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COMMENTS ON CDFI FUND GUIDELINES FOR NEW MARKETS TAX CREDIT

Mr. Jeffrey C. Berg
Acting Director
Community Development Financial Institutions Fund
U.S. Department of Treasury
601 13th Street, NW, Suite 200 South
Washington, DC 20005

Dear Mr. Berg:

Thank you for the opportunity to provide input and perspective on the drafting of guidelines for the CDFI Fund's administering of the New Markets Tax Credit (NMTC).

Aquila Bancorporation, Inc. is the first Hispanic owned and controlled depository institution holding company in the U.S. The holding company's structure is consistent with 12 U.S.C. 4702 as defined. In addition, we are structuring the entity beyond the Federal Reserve System's definition of minority-controlled, whereby the majority of voting/common stock is controlled by minorities. We are structuring the entity into a community owned institution consistent with the CDFI Fund's definition in 12 CFR Part 1805, Subpart A, 1805.104 (l) *Community Owned.* The principal organizer as the Hispanic founder of the CD holding company entity and other members of the Formation Group/Organizing Board who all are residents of our Target Investment Area and members of a historically underserved population (minorities), Targeted Population (Hispanic), represent the 51% ownership. We are meeting the standards and true intent of the Community Development Financial Institutions Act of 1994.

The primary operating unit is Aquila Community Bank of Texas, a Community Development Bank, to be chartered as a State of Texas commercial bank, and to be certified as a CDFI and CDE. The depository institution holding company structure includes a non-profit education, training and development services institute, real estate development and construction syndication company and venture/equity capital investment syndication company as allowed under 12 U.S.C. 4702.

The entity, Aquila Bancorporation, is in formation. In this process, we are moving swiftly and diligently to acquire the necessary formation equity capital investments from Hispanic Founding Investors and the necessary charter capital requirements from patient capital/institutional investors. It is extremely important that we have access to the NMTC for capital raising purposes. In as much that we are a de novo institution, we require that The CDFI Fund is cognizant of the special conditions that relate to this formation and capital raising process underway and that any capital raised and expensed to establish a CD bank holding company and CD bank and all the charter capital raised would constitute as a qualifying equity investment and in turn receive allocation of the NMTC for its investors.

The concern in our de novo situation as related to the first question: **1. IRC 45D(f)(2) (a)-(c)** are that it is our utmost intent to meet and exceed the standards of CDFI and CDE certification and the 60% test, etc., although, in being a de novo without specific historical data from which the CDFI Fund may evaluate, it is very important to have priority category treatment. This priority category treatment should in fact be available to all CD banks. In light of the fact that regulatory scrutiny for charter approval from the primary regulator, the Fed, and the holding company license approval and FDIC approval occurs that should position CD bank holding companies and CD banks differently than any other CDE that may be formed or are emerging.

More importantly, in establishing a true community owned institution, we have gone beyond the requirements for community accountability, it is very important that our minority (Hispanic) founding investors and overall Hispanic investors be economically empowered and enfranchised. All our individual investors must have the ability to receive tax credits for their equity capital investments that our entity would provide through approval from the CDFI Fund. This is also the case for all CD banks that have minority individual investors, patient capital and institutional investors in their capital structure mix with capitalization plans in place. It is the intent that all QEIs meet 45D(b)(1)(B) requirements to be invested in QLIIs over the required amount of time, preferably a twenty-four month period.

Additionally, banks should be uniquely set apart as explained above. Regulatory application processes, examination, safety and soundness standards, already put CD bank holding companies and CD banks in an entirely different category. A potential check-off by the Fund for all CD banks that meet the CDE certifications is our recommendation. Another would be an automatic allocation equal to the amount of capital raised. Furthermore, the capital raised by banks isn't necessarily direct loan/investment funds as would be the case for non-profits organizing for-profit CDEs and/or intermediaries raising conduit funds. The capital requirements for CD banks put in place the infrastructure from which the institution can secure deposits that become the source of loan funds. No other type of CDFI/CDE has the leveraging capacity of its capital than that of an insured depository institution, which realistically and statistically, as an "economic engine", provides the most positive outcomes in LMI markets and community economic development impact. It is extremely important that all CD banks, especially de novos, have access to NMTC allocations for capital raising purposes in a seamless fashion.

Please feel free to call me directly at 713-921-4616 with any questions on these comments.

Sincerely,

David Lovell
Founder and Principal Organizer/Chairman & CEO

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