April 10, 2009

Comments from Mike Mulder:

The FDIC is requesting comment from interested parties on all aspects of the proposed LLP. In particular it has formulated the following questions for interested parties to consider:

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?

    1. Comment: I would suggest using the standards established by the various national loan sale advisors with over 20+ years of experience

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?

    1. Minimum standards will need to be established for potential buyer's, assuring the FDIC the buyer has the qualifications to not only to purchase these assets but also to service and administer the new Joint Venture.

    2. Know your partner!

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?

    1. 50% Equity Contribution is a good number.

    2. A higher percentage amount only increases the government risk.

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

    1. I see no reason.

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?

    1. You need to deal with entities who understand loan sales transaction. Your desire to have a "…broad and diverse range of investment participation" could best be accomplished through a Mutual Fund.

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?

   1. Sealed Bid – No need to try and reinvent the process.

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

   1. Keep it Simple to begin with!

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

   1. Pool Size $5,000,000 to $25,000,000

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?

   1. Fixed Rate Financing for the term of the note based on collateral type and estimated cash flow.

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?

    1. The Selling bank needs CASH to restore CAPITAL.

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?

    1. NO

    2. If a fee is going to be charged it should be limited to an initial fee and not an annual fee.

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?

    1. NO – Your percentage of equity determines gain and risk.

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?

    1. If multiple sellers in the same pool, bidder with need to include a bid allocation.

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?

1. No comment

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?

    1. No Comment

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?

    1. No Comment

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?

    1. See below

18. General Comments:

    1. As an investor our biggest frustration over the last 18 months has been the 'no-trade" risk. We have priced a lot of loans, but it has ended up being just a pricing exercise. We understand that the leverage will certainly help improve the prices, but we still feel that there will be a large price gap between banks and investors especially for the toughest loans.

    2. As an investor we need some assurance that these loans will trade as the cost to us and also FDIC is too great just to go through the exercise. After reviewing the Legacy Loan Program we are wondering what happens when a bank submits a pool of loans to be sold but the price received from the bidders is not high enough for them to trade? Does this result in:

        1. A "no trade"

        2. Selling bank is forced to sell at the prices received OR

        3. A release price range given to the banks prior to final submission that if reached they have to trade

    3. The Loan Sale industry has been well established over the past 20+ years. The FDIC does not need to reinvent the process. Your idea to have the FDIC set up independent appraisers to determine the value of these assets is a complete waste of time and money. The government will be better served with greater returns by allowing the private inventor to determine the market price. If banks do not sell at the market price this program will not work.

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P.S. Mike Mulder has a 35-year career in the community banking industry. Since 1978, he has served as president of Minnesota-based PrinsBank, formerly Prinsburg State Bank. Mr. Mulder serves as president of PrinsFinancial, the managing entity of CapFinancial, and also serves as the president of PSB Credit Services, an entity founded in 1987 to purchase non-performing commercial loans.