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To: LLPComments
Subject: Legacy Loan Program Comments

April 10, 2009

Mr. Robert Feldman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D. C. 20429

Dear Mr. Feldman:

In response to the FDIC request for reactions from potential investors to the Legacy Loan Program guidelines as currently proposed, we would like to submit for the following thoughts for your consideration.

Our areas of interest and industry knowledge are primarily bank commercial real estate portfolios. We were active in the recapitalization of thrifts during the 1990's S&L crisis and the sale of their distressed assets; our comments are provided in the context of those experiences.

First, in order to induce eligible banks to capitalize on the program, we suggest you consider allowing for structured or negotiated sales of assets in addition to auctions. Auctions would cosmetically appear to produce the best prices for these sales. But practically, certainty of price can be as important as absolute price level when a bank is simultaneously trying to negotiate with private investors for a capital infusion.

It could be beneficial for the FDIC to allow an LLP investor to work with private equity parties in the overall disposition of assets and recapitalization of certain banks rather than run all transactions through auctions. Those organizations that have sufficient capital or that do not need simultaneous transactions (recapitalizations and asset sales) may elect an auction, but negotiated sales would widen the net of participation.

Second, we believe that structuring "seller participation" opportunities will also widen the net of bank participation. Forms of seller participation might include equity splits after certain hurdle rates for investors were achieved. Bids by investors that include seller participation might be harder to compare, but they could also encourage a bank's board of directors to commit to a sale that otherwise looked unattractive.

Third, we believe you should seriously consider removing the current proposal allowing banks to have a "last look" after a winning bid is established through an auction. Only those banks that do not really need to sell their assets would test the waters with the auction process and then turn down the bid. Alternatively, if a bank turned down a bid because it could not afford to take the write-down, even though it wanted to sell the assets, what's the use of the process? Again, it seems as though the recapitalization strategy must go hand in hand with asset sales.

Fourth, at least with respect to commercial real estate assets, including land and construction loans, we believe that servicing rights must be transferable. This may not be the case with certain consumer loans. But practically, if a loan is not performing, the investor will need the right to negotiate directly with the borrower, or the cost of uncertainty by working through the host bank as servicer will certainly reduce the price of that loan.

Fifth, and very importantly, we believe the FDIC should address the issue of construction completion loans. Putting equity into construction completion might not be as problematic generally as it is today. But with no clear market today for take-out loans or refinancing, the unleveraged cost of completing a partially constructed project will only drive the price of that loan to levels that banks might find less attractive than retaining the loan or REO on their books.

There are other comments you have received from others which we echo: understanding your guaranty terms, fees and issuance flexibility, for example, and the clarification of oversight issues. But we look forward to continuing the dialogue with you and hope to see the program evolve for the results you intend.

Sincerely,

Kenneth S. McCormick
Managing Director
Mill Creek Capital LLC