THE FINANCIAL SERVICES ROUNDTABLE

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Via www.regulations.gov

Mr. Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: RIN #3064-AD37: Modification of Temporary Liquidity Guarantee Program

Dear Mr. Feldman:

The Financial Services Roundtable[1] ("Roundtable") appreciates this opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") Interim Rule on the modification of the Temporary Liquidity Guarantee Program ("TLGP") ("Interim Rule"). The TLGP is an essential program to help provide liquidity to the financial markets. While the original TLGP has been extremely successful in providing banks with needed liquidity, it was not originally structured to address the issue of depleted capital levels of the nation's banks. However, we believe that building the capital levels in the banks will serve to spur loans to creditworthy borrowers and ultimately translate into economic growth.

As such, the FDIC's proposal to include mandatory convertible debt ("MCD") in the TLGP program is a necessary one. This product has the potential to significantly increase the banking sector's ability to raise capital through private investments, a critical step towards creating stability in the banking sector and moving the economic recovery forward. Getting private investor support into banks is critical to achieving this goal and private investors will be compelled to participate in MCD issued under the TLGP program because of the protection offered by the government guarantee on the debt securities. There will be a positive market impact generated by demonstrating the ability to execute such private capital raises, a meaningful step to building investor support going forward.

[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $85.5 trillion in managed assets, $965 billion in revenue, and 2.3 million jobs.

We offer some recommendations, however, on how best to shape this modification:

1) Purpose: The Interim Rule suggests that the intent of adding MCD to the TLGP is to "give eligible entities additional flexibility to obtain funding from investors with longer term investment horizons and to reduce the concentration of FDIC guaranteed debt maturing in mid-2012". We believe the following concept should specifically be added to the stated goals "…and to provide eligible entities greater flexibility to raise longer term private capital." To the extent the purpose of this amendment is solely to extend debt maturities, simply extending the period of the guarantee beyond the original date of June 30, 2012 would be more effective as banks will be unwilling to issue expensive dilutive capital simply to extend debt maturities, but would do so rather to replenish depleted capital levels.

2) MCD Guarantee: To ensure investor participation in MCDs, we believe that the guarantee on the instrument prior to conversion should mirror that of the TLGP program. The FDIC should, upon a failure of the issuer to make scheduled principal or interest, satisfy its guarantee obligation by making scheduled payments of principal and interest pursuant to the terms of the debt through maturity. It is imperative that the FDIC clearly identify its support of the full coupon on the security as some value of that coupon may be attributed by investors to the equity portion of the instrument. Therefore, an investor would be fully protected and made whole from a default prior to the conversion of the security into common equity. We believe that the protection to the investors should specifically include the bankruptcy and/or any type of conservatorship or receivership of the issuer. Without these protections, the value of the guarantee to investors may be clouded for asset valuation purposes and ultimately impact market acceptance of MCD.

3) MCD as Tier 1 Capital: We believe that the proposed MCD security does not meet the traditional requirements of Tier 1 capital from a Federal Reserve perspective. It is therefore imperative that the FDIC coordinate with the Federal Reserve to provide guidance that it will consider issuance of these MCD securities as Tier 1 capital. Without this qualification issuers are highly unlikely to utilize this product as it simply becomes a more expensive substitute for senior debt during the initial period prior to conversion.

   Additionally, as many institutions have exhausted their capacity for restricted Tier 1 instruments, we believe the FDIC should encourage the Federal Reserve to treat this MCD as *unrestricted* Tier 1 capital. This designation is supported by the nature of these securities and their ultimate conversion into common equity despite their initial status as senior unsecured debt. In support of an *unrestricted* Tier 1 capital designation, the FDIC should include language that will force conversion to common equity upon certain occurrences. Based on historical discussions, we would expect these to include a failure to meet well-capitalized status, and allowing the Federal Reserve at its discretion to do so.

On a related matter, we note that a number of our broker-dealer member firms have expressed an interest in investing customer account free-credit balances in TLGP Notes. These investments would be made through Special Reserve Accounts maintained for the exclusive benefit of the customers, as required by Securities Exchange Act Rules. Permitting such investment will assist in developing an active market for and increasing liquidity in the TLGP Notes. It remains unclear whether the TLGP Notes are "Qualified Securities" as defined under Exchange Act Rules. Until this is clarified between FDIC, Treasury and the SEC, such investments by broker-dealers are not possible. We therefore encourage the FDIC to take steps to confirm with Treasury and the SEC that the TLGP Notes are in fact backed by the full faith and credit of the federal government. We believe that the SEC will then consider the TLGP Notes to be "Qualified Securities" under the Rule, and thus eligible for investment of Special Reserve Account funds.

4) Investor Protection: It is critical for the FDIC also to provide protection in the form of a put to the FDIC or US Treasury for investors in this product upon early conversion in the above circumstances and prior to conversion in the event of an extraordinary government intervention. For example, protection could be provided to the extent the government takes ownership of more than twenty-five percent (25%) of an institution. This would provide equity investors further comfort around concerns of nationalization and reduce their downside risk during the initial period of the debt guarantee. This is particularly important to equity investors of banks that are considered "too big to fail" as the likelihood of nationalization far exceeds that of bankruptcy or conservatorship.

5) Tax Considerations: It is not clear whether the structure contemplated by the FDIC will be a standard tax deductible unit mandatory structure or a non-tax deductible mandatory structure. As a standard tax deductible unit mandatory structure has been the market convention, we would expect a greater demand from investors for that product. Additionally, such a unit would more clearly separate the debt that is insured by the FDIC from the equity forward contract and provide an economic benefit to issuers through the tax deductibility.

6) MCD Issuance: The interim rule states that "no FDIC-guaranteed MCD may be issued without the FDIC's prior written approval." Additionally the FDIC has required that eligible entities must submit a "strategic operating plan" and a description of the "use of the debt proceeds." We believe that allowing issuers to utilize MCD at their own discretion based on predetermined capacities would be a more efficient method for accessing the market and would also provide the market with more clarity (and ultimately more comfort) on each bank's ability to raise private capital.

   At a minimum, we request that the FDIC provide more guidance on acceptable use of proceeds. Some questions to consider in creating this guidance include: 1) Is the FDIC contemplating allowing issuers to utilize the MCD product as a means of repaying their obligations under the Capital Purchase Program? 2) Is this product an acceptable alternative for a capital raise under Capital Purchase Program? 3) Should institutions be allowed to issue MCD in exchange for existing preferred and trust preferred securities? Doing so will allow issuers to ultimately replace these lower quality capital securities with pure common equity while taking advantage of distressed trading levels which will result in P&L gains and increases to retained earnings further bolstering capital levels at the nations banks.

7) Existing Debt Guarantee Cap: The Interim Rule states that the amendment "will not result in a change to an eligible entity's existing debt guarantee cap." While we understand the FDIC's desire to limit its exposure to existing capacities, we believe that this methodology will result in significant inequities across issuers and not fully achieve the goal of rebuilding the depleted capital levels in the nations' banks. Banks that relied heavily on short term funding and were provided the lion's share of TLGP capacity will now be able to translate that capacity into significant dry powder for capital raises. On the other hand, issuers that managed their balance sheets in a prudent manner and had limited or no TLGP capacity will not be able to match the capital raises of their peers putting them at a competitive disadvantage, unable to make new loans or purchase attractive assets. The original intent of the TLGP was to encourage liquidity in the markets, and capacity was given to institutions based on their liquidity needs, as defined by maturing short term debt. As there is no connection between liquidity needs and capital needs, we believe that the FDIC should determine capacity to issue MCD based on metrics of each banking organization to ensure that each institution has an equal opportunity to build its capital levels. A suggested approach would be to provide capacity of up to two percent (2%) of consolidated assets at the holding company level.

   In the alternative, we request that the FDIC provide guidance as to whether or not insured banking subsidiaries would be able to utilize their existing FDIC capacity to move their capacity to the holding company for issuance of MCD, or issue MCD with debt of the insured depository institution that converts to equity of the holding company.

Thank you again for the opportunity to share our views with you on this subject. If you have any questions, please feel free to contact me or Melissa Netram at 202-289-4322.

Sincerely,

Richard M. Whiting

Richard Whiting
Executive Director and General Counsel