COMMERCIAL MORTGAGE
SECURITIES ASSOCIATION

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June 23, 2008

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

Comments@FDIC.gov

Re: Covered Bond Policy Statement: Response to Request for Comment

Dear Mr. Feldman:

The Commercial Mortgage Securities Association ("CMSA") submits this letter in response to the Federal Deposit Insurance Corporation ("FDIC") request for comment on the Interim Final Statement of Policy (the "Policy Statement") published in the Federal Register on April 23, 2008.

The CMSA is a global trade organization with its primary mission being to promote the ongoing strength, liquidity and viability of commercial real estate capital market finance worldwide. Based in New York, with a government relations office in Washington, DC, as well as a strong presence in Canada, Europe and Japan, CMSA is the collective voice for the entire market, with a diverse global membership of over 400 member firms represented by more than 5,000 individuals who actively engage in commercial real estate capital market finance activities. These members embody the full spectrum of the commercial mortgage-backed securities ("CMBS") market, including senior executives at the largest banks and investment banks, insurance companies, rating agencies, investors such as money managers and specialty finance companies, servicers, mortgage bankers and other service providers to the industry. CMSA and its members are the leaders in setting standards and maintaining a favorable investing environment for the more than $900 billion in outstanding CMBS issuance in the U.S., and we submit these comments in an effort to further advance these dual objectives.

The Policy Statement provides regulatory relief for covered bond issuances meeting the definition in the Policy Statement by allowing expedited access to covered bond collateral if an issuing insured depositary institution (an "IDI") is placed into FDIC receivership or conservatorship. The CMSA supports the goal of the Policy Statement to facilitate the prudent and incremental development of the U.S. covered bond market. The CMSA believes that the development of a U.S. covered bond market would create a powerful additional source of liquidity, provided by new and diverse funding sources, to IDIs in funding mortgage loans and other financial assets.

In the Policy Statement, the FDIC provides guidance to facilitate the prudent development of the U.S. covered bond market and invites comment on whether the Policy Statement should be limited to the currently defined structures or open to future innovations. The CMSA urges the FDIC to consider expanding the definition of eligible mortgages to include high quality commercial mortgage loans and CMBS, and to consider generally permitting a broader range of collateral assets, as well as ancillary assets that typically secure covered bonds. In addition, the CMSA believes that certain provisions and definitions in the Policy Statement, as discussed below, may create impediments to the development of a U.S. covered bond market, and consequently, the goal of providing liquidity to IDIs, and respectfully requests that such provisions be revised as described below. This letter also addresses certain policy questions raised by the FDIC regarding the Policy Statement, and suggests that the FDIC and other regulators consider providing regulated institutions with a lower risk weighting requirement for covered bonds similar to that implemented for European banks under the European Union Directive 2006/48/EC (June 14, 2006) (the "CRD Directive").

ELIGIBLE ASSETS

Commercial Mortgage Loans and CMBS. The CMSA believes that allowing inclusion of highly rated CMBS and high quality commercial mortgage loans as collateral for covered bonds during this interim evaluation period will support enhanced liquidity for mortgage finance without increasing the risks to the Deposit Insurance Fund. IDIs require additional liquidity and funding sources for commercial mortgage loans just as they do for residential mortgage loans. Moreover, commercial mortgage loans have been permitted as collateral for covered bonds issuances in all European countries with a legislative framework for covered bonds, are a familiar and well understood asset to rating agencies that rate covered bond issuances, and are an asset with a safety quality consistent with the prudent development of the covered bond market.

As of March 31, 2008, FDIC insured institutions held approximately $988,732,000,000 of commercial mortgage loans.[1] The origination of commercial mortgage loans is part of the core lending business of IDIs. Moreover, the funding of commercial mortgage loans is vital to the U.S. economy. IDIs have frequently looked to securitization as a source of funds for commercial mortgage lending. However, as Chairman Bair noted in testimony before the Senate Committee on Banking, Housing and Urban Affairs on March 4, 2008, "upheavals that began in residential markets now affect commercial real estate capital markets, resulting in sharply curtailed

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[1] Source: FDIC quarterly banking profile. Includes "non-farm non-residential" loans only; does not include construction and development loans or loans held by foreign branches of domestic banks.

liquidity....Securitizing commercial real estate loans has become difficult." Covered bonds create an alternative source of funding that can help take the place of securitization transactions in the current market.

Moreover, covered bonds will provide a desirable additional funding strategy even following a recovery of the commercial securitization market. Covered bonds are typically rated "AAA" or "AA"; their high rating, as well as the combination of high quality security and the fact that there are dual sources of repayment (*i.e.* both the issuing entity and the cover pool) generally attract a different, more conservative class of investors than securitization, thereby expanding the pool of capital available to fund commercial mortgage loans. Covered bonds generally attract conservative investors that would otherwise typically invest in government securities, including a greater proportion of banks, insurance companies and pension fund investors than asset-backed securities. Further, the higher rating of covered bonds generally translates into a lower cost of funding. Moreover, as the American Securitization Forum noted in its February 26, 2008 letter to the FDIC (the "February ASF Letter"), "covered bonds supply capital to banks in a form that offers substantial benefits from a risk management perspective. As Chairman Bair has emphasized, on-balance-sheet funding tools like covered bonds encourage especially strong underwriting." This is equally true with respect to underwriting of commercial mortgage loans.

Commercial mortgage loans and CMBS have been widely used to secure covered bonds in the European market. Legislative frameworks for covered bonds in Austria,[2] Bulgaria,[3] Denmark,[4] Finland,[5] France,[6] Germany,[7] Hungary,[8] Iceland,[9] Ireland,[10] Italy,[11] Latvia,[12] Luxembourg,[13] the

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[2] For historic reasons Austria has three different laws governing the issuance of covered bonds:

The Mortgage Bank Act (*Hypothekenbankgesetz*) under which joint stock companies active in mortgage lending may issue covered bonds.
www.fma.gv.at/cms/site//attachments/7/6/0/CH0217/CMS1138791998634/hypbg-bgbl__i_nr__48-2006.pdf (German original)

The Pfandbrief Act (*Gesetz über Pfandbriefe und verwandte Schuldverschreibungen öffentlich-rechtlicher Kreditanstalten*) under which Austrian public sector mortgage banks and their joint-issuance vehicles may issue covered bonds.
www.fma.gv.at/cms/site//attachments/2/8/6/CH0217/CMS1138792037220/pfandbri.pdf (German original)

The Law on Secured Bank Debentures (*Gesetz über fundierte Bankschuldverschreibungen*).
www.fma.gv.at/cms/site//attachments/2/4/4/CH0217/CMS1139394021480/8_bankschu.pdf (German original)

[3] Mortgage Bonds Law 1999.
www.pfandbrief.de/d/internet.nsf/0/CD8138A2C2B19BF3C1257455002F4D6D/$FILE/eur_li_bg_pfbrgesetz_bg.pdf (Bulgarian original and official English translation)

[4] Financial Business Act, Mortgage Loans and Mortgage Credit Bonds Act and Covered Bond Regulation.

[5] Mortgage Bank Act (*kiinnitysluottopankkilaki*) 1240/1999.

Netherlands,[14] Norway,[15] Poland,[16] Portugal,[17] Romania,[18] Spain,[19] Sweden[20] and the United

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[6] L.515-13 and seq. of the Monetary and Financial Code (*Code Monétaire et Financière*).
www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072026&dateTexte=20080616 (French original)

[7] The Pfandbrief Act 2005 (*Pfandbriefgesetz*).
www.pfandbrief.org/d/internet.nsf/tindex/en_pfand_act.htm?OpenDocument&C0AAEB00BE70AE13C1257377005ADAE4 (unofficial English translation)

[8] Act No. XXX of 1997 on Mortgage Banks and Mortgage Bonds.
www.mortgagebanks.hu/fileadmin/mortgagebanks/uploads/jogszabalyok/en/Mortgage_Bank_Act_25.01.08.pdf (unofficial English translation)

[9] Act on Covered Bonds 2008.
en.sff.is/news/infocus/nr/166 (unofficial English translation)

[10] Asset Covered Securities Act 2001, as amended by the Asset Covered Securities (Amendment) Act 2007.
Asset Covered Securities Act 2001: www.irishstatutebook.ie/2001/en/act/pub/0047/index.html (English original)
Asset Covered Securities (Amendment) Act 2007:
www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2007/a1307.pdf (English original)

[11] Articles 7-bis and 7-ter of Law n. 130/1999 and Bank of Italy Supervisory Regulations of May 15, 2007.
Articles 7-bis and 7-ter of Law n. 130/1999: www.freshfields.com/publications/pdfs/2007/jun20/18850.pdf (Italian original and unofficial English translation)
Bank of Italy Supervisory Regulations:
www.bancaditalia.it/vigilanza/banche/normativa/disposizioni/provv/COVERED%20BOND_ENG.pdf (official English translation)

[12] Law on Mortgage Bonds of September 10, 1998 as amended on June 1, 2000, July 5, 2001, November 6, 2002 and October 25, 2006.
www.fktk.lv/texts_files/Law%20on%20Mortgage%20Bonds_05_2007.doc (official English translation)

[13] Articles 12-1 to 12-9 of the Financial Sector Act of April 5, 1993.
www.pfandbrief.de/d/internet.nsf/0/3CACA63B213CD29AC1257441004E8C8C/$FILE/eur_li_lux_loi_05041993_update290905.pdf (French original)

[14] Covered Bonds Decree under the Financial Supervision Act (*Wet financieel toezicht*) (in force from 1 July 2008).

[15] Act on Financing Activity and Financial Institutions, Chapter 2, subchapter IV: Covered Bonds.
www.fnh.no/Norwegian_Covered_Bonds_Marked_ZDk3h.pdf.file (unofficial English translation)

[16] Act on Mortgage Bonds and Mortgage Banks of August 29, 1997.
www.en.ehipoteka.pl/corporate_site/content/download/258/1013/file/2005.05.01,%20ustawa%20o%20listach%20zastawnych%20na%20www,%20naglowki.pdf (Polish original)

[17] Decree-law no. 59/2006 of March 20, 2006.
www.pfandbrief.org/d/internet.nsf/0/EE48237251680BF4C125744E0039310A/$FILE/eur_li_pt_pfandbg_engl.pdf (unofficial English translation)

[18] Law No. 32/2006 on mortgage bonds of March 23, 2006
www.pfandbrief.org/d/internet.nsf/0/A0BC6D1A7A4DE1EBC125738A00691D70/$FILE/ROMANIA%20-%20Law_No_32_2006_on_mortgage_bonds.pdf (unofficial English translation)

Kingdom[21] specifically permit the use of commercial mortgage loans as covered bond collateral. In addition, all European jurisdictions that permit the use of residential mortgage-backed securities ("RMBS") in cover pools also permit the use of CMBS. Moreover, the CRD Directive, which sets forth standards for eligible covered bonds to receive a more favorable risk weighting, includes loan eligibility standards for covered bonds which permit unlimited use of commercial mortgage loans that meet the required eligibility standards, and permit use of CMBS to the same extent as use of RMBS. A 2007 Fitch Ratings study of 61 cover pools issued by 48 issuers in 11 countries found that commercial mortgage loans constituted 11% of the assets in all mortgage cover pools reviewed in the study; a similar study in 2006 (51 cover pools, 38 issuers) found that commercial mortgage loans constituted 29% of the assets in reviewed mortgage cover pools. Indeed, the use of commercial mortgage loans as covered bond collateral is so well-established in Europe that the European Covered Bond Council, in preparing tables showing collateral types for its Covered Bond Fact Book, does not differentiate between residential and commercial mortgage loans but treats them as a single category.

As a result of the widespread use of commercial mortgage loans to secure covered bonds, rating agencies that rate covered bonds are familiar with and experienced in rating covered bonds with cover pools that include commercial mortgages. Moreover, a cover pool with a mix of commercial and residential mortgage loans as well as CMBS and RMBS may have positive implications on the rating process. The degree of non-correlation between these asset classes could add a positive diversification impact on the risk profile of the cover pool. This would add to the viability of a robust U.S. covered bond market. Accordingly, including high quality commercial mortgages and highly rated CMBS in the definition of "eligible mortgage" will improve the ability of an IDI to utilize covered bonds as part of a prudent liquidity management framework for both its commercial and residential mortgage loan portfolio.

Allowing commercial mortgage loans and CMBS to be included in cover pools for covered bonds protected by the regulatory relief in the Policy Statement is consistent with the FDIC's goal of facilitating prudent development of the U.S. covered bond market. According to data from the Federal Reserve Fund of Funds report, the U.S. residential mortgage market amounted to $11.2

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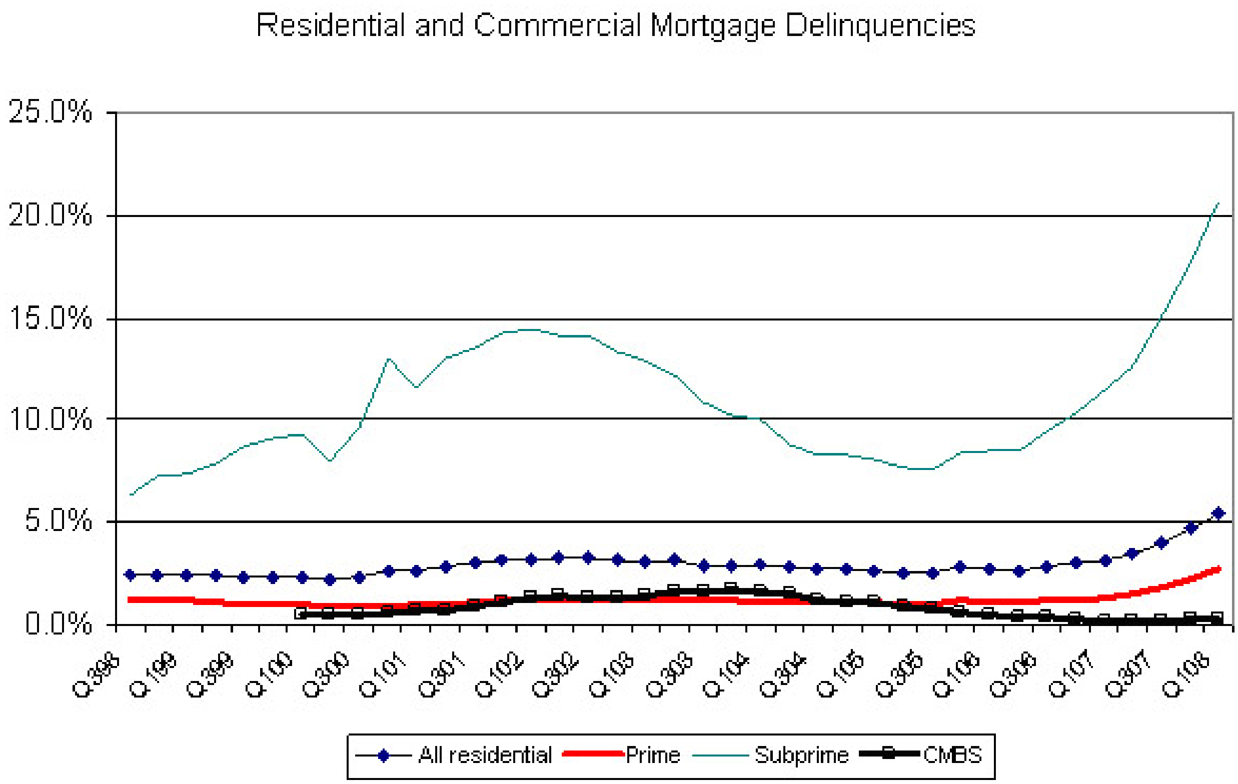
[19] Law 2/1981, of March 25, 1981, on the regulation of the mortgage market and Royal Decree 685/1982, of March 17, 1982.
Law 2/1981: wwwa.bde.es/clf/leyes.jsp?id=6574&tipoEnt=0 (Spanish original)
Royal Decree 685/1982: wwwa.bde.es/clf/leyes.jsp?id=6357&tipoEnt=0 (Spanish original)

[20] Covered Bond Law (Lag 2003:1223 om utgivning av säkerställda obligationer).
www.pfandbrief.de/d/internet.nsf/0/5BEE3BB122974C26C1257441004F193B/$FILE/eur_li_schwe_PfBrG_neu.pdf (Swedish original)

[21] Regulated Covered Bonds Regulations 2008.
www.opsi.gov.uk/si/si2008/uksi_20080346_en_1 (English original)

trillion at year-end 2007. The commercial market, including multifamily properties, amounted to \$3.3 trillion. Commercial mortgage loans have historically experienced low default rates as shown in the below chart.



Source: National Delinquency Survey, Mortgage Bankers Association, Trepp, Inc., CMSA. Residential mortgage delinquencies based on loan numbers. CMBS delinquencies by loan amount. Not all residential mortgages included in the survey have been securitized.

Moreover, the FDIC may permit covered bonds secured by commercial mortgage loans and CMBS in a manner consistent with its goal of prudent market development by imposing quality requirements on permitted commercial mortgage loans to ensure that their use is consistent with the traditionally high quality standards for assets used to secure covered bonds. For example, eligible commercial mortgage loans could be required, when combined with all other outstanding mortgage loans secured by prior or equal liens on the related property, to have a maximum loan-to-value ratio of 80%[22] and eligible CMBS could be required to be rated at the time of acquisition in one of the two highest rating categories of at least one nationally recognized statistical rating organization.

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[22] We understand that in Europe the loan-to-value ratio requirement is typically not a "hard cap" (in which loans not meeting the requirement are excluded from the pool, but rather a "soft cap,"(in which loans not meeting the requirement may be used as collateral but for purposes of calculating the value of the cover pool the principal amounts of the loans

Although the Policy Statement attempts to address the market uncertainty and additional costs created by the extra liquidity needed to ensure continued payment on outstanding covered bonds if the FDIC as conservator or receiver fails to make payment or provide access to the pledged collateral after the FDIC decides to terminate the covered bond transactions, the narrow definition of "eligible mortgages" will solve that problem in only limited circumstances. We believe the uncertainty and costs are the primary reasons why a U.S. covered bond transaction containing commercial mortgage loans or CMBS has not yet been consummated. One way to address this market uncertainty as well as decrease costs is to allow high quality commercial mortgages and highly rated CMBS into the cover pool.

Additional Eligible Assets. In addition to adding commercial mortgage loans and CMBS as eligible assets for cover pools, the CMSA also recommends that the Policy Statement include other asset types as eligible collateral. We note that in the European market, covered bond assets include a broader range of assets, such as, for example, various types of public sector debt. We suggest that the Policy Statement should permit the same types of assets as are permitted in Europe as cover pool collateral, and should also include flexibility for the FDIC to approve additional asset types in future. In addition, we note that covered bond issuances typically are secured by ancillary assets, including derivatives to mitigate interest rate, currency and/or maturity mismatches, credit and/or liquidity support facilities, assets in which cash flows from the cover pool that are being held pending distribution to bondholders are invested, and accounts. The CMSA respectfully requests that the Policy Statement be revised to clarify that the collateral for covered bonds that are issued under the Policy Statement may include such ancillary assets.

STRUCTURAL CONCERNS

The CMSA believes certain of the provisions and definitions in the Policy Statement either may impede the goal of creating a U.S. covered bond market and/or would benefit from clarification, as follows.

Repudiation. The Policy Statement provides for realization on covered bond collateral if the FDIC as conservator or receiver of an IDI provides a written notice of repudiation of a covered bond contract, but does not pay damages pursuant to 12 U.S.C. Section 1821(e) by reason of such repudiation within 10 business days after the effective date of the notice. Accordingly, the FDIC clearly contemplates that its right of repudiation would apply to covered bonds issued by an IDI.

Covered bonds in the vast majority of European jurisdictions are not subject to repudiation or acceleration by the issuing institution's conservators or receivers. Instead, typically the cover pool is maintained by an administrator and applied to make payments on the covered bonds in accordance

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are "haircut" to such amounts as are within the maximum permissible loan-to-value ratio). We propose that any loan-to-value requirement for commercial loans be implemented as a "soft cap."

with the original payment schedule. In addition, many European covered bond regimes isolate the cover pool both from the issuing institution's insolvency estate and the reach of the insolvency laws that would otherwise be applicable to such estate. The preservation of the FDIC's right to repudiate contracts in the Policy Statement may render covered bonds issued by an IDI less appealing to investors and place such bonds at a competitive disadvantage compared to European covered bonds, thereby impeding the development of a U.S. covered bond market.

Moreover, the compensation payable under 12 U.S.C. Section 1821(e) would not make covered bond obligees whole. Section 1821(e) provides for a claim for damages calculated only as of the date of the FDIC's appointment, and not as of any later date of payment. Moreover, Section 1821(e) affords the FDIC a reasonable time after its appointment to decide whether to repudiate a contract. Accordingly there is likely to be a gap between the appointment date as of which damages are calculated and the date as of which damages are paid. Because of this gap, statutory damages are unlikely to fully compensate covered bond obligees whose contracts are repudiated. Covered bonds issued in the U.S. prior to the Policy Statement have therefore utilized a guaranteed investment contract or similar instrument to cover shortfalls caused by the statutory damage calculation. The need to purchase such an instrument has added to the costs of issuing covered bonds in the U.S., and impeded the growth of the U.S. covered bond market.

As was noted in the February ASF Letter, compelling precedent exists for the FDIC to limit its rights as conservator or receiver to repudiate contracts under 12 U.S.C. Section 1821(e). In September 2000, the FDIC adopted the Legal Isolation Rule (12 C.F.R. Section 360.6), in which it expressly agreed not to exercise its right to repudiate contracts under Section 1821(e) to recover financial assets transferred by an IDI in connection with a securitization or participation, provided that such transfer qualified for sale accounting treatment. The Legal Isolation Rule was adopted specifically to address the uncertainty created by the statutory damage calculation in Section 1821(e) in the context of transfers of assets for securitization or participation. Entering into a similar limitation in the context of the covered bonds rule would further the FDIC's stated goal in the Policy Statement of removing market uncertainty and the additional costs of U.S. covered bonds transactions, and would facilitate IDIs' access to liquidity and the development of a successful U.S. covered bonds market.

If the right to repudiate covered bonds is retained, the CMSA suggests that the Policy Statement clarify the calculation of compensatory damages such that investors are fairly compensated for a repudiation. We believe a fair measure of compensatory damages would include principal of the covered bond, accrued and unpaid interest thereon through the date of the FDIC's appointment, enforcement expenses, and the cost of a guaranteed investment contract, derivatives contract and/or other instrument purchased to cover payment of interest to investors until the original maturity date of the covered bond.

Consent Requirement. Paragraph (c) of the Policy Statement provides that the FDIC "hereby consents" (*i.e*. consents as of the time of the Policy Statement) pursuant to 12 U.S.C. Section 1821(e)(13)(C) to the exercise of contractual rights, including liquidation of the covered bond collateral, by the covered bond obligee in the circumstances set forth in paragraph (c). However, paragraph (d) of the Policy Statement provides a procedure for requesting the FDIC's consent pursuant to the Policy Statement, including delivery of supporting documentation. Paragraph (d) therefore suggests that, contrary to paragraph (c), the FDIC has discretion to delay or withhold its consent to exercise of contractual rights. Accordingly, paragraph (d) appears to create the same uncertainty that the Policy Statement was intended to remove. The CMSA respectfully requests either (i) that paragraph (d) be deleted or (ii) that the Policy Statement provide that the consent required by paragraph (d) shall be deemed to be granted automatically upon delivery of request for such consent, or (iii) clarify the instances in which consent under (d) must be obtained.

Liquidation of Collateral Without FDIC Involvement. The relief granted under the Policy Statement provides that the covered bond obligee may liquidate its collateral "provided no involvement of the receiver or conservator is required." It is not clear that this condition can be met. Due to the non-static nature of covered bond collateral, as well as the possibility that the related IDI may act as a servicer of the collateral, it is highly possible that files or records regarding the collateral may be in the possession of the IDI. Moreover, to the extent the FDIC retains the consent requirement in paragraph (d) of the Policy Statement, such requirement is inherently contradictory to the requirement of non-involvement of the FDIC. Additionally, unless paragraph (d) is completely deleted as we suggest, it is possible that a transferee of the collateral may require confirmation that FDIC consent has been given as a prudential matter. Accordingly, the CMSA respectfully submits that liquidation of collateral should be permitted under the Policy Statement even if FDIC involvement is required to effectuate such liquidation.

Limitation to Monetary Default. In order to give covered bondholders the benefit of their bargain, the right to foreclose set forth in the Policy Statement should exist upon any event of default, or at minimum, any material event of default. In particular, a failure to satisfy asset coverage tests should trigger a right to foreclose; if the coverage test is not met, but bondholders must wait for a monetary default before foreclosing, there may no longer be sufficient collateral to repay them.

Other Operational Provisions. A number of provisions in paragraphs (c), (e) and (f) are difficult to construe or may create technical impediments to enforcement. The following clarifications are suggested:

- The FDIC should expressly waive its rights to assert the automatic stay under 12 U.S.C. Section 1821(d)(12).

- It should be clarified that the rights and remedies of covered bondholders may be exercised through a trustee or other agent.

- It should be clarified that paragraph (c), clause (1) applies to a continuing default that commenced prior to the appointment of the FDIC, as well as to a default that occurred subsequent to such appointment.

- The 10 business day period in paragraph (c), clause (2) should be conformed to that in clause (1); i.e. triggered by the delivery of written notice of repudiation.

- The language in paragraphs (e) and (f) should be revised to clarify that such language is not intended to override the relief granted in the Policy Statement or pursuant to the policy statements and advisory opinion described above.

Covered Bond Definition. The CMSA suggests that the definition of covered bond be revised as follows:

- to include as eligible commercial loans and CMBS.

- to eliminate the restrictions on maturity (European covered bonds are typically permitted to have longer maturities than ten years; setting forth a ten year limit compromises the ability of U.S. covered bonds to compete in the market).

- to clarify that a multiple tier structure may be used.

- to clarify that a cover pool is dynamic and assets may be substituted.

Limitation on Assignment. The Policy Statement provides that the FDIC’s right to consent may not be assigned to any purchaser of property from the FDIC. The CMSA is unclear what this provision means in the context of covered bonds, and respectfully requests clarification. It should be made clear that this statement is not intended to invalidate the transfer of collateral pursuant to the Policy Statement, or limit a purchaser’s right to further transfer the collateral. The CMSA also notes that a sale of covered bonds would not change the covered bond obligee or the party with the right to hold the collateral, as covered bondholders would typically be represented by a trustee.

Coverage Limitations. Paragraph (b) of the Policy Statement limits the Policy Statement's coverage to issuances (i) that are made with the consent of the IDI's primary regulator and (ii) that do not constitute more than 4% of the IDI's total liabilities. These requirements severely limit the ability of an IDI to utilize the covered bond structure. Moreover, it seems redundant to require both a fixed limit on issuances and specific consent for each issuance. The CMSA believes a more calibrated approach based on prudent banking standards would serve the goal of developing the market in a prudent manner without imposing arbitrary and unworkable requirements. The requirement for regulatory consent to each issuance would prevent IDIs from accessing the capital markets in a speedy and efficient manner. The 4% test appears to be an arbitrary limit. The FDIC has not imposed limits on other forms of secured borrowings, and no policy issue is raised by covered bonds that would justify special treatment for these securities. In Europe many jurisdictions do not require such limits, including Germany, France, Ireland, Spain and the United Kingdom. In the United Kingdom, the Financial Services Authority has informally requested issuers to inform them if issuance equaled 10% or more of assets, but has stated this is not a limit on issuance. The CMSA respectfully suggests that the FDIC consider applying the approach used in the United Kingdom. No regulatory consent should be required, but notice of issuance that equals or exceeds 10% of an IDI's assets would be provided to the FDIC. Such a notice procedure would be the most reasonable approach, as it would permit regulators to intervene if additional issuances raised safety and soundness concerns.

We note also that the reference to eligible assets in paragraph (b) should be deleted, as that is already a requirement of the definition of "covered bond."

ADDITIONAL QUESTIONS POSED IN THE POLICY STATEMENT

The FDIC has requested comment as to whether issuances of covered bonds should increase an IDI's insurance assessment rate or be included in its assessment base, whether an IDI's percentage of secured liabilities to total liabilities should be factored into its assessment rate or base, and whether there should be an overall cap on liabilities. The CMSA respectfully submits that such an approach would be unprecedented, and implicates far broader policy questions than the issuance of covered bonds. Accordingly, we believe that any regulatory initiatives on these questions should be made in a separate forum, and not implemented in connection with the Policy Statement.

The FDIC has also asked whether the Policy Statement should be open to future innovations in covered bond structures. The CMSA strongly supports this concept. We urge that the Policy Statement should not be limited to current structures, and should provide a mechanism for the FDIC to approve new asset types for inclusion of cover pools in the future.

RISK BASED CAPITAL

Covered bonds issued in Europe are given the benefit of the CRD Directive. The CRD Directive provides that covered bonds (that meet the specifications in the CRD directive) held by banks in the European Union are given a significantly more favorable risk weighting treatment (generally two to three times more favorable, depending on the applicable risk-weighting scheme) than other senior debt issued by the same institution. We urge the FDIC to consider providing similar regulatory capital relief for institutions that it regulates that hold covered bonds that meet the requirements of the Policy Statement, and to coordinate with other regulators such that this relief can be provided to all U.S. banking institutions.

The CMSA appreciates the opportunity to comment on this proposal. Please do not hesitate to contact us with questions and comments.

Sincerely,

Dottie Cunningham
Chief Executive Officer
Commercial Mortgage Securities Association

cc:

Hon. Ben S. Bernanke, Chairman, Board of Governors of the Federal Reserve System
Hon. Henry M. Paulson, Jr., Secretary, U.S. Department of Treasury
Hon. John C. Dugan, Comptroller of the Currency