal Reserve, Federal Deposit Insurance Corporation and Comptroller of the Currency have been successful in stabilizing the banking industry and financial markets. However, additional time is needed to ensure the banking system is recapitalized; as such, Key recommends consideration of a phase-in period beyond one year.

Question 5: Comment on the proposal to remove the exclusion of consolidated ABCP program assets from risk-weighted assets under the risk-based capital rules.

This question is not applicable to Key.

Question 6: Does this proposal raise competitive equity concerns with respect to accounting and regulatory capital treatments in other jurisdictions or with respect to international accounting standards?

Key believes that the Agencies must keep U.S. banking rules consistent with international banking rules to ensure the playing-field for banks is equal, from a global perspective. Onerous capital requirements in one country versus less stringent capital requirements in another country will create, over time, a competitive disadvantage that may lead to weaker bank performance, decreased lending and loss of human capital. In this current economy, creating this type of capital requirement disparity may further exacerbate the financial market disruption.

Question 7: Among the structures that likely will be consolidated under the 2009 GAAP modifications, for which types, if any, should the agencies consider assessing a different risk-based capital requirement than the capital treatment that will result from the implementation of the modifications?

As stated previously in this letter, Key believes there should be different regulatory capital/risk weighted asset methodologies employed for different VIE structures; not all structures are equal from a risk retention perspective. Revolving structures, such as those for credit cards or home equity lines of credit, carry inherently more risk due to the revolving nature of the assets which require issuers to actively manage the trust's assets. Key's closed-end, "brain-dead" trusts are effectively amortizing from inception. Within the trusts there are several credit enhancements to help mitigate risks, including the usage of reserve accounts, cross collateralization of tranches and over-collateralization. Key's ongoing risk, and thus the total amount of capital at risk, should equal the amount of book equity associated with a given trust (trust assets less trust liabilities), which approximates the residual interest currently retained on Key's balance sheet. Once this "equity" is extinguished due to losses on underlying loans, the economic risk to Key is also extinguished. Thus, we believe regulatory capital should be applied to only the equity of the trusts, and not to all underlying assets.

Question 8: Servicers of securitized residential mortgages who participate in the Treasury's Making Home Affordable Program (MHAP) receive certain incentive payments in connection with loans modified under the program. If a structure must be consolidated solely due to loan modifications under MHAP, should these assets be included in the leverage and risk-based capital requirements? Commenters should specify the rationale for an alternative treatment and what an appropriate alternative capital requirement would be.

This question is not applicable to Key.

Question 9: Which features and characteristics of transactions that may not be subject to consolidation after the 2009 GAAP modifications become effective should be subject to risk-based capital requirements as if consolidated in order to more appropriately reflect risk?

This question is not applicable to Key.

Question 10: Will securitized loans that remain on the balance sheet be subjected to the same ALLL provisioning process, including comparable loss rates, as similar loans that are not securitized?

Key believes that securitized loans should not have the same ALLL provisioning as similar loans in our portfolio. The rationale for this perspective lies in the fact that Key's securitized deals are in fact separate legal trusts, meaning that the bondholders have the legal recourse to the underlying loans. Given that the proposal requires regulatory capital greater than the economic risk, it does not logically follow that banks should also be required to record an additional allowance for future losses and thus further impair capital through reduced retained earnings. In this situation, capital ratios would be penalized in both the numerator (decrease in net income/capital) and denominator (increase in risk-weighted assets). The proposal could require banks to build additional loss reserves, which may result in additional capital needs. As previously mentioned, any capital raise in this environment would be problematic and costly.

Furthermore, servicing requirements for securitized student loans differ from on-balance sheet practices in a number of ways. In general, the servicer is permitted more time to work with a delinquent borrower before charging off the loan, if warranted. The servicer is also permitted more opportunities to offer forbearance or deferment options to the student loan borrower than would otherwise be permitted for Key's portfolio loans. This can allow borrowers more time to cure their repayment problems. Since Key is not the legal owner, as servicer, it needs to follow the charge-off policies that are contractually established in the legal documents that govern the trust operations. This could result in different collection and charge-off policies for loans consolidated under FAS 167 versus similar loans that were never sold or securitized.

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In conclusion, Key appreciates the opportunity to comment on the proposed rules and hopes these comments are useful and positively influence any final regulations. We welcome the opportunity to discuss these issues in more detail. Please feel free to contact William Schlag, Senior Vice President, Corporate Treasury, at 216-689-4682 or me at 216-689-3625.

Sincerely,

Joseph M. Vayda
Executive Vice President and Treasurer