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Park Bridge Financial welcomes the opportunity to provide comments to the FDIC on the proposed Legacy Loans Program. Park Bridge believes the overriding principle to a successful launch of this program will depend on its visibility, clarity and simplicity. With this idea in mind, we are pleased to provide the following responses (in bold) to the FDIC's 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?

Park Bridge believes the FDIC should focus on selling assets whose values are likely to have the steepest declines in the coming 24 months. If not resolved, these assets will likely create further stress on bank balance sheets. To this end, the FDIC should focus on the sale of C&I loans and commercial real estate debt (including whole loans and loan participations), prior to residential mortgages and other asset classes. For example, bank delinquency rates virtually doubled for commercial mortgages from 2007Q4 (2.75%) to 2008Q4 (5.42%).[1] Commercial mortgages represent the largest bank asset class, constituting 14.3% of all US bank assets.[2] Both statistics underscore the magnitude and urgency of the problem.

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?

Park Bridge believes the FDIC should generally discourage the sale of interests in PPIFs. It is important that initial investors screened and approved by the FDIC as eligible purchasers retain "skin in the game" so as to maximize the taxpayers' ultimate return. Moreover, one of the primary goals of the program is to broaden liquidity and encourage the creation of a secondary market in the underlying assets, not in derivatives of the assets (i.e., partial interests in PPIFs). Promoting a secondary market in partial interests in PPIFs could impede government efforts to create a robust secondary market in the mortgages and other assets owned by the PPIFs.

If PPIF investors demand some degree of liquidity, they should first look to sell assets. Beyond that, an acceptable compromise could be achieved by permitting initial investors to sell non-controlling interests of up to 49% of their initial investments (i.e., up to 24.9% of a PPIF) to qualified buyers. Eligibility criteria for a qualified buyer/transferee should be defined in the PPIF transaction documents and sale to any buyer/transferee not satisfying these criteria should require FDIC approval.

The Treasury should have the right but not the obligation to sell its pro-rata share of any permitted non- controlling minority interest alongside the initial investor. This would enable taxpayers to profit from such a sale, reduce its exposure in the PPIFs and recapture capital for other programs. Additionally, any such pro-rata share sale would maintain the equal allocation of interests between the initial investor and the taxpayers.

Similarly, initial investors should not be permitted to pledge their interests in the PPIF without FDIC consent. It is Park Bridge's opinion that the LLP provides sufficient

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[1] **Federal Reserve Statistical Release, see http://www.federalreserve.gov/releases/chargeoff/delallnsa.htm.**
[2] **Federal Reserve H.8 dated 4/3/2009.**

leverage to private investors and any further leverage obtained via a pledge will create a mismatched risk/reward profile between investors and its taxpayer partner in the PPIF.

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?

Park Bridge believes that a 50/50 public/private equity split is fair and optimal. With an equal share in the upside as well as the downside, the same risk/reward analysis applies to both partners and neither side is particularly advantaged or disadvantaged. A 50/50 equity split may also ease public perception that investors would benefit excessively or disproportionately from the program. Park Bridge does not think such a structure would discourage investor participation as long as investors can realize reasonable yields on their investments.

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

There is no reason to advertise investors' identities as long as the vetting process for qualifying buyers is sufficiently robust, including anti-money laundering and USA PATRIOT Act compliance. Park Bridge believes that keeping investors names private to the extent permissible by law will ultimately attract more capital because many investors will not want to be wrongly portrayed by a media that may misunderstand and inaccurately report the risks involved in these purchases. The FDIC should explain the vetting process in detail to bolster confidence in and streamline the procedure.

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?

<u>Investor Participation</u>: The FDIC should provide a straightforward process, details regarding financing terms and execution certainty. The FDIC should consider dividing large pools of assets into smaller groups based on loan type (e.g., fixed vs. floating rate, performing vs. non-performing, etc.), collateral type (e.g., unsecured, office, retail, land, residential, etc.) and collateral location. This will encourage broader investor participation and an investor base with targeted expertise.

<u>Seller Participation</u>: The FDIC should ensure that independent valuation consultants are provided full access to all loan data which will result in more accurate analyses. The FDIC should also permit the selling banks to review and comment on valuations (see answer to #17 below).

<u>Valuation and Bidding Process</u>: The FDIC should require each selling bank to establish a firm and publicly disclosed reserve price based on the results of the valuation consultant's analysis as well as input from the selling bank's regulator. This "price guidance" will provide comfort to investors that selling banks will transact at a certain level and not be able to withdraw collateral after the investor has expended time and money on due diligence and analysis. Additionally, bidders should be monitored closely for possible shills and other types of collusion.

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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?

Although a binding English auction with no reserve price would facilitate the broadest investor participation, it is unlikely that many selling banks would commit to such a process. Dutch auctions are also inappropriate given the heterogeneity within each asset pool (C&I loans and commercial mortgage loans, in particular, require extensive due diligence and are unique in nature). Dutch auctions work best where a spectrum of bids is likely to fall within a narrow range.

Park Bridge believes that sales via sealed bid auctions with binding publicly disclosed reserve prices are the most appropriate for the LLP. Investors with varying portfolio optimization strategies may make widely differing bids. As such, taxpayers would be more likely to realize the benefit of any higher "outlier" bids.

Investors should be required to bid on the entire private equity stake of any PPIF and such equity should be awarded to only a single investor. However, a PPIF may own multiple pools. Exhibit A illustrates the offering of three pools by a single selling bank. The FDIC, in conjunction with its valuation consultant, will set a reserve price and available leverage for each pool. Investors may then bid on each pool separately or any combination thereof, with the FDIC determining the winning combination. Regardless of the winning permutation (e.g., A only, A+B, A+B+C, etc.), the PPIF will own the equity in such combination.

Multiple investors may partner to submit combined bids. This type of joint venture bidding should create additional liquidity for larger pools.

Under all scenarios, asset management should be determined by the private equity holder of the PPIF. The FDIC should be indifferent to the selection of the asset manager so long as the manager meets pre-determined criteria.

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

For the reasons set forth in question #1 above, the FDIC should focus on selling assets whose values are likely to have the steepest declines in the near term (i.e., C&I loans and commercial mortgages). The success of the first few transactions will bring significant momentum to the program. As such, inclusion of loans without underlying property cash flow (e.g., development and land loans) should be limited during the initial phase of the LLP. The lack of cash flow would require complex structures to service the purchase-money leverage critical to the program's success. Although mitigating structures such as upfront interest reserves could be established, Park Bridge believes such additional complexity would be detrimental to the LLP's initial success.

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

Pools sizes of $100 to $500 million should appeal to a broad range of investors. For example, a pool with a face value of $100 million selling at 80 cents on the dollar at 6 to 1 leverage requires a $5.7 million private equity investment (100 x 0.80 / 7 / 2). This relatively modest investment should attract smaller investors. See Exhibit B for an illustration of this example.

Additionally, Park Bridge strongly recommends the segmentation of loans by asset class, geography and, with respect to commercial real estate loans, property type. This will ease the due diligence process and attract regional players and specialists likely to bid more aggressively. In addition, performing and non-performing loans should be pooled separately because the investor bases are different. Such segmentation would also create the potential for better asset management and therefore better returns for the investors and taxpayers.

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?

Each investor should be provided a detailed PPIF financing term sheet setting forth the following: (i) leverage ratio; (ii) term; (iii) rate, including type (i.e., fixed or floating), index, spread, floor and/or cap, if any; (iv) amortization; (v) accrual period; (vi) payment date; (vii) interest and principal application; (viii) prepayment and collateral release terms; (ix) events of default; (x) remedies; and (xi) recourse/non-recourse features.

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?

It would be preferable for the selling bank to take back an FDIC-guaranteed note from the PPIF. Because the note would be backed by the government, it would be treated like treasury securities on the selling bank's balance sheet and in the calculation of its risk-based capital ratios. Moreover, the selling bank would be able to repo the note to the Federal Reserve or sell it to a third party to free up cash for more lending. Thus, FDIC guaranteed seller-financing achieves two of the program's objectives: strengthening bank balance sheets and stimulating lending.

Structuring the program with publicly issued FDIC-guaranteed PPIF debt would be less efficient than FDIC-guaranteed seller financing. The underwriting and sale of public securities is time consuming, costly and complex. The issuance of public securities requires the involvement of many parties (e.g., broker-dealers, trustees, etc.) materially increasing the length of time to close the financing. All of the participants in a public debt offering need to be paid and their fees would increase the cost to the transaction.

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?

The FDIC should charge a flat percentage guarantee fee on the amount of debt outstanding. The risk of each pool should only be reflected in the leverage ratio determined by the FDIC in consultation with its advisors, not the amount of the guarantee fee. A guarantee fee based on risk would raise the cost of borrowing and further depress the sales prices of the riskiest assets. The FDIC has made a policy decision to help banks sell their most toxic assets; a flat fee will facilitate the sale of such assets.

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, this would disproportionately reduce the number and dollar amount of bids from private investors. The FDIC should seek to maximize bidder participation and bid prices. If competitive bidding is present and private investor returns are not capped, then any excess returns will be monetized at the bid stage and directly benefit selling banks. Capping private investor returns (a) ignores the risks taken by the private investor, (b) will deter many potential bidders from participating in the auctions and (c) is counter to the reason for inviting in private capital in the first place. If the government wants to attract private capital and talent, it must allow these investors to take risks and share equally in any returns they may earn for the partnership.

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?

As a matter of public policy, small banks should be encouraged to sell their troubled loans. However, the FDIC should recognize that creating very small pools will significantly increase the cost and administrative oversight of the program. PPIFs will have certain fixed costs (e.g., legal, accounting, advisory fees, etc.) associated with their creation. The FDIC must balance the benefits of attracting more bidders with the time and effort needed to create these vehicles. Given this background, Park Bridge believes that permitting small banks to sell through this program will require those banks to accept certain rigidities in return for tapping larger, more liquid pools of capital. While more thought is needed, we have outlined the major issues below:

(i) <u>No withdrawal of loans if pooled reserve price is hit</u> – If one or more banks withdraw loans from a pooled auction, there will be a corresponding alteration of the size and risk profile of the remaining pool. The auction will likely fail and all participants will have wasted time and money. In order to avoid this, each participating bank must agree on a binding <u>pooled</u> reserve price determined in consultation with the FDIC, the valuation advisor and the other banks selling into the pool. We propose that no single bank have its own reserve price. If the agreed-upon pooled reserve price is hit, <u>all</u> banks must sell to the winning bidder.

(ii) <u>Pre-agreed proceeds allocation</u> - Allocating proceeds in an equitable manner is a major focus for sellers selling into a pooled transaction. Selling banks must

agree <u>prior to the auction</u> on the method of proceeds allocation. We see two ways of determining each bank's proceeds and neither is perfect: (1) Require all bidders to provide loan-by-loan bids and have each bank receive its proceeds accordingly. (2) Have the independent valuation advisor determine asset values in advance and allocate proceeds using the following formula: (sum of selling banks' initial valuation estimate / sum of pool's initial valuation estimate) x (winning bid proceeds for the entire pool). While each method has advantages and disadvantages, we believe that (2) is better on balance. Bank sellers have time to vet valuation issues upfront, the valuation advisor has no bias towards any given bank and loan-by-loan prices from bidders are subject to whims and biases that are difficult to understand or predict in advance.

As long as the FDIC recognizes the added complexities of allowing pooled asset sales, we believe that fair, efficient and equitable methods for pooling and allocating these assets are available to the selling banks.

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?

LLP constituents (selling bank, investor, US Treasury) are typically sophisticated parties, so safeguards against conflicts of interest should generally be limited to the customary regulatory and transactional protections that the FDIC has incorporated into its prior structured transactions. For example, sales of PPIF assets to the selling bank or affiliates of the selling bank should be prohibited without FDIC approval.

Notwithstanding the potential conflict of interest, the FDIC should consider permitting a selling bank to "invest" alongside the purchaser if a reserve price is not met in order to encourage it to sell instead of walking away from a deal. However, in such situations the selling bank's equity interest should be limited to a passive minority interest, perhaps greater than the 10% currently contemplated but no greater than 20%.

Another potential conflict that the FDIC needs to consider involves investors with servicing affiliates. The FDIC needs to understand that certain investors may attempt to overcompensate their servicing affiliates to the detriment of the Treasury. One solution may be to standardize servicing fees across the program.

In addition, the FDIC should insist upon clear and standardized fund documentation, robust investor eligibility requirements and unambiguous ongoing reporting and audits.

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?

To encourage maximum private investor participation and asset resolution flexibility, the management of the PPIF assets should be left to the private investors. However, the FDIC should require the proposed asset managers be disclosed to the FDIC at the time of the bid and screened as part of the vetting process. Investors not qualified as asset managers must partner with a qualified manager during the bid submission process.

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With respect to the effective oversight of the government's investment, the FDIC should require winning bidders to submit an action plan to its asset management consultant detailing how it proposes to achieve its targeted return. Such plan would provide a basis from which the FDIC should judge investor performance. The investor/asset manager should also be required to provide performance reports on the government's equity investment as well as current credit metrics for the PPIF leverage.

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?

Servicing rights may be valuable and the FDIC should recognize that these rights are part of a portfolio's value. Park Bridge believes that assets should be sold with servicing rights released and investors should not be required to assign a separate value for such rights during the bidding process. The pricing of servicing rights is not a core competency of certain investors and therefore the requirement to do so may discourage participation by the broadest investor base possible.

Any monetization of such value is best left to the discretion of the private investor as a post-closing matter. In the event of any such sale of servicing rights, the Treasury would be entitled to its share of any sale proceeds. In order to maximize the value of the PPIF equity, the selling bank and other third parties should have the option to bid on the servicing rights if they can establish that they are qualified servicers.

The FDIC should understand that some pools, particularly portfolios of small balance loans, may have a negative servicing value given the labor intensive nature of collections and reporting and therefore should not anticipate to be paid for servicing rights in all cases.

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?

<u>Bidders</u> - The valuation consultant's analysis should not be released to potential bidders. Access to information such as suggested internal rates of return might create a ceiling on bid prices (if the IRRs are too high) or, alternatively, discourage bidding (if the IRRs are too low). Investors should analyze portfolios using their own tools and derive their own value conclusions. However, in order to achieve the highest bid, comprehensive diligence packages (e.g., payment histories, original and any updated third party reports, loan documents, etc.) should be made available to investors. Scarcity of information generally results in lower bid prices as investors embed a discount into their pricing to account for unforeseen risks.

<u>Sellers</u> - The valuation consultant's analysis and supporting data should be released to potential sellers. Providing this data would allow sellers to identify overlooked data and/or errors which could materially affect the consultant's valuation. However, sellers must not be permitted to alter or influence the consultant's assumptions or final valuations. Park Bridge believes the sharing of this information would be useful in setting the binding reserve prices critical to the success of the asset sales.

The Park Bridge team is available to discuss any of these responses. Our contact information is as follows:

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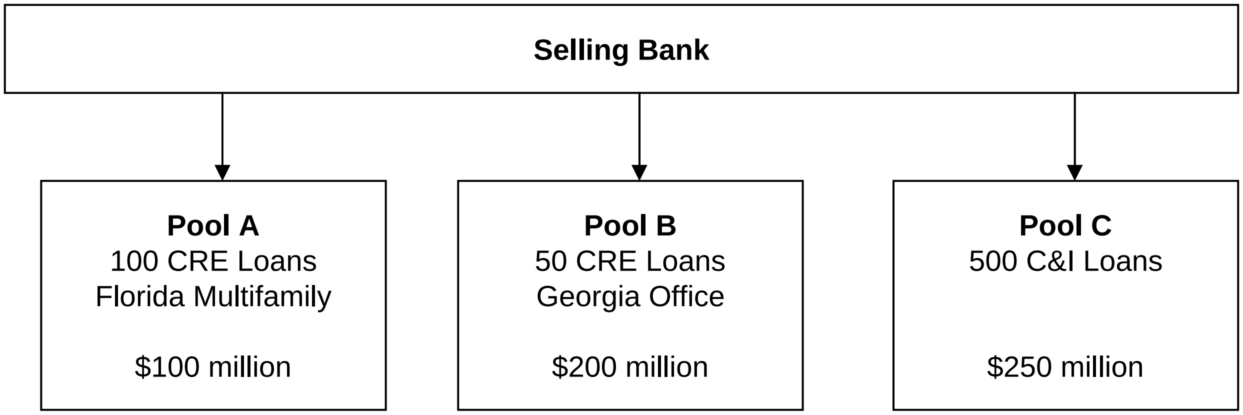
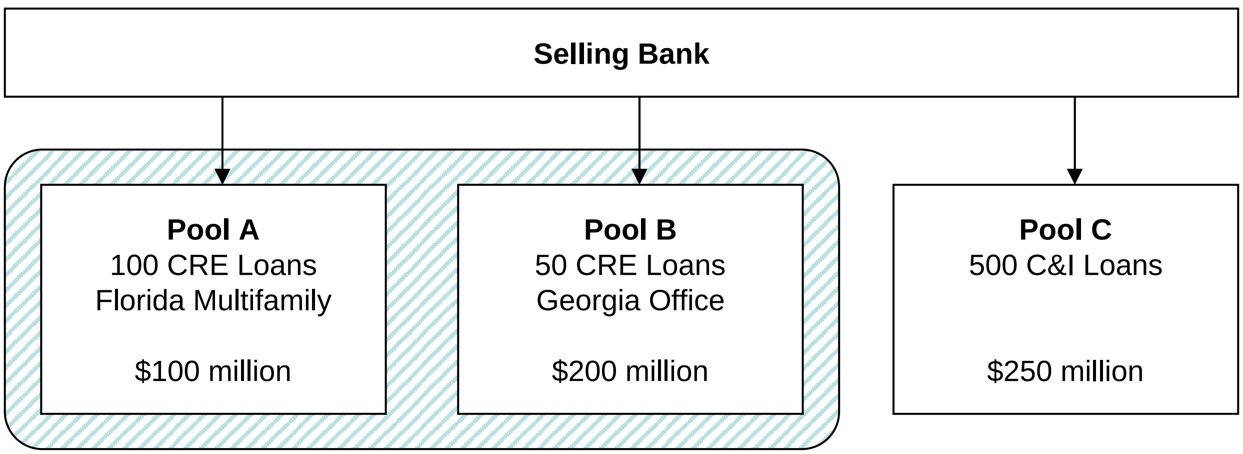
Park Bridge Financial is a privately-held commercial real estate advisory firm. We offer several complementary lines of financial services including brokerage and loan sale advisory, valuation and consulting, and asset / portfolio management. Park Bridge has substantial expertise in structuring, underwriting, closing, selling and working out first mortgages and mezzanine loans across all property types and across all regions of the U.S. and Canada. Please visit our website at www.parkbridgefinancial.com.

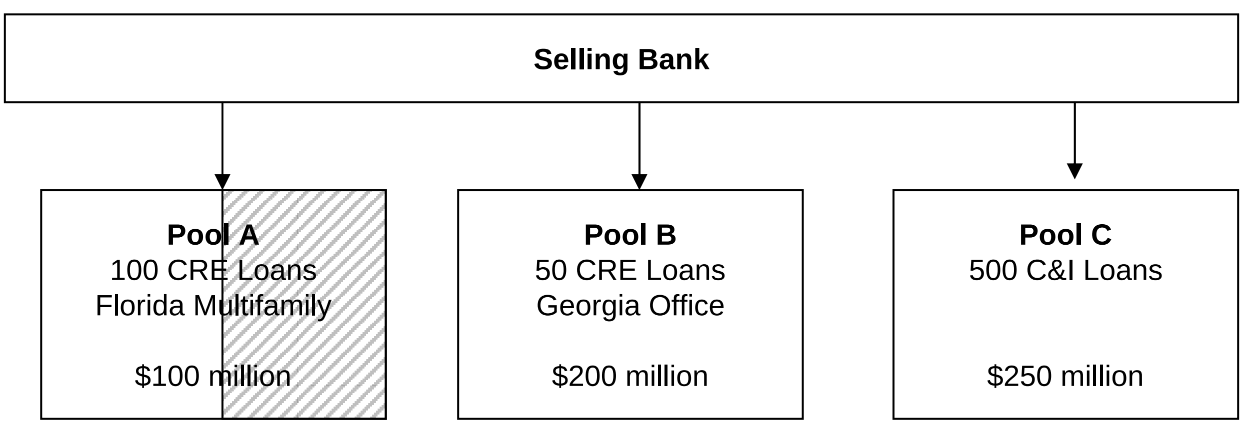
Exhibit A

(corresponds to question #6)





Bidders should be allowed to bid on multiple pools at the same time (e.g. A+B)



Partial pool bidding not acceptable
(e.g. $50 million of Pool A)

Exhibit B

(corresponds to question #8)