



Commerce Bancshares, Inc.

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February 15, 2012

Leslie Seidman, Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116
Via email: director@fasb.org

RE: File Reference No. 2011-200 *Financial Services – Investment Companies (Topic 946): Amendments to the Scope, Measurement, and Disclosure Requirements*

Dear Chairman Seidman:

Commerce Bancshares, Inc. (CBI) appreciates the opportunity to comment on the Exposure Draft: *Financial Services – Investment Companies (Topic 946): Amendments to the Scope, Measurement, and Disclosure Requirements* (ED). CBI is a \$20.6 billion bank holding company which has been in business for more than 145 years, operating principally in the lower Midwest portion of the United States. Our principal markets include St. Louis and Kansas City and surrounding smaller markets in Missouri, Kansas, central Illinois, Oklahoma and Colorado. We have over 200 full service branches and 400 ATM's. CBI operates as a traditional bank with broad, sophisticated product offerings to both consumers and business customers including consumer and business loan and deposit products, brokerage services, credit card products and trust services. We also make private equity investments in various small manufacturing and service companies in our markets through our investment subsidiary which is organized as a Small Business Investment Corporation (SBIC).

Among other things, the ED defines six criteria that must all be met to determine whether an entity is considered an investment company and must apply applicable investment company accounting. Those entities that are regulated by the Investment Company Act of 1940 are exempt from the six criteria and automatically assumed to be investment companies. Briefly, those criteria are:

1. The entity's only substantive activities are investing in multiple investments for returns from capital appreciation, investment income, or both.
2. The express business purpose of the entity is to provide the aforementioned returns.
3. Ownership in the entity is represented by units of investment, to which a portion of the net assets are attributed.
4. The funds are pooled to avail the investors of professional investment management and investors who are not related to the parent hold significant ownership in the entity.
5. Substantially all of the entity's investments are managed on a fair value basis.
6. The entity provides results about its investment activities to its investors.

While the above rule does exempt entities that are regulated by the Investment Company Act of 1940, it does not exempt other regulated entities, specifically SBIC's, from meeting these six criteria in order to qualify as investment companies, even though SBIC's operate and are regulated as investment companies. If approved as proposed, the ED will require these SBIC entities which do not meet all six criteria to potentially consolidate investee companies. We believe this will result in a change in practice related to certain banking activities that does not appear to be improve the usefulness of the financial statement information provided.

Small Business Investment Companies (SBICs)

Banks in the U.S. often participate in private equity investment activities as sanctioned under the Small Business Investment Company Federal program which is licensed by the Small Business Administration. Investment funds under this program are not regulated by the Investment Company Act of 1940.

In accordance with the Small Business Investment Act of 1958, the SBIC program was put into law to promote small business equity funding and these investments are often made through banking institutions, though bank holding companies sometimes will invest in SBICs. Generally, a bank's total investments held by SBICs is limited to 5% of capital and investments may only be made in businesses with tangible net worth of less than \$18 million and an average of \$6 million in net income over the previous two years at the time of investment. Further, 25% of SBIC investments must also be made in "Smaller Businesses"—businesses with tangible net worth of less than \$6 million and an average of \$2 million in net income over the previous two years at the time of investment. As part of the program, the SBIC may issue debentures up to 300% of the private equity contributed. The SBA then guarantees these debentures.

It should also be noted that SBICs are specifically excluded from the "Volcker Rule" limitations on investment company holdings within the Dodd-Frank Wall Street Reform and Consumer Protection Act. The SBIC program is thus a vital program to promote economic growth nationally and one that is important at the local, community level.

SBICs are currently considered investment companies by the Small Business Administration and, as such, their investments are accounted for at fair value. Banks of all sizes sponsor SBICs. However, it is common for SBIC entities to be wholly owned by banks or, through compensation arrangements, partly owned by employees of the bank (usually 20%) with the remaining ownership held by the bank. So for these kinds of SBIC entities, while we believe they would satisfy the other five criteria, they would not qualify as investment companies under the ED, because they do not meet criteria # 4 above.

Since SBICs often make investments in companies at levels that would indicate significant or majority control of the enterprise, banks would be required to consolidate the assets of these investees in their financial statements or to use equity method accounting. As a result, in the case of where consolidation is required, banks would consolidate on their balance sheets items like fixed assets and inventory of the investee, which are assets and liabilities that have no

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relevance to the bank's operations. Furthermore, investee companies are often small businesses with limited capabilities to produce the kind of financial information needed for consolidation by larger public companies under SEC regulations.

As proposed the ED would make it extremely difficult to continue these kinds of private equity investing activities and would discourage participation in specific government programs designed by Federal law to encourage investment in small and private businesses.

While many of the above factors could provide important indicators of investment company activities, including business purpose, investing for capital appreciation and fair value requirements we do not believe that criteria #4 is an important distinguishing factor as to whether an entity should or should not follow investment company accounting rules.

Given this information, we believe several adjustments could be made to improve this ED as follows:

- Exempt SBIC entities from the 6 criteria above and automatically consider them to be investment companies as are other entities regulated by the Investment Company Act of 1940;
- Eliminate criteria #4 altogether;
- Include these six factors only as general guidelines or indicators using a principles-based approach to determining investment company status. We recommend that all six criteria need not be met but that a preponderance of evidence, including the above factors, should be considered as well as the parent company's business model and expressed purpose in operating the investment fund.

We believe these changes would best respond to the needs of financial statement users without conflicting with the intent of the administrators of the related governmental programs.

Thank you for your attention to these matters. Please feel free to contact me; (jeff.aberdeen@commercebank.com; 816-234-2081) if you would like to discuss our concerns.

Sincerely,



Jeffery Aberdeen, Controller
Commerce Bancshares, Inc.