



INSTITUTE OF INTERNATIONAL BANKERS

299 Park Avenue, 17th Floor
New York, N.Y. 10171
Telephone: (212) 421-1611
Facsimile: (212) 421-1119
www.iib.org

LAWRENCE R. UHLICK
Chief Executive Officer
E-mail: luhlick@iib.org

November 13, 2008

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429
Comments@FDIC.gov

Re: Temporary Liquidity Guarantee Program – Interim Rule with Request for
Comments (RIN 3064-AD37)

Dear Mr. Feldman:

The Institute of International Bankers appreciates the opportunity to comment on the interim rule adopted by the FDIC to implement the Temporary Liquidity Guarantee Program (the “TLG Program”).¹ The Institute’s members include internationally headquartered banking organizations (“international banks”) that own FDIC-insured depository institution subsidiaries and/or operate “insured branches” (as such term is defined in Section 3(s)(3) of the Federal Deposit Insurance Act²) in the United States.

The Institute in general applauds the actions the FDIC has taken to help stabilize the financial markets and avoid or mitigate serious adverse effects on the economy. The “Debt Guarantee Program” and the “Transaction Account Guarantee Program” (as such terms are defined in the interim rule) provide important sources of support for insured depository institutions and will help restore confidence in the banking system. These benefits extend to all “eligible entities” (as defined in the interim rule) under the TLG Program regardless of the domicile of their ultimate parent. The Institute strongly supports this aspect of the interim rule.

¹ 73 Fed. Reg. 64179. Effective November 4th, the FDIC modified the interim rule to extend the opt out date for eligible entities until December 5th, extend the deadline for complying with certain disclosures until December 19th and establish assessment procedures to accommodate the extended opt out period. *See* 73 Fed. Reg. 66160 (Nov. 7, 2008). Our comments are based on the interim rule as thus amended.

² 12 U.S.C. § 1813(s)(3).



However, the interim rule expressly excludes insured branches from the Debt Guarantee Program (but not the Transaction Account Guarantee Program).³ The rationale for this exclusion is not explained. We strongly believe that as policy matter insured branches should be eligible to participate in the Debt Guarantee Program on the same terms as any other insured depository institution.

In particular, excluding insured branches from the Debt Guarantee Program places them at a potentially serious competitive disadvantage vis-à-vis other insured depository institutions and is contrary to the longstanding U.S. policy of national treatment established in the International Banking Act of 1978, which originally authorized insured branches. This discriminatory treatment of international banks also is inconsistent with applicable U.S. international treaty obligations, such as those set forth in Friendship, Commerce and Navigation treaties, guaranteeing that businesses, including banks, from treaty partner nations operating in the United States will be treated at least as favorably as U.S. businesses

Eligibility for the Debt Guarantee Program should not be a function of the organizational form through which an international bank chooses to operate in the United States. Insured branches are licensed to conduct banking operations in the United States and, as such, have the authority to undertake the same general types of borrowings as national banks and insured state-chartered banks.⁴ In addition, insured branches maintain their own books and records separate from those of their “parent” bank and, like other types of FDIC-insured depository institutions, they are subject to regulation and examination in the United States, as well as to the FDIC’s receivership powers.

Borrowings by national banks and state-chartered banks (regardless of the domicile of their ultimate parent) clearly are covered under the Debt Guarantee Program to the extent they constitute “senior unsecured debt” (as defined in the interim rule). The same type of borrowing equally should be covered when incurred in the name of an insured branch and recorded on the books of the insured branch – there is no meaningful difference in the nature of the obligation guaranteed by the FDIC.

Excluding insured branches can have anomalous results. An especially relevant example is federal fund purchased, which is specifically listed among the types of borrowings that are covered by the FDIC’s guarantee.⁵ The exclusion of insured branches’ obligations with respect to federal funds purchased places them at a competitive disadvantage in the market for federal

³ See 12 C.F.R. § 370.2(b).

⁴ As a separately licensed office of an international bank that is headquartered and maintains other offices outside the United States, an insured branch may in effect borrow funds from the “parent” bank that are recorded on the books of the insured branch as a “due to related depository institutions” amount. Such amounts are similar in nature to the type of intercompany debt that cannot be issued and identified as guaranteed by the FDIC without FDIC approval of the guarantee. See 12 C.F.R. § 370.3(d)(6).

⁵ See 12 C.F.R. § 370.2(e)(1).



INSTITUTE OF INTERNATIONAL BANKERS

funds, as counterparty institutions will be less likely to place funds with them as opposed to institutions that benefit from the FDIC's guarantee. This outcome is unfairly prejudicial to insured branches and counterproductive to the ongoing efforts to restore the vitality of the interbank lending market.

Based on the foregoing considerations, we respectfully urge the FDIC to include insured branches within the scope of the Debt Guarantee Program on the same basis as other types of insured depository institutions.

Please contact the undersigned or the Institute's General Counsel Richard Coffman whenever the Institute can be of further assistance.

Very truly yours,

A handwritten signature in black ink that reads "Lawrence R. Uhlick". The signature is written in a cursive, flowing style.

Lawrence R. Uhlick
Chief Executive Officer