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October 28, 2008

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Via Email Comments@FDIC.gov

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

Comment on Interim Rule, RIN #3064-AD37

Dear Mr. Feldman:

This responds to the issuance by the Federal Deposit Insurance Corporation ("FDIC") of its Interim Rule with request for comments governing the Temporary Liquidity Guarantee Program ("TLGP") on October 23, 2008. The Interim Rule has not yet appeared in the Federal Register, but because the comment period ends on November 12 we submit this comment based on the original issuance.

We comment on one point in the Interim Rule. It is not clear whether deposits on the books of non-U.S. branches of U.S. FDIC-insured banks are considered to be "senior unsecured debt" under the Interim Rule. Section 370.2(e)(1) indicates that the term includes bank deposits in an international banking facility and "Eurodollar deposits standing to the credit of a bank". Section 327.2(e)(3) indicates that the term excludes "Eurodollar deposits that represent funds swept from individual, partnership or corporate accounts held at insured depository institutions." Nothing seems to exclude deposits at non-U.S. branches (other than funds resulting from swept accounts), but it is not clear that the term "Eurodollar deposits" is intended to include them. That term appears not to be defined in either the general definitions of Section 303.2 or the definitions in Section 330 of the FDIC's regulations.

This is an important issue due to the possibility that persons holding more than $250,000 in deposits at U.S. offices of FDIC-insured banks could establish deposit accounts, including

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accounts that would otherwise be analogous to a NOW account or MMDA account, at a non-U.S. office of the same bank and obtain full FDIC insurance on all such balances. As you know, Regulation D of the Board of Governors of the Federal Reserve System at 12 C.F.R. Section 204.2(t) effectively treats any deposit of a United States resident at a non-U.S. office of a U.S. bank as a deposit payable in the United States, and therefore makes it subject to the requirements of Regulations D and Q (thereby disallowing the payment of interest if the maturity is less than seven days), but only if in denominations of less than $100,000. Thus, U.S. residents could obtain the benefit of full deposit insurance consistent with Regulations D and Q by opening accounts at non-U.S. branches of their banks if such deposits are considered to constitute senior unsecured debt.

If this is correct, then it would be helpful to explain how the calculation of a bank's maximum amount of senior unsecured debt should be calculated. While banks may control the issuance of senior unsecured debt for their own funding purposes, they will not be in control of the amount of balances deposited by existing customers. The inclusion of deposit accounts in this calculation introduces an element of uncertainty for banks. Apparently it would include deposits that would constitute demand deposits if held at a U.S. office of the bank, which would be subject to daily fluctuations. It is also unclear whether fresh funds deposited into a pre-existing non-U.S. deposit account would constitute "newly issued senior unsecured debt" as defined in Section 370.2(f). The FDIC should explain how banks should allow for this possibility.

We appreciate the opportunity to make this comment.

Very truly yours,

Shearman & Sterling LLP

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