FDIC Chairman Sheila Bair's Statement on the Proposed Statement of Policy on Qualification for Failed Bank Acquisition

On May 21, 2009 the FDIC issued a press release stating that we would provide guidance concerning acceptable structures for acquiring failed institutions. This Proposed Policy Statement would provide guidance to private capital investors interested in acquiring or investing in failed banks or thrifts regarding the terms and conditions of the investments or acquisitions.

I am particularly concerned with new owners' ability to support depository institutions with adequate capital, management expertise, and a long term commitment to provide banking services in a safe and sound manner. Obviously, we want to maximize investor interest in failed bank resolutions. On the other hand, we don't want to see these institutions coming back. I remain open minded on many aspects of this proposal, including the categories of investors to whom it should apply, the appropriate level of upfront capital commitments, and the operation of cross guarantee provisions and limits on affiliate transactions. I look forward to receiving comments in these areas.

I support the transactions we have completed to date which have involved sales to private equity owners. We have imposed some special restrictions on these, including higher capital requirements. However, some have suggested that capital requirements should be even higher, given the difficulties in enforcing source of strength obligations outside the initial capital investment made by the acquirers in so-called "shell" structures. I know that this will be a contentious area, and we are opening high, with a proposed 15% requirement.

I am also troubled by the opacity of some of the ownership structures that we have seen in our bidding process, though these have not been winning bids. We have seen bids where it has been difficult to determine actual ownership. We have seen bidders who have wanted permission to immediately flip ownership interests. We have seen structures organized in the secrecy law jurisdictions. So based on the experiences we have gathered, I think it is prudent to put some generic policies in place which tell non-traditional investors that we welcome their participation, but only if we have essential safeguards to assure that they will approach banking in a way that is transparent, long term, and prudently managed.