

### **Recent Regulatory Initiatives Pave Way for New Bank Investors\***

**December 1, 2008**

The announcement on Friday, November 21 of a regulatory first—the approval of a “shelf” or “expandable” charter—is the latest sign that bank regulators wish to encourage new equity investors in the banking market. The Office of the Comptroller of the Currency (OCC) touted the new charter of the Ford Group Bank—which positions the investor group to bid on assets and assume liabilities from the Federal Deposit Insurance Corporation (FDIC) as receiver of failed or failing institutions—as the first of its kind. Three private equity firms plan to invest in the bank holding company that will own the bank. This recent development was preceded by the OCC’s August approval of a small bank acquisition by an investor interested in bidding in future failed bank situations.

The preliminary approval to investors for this national bank charter generates a charter that remains inactive, or “on the shelf,” until such time as the investor group is in a position to acquire a troubled institution. The concept of a shelf charter expands the pool of potential buyers available to buy troubled banks and to bid on troubled institutions through the FDIC’s bid process.

For investors unwilling to take the step into a full-fledged regulatory regimen, the Board of Governors of the Federal Reserve System issued a new policy statement on Equity Investments in Banks and Bank Holding Companies. The statement, issued in September, raised the level of minority equity investment that could avoid a finding that the private equity fund “controlled” the bank or bank holding company. Control of either type of institution requires prior approval by the Federal Reserve, and continuing regulation and supervision of the investor by the Fed.

The FDIC highlighted regulatory interest in attracting new bidders for the deposits and assets of failing banks on November 26, 2008. The FDIC established a new modified bidder qualification process, in which it will issue conditional deposit insurance to qualified investors interested in acquiring deposits, provided the investor has conditional approval for a bank or thrift charter. This step by the FDIC will permit investors to qualify for the FDIC’s failing institutions bidders list.

The new policy statement finds that, generally speaking, a minority investor would not have a controlling influence over a banking organization if the investor owns a combination of voting and nonvoting shares that, when aggregated, represents less than one-third of the total equity of the organization (and less than one-third of any class of voting securities, assuming conversion of all

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convertible nonvoting shares held by the investor), and does not allow the investor to own, hold, or vote 15% or more of any class of voting securities of the organization.

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