

April 16, 2010

Basel Committee on Banking Supervision
Bank for International Settlements
CH-4002 Basel
Switzerland

Re: Proposals to Strengthen Capital Regulation

Ladies and Gentlemen:

The Clearing House Association L.L.C. (“*The Clearing House*”), an association of major commercial banks¹, is pleased to comment on the Basel Committee’s December 2009 consultative document (the “*CD*”), *Strengthening the resilience of the banking sector* (the “*Proposals*”).² The need to strengthen the regulation of capital in the financial sector is clear. We believe that many of the key concepts in the Proposals are sound, and we support their ultimate implementation. These include the heightened focus on Common Equity, which, as recent events suggest, is of particular concern to market participants in times of distress. However, we also have serious concerns with a number of aspects of the Proposals and are committed to working with the Committee and our national regulators to address those concerns.

¹ The member banks of The Clearing House are Bank of America, N.A., The Bank of New York Mellon, Capital One, N.A., Citibank, N.A., Deutsche Bank Trust Company Americas, HSBC Bank USA, N.A., JPMorgan Chase Bank, N.A., The Royal Bank of Scotland N.V., UBS AG, U.S. Bank N.A. and Wells Fargo Bank, N.A. The following members of our affiliate, The Clearing House Payments Company L.L.C., participated in the preparation of this letter and endorse its positions: Branch Banking and Trust Company, Comerica Bank, KeyBank, N.A., PNC Bank, N.A., and Union Bank, N.A.

² The Clearing House is submitting a separate letter commenting on the Committee’s liquidity proposal, *International framework for liquidity risk measurement, standards and monitoring* (the “*Liquidity Proposals*”). Additionally, a number of The Clearing House banks are submitting their own comment letters on the Proposals and the Liquidity Proposals, including in many cases comments on aspects of the Proposals and Liquidity Proposals that particularly affect the operations of those banks.

Capitalized terms used herein and not otherwise defined are used with the meanings assigned to them as in the CD. Paragraph references are to paragraphs in the CD.

EXECUTIVE SUMMARY

The Clearing House supports the goals that the Committee seeks to achieve with the Proposals and is committed to working with the Committee and our national regulators to achieve a workable solution to the need for enhanced capital standards. We believe, however, that the Proposals are seriously flawed.

A. Fundamental Concerns

1. Macroeconomic Impact. We are very concerned that the capital reforms reflected in the Proposals have been developed without due regard to other possible reforms of financial regulation, including the Liquidity Proposals, and that the macroeconomic consequences of financial reform, considered collectively, are not adequately understood. Capital reform cannot be evaluated in isolation and, of course, will not be implemented in isolation. We are concerned that the Proposals and other financial reforms, taken together, will have significant unintended consequences on banks, their customers and national economies, including reduced credit availability, higher costs for loans and other banking services, further growth of the unregulated shadow-banking system, and reduced returns on equity investments in common shares of banks, making it difficult if not impossible for banks to attract capital on reasonable terms.

2. Competitive Equality. The Clearing House supports the objective that capital regulations apply to banks in a consistent way across jurisdictions, but some flexibility is necessary so that various jurisdictional differences – in such areas as tax, accounting and legal requirements – do not result in banks in some jurisdictions being treated unfairly when compared to banks in other jurisdictions. The Proposals contain several features that inherently create competitive inequality. These include the exclusion of U.S.-style trust preferred securities from Tier 1 Capital, the requirement that all intangible assets (including readily marketable mortgage-servicing rights) be deducted from Common Equity, and, in the denominator of the leverage ratio, (i) the failure to recognize legally enforceable netting arrangements and (ii) the inclusion of unconditionally cancellable commitments.

3. Opportunity to Comment on the Revised Proposals. The Clearing House believes that banks cannot adequately evaluate the consequences of the Proposals without knowing what ratios the Committee will propose. The Clearing House therefore believes that it is *essential* that the Committee publish revised Proposals containing the proposed ratios, as well as the aggregate result of the QIS process and other information, for additional comment before issuing a final set of standards.

B. Key Concepts

1. Adjustments to Common Equity. We submit that certain of the proposed asset-type deductions from Common Equity, and hence from Tier 1 Capital, are inconsistent with the true value of the assets, are extraordinarily conservative and foster competitive inequality. In addition, the elimination of the “filter” for certain unrealized gains and losses would substantially increase the volatility of banks’ regulatory capital. Our greatest concerns include

the Proposals' requirements that, in direct contrast to longstanding regulatory practice, 100% of the following items (above designated thresholds in the case of investments in unconsolidated financial entities) be deducted or "filtered" from Common Equity:

- Intangibles. The Proposals would significantly alter current regulatory practice and require all intangibles to be deducted from Tier 1 capital. The Clearing House believes, however, that, consistent with longstanding regulatory practice, certain intangibles, including mortgage-servicing assets, nonmortgage-servicing assets and purchased credit-card relationships, have demonstrated realizable value across credit cycles and should not be deducted from Tier 1 Capital.
- Unrealized Gains and Losses Recognized on the Balance Sheet. The required addition of unrealized gains or deduction of unrealized losses as required by the Proposals would deprive banks of an important asset-liability management tool, force the recognition of gains and losses that may never be realized, introduce substantial volatility into regulatory capital measures, and have a decidedly procyclical effect. The Clearing House believes that the current practice should be maintained or that national regulators should have the flexibility to do so.
- Deferred Tax Assets ("DTAs"). The strength and realizability of DTAs reflected in financial statements depends in substantial part on the accounting standards applied in a particular jurisdiction. We urge the Committee to permit national regulators discretion in the treatment of DTAs rather than automatically require that 100% of DTAs dependent upon future income be deducted from Tier 1 Capital.
- Investments in Capital of Unconsolidated Financial Institutions and Insurance Entities. While The Clearing House agrees that the capital treatment of banks' investments in unconsolidated entities should be subject to special scrutiny, we do not believe that the proposed automatic required 100% deduction for all such investments above designated thresholds is sensible, in part because the rule would deter transactions that would otherwise be desirable or reduce risk.

2. Tier 1 Additional Going Concern Capital. The Clearing House supports the objective of making the components of Tier 1 Capital, including Tier 1 Additional Going Concern Capital, as strong as possible, but we believe that it is inappropriate to adopt an international standard that would create significant cost-of-capital advantages for institutions in different jurisdictions. Yet, the proposals would do precisely that by excluding from the Tier 1 Capital of U.S. banks instruments that are treated as debt for tax purposes (principally trust preferred securities), while accommodating European-style hybrid securities. We urge the Committee to permit national regulators the flexibility to permit the inclusion of tax-advantaged instruments in Tier 1 Additional Going Concern Capital, subject to certain limitations. We also

urge the Committee to grandfather all outstanding securities that qualified as regulatory capital when issued.

3. Counterparty Credit Risk. The provisions of the Proposals dealing with counterparty credit risk, or “*CCR*”, are intricate. We are most concerned with the proposed 1.25 multiplier to asset value correlations for financial institution exposures, the use of a more stressed Effective EPE charge to address general wrong-way risk, and the counterparty bond-equivalent approach to capturing CVA losses. Our concerns with these provisions are addressed in the more detailed comments below.

4. Leverage Ratio. U.S. banks have been subject to a leverage ratio for many years, and the Committee has included one as part of the Proposals. The Committee’s leverage ratio, however, creates a number of serious distortions, including the disregard of legally enforceable netting arrangements, the inclusion of the gross amount of a bank’s exposure under certain credit derivatives, the manner off-balance sheet obligations are converted to asset equivalents, and the inclusion of unconditionally cancellable commitments. Inclusion of these items in the denominator of the leverage ratio would be highly unreasonable and make the ratio unworkable for many banks.

5. “Systemically Significant” Banks. We strongly oppose a capital surcharge on “systemically significant” banks. Paragraph 47 indicates that the Committee is considering such a surcharge. We believe that there is no credible evidence that systemically significant (i.e., mostly large) banks have a greater risk of failure. The greater systemic risk if they do fail should be dealt with through an effective resolution regime.

6. Addressing Procyclicality With Capital Buffers. The Committee seeks to address the problem of the need for banks to restore capital levels during periods of stress by proposing that they be required to maintain capital levels well above the minimum requirements during normal periods so that they have a “buffer” available when lean times come. It is impossible to provide meaningful comments on this proposal when the Committee has yet to complete its quantitative impact study or before the capital ratios have been set. Nonetheless, we are concerned that the buffer proposal would create unnecessary confusion regarding exactly what the minimum capital ratios really are, and that the market will regard the buffered capital levels as de facto minimum capital levels that banks would feel compelled to meet in any event, in effect requiring banks to maintain capital well in excess of even the buffered levels.

DETAILED COMMENTS

We address (i) in Part I fundamental over-arching concerns that reach across multiple aspects of the Proposals, including the process for comment on and finalization of definitive proposals, (ii) in Part II our concerns with key concepts in the Proposals, and (iii) in Part III our comments on specific aspects of the Proposals that are more granular and less broadly conceptual.

I. Fundamental Concerns – Philosophy and Process

We have three fundamental, over-arching concerns that reach across multiple aspects of the Proposals: (i) a concern that the Proposals, once calibrated and combined with other regulatory initiatives, will not achieve the “better balance” that the Committee described in Paragraph 10 (referenced below), and that we agree must be achieved, resulting in unintended and unexpected consequences, macroeconomic and otherwise; (ii) competitive equality concerns; and (iii) the need for banks³ to have an opportunity to evaluate and comment on revised calibrated Proposals before they are adopted.

A. The “Better Balance” – Macroeconomic Impact

The Committee outlined in Paragraph 10 its objective to “promote a better balance between [*sic*] financial innovation, economic efficiency, and sustainable growth over the long run.” It is, of course, not possible to evaluate the Proposals against that standard prior to the calibration of the Proposals (that is, the Committee’s release of proposed minimum percentages for each ratio). Nonetheless, we are concerned that the Proposals will not achieve that better balance and, in fact, are so rigid and risk-avoidance oriented that their components, taken as a whole, will harm not only the banking sector but also national economies and consumers of banking services. The Proposals retreat in a very significant way from Basel II’s (i) recognition that “one size does not fit all” and (ii) related emphasis on the role of supervision (that is, Pillar 2), moving backward toward the much more blunt and prescriptive approach of Basel I.⁴ The objective of capital reform should not be to impose capital requirements and standards that, taken alone, will prevent each regulated institution from failing. Yet, the aggregate individual components of the Proposals seem designed to preclude, or nearly preclude, a possible bank failure simply through the robustness of its capital without regard to other regulatory and supervisory tools that promote the health of financial institutions, including liquidity requirements and supervision of the type addressed in the Liquidity Proposals.

There actually have been proposals that bank capital requirements should produce absolute assurance against failure, such as through a mandated 100% ratio of capital to loans. The absurdity of this position is self-evident; it would be impossible to attract capital for the limited yields that such loans would provide. At the same time, however, such proposals illustrate the need to establish a balance between considerations of safety and soundness and the need of banks to attract capital on reasonable terms and serve their customers.

³ We are using the term “*banks*” to mean both bank holding companies and depository institutions.

⁴ We are using the term “*Basel I*” to mean the Basel Committee’s 1988 risk-based capital framework titled *International Convergence of Capital Measurement and Capital Standards*. We are using the term “*Basel II*” to mean the Basel Committee’s June 2006 comprehensive new accord titled *International Convergence of Capital Measurement and Capital Standards – A Revised Framework*.

We comment in Part II on aspects of the Proposals that we think are especially problematic. They include:

- the required deductions of certain intangible and other assets from Common Equity that we believe have substantial and demonstrable value (Part II.A);
- the exclusion of U.S.-style trust preferred securities from Tier 1 Additional Going Concern Capital (Part II.B);
- various aspects of the counterparty risk proposals, including (i) the capital add-on intended to address CVA risk through a “bond-equivalent of the counterparty exposure” approach and (ii) the 1.25x multiplier for exposures to financial institutions (Part II.C);
- the calculation of the denominator in the leverage ratio, including (i) the failure to recognize legally enforceable netting arrangements, (ii) the inclusion of gross “sold” credit derivative positions without recognition of off-setting hedges, (iii) the treatment of off-balance sheet commitments, and (iv) the inclusion of unconditionally cancellable commitments (Part II.D);
- the possible capital surcharge for “systematically significant banks” (Part II.E); and
- the “buffer” concept (Part II.F).

The on-going reform of bank regulation arising out of the financial crisis is exceedingly complex and has many components. Some, including the specific regulation of capital and liquidity, are within the recognized purview of bank regulators and can and should be addressed as a matter of regulation and supervisory oversight. Others – for example, resolution of systemically important institutions and broader frameworks for regulatory oversight – are the subject of proposed legislation in many jurisdictions, including the United States. Still others – for example, compensation practices, limitations on powers and activities and the manner of funding resolutions of systemically important institutions – are being addressed both by bank regulatory agencies and legislators. Finally, certain other areas – accounting principles, for example – are within the purview of standards-setting organizations.

We are also concerned that the process that produced the discrete components of the Proposals (each of which taken alone is conservative) may not have been sensitive to their potential cumulative impact, especially when evaluated in the context of the proposed simultaneous implementation of the Liquidity Proposals.

The phrase “the pendulum swings too far” is a cliché but also, in certain circumstances, is accurate. We are very concerned that the Proposals reflect a pendulum with respect to capital regulation that may swing too far. The Clearing House members believe it is

essential that the Committee and national regulators, in refining the Proposals, evaluate their macroeconomic consequences, taking into account not merely the Proposals but also the Committee's July 2009 document titled *Revisions to the Basel II Market Risk Framework* (the "*July 2009 Market Risk Proposals*"), the broader scope of regulatory reform (including the Liquidity Proposals) and the role of capital as one of many components of a sound financial system. Capital reform cannot be evaluated in isolation and, of course, will not be implemented in isolation. Requiring financial institutions to maintain too much capital poses risks that are equally as threatening to national economies as too little capital, including reduced availability of credit, higher costs paid by consumers for loans and other banking services, potential disintermediation of activities historically conducted within banks to unregulated entities, reduced returns on equity for investors in financial institutions, related challenges for those institutions in raising additional capital, incentives to engage in activities or enter into transactions intended to maintain acceptable returns on equity of a type (and posing risks) not now contemplated, and, more generally, acting as an impediment to economic growth.

We recognize that the occurrence and consequences of the recent financial crisis suggest that the greater threat is too little capital rather than excessive capital requirements. That recognition, however, calls for some reconfiguration of the balance, rather than a manifestly unbalanced approach. It is critically important that the lessons learned from the financial crisis result in *better regulation of bank capital and not merely a requirement of more (and perhaps excessive, depending upon the calibration) capital* for banks.

B. Competitive Equality

The Clearing House broadly endorses the objective of applying capital regulation to banks in a consistent way across jurisdictions, where practicable. However, tax and other legal and accounting rules and standards that apply to banks, as well as business practices and markets, inevitably differ among jurisdictions and give rise to a need for some flexibility in approach. In some cases those differences, if not recognized and accommodated (including in the Proposals insofar as capital regulation is concerned), produce results that are substantively inappropriate, unfair, or both. Four aspects of the Proposals are of particular concern to The Clearing House in this regard.

The first is the treatment of tax-deductible capital instruments – often referred to as "*innovative*" or "*hybrid*" capital. The definition of Tier 1 Additional Going Concern Capital in the Proposals would have the effect of eliminating trust preferred securities, which are the principal type of hybrid securities issued by U.S. banks, from inclusion in Tier 1 Capital. However, because of the differences in tax laws in many European and other non-U.S. jurisdictions as compared to the United States, many banks outside the United States would be able to continue to issue and include in Tier 1 Additional Going Concern Capital tax deductible instruments. The competitive advantage to those banks that may include tax-deductible instruments in Tier 1 Additional Going Concern Capital, as well as the related cost of capital benefit, is substantial. In the view of The Clearing House members, it is simply not acceptable to permit non-U.S. banks to include in Tier 1 Additional Going Concern Capital tax-deductible instruments but not permit U.S. banks to do the same. We discuss this further in Part II.B.

The second is the requirement that all intangible assets, including readily marketable mortgage-servicing rights, be deducted from Common Equity. These assets, along with certain other intangibles required to be deducted, have demonstrated realizable value across economic cycles. Moreover, the creation and transferability of mortgage-servicing rights for U.S. banks is a much more significant asset and activity than is the case in other jurisdictions. We discuss this further in Part II.A.2. We strongly believe that mortgage-servicing rights and other intangible assets discussed in Part II.A.2 that are currently not required to be deducted from Tier 1 Capital as so-called “lesser assets” should not be required to be deducted from Common Equity or other components of Tier 1 Capital going forward.

The third is the failure of the Proposals to recognize legally enforceable netting arrangements in calculating exposures for purposes of the denominator in the leverage ratio. This is particularly significant as applied to repurchase agreements and OTC derivatives. Both are used much more widely in the United States than abroad, we expect in large part because of the supportive provisions in U.S. bankruptcy and insolvency law – both the United States Bankruptcy Code, with respect to bank holding companies and their non-depository subsidiaries, and the Federal Deposit Insurance Act with respect to depository institutions. We discuss this further in Part II.D.

The fourth is the inclusion, in the denominator of the leverage ratio, of unconditionally cancellable commitments. Banks in the United States (and, we believe, a number of other jurisdictions, including Canada) document unconditionally cancellable commitments in writing, notwithstanding the cancellation feature. Banks in other jurisdictions make similar commitments but, as a matter of practice, essentially as a “handshake” or understanding without documents. We do not believe that the exposure differs based on the quality and formality of the recordkeeping. We discuss this further in Part II.D.4.

C. Opportunity to Comment on Revised Proposals

The Clearing House believes it is essential that the Committee publish for additional comment, before issuing a final set of Proposals, revised Proposals that (i) take into account the quantitative impact studies (“QIS”) currently in process as well as comments the Committee receives on the Proposals, (ii) include the proposed calibrations of the various ratios – that is, the required percentages for each relevant ratio, and (iii) explain how the calibrations were derived (both as to the objectives sought to be achieved and the data supporting the calibrations). Banks cannot adequately evaluate the impact of the Proposals on them, and policy makers at all levels cannot evaluate the macroeconomic consequences of the Proposals, without knowing the proposed calibrations and their rationale.

A number of The Clearing House members are participating in the QIS process. The QIS are due on April 30, 2010, shortly after the April 16, 2010 due date for comments on the Proposals. The amount of data to be gathered by banks participating in the QIS process is substantial, and the granularity of the data differs from what most members collect on a regular basis today. Those banks that are participating have indicated that their understanding of the Proposals and consequences of their implementation is substantially enhanced by participation in

the QIS process. Because those banks are preparing comment letters at the same time as they are preparing their QIS responses, they have indicated (i) a need to more fully absorb the understandings they have gathered through the QIS process in commenting on the Proposals (both through The Clearing House and in preparing their own comment letters), and (ii) concern that, because the comment letters will be submitted before completion of the QIS, they will not be able to adequately reflect in comment letters the learning they are gaining through the QIS process. More generally, we believe that the banking industry as a whole must have access to the data provided through the QIS in an aggregated format in order to comment meaningfully on the Proposals.

Accordingly, The Clearing House believes it is *essential* that the Committee publish revised Proposals for additional comment, before issuing a final set of standards. In order to make the additional comment process useful, we urge the Committee to establish a 90-day comment period on revised Proposals. The revised Proposals, of course, need to take into account the results of the QIS. Equally important, banks need to evaluate the revised Proposals taking into account the results of the QIS as well as an understanding of the Committee's analysis in calibrating revised minimum capital ratios. We believe that this additional comment process can be provided without delaying the scheduled implementation date.

II. Key Concepts

A. Adjustments to Common Equity

The Clearing House is very concerned with the scope of the adjustments to Common Equity (and hence Tier 1 Capital) set forth at Paragraphs 93 through 107. We believe that some of them are unduly (even extraordinarily) conservative, at least as applied to U.S. banks, and others would cause Common Equity to be unduly volatile. The five required adjustments to Common Equity that are of the greatest concern are the deduction (or, in the case of clause (i), addition or deduction) of (i) unrealized gains and losses recognized on the balance sheet (Paragraph 96), (ii) some categories of intangibles (Paragraph 97), (iii) deferred tax assets which rely on the future profitability of the bank (Paragraph 98), (iv) investments in the capital of certain banking, financial and insurance entities which are outside the regulatory scope of consolidation (Paragraph 101), and (v) the shortfall of the stock of provisions to expected losses (Paragraph 102).

The strength (or weakness for that matter) of certain of these items as "lesser assets" that should be assumed to have little or no value, as applicable, differ from jurisdiction to jurisdiction, depending upon a variety of factors, including the operation of markets in those jurisdictions (for example, readily marketable mortgage-servicing rights), the interplay between the tax regime and generally accepted accounting principles in those jurisdictions (specifically as applied to deferred tax assets), and generally accepted accounting principles more generally (the deduction of the shortfall of the stock of provisions through expected losses, for example). We are particularly concerned that the Committee and national regulators take care not to implement revised capital rules that create disharmony with the convergence of international accounting

standards, including the accounting treatment of credit expense (both as to timing and amount) and of deferred tax assets.

We comment on each of the aforementioned items below. We urge the Committee to consider, as an alternative to requiring 100% deduction of these items from Common Equity as reflected in the Proposals, addressing any concerns as a matter of transparency by requiring banks to disclose the amounts of these items.

1. Unrealized Gains or Losses Recognized on the Balance Sheet. Under U.S. GAAP,⁵ certain unrealized gains and losses on securities in the investment portfolio that are classified as “*available for sale*” are recorded directly to equity, as opposed to being treated as income or expense items for income statement purposes. Under current regulatory reporting practice in the United States, those unrealized gains and losses are “filtered out” from the calculation of Tier 1 Capital.⁶ The Clearing House strongly believes that this practice should be continued or, at the least, national regulators should have the flexibility to permit its continuance on a jurisdiction-by-jurisdiction basis depending upon their consideration of relevant factors, including the accounting principles applicable in the relevant jurisdiction. To do otherwise as contemplated by Paragraph 96, at least in the case of U.S. banks, would (i) deprive banks of an important asset-liability management tool, (ii) force the recognition of unrealized gains and losses that may never be realized and (iii) introduce substantial volatility into Common Equity and Tier 1 Capital as measures of capital. It would also have a decidedly procyclical effect.

First, with respect to asset-liability management, banks customarily record the predominant portion of their investment portfolios as available for sale because purchases and sales of investment securities are a primary tool for accommodating variability in funding levels, particularly deposit inflows and outflows. We believe that internationally active U.S. banks record substantially all of their investment portfolios as available for sale. When, during the financial crisis, banks experienced substantial deposit inflows that they anticipated would be temporary, the corresponding balance sheet adjustment to the increase in deposits generally was

⁵ The U.S. Financial Accounting Standards Board’s (“FASB”) Financial Accounting Statement No. 115 (as amended), “Accounting for Certain Investments in Debt and Equity Securities”, and related accounting guidance address the financial statement treatment under U.S. GAAP of investments in equity securities that have readily determinable fair values and all investments in debt securities. Those are the investment securities addressed in this section. For U.S. banks, accumulated other comprehensive income or loss (hereinafter in either case, “AOCI”) includes unrealized gains and losses on investment securities that the bank has classified as “*available for sale*” (that is, they are not “*held-to-maturity securities*”, which are securities that the bank has a positive intent and ability to hold to maturity, or “*trading securities*”, which are securities that the bank bought and holds principally for the purpose of selling them in the near term).

⁶ By “filtering out” unrealized gains and losses from Tier 1 Capital, we mean that, for the relevant schedules to regulatory reports on which banks calculate Tier 1 Capital by beginning with GAAP shareholders’ equity and making adjustments, unrealized losses are added back into the starting point of the calculation and unrealized gains are subtracted out of the starting point of the calculation.

a purchase of investment securities recorded as available for sale. If the treatment contemplated by Paragraph 96 were in fact adopted, in order to avoid recognizing for regulatory capital purposes market-related losses (or gains) that may never be recognized, and suffering the related volatility in regulatory capital, there would be a strong incentive for banks to record as held to maturity investment securities purchased to address variability of funding. In that event, however, the relevant accounting rules would generally require banks to hold such securities until maturity. Banks would then need to take other steps to address variability in funding. That incentive is contrary to sound asset-liability management practices, where variability in funding should be matched by variability in assets. Moreover, there would be broader consequences that need to be considered and understood, including a bias toward investing in securities with shorter maturities (with a related adverse impact on sovereigns and other issuers who wish to raise longer-term debt) and likely steps to reduce variability of funding, including through adjustments in the pricing of deposits.

Second, the unrealized gains and losses in fact may never be realized, and, indeed, are highly unlikely to be realized in the amounts recorded on the day of any revaluation. The result is that this proposed change will establish an inherent inaccuracy in reported regulatory capital. When banks need to sell portions of their investment portfolios in order to accommodate changes in funding, they have an opportunity to make a variety of decisions that affect the amount of gain or loss recognized, including which assets to sell, the timing of sales and structuring decisions with respect to particular sale transactions that impact the amount of gain or loss.

Third, looking only at historical data and without attempting to factor in behavioral changes that would likely result from the implementation of Paragraph 96, reflecting unrealized gains and losses in Common Equity would make Common Equity a very volatile measure of capital. We have included in Annex 1, for 18 large U.S. bank holding companies,⁷ calculations of the impact of requiring that AOCI not be filtered out of Tier 1 Capital as of the end of each quarter for quarters ending from March 31, 2006 through December 31, 2009. As is apparent from Annex 1, the Tier 1 Capital Ratio would vary widely for individual banks from period-to-period, both up and down, if AOCI were not filtered out from Tier 1 Capital.

Fourth, and related to points “second” and “third” above, avoiding recognition of gains and losses that likely will never be realized and the related impact on the volatility of capital is particularly important to banks with extensive international operations, whether conducted through branches or subsidiary banks in other countries (both of which are included in the term “*bank*” as used in this paragraph). Many countries require banks operating within their borders to hold designated amounts of the country’s sovereign debt. As a consequence, internationally active banks hold large amounts of sovereign debt in their investment portfolios. Moreover, the Liquidity Proposals (particularly the Liquidity Coverage Ratio provided for in

⁷ The bank holding companies for which data are included in Annex 1 are 17 of the 19 bank holding companies that were subject to the Federal Reserve’s 2009 Supervisory Capital Assessment Program, or “SCAP”, plus Northern Trust Company. The two SCAP bank holding companies for which we did not include data in Annex 1 are GMAC and MetLife.

those proposals) would force internationally active banks, as well as other banks to which the Proposals may apply, to increase their investments in sovereign debt. Investments in sovereign debt generally have very little credit risk and, for the most part, tend to be held to maturity notwithstanding that they are available for sale. Requiring recognition of unrealized losses on sovereign debt effectively imposes a capital charge on banks from interest rate movements, without recognition of the off-setting changes in value of the bank's equity on a fully-marked basis that is inherent in changes in the fair value of its liabilities.

Moreover, implementation of Paragraph 96 is decidedly procyclical. In order to maintain a sufficient margin above minimum or targeted capital ratios, banks would be compelled to issue Common Equity or other capital instruments whenever their investment portfolios experience temporary declines in value. Those temporary declines are likely to be experienced across the banking sector at the same time, and the related capital-raising is likely to occur during a period of distress in the economic cycle, not a period of strength. This would sharply raise the cost of capital or even preclude some institutions from access to capital at any cost.

2. Intangibles. Paragraph 97 would require that all intangibles be deducted from Common Equity. Although we believe there is sufficient uncertainty as to the realizable value of certain intangible assets to warrant their deduction, we do not believe that is the case for all intangible assets. Mortgage-servicing assets, nonmortgage-servicing assets and purchased credit-card relationships have shown themselves to have demonstrable realizable value over sustained periods.

Servicing assets represent a real cashflow entitlement that is transferable, akin to an interest-only security with prepayment risk. Credit-card account relationships have demonstrable value, as reflected in numerous purchases and sales of credit card portfolios over the years. Credit card usage patterns are predictable and, accordingly, banks have substantial comfort with the models they use to value credit card portfolios. We believe that these intangibles should continue not to be deducted as lesser quality assets from Common Equity or the other components of capital in accordance with existing standards, subject to the discretion of national regulators.

For U.S. banks, mortgage-servicing rights are particularly important. The 18 large U.S. bank holding companies for which AOCI data are provided in Annex 1 (as discussed above) recorded more than \$67 billion of mortgage-servicing rights on their financial statements at December 31, 2009. By comparison, mortgage-servicing rights are an insignificant asset class for large European banks.

3. Deferred Tax Assets. Paragraph 98 would require that all DTAs that rely on future profitability of the bank to be realized be deducted from Common Equity. The strength and realizability of DTAs reflected in financial statements of banks in a particular jurisdiction largely depend upon the rigor of the accounting standards applied under generally accepted accounting principles in that jurisdiction – e.g., in the United States, the establishment of the “valuation allowance” required by U.S. GAAP and discussed further below. We urge the

Committee to permit national regulators discretion in their treatment of DTAs which rely on the future profitability of the bank, taking into account accounting standards applied in the relevant jurisdiction.

Paragraph 98 takes an even more conservative approach than is currently applied by the U.S. bank regulatory agencies under their capital guidelines and regulations. Those capital guidelines and regulations provide that DTAs dependent upon future income, net of the valuation allowance required to be established under U.S. GAAP (discussed further in the next paragraph), must be deducted from core capital elements in determining Tier 1 Capital to the extent that they exceed the lesser of (i) the amount of those DTAs that the bank is expected to realize within one year of the calendar quarter-end date, based on its projections of future taxable income for that year, and (ii) 10% of Tier 1 Capital. The Clearing House is of the view that even those standards are unduly conservative and urges the Committee to permit national regulators discretion in their treatment of DTAs that rely on future profitability of the bank, at least to the extent currently permitted.

Prior to the U.S. FASB's adoption of its Statement No. 109, "Accounting for Income Taxes" ("*FAS 109*"), which became effective for fiscal years beginning on or after December 15, 1992, U.S. GAAP did not permit the recording of deferred tax assets that are dependent upon future taxable income. FAS 109 changed U.S. GAAP to permit the recording of DTAs that are dependent upon future taxable income, but requires the establishment of a valuation allowance, if warranted, to reduce the DTA net of the valuation allowance to an amount that is more likely than not (*i.e.*, a greater than 50% likelihood) to be realized.

Effective April 1, 1995, the U.S. bank regulatory agencies, in responses to the changes in the U.S. GAAP treatment of DTAs brought about by FAS 109, amended their capital guidelines and regulations to include the limitations on DTAs as described above. Prior to those amendments, the U.S. bank regulatory agencies' capital guidelines and regulations did not include a limitation on DTAs.

The Clearing House and the American Bankers Association submitted a joint letter, dated September 25, 2009, to the U.S. bank regulatory agencies urging them to amend their capital guidelines and regulations to eliminate the existing limitations on DTAs. A copy of that letter is included as Annex 2. The Clearing House members continue to believe that even the current U.S. limitations on DTAs are unduly conservative, for the reasons set forth in the attached letter. Those reasons include, importantly, experience and actual practice in evaluating the need (or lack of the need) for the establishment of valuation allowances under FAS 109 through several credit cycles.

4. Investments in Capital of Financial Institutions and Insurance Entities Outside the Regulatory Scope of Consolidation. Paragraph 101, in addition to carrying forward the existing required deduction of reciprocal cross holdings of capital (which we endorse), adds two new required deductions – (i) one for holdings by a bank of common stock in a financial institution exceeding 10% of the target institution's common stock and (ii) the other for holdings of common stock in other financial institutions (that is, those not caught by clause (i)) which in

the aggregate exceed 10% of the bank's Common Equity, with the amount above 10% being required to be deducted. The reason given for the proposal is "to remove the double counting of capital in the banking sector and limit the degree of double counting in the wider financial system".

The Clearing House agrees that the capital treatment of investments by banks in unconsolidated entities should be subject to special scrutiny, mostly because the resources invested in these entities support assets not consolidated with the rest of the bank's activities and, therefore, may not be generally available to absorb losses elsewhere in the bank. However, we do not believe that an automatic required deduction above a specified threshold, either on a per investee institution basis or in the aggregate across all such investments for the investing bank, is sensible. Such a rule may prevent transactions that are otherwise legitimate, desirable and reduce risk, including movements of capital within the financial system and non-controlling investments that might have ancillary benefits for both the investing and the investee institution, including joint ventures to provide new services to customers.

Moreover, we do not believe that any "double counting" of capital is in fact occurring. Consider the following simple example in which "*Bank A*" invests \$100 million in the common stock⁸ of "*Bank B*":

- From the perspective of the investee bank, Bank B, the capital of Bank B is what it is. Once Bank B issues shares, neither the Common Equity component of its Tier 1 Capital nor its Tier 1 Capital is dependent on who owns its shares. Bank B's Common Equity and Tier 1 Capital are also independent of the default probability of any of the owners of its shares. Although it is true that the market capitalization of Bank B would likely decrease if some of its investors were forced to liquidate their shares in a crisis, any such decrease in Bank B's share price would not affect its Common Equity or Tier 1 Capital. Consequently, the measurement of Bank B's Common Equity and Tier 1 Capital does not entail a double

⁸ Paragraph 101 specifies that reciprocal cross-holdings of "*capital*" are deducted by both banks using the corresponding deduction approach, and then goes on to apply the two specific standards described above to holdings of "*common stock*" that exceed designated thresholds. We assume the distinction between capital and common stock was deliberate and that the new tests in fact only apply to common stock. However, we are concerned that that assumption may not be correct. The instructions to the QIS appear to assume that the two specific standards apply to each component of Tier 1 Capital and Tier 2 Capital separately. That requires clarification. The percentage limitations would be mechanically awkward, if not impossible, to apply to most capital instruments other than common stock, including, for example, subordinated debt within Tier 2 Capital. The simplified example assumes the two specific standards apply to common stock and, for simplicity, refers to "*Bank A*" and "*Bank B*", notwithstanding that the limitations apply more broadly to non-consolidated financial institutions (and without regard to limitations on powers of depository institutions – e.g., in the U.S., the general prohibitions against banks owning equity securities).

counting of the capital of Bank A because it would be unaffected even if Bank A's Common Equity fell to zero.

- From the perspective of the investing bank, Bank A, the Common Equity and Tier 1 Capital of Bank A would decrease if any of the financial institutions it invested in were to default. Of course, there is nothing unique about investments in the equity of financial institutions – the same decrease in Common Equity and Tier 1 Capital would occur, other things being equal, for any market or credit loss on any asset experienced by Bank A.
- The remedy for the potential loss on its investment is for Bank A to have sufficient capital against the risk it is taking. The industry worked closely with the Committee on all aspects of Basel II, including the treatment of equity investments in Basel II. The new equity rules thereunder assign a risk weighting of 300% for investments in publicly traded equity securities, and 400% for investments in privately traded equity securities. If a bank has a minimum Tier 1 Capital ratio of 8%, it would be required to have capital/asset ratios of 24% and 32%, respectively, for investments in public and private equities.
- If the Committee believes that the current risk weightings for public or private equity investments in other financial institutions are too small, we strongly believe that it should address this issue by proposing enhanced risk weights, which the industry could then comment on. A total deduction from capital has an effect similar to assigning a risk weight of 1250% for all equity investments in other financial institutions. Nothing in experience, including the actual default probabilities of other financial institutions during the recent crisis, justifies such a high risk weight for all investments in financial institutions, whether they were long-term equity investments or short-term trading positions.
- We also do not believe that it is appropriate to treat all forms of equity and equity index transactions in a trading portfolio as if they had the same risk as long term equity investments. Therefore, even if it were valid to increase the standard risk weights for equity investments in other financial institutions (which we have not yet seen evidence for), we do not see the justification for applying these higher risk weightings to trading book positions.

In addition, it will be costly and complex to build the infrastructure necessary to implement Paragraph 101 as written. Its implementation would require banks to have, or to develop and implement, processes well beyond what is currently required to aggregate equity positions (and perhaps positions in other types of capital securities for which data is not currently

gathered)⁹ in each financial institution, which would require information on equity investments (e.g., joint ventures and equity stakes in other financial institutions), and trading positions (and perhaps even common stock owned in connection with underwriting and market-making activities of securities subsidiaries, discussed further below) that is even more granular than information on equity investments already gathered. The Proposals apply to investments in common stock but are unclear as to what should be included – e.g., convertible bonds and preferred stock and equity index positions. Equity index positions (including presumably derivatives on equity indices), if included, would need to be decomposed into their constituent equities (with the proper weights) for inclusion in the total ownership per equity.

Moreover, there are ambiguities in Paragraph 101 regarding aggregation:

- It is not clear how derivatives and securities financing transactions (“SFTs”) on common stock and equity indices should be treated, particularly when they have a positive delta. The proposal explicitly states that short positions in transactions with counterparty credit risk (i.e., derivatives and SFTs) cannot be used to offset long positions (Paragraph 101). However, the proposal does not explicitly exclude long positions on derivatives and SFTs on equities or equity indices. The proposal also does not describe the method that should be used to include such positions (e.g., on a delta basis or on the basis of notional principal).
- In addition, it is not clear whether a bank would need to build a process to monitor its aggregate position in other financial institutions intra-day or only at the end-of-the-day.

We request that the Committee, in revised Proposals, clarify how derivatives and SFTs on equities and equity indices should be treated and how often this data would need to be tracked.

If assets are excluded from the calculation of Tier 1 Capital, they would, we assume, be excluded from the calculation of a bank’s total risk-weighted assets (“RWA”). There are two principal consequences of excluding such transactions from RWA. First, banks would need to develop a process to exclude certain transactions from the calculation of RWA, conditional on whether the transactions which generated the RWA were excluded from Tier 1 Capital. This would be difficult to do retrospectively, particularly for market risk and counterparty credit risk. For market risk it would require the ability to retroactively exclude certain positions from the calculation of daily VaR, conditional on whether the underlying equity (or component of the equity index) met the criteria for exclusion from Tier 1 Capital. Presumably, it would also require the retroactive exclusion of certain positions from the daily comparison of ex-ante VaR and ex-post P&L.

Second, the exclusion from the calculation of RWA of short equity/equity index derivatives and securities financing transactions, without the exclusion of off-setting long

⁹ See footnote 8 to this letter.

derivative and SFT positions, would materially exaggerate the total RWA for market and counterparty credit risk. For market risk, excluding one side of off-setting positions in the calculation of VaR might materially exaggerate VaR and unnecessarily increase a bank's total RWA for trading. For counterparty credit risk, excluding a subset of transactions which fall under a legally enforceable netting agreement, while including their offsetting transactions (which are under the same legally enforceable netting agreement), might materially exaggerate RWA for counterparty credit risk.

Because of these difficulties and for all the foregoing reasons, we urge the Committee not to exclude the investments in capital described in Paragraph 101 from Tier 1 Capital and, instead, to consider the approach currently applied by the U.S. bank regulatory agencies, which is to give national regulators discretion to evaluate investments of this type and require a deduction from capital where they determine the deduction to be appropriate.

In any event, any limitations on holdings of securities in unconsolidated financial institutions should not encompass holdings in connection with underwriting and market-making activities of investment banks in the ordinary course of their securities businesses. Holdings in those capacities generally are temporary and could not contribute to double counting of capital in the financial system in the manner contemplated by Paragraph 101. In the United States, each of the five largest securities underwriting firms – Bank of America Merrill Lynch, Citi, JPMorgan Securities, Goldman Sachs, and Morgan Stanley – is now owned by a bank holding company and, accordingly, its operations are encompassed by the Proposals. Moreover, a very large portion of the securities underwriting business in the United States is conducted by securities subsidiaries of bank holding companies, including in addition to the five firms mentioned above a number of smaller entities that are subsidiaries of bank holding companies. It would be very inadvisable to include provisions in capital regulations that impede or increase the cost of capital-raising activities by financial institutions by imposing a heavy capital charge on underwriters.

5. Allowance for Loan and Lease Losses and Shortfall of the Stock of Provisions (Effectively the ALLL) to Expected Losses – Paragraphs 90, 102 and 103. The existing definition of Tier 2 Capital permits banks to include in Tier 2 Capital either the allowance for loan and lease losses (“ALLL”) or the surplus (if any) of the ALLL in excess of expected losses, subject to respective caps of 1.25% of RWA and 0.6% of credit RWA under the standardized and IRB approaches, respectively, in Basel II. The Proposals, by defining Tier 2 Capital in Paragraph 90 only with respect to instruments, appear to eliminate the ALLL or such surplus as a component of Tier 2 Capital. We request the Committee in revised Proposals to clarify whether that is the intent and, if it is, to reconsider. Pending the convergence of accounting standards across jurisdictions with respect to the treatment of expected losses and related provisions, we believe that the ALLL or such surplus, at a minimum, should continue to be includible in Tier 2 Capital, and that, indeed, the existing limits should be eliminated or expanded. Eliminating the ALLL as a component of Tier 2 Capital with or without the existing caps would be decidedly procyclical. It would discourage banks from building reserves to deal with the impact on borrowers of virtually inevitable economic fluctuations.

Paragraph 103 notes that the data collected in the QIS should help aid consideration of the existing inclusion of provisions in Tier 2 Capital under the standardized and IRB approach to credit risk, including the treatment of the caps (i.e., the 1.25% and 0.6% of RWA and credit RWA under the standardized and IRB approaches, respectively, referenced above). We expect that it will and, as indicated above, believe the caps should be higher.

Paragraph 102 exacerbates the asymmetry in the treatment of the shortfall or excess of the ALLL as compared to expected losses that already exists under Basel II. Basel II in its current form includes in Tier 2 Capital the ALLL or the surplus (if any) of the ALLL in excess of expected losses, subject to caps described above. But it requires that any shortfall in the ALLL as compared to expected losses be deducted 50/50 from Tier 1 Capital and Tier 2 Capital. That treatment is itself, of course, asymmetric. Paragraph 102 would exacerbate the asymmetry by requiring that 100% of any shortfall be deducted from Common Equity. The correct approach, in our view, would be to treat a shortfall or surplus in the ALLL as compared to expected losses symmetrically, with the relevant amount added to or subtracted from Tier 2 Capital.

We strongly support the Committee's interest, discussed in Paragraphs 243 to 246, in working with the promulgators of accounting standards to rationalize across jurisdictions the financial statement treatment of credit risk. However, we believe this area requires additional analysis before changes that are even more conservative than the existing treatment are implemented.

The Committee should make clear in any event that the adjustment for a shortfall of the ALLL compared to expected losses only applies to those banks that apply the advanced Basel II approaches, not the standardized approach or, in the United States, Basel I. Only those applying the more advanced approaches have compliant EAD, PD and LGD models.

B. Tier 1 Additional Going Concern Capital

The 14 criteria for Additional Tier 1 Going Concern Capital outlined in Paragraph 91 would have the effect for U.S. banks of restricting Tier 1 Additional Going Concern Capital to non-cumulative perpetual preferred stock. Many of the 14 criteria are inapt in the context of preferred stock issued as an equity instrument for corporate law purposes and appear to be addressing European-style hybrid securities.

As discussed in Part I.B, our major concern with the definition of Tier 1 Additional Going Concern Capital is that it would preclude from inclusion in capital of U.S. banks instruments that are treated as debt for tax purposes (principally U.S.-style trust preferred securities), yet accommodate many European-style hybrid securities that generate an interest deduction or its equivalent in the relevant jurisdiction for tax purposes.

The Clearing House supports the objective of making the components of Tier 1 Capital, including Tier 1 Additional Going Concern Capital, as strong as possible, including with respect to their ability to absorb losses for the bank as a whole and preserve for management the ability to work through periods of distress without having decisions dictated by the actions of

creditors or special classes of securityholders. However, as a matter of competitive equality, we do not believe it is appropriate or fair to adopt international standards that create a significant cost of capital advantage for institutions in one jurisdiction as compared to another jurisdiction. The large U.S. bank holding companies subject to the SCAP (excluding GMAC) included at December 31, 2009 \$120.2 billion of trust preferred securities (including mandatory convertible preferred securities) in their Tier 1 Capital of \$823.6 billion (or approximately 14.6%). We expect that the capital composition of the large European and Asian banks included, in the aggregate, a similar proportion of innovative instruments that were tax advantaged, taking into account legal and structural considerations in the relevant home jurisdictions, reflecting the understanding in the October 1999 release often referred to as the “*Sydney Agreement*”.

Among the criteria in Paragraph 91 that preclude U.S.-style trust preferred securities from inclusion in Tier 1 Additional Going Concern Capital are items 4 (requiring that the instrument be perpetual), 7 (requiring that dividends or coupons must be purely discretionary and effectively non-cumulative), 8 (requiring that dividends/coupons must be paid only out of distributable items, which we take to mean income), and 10 (precluding inclusion of an instrument that counts as a liability for national insolvency law purposes).

In order to address this concern, we urge the Committee to include in revised Proposals provisions permitting national regulators the flexibility to permit the inclusion in Tier 1 Additional Going Concern Capital of tax-advantaged instruments that would not otherwise comply, subject to (i) an overall limit of such non-compliant instruments equal to 15% of Tier 1 Capital less goodwill (when ultimately phased in) and (ii) the national regulator having determined, based upon its review of applicable law (including constraints under applicable tax law as in effect from time to time), that the instrument has sufficiently close similarities to equity to warrant inclusion in Tier 1 Additional Going Concern Capital and satisfies the criteria for Tier 1 Additional Going Concern Capital to the extent reasonably practicable, taking into account the tax laws of the relevant jurisdictions.

We note that U.S.-style trust preferred securities did demonstrate substantial loss absorption capacity during the financial crisis. Because of their equity-like characteristics (most importantly, deep subordination and the right to defer payments of interest for at least five years, and a minimum maturity of at least 30 years), trust preferred securities of many institutions traded at deep discounts to their face amounts during the financial crisis, and their holders absorbed substantial losses. Of the 19 SCAP banks, six effected exchanges¹⁰ of common stock for trust preferred securities during 2009, with investors absorbing losses (through the discounted prices in the exchange offers) for those six banks aggregating more than \$6 billion.

Apart from the specific concerns of U.S. banks with respect to the treatment of trust preferred securities, we urge the Committee to grandfather all outstanding securities that

¹⁰ We are including as “*exchanges*” for this purpose both direct exchanges of common stock for trust preferred securities and indirect exchanges accomplished by substantially contemporaneous new issuances of common stock and application of the proceeds of the new issuances to repurchase trust preferred securities for cash.

qualified as regulatory capital when issued (including, for U.S. bank holding companies, trust preferred securities and cumulative perpetual preferred stock, subject to existing limits). Additionally, we urge the Committee in revised Proposals either to leave the grandfathering date to the discretion of national regulators or to confirm that a national regulator may grandfather instruments issued before publication of definitive Proposals in that national regulator's home jurisdiction, as opposed to the publication date of the Proposals contemplated by Paragraph 84. Having a December 17, 2009 grandfathering date not only would be extraordinary and inconsistent with historical practice but would also have the effect, as applied to U.S. banks, of immediately depriving them of the ability to issue tax-advantaged regulatory capital while banks in other jurisdictions may continue to do so.

C. Counterparty Credit Risk

A number of The Clearing House members are participating in an inter-association working group, under the auspices of ISDA¹¹, the IIF¹² and AFME¹³, on the measures outlined in Paragraph 113 through 177, concerning the CCR provisions in the Basel II framework. Those provisions, as well as the suggestions in Paragraphs 113 through 177, are intricate. The Clearing House supports the comments being made by the inter-association working group in its letter of even date herewith on those paragraphs. We have summarized below our principal concerns.

Basel II treats CCR as a form of wholesale credit risk. It captures the stochastic nature of potential counterparty exposure by defining the EAD, for each netting set, as the product of alpha times EEPE, where "EEPE" is the effective expected positive exposure and "alpha" is a scaling parameter whose value will depend on the degree of diversification within a bank's OTC derivative portfolio.

Several of the CCR components of the Proposals are aimed at enhancing the calculation of RWA for CCR within the wholesale credit framework. Examples of such components are: (a) the multiplication of the AVC, used in the risk weight formula for wholesale credit, by 1.25 for all credit sensitive transactions between designated financial institutions and (b) the use of stressed inputs for the calculation of RWA for CCR as a means of capturing general wrong-way risk.

The largest impact of the proposal on CCR is the requirement that banks calculate an additional RWA for each counterparty, to capture the increased profit and loss ("P&L")

¹¹ ISDA is the International Swap and Derivative Association.

¹² IIF is the Institute of International Finance

¹³ AFME is the Association for Financial Markets in Europe. This organization was created in November, 2009 by the merger of LIBA (London Investment Banking Association) and SIFMA's (Securities Industry Financial Markets Association) London based operations.

volatility that arises from the mark-to-market of the CVA¹⁴. The Proposals require the additional RWA, for each counterparty, to be calculated by a stand-alone VaR through the use of a “*bond equivalent*” proxy for the CVA. In our response we will first address the components of the Proposals that enhance the calculation of RWA within the wholesale credit framework and then we will address the proposed use of the bond equivalent proxy.

1. 1.25 Multiplier for AVC The Proposals would require banks to increase the risk weight for all forms of wholesale credit risk with designated financial institutions by multiplying the AVC in the Basel II risk-weight formula by 1.25 (Paragraphs 135 to 140). The justification for this increase in risk weight is the higher correlation of distress between financial institutions in the recent crisis, as reflected in the correlation of the widening of their bond spreads and the correlation of the decrease in their equity prices. While we acknowledge the higher correlation, the industry would like to see the empirical evidence that justifies the 1.25 multiplier. We are skeptical that such a high multiplier is justified. In addition, the cumulative effect of the July 2009 Market Risk Proposals (which will materially increase in RWA for the trading book), together with the Proposals and the Liquidity Proposals, should materially decrease the likelihood of a repeat of the recent crisis and thus should lessen the need for an increase (or, at least, such a sharp increase) in the AVC.

2. General Wrong-Way Risk. The Proposals set out several suggested changes to address general wrong-way risk (Paragraphs 118-122). The proposal in Paragraph 131 to take the higher of current market factors and stressed market factors may be conceptually appealing, given its apparent simplicity and that it prevents a benign market environment from unjustifiably impacting results. However, the Pillar 2 stress test charge should already take into account potential wrong-way risk. Therefore, we believe the stressed Effective EPE charge contemplated by the Proposals is duplicative and should not be implemented.

In addition, we believe that Effective EPE based on stressed inputs may not produce the intended benefits and may, in fact, increase overall risk. First, where the stressed charge dominates, the use test may be weakened because it is unlikely to be adopted for credit sanctioning purposes. Moreover, credit risk management already considers tail values on a client-by-client basis. It will become harder for firms to manage exposures, and undertaking additional trades to offset risk based on current market factors could potentially increase the exposure of a stressed Effective EPE basis because of differences in correlations. In addition, clients are unlikely to be willing to post initial margin against stressed volatility instead of current or market implied volatilities.

¹⁴ The CVA is the “*Credit Value Adjustment*” of the mark-to-market value of a derivative portfolio with a counterparty. The CVA is analogous to the credit risk premium for each issuer in a bond portfolio. In a bond portfolio the credit risk premium is the difference between the “risk free” market value of each bond (i.e. the value the bond would have if all of its future cash flows were discounted at the Treasury yield) and the actual market value of the bond (its value given that its future cashflows are discounted to present value at a spread to Treasuries).

The Clearing House believes that the primary, and most credible, tool to test Effective EPE validity is back-testing (regarding which a regulatory approach is still being developed). We urge the Committee to review its proposal regarding a stressed Effective EPE once the results of the QIS are known and a back-testing framework is finally implemented.

3. Bond Equivalent CVA. The Clearing House supports the Proposals' goal to provide "incentives to strengthen the risk management of counterparty credit exposures" (Paragraph 20). We recognize that banks that mark-to-market their CVA had increased P&L volatility that was not reflected in the Basel II RWA for CCR. The latter was calculated by treating CCR as a form of wholesale credit risk and was not designed to capture the increased P&L volatility that results from marking-to-market CVAs. The mark-to-market value of banks' CVAs materially increased during the crisis because both components of the CVA calculation, (a) the "market-risk vector" (i.e., the EPE profile) and (b) counterparty credit spreads, materially increased, as implied volatilities and credit spreads widened respectively.

Thus, as the recent crisis demonstrated, the need to improve CCR management is clear. Nevertheless, we do not believe the bond equivalent of the counterparty exposure approach to capture CVA losses (Paragraphs 123-125) is a workable approach.

Our principal concerns with the bond equivalent approach are as follows:

- Failure to Recognize Hedging Broadly. We agree that banks need capital to account for unexpected variation in income arising from movements in the CVA. However, we believe that the bond equivalent CVA proposal needs to more fully take into account the effect hedging instruments have on CVA, and CCR risk capital, more generally, by broadening the unduly narrow range of hedging instruments currently recognized to include instruments other than just single name CDSs and other equivalent instruments. For example, CDSs on broad indices are a very effective way of hedging against the systemic risk of a general widening in spreads. More broadly, banks hedge both the market vector component and the credit spread component of their CVA, yet the proposal only recognizes a partial set of the hedges of the latter.

Preliminary estimates suggest that the Proposals regarding CCR, including the bond equivalent CVA proposal, could result in a very large and disproportionate increase in CCR risk capital. As a general matter, a bank that reduces its economic risk to the default of a counterparty should have to post less capital than another firm with the same economic exposure that chooses not to hedge, with the reduction in capital commensurate to the reduction in risk.

- Risk Insensitivity. The bond equivalent CVA defined by the CD does not accurately reflect the real balance-sheet risks banks face and is not sufficiently risk-sensitive to be a proper measure for imposing capital

requirements. It also will subject banks in certain instances to “double counting”, by including the effect of tenor and potential counterparty downgrades in both the standard RWA calculation and in the standalone “bond equivalent” proxy

In the United States, banks with CCR exposure are required to mark-to-market their CVA under FASB rules. In other jurisdictions, banks operating under current international financial reporting standards (“*IFRS*”) do not have to mark-to-market their CVA. Since The Clearing House is only addressing issues faced by banks operating in the U.S., we will not discuss the question of the appropriateness of requiring banks that do not mark-to-market their CVA to be required to hold capital for the potential volatility of the market value of their CVA.

For firms that are required by accounting standards to calculate a market-implied CVA, spread sensitivities are already available from the calculation of CVA. The Proposals create a bond position that materially differs from the economic risk these firms actually face, because the “bond equivalent” proxy approximates the credit sensitivity as a function of exposure only (i.e., EAD and effective maturity), whereas the actual spread sensitivity is instead a function of not only exposure, but the prevailing spread as well, because of the effect of convexity. In addition, the stipulated rules for calculating the “bond-equivalent” proxy, such as the requirement to use the largest tenor of any netting set with the counterparty, materially distorts the actual CS01¹⁵ of the CVA. As a result of the difference between the real CS01 and the fictitious risk of the bond equivalent set forth in the Proposals, the hedged positions of a bank with a market-implied CVA would, for capital purposes, become unhedged. Moreover, the bond equivalent approach would unbalance many credit sensitivities and all market vectors in the market risk VaR, suggesting a potential for trading loss unreflective of actual risk.

In general, the Proposals’ insistence on a standalone VaR is misguided (Paragraph 125). There are numerous instruments that provide an economic offset to CVA movements (particularly when the idiosyncratic risk of jump-to-default is excluded) as with the banking book treatment of EAD. Moreover, all standalone VaR approaches ignore the important systemic risk of a general widening of credit spreads, which can be hedged, for example, by buying CDSs on indices.

Furthermore, the Proposals are inconsistent with the trading book regime with which the Proposals purport to seek alignment. Although we agree that the scaling in the trading book VaR should equate to a 99.9%, one-year principle, the two scaling factors (annualization (5x) and scaling (3x)) set forth in the Proposals place this approach well beyond that tail estimate. For a normal distribution, the 99.9%, 250-day VaR is approximately 6.6 times the 99%, 10-day VaR, not 15 times it (5 x 3). Given the addition of Stressed VaR, and the reality of fat tail effects, this is an extreme and unduly conservative measure.

¹⁵ “CS01” is the sensitivity of the market value of the CVA to a +1 bp increase in the credit spread of the counterparty.

For the foregoing reasons, The Clearing House urges the Committee not to adopt the proposed bond equivalent CVA. The problems with this approach do not merely stem from its calibration, and do not have a simple solution, such as adjusting the scaling factors. Even if they were adjusted, this approach would remain misaligned with actual risk.

The Clearing House strongly supports the full integration of CVA into the market risk framework, which (as of the July 2009 proposal) would require banks to calculate RWA for (a) VAR, (b) Stressed VAR and (c) the Incremental Risk Charge for default and downgrade risk. Such an approach would enable banks to get full recognition of all of their hedges, both their hedges of potential changes in the market vector component of the CVA and potential changes in general and idiosyncratic spreads of counterparties. It would also avoid the inevitable double counting that exists in the proposed addition of RWA (based on a stand-alone VAR using a bond-equivalent proxy) to the wholesale credit RWA based on alpha times EEPE.

If the Committee ultimately determines to implement this proposed approach, it should at a minimum permit banks to employ a broader array of hedging instruments than at present allowed (e.g. to recognize the hedging of general and idiosyncratic changes in credit spreads), it should exclude the hedges of the market risk vector component of the CVA from the calculation of RWA for market risk, and it should work with the industry to enhance the bond equivalent CVA approach to more closely match the various methods banks already use to calculate their CS01s for CVA.

4. Provisioning in Connection with CVA. Paragraph 102 removes the perceived incentive to provision at low levels by deducting any shortfall of provisions against expected loss under the IRB approach 100% from the Common Equity component of Tier 1 Capital. Where the provision is in excess of the regulatory expected loss, however, the current framework allows for the addition of the excess in Tier 2 Capital subject to a cap. Tier 2 Capital, as an expression of gone-concern capital is not the correct place to account for a forward-looking dynamic provision such as the ones made in connection with CVA. If a default occurs, the CVA is available to offset, in whole or in part, the loss when a claim needs to be provisioned. For the part of the loss for which a bank holds an amount of CVA, there is no need for a capital charge given that the CVA is already reserved for that loss. Thus, we believe that the excess of CVA over regulatory expected loss should be incorporated as a direct deduction from the CCR capital charge rather than being made eligible for inclusion in Tier 2 Capital. This treatment would provide stronger incentives to provision and adhere to the governance and validation standards underlying the forward-looking modeling of exposure, thereby promoting stronger risk management and countercyclical practices.

D. Leverage Ratio

The U.S. bank regulatory agencies have applied a leverage ratio to U.S. banks for many years. It is a simple and straightforward metric, calculated as the ratio of Tier 1 Capital to average total consolidated assets less goodwill and certain other items. The Clearing House members question the utility of a leverage ratio. The purpose of capital is to absorb risk of unexpected losses. Both the leverage ratio as presented in the Proposals and the U.S. bank

regulatory agencies' leverage ratio, however, are risk-insensitive. At best, a leverage ratio is a blunt, back-stop measure.

If the Committee nevertheless determines to implement a leverage ratio as an international standard, we urge it to consider the existing U.S. formulation as an alternative to the formulation in the Proposals. We are particularly concerned with four aspects of the denominator in the leverage ratio as set forth in the Proposals: (i) the disregard of legally enforceable netting; (ii) the inclusion of the gross amount of a bank's exposure under credit derivatives where the bank is the seller of credit protection without recognition of off-setting purchases of credit protection on the same reference entities or reference obligations; (iii) the manner of conversion of off-balance sheet obligations to asset equivalents; and (iv) the inclusion of any amount with respect to unconditionally cancellable commitments. Taken together, they would so expand the denominator in the leverage ratio that they would render the ratio, even as a back-stop measure of capital, useless.

In order to have any usefulness as a measure of capital, the exposures included in the denominator of the leverage ratio need to be reasonable. The four aspects of the denominator discussed below would increase the denominator for many banks by substantial multiples of their GAAP assets. As a practical matter, the Committee would have to choose a percentage for the leverage ratio, in the calibration process, that is so small as to make the leverage ratio meaningless.

1. Legally Enforceable Netting Arrangements. We strongly disagree with the proposed treatment of netting in the Proposals and urge the Committee to recognize legally enforceable netting arrangements, whether in the context of credit or other derivatives or repurchase agreements. Two principal considerations bear on that view.

First, banks have a great deal of experience with evaluating when and whether bilateral netting is enforceable, taking into account for multi-jurisdictional transactions the impact of bankruptcy and insolvency laws in the relevant jurisdictions. Over the years, individual banks and trade associations, including ISDA, have expended substantial effort on analyzing the enforceability of netting in various jurisdictions and obtaining relevant legal opinions. If there is a concern with netting, we expect that it would arise not so much out of incorrect determinations as to whether multiple contracts may be netted in a legally enforceable manner, but, instead, out of the operational challenges of identifying which contracts are subject to netting and determining the current exposure after giving effect to netting. If that is a concern, then we urge national regulators to address it, as a supervisory matter, by reviewing the documentation, recordkeeping and operational requirements that banks should satisfy and follow in order to demonstrate their ability on a timely basis to identify which contracts are netted and the net current exposure. The operational challenge cannot possibly be so unmanageable that the only recourse is to disregard netting altogether.

Second, and most fundamentally, assuming that the identification of contracts subject to legally enforceable netting and the calculation of the net current exposure are correctly done, the underlying transactions do not in fact promote the build-up of excessive leverage. The

exposure is circumscribed to the net obligation. A contrary view would reflect the determination that the aggregate notional amounts of derivatives, repurchase agreements and other transactions of types that banks customarily analyze on a net exposure basis (assuming legally enforceable netting), should be limited for reasons – policy or otherwise – other than the real exposures of the relevant counterparties. Although derivatives (principally credit derivatives) were a contributing factor to the financial crisis, the application of the leverage ratio to notional amounts without netting is an exceedingly blunt way to address concerns with the instruments. Analysts' reports have estimated that, for some U.S. banks, the leverage ratio as proposed, merely because of the failure to recognize legally enforceable netting and the inclusion of the notional amount of credit derivatives where the bank is the seller of credit protection (discussed in Part II.D.2, below), would increase the denominator in the leverage ratio by a factor of as much as 2x, effectively forcing those banks to cease the activity. Credit derivatives as a means to transfer and mitigate risk (whether as a buyer or seller) and repurchase agreements as a means of borrowing or lending, taking into account the special protections provided for them under applicable bankruptcy laws, are valuable financial tools that have the ability to enhance the resilience of the financial system.

2. Credit Derivatives. Paragraphs 230-231 would require banks to include in the denominator of the leverage ratio 100% of the notional value of credit derivatives where the bank is the seller of credit protection, without any reduction for credit derivatives where the bank has hedged its exposure by buying credit protection on the same reference entities or reference obligations. The Clearing House members strongly feel that that is a very inappropriate treatment. Credit derivatives – typically credit default swaps, or “CDS”, and total return swaps, or “TRS” – are a valuable tool used by many companies (banks and non-banks alike) to manage exposure to third parties. Used properly, they perform a valuable function in distributing risk within the financial system. Banks that conduct this business for customers, as end users, almost always maintain off-setting positions to limit their exposure (unlike our understanding of AIG's activities in this area). The bank is acting as a financial intermediary, and the service it is providing is one that is appropriate for financial intermediaries. The inclusion in the leverage ratio denominator of the notional amount of credit protection sold would inflate the denominator of the ratio in a manner that bears no relationship to actual exposure.

The possibility that a bank writing credit protection may have to post margin to secure its obligations under credit derivatives in specified circumstances, including ratings downgrades, is, of course, a supervisory issue. But the issue is liquidity, as addressed and discussed in the Liquidity Proposals. Margin requirements for a bank writing credit protection bear upon the purchaser's exposure to the bank, not the bank's exposure to the reference entity or the reference obligations. Accordingly, we strongly urge the Committee to exclude hedged credit derivative exposures from the denominator in the leverage ratio.

3. Off-Balance Sheet Exposures. If the Committee determines to include off-balance sheet items in total exposure for leverage ratio purposes, we urge the Committee to consider reasonable conversion factors (and not apply a blanket 100% conversion factor) in order to make the leverage ratio meaningful. Many banks have substantial databases documenting draw-down and usage experience for off-balance sheet items over a very substantial period (in

the case of some of our members going back more than 20 years). We urge the Committee to permit banks that have substantial databases, subject to consultation with and approval by their national regulators, to use conversion factors based on their historical experience as supported by those databases. For those banks that do not have satisfactory databases, we urge the Committee, as a “default” approach, to treat off-balance-sheet items for purposes of the leverage ratio in the same manner as they are treated under Basel II in the paragraphs of Basel II cited in Paragraph 232, recognizing differences among committed and uncommitted facilities, direct credit substitutes, acceptances, trade letters of credit, failed transactions, and unsettled securities. The conversion factors used in Basel II to convert those off-balance sheet items to asset equivalents range from 0% to 100%.

As a conceptual matter, we question the logic behind using different conversion factors for risk-based capital measures as compared to the leverage ratio. We believe the Basel II conversion factors, although themselves a fairly blunt approach to addressing the asset equivalents of off-balance sheet obligations, are a reasonable approach to estimating exposures for those banks who do not have sufficient databases to reliably develop their own conversion factors.

4. Unconditionally Cancellable Commitments. In Part I.B, we address the inappropriateness, as a matter of competitive equality, of including in the denominator of the leverage ratio unconditionally cancellable commitments. As discussed therein, we do not believe that the exposure differs based on the quality and formality of the recordkeeping – that is, a writing versus a handshake. As to substance, and apart from competitive equality, banks should not be assumed to make decisions that are against their best interest. Accordingly, commitments that are unconditionally cancellable, even if in writing, are legally and practically non-binding and give the lending bank an opportunity to make a credit determination at the time of a requested borrowing. Banks customarily are not paid commitment fees on these facilities, and these facilities are not in any respect akin to financial guarantees. Moreover, undrawn amounts on unconditionally cancellable facilities are not included in other relevant regulatory reporting metrics, including non-performing assets (at least in the United States).

The Committee also needs to take into account other types of unconditionally cancellable commitments that may not have been considered in formulating the Proposals. A principal example is the unused availability of credit card lines. We believe that the unused availability of credit card lines should be excluded from the leverage ratio’s denominator. Banks that have a credit card business may reduce each customer’s maximum availability at any time. Moreover, the principal function of credit cards is to finance purchases by customers (including small businesses), not to provide a source of cash to consumers. Credit card usage patterns are highly predictable and aggregate outstanding balances for credit card portfolios tend to be stable. It would be extraordinarily conservative, and not reflective of experience (even during the financial crisis), to assume a 100% use of credit card available lines for any regulatory purpose, whether capital or otherwise.

E. “Systemically Significant” Banks

Paragraph 47 notes that the Committee is considering whether final regulations should incorporate capital surcharge requirements for “systemically significant” banks. We strongly oppose such a surcharge. We believe that there is no credible evidence that systematically significant (i.e., mostly large) banks have a greater risk of failure. The greatest systemic risk if they do fail should be dealt with through an effective resolution regime. Although we appreciate the dangers of excessive risk-taking at some institutions (most of which were not systemically significant) exposed during the financial crisis, we believe that a capital surcharge on “systemically significant” banks would be difficult to implement, among other reasons, because initiatives in several countries to regulate and tax such banks would require further coordination with new capital regulations that also singled them out. Furthermore, we view the capital surcharge proposal as yet another layer of conservatism that seems likely to further increase capital requirements without due regard for potential macroeconomic consequences.

To the extent that such a surcharge is implemented, we believe that the criteria for determining which banks are deemed to be of “systemic significance” should not only be based on size or the concept of “interconnectedness”, but be calibrated based on risk exposure as well. We believe that there are banks that have a significant amount of assets but do not have the trading book exposure, counterparty risk or extreme sensitivity to credit downgrades and collateral calls that severely impaired some financial institutions during the financial crisis. If a bank, whether large or small, is at particular risk of losses or loss of liquidity, this risk should be addressed in the capital and stock of high quality liquid assets it is required to hold.

F. Addressing Procyclicality with Capital Buffers

The Clearing House shares the Committee’s concern with the procyclicality of the existing capital framework. However, we do not favor adopting as an international standard the buffer framework outlined in Paragraphs 247 through 259. Instead, we strongly believe that capital conservation should be addressed as a supervisory matter by national regulators, not through a single series of proscriptions.

It is, of course, impossible to evaluate the buffer proposal in a meaningful way without knowing the calibration of the capital ratios. However, we are very concerned that, taking into account the totality of the Proposals, the sum of the minimum capital ratios “plus buffers” would de facto become the minimum ratios, and markets and regulators will demand that banks maintain capital ratios well in excess of the de facto minimum ratio – another layer of conservatism on an already conservative approach. In our experience, virtually no bank plans to maintain its capital at just the minimum levels and, as a supervisory matter, the regulators are likely to be critical of a bank that did not maintain a margin of safety.

In our view, a buffer scheme would create unnecessary confusion and ambiguity regarding precisely what capital ratios are required. The Proposals attempt to distinguish a bank that does not meet minimum capital requirements from a bank that does so but fails to maintain recommended “buffers” by suggesting that the latter will be able to conduct “business as usual,”

subject to certain constraints on distributions (Paragraphs 256 and 258). Nonetheless, it seems to us challenging to suggest that a bank subject to limitations on dividends and other distributions and compensation paid to employees is conducting “business as usual”. In addition, we do not believe that banks or the market will see it that way. Instead, as expressed above, we are concerned that “buffered” capital levels would become de facto minimums, with both banks and their investors and creditors wanting to stay above “buffered” levels at all costs. As a result, banks would have to maintain “buffers” even higher than the nominal required “buffers”.

The risk that “buffered” capital levels become de facto minimums makes the process of setting appropriate required capital levels more complicated than it needs to be. Moreover, the combination of high minimum capital levels and even higher “buffered” levels could exacerbate the conservatism of the Proposals and, we believe, further threaten the vitality of the banking sector. We do not believe that it makes sense to set minimum capital levels lower than they otherwise would be merely to mitigate the impact of higher “buffered” levels. Instead, we believe that the limitations contemplated by the Proposals as capital ratios fall within buffer ranges – limitations on dividends, share buybacks, and discretionary bonus payments – are best addressed by regulators within each jurisdiction, as they already do in the United States, taking into account the circumstances of that jurisdiction. For example, in the United States, the bank regulatory agencies’ “prompt corrective action regulations”, adopted pursuant to Section 38 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831o, establish five capital categories for FDIC-insured banks (based upon Tier 1 and total risk-based capital ratios and the U.S. leverage ratio): well-capitalized, adequately-capitalized, under-capitalized, significantly under-capitalized and critically under-capitalized. Although these regulations may have worked imperfectly, they are conceptually similar to the proposal buffers, imposing progressively more restrictive constraints on operations (including brokered deposits), management and capital distributions, depending on the capital category in which an institution is classified. Additionally, limitations on dividends, share buybacks and compensation arrangements already are or are proposed to be addressed by a variety of statutory and/or regulatory constraints in the United States.¹⁶ We do not believe that a single international standard would be useful and, if anything, may well work at odds with regulatory regimes in many jurisdictions that are satisfactory in their current form.

To the extent buffer requirements are ultimately established, we strongly believe that far more development and research are needed. For reasons noted above, we believe that it would be extremely difficult to calibrate buffer levels in a meaningful way. If they are to be implemented, the buffers should be an integral part of a further round of comments on the

¹⁶ With respect to dividends and stock repurchases by bank holding companies, the Federal Reserve Board issued, in February 2009, a supervisory letter – SR 09-4 – providing direction to supervisory staff and to bank holding companies with respect to these matters. Among other things, that supervisory letter indicates that bank holding companies should eliminate, defer or significantly reduce dividends and other capital distributions (including stock buy-backs) if net income for the past four quarters is not sufficient to fully fund the dividends or distributions, the prospective rate of earnings retention is not consistent with the bank holding company’s current and prospective financial condition, or the bank holding company does not meet or is in danger of not meeting its minimum capital requirements.

Proposals in order to better understand and refine the rules that would result and the buffer levels that would be required.

III. Additional Comments

We have set forth in this Part III additional comments on the Proposals that are less broadly conceptual than those set forth in Parts I and II.

A. Components of Capital

1. Common Equity as the “Predominant” Form of Tier 1 Capital – Paragraphs 82 and 85. Paragraphs 82 and 85 provide for the new separate ratio of Common Equity to RWA and also carry forward the existing standard that Common Equity must be the “predominant” form of Tier 1 Capital. We are uncertain as to how the two requirements work together and, in particular, whether the inclusion of both is sensible. We urge the Committee to explain its thinking in proposing a ratio of Common Equity to RWA and, at the same time, retaining the predominance test.

2. Criteria for Inclusion in Tier 1 Additional Going Concern Capital – Paragraph 89. Apart from the exclusion of U.S.-style trust preferred securities from Tier 1 Additional Going Concern Capital, we have two additional comments on the 14 criteria specified in Paragraph 89, as follows:

(a) Criterion no. 5 requires that Tier 1 Additional Going Concern Capital may be redeemed or called at the issuer’s option only after a minimum of five years, and then only if the three criteria outlined within criterion no. 5 have been satisfied (that is, regulatory approval, no actions to create an expectation of redemption, and replacement with equal or better capital or a capital position that is demonstrated to be well above the minimum capital requirements after the call is exercised). We question whether the prohibition on redemptions during the first five years after issuance is necessary or desirable, particularly given the three other criteria that must be satisfied in any event. Changes in circumstances, whether specific to the issuing bank or relating to market developments, may have the consequence that an early redemption will result in a lower cost of capital or other benefit to the issuing bank. We urge the Committee to consider whether the prohibition against redemptions during the first five years is necessary in view of the other tests provided for in criterion no. 5.

(b) We would appreciate the Committee clarifying the intent behind criterion no. 14. That criterion provides that, if the instrument being considered for Tier 1 Additional Going Concern Capital status is not issued by an operating entity or the holding company (i.e., it is issued by an SPV), the proceeds “must be immediately available without limitation to an operating entity or the holding company . . . in a form which meets or exceeds all of the other criteria for inclusion in Tier 1 Additional Going Concern Capital” (emphasis added). This appears to require that assets of the SPV be limited to instruments that themselves are Tier 1 Additional Going Concern Capital for the bank and would seem to preclude asset-driven hybrid securities, such as the

exchangeable REIT preferred securities that have been issued by SPV subsidiaries of several U.S. banks (generally in the form of non-cumulative perpetual preferred stock) that are automatically exchanged for non-cumulative perpetual preferred stock of the parent bank or bank holding company if the bank falls out of capital compliance or becomes subject to a receivership or conservatorship proceeding, or its primary regulator determines that there is a danger of either of those events occurring. We believe asset-driven exchangeable instruments of this type, properly structured, can contribute to the capital strength of an organization in the same manner as instruments issued directly by the bank that are Tier 1 Additional Going Concern Capital. More generally, the impact of criterion no. 14 seems to preclude any minority interest from inclusion in Tier 1 Additional Going Concern Capital other than a minority interest issued by an operating entity, notwithstanding the general statement at the end of paragraph 89 to the effect that the 14 criteria also apply to instruments which appear in the consolidated accounts as minority interests. We urge the Committee to clarify its intent behind the interplay between criterion no. 14 and the more general comment on minority interests, including giving consideration to exchangeable securities that in times of distress are automatically exchanged for instruments that are Tier 1 Additional Going Concern Capital issued directly by the bank.

3. Defined Benefit Pension Fund Assets – Paragraph 107. Paragraph 107 would require banks to deduct from Common Equity the value of any defined benefit pension fund asset. The reason enunciated in Paragraph 107 is that these assets may not be “capable of being withdrawn and used for the protection of depositors and other creditors of the bank”. We urge the Committee to reconsider. Pension fund assets, even if they cannot be withdrawn, have value to the bank because they reduce the bank’s future expenses and enhance its going concern value, both of which ultimately reduce the likelihood of a failure. We do not believe the fact that pension fund assets may not be capable of being withdrawn from the pension fund and used for other purposes warrants their deduction from Common Equity, any more than other assets whose use may be limited (for example, assets pledged as collateral for secured debt).

As a related matter, we would expect that the required deduction does not apply in any event to the excess assets in a plan – i.e., the amount by which a plan is over-funded. We would appreciate the Committee confirming that understanding in revised Proposals or, if that understanding is not correct, explaining the rationale for requiring the deduction of excess plan assets.

4. Remaining 50:50 Deductions – Paragraph 108. Paragraph 102 provides that deductions for certain exposures, transactions and investments not addressed elsewhere in the Proposals (currently made 50% from Tier 1 Capital and 50% from Tier 2 Capital) would receive a risk weight of 1250%. We believe that this proposal could have the unintended effect of creating a capital charge on an investment that would exceed the actual risk exposure, in cases in which, for instance, a country generally, or a national regulator for supervisory reasons (e.g., a cease and desist order), imposed a capital charge in excess of the internationally agreed level. As a general matter, the deduction is not equivalent to the proposed risk-weighting except at the 8% level. For firms in excess of this level, the charge will be excessive, and could create a perverse

incentive to maintain lower capital levels. In order to address this issue, we believe that the Committee should cap the capital deduction (indirectly effected through the proposed risk weight treatment) at 100% of the exposure equivalent.

B. Procyclicality

1. Excessive Credit Growth. In an attempt to reduce procyclicality in capital regulation, the Proposals discuss the possibility of increasing local capital requirements in times of “excessive credit growth” (Paragraphs 41-43 and 260-262). Although we generally support the intent of this proposal, we believe that imposing higher capital requirements in jurisdictions with “excessive” credit growth would be a highly subjective exercise and difficult to implement in a non-arbitrary way. It seems very unlikely to us that, even with the benchmarking approach discussed in Paragraph 262, the Committee will be able to develop a compelling “one size fits all” macroeconomic model to discern “excessive” credit growth around the world – especially when this is an area where supervision by national regulators, who have a deeper understanding of their economies, would appear to be a better alternative.

We believe that in this case the Proposals tend to emphasize complex quantitative modeling beyond the point of diminishing returns. The difficulty of developing and administering an accurate set of rules becomes prohibitive in comparison to the costs and benefits of an approach that is more standards-based and supervisory oriented. We agree that excessive credit growth could not be monitored and controlled by “a strict rules-based regime”, as the Proposals acknowledge (Paragraph 262). We also believe, however, that accurately determining the predictors of future credit “bubbles” in every economy is likely to prove insuperably difficult, even with supervisory adjustments at the margins. Especially for growing economies, we are dubious that a fixed set of variables could effectively distinguish between “good” and “excessive” credit growth based on factors such as GDP. Moreover, there is no guarantee that future credit “bubbles” will take the same form as they have in the past. We believe that leaving the question of credit growth to national regulators as Part of Pillar 2 regulation is a more sensible and effective approach to this difficult issue, not only because it will help to avoid the problems discussed above, but also because it will make it easier for credit growth monitoring to evolve over time with local economies.

C. Other

1. Operational Adjustments Required for Implementation. We urge the Committee, in considering the implementation schedule for the definitive Proposals, to be sensitive to the operational adjustments that banks will need to implement before the implementation is complete. The challenges of those adjustments, as to both the time and expense required for implementation, may differ among the aspects of the Proposals (and between the Proposals and the Liquidity Proposals), perhaps leading to different implementation schedules for different parts. They include, for example, the need to:

- implement and/or enhance models to calculate specific and incremental risk in the trading book;

- implement or enhance models to factor in proposed changes for calculating counterparty credit risks;
- enhance exposure calculation processes in systems using stressed inputs, and to synchronize those enhancements with the current Pillar 2 efforts;
- implement systems and processes to capture data that currently is not readily captured or stored in a centralized or integrated manner;
- enhance customer reference systems to identify financial institutions based on the criteria specified in the QIS (e.g., regulated versus unregulated entities and by asset size);
- enhance product reference systems to identify re-securitizations and loans to special purpose entities; and
- implement the measures relating to reduced reliance on external ratings.

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The Clearing House appreciates your consideration of the views expressed in this letter. If you have any questions or if the members of The Clearing House can assist you in any way, please contact Joseph R. Alexander, Senior Vice President and Senior Counsel of The Clearing House, at (212) 612-9234 or joe.alexander@theclearinghouse.org.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Paul Salzman". The signature is fluid and cursive, with a long horizontal stroke at the end.

cc (w/encls.): Norah M. Barger
(Deputy Director, Division of Banking Supervision
and Regulation, Board of Governors of the Federal
Reserve System)

William L. Rutledge
(Executive Vice President, Federal Reserve Bank
of New York)

Amrit Sekhon
(Director, Capital Policy, Office of the Comptroller
of the Currency)

Sandra L. Thompson
(Director, Division of Supervision and Consumer Protection,
Federal Deposit Insurance Corporation)

Historical Accumulated OCI

\$ in millions

Total AOCI Balance

	1Q06	2Q06	3Q06	4Q06	1Q07	2Q07	3Q07	4Q07	1Q08	2Q08	3Q08	4Q08	1Q09	2Q09	3Q09	4Q09
American Express	(170)	(98)	(33)	(520)	(500)	(623)	(561)	(442)	(661)	(451)	(866)	(1,606)	(1,253)	(905)	(556)	(712)
Bank of America	(8,981)	(10,973)	(6,867)	(7,711)	(7,661)	(9,957)	(8,615)	1,129	(884)	(1,864)	(5,647)	(10,827)	(11,164)	(11,227)	(6,705)	(5,619)
BB&T	(465)	(552)	(318)	(359)	(288)	(452)	(268)	(104)	(103)	(339)	(462)	(732)	(682)	(729)	(363)	(418)
Bank of New York	(189)	(231)	(66)	(317)	(336)	(407)	(487)	(574)	(1,835)	(1,919)	(3,115)	(5,426)	(5,990)	(5,608)	(1,947)	(1,835)
Capital One	(8)	60	174	266	283	245	346	315	184	127	(202)	(1,222)	(852)	(399)	57	83
Citigroup	(2,706)	(3,351)	(2,822)	(3,700)	(3,875)	(2,970)	(3,555)	(4,660)	(7,381)	(8,049)	(14,001)	(25,195)	(27,013)	(21,643)	(17,651)	(18,937)
Fifth Third Bancorp	(569)	(683)	(393)	(179)	(163)	(294)	(198)	(126)	11	(152)	(60)	98	151	152	285	241
Goldman Sachs	15	11	13	21	18	23	30	(118)	(144)	(136)	(165)	(202)	(357)	(350)	(240)	(362)
JPMorgan Chase	(1,017)	(1,218)	(526)	(1,557)	(1,482)	(2,080)	(1,830)	(917)	(512)	(1,566)	(2,227)	(5,687)	(4,490)	(3,438)	283	(91)
KeyCorp	(121)	(120)	(69)	(1,837)	(114)	(169)	(54)	130	393	149	153	65	97	(90)	46	(3)
Morgan Stanley	(130)	20	32	(35)	(127)	(119)	(95)	(199)	(138)	(218)	(380)	(420)	(471)	(342)	(299)	(560)
Northern Trust	(27)	(23)	(11)	(149)	(154)	(147)	(152)	(90)	(137)	(148)	(190)	(495)	(446)	(353)	(313)	(362)
PNC	(394)	(510)	(109)	(235)	(162)	(440)	(255)	(147)	(779)	(1,227)	(2,230)	(3,949)	(3,289)	(3,101)	(1,947)	(1,962)
Regions Financial	(170)	(221)	(88)	(131)	(61)	(237)	(50)	202	330	47	69	(22)	(6)	(36)	143	130
State Street	(349)	(378)	(113)	(224)	(147)	(276)	(369)	(575)	(1,658)	(1,716)	(3,146)	(5,650)	(4,987)	(3,828)	(2,776)	(2,238)
SunTrust	894	777	1,179	926	1,185	921	1,252	1,607	1,909	922	888	981	1,034	824	1,152	1,070
US Bancorp	(757)	(1,137)	(541)	(736)	(653)	(1,072)	(1,028)	(936)	(1,480)	(1,519)	(1,828)	(3,363)	(2,949)	(2,384)	(1,753)	(1,484)
Wells Fargo	576	155	633	302	289	(236)	291	725	120	(1,060)	(2,783)	(6,869)	(3,624)	(590)	4,088	3,009

Change in Total AOCI

	2Q06	3Q06	4Q06	1Q07	2Q07	3Q07	4Q07	1Q08	2Q08	3Q08	4Q08	1Q09	2Q09	3Q09	4Q09
American Express	72	65	(487)	20	(123)	62	119	(219)	210	(415)	(740)	353	348	348	(156)
Bank of America	(1,991)	4,105	(844)	51	(2,297)	1,343	9,743	(2,013)	(979)	(3,783)	(5,178)	(339)	(62)	4,522	1,086
BB&T	(87)	234	(41)	72	(164)	184	164	2	(236)	(123)	(270)	50	(47)	366	(55)
Bank of New York	(42)	165	(251)	(19)	(71)	(80)	(87)	(1,261)	(84)	(1,196)	(2,311)	(564)	382	3,661	112
Capital One	68	114	92	17	(38)	101	(31)	(132)	(57)	(328)	(1,020)	370	453	455	26
Citigroup	(645)	529	(878)	(175)	905	(585)	(1,105)	(2,721)	(668)	(5,952)	(11,194)	(1,818)	5,370	3,992	(1,286)
Fifth Third Bancorp	(114)	290	214	16	(131)	96	72	137	(163)	93	158	53	1	132	(44)
Goldman Sachs	(4)	2	8	(3)	5	7	(148)	(26)	8	(29)	(37)	(155)	7	110	(122)
JPMorgan Chase	(201)	692	(1,031)	75	(598)	250	913	405	(1,054)	(661)	(3,460)	1,197	1,052	3,721	(374)
KeyCorp	1	51	(1,768)	1,723	(54)	114	184	263	(244)	4	(89)	33	(187)	136	(49)
Morgan Stanley	150	12	(67)	(92)	8	24	(104)	61	(80)	(162)	(40)	(51)	129	43	(261)
Northern Trust	4	13	(138)	(6)	8	(6)	62	(46)	(12)	(42)	(305)	49	93	40	(48)
PNC	(116)	401	(126)	72	(277)	185	108	(632)	(448)	(1,003)	(1,719)	660	188	1,154	(15)
Regions Financial	(52)	134	(44)	70	(176)	187	252	128	(284)	23	(92)	16	(30)	180	(13)
State Street	(28)	265	(111)	77	(129)	(93)	(206)	(1,083)	(58)	(1,430)	(2,504)	663	1,158	1,052	537
SunTrust	(118)	402	(253)	259	(264)	331	355	302	(987)	(34)	93	53	(210)	328	(82)
US Bancorp	(380)	596	(195)	83	(419)	44	92	(544)	(39)	(309)	(1,535)	414	565	631	269
Wells Fargo	(421)	478	(331)	(13)	(525)	527	434	(605)	(1,180)	(1,723)	(4,086)	3,245	3,034	4,678	(1,079)



September 25, 2009

Board of Governors of the Federal
Reserve System,
20th & C Streets, N.W.,
Washington, D.C. 20551.

Office of the Comptroller of Currency,
250 East Street, S.W.,
Washington, D.C. 20219.

Attention: The Honorable Daniel K. Tarullo,
Governor

Attention: The Honorable John C. Dugan,
Comptroller of the Currency

Federal Deposit Insurance Corporation,
550 17th Street, N.W.,
Washington, D.C. 20429.

Office of Thrift Supervision,
1700 G Street, N.W.,
Washington, D.C. 20552.

Attention: The Honorable Sheila Bair,
Chairman

Attention: The Honorable John Bowman,
Acting Director

Re: Regulatory Capital Limits on Deferred Tax Assets

Ladies and Gentlemen:

The Clearing House Association L.L.C. (“*The Clearing House*”)¹ and the
American Bankers Association (the “*ABA*”)² are writing to urge the Board of Governors

¹ The member banks of The Clearing House are ABN AMRO Bank, N.V., Bank of America, National Association, The Bank of New York Mellon*, Citibank, N.A.*, Deutsche Bank Trust Company Americas, HSBC Bank USA, National Association*, JPMorgan Chase Bank, National Association*, UBS AG, U.S. Bank National Association*, and Wells Fargo Bank, National Association*. Those member banks whose names are marked with an asterisk in the preceding sentence actively participated in the preparation of this letter, including the materials enclosed as Annex 1, and are referred to herein as the “*Participating Clearing House Members*”.

² The ABA brings together banks of all sizes and charters into one association. The 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 over 2 million men and women.

of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision (together, the “Agencies”) to revisit the continued appropriateness of the provisions in their risk-based capital guidelines and regulations (together, the “*Capital Regulations*”) that limit the amount of deferred tax assets (“DTAs”) dependent upon future taxable income that may be included in – or, more specifically, not deducted from – a banking organization’s regulatory capital. For the reasons discussed further below, The Clearing House and the ABA believe that now is an appropriate time for the Agencies to revisit whether the present limitations on DTAs as set forth in the Capital Regulations continue to be appropriate. We believe strongly that they are not and urge the Agencies either to eliminate the limitations, with the consequence that the Capital Regulations would simply follow U.S. generally accepted accounting principles (“*U.S. GAAP*”) in their treatment of DTAs, or at the least significantly relax the existing limitations.

I. Background

Prior to the Financial Accounting Standards Board’s adoption of its Statement No. 109, “Accounting for Income Taxes” (“*FAS 109*”), which became effective for fiscal years beginning on or after December 15, 1992, U.S. GAAP did not permit the recording of deferred tax assets that are dependent upon future taxable income. FAS 109 changed U.S. GAAP to require the recording of DTAs that are dependent upon future taxable income, but requires the establishment of a valuation allowance, if warranted, to reduce the DTA net of the valuation allowance to an amount that is more likely than not (*i.e.*, a greater than 50% likelihood) to be realized.

Effective April 1, 1995, the Agencies, in response to the changes in the U.S. GAAP treatment of DTAs brought about by FAS 109, amended the Capital

Regulations to include the current limitations on deferred tax assets.³ Prior to those amendments, the Capital Regulations did not include a limitation on DTAs. Those amendments provide that DTAs dependent upon future taxable income, net of the valuation allowance, must be deducted from core capital elements in determining Tier 1 capital to the extent that they exceed the lesser of (i) the amount of those DTAs that the banking organization is expected to realize within one year of the calendar quarter-end date, based on its projections of future taxable income for that year, or (ii) 10% of Tier 1 capital.

We believe this is an appropriate time for the Agencies to revisit the treatment of DTAs in the Capital Regulations for two reasons, as follows:

First, the credit and liquidity crises of the last several years have only heightened the critical importance of regulatory capital as a measure of banking organizations' financial health and strength. The mere passage of time – 17 years since the adoption of FAS 109 and 14 years since the adoption by the Agencies of related amendments to their Capital Regulations limiting DTAs – warrants a re-evaluation of whether the limitations on DTAs are in fact sensible and appropriate. Measures of regulatory capital are not only a critical tool for the Agencies in their supervision of banking organizations; they are also a critical measure monitored by the investor and analyst communities, with distortions to regulatory capital having the potential to likewise distort the perceptions by those communities of the financial health and stability of banking organizations.

Second, the credit and liquidity crises of the last several years inevitably will, and should, lead to a more general re-evaluation of regulatory capital regulations for banking organizations, not only in the United States but

³ The Agencies' proposing and adopting releases appear at 58 Fed. Reg. 8007 (February 11, 1993) and 59 Fed. Reg. 65920 (December 22, 1994), respectively.

internationally. The United States Treasury Department, in its policy statement on capital released on September 3, 2009 entitled “Principles for Reforming the U.S. and International Regulatory Capital Framework for Banking Organizations” (the “*Treasury Policy Statement*”), noted that “the inclusion in regulatory capital of deferred tax assets...should be subject to strict, internationally consistent qualitative and quantitative limits.” We understand that the United States is the most restrictive of the G-10 – i.e., those countries whose banking supervisory authorities participate in the Basel Committee on Banking Supervision – in its disallowance of DTAs as a limitation on capital. Pending the convergence on an international standard as part of that re-evaluation, we urge the Agencies to conform the treatment of DTAs under the Capital Regulations so as to be more in line with international standards.

The disallowance from Tier 1 capital of excess DTAs is not an issue only for larger banking organizations. We anticipate that during the next several years it is likely to be at least as constraining, and perhaps more constraining, for community banks and other smaller banking organizations as the resolution of troubled assets “ripples” through the banking system. That is not, of course, a reason for inappropriately relaxing capital standards, whether with respect to DTAs or other components. It is a reason, however, for revisiting whether the limitations on DTAs in the Capital Regulations continue to be appropriate.

II. Discussion

When the Capital Regulations were amended in 1995 to limit the inclusion of DTAs in Tier 1 capital, the comment letters submitted by the banking industry, including The New York Clearing House Association (as The Clearing House was then known) and the ABA, uniformly opposed the limitation and urged the Agencies to simply follow U.S. GAAP. Some of the considerations bearing upon the appropriateness of the

limitation, both pro and con, are the same now as those discussed in 1993/1994; some are different. We have set forth below the considerations that cause us to believe that the limitation decided upon by the Agencies in 1995 should now be eliminated or relaxed.

1. Experience

Banking organizations and their independent accountants have had substantial experience since 1995 with DTAs that are dependent on future taxable income (and, accordingly, the appropriateness of their inclusion in Tier 1 capital), including actual practice in evaluating the need (or lack of a need) for the establishment of valuation allowances under FAS 109 through several credit cycles. We believe experience shows that valuation allowances have been conservatively established and that DTAs net of any valuation allowance that appear on banking organizations' balance sheets under U.S. GAAP are not lesser assets (in terms of realizability) that should be subject to a risk-based capital limitation.

In preliminary discussions that The Clearing House and the ABA have had with the Agencies during the past several months, including meetings with representatives of the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency on May 19, 2009, the Agencies understandably have questioned whether empirical evidence supports that conclusion. An empirical determination of whether DTAs net of any valuation allowance, as reflected on a banking organization's balance sheet as of a particular date, were in fact usable or realizable (and in fact used or realized) against future taxable income, and how quickly, necessarily requires access to granular detail. The granular detail likely would include managements' and accountants' work papers, as to the precise content – by type and transaction – of those DTAs and any related valuation allowances as of a date, followed by a “tracking” of whether and how they were used or realized. That information is not available from public sources, whether periodic reports (including financial statements

included with such reports) filed by public companies with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the “1934 Act”), financial information filed by bank holding companies on Form FR Y-9C, or Call Reports filed by banks with the Agencies.

In the absence of more granular data that is not publicly available, the Participating Clearing House Members and the ABA nevertheless have assembled the information in the tables included as Annex 1⁴ from the financial statements and related tax footnotes included in annual reports filed under the 1934 Act for 17 bank holding companies. For each of the 17 bank holding companies, we have included two tables. The first table includes data from 1993 through 2008 and shows: (i) in columns (1) through (3), the bank holding company’s DTA (i.e., the DTA net of the deferred tax liability) before the valuation allowance, the valuation allowance, and the DTA after the valuation allowance (the “*Net DTA*”); (ii) in columns (4) through (7), information with respect to current tax expense for the relevant years and whether the future year’s or years’ tax expense equaled or exceeded the current year’s Net DTA within one, two or three years; (iii) in columns (8) through (10), the DTA arising from the loan loss reserve for the current year, the utilization or realization of DTAs by the tax deduction for net write-offs in the current year, and the number of future years that were required for the net write-offs in those future years to equal or exceed the loan loss reserve for the current year; and (iv) in column (11), the net operating loss and tax credit carryforward as of the end of the current year. We focused on comparing the loan loss reserve DTA to tax

⁴ The 17 bank holding companies are the holding companies for the six Participating Clearing House Members and six other bank holding companies for which they prepared tables – American Express Company, Fifth Third Bancorp, First Horizon National Corporation, State Street Corporation, SunTrust Banks, Inc. and Zions Corporation. Tables were prepared by the ABA for five bank holding companies which, in accordance with ABA practice, are not identified on the charts but generally are smaller institutions, with the total asset size for each bank holding company as of June 30, 2009 indicated at the top of the first page of the two-page table for such bank holding company.

deductions for net write-offs in columns (8) through (10) because the temporary difference between the U.S. GAAP and the income tax treatments of credit expense is among the items likely to be the most significant during periods of credit stress.

The second table for each bank holding company provides a historical perspective for that bank holding company, setting forth Tier 1 capital before any DTAs disallowed by the Capital Regulations, total risk-weighted assets, total assets, the Net DTA as a percentage of Tier 1 capital, DTAs before deducting deferred tax liabilities or the valuation allowance (“*Gross DTAs*”) as a percentage of risk-weighted assets, and Gross DTAs as a percentage of total assets.

The tables show that, since the adoption of FAS 109:

(a) For those bank holding companies that had Net DTAs,⁵ current tax expense (reflecting the presence of current taxable income) generally has aggregated to an amount exceeding a prior year’s Net DTA very quickly — generally within one year.

(b) For the larger bank holding companies, the year-end DTA related to loan loss reserves generally equaled the actual tax deductions for net write-offs within the subsequent two to three years, but for the smaller bank holding companies the period has been somewhat longer (in one case as many as nine years).

(c) Predictably the DTA related to loan loss reserves (in column (8) of the first table) as well as the tax deduction for net write-offs rose substantially in 2008. It is important to note that both items increased, the implication being that

⁵ A number of the bank holding companies had net deferred tax liabilities instead of net DTAs for many of the years in the period, including the down years in the credit cycle.

the disparity between the U.S. GAAP and the income tax treatments of credit expense does not necessarily increase during the down period in economic cycles because write-offs occur and tax deductions are realized within a reasonable period after provisions are taken to increase the loan loss reserve.

With respect to how the Agencies might access the more granular data that would be most useful for an empirical analysis, we understand that the Agencies are making inquiry of the major accounting firms, including the “Big Four” (Deloitte & Touche, Ernst & Young, KPMG, and Pricewaterhouse Coopers), concerning their experience as independent accountants’ in auditing financial statements and reviewing clients’ DTAs and the need for related valuation allowances since the adoption of FAS 109. We encourage those discussions. Although banks (including the Participating Clearing House Members) would not generally be willing to share with competitors their own granular data, each of the Participating Clearing House Members would be willing to meet with representatives of the Agencies, along with their independent accountants, to discuss confidentially the details of their individual DTAs and related valuation allowances.

2. Rulemaking by Exception

Rules and regulations, as an objective, should be of general applicability and work without a need for frequent one-off exceptions. During the past year, however, the Federal Reserve on three occasions has accorded DTA capital relief to large banking organizations in connection with acquisitions of troubled institutions: by letter dated December 22, 2008 to PNC Financial Services Group, Inc. in connection with its acquisition of National City Corporation; by letter dated February 20, 2009 to Wells Fargo & Company in connection with its acquisition of Wachovia Corporation; and by letter dated March 30, 2009 to Bank of America Corporation in connection with its acquisition of Merrill Lynch & Co. Incorporated. The need for these three bank holding

companies to seek DTA capital relief, and the Federal Reserve's determination to grant the relief sought, indicate the need for a more comprehensive re-evaluation of the Capital Regulations' treatment of DTAs and the constraint that that treatment can have on acquisitions of troubled entities at a time when acquisitions should be facilitated where possible.

3. Capital Regulations Assume Banking Organizations Are Going Concerns

One of the arguments that the banking industry made in 1993/1994 was that the Agencies' concern with respect to the usability or realizability of DTAs against future taxable income was, although not misplaced, likely overstated given the core premise of the Capital Regulations. The Capital Regulations are premised upon banking organizations as going concerns, not failed entities, and accordingly the concern that there will never be future taxable income against which deferred tax assets could be used or realized should not be the major concern. That premise as applied to DTAs, unlike the scope and application of the Capital Regulations more generally, was rejected in the Agencies' determination to amend the Capital Regulations in 1995. We strongly urge the Agencies to reconsider their view. Moreover, we note that the banking organization failures (or near failures, resulting in forced mergers) in the current financial crisis have for the most part not resulted from periods of losses or low earnings (whether relating to asset quality concerns or otherwise) or even expectations of sustained future periods with no earnings but, instead, from liquidity crises.

4. Loss of DTAs in Mergers and Acquisitions

One of the concerns the Agencies raised at the time of adoption of the existing Capital Regulation limitations was with the possible loss of DTAs dependent upon future taxable income due to the limitations on net operating loss carryforwards under Section 382 of the Internal Revenue Code if a change in control occurs. The

Clearing House and the ABA respectfully submit that that should not be a major concern because the context in which the loss of carryforwards most commonly would arise is in an acquisition subject to regulatory approval. The relevant Agency will have an opportunity to assess capital adequacy at the time in evaluating whether or not to grant approval. In addition, under current purchase accounting rules acquiree DTAs are revalued and closely scrutinized.

III. Proposal

The Clearing House and the ABA believe that the Capital Regulations should simply follow U.S. GAAP in their treatment of DTAs, including those dependent upon future taxable income, and not treat DTAs dependent upon future taxable income as “lesser assets” (or assets the future realization of which is in doubt) that are analogous to intangible assets the value of which can decline or disappear, even for a going concern. Accordingly, we strongly urge the Agencies to commence a formal rulemaking to eliminate the current limitation in the Capital Regulations on DTAs dependent upon future taxable income.

If the result of the Agencies’ own investigation as well as comments made during a formal rulemaking ultimately do not, in the Agencies’ view, support simply conforming the treatment of DTAs in the Capital Regulations to U.S. GAAP, we strongly urge the Agencies to consider other alternatives that do not require a 100% capital charge for excess DTAs. Those alternatives could include one or more of: (i) meaningfully extending the current one-year “look forward” period during which banking organizations currently must expect to realize DTAs that are not disallowed; (ii) meaningfully increasing the 10% of Tier 1 capital limit on DTAs that are not disallowed; or (iii) instead of requiring a deduction in calculating Tier 1 capital of 100% of DTAs dependent upon future taxable income that exceed the more restrictive threshold, require a deduction of 50% of such excess DTAs.

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of Currency
Office of Thrift Supervision

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The Clearing House and the ABA would be pleased to discuss with the Agencies the enclosed charts and the views expressed in this letter. Please direct any questions to Joseph R. Alexander, Senior Vice President and Senior Counsel of The Clearing House, 212-612-9234, and Fran Mordi, Vice President and Senior Tax Counsel of the ABA, 202-663-5317.

Very truly yours,

The Clearing House Association L.L.C

Handwritten signature of Joseph R. Alexander in black ink.

Joseph R. Alexander
Senior Vice President
and Senior Counsel

Very truly yours,

American Bankers Association

Handwritten signature of Robert R. Davis in black ink.

Robert R. Davis
Executive Vice President

American Express Company
Deferred Tax Assets Historical Perspective
1993-2008 (\$ in millions)

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforwards
1993	1,186	45	1,141	NA	52.23%	100.00%	100.00%	229	NA	2	-
1994	1,459	45	1,414	596	46.25%	100.00%	100.00%	191	159	2	-
1995	755	45	710	654	100.00%	100.00%	100.00%	211	165	1	-
1996	1,155	45	1,110	846	74.23%	100.00%	100.00%	210	231	1	-
1997	1,203	45	1,158	824	76.25%	100.00%	100.00%	247	245	1	-
1998	1,241	-	1,241	883	57.70%	100.00%	100.00%	284	371	1	-
1999	1,435	-	1,435	716	84.25%	100.00%	100.00%	264	312	1	-
2000	1,477	-	1,477	1,209	51.79%	100.00%	100.00%	279	308	1	-
2001	1,951	-	1,951	765	46.28%	82.37%	100.00%	348	426	1	-
2002	1,534	-	1,534	903	45.89%	100.00%	100.00%	429	453	1	-
2003	1,078	-	1,078	704	86.55%	100.00%	100.00%	392	504	1	-
2004	1,042	28	1,014	933	100.00%	100.00%	100.00%	379	429	1	-
2005	1,325	55	1,270	1,346	100.00%	100.00%	100.00%	384	479	1	-
2006	1,691	51	1,640	1,536	100.00%	100.00%	N/A	410	507	1	-
2007	2,471	60	2,411	2,285	43.92%	N/A	N/A	641	735	1	-
2008	3,539	69	3,470	1,059	N/A	N/A	N/A	900	1,222	N/A	-

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

(1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote

(2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs

(3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))

(4) **Current Tax Expense** - Total current income tax expense for all jurisdictions (a component of total income tax expense) disclosed in the 10K income tax footnote

(5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding one, two, or three years, as applicable, divided by the amount in column (3) for the current year)

(8) **Loan Loss Reserve DTA** - Cardmember lending reserve for losses per Loans footnote, multiplied by the U.S. federal statutory rate of 35%

(9) **DTA utilized by tax deduction for net write-offs** - Cardmember lending write-offs net of recoveries, as set forth in the Loans footnote, multiplied by the U.S. federal statutory rate of 35%

(10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA

(11) **Tax Carryforward DTA** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

Deferred Tax Assets - Credit Card Issuer
Historical Perspective
1993-1998 (in millions)

Relationship to Other Balance Sheet Components						
Year	Tier 1 Capital Before DTA Disallowance	Risk- Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Net DTA % of GAAP Assets
1993	NA	NA	94,132	NA	NA	1.21%
1994	NA	NA	97,006	NA	NA	1.46%
1995	NA	NA	107,405	NA	NA	0.66%
1996	NA	NA	108,512	NA	NA	1.02%
1997	NA	NA	120,003	NA	NA	0.96%
1998	NA	NA	126,933	NA	NA	0.98%
1999	NA	NA	148,517	NA	NA	0.97%
2000	NA	NA	154,523	NA	NA	0.96%
2001	NA	NA	151,100	NA	NA	1.29%
2002	NA	NA	157,253	NA	NA	0.98%
2003	NA	NA	174,547	NA	NA	0.62%
2004	NA	NA	192,638	NA	NA	0.53%
2005	NA	NA	113,960	NA	NA	1.11%
2006	NA	NA	127,853	NA	NA	1.28%
2007	NA	NA	149,743	NA	NA	1.61%
2008	10,087	104,000	126,074	34.40%	4.75%	2.75%

The Bank of New York Mellon Corporation
Deferred Tax Assets
Historical Perspective 1993-2008
(in millions)

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			NOL and Tax Credit Carryforwards
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforward DTA
BNYM											
1993	(667)		(667)	134	-28.34%	-76.76%	-157.12%	532	N/A	4	-
1994	(896)		(896)	189	-36.05%	-95.87%	-140.29%	508	142	5	-
1995	(1,217)		(1,217)	323	-44.04%	-76.75%	-112.82%	321	151	2	-
1996	(1,174)		(1,174)	536	-33.90%	-71.29%	-126.41%	361	182	5	-
1997	(1,536)		(1,536)	398	-28.58%	-70.70%	-89.78%	329	142	5	-
1998	(1,818)		(1,818)	439	-35.59%	-51.71%	-64.91%	317	12	4	-
1999	(2,152)		(2,152)	647	-13.62%	-24.77%	-45.77%	322	55	3	-
2000	(2,789)		(2,789)	293	-8.61%	-24.81%	-28.65%	321	34	2	9
2001	(3,164)		(3,164)	240	-14.29%	-17.67%	-24.12%	363	150	6	4
2002	(3,053)		(3,053)	452	-3.50%	-10.19%	-32.79%	345	188	N/A	256
2003	(3,250)		(3,250)	107	-6.28%	-27.51%	-36.62%	334	73	N/A	263
2004	(3,434)		(3,434)	204	-20.09%	-28.71%	-62.09%	299	21	N/A	515
2005	(3,108)		(3,108)	690	-9.52%	-46.40%	-103.15%	251	60	N/A	675
2006	(3,472)		(3,472)	296	-33.01%	-83.81%	N/A	201	5	N/A	609
Post-Merge with Mellon											
2007	(4,016)		(4,016)	1,146	-43.92%	N/A	N/A	221	25	N/A	889
2008	(64)		(64)	1,764	N/A	N/A	N/A	224	29	N/A	189

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

- (1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote
- (2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs
- (3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))
- (4) **Current Tax Expense** - Total current income tax expense for all jurisdictions (a component of total income tax expense) disclosed in the 10K income tax footnote
- (5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding year(s))
- (8) **Loan Loss Reserve DTA** - Line item in DTA table of 10K income tax footnote
- (9) **DTA utilized by tax deduction for net write-offs** - Consumer and Commercial write-offs net of recoveries, as set forth in the Allowance for Credit Losses 10K footnote, multiplied by the U.S. federal statutory rate
- (10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA
- (11) **Tax Carryforward DTA** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

The Bank of New York Mellon Corporation
Deferred Tax Assets
Historical Perspective 1993-2008
(in millions)

	Relationship to Other Balance Sheet Components					
Year	Tier 1 Capital Before DTA Disallowance	Risk-Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
BNYM						
1993	3,755	42,329	45,546	-17.76%	-1.58%	-1.46%
1994	4,024	47,609	48,879	-22.27%	-1.88%	-1.83%
1995	4,502	53,492	53,720	-27.03%	-2.28%	-2.27%
1996	4,613	55,340	55,765	-25.45%	-2.12%	-2.11%
1997	4,507	56,912	59,961	-34.08%	-2.70%	-2.56%
1998	4,850	61,503	63,503	-37.48%	-2.96%	-2.86%
1999	4,961	66,055	74,756	-43.38%	-3.26%	-2.88%
2000	5,623	65,414	77,114	-49.60%	-4.26%	-3.62%
2001	5,616	69,277	81,025	-56.34%	-4.57%	-3.90%
2002	5,028	66,305	77,564	-60.72%	-4.60%	-3.94%
2003	5,362	72,076	92,397	-60.61%	-4.51%	-3.52%
2004	6,118	73,661	94,529	-56.13%	-4.66%	-3.63%
2005	6,643	79,282	102,118	-46.79%	-3.92%	-3.04%
2006	6,350	77,567	103,370	-54.68%	-4.48%	-3.36%
Post-Merge with Mellon						
2007	11,259	120,865	197,656	-35.67%	-0.05%	-0.03%
2008	15,402	115,811	237,512	-0.42%	0.00%	0.00%

Citigroup
Deferred Tax Assets Historical Perspective
1993-2008 (\$ in Millions)

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforwards
Citicorp											
1993	1,899	1,120	779	N/A	100.00%	100.00%	100.00%	1,801	NA	4	300
1994	1,467	511	956	1,230	100.00%	100.00%	100.00%	1,996	400	3	422
1995	1,516	468	1,048	1,970	100.00%	100.00%	100.00%	2,056	592	3	353
1996	1,189	402	787	3,492	100.00%	100.00%	100.00%	2,127	685	2	280
1997	2,124	324	1,800	5,263	100.00%	100.00%	100.00%	2,205	724	2	316
Post-Merge with Travelers											
1998	5,415	394	5,021	4,117	100.00%	100.00%	100.00%	2,327	1,420	2	256
1999	5,070	314	4,756	5,932	100.00%	100.00%	100.00%	3,003	1,639	2	311
2000	4,475	220	4,255	5,657	100.00%	100.00%	100.00%	2,981	1,818	2	293
2001	4,080	200	3,880	6,200	100.00%	100.00%	100.00%	4,197	2,460	2	290
2002	2,359	212	2,147	7,202	100.00%	100.00%	100.00%	3,931	3,151	2	223
2003	949	320	629	7,030	100.00%	100.00%	100.00%	3,351	3,068	2	289
2004	1,366	16	1,350	7,673	100.00%	100.00%	100.00%	2,893	3,010	1	16
2005	3,578	16	3,562	9,259	100.00%	100.00%	100.00%	2,597	2,942	2	16
2006	4,687	-	4,687	7,647	30.51%	39.36%	N/A	2,497	2,401	1	-
2007	13,577	-	13,577	1,430	3.06%	N/A	N/A	5,977	3,474	1	4,644
2008	44,469	-	44,469	415	N/A	N/A	N/A	11,242	6,657	N/A	18,424

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

(1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote

(2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs

(3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))

(4) **Current Tax Expense** - Total current income tax expense for all jurisdictions (a component of total income tax expense) disclosed in the 10K income tax footnote

(5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding one, two, or three years, as applicable, divided by the amount in column (3) for the current year)

(8) **Loan Loss Reserve DTA** - Line item in DTA table of 10K income tax footnote

(9) **DTA utilized by tax deduction for net write-offs** - Consumer and Commercial write-offs net of recoveries, as set forth in the Allowance for Credit Losses 10K footnote, multiplied by the U.S. federal statutory rate of 35%

(10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA

(11) **Tax Carryforward DTA** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

Citigroup
Deferred Tax Assets Historical Perspective
1993-2008 (\$ in Millions)

Relationship to Other Balance Sheet Components						
Year	Tier 1 Capital Before DTA Disallowance	Risk- Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
Citicorp						
1993	13,388	202,273	216,574	5.82%	1.88%	1.75%
1994	16,919	216,856	250,489	5.65%	1.77%	1.53%
1995	18,915	224,915	256,853	5.54%	1.67%	1.46%
1996	19,796	236,073	281,018	3.98%	1.52%	1.27%
1997	21,096	252,999	310,897	8.53%	1.71%	1.39%
Post-Merge with Travelers						
1998	41,777	481,208	668,641	12.02%	1.97%	1.42%
1999	51,604	581,858	795,584	9.22%	1.92%	1.40%
2000	54,498	650,351	902,210	7.81%	1.69%	1.22%
2001	58,448	694,035	1,051,450	6.64%	1.53%	1.01%
2002	59,012	696,339	1,097,590	3.64%	1.35%	0.86%
2003	66,871	750,293	1,264,032	0.94%	1.25%	0.74%
2004	74,415	851,563	1,484,101	1.81%	1.37%	0.78%
2005	77,824	885,472	1,494,037	4.58%	1.40%	0.83%
2006	90,899	1,057,872	1,884,318	5.16%	1.37%	0.77%
2007	89,226	1,253,321	2,187,480	15.22%	1.81%	1.04%
2008	142,278	996,247	1,938,470	31.26%	5.23%	2.69%

FIFTH THIRD BANCORP
Deferred Tax Assets Historical Perspective 1993-2008 (in millions)

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforwards
Fifth Third Bank											
1993	(76)	0	(76)	75	#DIV/0!	#DIV/0!	#DIV/0!	44	9	4	-
1994	(86)	0	(86)	76	N/A	N/A	N/A	54	6	4	-
1995	(185)	0	(185)	78	N/A	N/A	N/A	58	11	3	-
1996	(260)	0	(260)	90	N/A	N/A	N/A	64	21	3	-
1997	(378)	0	(378)	125	N/A	N/A	N/A	67	24	2	-
1998	(454)	0	(454)	166	N/A	N/A	N/A	89	34	3	-
1999	(524)	0	(524)	104	N/A	N/A	N/A	125	39	3	-
2000	(984)	0	(984)	92	N/A	N/A	N/A	131	27	2	-
2001	(1,195)	0	(1,195)	296	N/A	N/A	N/A	247	79	3	-
2002	(1,663)	0	(1,663)	486	N/A	N/A	N/A	241	65	3	-
2003	(1,759)	0	(1,759)	528	N/A	N/A	N/A	282	109	3	-
2004	(1,600)	0	(1,600)	725	N/A	N/A	N/A	250	88	3	-
2005	(1,445)	0	(1,445)	675	N/A	N/A	N/A	260	105	2	-
2006	(1,549)	0	(1,549)	464	N/A	N/A	N/A	270	111	2	-
2007	(1,019)	0	(1,019)	639	N/A	N/A	N/A	328	162	1	-
2008	301	0	301	588	0.00%	0.00%	0.00%	975	949	N/A	-

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

(1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote

(2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs

(3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))

(4) **Current Tax Expense** - Total current income tax expense for all jurisdictions (a component of total income tax expense) disclosed in the 10K income tax footnote

(5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding one, two, or three years, as applicable)

(8) **Loan Loss Reserve DTA** - Line item in DTA table of 10K income tax footnote

(9) **DTA utilized by tax deduction for net write-offs** - Consumer and Commercial write-offs net of recoveries, as set forth in the Allowance for Credit Losses 10K footnote, multiplied by the U.S. federal statutory rate of 35%

(10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA

(11) **Tax Carryforward DTA** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

Deferred Tax Assets Historical Perspective 1993-2008 (in millions)

Year	Relationship to Other Balance Sheet Components					
	Tier 1 Capital Before DTA Disallowance	Risk- Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
Fifth Third Bank						
1993	N/AV	N/AV	11,966	N/AV	N/AV	-0.38%
1994	N/AV	N/AV	14,957	N/AV	N/AV	-0.55%
1995	2,092	14,599	17,053	-8.84%	-0.40%	-0.34%
1996	1,840	16,183	20,549	-14.13%	-0.40%	-0.31%
1997	2,081	17,213	21,375	-18.16%	-0.39%	-0.31%
1998	2,925	24,194	28,922	-15.52%	-0.37%	-0.31%
1999	4,240	27,462	41,589	-12.37%	-0.91%	-0.60%
2000	5,387	36,500	45,857	-18.26%	-0.36%	-0.29%
2001	7,352	59,480	71,026	-16.25%	-0.42%	-0.35%
2002	7,647	65,471	80,894	-21.74%	-0.37%	-0.30%
2003	8,168	74,689	91,143	-21.54%	-0.42%	-0.34%
2004	8,522	82,633	94,456	-18.77%	-0.92%	-0.81%
2005	8,209	97,994	105,225	-17.60%	-0.91%	-0.85%
2006	8,625	102,823	100,669	-17.96%	-0.74%	-0.75%
2007	8,924	115,529	110,962	-11.42%	-0.75%	-0.78%
2008	11,924	112,570	119,764	2.52%	-1.45%	-1.37%

First Horizon National Corporation
Deferred Tax Assets Historical Perspective 1993-2008
(\$ in Millions)

	Deferred Tax Disclosures			Current Tax Expense/DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforwards
First Tennessee National Corporation											
1993	30	6	24	68	100.00%	100.00%	100.00%	43	10	5	-
1994	-	8	-	65	-	-	-	-	6	-	-
1995	(17)	-	(17)	55	-	-	-	36	7	3	7
1996	(52)	-	(52)	63	-	-	-	51	11	4	7
1997	-	-	-	72	-	-	-	-	15	-	-
1998	(188)	-	(188)	43	-	-	-	66	13	3	4
1999	(248)	-	(248)	50	-	-	-	67	18	3	5
2000	-	-	-	-	-	-	-	-	21	-	-
2001	-	-	-	-	-	-	-	-	28	-	-
2002	-	-	-	139	-	-	-	-	34	-	-
2003	(310)	-	(310)	132	-	-	-	69	24	4	-
First Horizon National Corporation											
2004	(350)	-	(350)	158	-	-	-	67	15	3	-
2005	(328)	-	(328)	154	-	-	-	74	13	3	-
2006	(410)	-	(410)	(15)	-	-	-	81	19	2	-
2007	(237)	-	(237)	75	-	-	-	143	46	1	IMMATERIAL
2008	251	-	251	255	-	-	-	335	200	-	IMMATERIAL

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

(1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote

(2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs

(3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))

(4) **Current Tax Expense** - Total current income tax expense for all jurisdictions (a component of total income tax expense) disclosed in the 10K income tax footnote

(5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding one, two, or three years, as applicable, divided by the amount in column (3) for the current year)

(8) **Loan Loss Reserve DTA** - Line item in DTA table of 10K income tax footnote

(9) **DTA utilized by tax deduction for net write-offs** - Consumer and Commercial write-offs net of recoveries, as set forth in the Allowance for Credit Losses 10K footnote, multiplied by the U.S. federal statutory rate of 35%

(10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA

(11) **NOL and Tax Credit Carryforwards** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

First Horizon National Corporation
Deferred Tax Assets Historical Perspective 1993-2008
(\$ in Millions)

	Relationship to Other Balance Sheet Components					
Year	Tier 1 Capital Before DTA Disallowance	Risk-Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
First Tennessee National Corporation						
1993	617	6,422	9,609	3.93%	0.78%	0.52%
1994	-	-	10,933	-	-	-
1995	764	8,901	12,077	-	0.52%	0.39%
1996	857	9,520	13,059	-	0.66%	0.48%
1997	-	-	-	-	-	-
1998	1,038	13,229	18,734	-	0.62%	0.43%
1999	1,218	13,889	18,373	-	0.72%	0.54%
2000	-	-	-	-	-	-
2001	-	-	-	-	-	-
2002	-	-	-	-	-	-
2003	1,754	19,028	24,507	-	0.76%	0.59%
First Horizon National Corporation						
2004	2,080	23,747	29,772	-	0.60%	0.48%
2005	2,524	29,115	36,579	-	0.69%	0.55%
2006	2,696	30,398	37,918	-	0.77%	0.62%
2007	2,460	30,290	37,015	-	0.99%	0.81%
2008	3,784	25,177	31,022	6.63%	1.96%	1.59%

HSBC USA, Inc. - Deferred Tax Assets
Historical Perspective
1993-2008 (\$ in millions)

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforwards
Marine Midland Banks, Inc.											
1993	223	183	40	22	100.00%	100.00%	100.00%	135	100	2	44
1994	447	407	40	126	100.00%	100.00%	100.00%	226	57	4	116
HSBC Americas, Inc.											
1995	392	304	88	116	100.00%	100.00%	100.00%	175	80	4	120
1996	305	250	55	128	100.00%	100.00%	100.00%	158	45	4	94
1997	171	131	40	177	100.00%	100.00%	100.00%	141	48	4	-
1998	87	28	59	266	100.00%	100.00%	100.00%	123	38	3	-
HSBC USA, Inc.											
1999	149	28	121	299	100.00%	100.00%	100.00%	220	35	3	-
2000	120	28	92	256	100.00%	100.00%	100.00%	182	84	3	-
2001	328	-	328	470	-0.61%	100.00%	100.00%	198	83	3	-
2002	(209)	-	(209)	(2)	-209.09%	-506.70%	-784.69%	178	72	3	-
2003	(268)	-	(268)	437	-232.09%	-448.88%	-648.51%	176	67	2	-
2004	(274)	-	(274)	622	-212.04%	-407.30%	-541.97%	308	28	2	-
2005	2	-	2	581	100.00%	100.00%	100.00%	322	216	2	-
2006	101	-	101	535	100.00%	41.58%	N/A	296	267	2	-
2007	582	7	575	369	-56.87%	N/A	N/A	524	352	1	6
2008	1,481	99	1,382	(327)	N/A	N/A	N/A	886	546	N/A	46

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

(1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote

(2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs

(3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))

(4) **Current Tax Expense** - Total current income tax expense for all jurisdictions (a component of total income tax expense) disclosed in the 10K income tax footnote

(5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding one, two, or three years, as applicable, divided by the amount in column (3) for the current year)

(8) **Loan Loss Reserve DTA** - Line item in DTA table of 10K income tax footnote

(9) **DTA utilized by tax deduction for net write-offs** - Consumer and Commercial write-offs net of recoveries, as set forth in the Allowance for Credit Losses 10K footnote, multiplied by the U.S. federal statutory rate of 35%

(10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA

(11) **NOL and Tax Credit Carryforwards** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

HSBC USA, Inc. - Deferred Tax Assets
Historical Perspective
1993-2008 (\$ in millions)

Relationship to Other Balance Sheet Components						
Year	Tier 1 Capital Before DTA Disallowance	Risk- Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
Marine Midland Banks, Inc.						
1993	1,300	13,100	18,065	3.08%	2.38%	1.73%
1994	1,500	13,000	19,120	2.67%	3.92%	2.67%
HSBC Americas, Inc.						
1995	1,600	15,000	20,553	5.50%	3.11%	2.27%
1996	2,000	16,800	23,630	2.75%	2.21%	1.57%
1997	2,000	21,800	31,518	2.00%	1.39%	0.96%
1998	2,200	26,100	33,944	2.68%	1.11%	0.85%
HSBC USA, Inc.						
1999	4,553	51,200	87,253	2.66%	1.34%	0.78%
2000	4,573	54,500	83,035	2.01%	1.00%	0.66%
2001	4,639	55,620	87,114	7.07%	1.59%	1.01%
2002	5,127	54,993	89,426	-4.08%	1.00%	0.61%
2003	5,366	62,945	95,562	-4.99%	0.52%	0.35%
2004	8,983	107,696	141,050	-3.05%	0.49%	0.37%
2005	9,746	118,145	153,859	0.02%	0.53%	0.41%
2006	10,577	123,262	164,817	0.95%	0.52%	0.39%
2007	9,639	135,339	187,965	5.97%	0.80%	0.58%
2008	11,156	146,878	185,569	12.39%	1.19%	0.94%

JPMorgan Chase
Deferred Tax Assets Historical Perspective 1993-2008
(\$ in Millions)

	Deferred Tax Disclosures			Current Tax Expense/DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforward
Chase											
1993	270	120	150	974	100.00%	100.00%	100.00%	1,446	916	4	-
1994	1,273	144	1,129	1,102	100.00%	100.00%	100.00%	983	512	4	-
1995	1,212	115	1,097	1,877	100.00%	100.00%	100.00%	933	294	3	-
1996	1,331	98	1,233	1,732	100.00%	100.00%	100.00%	911	314	3	-
1997	641	90	551	1,653	100.00%	100.00%	100.00%	930	281	2	-
1998	(308)	40	(348)	1,717	N/A	N/A	N/A	1,038	496	2	-
1999	58	45	13	1,848	100.00%	100.00%	100.00%	1,022	607	2	-
Post-Merger with JPMorgan											
2000	1,528	165	1,363	3,556	100.00%	100.00%	100.00%	1,058	490	2	225
2001	2,406	165	2,241	1,485	0.00%	83.94%	100.00%	1,502	817	2	100
2002	(294)	165	(459)	(780)	N/A	N/A	N/A	1,675	1,287	2	25
2003	(872)	160	(1,032)	1,881	N/A	N/A	N/A	1,410	795	2	23
2004	(794)	150	(944)	2,555	N/A	N/A	N/A	2,739	1,085	3	-
2005	1,335	110	1,225	5,523	100.00%	100.00%	100.00%	2,745	1,337	3	-
2006	3,539	210	3,329	8,619	100.00%	100.00%	N/A	2,910	1,065	2	-
2007	2,726	220	2,506	6,133	68.28%	N/A	N/A	3,800	1,588	N/A	-
2008	14,269	1,266	13,003	1,711	N/A	N/A	N/A	8,029	3,442	N/A	1,383

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

- (1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote
- (2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs
- (3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))
- (4) **Current Tax Expense** - Total current income tax expense for all jurisdictions (a component of total income tax expense) disclosed in the 10K income tax footnote
- (5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding one, two, or three years, as applicable, divided by the amount in column (3) for the current year)
- (8) **Loan Loss Reserve DTA** - Line item in DTA table of 10K income tax footnote
- (9) **DTA utilized by tax deduction for net write-offs** - Consumer and Commercial write-offs net of recoveries, as set forth in the Allowance for Credit Losses 10K footnote, multiplied by the U.S. federal statutory rate of 35%
- (10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA
- (11) **NOL and Tax Credit Carryforwards** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

JPMorgan Chase
Deferred Tax Assets Historical Perspective 1993-2008
(\$ in Millions)

Relationship to Other Balance Sheet Components						
Year	Tier 1 Capital Before DTA Disallowance	Risk- Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
Chase						
1993	7,528	89,192	102,103	1.99%	1.37%	1.20%
1994	17,317	215,105	285,383	6.52%	1.41%	1.06%
1995	18,976	230,887	303,989	5.78%	1.15%	0.87%
1996	20,315	249,215	336,099	6.07%	1.18%	0.87%
1997	22,594	286,163	365,521	2.44%	0.99%	0.77%
1998	24,116	289,367	365,875	N/A	1.04%	0.82%
1999	25,453	301,501	406,105	0.05%	1.07%	0.80%
Post-Merger with JPMorgan						
2000	37,581	444,328	715,348	3.63%	1.20%	0.75%
2001	37,713	455,123	693,575	5.94%	1.35%	0.88%
2002	37,570	455,948	758,800	N/A	1.23%	0.74%
2003	43,167	507,456	770,912	N/A	1.10%	0.72%
2004	68,621	791,373	1,157,248	N/A	1.25%	0.85%
2005	72,474	850,643	1,198,942	1.69%	1.30%	0.92%
2006	81,055	935,909	1,351,520	4.11%	1.35%	0.93%
2007	88,746	1,051,879	1,562,147	2.82%	1.06%	0.71%
2008	136,104	1,244,659	2,175,052	9.55%	1.85%	1.06%

State Street Corporation - Deferred Tax Assets

Historical Perspective

1993-2008 (\$ in millions)

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforwards
State Street Boston Corporation											
1993	(115)	3	(118)	58	-62.71%	-124.58%	-190.68%	23	6	9	12
1994	(95)	4	(99)	74	-73.74%	-152.53%	-283.84%	26	2	N/A	30
1995	(243)	10	(253)	73	-30.83%	-82.21%	-117.39%	27	1	N/A	21
1996	(325)	11	(336)	78	-38.69%	-65.18%	-123.81%	31	(1)	N/A	18
State Street Corporation											
1997	(391)	5	(396)	130	-22.47%	-72.22%	-109.85%	36	2	N/A	5
1998	(511)	3	(514)	89	-38.33%	-67.32%	-92.80%	36	6	N/A	10
1999	(603)	3	(606)	197	-24.59%	-46.20%	-82.18%	21	5	N/A	31
2000	(780)	3	(783)	149	-16.73%	-44.57%	-65.13%	23	-	N/A	86
2001	(957)	3	(960)	131	-22.71%	-39.48%	-61.88%	23	3	N/A	82
2002	(1,277)	3	(1,280)	218	-12.58%	-29.38%	-59.38%	24	-	N/A	41
2003	(1,526)	3	(1,529)	161	-14.06%	-39.18%	-83.32%	24	-	N/A	61
2004	(1,590)	1	(1,591)	215	-24.14%	-66.56%	-122.82%	11	-	N/A	69
2005	(1,508)	1	(1,509)	384	-44.73%	-104.04%	-214.91%	11	-	N/A	1
2006	(1,514)	-	(1,514)	675	-59.11%	-169.62%	N/A	11	-	N/A	-
2007	(828)	2	(830)	895	-201.57%	N/A	N/A	11	-	N/A	-
2008	2,804	6	2,798	1,673	N/A	N/A	N/A	11	-	N/A	-

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

(1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote

(2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs

(3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))

(4) **Current Tax Expense** - Total current income tax expense for all jurisdictions (a component of total income tax expense) disclosed in the 10K income tax footnote

(5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding one, two, or three years, as applicable, divided by the amount in column (3) for the current year)

(8) **Loan Loss Reserve DTA** - Line item in DTA table of 10K income tax footnote

(9) **DTA utilized by tax deduction for net write-offs** - Consumer and Commercial write-offs net of recoveries, as set forth in the Allowance for Credit Losses 10K footnote, multiplied by the U.S. federal statutory rate of 35%

(10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA

(11) **NOL and Tax Credit Carryforwards** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

State Street Corporation - Deferred Tax Assets
Historical Perspective
1993-2008 (\$ in millions)

Relationship to Other Balance Sheet Components						
Year	Tier 1 Capital Before DTA Disallowance	Risk- Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
State Street Boston Corporation						
1993	1,070	8,842	18,720	-11.03%	0.80%	0.38%
1994	1,354	9,935	22,547	-7.31%	1.01%	0.44%
1995	1,507	10,748	25,785	-16.79%	0.97%	0.40%
1996	1,818	13,560	31,524	-18.48%	0.91%	0.39%
State Street Corporation						
1997	2,259	16,472	37,975	-17.53%	0.97%	0.42%
1998	2,725	19,266	47,082	-18.86%	0.87%	0.36%
1999	3,119	21,219	60,896	-19.43%	1.07%	0.37%
2000	3,611	24,941	69,298	-21.68%	1.05%	0.38%
2001	3,795	27,942	69,896	-25.30%	1.12%	0.45%
2002	4,727	27,649	85,794	-27.08%	0.81%	0.26%
2003	4,822	34,502	87,534	-31.71%	0.70%	0.27%
2004	5,233	39,400	94,040	-30.40%	0.65%	0.27%
2005	5,511	47,235	97,968	-27.38%	0.69%	0.33%
2006	6,473	47,213	107,353	-23.39%	0.99%	0.44%
2007	7,131	63,537	142,543	-11.64%	1.94%	0.86%
2008	14,090	69,585	173,631	19.86%	6.08%	2.44%

SunTrust Banks Inc
Deferred Tax Assets Historical Perspective
1993-2008 (\$ in Millions)

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforwards
SUNTRUST BANKS INC											
1993	(396)	-	(396)	238	N/A	N/A	N/A	211	N/A	4	-
1994	(247)	-	(247)	264	N/A	N/A	N/A	244	36	4	-
1995	(607)	-	(607)	280	N/A	N/A	N/A	266	45	4	-
1996	(836)	-	(836)	394	N/A	N/A	N/A	242	67	4	-
1997	(1,074)	-	(1,074)	503	N/A	N/A	N/A	349	67	5	-
1998	(1,140)	-	(1,140)	488	N/A	N/A	N/A	354	68	4	-
1999	(1,021)	-	(1,021)	388	N/A	N/A	N/A	316	81	4	-
2000	(1,309)	-	(1,309)	435	N/A	N/A	N/A	305	46	3	-
2001	(1,058)	-	(1,058)	612	N/A	N/A	N/A	325	95	3	-
2002	(1,176)	-	(1,176)	345	N/A	N/A	N/A	321	148	4	-
2003	(1,503)	-	(1,503)	397	N/A	N/A	N/A	343	109	4	-
2004	(1,373)	-	(1,373)	539	N/A	N/A	N/A	399	70	4	28
2005	(1,428)	3	(1,431)	701	N/A	N/A	N/A	379	70	3	28
2006	(1,654)	19	(1,673)	761	N/A	N/A	N/A	387	86	2	63
2007	(1,671)	37	(1,708)	763	N/A	N/A	N/A	474	148	1	89
2008	(961)	41	(1,001)	154	N/A	N/A	N/A	887	548	N/A	149

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

(1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote

(2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs

(3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))

(4) **Current Tax Expense** - Total current income tax expense for all jurisdictions (a component of total income tax expense) disclosed in the 10K income tax footnote

(5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding one, two, or three years, as applicable, divided by the amount in column (3) for the current year)

(8) **Loan Loss Reserve DTA** - Line item in DTA table of 10K income tax footnote

(9) **DTA utilized by tax deduction for net write-offs** - Consumer and Commercial write-offs net of recoveries, as set forth in the Allowance for Credit Losses 10K footnote, multiplied by the U.S. federal statutory rate of 35%

(10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA

(11) **Tax Carryforward DTA** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

SunTrust Banks Inc
Deferred Tax Assets Historical Perspective
1993-2008 (\$ in Millions)

Relationship to Other Balance Sheet Components						
Year	Tier 1 Capital Before DTA Disallowance	Risk- Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
SUNTRUST BANKS INC						
1993	4,088	43,077	59,646	N/A	N/A	N/A
1994	4,192	48,712	62,894	N/A	N/A	N/A
1995	4,497	54,000	68,800	N/A	N/A	N/A
1996	4,921	58,113	75,264	N/A	N/A	N/A
1997	5,587	69,503	82,841	N/A	N/A	N/A
1998	6,587	80,586	93,170	N/A	N/A	N/A
1999	6,580	87,866	95,390	N/A	N/A	N/A
2000	6,851	96,657	103,660	N/A	N/A	N/A
2001	7,994	99,701	104,741	N/A	N/A	N/A
2002	8,106	108,501	117,323	N/A	N/A	N/A
2003	8,930	113,711	125,250	N/A	N/A	N/A
2004	9,784	136,643	158,870	N/A	N/A	N/A
2005	11,080	158,132	179,713	N/A	N/A	N/A
2006	12,525	162,237	182,162	N/A	N/A	N/A
2007	11,425	164,932	179,574	N/A	N/A	N/A
2008	17,614	162,046	189,138	N/A	N/A	N/A

U.S. Bancorp
Deferred Tax Assets Historical Perspective 1993-2008 (in millions)

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforwards
U.S. Bank											
1993	180	20	160	115	100.00%	100.00%	100.00%	151	53	4	66
1994	234	14	220	181	100.00%	100.00%	100.00%	170	37	3	25
1995	222	6	216	261	100.00%	100.00%	100.00%	162	42	2	47
1996	218	2	216	445	100.00%	100.00%	100.00%	186	53	2	22
Post-Merge with First Bank Systems											
1997	108	-	108	515	100.00%	100.00%	100.00%	385	157	3	2
1998	261	-	261	741	100.00%	100.00%	100.00%	382	152	3	1
1999	158	-	158	799	100.00%	100.00%	100.00%	383	199	2	1
2000	13	-	13	825	100.00%	100.00%	100.00%	378	234	1	1
Post-Merge with Firststar											
2001	(556)	17	(573)	1,112	N/A	N/A	N/A	1,044	541	3	24
2002	(1,663)	1	(1,664)	1,418	N/A	N/A	N/A	961	481	3	35
2003	(1,555)	1	(1,556)	1,669	N/A	N/A	N/A	978	438	4	21
2004	(1,898)	1	(1,899)	1,728	N/A	N/A	N/A	924	268	4	9
2005	(1,614)	1	(1,615)	2,383	N/A	N/A	N/A	907	240	3	9
2006	(1,417)	66	(1,483)	2,115	N/A	N/A	N/A	871	190	2	66
2007	(1,213)	66	(1,279)	1,980	N/A	N/A	N/A	879	277	N/A	66
2008	1,169	49	1,120	2,132	0.00%	0.00%	0.00%	1,345	637	N/A	49

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- (11) **Tax Carryforward DTA** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

U.S. Bancorp
Deferred Tax Assets Historical Perspective 1993-2008 (in millions)

Year	Relationship to Other Balance Sheet Components					
	Tier 1 Capital Before DTA Disallowance	Risk- Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
U.S. Bank						
1993	1,971	21,424	26,385	8.12%	1.64%	1.33%
1994	1,902	23,775	26,219	11.57%	1.54%	1.40%
1995	1,989	30,600	33,874	10.87%	1.26%	1.14%
1996	2,355	32,708	36,489	9.17%	1.24%	1.11%
Post-Merge with First Bank Systems						
1997	5,028	67,946	71,295	2.15%	1.02%	0.97%
1998	4,917	76,828	76,438	5.31%	1.03%	1.03%
1999	5,631	82,809	81,530	2.81%	0.96%	0.97%
2000	6,322	89,042	87,336	0.21%	0.81%	0.83%
Post-Merge with Firststar						
2001	12,488	162,182	171,390	-4.59%	0.87%	0.83%
2002	12,606	161,615	180,027	-13.20%	1.01%	0.91%
2003	14,623	160,692	189,286	-10.64%	1.05%	0.89%
2004	14,720	171,163	195,104	-12.90%	1.00%	0.87%
2005	15,145	184,695	209,465	-10.66%	1.03%	0.91%
2006	17,036	193,591	219,232	-8.71%	0.92%	0.81%
2007	17,539	211,313	237,615	-7.29%	0.99%	0.88%
2008	24,426	230,434	265,912	4.59%	1.70%	1.47%

Wells Fargo & Company
Deferred Tax Assets Historical Perspective
1993-2008 (\$ in millions)

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforwards
1993	258	-	258	NA	26.36%	100.00%	100.00%	231	NA	3	-
1994	46	-	46	68	100.00%	100.00%	100.00%	226	68	2	-
1995	(187)	-	(187)	537	-225.67%	-593.05%	-593.05%	259	106	2	-
1996	(454)	-	(454)	422	-151.25%	-475.34%	-635.40%	271	134	2	-
1997	(454)	-	(454)	687	-324.16%	-484.25%	-847.61%	344	175	1	-
1998	(177)	-	(177)	1,472	-410.73%	-1342.94%	-2837.29%	1,143	587	3	-
1999	(1,943)	-	(1,943)	727	-84.92%	-221.05%	-367.16%	1,377	381	3	-
2000	(3,297)	-	(3,297)	1,650	-80.22%	-166.33%	-214.16%	1,414	413	3	-
2001	(2,614)	-	(2,614)	2,645	-108.61%	-168.94%	-296.06%	1,429	606	3	-
2002	(2,883)	-	(2,883)	2,839	-54.70%	-169.96%	-276.24%	1,451	586	3	-
2003	(4,517)	-	(4,517)	1,577	-73.57%	-141.40%	-222.65%	1,479	602	3	-
2004	(4,940)	-	(4,940)	3,323	-62.02%	-136.32%	-209.21%	1,430	583	2	-
2005	(5,595)	-	(5,595)	3,064	-65.59%	-129.96%	-170.06%	1,471	799	2	-
2006	(5,985)	-	(5,985)	3,670	-60.17%	-97.66%	N/A	1,430	789	2	-
2007	(4,657)	-	(4,657)	3,601	-48.19%	N/A	N/A	1,977	1,239	1	-
2008	14,837	973	13,864	2,244	N/A	N/A	N/A	7,859	2,744	N/A	520

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

(1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote

(2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs

(3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))

(4) **Current Tax Expense** - Total current income tax expense for all jurisdictions (a component of total income tax expense) disclosed in the 10K income tax footnote

(5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding one, two, or three years, as applicable, divided by the amount in column (3) for the current year)

(8) **Loan Loss Reserve DTA** - Line item in DTA table of 10K income tax footnote

(9) **DTA utilized by tax deduction for net write-offs** - Consumer and Commercial write-offs net of recoveries, as set forth in the Allowance for Credit Losses 10K footnote, multiplied by the U.S. federal statutory rate of 35%

(10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA

(11) **Tax Carryforward DTA** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

Deferred Tax Assets
Historical Perspective
1993-1998 (in millions)

Year	Relationship to Other Balance Sheet Components					
	Tier 1 Capital Before DTA Disallowance	Risk- Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
1993	2,947	30,355	54,665	8.75%	1.77%	0.98%
1994	3,110	31,447	59,316	1.48%	2.06%	1.09%
1995	4,232	52,181	72,134	-4.42%	0.55%	0.40%
1996	5,022	58,196	80,175	-9.04%	1.32%	0.96%
1997	5,797	63,778	88,540	-7.83%	4.06%	2.92%
1998	12,400	153,465	202,475	-1.43%	1.78%	1.35%
1999	13,500	167,286	241,053	-14.39%	1.33%	0.92%
2000	16,096	220,736	272,426	-20.48%	1.01%	0.82%
2001	18,247	260,863	307,569	-14.33%	0.96%	0.81%
2002	21,512	282,882	349,197	-13.40%	0.84%	0.68%
2003	25,704	305,302	387,798	-17.57%	0.70%	0.55%
2004	29,060	345,528	427,849	-17.00%	0.59%	0.48%
2005	31,724	383,993	481,741	-17.64%	0.55%	0.44%
2006	36,808	411,333	481,996	-16.26%	0.75%	0.64%
2007	36,674	483,421	575,442	-12.70%	0.90%	0.76%
2008	92,397	1,101,308	1,309,639	15.00%	2.84%	2.39%

Zions Bancorporation
Deferred Tax Assets
Historical Perspective 1993-2008
(in millions)

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			NOL and Tax Credit Carryforwards
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforward DTA
Zions											
1993	19		19	25	100.00%	100.00%	100.00%	25	N/A	6	9
1994	23		23	23	100.00%	100.00%	100.00%	26	2	6	8
1995	13		13	33	100.00%	100.00%	100.00%	26	1	5	5
1996	15		15	48	100.00%	100.00%	100.00%	29	2	4	4
1997	10		10	62	100.00%	100.00%	100.00%	32	4	3	5
1998	49		49	65	93.88%	100.00%	100.00%	78	6	5	4
1999	17		17	46	100.00%	100.00%	100.00%	79	12	4	-
2000	11		11	59	100.00%	100.00%	100.00%	75	17	4	-
2001	(31)		(31)	131	-438.71%	-1051.61%	-1709.68%	100	16	N/A	-
2002	(23)		(23)	136	-826.09%	-1713.04%	-3000.00%	109	25	N/A	-
2003	4		4	190	100.00%	100.00%	100.00%	108	28	N/A	-
2004	42		42	204	100.00%	100.00%	100.00%	110	16	N/A	-
2005	100		100	296	100.00%	100.00%	100.00%	132	10	N/A	-
2006	83		83	308	100.00%	100.00%	N/A	142	(8)	N/A	-
2007	211		211	394	89.10%	N/A	N/A	179	(6)	N/A	-
2008	479		479	188	N/A	N/A	N/A	275	3	N/A	-

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

- (1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote
- (2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs
- (3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))
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- (9) **DTA utilized by tax deduction for net write-offs** - Consumer and Commercial write-offs net of recoveries, as set forth in the Allowance for Credit Losses 10K footnote, multiplied by the U.S. federal statutory rate of 35%
- (10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA
- (11) **Tax Carryforward DTA** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

Zions Bancorporation
Deferred Tax Assets
Historical Perspective 1993-2008
(in millions)

	Relationship to Other Balance Sheet Components					
Year	Tier 1 Capital Before DTA Disallowance	Risk-Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
ZIONS						
1993	N/A	N/A	N/A	N/A	N/A	N/A
1994	N/A	N/A	5,714,000	N/A	N/A	0.00%
1995	N/A	N/A	6,904,000	N/A	N/A	0.00%
1996	N/A	N/A	8,224,000	N/A	N/A	0.00%
1997	757,245	6,556,234	10,869,000	0.00%	0.00%	0.00%
1998	1,046,600	12,459,524	18,049,623	0.00%	0.00%	0.00%
1999	1,260,090	14,584,375	20,281,000	0.00%	0.00%	0.00%
2000	1,368,041	16,037,995	21,939,000	0.00%	0.00%	0.00%
2001	1,576,175	19,105,152	24,304,000	0.00%	0.00%	0.00%
2002	1,974,095	21,318,521	26,566,000	0.00%	0.00%	0.00%
2003	2,258,863	23,979,437	28,558,000	0.00%	0.00%	0.00%
2004	2,558,568	27,362,582	31,470,000	0.00%	0.00%	0.00%
2005	2,830,419	37,636,002	42,780,000	0.00%	0.00%	0.00%
2006	3,437,413	43,069,139	46,970,000	0.00%	0.00%	0.00%
2007	3,596,234	47,506,394	52,947,000	0.01%	0.00%	0.00%
2008	5,269,330	51,559,002	55,093,000	0.01%	0.00%	0.00%

**Deferred Tax Assets
Historical Perspective
1993-2008 (in millions)**

Bank Asset Size: \$2.5 Billion

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL & Tax Credit Carryforwards
1993	831	-	831	2,799	100.00%	100.00%	100.00%	825	NA	4	-
1994	1,919	-	1,919	2,785	100.00%	100.00%	100.00%	1,178	156	3	143
1995	247	-	247	3,270	100.00%	100.00%	100.00%	1,325	247	3	63
Post-Merge with Entity A											
1996	(47)	-	(47)	6,114	N/A	N/A	N/A	2,301	418	5	13
1997	551	-	551	8,232	100.00%	100.00%	100.00%	3,113	692	5	-
1998	636	-	636	8,014	100.00%	100.00%	100.00%	4,079	314	2	-
1999	4,753	-	4,753	7,724	100.00%	100.00%	100.00%	5,114	407	6	-
2000	3,023	-	3,023	5,941	100.00%	100.00%	100.00%	5,467	456	7	-
2001	1,913	-	1,913	7,037	100.00%	100.00%	100.00%	5,993	796	7	-
2002	2,147	-	2,147	8,739	100.00%	100.00%	100.00%	3,931	1,188	6	-
2003	2,446	-	2,446	10,047	100.00%	100.00%	100.00%	7,124	877	5	-
2004	2,745	-	2,745	8,292	100.00%	100.00%	100.00%	7,454	497	4	-
2005	5,411	-	5,411	9,292	100.00%	100.00%	100.00%	8,042	237	3	-
2006	5,359	-	5,359	14,883	100.00%	100.00%	N/A	8,845	375	2	-
2007	18,314	-	18,314	20,000	N/A	N/A	N/A	18,030	1,588	N/A	-
2008	15,258	-	15,258	(11,409)	N/A	N/A	N/A	11,114	8,817	N/A	-

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

- (1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote
- (2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs
- (3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))
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- (5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding one, two, or three years, as applicable, divided by the amount in column (3) for the current year)
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- (10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA
- (11) **Tax Carryforward DTA** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

Deferred Tax Assets
Historical Perspective
1993-1998 (in 000's)

Deferred Tax Disclosures						Relationship to Other Balance Sheet Components					
Year	Gross Deferred Tax Assets	Tax Carryforward DTA	Valuation Allowance	Net Deferred Tax Asset/(Liability)	P+L Exp / (Ben) of V.A. Changes	Tier 1 Capital Before DTA Disallowance	Risk-Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
1993	3,794	-	-	831	-	23,547	185,041	402,165	3.53%	2.05%	0.94%
1994	3,840	143	-	1,919	-	26,772	200,982	451,772	7.17%	1.91%	0.85%
1995	3,760	63	-	247	-	51,193	377,138	516,647	0.48%	1.00%	0.73%
Post merger											
1996	3,577	13	-	(47)	-	66,072	567,920	712,343	-0.07%	0.63%	0.50%
1997	4,319	-	-	551	-	77,098	661,536	1,117,826	0.71%	0.65%	0.39%
1998	9,499	-	-	636	-	111,562	966,508	1,255,423	0.57%	0.98%	0.76%
1999	11,162	-	-	4,753	-	118,397	1,128,086	1,354,687	4.01%	0.99%	0.82%
2000	10,984	-	-	3,023	-	119,600	1,097,697	1,354,961	2.53%	1.00%	0.81%
2001	10,601	-	-	1,913	-	129,802	1,243,219	1,435,701	1.47%	0.85%	0.74%
2002	9,425	-	-	2,147	-	140,095	1,386,843	1,532,327	1.53%	0.68%	0.62%
2003	9,400	-	-	2,446	-	156,116	1,470,601	1,662,882	1.57%	0.64%	0.57%
2004	11,650	-	-	2,745	-	172,366	1,657,013	1,790,919	1.59%	0.70%	0.65%
2005	12,356	-	-	5,411	-	183,935	1,845,649	1,997,138	2.94%	0.67%	0.62%
2006	14,450	-	-	5,359	-	227,165	2,306,935	2,465,372	2.36%	0.63%	0.59%
2007	24,379	-	-	18,314	-	244,165	2,470,097	2,646,614	7.50%	0.99%	0.92%
2008	20,839	-	-	15,258	-	236,601	2,375,375	2,516,140	6.45%	0.88%	0.83%

**Deferred Tax Assets
Historical Perspective
1993-2008 (in thousands)**

Bank Asset Size: \$23 Billion

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL & Tax Credit Carryforwards
1993	9,723	-	9,723	19,034	100.00%	100.00%	100.00%	14,296	1,453	6	-
1994	18,558	-	18,558	23,487	100.00%	100.00%	100.00%	14,467	587	5	-
1995	18,574	-	18,574	27,277	100.00%	100.00%	100.00%	15,115	720	4	-
1997 purchase FF Corp - restated financials.											
1996	41,061	4,024	37,037	57,117	100.00%	100.00%	100.00%	27,891	4,900	6	9,225
1997	68,924	23,965	44,959	63,909	100.00%	100.00%	100.00%	37,218	4,001	6	15,546
1998	57,136	18,866	38,270	75,943	100.00%	100.00%	100.00%	38,792	4,001	6	13,357
1999	87,473	14,930	72,543	72,373	85.24%	100.00%	100.00%	44,655	4,809	7	10,227
2000	71,099	13,198	57,901	61,838	100.00%	100.00%	100.00%	47,895	3,134	7	12,182
2001	4,709	12,163	(7,454)	71,487	N/A	N/A	N/A	53,484	7,083	7	14,998
2002	17,437	12,149	5,288	85,607	100.00%	100.00%	100.00%	67,900	9,921	6	15,323
2003	22,228	7,335	14,893	93,059	100.00%	100.00%	100.00%	72,319	11,106	5	16,716
2004	32,619	8,414	24,205	112,051	100.00%	100.00%	100.00%	77,643	6,047	na	20,589
2005	61,305	10,085	51,220	149,698	100.00%	100.00%	100.00%	84,051	4,431	na	25,924
2006	47,782	7,689	40,093	133,134	100.00%	100.00%	N/A	82,661	6,643	na	23,311
2007	35,013	12,082	22,931	133,442	100.00%	N/A	N/A	81,498	14,144	na	29,337
2008	89,690	25,182	64,508	53,828	N/A	N/A	N/A	108,028	48,038	na	37,249

NOTE: had several smaller pooling of interests in 1996 & 1995

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

- (1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote
- (2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs
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Deferred Tax Assets
Historical Perspective
1993-1998 (in thousands)

Relationship to Other Balance Sheet Components						
Year	Tier 1 Capital Before DTA Disallowance	Risk- Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
1993				N/Available	N/Av	N/Av
1994				N/Av	N/Av	N/Av
1995				N/Av	N/Av	N/Av
1996				N/Av	N/Av	N/Av
1997				N/Av	N/Av	N/Av
1998				N/Av	N/Av	N/Av
1999				N/Av	N/Av	N/Av
2000				N/Av	N/Av	N/Av
2001				N/Av	N/Av	N/Av
2002				N/Av	N/Av	N/Av
2003				N/Av	N/Av	N/Av
2004	1,428,000	14,731,000	20,546,000	0.09%	0.08%	0.06%
2005	1,605,000	16,421,000	22,118,000	0.22%	0.08%	0.06%
2006	1,553,000	16,405,000	20,862,000	0.30%	0.09%	0.07%
2007	1,567,000	17,293,000	21,592,000	0.87%	0.13%	0.10%
2008	2,117,000	17,784,000	24,199,000	2.10%	0.29%	0.22%

**Deferred Tax Assets
Historical Perspective
1993-2008 (in millions)**

Bank Asset Size: \$60 Billion

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL & Tax Credit Carryforwards
1993	17,217	-	17,217	71,072	100.00%	100.00%	100.00%	93,189	1,760	7	-
1994	59,163	-	59,163	73,405	100.00%	100.00%	100.00%	153,961	4,546	9	-
1995	26,949	-	26,949	106,580	100.00%	100.00%	100.00%	161,430	9,257	7	-
1996	22,689	-	22,689	109,711	100.00%	100.00%	100.00%	155,895	20,289	6	-
1997	(14,558)	-	(14,558)	125,107	N/A	N/A	N/A	202,818	13,103	7	
1998	28,082	11,341	16,741	163,962	100.00%	100.00%	100.00%	226,052	9,692	7	
1999	30,121	25,727	4,394	173,428	100.00%	100.00%	100.00%	225,862	25,609	6	
2000	97,392	40,653	56,739	152,948	100.00%	100.00%	100.00%	235,115	21,347	6	14,942
2001	87,048	47,709	39,339	163,124	100.00%	100.00%	100.00%	268,198	40,183	6	6,922
2002	52,873	48,716	4,157	238,265	100.00%	100.00%	100.00%	338,409	44,018	5	-
2003	73,283	43,871	29,412	214,282	100.00%	100.00%	100.00%	349,561	51,841	4	-
2004	116,484	40,228	76,256	317,880	100.00%	100.00%	100.00%	358,110	29,441	4	-
2005	93,575	39,060	54,515	362,898	100.00%	100.00%	100.00%	363,769	39,146	3	-
2006	224,160	73,620	150,540	307,435	100.00%	N/A	N/A	420,610	38,968	2	
2007	266,614	80,167	186,447	213,641	N/A	N/A	N/A	496,191	255,892	1	
2008	697,578	135,711	561,867	(459,525)	N/A	N/A	N/A	1,202,167	1,363,841	N/A	

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(2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs

(3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))

(4) **Current Tax Expense** - Total current income tax expense for all jurisdictions (a component of total income tax expense) disclosed in the 10K income tax footnote

(5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding one, two, or three years, as applicable, divided by the amount in column (3) for the current year)

(8) **Loan Loss Reserve DTA** - Line item in DTA table of 10K income tax footnote

(9) **DTA utilized by tax deduction for net write-offs** - Consumer and Commercial write-offs net of recoveries, as set forth in the Allowance for Credit Losses 10K footnote, multiplied by the U.S. federal statutory rate of 35%

(10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA

(11) **Tax Carryforward DTA** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

Deferred Tax Assets
Historical Perspective
1993-2008 (in millions)

Deferred Tax Disclosures*					Relationship to Other Balance Sheet Components					
Year	Gross Deferred Tax Assets	Tax Carryforward DTA	Valuation Allowance	Net Deferred Tax Asset/(Liability)	Tier 1 Capital Before DTA Disallowance	Risk-Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
1993	60,715	-	-	17,217	731	5,990	7,970	2.35%	1.01%	0.76%
1994	111,383	-		59,163	1,040	9,296	12,613	5.69%	1.20%	883.08%
1995	99,815	-		26,949	1,165	9,899	13,343	2.31%	1.01%	748.06%
1996	107,788	-		22,689	1,362	10,713	14,763	1.67%	1.01%	730.11%
1997	158,838	-		(14,558)	1,736	14,242	19,477	-0.84%	1.12%	815.50%
1998	169,496	-		16,741	2,060	16,120	21,566	0.81%	1.05%	785.93%
1999	222,823	28,586	25,727	4,394	1,993	17,937	24,370	0.22%	1.24%	914.34%
2000	260,018	45,170	40,653	56,739	2,071	20,294	26,078	2.74%	1.28%	997.09%
2001	321,665	53,010	47,709	39,339	2,091	21,554	27,273	1.88%	1.49%	1179.44%
2002	388,116	52,959	48,716	4,157	2,344	26,791	32,933	0.18%	1.45%	1178.50%
2003	363,017	45,833	43,871	29,412	2,538	28,601	34,394	1.16%	1.27%	1055.45%
2004	354,627	23,464	40,228	76,256	2,519	33,948	40,479	3.03%	1.19%	996.29%
2005	403,289	29,821	39,060	54,515	3,046	39,698	46,296	1.79%	1.19%	996.29%
2006	458,443	41,224	73,620	150,540	3,873	49,128	56,269	3.89%	0.93%	814.74%
2007	53,106	43,995	80,167	186,447	5,448	53,325	59,857	3.42%	0.10%	88.72%
2008	981,970	62,900	135,117	561,867	5,820	56,428	62,518	9.65%	1.74%	1570.71%

**Deferred Tax Assets
Historical Perspective
1993-2008 (in millions)**

Bank Asset Size: \$74 Billion

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL & Tax Credit Carryforwards
*1993	151	184	(33)	6	N/A	N/A	N/A	282	87	8	76
*1994	82	-	82	57	N/A	N/A	N/A	235	71	6	79
1995	6	-	6	143	100.00%	100.00%	100.00%	220	21	6	42
1996	(35)	-	(35)	112	100.00%	100.00%	100.00%	195	25	5	-
1997	(93)	-	(93)	179	N/A	N/A	N/A	170	25	4	-
1998	(127)	-	(127)	177	N/A	N/A	N/A	178	12	3	-
1999	(78)	-	(78)	224	N/A	N/A	N/A	184	19	2	-
2000	(137)	-	(137)	208	N/A	N/A	N/A	246	104	8	-
2001	(259)	-	(259)	175	N/A	N/A	N/A	239	92	N/A	-
2002	(374)	-	(374)	209	N/A	N/A	N/A	232	72	N/A	-
2003	(322)	-	(322)	240	N/A	N/A	N/A	218	57	N/A	-
2004	(321)	-	(321)	335	N/A	N/A	N/A	197	9	N/A	-
2005	(364)	-	(364)	291	N/A	N/A	N/A	187	(1)	N/A	-
2006	(319)	-	(319)	229	N/A	N/A	N/A	177	5	N/A	-
2007	(282)	-	(282)	319	N/A	N/A	N/A	199	4	N/A	-
2008	239	-	239	309	N/A	N/A	N/A	355	59	N/A	-

*Sum of Bank and sub

Column / Data Descriptions (All 10K annual data is obtained from the most recent year available to account for prior year restatements)

- (1) **Net Deferred Tax Asset (Liability) Before V.A.** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end before valuation allowance as disclosed in the 10K income tax footnote
- (2) **Valuation Allowance** - Allowance on balance sheet against realization of DTAs
- (3) **Net Deferred Tax Asset (Liability)** - Net FAS 109 deferred tax balance sheet asset (liability) at year-end after valuation allowance (i.e. column (1) minus column (2))
- (4) **Current Tax Expense** - Total current income tax expense for all jurisdictions (a component of total income tax expense) disclosed in the 10K income tax footnote
- (5-7) **% DTA covered by next 1-3 years current tax** - Following year(s) current tax expense divided by the current year net deferred tax asset (liability) (i.e. the sum of the amount(s) in column (4) for the succeeding one, two, or three years, as applicable, divided by the amount in column (3) for the current year)
- (8) **Loan Loss Reserve DTA** - Line item in DTA table of 10K income tax footnote
- (9) **DTA utilized by tax deduction for net write-offs** - Consumer and Commercial write-offs net of recoveries, as set forth in the Allowance for Credit Losses 10K footnote, multiplied by the U.S. federal statutory rate of 35%
- (10) **Years until loan loss DTA is fully utilized** - Amount of subsequent year(s) net write-offs from column (9) that it takes to utilize the current year Loan Loss Reserve DTA
- (11) **Tax Carryforward DTA** - Line item in DTA table of 10K income tax footnote for net operating loss and tax credit carryforwards

Deferred Tax Assets
Historical Perspective
1993-1998 (in millions)

Deferred Tax Disclosures						Relationship to Other Balance Sheet Components					
Year	Gross Deferred Tax Assets	Tax Carryforward DTA	Valuation Allowance	Net Deferred Tax Asset/(Liability)	P+L Exp / (Ben) of V.A. Changes	Tier 1 Capital Before DTA Disallowance	Risk-Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
*1993	441	76	184	(33)	-	1,780	21,571	23,731	N/A	2.04%	1.86%
*1994	396	79	-	82	-	1,987	22,179	24,463	4.13%	1.79%	1.62%
1995	314	42	-	6	-	2,355	25,187	27,547	0.25%	1.25%	1.14%
1996	265	-	-	(35)	-	2,396	26,388	29,234	N/A	1.00%	0.91%
1997	236	-	-	(93)	-	2,587	28,873	30,585	N/A	0.82%	0.77%
1998	232	-	-	(127)	-	2,966	30,768	32,276	N/A	0.75%	0.72%
1999	291	-	-	(78)	-	3,309	33,290	33,685	N/A	0.87%	0.86%
2000	302	-	-	(137)	-	3,471	33,896	35,162	N/A	0.89%	0.86%
2001	297	-	-	(259)	-	3,661	31,918	36,039	N/A	0.93%	0.82%
2002	314	-	-	(374)	-	3,667	32,800	40,170	N/A	0.96%	0.78%
2003	299	-	-	(322)	-	3,748	33,139	42,498	N/A	0.90%	0.70%
2004	298	-	-	(321)	-	3,818	39,320	48,098	N/A	0.76%	0.62%
2005	365	-	-	(364)	-	4,178	45,562	49,416	N/A	0.80%	0.74%
2006	435	-	-	(319)	-	4,334	49,931	52,620	N/A	0.87%	0.83%
2007	535	-	-	(282)	-	4,534	54,627	55,728	N/A	0.98%	0.96%
2008	1,363	-	-	239	-	5,467	62,267	70,121	4.37%	2.19%	1.94%

**Deferred Tax Assets
Historical Perspective
1993-2008 (in millions)**

Bank Asset Size: \$214 Billion

	Deferred Tax Disclosures			Current Tax Expense / DTA Analysis				Loan Loss DTA Realization			Tax Carryforward
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Net Deferred Tax Asset (Liability) Before V.A.	Valuation Allowance (V.A.)	Net Deferred Tax Asset (Liability)	Current Tax Expense	% DTA covered by next year current tax	% DTA covered by next 2 year current tax	% DTA covered by next 3 year current tax	Loan Loss Reserve DTA	DTA utilized by tax deduction for net write-offs	Years until loan loss DTA is fully utilized	NOL and Tax Credit Carryforwards
1994	20	-	20	52	100.00%	100.00%	100.00%	24	7	2	-
1995	9	-	9	64	100.00%	100.00%	100.00%	26	18	2	-
1996	39	-	39	121	100.00%	100.00%	100.00%	42	36	1	-
1997	62	-	62	139	100.00%	100.00%	100.00%	61	69	1	-
1998	115	14	101	245	100.00%	100.00%	100.00%	76	79	1	8
1999	194	21	173	234	100.00%	100.00%	100.00%	117	97	1	15
2000	195	36	159	286	1.89%	100.00%	100.00%	155	187	1	11
2001	(132)	41	(173)	3	N/A	N/A	N/A	107	242	1	36
2002	55	60	(5)	717	N/A	N/A	N/A	442	441	1	39
2003	69	52	17	611	100.00%	100.00%	100.00%	338	576	1	18
2004	67	29	38	819	100.00%	100.00%	100.00%	324	454	1	24
Post-Merge with Entity A											
2005	36	43	(7)	910	N/A	N/A	N/A	451	496	1	11
Post-Merge with Entity B											
2006	23	16	7	1,317	100.00%	100.00%	N/A	697	485	2	22
2007	1,162	21	1,141	1,750	100.00%	N/A	N/A	1,034	686	1	128
2008	2,395	68	2,327	1,154	N/A	N/A	N/A	1,632	1,217	N/A	236

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Deferred Tax Assets
Historical Perspective
1993-1998 (in millions)

Deferred Tax Disclosures						Relationship to Other Balance Sheet Components					
Year	Gross Deferred Tax Assets	Tax Carryforward DTA	Valuation Allowance	Net Deferred Tax Asset/(Liability)	P+L Exp / (Ben) of V.A. Changes	Tier 1 Capital Before DTA Disallowance	Risk-Weighted Assets	Total GAAP Assets	Net DTA % of Tier 1 Capital	Gross DTA % of RWA	Gross DTA % of GAAP Assets
1994	27	-	-	20	-	N/A*	N/A*	250,489			0.01%
1995	29	-	-	9	-	N/A*	N/A*	4,759			0.61%
1996	52	-	-	39	-	N/A*	N/A*	6,468			0.80%
1997	110	-	-	62	-	N/A*	N/A*	7,078			1.55%
1998	188	8	14	101	8	N/A*	N/A*	9,419			2.00%
1999	352	15	21	173	7	N/A*	N/A*	13,336			2.64%
2000	495	11	36	159	15	N/A*	N/A*	18,889			2.62%
2001	618	36	41	(173)	5	N/A*	N/A*	28,184			2.19%
2002	1,117	39	60	(5)	19	N/A*	N/A*	37,382			2.99%
2003	983	18	52	17	(8)	N/A*	N/A*	46,284			2.12%
2004	875	24	29	38	(23)	8,150	48,364	53,747	0.47%	1.81%	1.63%
Post-Merge with Entity A											
2005	1,138	11	43	(7)	6	9,973	75,290	88,701	-0.07%	1.51%	1.28%
Post-Merge with Entity B											
2006	1,607	22	16	7	(24)	12,238	119,733	149,739	0.06%	1.34%	1.07%
2007	2,492	128	21	1,141	(10)	12,410	122,456	150,590	9.19%	2.04%	1.65%
2008	3,553	236	68	2,327	47	16,768	121,380	165,914	13.88%	2.93%	2.14%