Response to Request for Comment – Newmark Knight Frank

The paragraphs that follow include Newmark Knight Frank's response to questions 5 and 6. Please feel free to contact James D. Kuhn (President), or Brittain Youngblood (Director of Strategic Advisory Services) if you have any questions or if we can be of additional help. We applaud this program and look forward to the restoration of both the real estate industry and the economy as a whole.

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?

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?

Response to Question 5:

When the RTC took over the banks in the 1990's, the FDIC had certain advantages that were the direct result of the government taking full control of the institutions. There were no mark to market problems; the assets were owned. The RTC could, and did, sell the assets at whatever price the market would bear. Today, the FDIC has not yet determined whether or not selling banks would be willing to accept returns at a threshold that the investment community will demand. It is our opinion that participation levels in the program would be negatively impacted if there is the possibility that after the expenditure of extensive time, energy, and capital, banks have the option to reject all bids.

At the same time, we recognize that banks have a minimum return that must be met in order to make the disposition worthwhile. If there is a gap between where investors might bid and recoverable value for the banks, the difference should be subsidized by the government with funds issued as part of the cost of the program. This guarantee will both incentivize a larger number of banks to participate in selling assets and incentivize a larger and more diverse range of investors to participate in the bidding process, putting the assets back in the hands of the private sector and fueling credit markets.

Response to Question 6:

One of the largest mistakes of the RTC bidding process was that the large investment groups were given specific advantages. By forcing bidders to decide if they were going to bid in bulk or for individual pools (and without the option to do both), large investment groups, which were the only groups well capitalized enough to participate in these bulk sales, were given priority. Smaller investors who might have submitted a higher bid for a smaller individual pool were not favored because large investors were able to purchase more assets in one transaction. As a result, the RTC sold the assets at greater discounts than was necessary, as the aggregate would have resulted in greater returns.

We believe that investors should be required to bid on the entire equity stake of a PPIF. A Dutch auction, which implies that multiple investors will all own part of the Fund would result in various owners with different agendas. Another problem with this model is that if an owner wanted to sell his or her interest, it would be very hard to do. If the FDIC decided to do something of this sort to increase participation, then they should create something that is similar to a public REIT so that there is liquidity. At least with some sort of public vehicle, investors can sell their shares in a marketplace and have a sense of value.

The asset pools that are acquired by each individual PPIF should be divided between performing and non-performing loans. Non-performing loans, REO, and construction loans all attract a different kind of investor than the type of investor that is interested in performing loans. Separating the assets with an understanding of potential investor types and their investment profiles will encourage a greater number of bids at higher prices.