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Ramius/RCG Longview Comments on FDIC's Proposed Legacy Loans Program ("LLP")

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?

While we do not see any reason why the LLP should not ultimately apply to all asset classes, there is a tremendous looming problem in the commercial real estate marketplace which warrants particular attention to that asset class today. With over $80BN in commercial real estate debt maturing through 2010, the problem is particularly acute. Lending institutions should be required to take steps, such as selling their legacy loans through the LLP, which would put them in a position to make new loans. Without sufficient capacity to refinance these loans as they come due, the downward pricing/valuation pressures (the "negative feedback loop") will only accelerate, thereby compounding the problems for our lending institutions and the nation.

While different investors are drawn to loans with different characteristics, we believe that the LLP/PPIF structure will be particularly appealing to purchasers of loans that have ongoing funding obligations. Purchasers of construction loans on yet-to-be-completed projects, for example, will benefit from the program because the FDIC will be responsible for 50% of the future cash needs, thereby alleviating the private investor some of the burden of contributing cash on an ongoing basis.

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?

It is absolutely critical that the initial investors should not be able to pledge, sell or transfer their interests in the PPIF until such time as enough value has been created by the investor (or conventional financing becomes available) and the FDIC financing is replaced with a conventional facility. One of the reasons that *the nation is facing the problems in the credit markets today is because investors were continually allowed/incentivised to sell off their risk. If one of the goals of the FDIC's efforts is to get new loans flowing again, making participants in the LLP retain the risk will insure that these investors believe in the values they are setting for the assets they purchase, which, in turn, will give the banks more confidence in the value of other assets they are being asked to lend against, which will make it easier for them to make new loans.*

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?

Taken together with the contemplated 6-to-1 leverage being provided/guaranteed by the FDIC, the 50% equity contribution will effectively generate 92% of the capital required to purchase an asset through the combined PPIF/LLP program. We believe that this level of "financing" strikes the correct balance between ensuring that the investor has meaningful "skin in the game", and creating a framework that can provide enough capital to address the very large size of the problem faced by the real estate investing marketplace.

We believe that a higher percentage of government participation will encourage greater risk-taking by investors. This will have two effects. First, it may result in unjustifiably higher values being attributed to the purchased assets, which would denigrate confidence in true value, thereby hindering the making of new loans. Second, as a consequence of that described in the previous sentence, it would increase the liklihood of losses down the road, with the obvious negative effect on the US taxpayer.

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

Investor identities should not be made public. By doing so, it may hinder the ability of many institutional investors to participate because of perceived public response to its investing activities.

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?

The FDIC will encourage a broad range of participation by setting appropriate "accreditation" standards, which should include a minimum assets under management test, and a sophistication test. The standards should not be such that only the largest of institutions can qualify. Making the investor contribute its own risk capital and retain the risk should go a long way to enhance the chances that participants are adequately qualified.

One way to motivate sellers to participate is to allow them to strategically target their universe of buyers. For example, a regional commercial bank may have a very good idea about who the likely buyers for an asset are based upon their relationships in the marketplace, and those buyers may be more willing to participate if they knew that the sale was only being marketed to a discrete pool of potential buyers, as opposed to competing against the entire universe of investors.

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?

> *See previous comment on investor accreditation as it relates to facilitating broad investor participation. We do not believe, however, that maximizing the number of bidders on any particular asset sale should be the goal, as it will discourage many from participating. Alternatively, allowing sellers to target the most likely buyers based upon geography and familiarity with asset type will maximize participation and enhance the quality of the bids.*

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

> *The FDIC should make it a priority to sell those loans that are cash-flowing, performing assets. Due to more stringent underwriting standards, these types of loans are most likely to default at maturity if there are no refinance options available to borrowers at that time, as opposed to during their term. If these types of loans are allowed to default because of the lack of financing available at maturity (as mentioned earlier, $80BN by 2010), it will have a further negative effect on confidence, investor sentiment, and banks' willingness to lend on new assets. Alternatively, if these loans reach some acceptable resolution, presumably through the LLP process, it will have a tangential, uplifting effect on the more deeply troubled loans.*

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

> *We do not believe that there is an optimal pool size. We do believe that pools should be comprised of similar asset types. By making a pool more homogeneous, it would promote those investors with greatest expertise in that particular area to make a stronger bid. Additionally, diverse pools of assets (CMBS, for example) have been more attractive historically to those investors who rely on statistical analyses (geography, asset type, etc), and those types of analyses have been at the root of the credit crisis. Said another way, anything that can be done to promote investment by groups with specific expertise as it relates to the operations of a particular asset class is much healthier than promoting investment by pure structured finance players.*

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?

> *Level of proceeds, interest rate, term, non-recourse provisions, and prepayment.*

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?

Structuring the program so that the PPIF must issue public debt would be too time consuming, and would not achieve the desired result because of the lack of confidence (on the part of the investors purchasing such debt) in the values being set in the marketplace, especially in the early stages of the program. Time is of the essence. We assume that public debt will need to be structured, rated, marketed, etc., and will only serve to delay the very urgent need to provide liquidity to the banks so they can start making new loans.

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. Loans should be characterized as performing, partially performing, and non-performing, with fees suited to each category.

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?

No. Having the government increase its participation as performance increases actually results in a de facto disincentive to increase performance, and runs contrary to the widespread belief that government should not be in the business of owning private business enterprises for the long term.

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?

Pooling assets among sellers should be avoided if possible. Once again, having multiple sellers will complicate the process and speed of execution should be a priority. For example, it will require that purchasers contend with potentially very different loan documentation and underwriting standards utilized by disparate originators. If a structure that involves multiple sellers is adopted, the easiest way to manage the allocation problem is to require investors to break their bids down by individual asset.

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 biggest potential conflict among the LLP participants will involve that situation where the stated business objective is not being achieved, and the FDIC, as both the lender (or guarantor) and the 50% equity holder, will need to enforce its remedies under the financing arrangement. In order to mitigate the effects of this potential conflict, the FDIC should agree to minimize its involvement in the decision making as it relates to its equity participation, in return for a waiver of certain rights from the private investor in the event the FDIC financing goes into default.

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 government can mitigate its exposure to unqualified asset managers by setting its accreditation standards as described above. The most effective way to oversee the ongoing asset management efforts is to require that investors, as part of its qualification test, submit a multi-year business plan as it relates to the specifics of individual assets or pools. The business plan must contain sufficient detail, a description of assumptions used, and easily measured performance hurdles (leaseup, NOI, etc). The government must sign on to the plan at inception. In the event, in any given year, that the investor is not able to meet the performance benchmarks as described in the business plan (within a certain range), either because of market conditions or otherwise, the investor must get approval from the FDIC (or servicer) for a modification of that plan.

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?

A reasonable servicing fee should be paid by the PPIF.

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?

We do not believe that data used by the independent valuation consultant should be made available to potential bidders because in order to enhance the prospect for taxpayer recovery, the assets in question are better off in the hands of operators/managers who have expertise in the specifics of the pool, whether it be geography or asset type. These experienced investors will be best able to arrive at their own conclusions as to value based upon their first hand experience. Indications of value provided by so-called "experts" may have the undesired effect of instilling a false sense of confidence on the part of otherwise unqualified investors to submit a bid.

We are uncertain about whether such information should be provided to potential sellers. If a goal of the program is to induce sellers to remove these items from their balance sheets through a sale under the program, where the financial institutions may be disinclined to sell because it does not have a good understanding about where values lie, under certain circumstances, we may be convinced that these independent valuations could be useful in convincing them to sell.