



November 13, 2008

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

Attention: Comments Re: RIN #3064-AD37

Re: Interim Rule Regarding Temporary Liquidity Guarantee Program

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Interim Rule Implementing the Temporary Liquidity Guarantee Program (“Interim Rule”) issued by the Federal Deposit Insurance Corporation (“FDIC”). SIFMA strongly supports the efforts of the FDIC to avoid or mitigate serious adverse effects on economic conditions or financial stability through the establishment of the Temporary Liquidity Guarantee Program (“TLGP”). Our members, many of whom expect to support the market for this product through market-making, believe that with appropriate modifications this program will be an effective tool in combating the challenges facing the nation’s financial institutions.

In order to maximize the effectiveness of the TLPG and to achieve its important policy goals, SIFMA would suggest that:

****the FDIC modify the guarantee under the TLGP to cover principal and interest payment obligations as they become due. In addition, any final rule should clearly state that the guarantee is backed by the full faith and credit of the U.S. government;**

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D. C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

**the FDIC should make available standard language that issuers may use and that other market participants can look to in order to understand the full scope of the guarantee; and

**the FDIC should develop a process for more timely payment in the event of an insolvency. The process described in the Interim Rule is cumbersome and subject to delays that could detract from the attractiveness to bond investors of securities issued under the guarantee.

The Guarantee Should be a Full and Unconditional Guarantee of Timely Payments of Principal and Interest and Explicitly Backed by the Full Faith and Credit of the U.S. Government

In the Chairman's Statement on the TLGP, Chairman Bair clearly stated that "the guarantees we have made are broad and backed by the full faith and credit of the U.S. government..."² However, there is no comparable statement in the Interim Rule and such a clear statement, either in the rule itself or in publicly available guarantee language, would alleviate concerns that the guarantee is anything less than a full faith and credit guarantee by the U.S. government.

Further, market participants are concerned that the guarantee described in the Interim Rule is not sufficient to make the guaranteed senior debt attractive to the widest possible investor base and is not consistent with the nature of the guarantees provided by other governments, most notably by the U.K., and thus could put the U.S. guaranteed product at a competitive disadvantage to securities offered under non-U.S. programs.

In particular, the Interim Rule states that the FDIC's obligation to pay on its guarantee will become effective "upon the failure of a participating entity that is an insured depository institution or the filing of a petition in bankruptcy with respect to any other participating entity." We believe that a program with this characteristic will not appeal to the broadest group of investors and will hamper the attractiveness, liquidity and pricing for this product.

We believe that the program should be altered to specifically indicate that the guarantee is one for "full and timely payment" of principal and interest. This, we believe, would make the program consistent with that of the most prominent non-U.S. program in the U.K. In the initial statement by Chairman Bair announcing the creation of the TLGP she specifically expressed concern that, in light of efforts by European and Asian nations, U.S. banks not be put "on an uneven playing field."³ While the U.K. guarantee

² See Chairman's Statement on the Temporary Liquidity Guarantee Program at http://www.fdic.gov/regulations/resources/TLGP/chairman_statement.html.

³ See Statement by FDIC Chairman Sheila Bair, October 14, 2008 at <http://www.fdic.gov/news/news/press/2008/pr08100a.html>.

is “unconditional, irrevocable and ensures timely payment”,⁴ the U.S. guarantee, in contrast, does not become effective upon the occurrence of a missed payment and investors will need to wait until the failure or bankruptcy of the issuer. Thus, investors may be subject to significant delay and uncertainty. This guarantee structure may limit the value to investors and thus make this investment less attractive generally, and less attractive with respect to other non-U.S. guaranteed bank debt.

While we understand that the claims process is consistent with the approach taken with deposit insurance, the expectations of debt investors are different from those of depositors. Bond investors, particularly those in the rates space, generally expect safety and liquidity with an unconditional guarantee of timely payment. Rates investors in particular might have limited appetite for a product that may include uncertainty as to the timeliness of payment.

The Form of Guarantee should be Standardized and made publicly available

In order for the market to have a clear understanding of the nature of the guarantee that is being provided by the FDIC, a form of guarantee should be made publicly available, perhaps on the FDIC website. This form of guarantee would form the basis of consistent disclosure that issuers may use and avoid minor discrepancies in language within disclosure that could cause confusion among investors. We believe that providing approved language will lessen concern about the scope of the guarantee (while providing clarity that the guarantee is a full, faith and credit obligation of the U.S. government) and will provide the uniformity in this product that investors would require. We believe an approach similar to that taken in connection with the U.K. scheme would address this concern.

Claims Process

The claims process as described in the Interim Rule has the potential to impair the attractiveness of these guaranteed securities. The process described in the Interim Rule and the accompanying Release leaves the potential for substantial delay in the settling of claims and we believe this process needs to be streamlined. While the FDIC states that it will strive to expedite the process it is not certain that timeliness will meet market expectations, particularly of those investors that operate in the rates space. A process that is more aligned with methods that are usual in the debt markets would ease investor concerns. There may be a number of different ways to achieve this goal and these might include use of a paying agent, an announced claims approval process or a letter-of-credit structure. Details of any of these possible approaches will need to be developed and SIFMA will be happy to work with the FDIC to develop these and to identify other ways to expedite the claims process.

⁴ See Market Notice: The UK Government’s 2008 Credit Guarantee Scheme at <http://www.dmo.gov.uk/documentview.aspx?docname=cgs/press/mktnotice08.pdf&page=>.

Conclusion

SIFMA appreciates the opportunity to provide input on this important program and would be happy to discuss the substantive points raised in this letter and more generally any enhancements that would make the program meet its stated objectives. However, making explicit that the obligation is for timely payment of principal and interest and represents a full faith and credit obligation of the U.S. government, publishing standardized language for disclosure, and streamlining the claims process would significantly enhance the attractiveness of the program and ensure that the FDIC will meet its announced goals.

If you have any questions, please feel free to contact the undersigned at 212-313-1124.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert Toomey", written in a cursive style.

Robert Toomey
Managing Director and
Associate General Counsel