MALVERN NATIONAL BANK

Hunter M. Windle
Vice President/Legal Counsel

February 12, 2014

Office of the Comptroller of the Currency
400 7th Street, SW., Suite 3E-218,
Mail Stop 9W-11
Washington, DC 20219
Docket No. OCC-2014-0003; RIN: 1557-AD79
By e-mail: regs.comments@occ.treas.gov

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551
Docket No. R-1480; RIN: 7100 AE-11
By e-mail: regs.comments@federalreserve.gov

Federal Deposit Insurance Corporation
550 17TH Street, NW.
Washington, D.C. 20429
RIN:3064-AE11
By e-mail: comments@fdic.gov

Commodity Futures Trading Commission
Three Lafeyette Centre
1155 21st Street NW.
Washington, DC 20581
RIN: 3038-AD05
By regular mail

Securities and Exchange Commission
100 F Street, NE.
Washington, DC 20549
RIN: 3235-AL52
By e-mail: rule-comments@sec.gov

Re: Treatment of Certain Collateralized Debt Obligations Backed Primarily by Trust Preferred Securities with Regard to Prohibitions and Restrictions on Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds

Dear Sirs and Madams:

I am writing on behalf of Malvern National Bank ("MNB"), a community bank based in Malvern, Arkansas, with approximately $450 million in total assets, in order to comment on the Agencies' interim final rule regarding the above-referenced matter ("interim final rule"). We respectfully contend that the effects of the interim final rule and, therefore, the rule itself are arbitrary and inconsistent with the spirit and intent of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

In 2004 and 2005, MNB purchased collateralized debt obligations ("CDOs") backed by a pool of trust preferred securities ("TruPS"), surplus notes, and secondary market securities issued by small- and medium-sized insurance companies. These CDOs have not resulted in any losses to MNB and have generally performed better than similar securities collateralized by bank-issued TruPS. However, pursuant to the Agencies' final rule implementing section 619 of the Dodd-Frank Act ("final rule") and the interim final rule, MNB has been forced to realize losses of approximately

$400,000 on these securities, an amount equal to approximately 14% of MNB's annual net earnings.

The Dodd-Frank Act was not intended to harm or punish responsible market participants. Of particular relevance, section 171 of the Dodd-Frank Act generally disqualifies financial institutions from treating TruPS as Tier 1 regulatory capitol, yet permits community banks to continue to treat TruPS as Tier 1 regulatory capitol provided that such TruPS were issued prior to May 19, 2010. This exception was clearly made to protect community banks from a rule to which they did not give impetus.

While many community banks used CDOs as a means to avail themselves of TruPS for regulatory capitol purposes, many more, like MNB, purchased CDOs as an investment. By only exempting investments in CDOs that are backed by TruPS covered under section 171 of the Dodd-Frank Act, the interim final rule only addresses the size and nature of the issuer, ignoring the size and nature of the investor. This approach does ensure that the final rule is more superficially consistent with section 171, but it ignores the rationale behind such section and others, creating an arbitrary impact. The interim final rule, like section 171, should exempt all community banks from its negative effects, not just those institutions that were fortunate enough to have purchased CDOs backed by qualifying TruPS collateral.

The Agencies are no doubt aware of the inadvertent and arbitrary effects of the final and interim final rules. Their inaction on this issue is, from my understanding, attributable to the belief that the interim final rule's narrow exemption exhausts the Agencies' legal authority on this matter, and that adoption of a broader exemption could, therefore, subject the Agencies to legal scrutiny or liability, for example, under the Administrative Procedures Act. In light of the arguably extemporaneous adoption of the final and interim final rules, the Agencies' caution is understandable yet, in this case, unfounded. The final and interim final rules are substantially more rigid than the regulation they implement. The Agencies have sufficient authority to adopt a broader, more reasoned exemption. Rather than undermine the Agencies' efforts thus far, a broader exemption would bolster those efforts by making the interim final rule more consistent with the regulation it implements, strengthening the rule's legitimacy and defensibility.

I appreciate the Agencies' responsiveness on this and related matters, and their consideration of this comment. Community banks are an integral part of our financial system, providing it with diversity and stability. They provide financial services and support to small businesses and consumers, creating jobs and promoting development both directly and indirectly. It is imperative that rules and regulations intended to avoid future financial crises do not inadvertently and arbitrarily cause additional crises by harming responsible market participants and those served by them.

Sincerely,

HUNTER M. WINDLE,
Vice President/Legal Counsel

Cc: Honorable Mark Pryor
United States Senate
255 Dirksen Senate Office Building
Washington, D.C. 20510