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April 9, 2009

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

Submitted via email to LLPComments@FDIC.gov

Call for comments on FDIC Legacy Loans Program

Dear Sirs,

Markit welcomes the FDIC's request for comments on the Legacy Loans Program and we appreciate the opportunity to provide you with our views on this topic.

Markit is a financial information services company with over 1,200 employees in Europe, North America and Asia Pacific. More than 1,500 institutions use our independent services to value financial instruments, manage risk, improve operational efficiency and meet regulatory requirements. Markit provides a unified offering across asset classes that covers deal structure and analysis, reference and performance data, pricing and valuations, trade support, and indices.

Markit is best known in the structured finance market for our pivotal role in the development of ABX.HE and CMBX indices and for implementing the Reference Cashflow Database (RCD) for settlement of CDS on ABS. The full complement of our structured finance services include performance data, cashflow modeling and ABS pricing. Markit has won the International Securitisation Report's "Editor's Award for Innovation" in recognition of services provided to the structured credit market through ABX.HE and its European ABS pricing service. We are also actively involved in the modeling of securities, managing and maintaining performance databases and the independent valuation of securities. In total we have over 100 staff working on these initiatives.

In addition, Markit and Creditex run the Credit Event Fixings (www.creditfixings.com), which are auctions designed to ensure a fair, efficient and transparent process for settlement of credit derivative trades following a Credit Event. The Credit Event Fixings were recognized as the "Innovation of the Year" by the International Financing Review, and continue to be integral to the smooth function of the CDS market. Recent credit event auctions include those involved in the settlement of CDS contracts referencing Fannie Mae, Freddie Mac, Lehman Brothers and Washington Mutual. The process developed went through many iterations and significant scrutiny, so we therefore feel well-placed to comment on issues related to auction procedures for the purposes of the Legacy Loans Program.

Comments on auction procedures

The credibility of the FDIC LLP auctions depends upon market confidence, which means upholding transparency, measures to penalize and eliminate participants trying to game the results, and maximum market information input into the auctions, reflecting the open market interest to the fullest extent. Several points in the Request for Comment center on how best to design the auction and interest participants, so we offer the benefit of our experience in CDS auctions in response.

Transparency

As the market reaction to the proposed Legacy Loans plans has been mixed, it is an absolute necessity to make visible the complete workings of the auctions and its participants. This includes publicly disclosing the names of potential investors and sellers, as well as actual investors and sellers.

The design and implementation of the auction process must be explained in full to the public. The FDIC has done an excellent job of using its website for outreach to market participants, which should continue. The auction process should minimize hurdles to entrants' participation, so for ease of use, we recommend a web-based auction conducted after a generous time period in which interested parties may analyze the assets and the valuation consultant's work. In addition, any contractual or legal documentation for the sale, purchase, or division of equity control must be posted for comment by all potential participants. Results of the auctions should also be posted to the website.

Auction design

Voluntary seller interest will likely be low due to the current accounting practices on mortgage loans, as solvent entities will be unwilling to affect trades that result in large losses. This will have a direct bearing on the potential reserve prices for any given pool of loans from a potential seller. The best approach to maximize participation by sellers is to have a screening mechanism for segmenting sellers by asset lot size; such that the FDIC or its advisor can facilitate demand among investors and help any smaller players join with other smaller players to offset fixed costs associated with the sales.

Lot size is also a consideration in allowing investors to take full or partial equity stakes in the PPIP. The current distressed investing environment comprises participants with varying investment appetites, ranging from several million to billions of dollars. There may be some synergy in scheduling a range of auction sizes such that investment and sales appetites can be segmented according to individual firms' abilities to participate. Additionally, a variety of corporate structures may dictate accounting concerns for large investments that may further segment potential investors. In short, there are several considerations that may be important in order to manage and engage participants for the most successful auction.

Participant incentives
The Legacy Loans program must fully anticipate and mitigate adverse outcomes so that participant interest for the initial phase is as high as possible. Our deep experience with auctions and with external consultants indicates that a document describing the mechanisms for awarding and allocating lots must be available to the public. Additionally, the FDIC must guard against conflicts of interest between sellers and buyers, especially with respect to promoting arms length transactions by prohibiting sellers and their subsidiaries from investing in assets that they put up for sale. The potential for gaming the system in this way would nullify the respectability of the auction process and potentially damage taxpayers, as elevated prices would make the sellers and subsidiaries whole, while transferring all downside risk to the government.

Price levels should also be taken into account in the auction method chosen. Although the Dutch auction is a common method for maximizing bidders' outcomes by awarding pools at lower prices, there is little incentive for seller participation. The Legacy Loans Program may benefit from a second price sealed bid auction, which would balance the FDIC's need to have sellers participate with its fiduciary responsibility to avoid investing at elevated prices. Additional safeguards must be in place to prevent collusion among investors to not bid, or lowball the assets in pursuit of higher returns. The FDIC must promote full disclosure of contractual arrangements and expressly prohibit such behavior to ensure compliance by all participants.

Market response
We are hearing considerable concern regarding government involvement post-investment, especially with respect to any potential tax liability, corporate investigations or conditions for additional TARP funding. Of particular interest to the investing community is any potential mandate of cram downs or other modifications on the loan pools won at auction. As investor interest will be generated by the expected return on assets, any contractual or conditional obligations must be communicated and defined for participants well in advance of the auctions. Due to the complexity of the assets and the disparate views of market participants on how to evaluate them, sufficient time must be given to fully digest the information during the auction, and after it, for the administrator to understand bids given.

We hope that our comments are of value to you. Please do not hesitate to contact us if you require further information or if you want to discuss any of our comments in more detail.

Kind regards,

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