From: Ryan Bybee [mailto:ryan@cadencecapital.net]
Sent: Friday, April 10, 2009 5:05 PM
To: LLPComments
Subject: Legacy Loan Program Comments- DBS Fund

Please see the following comments in regards to the Legacy Loan Program. Thank you for the call yesterday, it was very helpful and it provided a better understanding of the program.

Our company, DBS Fund, has been successful in acquiring and managing assets through the FDIC in the past. We have learned first hand what works and what does not, hopefully some of our comments will help shape this program as it moves forward. The process of recapitalizing bad assets is absolutely imperative if our economy is going to rebound and recover, the private sector is the place to do this effectively, accurately and timely.

Ryan Bybee
DBS Fund

Comments to FDIC Questions

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? All bank assets should be considered with the emphasis starting with real estate backed assets. There is a market for other assets i.e. consumer credit etc. but the biggest bang will come with real estate assets.

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? This should be limited or prohibited altogether. The success of this program will be determined by the quality of investor the program attracts. The qualifying process and requirements of potential bidders must be stringent enough so that only capable investors can participate. A tremendous amount of work goes into analysis, due diligence, etc. which is absolutely necessary to price the assets correctly. If unqualified or uneducated “investors” come in an bid up the price of the assets this will not only cause qualified investors to look elsewhere but it sets the FDIC up for additional problems when the unqualified investor cannot perform because he paid too much for the asset.

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? A maximum allowable split should be established the FDIC and then the investor should have the flexibility to put up additional equity and receive a bigger share of the profit. Some investors may want to put 100% of the equity and keep a 100% of the profits.

4. Is there any reason that investors' identities should not be made publicly available? No big deal, just don't demonize us if we make a buck or two, we are partners in this deal and we perform a necessary service for the public.

5. How can the FDIC best encourage a broad and diverse range of investment participation? Group the assets by type, location, size and performance. Keep the pool values high enough to discourage unqualified investors but low enough to keep the mid-level investor interested. $20MM -$100 MM pre-bid per pool. How can the FDIC best structure the valuation and bidding process to motivate sellers to bring assets to the PPIF? This is very important. Once Sellers decide to put assets up for auction they must be required to follow through. Too much time, money and effort goes into due diligence for Sellers to decide not to sell after bids have been submitted. If a reserve price system is used the reserve price range must be disclosed up front for the same reasons. The best mechanism to price distressed assets is by using the private sector, banks cannot be allowed to test the market or fish around this will upset investors and cause them to look elsewhere.

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? The current online bid process for receivership assets is fairly effective. It requires due diligence and forces investors to spend the necessary time to price the asset correctly. Dutch auction may or may not work and I think it favors the unqualified investor which could open up the FDIC to management problems. If a reserve price system is used the reserve price needs to be disclosed up front. Investors should be required to bid on the entire equity stake not partial stakes. The assets will be analyzed as a whole and you do not want to encourage cherry picking. Additionally, investors do not want partners forced on them owning shares of a fund.

7. What priorities (i.e., types of assets) should the FDIC consider in deciding which pools to set for the initial PPIF auctions? Real estate assets. These assets will make the biggest impact towards thawing the market freeze. Real estate assets need to be recapitalized and this is the best place to do ti.

8. What are the optimal size and characteristics of a pool for a PPIF? Answered above. Group the assets by type, location, size and performance. Keep the pool values high enough to discourage unqualified investors but low enough to keep the mid-level investor interested. $20MM -$100 MM pre-bid per pool.

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? Flexible enough to allow the investor to maximize the return on the pool. If the terms are not long enough it force the investor to liquidate assets prematurely in order to satisfy the note, especially if the asset is non-performing. Term should probably be in the 10 year range.

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? I think you need to keep it as simple as possible and probably use the FDIC as the intermediary

between the seller and investor. Investors do not want to have to interact with multiple partners i.e. the FDIC, the bank, the public.

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? This probably makes sense but again if the fee is too high it might discourage the bank or Seller to put the pool up for auction.

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? Rather than the government increasing their participation if trigger levels are reached the investor participation should be increased if certain criteria are met. The investor will be motivated to maximize return if there is a chance at greater participation. If the private investor does not see the upside they will not invest, additionally if they see the government profiting from their hard work it may dissuade the investor from participating. If participation agreements change over the life of the partnership this obviously needs to be disclosed up front.

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? Definitely, this makes sense. Once they are pooled they should not be allowed to be retracted. Independent contractors should place a value on all the assets in the pool, this sets the participation percentages, if the bid is less or greater than the value placed by the independent contractor then the distribution is adjusted according to the ratio.

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? I don't see this problem being addressed by the FDIC, that is up to the investor to manage. The key is to allow the investor maximum flexibility to manage the assets. Less oversight and governmental input the better. Once the pool is sold let the private sector do what it does best and maximize value.

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? Again, certain criteria needs to be set up front and investors must clear the necessary hurdles and approvals but once approved leave the investor alone and let them go to work. Do not make the process so cumbersome with reports and follow-ups that nothing gets done.

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 investor must control the servicing rights and have the flexibility to take control of the servicing. Again the investor does not want to have to manage relationships on all sides of the deal. The FDIC acts as the intermediary and allows the investor to use their team (property managers, servicers etc.) to manage the assets.

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? Absolutely NOT! Independent valuation consultants are only one tool to assess value, if their

information is disclosed it will destroy the market valuation process. The private sector is the best way to value assets. You have got to allow the private sector to do the underwriting independently so the assets are priced correctly. Do not allow this process to be skewed by an independent valuation consultant. You have one shot to make this work and if assets are not recapitalized correctly these assets will turn into troubled assets again somewhere down the road.

Random Comments

1. Independent contractors for the FDIC should be excluded from bidding. This represents a clear conflict of interest.
2. How do the "Fund Level Managers" differ from the smaller investor? Will the Fund Level Managers have first right on asset purchases and will this leave the smaller investor with the less desirable assets?
3. The qualifying process and requirements of potential bidders must be stringent enough so that only capable investors can participate. A tremendous amount of work goes into analysis, due diligence, etc. which is absolutely necessary to price the assets correctly. If unqualified or uneducated "investors" come in an bid up the price of the assets this will not only cause qualified investors to look elsewhere but it sets the FDIC up for additional problems when the unqualified investor cannot perform because he paid too much for the asset.
4. Funds or pools should grouped by asset class, geography, size and performance.
5. Pool values should be in the $20 – $100MM range. Small enough to keep the small investor interested but big enough to justify due diligence time etc.
6. Once Sellers put assets up for auction they MUST accept the bid or this plan will fall apart. Too much time, money and effort goes into analyzing and pricing the assets, if Sellers don't sale investors will invest elsewhere. Additionally, private investors (or the free market) are the most accurate mechanism to price distressed assets. If sellers elect not to sell because the price is too low it will only prolong the recession because banks will hold assets in lieu of cleaning their balance sheets.
7. If a reserve price is used in the auction, the reserve price range must be disclosed up front so investors can determine whether the Seller is serious or just fishing. The best thing to do is to require the Seller to sell once they have turned the assets over to the FDIC.
8. Investors should not be allowed to sell their interests in a PPIF doing so would encourage "flippers" and create a management nightmare for the FDIC.
9. Selling banks should be allowed to pool assets for sale but once the assets are pooled they should not be allowed retract them.