From: Paul A. Ferreira [mailto:PAF@BlueHawkInvestments.com]
Sent: Friday, April 03, 2009 9:53 PM
To: LLPComments
Subject: RE: FDIC Request for Comments - Legacy Loans Program

Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

Dear Mr. Feldman:

Please find below comments to the Legacy Loans Program currently under consideration with the FDIC.

1. Which asset categories should be eligible for sale through the LLP? Should the program initially focus only on legacy real estate assets or should any asset on bank balance sheets be eligible for sale? Are there specific portfolios where there would be more or less interest in selling through the LLP?

    a. All assets on bank balance sheets could be made eligible however, there must be a mechanism by which the bidder can bifurcate real estate assets from other assets in formulating its bid. Moreover, specific portfolios should be separated by real estate use, i.e, all hotel assets together, all multi-family assets together etc.

2. Should the initial investors be permitted to pledge, sell or transfer their interests in the PPIF? If so, how should the FDIC ensure that subsequent investors meet the program's criteria for investors?

    a. No, the LLC structure should closely follow the standard institutional equity model which typically prohibits the transfer or sale of memberships interests without the consent of the majority member or some pre-determined “lock-out” period, typically 3-7 years. The PPIF is essentially a closed end fund with equity raised at the outset to achieve the goals of the business plan.

3. What is the appropriate percentage of government equity participation which will maximize returns for taxpayers while assuring integrity in the pricing by private investors? How would a higher investment percentage on the part of the government impact private investment in PPIFs? Should the amount of the government's investment depend on the type of portfolio?

    a. The government’s equity participation policy here should have a ceiling of 50% and a floor of 0% which allows private equity to make its own risk assessments around the participation it seeks from the US Government. A US Government mandated investment percentage we believe could be a disincentive to private equity in bidding on portfolios. Private equity will vote with its bid on a particular type of portfolio and its desired government investment percentage.

4. Is there any reason that investors' identities should not be made publicly available?

    a. It depends on the definition of investors. It seems the sponsor should be identified not sure it matters that all investors are disclosed .

5. How can the FDIC best encourage a broad and diverse range of investment participation? How can the FDIC best structure the valuation and bidding process to motivate sellers to bring assets to the PPIF?

    a. The size of the portfolio disposition is critical here. It cannot be so large as this would be restrictive to those with only very large equity pools yet cannot be too small to cause a large administrative burden to the US Government. We believe a broad and diverse range of investment participation would occur at not less than $50MM. If the sellers are largely other banks the risk is going to be that by participating in this program and selling the loans it would result in the bank now violating its tier based capital ratios which could ultimately result in closure. Most banks are not well equipped to address the complications around restructuring troubled assets which is typically better managed by the private sector. The quicker the troubled loans can be extricated from the performing loans and assigned to restructuring professionals the quicker and higher the yield of recovery.

6. What type of auction process facilitates the broadest investor participation? Should we require investors to bid on the entire equity stake of a PPIF, or should we allow investors to bid on partial stakes in a PPIF? If the latter, would a Dutch auction process or some other structure provide the best mechanism for bridging the potential gap between what investors might bid and recoverable value? If multiple investors are allowed to bid through a Dutch auction, or similar process, how should asset management control be determined?

    a. A sealed bid auction process for the entire equity stake of the PPIF is most effective. It would prove difficult to consider an investment in an LLC where the private equity did not control the asset management. If a portfolio is at a size that may be beyond the financial scale of a particular investor then the private market will combine resources and conduct a joint bid which would predetermine control and asset management functions.

7. What priorities (i.e., types of assets) should the FDIC consider in deciding which pools to set for the initial PPIF auctions?

    a. In order to restore confidence in the US banking system in a reasonable time frame all real estate assets are of the highest priority.

8. What are the optimal size and characteristics of a pool for a PPIF?

    a. For broadest participation a $50MM-$100MM would be optimal with a split between performing and non-performing assets. To the extent the loan pool could deliver a current yield of between 7%-9% with the opportunity to yield 20%+ overall would prove to be win/win between private equity and US Government within 7 years.

9. What parameters of the note and its rate structure would be essential for a potential private capital investor to know at the time of the equity auction to provide equity?

    a. 5 year term with a two year option to extend, fixed priced at 400+bp over short term index, non-recourse with FDIC guaranty for 25 bps

10. Would it be preferable for the selling bank to take a note from the PPIF in exchange for the pool of loans and other assets that it sells? Alternatively, what would be the advantages and

disadvantages of structuring the program so that the PPIF issues debt publicly in order to pay cash to the selling bank? Would a public issuance of debt by the PPIF limit its flexibility compared to the issuance of a note to a selling bank?

   a. It would be preferable and it may also provide some support for incentivizing the banks to sell the loans since they will share in the upside. The public issuance of debt would be reserved for only very large portfolio's and would limit the number of bidders that could participate. Moreover, it is unclear given the legacy securities issues that the market will respond as favorably to this participation. The costs and time involved in issuing public debt may also outweigh the added potential recovery to the bank.

11. In return for its guarantee of the debt of the PPIF, the FDIC will be paid an annual fee based on the amount of debt outstanding. Should the guarantee fee be adjusted based on the risk characteristics of the underlying pool or other criteria?

   a. No, ultimately the pricing is going to reflect the risk of the deal. If private equity believes "X" portfolio is worth 25% of par then that would suggest the assets are of higher risk, if "Y" portfolio is worth 75% of par then that would suggest the assets are of a lower risk, in each instance the government has been paid its relative risk "premium" or "discount" as the case may be and should not in addition receive other compensation for its debt guaranty.

12. Should the program include provisions under which the government would increase its participation in any investment returns that exceed a specified trigger level? If so, what would be the appropriate level and how should that participation be structured?

   a. No just the opposite, private equity should be incentivized [again similar to institutional private equity structures] to pay back the US government sooner on a progressive rate scale whereby the government receives a base hurdle rate after which, the economic splits are then promoted to the sponsor. For instance, let's assume the US Government and Private Equity are 50%/50% partners, a widely accepted structure in private equity might suggest that the US Government/PE get up to an 8% pari passu return after which US/PE would then split say 40/60 to a 12% after which US/PE would then split say 30/70 to a 15% etc. Again, this has worked very well in PE and would be perfectly suitable to the PPIF.

13. Should the program permit multiple selling banks to pool assets for sale? If so, what constraints should be applied to such pooling arrangements? How can the PPIF structure equitably accommodate participation by smaller institutions? Under what process would proceeds be allocated to selling banks if they pool assets?

   a. Absolutely, probably should be arranged geographically which is consistent, in most instances, on the basis on which the banks made their original loans.

14. What are the potential conflicts which could arise among LLP participants? What structural arrangements and safeguards should the FDIC put into place to address or mitigate those concerns?

   a. The best way is to offer the loan pools in a size that appeals to the largest audience. To the extent the pools are extraordinarily high it will limit the LLP participants which could create the conflicts described.

15. What should the relative role of the government and private sector be in the selection and oversight of asset managers? How can the FDIC most effectively oversee asset management to protect the government's investment, while providing flexibility for working assets in a way which promotes profitability for both public and private investors?

    a. It is difficult if not impossible to envision a role of asset managers without being at risk. If the asset manager is qualified they should be able to access private equity to participate. Alignment of Interest is of paramount importance and such a concept cannot exist without a meaningful investment by the participants.

16. How should on-going servicing requirements of underlying assets be sold to a PPIF and paid for? Should value be separately attributed to control of the servicing rights?

    a. Again, this should be a requirement of the bidder's capability. Let the private investor bring the total solution on how it executes the recovery plan, the US Government role is to solve the liquidity issue. Most groups should come to a bid with a total integrated solution, asset management, servicing and capital.

17. Should data used by the independent valuation consultant, as well as results of such consultant's analysis, be made available to potential bidders? Should it be made available to potential sellers prior to their decision to submit assets to bid?

    a. Absolutely it usually contains good empirical data which is helpful in formulating pricing but it should only be used as a guide tool and not as the ultimate arbiter of pricing.

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