Bank of America

Gregory A. Baer
Deputy General Counsel
Regulatory and Public Policy

June 23, 2008

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

Dear Mr. Feldman:

Bank of America appreciates the Federal Deposit Insurance Corporation's (FDIC) efforts to foster a robust U.S. covered bond market. Covered bonds can provide a diversified, stable, and cost-effective funding source for banks to originate and hold mortgages on their balance sheets. We believe that a U.S. covered bond market will improve underwriting discipline, liquidity, and stability to the housing finance market.

As one of the leading home finance providers in the nation and a covered bond issuer, we support the Interim Final Covered Bond Policy Statement issued by the FDIC. In particular, the reduction of the automatic stay period from 90 days to 10 days will benefit the market. We believe, however, that as currently drafted, the Policy Statement still leaves U.S. issuers at a significant disadvantage to European issuers.

Covered bond investors assess the following key credit criteria in making their investment decisions: issuer strength, legal certainty, structural transparency, and collateral quality. In Europe, covered bond legislation defines the covered bond structure, provides legal certainty in the event of insolvency, and sets forth general guidelines as to eligible collateral. The result is a unique asset class relative to corporate bonds or asset-backed securities viewed by investors as having low credit risk and good liquidity. These characteristics have allowed the European covered bond market to grow to over $2.8 trillion, and serve as the primary source of funds for banks to make mortgage loans.

The recommended changes to the Policy Statement discussed below would provide investors in U.S. covered bonds the same type of legal certainty, structural transparency, and collateral quality that they receive under European covered bond legislation.

Tel: 202.442.7573 · Fax: 804.262.8125
gregory.a.baer@bankofamerica.com

Bank of America, DC1-701-10-05
730 15th Street, NW, Washington, DC 20005

Legal Certainty and Structural Transparency

First, we recommend that the Policy Statement provide explicitly that, following a bank insolvency and a payment default on the bank's obligations, the amount of damages the FDIC will pay upon its repudiation of a bond, or the amount of liquidation proceeds from a sale of cover pool assets that a covered bond trustee is entitled to recover, will be equal to the outstanding principal amount of the bond plus accrued interest through the date either on which such repudiation damages are paid or on which the trustee commences such liquidation ("Par plus Accrued").

Clearly establishing Par plus Accrued as the amount of damages or liquidation proceeds to which covered bondholders are entitled would eliminate uncertainty on this point by investors and the rating agencies. Certainty as to what investors are entitled to in a bank insolvency is one of the key elements of a covered bond program. Receiving less than Par plus Accrued would trigger an acceleration of the covered bonds. Also, although the reduced stay period of 10 business days is a significant improvement, a bank must still establish a swap to cover the potential unpaid interest for this 10 day period. This creates additional cost and complexity absent in European programs.

Stating that Par plus Accrued will be paid in the event of a receivership is a reasonable step and fully consistent with the best interests of the deposit insurance fund. The over-collateralization level of the cover pool is dynamic to ensure that its market value in liquidation will exceed Par plus Accrued. The rating agencies monitor the collateral pool on an ongoing basis and re-define the over-collateralization requirements as required by market conditions.

We also recommend that the Policy Statement explicitly state that the FDIC, in event of receivership, will not consolidate a special purpose bank subsidiary or a legally remote special purpose entity (SPE) organized solely for the purpose of issuing or guaranteeing the bank's covered bonds. This would enable banks to issue covered bonds directly to investors, and to offer public securities relying upon the exemption from registration provided to securities guaranteed by a bank. Direct issuance improves structural transparency and is comparable to the way covered bonds are issued in Europe. Public offering also permits covered bonds to be eligible for inclusion in market indices, which will provide enhanced liquidity and transparency to the market.

Collateral

We recommend the Policy Statement define eligible collateral as follows.

- Perfected first lien mortgage loans on one-to-four family residential properties that meet the following criteria:
  - LTV is less than or equal to 80% without private mortgage insurance (PMI), or less than or equal to 90% with PMI;
  - Is not past due 60 or more days;
  - Negative amortization is not permitted; and

- Was underwritten in accordance with all legal requirements and bank supervisory guidance in effect at the time of origination.

- Government and agency securities, Agency MBS, AAA rated Private Label MBS, and highly rated (A-1/ P-1) money market instruments up to a maximum of 10% of the collateral pool, unless prior approval is obtained from the bank's primary regulator. Mortgage loans underlying a MBS must comply with the eligible mortgage loan requirements.

- Derivative contracts and guaranteed investment contracts as necessary to hedge interest rate, currency, and payment continuation risks on behalf of the investors.

As the current mortgage crisis has borne out, Loan-To-Value (LTV), delinquency, and negative amortization are the key determinants of mortgage loan performance. Thus, in order to maximize investor confidence and maintain consistency, these should be the criteria considered when looking to set eligible collateral requirements. In particular, LTV has proven to be the key factor when considering loan performance and is the primary criterion for mortgage loan eligibility in European Covered Bonds.

The Policy Statement restricts eligible mortgage loans to those that are underwritten at the fully indexed rate and rely on documented income. We believe this language creates substantial, unintended problems for the near-term development of a U.S. covered bond market. Prospective issuers would not currently have a sufficient inventory of eligible mortgages or systems to document compliance. Accordingly, if this restriction is retained, we strongly recommend that the Policy Statement grandfather mortgages originated before July 1, 2007 in order to allow the market to grow while adjusting to these new regulatory restrictions.

Permitting high quality liquid collateral above 10% of the collateral pool with the prior approval of the bank's primary regulator provides a bank the necessary flexibility to maintain collateral levels in the event it does not have adequate mortgage loans.

Other Issues

We recommend the Policy Statement permit a bank to issue covered bonds in excess of 4% of its liabilities with prior approval from its primary regulator and the FDIC. The 4% limit could be a significant barrier for small and mid-size financial institutions to enter into this market. Requiring prior approval of the bank's primary regulator to exceed 4% will ensure that the bank has appropriate risk management and controls in place.

We recommend the Policy Statement not limit the tenor of covered bonds to 10 years. There is no similar limit for European covered bonds. Also, banks are subject to regulatory guidance and requirements for prudent funding and asset-liability management, which precludes any inappropriate asset-liability mismatches.

We recommend the Policy Statement not include any language regarding deposit assessments. Covered bonds today and in the future are insignificant relative to other forms of secured borrowings by banks, and the FDIC should address the topic separately from this Policy Statement.

Again, we appreciate the FDIC's leadership in issuing the Policy Statement and are available to answer any questions you might have or provide any further assistance you might require.

Respectfully submitted,

Gregory A. Baer
Deputy General Counsel