Osprey Investment Company, LLC

7600 Grand River, Suite 120 Brighton, MI 48114 810.225.9660

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

Attention: Comments, Federal Deposit Insurance Corporation

Thank you for the opportunity to provide our thoughts and comments on the Legacy Loan Program. As active investors in the private market for sales of distressed whole loans, we are obviously interested in the LLP.

By way of introduction, Osprey Investment Company, LLC is a privately funded real estate investment company focused on, among other thing, the acquisition of distressed debt secured by commercial real estate. Along with our affiliates (collectively the Osprey Group of Companies) we own a portfolio of 4.1 million square feet of commercial real estate, primarily in the Southeastern and Midwestern United States. Over the past 18 months we have underwritten hundreds of loan sales and have completed the acquisition of two commercial mortgages. Depending on the final particulars of the PPIP, we intend to pursue the acquisition of debt secured by commercial mortgages sold through Legacy Loan Program. Although we have been self funded to date through our ownership group, we plan to raise third party equity to invest alongside our current equity partners in the acquisition of assets through the LLP.

While I address the specific questions that the FDIC has raised in its request for public comments below (along with a few additional issues that I have added), the overriding issue that we wish to address is the size of the pools of loans to be offered. It is certainly understandable that the most efficient way to auction off what could be up to $1 trillion in distressed debt would be to aggregate the loans into a number of pools. Our concern, however, is with the size of the pools. Specifically, we believe that the creation of overly large pools will likely result in three significant problems:

a. It will reduce the number of bidders that can afford the pools, hence reducing competition for the loans. This may deter banks from selling their loans or, for those that do sell, it may help to weaken rather than strengthen their balance sheets by achieving suboptimal pricing.
b. It will likely result in the neglect of many properties that were secured by poorly performing or non-performing loans purchased in bulk by entities with very little interest or knowledge of the properties. While we acknowledge that the problem of legacy assets for the banks is a national (and international) problem, the real estate securing the individual loans is, as always, local. By reducing the size of the loan pools (and grouping like assets from like geographies together), it is much more likely that the buyer of the

loan will have local knowledge of the property and its market and will be capable of managing both the loan and, should there be a foreclosure, the property.

c. Depending on the portability of the FDIC guarantee and the Treasury equity investment (both of which we believe should be portable), excessively large pools will create a small group of large institutions that will buy the pools and then split them up and sell them off in smaller pieces. This will both add a layer of overhead to the system (and profit to the large institutions) and slow the process of getting the loans into the hands of owners with knowledge of the secured real estate and its market.

We therefore believe that the loan pools should be limited to a certain maximum amount of, for example, $50 million. Furthermore, the pools should contain loans secured by similar property types (e.g. CBD office, or Class A multifamily, or regional retail centers, etc.), in the same general geography and have a similar term and credit profile (e.g. performing, or non-accrual, or in foreclosure, etc.). This again will help insure that the individual loans are purchased by a buyer that wants that particular loan as opposed to a buyer that is likely to sell it off in the short term.

Alternatively, if larger pools are utilized, then the ability to buy only a single loan from the pool should be allowed. Administratively this may ultimately prove more cumbersome than limiting the size of the auction pools, but it would avoid the problems delineated above.

In our experience of underwriting and buying loans over the past 18 months in the private sector, we have seen a shift from large pools to single asset sales, or at least the ability to bid on a single asset within a larger pool. In addition, the selling brokers have indicated that they have had very few loan sales in excess of $50 million. Given the FDIC guarantee and the Treasury equity contribution under the LLP I do expect this to change. I also think, however, that we should take some cues from what has happened in the purely private market to date prior to the government enticements of the LLP.

Our thoughts and comments to the questions that the FDIC has posed (in blue) are as follows:

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?

While this is obviously a question more for the banks than the investors, it seems to make sense to keep the LLP confined to whole loans secured by real estate initially. These loans intuitively should be the most fungible. Should that go smoothly the LLP could be rolled out to include other real estate related loans (mezzanine loans, B loans, etc.) as well as other bank loans (loans secured by equipment, working capital loans, 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?

Yes, as discussed above, we believe the FDIC guarantee should be portable. By giving buyers more flexibility in how they manage the loan going forward it should increase the price they are willing to the banks.

Ideally, the requirements for the buyer/transferee should be similar to the requirements that the FDIC imposes on the original buyer (which are hopefully straightforward and measurable). At a minimum, it should require the FDIC's consent, which should not be unreasonably withheld. We would also favor a time limit prior to any sale of 12 months from the date of purchase. This should help eliminate pure speculators from the market.

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?

50/50 seems fair and appropriate. We would be inclined to agree with a lower percentage participation by the Treasury (as low as say 25%) rather than a larger percentage as we believe that a lesser commitment on behalf of the private investor may not align their risk/reward incentives appropriately.

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

No. In fact we encourage the public release of the participants in the program so as to increase transparency and further the acceptance of the LLP by the general public.

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?

Assuming the first part of the question relates to buyers of the distressed loans, as discussed above, we believe that keeping loan pools from being over large and/or allowing the purchase of single assets within a pool would give the process the best chance of a broad and diverse field of investors. Having said that, we think it is very important to limit this to firms that have the means to not only own and manage a particular loan, but also to own and manage the underlying property should the loan require foreclosure. The worst case scenario for the FDIC, the Treasury and the US taxpayers would be to have unqualified investors (from both a financial and operational standpoint) who end up in the same position as the selling banks are in (who, in most cases were both financially and operationally very qualified to make the original loan).

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?

Please see comments above in my opening paragraphs. As I indicate there, any process used to allow the individual sale of assets in a pool can potentially be more cumbersome than just selling the individual assets. We've found that sales in the private sector have typically been single asset sales, even when the loans are offered in pools, as the strongest investor interest is typically confined to specific assets.

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

In order for the PPIF auctions to work effectively it is imperative that the initial auction(s) are successful. It will be hard to overcome the perception that the process does not work if the initial auctions fail. Therefore it is important to have committed sellers with realistic price expectations selling loans that investors want. We would suspect that the FDIC can hand pick some banks as committed sellers and through the auctions that have occurred in the private sector you can determine the characteristics of the assets most likely to sell and their appropriate price range.

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

Again, see my comments above.

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?

Obviously the less that a bidder knows the lower they will bid as they will have to assume the worst. Our strong preference is to underwrite the property as much as possible because we will not bid on a loan that is secured by a property that we do not want to own. At a minimum having electronic access to the lender's full credit file should be a requirement.

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?

As investors, we are indifferent as to the lender (assuming the pricing is fixed ahead of the auction. If the guarantee is absolute (absence fraud on the part of the investor), as an investor there is no difference whether the FDIC is the lender or the guarantor.

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?

As long as the fee is known up front and can be taken into account prior to bidding on the loan/pool we are indifferent. We do feel that the fee should not change during the life of the loan.

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?

No. See comments below regarding fees and carried interest.

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?

See comments above regarding pool sizing.

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?

From the investor's side, insure equal access to information and award the sale to the highest bidder.

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?

We believe strongly that he private investors should be responsible for managing the assets directly or through a related entity. If the private investor is not capable of competently managing the loans and, if necessary, the underlying properties, they should not be able to bid on the assets. That should be a major part of the screening criteria for allowing investors to bid on the loans.

The FDIC and Treasury's greatest financial risk will come from having inexperienced, under qualified private investors buying the assets. Furthermore, if a private investor cannot manage the assets themselves they have no business setting the price of the assets via the auction process.

The FDIC and Treasury can effectively manage their respective interests in the PPIF via loan agreements (including financial covenants) and partnership agreements similar to what is used today in the private sector to protect investors.

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?

Servicing should be included in the price for the loan and the investor should have the right to service the loans themselves or outsource the servicing to the servicer of their choice.

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?

While we understand the desire of the FDIC to retain a valuation consultant, we strongly believe that the consultant's analysis should not be provided to either buyers or sellers. If either buyers or sellers wish to engage their own consultants at their own cost that is their prerogative. To have the FDIC effectively set a price via its handpicked consultant's valuation by supplying it to either buyers or sellers will kill the price setting effects of the auction process. Whether the consultant's analysis is ultimately right, wrong or indifferent (and we have very strong doubts as to it being right) it will impose the judgment of a consultant over the free market process in price setting as unsophisticated buyers (and hence sellers) will move to that price.

As to the data provided to the valuation consultant, we assume that that information is the same information that will be available to private investors bidding on the loans. Certainly there should not be any data available to the valuation consultants that is not also available to the prospective bidders.

In addition to the above, we have the following comments, questions and recommendations:

A. We recommend that the borrowers of the loans being sold should not be allowed to bid on their own loans. Obviously that would put all other bidders at a distinct disadvantage and will cool investor interest.
B. It is our view that the PPIF should be structured as a real estate private equity limited partnership (i.e. a limited partnership with the private investor as the General Partner and the private investor and Treasury as 50/50 Limited Partners). The PPIF will be charged for typical costs and expenses (e.g., organizational costs, closing costs, asset management fees, property management fees, leasing fees, etc.) The General Partner would charge a management fee (e.g. 1.5% annually) and would receive a carried interest (e.g. 20%) after the Limited Partners have received a preferred return (e.g. 9%). The Treasury will be treated pari passu with the private investor's Limited Partnership interest.
C. The loan to the PPIF (and hence the FDIC guarantee) should be for a period equal to 24 months longer than the fully extended term of the loan, with extensions available upon FDIC consent. This will give the PPIF the ability to extend the loan to the underlying borrower if necessary to improve the performance of the underlying property and/or refinance in a more favorable credit/economic climate. Furthermore, should the borrower default and the PPIF foreclose on the property, the FDIC guaranteed loan should convert to a 3 year, interest only balloon loan in order to give the PPIF the time reposition and refinance the property.
D. Likewise the Treasury's equity investment should stay in the PPIF through foreclosure and the repositioning/sale of the property if a loan comes to that. There should also be a provision for capital calls from the Limited Partners, including the Treasury, in the event of a foreclosure of the property.
E. What is the FDIC Guarantee Fee? How will borrowing rates be determined (by the FDIC or by the lending institution)?

Again, thank you for the opportunity to share our views on this very important program. Should you desire our participation in any other process regarding the design and implementation of the LLP we would very happy to oblige.

Sincerely,

Michael A. Collins
Managing Partner and CEO
Osprey Investment Company, LLC