From: Eric Lindner [mailto:eric.lindner@heliosamc.com]
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To: LLPComments
Subject: Legacy Loan Program

We are pleased to provide comments regarding the proposed Legacy Loan Program. Helios AMC, LLC is a commercial real estate special servicer and distressed debt investor. Our responses are based upon our experience in commercial real estate distressed debt investment management and workout.

Helios AMC, LLC response to FDIC request for comments on the Public-Private Investment Program for Legacy Loans

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?

We would suggest that most assets on the bank balance sheet should be eligible for sale – buildings, residential and commercial whole loans, C&I loans, lines of credit, bank loans, consumer loans. Additionally, we would suggest that all legacy loans on banks' balance sheets be eligible for sale so long as the assets are pooled prior to being put out for auction. The pools should be created so as to combine assets based on common characteristics as indicated below.

Combine loans by asset type - commercial real estate–secured loans separately from residential real estate- secured; corporate buy-out (leveraged loans), small business loans, consumer etc.

Loan Size: we would recommend creating pools that combine similar sized loans, e.g. loans less the $2 million, loans $2 million to $10 million, $10 million to $30 million, greater than $30 million.

Combine common obligors so that a pool would contain unsecured working capital facilities, guaranteed obligations, etc. in a specific pool whether or not the obligations are cross-defaulted or cross- collateralized.

Pool loans based on performance metrics, including (1) non-performing (>60 days past due); (2) sub-performing (to include loans in non-monetary breach; where LTVs exceed 100%; where DSC is < 1.00); (3) performing loans with impending maturities (where on pooled basis WAM is <24 months, or for individual loans balloon maturity is < 36 months).

Geographic location: to the extent possible consolidate assets along geographic lines except to the extent of other common characteristics noted above.

Also, assets with future funding liabilities that cannot be repudiated or terminated should be segregated (e.g., partially-completed condominium developments; "pro-forma" assets where repositioning has yet to be achieved; and perhaps large one-off assets, say, >$100MM) to maximize program participation

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?

We believe that pledging, selling and transferring interest in the PPIP Funds would increase the investor base for the PPIP program In addition to program leverage, the equity-investor participants should have the ability to pledge their interest to obtain additional leverage. Interests in the PPIF should be readily transferable to a defined universe of permitted transferees as long as the transferees meet the same requirements as the initial investors. Transfers from one initial investor in the PPIF to another within the same structure, transfers to affiliates and other transferees that do not trigger a change in control (a transfer of 51% or less) should qualify as permitted transfers under the program. These mechanisms would create liquidity for the equity investors, which should serve to broaden the potential group of investors. Moreover, private equity investors may seek, in time, to sell down a portion or its entire share to affiliated vehicles which may have targeted returns less than the original underwriting and therefore be able to implement certain lower returning exit strategies. Again, the flexibility should serve to support one of the FDIC's stated objectives of increasing investor participation.

To ensure that subsequent investors meet the program's criteria, all investors will be required to meet the qualifying guidelines of the Fund. Our compliance department will ensure that new investors meet the qualifying guidelines.

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?

We submit that the government equity participation as a percentage of the equity raised by the PPIF should be variable depending on qualitative aspects of the assets being offered for sale. As in the Legacy Securities program, the FDIC equity should probably not exceed 50% of the required equity in any particular transaction.

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

To attract the maximum level of participation from private sources of capital, only the identities of the fund sponsor should be made public; disclosing details about the individual sources of the equity capital is likely to have a chilling effect on program participation.

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?

To encourage a broad and diverse range of investment participation, we recommend that the FDIC select managers that yield the broadest reach across potential client bases. For example, chose some managers with a strong institutional distribution system, some with retail funds distributed to medium and high net worth, a manager with international funds, minority-owned management platforms as well as those whose distribution is regional in nature.

We believe that the leverage levels of up to 6:1, should be a high motivating factor in to attracting investors to the PPIP Funds, Returns on Equity in excess of 20% can be achieved with the leverage, which should maximize pricing to the seller. In addition to some of the pooling categories listed in our response to Question 1. above, a reserve price for each pool should be set as part of the auction process,. Notwithstanding our comment with respect to reserve prices, we strongly believe that the auctions should be structured so that all contributed assets will clear (i.e. trade). The prospects of a bidder undertaking an extensive (and expensive) due diligence without the assurance of a trade would have a profoundly chilling effect on the process and stifle competition. Additionally to get maximum exposure and interest from buyers, the larger the amount of assets being sold, the better. For example, multiple pools should be brought to market simultaneously, and bidders should be able to bid on individual pools or on a combination of pools on an all or nothing basis.

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?

We believe that most bids submitted by investors will be in an all or none format. Especially with large numbers of underlying collateral, pricing of asset pools will be at the pool level and not at the individual loan level and pricing individual loans would be extremely time consuming. Additionally the potential to separate common borrowers, property types, and common geographic location would be counterproductive. Only one private equity investor (or joint venture) should be in any one PPIF. To link multiple bid participants that did not join together prior to the due diligence process in the same PPIF would make the process of managing the PPIF and its assets overly complex and challenging and would discourage investor participation. The auction/bid process should be a sealed bid auction.

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

Our proposal would be for the FDIC and Banks to work to identify assets that are categorized as non-performing or impaired in some way and to include those in initial pool auctions. Private equity investors are waiting for toxic assets to be put into the market so by including these assets in the initial pools, the FDIC may help establish a market bottom bringing cash that has been on the sidelines back into the market, which in turn should help determine how much additional risk exists in the banking system. The RTC utilized this strategy which helped to clear the market. Additionally, placing these distressed assets into the hands of interested investors and asset managers would hopefully stabilize the value of the underlying assets.

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

Please see comments above in responses to Questions 1, 5 and 7.

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?

With respect to the FDIC financing, the potential private capital investor will need specific information as to how much debt the FDIC will offer with specific pools, the rate, the payment frequency and pre-payment provisions if any, and any other terms that will have an impact on the returns and ability to manage the pool including collateral release provisions.

With respect to the notes offered in the asset pools, the data fields supplied by the FDIC in its current marketing efforts will be sufficient. These include origination balance and date; current unpaid principal balance; interest rate type (fixed or variable); pay history (paid through date) maturity; lien priority on collateral and location of collateral; unfunded commitment; DSC; prepayment type; recourse liability; guaranties; amortization/ interest only. In addition, to maximize bid prices, the equity investors/ PPIF should be able to get the benefit of all third-party reports and documents created at origination such as title policies, legal opinions and environmental site assessments.

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?

Our proposal is for the FDIC or the selling bank to take a note from the PPIF. The costs in dollars and time that would be incurred by the PPIF in issuing public debt would be detrimental to the process of removing these assets from the banking system on an expedited basis and it would exclude many potential PPIF investors. The FDIC guaranty would allow the bank to take the note back while still improving its capital adequacy. The guaranteed debt could be held or subsequently sold. One concept is to have the FDIC or Treasury acquire the notes from the various PPIP auctions, pool them together and issue treasury securities to the public market.

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?

Yes, we would propose a risk-based fee structure similar to what is available in the general market that corresponds to the type and quality of the underlying collateral. For example, the more illiquid and more distressed the underlying collateral, the higher the fee. These fees should be reflective of the market such that as financing conditions improve or deteriorate, fees would decrease or increase, respectively. We would recommend benchmarking fees based on where primary dealers are pricing similarly rated corporate bonds, plus a spread.

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?

We would propose that the government make its equity investment on a pari-passu basis and take its returns on the same basis. Having a step-up in participation would likely present complexities and could provide disincentives to the private capital investor.

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?

In order to create pools of characteristics suggested above and in size large enough to attract investor interest , it may be advisable for the program to combine loans from different selling banks. As long as the collateral charactistics as similar, the originating bank becomes less important. The ability of the FDIC and its advisors and consultants to manage an auction of combined assets will become much more challenging, but pooled asset transaction still might achieve the highest and best price for all participants because the pools created may be large enough to appeal to a broader group of investors.

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?

The form of JV agreement between the private equity investor and the government as co-investor should permit all decision-making by the private equity investor as long as the decisions/actions are made with regard to the provisions LLP agreement.

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?

The FDIC will have interest in a number of Funds managed by asset managers. They should treat their investments like other LP investors treat their investments. There should be a portfolio management team monitoring the FDIC investments and with the FDIC being a substantial, potentially 50% investor, it should wield a great amount of weight in Fund activities, Underperforming Funds should be reviewed, discussed with management and to the extent required, changes in investment strategy or Fund Management.

The private equity investor should be able to select one or more asset managers, which may or may not be an affiliate, to implement approved asset level "business plans" (akin to a SAMDA contract under the RTC) for each pool depending on the characteristics of the pool. The asset manager should be incentivized to achieve the highest recovery for the PPIF on a net present value basis. The private capital investor and asset manager should reach agreements that include a combination of base fees and resolution fees. . The selection process for asset managers should be driven by an operational review of such firms' capacities to administer the specific asset classes included in the pool. The FDIC should set minimum standards for acceptable asset managers that would include track records for the asset manager and its personnel. These standards may include fiduciary experience, experience in the RTC SAMDA program, robust policies and procedures and adequate systems to manage the assets. In addition, preference should be given to asset management firms that have acceptable special servicer ratings from Fitch Ratings and Standard and Poors or who retain sub-servicers who do. The FDIC oversight should mirror and build on the experiences of the RTC SAMDA program. For instance, the program might provide for an Oversight Manager charged with overseeing multiple asset managers for multiple PPIF's. It is very important that the structure provide the asset manager sufficient delegated authority so as to be able to implement the asset level business plans or exit strategies for each asset as approved by the private equity investor/PPIF.

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?

The bid for the assets will ultimately be net of asset management and servicing fees, therefore the private equity investor should identity the asset management and servicing contractors for each PPIF. Since each bid is a net bid by the private investor/ PPIF, the market place will determine the price of these services, but we would not recommend a special value be attributed to the control of the servicing rights.

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?

Yes; if a reserve price structure is used, the pools are guaranteed to trade, and third party valuations/ models are made available to potential bidders, the program's prospects of success are greatly enhanced.